



Homes
England

Adrian Duffield
Head of Planning
South Oxfordshire District Council
135 Eastern Avenue
Milton Park, Milton
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BY EMAIL ONLY

6 March 2018

Dear Adrian,

Housing Development at Chalgrove Airfield

We refer to our meeting of 20 February 2018 with the Council and Oxfordshire County Council and also to your letter of 27 February in relation to the proposed level of highway infrastructure to support the allocation of development at Chalgrove Airfield.

On behalf of Homes England, we wish to reiterate our commitment to working with the Council and Oxfordshire County Council to find an acceptable solution to the provision of appropriate highway infrastructure to facilitate development at Chalgrove.

Homes England is committed to making substantial investments in transport infrastructure as part of the Chalgrove Airfield development. We will also provide significantly enhanced sustainable travel opportunities, such as high quality bus services, the exact package of measures is being discussed in detail with Officers of the Councils, and is in line with the Council's 2033 Local Plan (Regulation 19 Version). It is a shared priority of Homes England and both Councils that these investments lead to the delivery of much needed infrastructure.

The three main areas where we have anticipated third party funding requirements are the Stadhampton Bypass, and Watlington and Benson Edge Roads. In the case of Stadhampton, we are prepared to work with the County Council to agree a funding and delivery mechanism which would allow us to front-fund the full cost of the Bypass. In Watlington, we are working with Developers, Officers and the Neighbourhood Plan Group to progress the delivery of the Edge Road. We are confident that agreements will be reached on land, technical delivery, timing and funding. In the case of Benson, we understand that similar agreements are well progressed and we have made a commitment to provide gap funding. In all three cases, the Local Planning and Highways Authorities can have confidence that the infrastructure will be delivered without a funding shortfall.

Your letter refers to Homes England forward funding some of the highway schemes with reference to a mechanism to assist in the clawing back of funds from other developers when these come on stream. Whilst Homes England wishes to assist, as a public body expending public monies, we have to be certain that any decisions that we take are accountable and made transparently, in accordance with both planning policy and legislation.

Following our meeting, we have taken legal advice about the proposal to forward fund other highway infrastructure not directly related to the Chalgrove scheme. As you will be aware, Regulation 122 of the

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Community Infrastructure Regulations 2010 (as amended) states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

Homes England is concerned that a number of the highways improvements which the County Council considers should be forward funded by Homes England should be delivered by third party funding and are not fairly or reasonably related in scale or kind to the Chalgrove development. We have been informed of the recent Scottish case *Aberdeen City and Shire Strategic Development Planning Authority (Appellant) v Elsick Development Company Limited (Respondent)* ((Scotland) [2017] UKSC 66), where supplementary planning guidance was promoted by the local planning authority which required developers to enter into planning obligations to make financial contributions to a strategic transport fund on the basis that such contributions were pooled and spent on required infrastructure. Our position is informed by this guidance in that an obligation must be fairly and reasonably related to the permitted development and that it is not lawful to restrict development by way of planning obligation until the developer undertakes to make a financial contribution towards infrastructure which is unconnected with the development of the site.

In addition, we assume that the claw back of funds from subsequent developments would be in the control of the County Council as highway authority as any highway related financial contributions payable under a section 106 agreement would be paid to it. If the highway infrastructure has already been provided, how will the County Council be able to justify other developers subsequently paying for it on the basis that it is necessary to allow that development to go ahead? We are very interested to understand how such a legal mechanism would work and whether either the District or County Council has taken any legal advice about taking this approach.

Homes England therefore has concerns about the limitation on the suggested use of planning obligations imposed by Regulation 123 of the CIL Regulations which restricts the pooling of planning obligations for five or more developments. Has any consideration been given to how this could be addressed if funds need to be clawed back from more than five other developments?

Whilst Homes England is very keen to work together with both authorities to find an appropriate solution to ensure the delivery of development in line with the Council's draft Local Plan, we need to understand from the Council and the County Council how it considers that Homes England front funding development in the way suggested (1) can be justified in planning policy terms (2) will meet the requirements of Regulation 122 of the CIL Regulations and planning law and (3) how any claw back mechanism would work.

Homes England recognises that the Government has issued a consultation in relation to reforming S106 contributions and the collection of developer contributions for strategic infrastructure. Notwithstanding the issues raised in the consultation, Homes England has concerns about the legality of the Councils' proposals for the reasons set out in the letter.

We are happy to meet with you to discuss any of the above and understand the need to reach a solution as quickly as possible in light of the Council's intention to submit a report to Cabinet on 20 March.

Yours sincerely,


Ken Glendinning
Head of Strategic Land