

Appeal Reference APP/B3030/W/25/3364181
LPA Reference 23/01837/FULM
Appellant Name Assured Asset Solar 2 Ltd
Site Address Land To The West Of Main Street Kelham

Newark and Sherwood District Council's Statement for the need for a s106 Agreement

The draft s106 submitted to the Planning Inspectorate has been agreed between the Newark & Sherwood District Council (the "Council") and the Appellant. The form of the planning obligation has been amended from a unilateral undertaking to a bilateral agreement due to the reciprocal obligations by the Council. The Council has assessed the planning obligations originally contained in the Head of Terms to be secured and accepted the position to exclude the hedgerow translocation and highways condition survey but maintain that the biodiversity, landscaping and ecological mitigation obligations are still required.

The Council's position is to require planning obligations in relation to the delivery of on-site mitigation and habitat enhancement, which the Council take the view cannot be secured by planning condition only. The agreed draft s106 secures the biodiversity net gain, habitat creation, and ongoing ecological monitoring to offset any loss of habitat and ensure long-term environmental benefits. It also provides a mechanism for the Council to monitor compliance with planning obligations, ensuring that mitigation measures, restoration, and community benefits are delivered as promised as well as the Council's fee for this monitoring.

This method follows the previously accepted CIL-compliant approach for the following applications:

Knapthorpe Solar Farm (Council ref: 22/00975/FULM) (Appeal ref: APP/B3030/W/24/3344502)

Muskham Wood Solar Farm (Council ref: 22/00976/FULM) (Appeal ref: APP/B3030/W/24/3344500)

Averham BESS (Council ref: 23/00317/FULM)

Staythorpe BESS Infrastructure (Council ref: 24/01261/FULM)

Staythorpe BESS (Council ref: 22/01840/FUL) Appeal ref: APP/B3030/W/23/3334043)

In this appeal the Inspector specifically dealt with the s106 Agreement associated with the site and made comments in his decision notice at paragraph 58:

An obligation dated 30 April 2024 requires the owner and/or the developer to translocate the hedgerow discussed in paragraph 24 and to maintain it until the development is decommissioned or for a period of 30 years from the date of the full implementation of the biodiversity net gain measures, whichever is the later; to maintain the biodiversity net gain measures discussed in paragraph 52 within the same timetable; and to maintain the enhanced mitigation measures discussed above in paragraph 23 until decommissioning. These requirements are necessary to ensure that the landscaping and planting on site remains

effective throughout the life of the development.

The Council is satisfied that the planning obligations satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (“CIL Regs”), which state that planning obligation may only constitute a reason for granting planning permission for the 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.

The agreed draft planning condition 15 secures the submission of a Biodiversity, Landscape and Ecology Management Plan (“BLEMP”) to be approved by the Council and the planning obligations secure the ongoing management and monitoring of the mitigation and enhancements detailed in the BLEMP.

The locations of the delivery of the on-site landscape and biodiversity enhancement and mitigation have already been submitted by the Appellant through the Landscape Masterplan and the Biodiversity metric and form part of the documents referred to in the planning conditions. The s106 Agreement seeks to bind the parts of the site which deliver the mitigation.

Along with binding the site and securing delivery on-site for the lifetime of the development, the s106 agreement seeks a monitoring fee. As financial payments cannot be secured through planning condition, the only way the Council can require this is by way of a planning obligation. The Council has a set Fees and Charging schedule¹ which identifies the level of monitoring fees attracted by the site. Whilst the Council acknowledge that this theoretically could be dealt with at the discharge of condition stage, the Council do not think that this is appropriate. The monitoring fees cannot be a clear requirement of the condition outlining the detail to be submitted as part of the BLEMP. This results in uncertainty in expectations to satisfy any discharge of condition, which could form part of a dispute at this stage and render the condition unenforceable on the part of the Council.

The Council takes the view that not dealing with any required planning obligations as part of the consideration of an application is not open and transparent. Applying the provisions contained in The Town and Country Planning (Development Management Procedure) (England) Order 2015² and recently considered in *R. (on the application of Greenfields (IOW) Ltd) v Isle of Wight Council*³, any required s106 agreement should be published before the

¹ <https://www.newark-sherwooddc.gov.uk/media/nsdc-redesign/documents-and-images/your-council/access-to-our-information/council-spending/fees-and-charges/Fees-and-Charges.pdf> (pg. 14)

² Article 40

³ [2025] EWCA Civ 488

grant of planning permission to allow public scrutiny. To deal with the planning obligations at any point after the grant of planning permission, or in this case, if the appeal is allowed, would not in the Council's view align with those requirements.

The Appellant has submitted the locations of the delivery of the biodiversity, landscape and ecological mitigation/creation and enhancement through the Landscape Masterplan which the planning obligation is seeking to secure. This provides certainty for securing the planning obligation at this stage of the process, should the appeal be allowed it is not subject to further approval by the Council, just the details for implementation secured through the BLEMP.

The Appellant has offered biodiversity, landscape and ecological enhancement and mitigation as a benefit forming part of their application, which can be weighed in the planning balance. As such, the Council takes the view that this should be considered as part of the application and if the Inspector is minded to allow the appeal, that it is secured before any grant of permission.