

APPEAL UNDER  
SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

PLANNING APPLICATION BY  
CLAYGATE HOUSE INVESTMENTS LTD  
& MJS INVESTMENTS LTD

CONSTRUCTION OF UP TO 60 DWELLINGS  
WITH ASSOCIATED LANDSCAPING AND OPEN SPACE  
WITH ACCESS FROM RALEIGH DRIVE.  
(OUTLINE APPLICATION WITH APPEARANCE, LANDSCAPING, LAYOUT AND  
SCALE RESERVED)

AT LAND NORTH OF RALEIGH DRIVE, CLAYGATE

Application Reference 2023/0962  
PINS Reference APP/K3605/W/23/3334391

Inquiry Opening: 16 April 2023

---

CIL COMPLIANCE UPDATE SHEET

The Inspector requested clarification and additional information on the four below matters:

1. The calculation of the First Homes Monitoring Fee.
2. The Travel Plan auditing fees are fixed at two scales in the Surrey Good Practice Guide but a copy has not been provided.
3. The calculation of the Traffic Regulation Fee capped maximum amount, how that has been calculated and is it a reasonable maximum figure.
4. The calculation of the Council's and County Council's legal fees.

These matters are addressed below:

1. The burden of monitoring the delivery of First Homes during the lifetime of the obligation falls on the Council rather than a shared responsibility between the registered provider (who is regulated by Homes England) and the Council. The Council takes into account that more cross-departmental involvement is required to ensure that this is monitored properly and picked up at the appropriate time and recorded as required under the First Home scheme. As this is a new scheme and process, the Council is having to assess the likely costs of the monitoring rather than rely on past base evidence.

The First Homes: application pack and First Homes: conveyancer pack [First Homes scheme: template sales documents - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114144/First_Homes_application_pack_and_conveyancer_pack.pdf) illustrates that the council will need to be very active in monitoring the process appropriately including checking the eligibility of the potential First Home Owner, to issue the authority to proceed and authority to exchange and to provide compliance certificates and other requirements. This needs to be funded appropriately and should not be borne solely by the Council (or by the public purse).

In arriving at a standard fee of £350 per First Home, it was intended to ensure that the fee is fair to all developers/landowners and covers the time and resources to monitor the delivery of First Homes without undue burden on the public purse. It does not include the initial layout costs of the Council in readiness of the actual monitoring of the scheme. The monitoring fee is considered to be fair and reasonable to ensure that the costs of monitoring the delivery of the obligations relating to First Homes is properly addressed by the Council's Housing and Planning Services as appropriate. It is assessed that this fee would not exceed the estimated costs required to be met under the relevant schedule and annex of the section 106 agreement.

2. The Surrey Good Practice Guide is included with this update, the fees are set out on page 16. The fees have been calculated based on the amount of time that the Travel Plan Officer would be spending on the auditing of the monitoring returns over the 5-9 year period of auditing. This would include things like meetings, travel, site visits, recommendations etc...
3. The Traffic Reg. fee is based on the typical cost of an officer processing and advertising fee and then Surrey CC doubled it to allow for readvertising and re-consultation should any major issues be raised during the consultation period that required the process to be repeated. The County Council have advised that they would be very surprised if the final fee would be anywhere near to the £10k cap, but considered that including a cap gave the most certainty to the Applicant with the least risk to the County Council.
4. The Council have charged a fee of £1,750 which relates to the preparation, negotiation, completion, and registration of the section 106 agreement for the outline application under 2023/0962. As stated previously the Council considers that the legal fee is not, in itself, a planning obligation but rather a service provided and accordingly there is no requirement to meet the 3 tests under Regulation 122(2) or the test under Reg 122(2A).

The fees are on a fixed fee basis, though the Council's legal services may exercise their discretion where the time spent exceeds the fixed fee, due to the complexity of the matter, or it has become unnecessary protracted. An hourly rate is applied for time spent over and above. The more parties involved, the more likely that the work is involved in bringing this matter to completion is higher thus incurring higher fees.

The fixed fees are based on the average amount of time to carry out the basics: e.g. to take instructions, to liaise with the applicant or their solicitor, to check proofs of title and to address any title queries, to draft/review the agreement, to consider any revisions subsequently made and to take further instructions as and when required. It includes arranging the document to be sealed and signed by the Council's authorised signatory.

In relation to this matter: there are approximately 430 emails and various versions of the draft section 106 (at least 10 versions of varying levels of revisions made to them). If the Council's Legal team were to assess the work carried out on an hourly rate, then the fee of £1750 that has been paid has been exceeded significantly.

The County Council has advised that their fees are calculated on an hourly rate up to £3,000. County Council's solicitors have confirmed that costs as at Monday 16<sup>th</sup> April were £2,389.50, though there were some costs incurred Wednesday 17<sup>th</sup> April to be added and the costs of completion to add and consequently costs should come within the undertaking of £3,000.00 unless more drafting is required following the s106 session.