

## **The Network Rail (Cambridge South Infrastructure Enhancements) Order**

### **Response to Inspector's Question – Whether Deed of Variation is Required to the Existing S106 Agreement Relating to Hobson's Park**

#### **1 Summary**

- 1.1 This note responds to the question raised by the Inspector as to whether the acquisition of those parts of Hobson's Park (comprised in plots 3, 4c, 6b and 7 on the deposited plans **NR 09.01**) required for the CSIE Project will necessitate a Deed of variation to the S106 Agreement which secured the provision of Hobson's Park.
- 1.2 In summary the position is that no Deed of Variation is required, for the reasons explained further below.
- 1.3 The City Council has been consulted on the content of this note and agrees with its contents.

#### **2 Section 106 Agreement Obligations – Hobson's Park**

- 2.1 The Section 106 Agreement dated 6 August 2010 relates to planning permissions 07/0620/OUT and 09/0272/FUL; it includes planning obligations relating to the provision of Hobson's Park at paragraph 6 of Part 2 of Schedule 3.
- 2.2 The planning obligations can be summarised as follows:
  - (a) to make Hobson's Park available for use by the public, in phases to be agreed with the City Council;
  - (b) that at the date the lease of a phase is granted to the City Council it is provided with appropriate access to the boundary of that phase;
  - (c) to enter into the lease for each phase with the City Council in the form of lease attached in draft to the S106 (Schedule 14) and a summary of the main terms on which the lease is to be granted is also set out;
  - (d) to allow the Council access for the purposes of carrying out inspections of the relevant phase until such time that the lease is granted; and
  - (e) payment of a financial contribution for on-going proportionate to the land transferred to the Council via the phase lease (Schedule 3, Part 1, Section D paragraph 8.4)
  - (f) Restrictions relating to the on-going use and management of the land are then set out in the lease, and not as planning obligations.

- 2.3 Notably there are no positive obligations in the S106 Agreement which specifically require Hobson's Park to be laid out, to be laid out in a specific form or to be retained in that form in perpetuity. The primary purpose of the S106 Agreement is to secure public access to Hobson's Park as and when it is provided, together with its subsequent transfer to the City Council.
- 2.4 Any obligations relating to on-going management and maintenance of the park by the Council are contained in the relevant Phase Lease and are not planning obligations.

### **3 Effect of the proposed CSIE Order**

- 3.1 Hobson's Park is being delivered in Phases. Phase 1 of Hobson's Park has now been laid out with the lease having been granted to the City Council.
- 3.2 The remaining phases of Hobson's Park will be subject to a phase lease once ready for transfer.
- 3.3 Accordingly, it is considered that the acquisition of the CSIE Project plots comprised in Hobson's Park will not conflict with the obligations in the S106 Agreement nor put any of the landowners in breach of that S106 Agreement. This is because there is no positive obligation to lay out the park in a prescribed form, nor any on-going obligation to retain Hobson's Park in a prescribed form.
- 3.4 The phasing plan for Hobson's Park, which was agreed post S106 Agreement can, for the purposes of completeness, be amended and agreed between the parties if, at the point of acquisition any part of the land has not been subject to the phase lease.
- 3.5 Where the lease has already been entered into in relation to that land, then the effect of the compulsory acquisition will be to simply remove the acquired land from the land demised under the lease. The phase lease will continue to apply to the remaining demised land.

### **4 Conclusion**

- 4.1 In conclusion therefore it is considered that no variation is required to the S106 Agreement as a consequence of the CSIE Project.