

Section 106 Obligations Justification Statement:

LPA Reference: P/18/1073/FP

PINS Reference: APP/A1720/W/21/3271412

LAND SOUTH OF ROMSEY AVENUE, PORTCHESTER

OUTLINE PLANNING APPLICATION FOR RESIDENTIAL DEVELOPMENT OF 225 DWELLINGS, BIRD CONSERVATION AREA AND AREA OF PUBLIC OPEN SPACE WITH ALL MATTERS RESERVED EXCEPT FOR ACCESS

30th July 2021

1.0 Compliance with Regulation 122 of The Community Infrastructure Levy Regulations 2010

1.1 The Community Infrastructure Levy (CIL) Regulations 2010 came into effect on the 6th April 2010. From that date, Regulation 122(2) provides that a planning obligation can only constitute a reason for granting permission 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.

1.2 All applications (and appeals) finally determined after the 6th April 2010 must clearly demonstrate that any planning obligation that is used to justify the grant of permission must meet the three tests. The same tests are repeated in paragraph 56 of the National Planning Policy Framework (NPPF).

1.3 This statement sets out the Local Planning Authority's (LPA) position in respect of the application of the above 'CIL tests' to the draft unilateral undertaking from the appellant. Whilst at the time of writing this statement the LPA has not had sight of the submitted version of the unilateral undertaking, the LPA has been provided with a recent draft copy on which to comment and on which this statement is based.

2.0 Schedule One – Affordable Housing Obligations

2.1 Core Strategy Policy CS18 states:

“The Council will require the provision of affordable housing on all schemes that can deliver a net gain of 5 or more dwellings....

On sites that can accommodate 15 or more dwellings developers will be expected to provide 40% affordable units”.

2.2 It continues:

“Development proposals will be required to provide a mixture of dwelling types, sizes and tenures reflecting the identified housing needs of the local population”.

2.3 The draft unilateral undertaking secures delivery of 40% of the total number of residential units to be constructed as affordable units. It also secures an acceptable mix of tenures and sizes of those affordable units to reflect the identified housing needs in the locality including the provision of social rented units and the capping of affordable rents at Lower Housing Allowance Levels. These provisions have been agreed with the LPA following discussions with the authority’s strategic housing Officers.

2.4 In summary, the LPA are content that the unilateral undertaking secures a policy compliant scheme of affordable housing and that the relevant tests of CIL Regulation 122 are met.

3.0 Schedule Two – Open Space Obligations

3.1 Core Strategy Policy CS21 states:

“Proposals for new residential development will be permitted provided that, where existing provision is insufficient to provide for the additional population, public open space is provided”.

- 3.2 To ensure adequate infrastructure provision is made therefore to serve the development and not increase the burden on existing infrastructure, the provision of on-site open space, with appropriate obligations to secure the provision of play equipment (or financial contributions towards it) and the maintenance of such, is required to make the development acceptable in planning terms.
- 3.3 The amount of open space to be provided is secured in the submitted unilateral with reference to the calculations taken from the Council’s adopted Planning Obligations Supplementary Planning Document (SPD) – (**Core Document CDE.5**). Similarly, the maintenance contributions are derived from that document and based on the known costs of providing equipped play spaces and associated maintenance. The provisions made in the undertaking are therefore considered fairly and reasonably related in scale and kind.

4.0 Schedule Three – Environmental and Habitat Obligations

- 4.1 The financial contribution secured towards the Solent Recreation Mitigation Strategy complies with Policy DSP15 of the adopted Fareham Borough Local Plan Part 2: Development Sites and Policies. That local plan policy states that:

“Planning permission for proposals resulting in a net increase in residential units may be permitted where ‘in combination’ effect of recreation on the Special Protection Areas are satisfactorily mitigated through the provision of a financial contribution that is consistent with the approach being taken through the Solent Recreation Mitigation Strategy.”

- 4.2 The adopted definitive strategy is the Solent Recreation Mitigation Strategy (Bird Aware Solent, December 2017) - **Core Document CDH.9**.
- 4.3 The LPA considers this obligation to be directly related to and necessary in order to make the development acceptable in planning terms. The level of contribution is proportionate and relative in scale and kind due it being based on a schedule within the SRMS detailing the required sum according to the number of dwellings and bedrooms within those dwellings.
- 4.4 The Council will provide a Supplementary Proof of Evidence from Nick Sibbett to address the obligations relating to the “Bird Conservation Area”.

5.0 Schedule Four – Education

- 5.1 Para 94 of the NPPF states that:

“It is important that a sufficient choice of school places is available to meet the needs of existing and new communities... They [LPAs] should: give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications...”

5.2 Please see the consultation responses provided to the Council by Hampshire County Council Children’s Services on the need for a contribution towards education provision dated 28th September 2018 (**Core Document CDB.4**). The response sets out the impact the appeal development would have on local schools and the financial contribution required from the developer in order to mitigate this impact.

5.3 The obligation is considered to be directly related to and necessary in order to make the development acceptable in planning terms. The level of contribution required is relative in scale and kind as demonstrated in the consultation response from the education authority.

6.0 Schedule Five – Rights of Way

6.1 Schedule Five secures financial contributions towards improvements to public rights of way the basis for which is set out in the consultation response provided to the Council by Hampshire County Council Countryside Services dated 5th October 2018 (**Core Document CDB.7**).

6.2 The LPA considers that these obligations are necessary to make the appeal development acceptable in planning terms, are directly related to the impact of development on the appeal site and are fairly and reasonably related in accordance with CIL Regulation 122.

7.0 Schedule Six - Transport

7.1 The appellant and the highway authority Hampshire County Council (HCC) have submitted an Agreed Statement on Transport Matters dated June 2021 (**Core Document CDD.3**).

7.2 Paragraphs 8.1 – 8.6 of that statement set out the required mitigation measures whilst paragraph 9.2 provides a breakdown of the items to be funded through the transport contribution to be secured through the unilateral undertaking. It is agreed that in the event the Inspector were to allow the appeal those measures set out in the draft unilateral undertaking would comply with CIL Regulation 122.