

## **Section 106 Obligations Justification Statement:**

**LPA Reference:** P/19/1193/OA

**PINS Reference:** APP/A1720/W/20/3254389

LAND EAST OF POSBROOK LANE, TITCHFIELD

OUTLINE PLANNING APPLICATION FOR THE ERECTION OF UP TO 57 DWELLINGS, TOGETHER WITH ASSOCIATED PARKING, LANDSCAPING AND ACCESS FROM POSBROOK LANE

**13<sup>th</sup> December 2021**

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### **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:

- 1) the main draft unilateral undertaking from the appellant;
- 2) the recreational disturbance 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 undertakings, the LPA has been provided with recent draft copies on which to comment and on which this statement is based.

## **2.0 Main Unilateral Undertaking - 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 Main Unilateral Undertaking Schedules Two - LEAP**

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 (LEAP) (or financial contributions towards it) and the maintenance of such, is required to make the development acceptable in planning terms.

3.3 The LEAP is defined in the undertaking in accordance with the Council’s adopted Planning Obligations Supplementary Planning Document (SPD) – **(Core Document CDE.5)**. The provision and maintenance contributions are based on the costs of providing and maintaining other LEAPs incurred by the Council. The provisions made in the undertaking are therefore considered

fairly and reasonably related in scale and kind.

#### **4.0 Main Unilateral Undertaking Schedule Three – Bird Conservation Area**

4.1 Paragraphs 2.7 – 2.10 of the agreed Ecology Statement of Common Ground (ESoCG) sets out the agreed position in relation to the need for and adequacy of appropriate mitigation for the loss of part of a Primary Support Area for Brent Geese and Waders.

4.2 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.”*

4.3 The adopted definitive strategy is the Solent Recreation Mitigation Strategy (Bird Aware Solent, December 2017) - **Core Document CDH.6**.

4.4 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.

#### **5.0 Main Unilateral Undertaking 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 12<sup>th</sup> March 2021 (**Appendix 1**). 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 Main Unilateral Undertaking 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 5<sup>th</sup> March 2021 (**Appendix 2**).

**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 Main Unilateral Undertaking Schedule Six – Management of Site and Management Company**

**7.1** This schedule has been included in the S106 by the Appellant so that, in the event the common areas of the development, LEAP (Schedule Two) and open space (Schedule Seven) are not transferred to the Council and are instead are transferred to a Management Company, there is proper provision to ensure these areas are maintained and that such maintenance is funded over the long term.

## **8.0 Main Unilateral Undertaking Schedule Seven – Open Space Obligations**

**8.1** As stated above in relation to Schedule Two, 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”.*

**8.2** 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 is required to make the development acceptable in planning terms. The Inspector has heard evidence on this matter from the Council’s Planning witness Stephen Jupp and also from the Appellant.

**8.3** 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**). However, unlike the earlier iteration of the submitted unilateral which provided for a “Scheme of Works” in relation to the open space, the revised unilateral undertaking from the Appellant fails to secure details of the type and layout of the open space to be provided so as to accord with the requirements of the SPD for Parks and Amenity Space to be provided. It is not considered necessary to repeat the evidence the Inspector has heard on this matter from Mr Jupp.

## **7.0 Recreational Disturbance Unilateral Undertaking – Schedule One Habitats Mitigation Contribution**

- 7.1 The position of the parties on the need for mitigation in relation to the impact of increased recreational disturbance on protected sites in the New Forest is set out at paragraphs 3.1 – 3.10 of the Ecology Statement of Common Ground (ESoCG) – **Core Document CDD.5**.
- 7.2 The Habitats Mitigation Contribution set out on p3 of the submitted unilateral undertaking relates to the figure provided at paragraph 3.9 of the ESOCG and explained in the Appellant’s Shadow HRA (**Core Document CDAA.3**).
- 7.3 The LPA considers this obligation to be directly related to and necessary in order to satisfactorily mitigate the impact of the development on the New Forest protected sites and make the development acceptable in planning terms. The level of contribution is proportionate and relative in scale and kind due it being based on an accepted methodology as proposed in the recent appeal at Land east of Crofton Cemetery and supported by Natural England (**Inquiry Document ID8.a**).