

IN THE MATTER OF THE SOUTHBOURNE NEIGHBOURHOOD PLAN (“the SNP”)  
AND IN THE MATTER OF LAND TO THE SOUTH OF THE RAILWAY LINE,  
SOUTHBOURNE.

---

ADVICE

---

1. I am asked to advise Metis Homes Ltd (“Metis”) in connection with land known as land to the south of the railway line (“the Railway Line”), Southbourne (“the Metis Land”).
2. In particular, I am asked to advise upon the strength of any suggestion that Metis should be required to contribute to the construction of a bridge (“the Bridge”) over the Railway Line which is identified in paragraph (g) of draft policy SB2 of the SNP and the implications of this for policy SB2.

Background Facts

3. The Metis Land will be developed for up to 200 dwellings.
4. The evidence before the Examination is that either the Bridge is not required to deliver the SB2 allocation (see the Stantec Report) or the trigger for its delivery is after the construction of 400 dwellings to the south of the Railway Line and 400 dwellings north of the Railway Line. I am instructed that West Sussex County Council (the Highway Authority) have provided a formal pre-application response and confirmed that up to 200 dwellings can be delivered on the Metis Land without any reliance on a bridge.
5. Similarly, I am instructed that, given the Metis Land’s accessibility to Southbourne via routes to the west of the Site, the Bridge is not required for its delivery in place-making terms.
6. I have seen Metis’ proposed amendments to paragraph (g) which are set in Nova Planning’s response of 10 January 2022.

Analysis

7. The answer to the question put to me is straightforward. The appropriateness of paragraph (g) of policy SB2 must be considered in a development control context (since it is by a planning application that any bridge will be provided).
8. There is no requirement for a single planning application covering the whole allocation. On a planning application for the delivery of housing on the Metis Land, there could be no requirement on Metis to contribute to the Bridge. On the evidence, the delivery of the Bridge is not necessary to make the development of the Metis Land acceptable in planning terms; it could not be regarded as reasonably related to the development of the Metis Land, nor would it be fairly and reasonably related in scale and kind to the development of the Metis Land. In short, the provision of a Bridge in a planning application relating to the development of the Metis Land would fail each of the tests in regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
9. Ostensibly, regulation 122 sets out the circumstances when a planning obligation may constitute a reason for granting planning permission, but it necessarily also identifies the jurisdiction for a planning authority to require such a planning obligation.

10. Retuning to paragraph (g) of policy SB2, it must be considered (alongside the rest of the SNP) against the basic conditions - I do not set these out, they are well known those involved in the Examination.
11. A requirement in the SNP that places (implicitly or explicitly) a burden on a developer to provide unnecessary infrastructure through a planning application would contravene paragraph 57 of the NPPF (setting out the terms of regulation 122). The wording of paragraph (g) currently does that; it requires the delivery of the Bridge as soon as possible in respect of any part of the allocation. By positively placing a requirement on Metis to provide the Bridge in these circumstances, it fails basic condition (a) – it could not be appropriate to make a plan with such an obligation.
12. There should, consequently, be an alteration to the wording of paragraph (g) of policy SB2 to identify when (if at all) a Bridge is required, making clear that the delivery of the Metis Land would not be affected by the requirement.

#### Summary of Conclusions

13. In summary, I have reached the conclusion that paragraph (g) of policy SB2 should be amended to make clear that the delivery of housing on the Metis Land would not entail the requirement to provide the Bridge. Metis' suggested amendments achieve this.

MATTHEW REED Q.C.

Landmark Chambers,  
180 Fleet Street,  
London,  
EC4A 2HG.

10 January 2022