

Draft Heads of Terms for Section 106 Agreement

Land to the North of Eastlands Lane, Cowfold

Client	Eastlands Farm Ltd & Hunter Developments Ltd
Project	P2305 Eastlands Lane, Cowfold
Document	Draft Heads of Terms for Section 106 Agreement / Unilateral Undertaking
Planning Reference	DC/26/0472 / Planning Portal PP-14656469
Date	15 June 2026
Status	Draft for discussion with Horsham District Council and West Sussex County Council

Drafting note: This document is prepared as draft heads of terms only. It is not a settled legal agreement and will require review by the Appellant, the Local Planning Authority, West Sussex County Council and their respective legal advisers.

1. Introduction and Context

- 1.1. This document sets out the draft Heads of Terms for a proposed planning obligation to be secured by way of a Section 106 Agreement and/or Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended).
- 1.2. It is submitted on behalf of the Appellant, Eastlands Farm Ltd & Hunter Developments Ltd, in support of the accompanying planning appeal to the Planning Inspectorate against the refusal of planning application reference DC/26/0472.
- 1.3. The appeal relates to the proposed erection of 9 no. dwellings with associated car parking spaces, detached carports, garages and landscaping at Land to the North of Eastlands Lane, Cowfold (the Site). The application site extends to approximately 0.49 hectares.
- 1.4. The purpose of the planning obligation is to secure measures which are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the National Planning Policy Framework.
- 1.5. The Appellant will continue to engage with Horsham District Council (HDC), West Sussex County Council (WSCC) and any other relevant parties to agree the final scope, drafting and timing of the obligations during the appeal process.

2. Parties

- 2.1. The proposed agreement or undertaking is expected to include, as necessary:
 - Owner / Appellant: Eastlands Farm Ltd & Hunter Developments Ltd, or such other legal owner(s) as may be confirmed by title review.
 - Local Planning Authority: Horsham District Council.
 - County Council / Local Highway Authority: West Sussex County Council, insofar as highway or rights of way obligations are required.
 - Mortgagee / chargee: any mortgagee or chargee with an interest in the Site, if applicable.
- 2.2. The final parties and land interests should be confirmed by the Appellant's solicitor following title review.

3. Definitions

Term	Meaning
Commencement	The carrying out of a material operation as defined by section 56(4) of the Town and Country Planning Act 1990, excluding site investigations, surveys, ecological mitigation works, archaeological investigations, remediation, diversion and laying of services, temporary access works, erection of fencing or hoardings, and other preparatory works as may be agreed.
Development	The erection of 9 no. dwellings with associated car parking spaces, detached carports, garages and landscaping at the Site, pursuant to planning application / appeal reference DC/26/0472.
Highway Works	The Eastlands Lane pedestrian and/or highway improvement works, including refuge points and any associated low-level lighting or ancillary measures agreed with HDC and WSCC.
Landscape Buffer	The minimum 15 metre undeveloped buffer adjacent to the western woodland boundary, together with associated planting, boundary treatment and management measures.
Management Company	A private management company or other approved management body responsible for the maintenance, management and repair of communal drainage, SuDS, landscape areas, access areas and any other non-adopted communal infrastructure.
Occupation	Occupation of any dwelling for residential purposes, excluding occupation for fitting out, marketing, security or construction-related purposes.
SuDS	Sustainable drainage systems and related surface water drainage infrastructure serving the Development.

4. Draft Planning Obligations

4.1. Eastlands Lane / Highway Improvements

- 4.1.1 The Appellant shall secure the delivery of proportionate pedestrian and highway improvements to Eastlands Lane, to be agreed with HDC and WSCC before Commencement or before any other trigger agreed between the parties
- 4.1.2 The Appellant shall secure the delivery of proportionate pedestrian and highway improvements to Eastlands Lane, to be agreed with HDC and WSCC before Commencement or before any other trigger agreed between the parties.
- 4.1.3 The works are expected to include:
- pedestrian refuge points along Eastlands Lane, broadly in accordance with the submitted Proposed Pedestrian Refuge Points Plan 14034_110 P1, or such alternative arrangement as may be agreed with HDC and WSCC;

- any localised widening, surfacing, signage, road safety, visibility or ancillary works reasonably required to deliver the refuge points;
- low-level lighting or other proportionate pedestrian safety measures, if required by the Inspector, HDC or WSCC, subject to detailed design, ecology and landscape considerations;
- arrangements for future maintenance of any non-adopted improvement works unless otherwise adopted by the Highway Authority.

4.1.4 Suggested trigger: details to be approved before Commencement; works to be completed before first Occupation, unless otherwise agreed in writing with HDC and WSCC.

4.2. Drainage Management and SuDS

4.2.1 The Appellant shall secure the provision, implementation, management and long-term maintenance of the surface water drainage strategy and any SuDS serving the Development.

4.2.2 The obligation may include:

- submission and approval of a drainage and SuDS management and maintenance plan, where not secured by planning condition;
- establishment of the Management Company or other approved management body prior to first Occupation;
- transfer, vesting or other legal arrangements to ensure the Management Company has sufficient rights, responsibilities and funding to maintain the drainage and SuDS infrastructure;
- maintenance of the SuDS in accordance with the approved management and maintenance plan for the lifetime of the Development;
- rights of access for inspection, maintenance and repair by the Management Company and, where necessary, HDC / WSCC in default.

4.2.3 Suggested trigger: management and maintenance arrangements to be approved before Commencement or prior to installation of drainage infrastructure; Management Company to be established before first Occupation; maintenance obligations to apply in perpetuity.

4.3. Landscape, Boundary Treatment and Landscape Buffer

4.3.1 The Appellant shall secure the delivery and long-term management of landscaping associated with the Development, including the retention and enhancement of existing boundary vegetation wherever possible, new trees, hedgerows, shrubs, estate rail fencing, timber panel fencing and the Landscape Buffer adjacent to the western woodland boundary.

4.3.2 The obligation may include:

- implementation of the approved landscape scheme in accordance with the approved plans and any agreed phasing;

- retention of the minimum 15 metre undeveloped buffer adjacent to the woodland, free from built form, private gardens and hardstanding, except as may be expressly approved;
- management of planting, boundary treatments and buffer areas for a minimum period to be agreed, and thereafter through the Management Company where the areas remain communal or non-adopted;
- replacement planting where any tree, hedge or shrub dies, is removed or becomes seriously damaged or diseased within the agreed defects period;
- protection of public access and ecological interests where landscape areas interface with the public right of way and woodland edge.

4.3.3 Suggested trigger: detailed landscaping and management provisions to be approved before Commencement where not controlled by condition; implementation to be completed in the first planting season following substantial completion of relevant dwellings or as otherwise agreed; maintenance obligations to apply for the approved management period and thereafter through the Management Company where applicable.

4.4. Management Company and Estate Infrastructure

4.4.1 The Appellant shall establish a Management Company, or secure another approved management arrangement, to manage and maintain all non-adopted communal areas and infrastructure associated with the Development.

4.4.2 The Management Company responsibilities may include:

- communal drainage and SuDS infrastructure;
- communal landscaping, open space, woodland-edge buffer areas and boundary treatments;
- private access road, turning areas and any non-adopted pedestrian or refuge infrastructure within the Appellant's control;
- private lighting, if installed and not adopted;
- future inspection, maintenance, repair, replacement, insurance and funding arrangements.

4.4.3 Suggested trigger: Management Company to be incorporated and management arrangements approved before first Occupation. No dwelling shall be occupied until the relevant management arrangements for the infrastructure serving that dwelling are in place.

4.5. Monitoring, Legal and Administrative Costs

4.5.1 The Appellant shall pay HDC's and, where relevant, WSCC's reasonable legal, monitoring and administrative costs associated with the preparation, completion, monitoring and enforcement of the Section 106 Agreement or Unilateral Undertaking, subject to the amounts being justified and agreed.

4.5.2 Suggested trigger: legal costs payable on completion of the agreement or undertaking; monitoring fees payable in accordance with the agreed schedule or before Commencement.

5. Matters to be Agreed

- Whether the obligation is progressed as a Section 106 Agreement or Unilateral Undertaking.
- Precise land ownership, title boundaries and parties to the agreement.
- Detailed specification, design and approval mechanism for the Eastlands Lane pedestrian / highway improvements.
- Whether any low-level lighting is necessary, and if so its specification, location, timing controls and ecological safeguards.
- Final drainage and SuDS management responsibilities where not controlled by planning condition.
- The extent of any communal landscape areas, the Landscape Buffer and related maintenance period.
- Reasonable legal, monitoring and administrative costs payable to HDC and WSCC.

6. Suggested Operative Wording - Framework Clauses

6.1. The following wording is indicative only and should be settled by the parties' legal advisers:

The Owner covenants not to Commence the Development until details of the Highway Works have been submitted to and approved in writing by the Council in consultation with the Highway Authority.

The Owner covenants not to Occupy any Dwelling until the Highway Works have been completed in accordance with the approved details, unless otherwise agreed in writing by the Council and the Highway Authority.

The Owner covenants to establish the Management Company prior to first Occupation and to procure that the Management Company maintains the SuDS, communal landscaping, private access areas and any other non-adopted communal infrastructure in accordance with the approved management arrangements.

The Owner covenants to retain the Landscape Buffer as an undeveloped landscaped buffer and to manage it in accordance with the approved landscape management plan.

The Owner covenants to pay the Council's and County Council's reasonable legal and monitoring costs in accordance with the agreed costs schedule.

7. Conclusion

- 7.1. These draft Heads of Terms identify the principal measures that may be secured by planning obligation to mitigate the direct impacts of the Development and address matters raised during the application and appeal process. The Appellant's position remains that drainage, ecology, BNG and certain detailed landscape matters may be capable of being secured by condition; however, the above framework provides flexibility should HDC, WSCC or the Inspector consider that any matter requires a planning obligation.