

Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) states that a planning obligation may only constitute a reason for granting planning permission where 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

Elmbridge Borough Council confirms that, in its opinion, the legal agreement submitted in relation to this inquiry is in compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

Clause 3.5 of the agreement provides that, where the Secretary of State states clearly in his decision letter granting planning permission for the development, one or more of the obligations in the Agreement are in whole or in part unnecessary or otherwise in whole or part fail the tests in Regulation 122 of, then the relevant obligation or part of the obligation shall not apply and shall not be enforceable by the Council.

Unless otherwise stated, defined terms in this statement have the same meanings as in the legal agreement.

#### **Tri-lateral agreement**

Reference	Obligation	Policy	Reasons
Littleworth Common Contribution  (Schedule 1, Clause 1)	To pay a sum of £25,000 to be applied as follows:  The payment of £5,000 prior to commencement  The payment of up to £20,000 prior to the first occupation of a residential unit on Sites 2, 4 or 5 or the first occupation of the hotel	Core Strategy Policy CS15 (Biodiversity)  Development Management Plan Policy DM21 (Nature conservation and biodiversity)  NPPF paragraph 170 point d)	The initial payment is to be applied to the creation of the Littleworth Common Management Plan. The amount payable has been informed by a quote obtained by the Council from a provider of these services.  The second payment is to be applied to implementation of the actions identified by the Littleworth Common Management Plan and is intended to be proportionate to the

			additional recreational pressure arising from the development. The amount payable has been informed by an estimate from the Appellant's ecologist.
Railway Station Accessibility (Schedule 4, Clause 2.1)	To pay the Esher Railway Station Contribution of £300,000 (index-linked) to Surrey County Council prior to first occupation of a residential unit.	Core Strategy Policy CS25 (Travel and Accessibility)  Surrey Transport Plan: Rail Strategy  NPPF paragraph 108 point b) and paragraph 110 point b)	The financial contribution would contribute towards improvements to accessibility at Esher railway station. The increase in the number of users of the station arising from the proposed development can be expected to cover a range of abilities. The improvements to step-free access will be available to residents of the development who need this, such as people with disabilities, parents with pushchairs or individuals with heavy luggage. The cost to the developer of £300,000 is considered proportionate to the scale of the proposed development and is to be matched by other sources of funding available to the County Council.
Travel Plan Monitoring Fee (Schedule 4, Clause 3.1)	To pay the Travel Plan Auditing Payment of £6,150 prior to first occupation of a residential unit.	Core Strategy Policy CS25 (Travel and Accessibility)  Surrey Transport Plan: Travel Planning Strategy	The fee ensures that the County Council can monitor the effectiveness of the Travel Plan to promote sustainable travel choices at the site.

		NPPF paragraph 111	
Community Use Agreement (Schedule 2, Clauses 2.1-2.2 and Schedule 6)	To submit a Community Use Agreement (based on the indicative Heads of Terms) for the Council's approval prior to bringing the development on Site C into use, and to thereafter comply with the terms of the approved Community Use Agreement.	Core Strategy Policy CS16 (Social and Community Infrastructure)  Development Management Plan Policy DM9 (Social and community facilities)  NPPF paragraph 91 point d)	To maximise the use of the facilities by local residents and other visitors, in order to ensure that the Aims and Objectives within the Community Use Agreement Heads of Terms are met.
Hotel Planning Permission (Schedule 2, Clause 3.1)	Following commencement of the development on Site B (the proposed hotel), the Owner shall not carry out any further works on the hotel previously approved under application refs. 2008/0729 and 2011/0811	Development Management Plan Policy DM17 (Green Belt – development of new buildings)  Core Strategy Policy CS21 (Affordable Housing)  NPPF paragraph 144	To ensure that the affordable housing on Site 2, which (in the event that permission is granted) would form part of the very special circumstances for permitting the proposal, can be delivered.
Racecourse Improvement Works (Schedule 2, Clauses 1.1 – 1.6)	To agree a Racecourse Improvement Works Delivery and Phasing Plan prior to the commencement of the Racecourse Improvement Works and prior to the disposal of any part of the residential land. To carry out the works in accordance with the plan.  To set up the Racecourse Improvement Works Deposit Account and to pay the receipts from the sale of the residential land	Core Strategy Policy CS16 (Social and Community Infrastructure)  Development Management Plan Policies DM9 (Social and community facilities) and DM17 (Green Belt – development of new buildings)  NPPF paragraphs 91 point d) and paragraph 144	To ensure that the Racecourse Improvement Works, which (in the event that permission is granted) would form part of the very special circumstances for permitting the proposal, are delivered in full.

	<p>into this account. To use all of the land receipts to carry out the works.</p> <p>Not to withdraw funds from the Account which would result in a remaining balance of less than £3m until a contract with an Affordable Housing Provider has been entered into.</p> <p>Not to carry out any of the works on Site A other than in conjunction with the groundworks facilitating the development on Sites 1 and 2.</p>		
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### **Unilateral Undertaking**

Reference	Obligation	Policy	Reasons
<p>Nursery Provisions</p> <p>(Schedule 3, Clauses 1.1-1.2)</p>	<p>Not to carry out any works for the demolition of the existing day nursery until the Commencement of Development on Site 5.</p> <p>Not to occupy more than 65% of the Open Market Units (165 units) until the new Nursery Facility has been provided and is fully operational.</p>	<p>Core Strategy Policy CS16 (Social and Community Infrastructure)</p> <p>Development Management Plan Policy DM9 (Social and community facilities)</p> <p>NPPF paragraph 92 point c)</p>	<p>The Appellant has set out a significant unmet need for childcare provision in the area, and the loss of the existing day nursery without a suitable replacement would be contrary to policies resisting the loss of existing social and community facilities.</p> <p>NOTE: The Council considers that the obligation should be to deliver</p>

			and have fully operational the proposed nursery on Site 5 prior to the demolition of any part of the existing nursery facilities. If this proved not to be feasible, the Council would accept the re-location of the nursery to a temporary location elsewhere in Esher to cover the period between demolition of the existing buildings and delivery of the new facility.
Affordable Housing  (Schedule 1, Clauses 1.1 – 8.1 and Schedule 2)	<p>To submit an Affordable Housing Scheme to the Council prior to commencement;</p> <p>Not to allow the Occupation of any residential unit on Site 3 until a contract with an Affordable Housing Provider has been entered into;</p> <p>Not to occupy more than 65% of the Open Market Units (165 units) until all of the Affordable Housing Units have been made available for occupation, to include no more than 51 Open Market Units on Site 4 and no Open Market Units on Site 5;</p> <p>To carry out Viability Reviews as required by Clauses 3.1-3.3;</p>	<p>Core Strategy Policy CS21 (Affordable Housing)</p> <p>Development Management Plan Policy DM17 (Green Belt – development of new buildings)</p> <p>NPPF paragraph 62</p>	<p>To ensure that the affordable housing units, which (in the event that permission is granted) would form part of the very special circumstances for permitting the proposal, are delivered. Further, to ensure that in the event that economic factors change and the scheme's financial viability improves, that additional profit is used to provide affordable housing up to the 45% cap.</p> <p>NOTE: The Council cannot agree to the provision of 20% affordable housing (as set out in Clause 1.1.1) as it does not consider that provision below the policy requirement of 45% has been justified.</p>

	<p>Where a Viability Review identifies that the provision of Additional On-Site Affordable Housing is required, to provide such Affordable Housing in accordance with an amended Affordable Housing Scheme;</p> <p>Where a Viability Review identifies that the provision of an Affordable Housing Review Contribution is required, to pay that contribution;</p> <p>To conduct the Viability Reviews in accordance with the formulas at Schedule 2</p>		<p>The Council considers that no more than 50% of the Open Market Units (127 units) should be made available for occupation prior to the delivery of all of the Affordable Housing Units and notes that the trigger proposed in Clause 2.2 would conflict with the Indicative Phasing Information at Schedule 7 to the tri-lateral agreement.</p>
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