

From: Mike Calder

Sent: 18 August 2026 13:46

To: John Gulston; Valerie Okeiyi

Subject: 25-27 Clarendon Road (HGY/2024/2279) - proposed variation to clause 9.1, s106

Hi John, Valerie,

Thank you both for your time today. As discussed, I am writing to set out the change we propose to the s106 agreement so that you have it in writing ahead of any referral to Legal Services.

Proposed variation

We are seeking to vary clause 9.1 of the s106 agreement dated 2025 only, so that the monitoring costs of £43,800 become payable no later than one month prior to Implementation of the Development, rather than six months prior.

We propose that linking payment to the submission of the Affordable Workspace Statement is deleted, and that paragraph 2.3 of the Eighth Schedule is left unchanged. The Affordable Workspace Statement would therefore continue to be submitted six months prior to Implementation as currently drafted, preserving the Council's time to consider and approve it in advance of Implementation under paragraph 2.4. No other obligation is affected.

We are content that the trigger remains tied to Implementation as defined in clause 1.1, and are not seeking any change to that definition or to the notice requirements under clause 6.

Reason for the request

The monitoring obligation is a fixed sum payable in respect of the Council's costs of monitoring the agreement. Under the current drafting it falls due at a point at which Implementation is anticipated but not yet certain, and the refund mechanism at clause 5.1.2 does not readily apply to a monitoring fee. Aligning the payment with the point at which Implementation is committed gives both parties greater certainty that the sum is paid in respect of monitoring that will actually be undertaken, without reducing the amount payable or the Council's ability to recover it.

As discussed, our founding partners wish to link any payments to success through the BSR Gateway 2 process which is not expected until at least December 26. They see the payment as speculative and a risk until completion of Gateway 2 and will not fund the payment.

Process

We note that clause 3.1 expressly excludes clause 9 from the covenants that take effect as planning obligations for the purposes of section 106. On that basis we anticipate this can be dealt with by way of a short supplemental deed rather than a variation of a planning obligation, and that it should not require any planning judgement or committee involvement. We are of course content to give the usual undertaking for the Council's reasonable legal costs before drafting commences.

If you are content with the principle, could you confirm the appropriate contact in Legal Services and we will instruct our solicitors to prepare a draft for your review. I am happy to discuss further if it would help.

Kind regards

Mike

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