

This is my second submission arising from WBC's response to the objections to the planning application for the projected Spencers Wood Primary School (applications 241861 and 241862).

The riders in the previous submission also apply to this.

Whilst the statement by WBC falls back on the S106 agreement dated 22 July 2014, it is in some respects hard to see what relevance this has to the present situation. Virtually no part of the schools section has been complied with (although there are so many gets out it may be held that there was never anything to comply with).

It is correct that the option was provided of having one-, two- or three-form school. The site was split into three parcels (A, B and C) to accommodate this. There was no option provided of deciding not to have a school at all. Bizarrely, the developer contribution to the school was not linked to the size of the school: it was a flat payment.

It is agreed in the S106 agreement that the developers and WBC *may* agree within 12 months of the commencement of the development (so in 2015 or 2016?) that the school should be constructed to an agreed specification and costings. This was not done.

Part Two (p. 45 of the S106 agreement) would then have come into play. This provides for the transfer of the Parcel A to the council or its nominee within the three months following the twelfth month after development started and the payment over to the council of the developer's contribution. We do not know if (or when) the conveyance was made: we understand that the developer contribution was paid to WBC and is held by them. Again we do not know when this was done. One assumes that at this stage the obligation on the developer to build the school lapsed.

There is then provision for WBC to initiate the process of buying parcels B and C within two years of the commencement of the development. This, however, was an option which the council was not bound to take up. My reading of the terms (on p. 45) suggests that this was not contingent on the school being started or opened: it was contingent on a point being passed in the building of the development.

All of this is irrelevant though. The milestones specified in the S106 agreement are long past. The statement in the WBC document prepared in December 'that in terms of the S106 the council were required to exercise the option within 2 years of the commencement of the development' might be correct on a strict reading of the S106: but this is not what happened. It is plain that T-W sat on the site of the school until the Planning Application was submitted and it was then clear (or agreed between WBC and T-W) that the second and third parts of the site would not be needed. I do not see that they needed to retain the land for so long. They indulged the council for a decade. 'To say that the opportunity to [acquire the land] under the S106 has long since passed' again might be legally correct, but is basically dishonest. The land was plainly available for WBC to acquire to build a school of the size required to meet local need until the planning application was made.

It may have been understood that the rights of acquisition determined on the tenth anniversary of the signing of the S106 agreement, but whether this is the case or not, by bringing forwards an application for a single-form entry school on 19 July 2024, TWO days

(yes TWO days!) before the S106 agreement expired and the capital sum became repayable, WBC showed that it had no interest in acquiring parcels B and C.

These two parts which WBC decided were not required (Parcels B and C) were offered for sale on 22 October 2024.

Given the loss of the larger part of the site, one would like to know who took the decision to only apply for planning permission for a single-form school and when. Given that we fundamentally disagree with the decision, which was taken without reference to the local community represented by Shinfield Parish Council or consultation with the Shinfield councillors, this is an important point of fact to which we request an answer. It was plainly not a councillor decision: it was an officer's decision.

We might add that the S106 agreement speaks of 'market value' and not 'residential market value' which is the phrase employed in the December paper. In present circumstances the two are very different. As the site lies in the enlarged DEPZ, the market value of the two parcels is close to nil if the DEPZ means anything. In fact the site sold for £420k which I am advised is far less than 'residential market value' although it was suggested at the time of sale that close to 30 houses could have been built on it. WBC could have secured the site for a song as late as last summer. The good news of course is that it will be cheaper to buy back in the future.

Whilst the planning rights might have lapsed on the tenth anniversary of the date of the S106 agreement, which may have brought about the hurried and rather perfunctory planning application, how long do WBC think they can continue procrastinating and retain the £3.25 million paid them by Taylor Wimpey for a school which they apparently have no intention of building? WBC has met the minimum requirements of para. 5.11 of the S106 agreement. However, this does not simply allow WBC to keep the money in the event of their deciding not to build the school. Or is it the intention not to build the school, nor to repay Taylor-Wimpey the £3.25 million (plus interest) but to conform with paragraph 5.11 by renewing the planning permission every decade?

The real choice is between repaying the £3.25m, plus ten years' interest or using the £3.25m plus any interest that has accrued together with a similar sum from reserves to build a primary school to serve the residents of Spencers Wood. This should be on an appropriate scale.

It is our opinion that WBC have screwed up, big time, and over a long period of time and that they will suffer for it. Damage limitation ought to be the order of the day. |Build the school. Even better, build a two-form entry school.

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Spencers Wood
15 January 2025

