

CIL COMPLIANCE STATEMENT

PRODUCED BY WELWYN HATFIELD BOROUGH COUNCIL (WHBC).

Appeal By: Aurora Properties (UK) Ltd

LPA Ref: 6/2022/1097/OUTLINE

PINS Reference: APP/C1950/W/22/3307844

Site: Land North of Bradmore Way (BrP12a), The Brookmans Park Estate, Brookmans Park, Hertfordshire, AL9 7QR

Date: 24 January 2023

A. Description:

- A.1 Outline planning permission with all matters reserved except access, for up to 125 dwellings, a care facility for up to 60 bedrooms (Use Class C2), and a scout hut (Use Class F2).

B. Background

- B.1 Regulation 122 of the Community Infrastructure Levy Regulations 2010 Statutory Instrument 2010/948 makes it unlawful for any planning obligation to be taken into account as a reason to grant a planning permission if it does not meet the three tests set out in the Regulation.
- B.2 The National Planning Policy Framework 2021 (NPPF) sets out at paragraph 57, three policy tests which mirror the tests in the Regulations.
- 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.

C. Relevant Policy

- C.1 The policies for seeking the contributions sought by Hertfordshire County Council are set out in Hertfordshire County Council Guide to Developer Infrastructure Contributions 2021. See statement submitted at this appeal by Hertfordshire County Council in support of planning obligations sought towards Hertfordshire County Council (non-highways) services – Appendix A.
- C.2 The policies for seeking the contributions sought by WHBC are set out in the WHBC Planning Obligations Supplementary Planning Document February 2012 (Planning Obligations SPD)(CD8.15); Welwyn Hatfield District Plan 2005 (District Plan) Policies IM2, M3, M4, M5, H7, OS2, OS3, R7, R10 and R11 (CD5.01); Welwyn Hatfield Borough Council Draft Local Plan Proposed Submission August 2016 (DLP Proposed Submission) Policies SADM1, SADM3, SADM16, SP7 and SP13 (CD6.01); and the NPPF (CD8.23).
- C.3 Relevant policies in relation to specific contributions are referenced as appropriate below.

D. Justification for the contributions

D.1 Justification set out as follows. Sums are subject to indexation as set out in the S106.

1. County Council Contributions

1.1 Primary Education

1.1.1 See Appendix A

1.2 Secondary Education

1.2.1 See Appendix A

1.3 Special Educational Needs and Disabilities

1.3.1 See Appendix A

1.4 Library Services

1.4.1 See Appendix A

1.5 Youth Services

1.5.1 See Appendix A

1.6 Waste Services

1.6.1 See Appendix A

1.7 Monitoring fee

1.7.1 See Appendix A

1.8 Travel Plan Evaluation and Support Contribution

1.8.1 Travel plans are an essential tool for enabling development by creating sustainable transport access to, from and around the site. They are effective in managing travel demand, with the potential to contribute to significant reduction in national and local traffic. The NPPF requires in paragraph 113 that:

“All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.”

1.8.2 Travel Plans are also a requirement under Policy M3 of the District Plan and Policy SADM3 of the DLP Proposed Submission.

1.8.3 In March 2020 the County Council formally adopted updated Travel Plan Guidance entitled “Hertfordshire County Council Travel Plan Guidance” (<https://www.hertfordshire.gov.uk/media-library/documents/highways/development-management/travel-plan-guidance.pdf>), supporting the Highway Authorities policy on Travel Plans as set out in its Local Transport Plan 4 (<https://www.hertfordshire.gov.uk/services/recycling-waste-and-environment/planning-in-hertfordshire/transport-planning/local-transport-plan.aspx>) and Roads in Hertfordshire – Highways Design Guide (<https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business->

[and-developer-information/development-management/highways-development-management.aspx#DynamicJumpMenuManager_1_Anchor_6](#)).

- 1.8.4 For residential developments, the Highway Authority requirement for a full Travel Plan has been set at more than 80 dwellings. A Travel Plan Statement is required for developments between 51 and 79 dwellings. These thresholds are based on 'Good Practice Guidelines, Delivering Travel Plans through the Planning Process' (DCLG 2009). Whilst it is recognised that this document has recently been revoked, it is still considered to represent a good basis for determining trigger points.
- 1.8.5 Concurrent with the obligation for a Travel Plan, the Highway Authority considers a contribution towards the ongoing cost of monitoring and supporting the Travel Plan is appropriate.
- 1.8.6 The requirement for a Travel Plan evaluation and support contribution is included in the updated Travel Plan Guidance and is set at £1,200 per annum. The monitoring fee was introduced to enable the County Council to be proactive in ensuring that approved Travel Plans are being complied with. The cost includes assessment of the annual monitoring, annual site visits and annual monitoring meetings with the Travel Plan Coordinator. Ongoing engagement with the Travel Plan Coordinator of changes relevant to the site is also included. Planning Practice Guidance states that authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that section 106 obligation. Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation (Paragraph: 036 Reference ID: 23b-036-20190901).
- 1.8.7 Ensuring monitoring is gathered by new developments can assist Hertfordshire County Council and the individual districts to assess the impact that individual developments, or developments over a specific area, are having on the road network, and the take up of sustainable modes. The monitoring engagement also allows for developments (businesses, residential, community, educational) to feed back to the council their needs with regards to better understanding where people are travelling from/to, by what mode, and for what reason.
- 1.8.8 The monitoring of Travel Plans is not a statutory function of the County Council. The Travel Plan contribution is not a single payment towards monitoring/administrative costs of the Travel Plan but is a cost to enable active engagement of the County Council in the Travel Plan implementation. It enables ongoing reviews of the Travel Plan and engagement between the County Council and the Developer to take place as any travel plan will require continuing management and review. The contribution value has been calculated on such basis.
- 1.8.9 Two travel plans are required for this development – one to cover the residential element of the development and the other to cover the care home. A full travel plan for each will be required for the site to be in place from first occupation to 5 years post full occupation. A £1,200 per annum Evaluation and Support Fee per Travel Plan should be secured by section 106 agreement in accordance with Hertfordshire County Council's Travel Plan Guidance. This should incorporate measures to promote sustainable transport, an appointed travel plan co-ordinator and an appropriate monitoring programme. This contribution is to cover the County Council's costs of administrating and monitoring the objectives of the Travel Plan and engaging in any Travel Plan Review. Residential developments are also required to

provide Residential Travel Vouchers for each unit (£100 per house/£50 per flat) to encourage the take up of sustainable modes.

1.8.10 A single Residential Travel Plan was submitted with the planning application which requires amendments before being considered acceptable. It is considered appropriate for this to be secured through the S106 Agreement.

1.8.11 It follows that this contribution is:

- a) necessary to make the development acceptable in planning terms, to ensure compliance with Policies M3 and IM2 of the District Plan, Policy SP13 and SADM3 of the DLP Proposed Submission and paragraph 111 of the NPPF;
- b) directly related to the development, because it relates to the direct impact of the development in terms of the amount of movements that will be generated and maximising the use of sustainable modes; and
- c) fairly and reasonably related in scale and kind to the development because of the approach to thresholds adopted by the Highway Authority and explained in this note.

1.9 Off-site highway works

1.9.1 Off-site highway works may be required for a number of reasons associated with new development, and to comply with paragraph 110 to 112 of the NPPF. Paragraph 110 states:

“In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
- b) safe and suitable access to the site can be achieved for all users; and*
- c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.”*

1.9.2 Policy M4 outlines that development necessitating the provision of new transport infrastructure or services will be granted only if those works are environmentally acceptable and if the applicant agrees to meet, or where appropriate contribute to, the cost of the works or services.

1.9.3 Policy M5 outlines that, wherever possible and practical, the Council will seek improvements in facilities for the safe and convenient movement of pedestrians and that developers may be required to provide or contribute towards off-site pedestrian facilities where this would be necessary to integrate it with surrounding areas.

1.9.4 Policy IM2 requires off-site improvements to mitigate any possible adverse environmental impact arising from the development and that developers will be required to provide or finance the cost of all such provision which is fairly and reasonably related in scale and kind to the development. This approach is consistent with Policy SP13 of the DLP Proposed Submission.

1.9.5 In accordance with the HCC Planning Obligations Guidance (2021), second strand sustainable transport contributions are sought for residential developments on a unit

rate basis of £6,826 per dwelling and £422 per job. The total S106 sustainable transport contribution sought is £875,616 (subject to indexation).

- 1.9.6 This is to mitigate adverse pressures generated by the proposed to the future operation and safety of the local highway, footway, cycleway and public transport networks. The mitigation will also focus on enhancing and encouraging active travel and public transport use by improving facilities, walking and cycling environments, and improving the safety of trips.
- 1.9.7 Contribution will go towards, but not limited to packages in the South-Central Hertfordshire Growth and Transport Plan, including (SM109 Welham Green-Brookmans Park Pedestrian/Cycle Link) & (SM110 Potters Bar-Brookmans Park Cycleway Improvements).
- 1.9.8 These obligations are considered to be:
- a) Necessary to make the development acceptable in planning terms, by virtue of Policies M4, M5 and IM2 of the District Plan, Policy SP13 of the DLP Proposed Submission, and the NPPF;
 - b) Directly related to the development, by virtue of the fact they are directly required to mitigate for highways impacts and to encourage travel by sustainable modes from the site; and
 - c) Fairly and reasonably related in scale and kind, for the reasons outlined above.

2. Welwyn Hatfield Borough Council Contributions

2.1 Community Healthcare Contribution

- 2.1.1 Policy IM2 of the Welwyn Hatfield District Plan 2005 provides for off-site improvements, services and facilities necessary as a result of developments in order to avoid placing an additional burden on the existing community. This is consistent with Policy SP13 of the DLP Proposed Submission.
- 2.1.2 The NHS request £182.03 per dwelling, equating to £22,753.00, to be invested in Queensway Health Centre in Hatfield town centre toward the evolving expansion, re configuration and refurbishment project including the installation of a lift. Community Services for the Welwyn Hatfield area are centralised from Queensway Health Centre in Hatfield Town Centre. The figure of £182.03 per dwelling is calculated through capital costs, estimated ten-year population growth and estimated number of new dwellings over this period.
- 2.1.3 This contribution is therefore:
- a) Necessary to make the development acceptable in planning terms, by virtue of Policy IM2 of the District Plan, Policy SP13 of the DLP Proposed Submission and NPPF;
 - b) Directly related to the development, by virtue of its proximity and the likelihood that the new residents will use and have an impact on this community health facility; and
 - c) Fairly and reasonably related in scale and kind, by virtue of the use of the formula approach in this instance, for the reasons outlined above.

2.2 General Medical Service Contribution

- 2.2.1 Policy IM2 of the Welwyn Hatfield District Plan 2005 provides for off-site improvements, services and facilities necessary as a result of developments in order to avoid placing an additional burden on the existing community. This is consistent with Policy SP13 of the DLP Proposed Submission.
- 2.2.2 The proposed development will have an impact on GP practices, and a contribution is sought to keep the patient lists open and make this scheme favourable to the NHS England and East and North Herts Clinical Commissioning Group.
- 2.2.3 The NHS request £193,750.00 toward expansion, reconfiguration and/or digitisation of patient records at Potterells Medical Centre. This calculation is based on the number of dwellings proposed and recently updated build costs.
- 2.2.4 The site is located within the Brookmans Park and Little Heath Ward and is approximately 0.8 miles from the appeal site. It is therefore expected that residents of the proposed development would use this medical centre.
- 2.2.5 It follows that this contribution is therefore:
- a) Necessary to make the development acceptable in planning terms, by virtue of Policy IM2 of the District Plan, Policy SP13 of the DLP Proposed Submission and the NPPF;
 - b) Directly related to the development, by virtue of its proximity and the likelihood that the new residents will use the medical centre; and
 - c) Fairly and reasonably related in scale and kind, by virtue of the use of the formula approach in this instance, for the reasons outlined above.

2.3 Mental Health

- 2.3.1 Policy IM2 of the Welwyn Hatfield District Plan 2005 provides for off-site improvements, services, and facilities necessary as a result of developments in order to avoid placing an additional burden on the existing community.
- 2.3.2 Based on recent cost impact forecasting calculations, the cost impact of this development going ahead on mental healthcare would amount to £25,218.00 (£201.75 per dwelling).
- 2.3.3 Mental Health Services for the Hatfield and Welwyn Garden City area are centralised at Roseanne House in Welwyn Garden City. The financial contribution would go toward the evolving expansion, reconfiguration & refurbishment project on that site by taking on additional space with the building.
- 2.3.4 It follows that this contribution is therefore:
- a) Necessary to make the development acceptable in planning terms, by virtue of Policy IM2 of the District Plan, Policy SP13 of the DLP Proposed Submission and NPPF;
 - b) Directly related to the development, by virtue of its proximity and the likelihood that the new residents will use and have an impact on this mental health service; and

c) Fairly and reasonably related in scale and kind, by virtue of the use of the formula approach in this instance, for the reasons outlined above.

2.3.5 Calculations and further details of all the above NHS contributions are set out in Core Document CD3.24.

2.4 Outdoor and Indoor Sports Facilities Contributions

2.4.1 Policy IM2 of the Welwyn Hatfield District Plan 2005 provides for off-site improvements, services and facilities necessary as a result of developments in order to avoid placing an additional burden on the existing community. This is consistent with Policy SP13 of the DLP Proposed Submission.

2.4.2 The Planning Obligations SPD applies the 2011 Welwyn Hatfield Sports Facilities Study to assess and identify need for indoor and outdoor sports facilities in the borough up to 2026. That Study was replaced in January 2020 by the Welwyn Hatfield Borough Council Playing Pitch Strategy and Built Facilities Strategy (2020 Sport Strategy)(CD12.31)

2.4.3 The 2020 Sport Strategy provides a clear evidence base and guides future provision and management of new sports pitches, outdoor and indoor sports facilities in the Welwyn Hatfield area in the context of national policy and local sports development criteria.

Outdoor Sport

2.4.4 The Planning Obligations SPD states that in line with Policy OS2 of the District Plan, on sites over 0.4 ha, where there are existing outdoor sports facilities and playing pitches in proximity to the development, that would serve the development, and are shown to be in need of enhancement, then contributions will be sought from developments for this purpose.

2.4.5 Sport England's Playing Pitch Calculator (PPC) is applied. This calculator takes the estimated needs for matches and training activity for various sports in an area of interest based on the population of the development and converts this into an estimate of the likely pitch provision required to meet the needs, as well as indicative costs to provide the level of pitch provision. Costs are calculated using estimates of what it typically costs to build modern sports facilities, including fees and external work, taking into account: varying conditions, inflation and regional adjustments.

2.4.6 While the calculator provides an indication of what the estimated needs may equate to in terms of new pitches, it does not suggest that this level of new provision is required. The results/costs needs to be looked at alongside a robust and up-to-date assessment of need and related plan/strategy for the area - which in the case of Welwyn Hatfield is the 2020 Sport Strategy.

2.4.7 Applying the PPC alongside the 2020 Sport Strategy, the following outdoor sport contributions have been identified:

Artificial Grass Pitches (AGP)

- £18,897 for 3G AGP toward either:

- a) A new 3G facility at either Chancellors School or Birchwood Leisure Centre, or
 - b) Related improvement works at Chancellors School and Birchwood Leisure Centre
- £3,461 for sand based AGP toward maintenance improvements at Chancellors School or the University of Hertfordshire

Natural Grass Pitches

- £32,245 (adult football) and £2,167 (mini soccer) toward pitch maintenance repairs to improve the pitch quality at either Chancellors School or Welham Green recreational ground
- £29,863 (youth football) toward either:
 - a) Pitch maintenance repairs to improve the pitch quality at Chancellors School; or
 - b) A new youth pitch at Welham Green recreational ground
- £9,313 (rugby union) toward pitch maintenance repairs at either Chancellors School or Roe Hill Park
- £10,314 (cricket) – towards pitch improvements and or additional cricket wickets/cricket squares at either:
 - a) Newgate Street, Hatfield and Crusaders cricket club; or
 - b) North Mymms Cricket club, and/or an inspection report for the improvement works needed at Newgate street.

2.4.8 The proximity of the projects/facilities to the site are such that they are likely to be used by occupiers of the development.

2.4.9 These contributions are therefore:

- a) Necessary to make the development acceptable in planning terms, by virtue of Policies IM2 and OS2 of the District Plan, the Planning Obligation SPD, and Policy SP13 of the DLP Proposed Submission
- b) Directly related to the development, by virtue of its proximity and the likelihood that the new residents will use such sports facilities;
- c) Fairly and reasonably related in scale and kind, by virtue of the use of the formula approach in this instance, for the reasons outlined above.

Indoor sport

- 2.4.10 The Planning Obligations SPD states that in line with Policy OS2 of the Welwyn Hatfield District Plan, on sites over 0.4 ha, where there are existing indoor sports facilities in proximity to the development, that would serve the development, and are shown to be in need of enhancement, then contributions will be sought from developments for this purpose.
- 2.4.11 Sport England's Sport Facility Calculator (SFC) is a planning tool which helps to estimate the amount of demand for key community sports facilities that is created by a given population in an area of interest. The SFC covers Swimming pools, Sports halls, Artificial Grass Pitches and Indoor bowls centres. A cost is generated within the SFC relative to the demand. Capital costs are calculated using estimates of what it typically costs to build modern sports facilities, including fees and external work, taking into account: varying conditions, inflation and regional adjustments.
- 2.4.12 Applying the Sport England's SFC Calculator alongside the 2020 Sport Strategy, the following indoor sport contributions have been identified:
- £1,782 (indoor bowls) toward maintenance to the facility/equipment at Hatfield Bowls Club
 - £66,962 (sports halls) toward either of the following:
 - a) new sports hall facility in Hatfield; or
 - b) maintenance works to the current Birchwood facility sports hall, includes flooring, accessibility, toilets, and repairs
 - £70,285 (swimming pools) toward improvement works to the current swimming pool at Hatfield swim centre
- 2.4.13 The proximity of the projects/facilities to the site are such that they are likely to be used by occupiers of the development.
- 2.4.14 This contribution is therefore:
- a) Necessary to make the development acceptable in planning terms, by virtue of Policies IM2 and OS2 of the District Plan, the Planning Obligation SPD, and Policy SP13 of the DLP Proposed Submission;
 - b) Directly related to the development, by virtue of its proximity and the likelihood that the new residents will use such sports facilities; and
 - c) Fairly and reasonably related in scale and kind, by virtue of the use of the formula approach in this instance, for the reasons outlined above.

2.5 Waste and Recycling Contribution

- 2.5.1 Policy IM2 of the Welwyn Hatfield District Plan 2005 provides for off-site improvements, services, and facilities necessary as a result of developments in order to avoid placing an additional burden on the existing community.
- 2.5.2 The Planning Obligations SPD outlines that the council will employ a standard charge approach to secure planning obligations from residential development in the borough for the delivery of waste and recycling facilities.
- 2.5.3 A standard charge has been developed here on the grounds that the provision of waste and recycling bins is a one-off capital cost which is directly attributable to the impact of a new development.
- 2.5.4 The scale of the development would require:
- 1 x 180 litre refuse, 1 x 240 litre recycling and food caddy at cost of £75.00 per dwelling; and
 - Flats would share a communal bin store and require 1 x 1100l + 1 x 360l refuse containers, 1 x Mini Recycling Centre, 2 x 240l food waste bins.
- 2.5.5 The above would equate to a £9525.98 waste and recycling contribution (excluding VAT).
- 2.5.6 This contribution is therefore:
- a. Necessary to make the development acceptable in planning terms, by virtue of Policy IM2 of the District Plan, the Planning Obligations SPD, and Policy SP13 of the DLP Proposed Submission;
 - b. Directly related to the development; and
 - c. Fairly and reasonably related in scale and kind, by virtue of the use of the formula approach in this instance, for the reasons outlined above.

2.6 Public Open Space

- 2.6.1 Policy IM2 of the District Plan provides for off-site improvements, services, and facilities necessary as a result of developments in order to avoid placing an additional burden on the existing community and to mitigate adverse environmental impact arising from the development.
- 2.6.2 The Planning Obligations SPD outlines that Green Space forms an important part of the borough's infrastructure, as it is increasingly recognised as a cornerstone of sustainable development, and a 'must have' for communities, due to the many social, environmental, and health benefits it offers.
- 2.6.3 Paragraph 3.20 of the Planning Obligations SPD states that the council will expect all new development within the borough to provide green space and landscaping on site, in accordance with the council's adopted local standards, as set out in the Open

Space, Outdoor Sport, and Recreation Strategy.

- 2.6.4 Paragraph 3.21 of the same document goes on to state that, further to this, where there is the potential to implement either the actions identified in the council's Open Space Strategy Action Plan 2010 - 2020, and/or the projects set out in the Green Infrastructure Plan (2011), in the vicinity of the development site, then the council will seek a contribution from that development, by means of a standard charge, and this money would then be put towards implementing one or more of these projects (as applicable).
- 2.6.5 The Green Infrastructure Plan (2011) remains in effect (CD12.32).
- 2.6.6 The financial contribution would be applied towards improvement works at Gobions Open Space in Brookmans Park. The projects would fall within 'Project 4: Woodland and Heathland/grassland Landscape Links' as identified in the Green Infrastructure Plan 2011.
- 2.6.7 Given the proximity of the site to Gobions Open Space, it will very likely be a recreation choice for residents of the proposed development.
- 2.6.8 This contribution is therefore:
 - a) Necessary to make the development acceptable in planning terms, by virtue of Policy IM2 of the District Plan, the Planning Obligation SPD, and Policy SP13 of the DLP Proposed Submission;
 - b) Directly related to the development, by virtue of its proximity and the likelihood that the new residents will use the open space; and
 - c) Fairly and reasonably related in scale and kind, by virtue of the use of the formula approach in this instance, for the reasons outlined above.

2.7 Monitoring Fee

- 2.7.1 The Borough Council charges Planning Obligation Monitoring Fees on all monetary s106 Agreements/Unilateral Undertaking's. This is sought towards the costs associated with continuous administering, monitoring, and ensuring compliance of each agreement. The Fee is equivalent to 5% of the total value of contributions, capped at a maximum of £5,000.
- 2.7.2 Planning Practice Guidance states that authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that section 106 obligation. Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation (Paragraph: 036 Reference ID: 23b-036-20190901).
- 2.7.3 The monitoring fees are proportionate and reasonable and reflect the actual cost of monitoring. A cap is set to ensure that any fees are not excessive.

2.8 Management of Open Space

2.8.1 Policy OS3 of the Welwyn Hatfield District Plan 2005 requires the provision of informal open space on substantial new residential developments (of 0.4 hectares or more). The submitted landscaping plans allows for this provision on-site.

2.8.2 However, it is reasonable and necessary to ensure that the management of the open space is secured, and that its provision is sustained over the lifetime of the development. A condition would not be capable of securing all the provisions required to secure the management company.

2.8.3 The obligation is therefore:

- a) Necessary to make the development acceptable in planning terms, by securing the long-term retention and management of open space required by policy;
- b) Directly related to the development, because it relates to provision on site; and
- c) Fairly and reasonably related in scale and kind, because it refers only to the open space as proposed on site by the appellant.

2.9 Management of Sustainable Urban Drainage Systems (SUDs)

2.9.1 SUDs are required for this development in line with Policies R7 and R10 of the District Plan, Policy SADM14 of the DLP Proposed Submission, and the NPPF. Paragraph 169(c) of the NPPF also requires such systems to have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development.

2.9.2 It is therefore reasonable and necessary to ensure that the management of the SUDS is secured and to ensure that its provision is sustained over the lifetime of the development. A condition would not be capable of securing all the provisions required to secure the management company.

2.9.3 The obligation is therefore:

- a. Necessary to make the development acceptable in planning terms;
- b. Directly related to the development, because it relates to provision on site; and
- c. Fairly and reasonably related in scale and kind.

2.10 Affordable Housing

2.10.1 Policy H7 of the District Plan requires that a minimum of 30% subsidised housing should be provided on suitable sites. Policy SP7 of the DLP Proposed Submission requires an on-site delivery target of 35% for excluded villages (including Brookmans Park), subject to viability.

2.10.2 The Appellant is proposing 45% affordable housing. It is considered reasonable and necessary to secure this provision by way of the legal agreement given the policy requirement and the level of proposed provision which forms a key part of the Appellant's case.

2.10.3 A condition would not be capable of securing the provision and retention of the housing in line with an appropriate tenure mix and other detailed requirements.

2.10.4 The obligation is therefore:

- a) Necessary to make the development acceptable in planning terms, since affordable housing is a local policy requirement of WHBC;
- b) Directly related to the development, because the affordable housing is secured on site; and
- c) Fairly related in scale and kind because the affordable housing provided for is at the proportion proposed by the appellant.

2.11 Self-build plots

2.11.1 Policy SP7 of the DLP Proposed Submission covers the provision of housing to support the needs and requirements of different households. This includes serviced plots of land for Self-build and Custom Housebuilding.

2.11.2 The Appellant is proposing 8% provision of self-build and custom housing plots. It is considered reasonable and necessary to secure this provision by way of the legal agreement as it forms a key part of the Appellant's case, and a condition would not be capable of securing all the provisions required to secure the self-build plots.

2.11.3 The obligation is therefore:

- a) Necessary to make the development acceptable in planning terms, as self build housing is part of the development proposed;
- b) Directly related to the development, because the self-build and custom housing plots are secured on site; and
- c) Fairly related in scale and kind because the self-build and custom housing plots are provided at the proportion proposed by the appellant.

2.12 Care facility

2.12.1 Policy SP7 of the DLP Proposed Submission covers the provision of housing to support the needs and requirements of different households. This includes housing for older people.

2.12.2 It is considered reasonable and necessary to secure this provision by way of the legal agreement as it is a key part of the Appellant's case, and a condition would not be capable of securing all the provisions required to secure the care facility.

2.12.3 The obligation is therefore:

- a) Necessary to make the development acceptable in planning terms, since the care facility is part of the development proposed;
- b) Directly related to the development, because care facility is secured on site; and
- c) Fairly related in scale and kind because the care facility is part of the development proposed

2.13 Scout hut

2.13.1 A scout hut is included in the description of the development. It is considered reasonable and necessary to secure such provision, as well as its management and maintenance, by way of the legal agreement.

2.13.2 A condition would not be capable of securing all the provisions required to secure the scout hut.

2.13.3 The obligation is therefore:

- a) Necessary to make the development acceptable in planning terms, since the scout hut is part of the development proposed;
- b) Directly related to the development, because the scout hut is secured on site; and
- c) Fairly related in scale and kind because the scout hut is part of the development proposed

2.14 Biodiversity Net Gain

2.14.1 Policy R11 of the District Plan requires all new development to demonstrate how it would contribute positively to the biodiversity of the site, and Policy SADM16 of the DLP Proposed Submission states that proposals will be expected to maintain, protect, and wherever enhance biodiversity. Paragraph 174(d) of the NPPF outlines that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on a providing net gains for biodiversity

2.14.2 The Appellant is proposing a 15% biodiversity net gain under the appeal proposal which exceeds policy requirement.

2.14.3 A biodiversity offsetting sum of £302,349.00 is required to compensate for the loss of on-site biodiversity as a result of the development and to provide a 15% biodiversity net gain off-site.

2.14.4 A defined best practice methodology has been used to calculate how many 'biodiversity units' need to be paid by a development to offset the biodiversity loss¹.

2.14.5 The Biodiversity Financial Contribution is index-linked and is the sum total of the following three components:

1. A Biodiversity Accounting Payment (BAP) – this is the total cost of the offset and comprises: set-up costs, habitat creation cost and maintenance cost (including inflation)
2. A Contingency Payment (CP) - at 10% of the BAP (Insurance Fund)
3. An index linked Management Payment (MP) - at 20% of the BAP

So, overall

Biodiversity Financial Contribution = BAP + CP + MP

2.14.6 A table setting out the habitat units required, and the above formula is in Appendix B of this Statement.

¹ <https://api.warwickshire.gov.uk/documents/WCCC-863-890>

- 2.14.7 The BAP set-up cost and creation/management cost per hectare are averages of direct quotations from a number of suppliers and contractors in the Hertfordshire area. These figures are therefore deemed to be realistic.
- 2.14.8 Having regard to the above, it follows that the sum would be fairly and reasonably related in scale and kind to the development and would, therefore, meet test (c) of NPPF paragraph 57.
- 2.14.9 The biodiversity net gain obligation would be directly related to the development as it would compensate the loss on-site and the biodiversity offsetting would be required to be in the nearest proximity to the site. It would therefore accord with test (b) of NPPF paragraph 57.
- 2.14.10 In terms of test (a), the obligation is necessary, in part, to make the development acceptable in planning terms i.e., to address reason for refusal 4 of the Council's decision to refuse planning permission.
- 2.14.11 It is a however salient point that the mechanism/terms to ensure the biodiversity sum is implemented, managed, and maintained long term have not been agreed between the main parties in the S106. If this were to be agreed, the obligation would satisfy remaining test (a) of NPPF paragraph 57.

David Elmore

Principal Major Development Officer

Welwyn Hatfield Borough Council

24 January 2023