

Planning and Economic Development

**Hertsmere Borough Council
CIL Compliance Statement**

APP/N1920/W/22/3311193

April 2023

LPA reference: 22/0971/OUT

Appeal by: Griggs (Options) Ltd

Site Address: Land Adjacent And To The Rear Of 52 Harris Lane,
Shenley, WD7 9EG

Proposal:

Construction of up to 37 dwellings with associated landscaping and open space to include access from Harris Lane. (Outline Application with Appearance, Landscaping, Layout and Scale Reserved).

Contents

1.0	Background	2
2.0	Policies	2
3.0	Proposed Planning Obligations	3
4.0	CIL Tests	4

1.0 Background

- 1.1 Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the National Planning Policy Framework 2021 (NPPF) state that planning obligations should only be sought where they are:
- 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.

2.0 Policies

- 2.1 The development plan for Hertsmere Borough, and for the purposes of this appeal, comprises the Hertsmere Core Strategy (2013), the Site Allocations and Development Management Policies Plan (2016), the Elstree Way Corridor Area Action Plan (2015), and the Shenley Neighbourhood Plan (2021).
- 2.2 The following policies within the development plan are relevant to the obligations being sought on the appeal site, and to support the case that these obligations meet the CIL tests:

Core Strategy

- CS4 – Affordable Housing
 - CS12 – The Enhancement of the Natural Environment
 - CS16 – Environmental impact of development
 - CS17 – Energy and CO2 Reductions
 - CS21 – Standard charges and other planning obligations
- 2.3 The following Supplementary Planning Documents are also relevant:
- Affordable Housing SPD (2015)
 - Biodiversity Net Gain Draft Supplementary Planning Document (2022)
 - Draft Carbon Offset Fund Supplementary Planning Document (2022)

These SPDs are in draft form. They have been approved by the Council's Executive for consultation but have not yet been adopted.

2.4 The Climate Change and Sustainability Interim Planning Policy Position Statement (2020) is relevant as a material consideration.

3.0 Proposed Planning Obligations

3.1 The proposed planning obligations have been sought through the Section 106 Agreement:

- **Affordable Housing:** The appeal scheme is a major residential development. In line with Policy CS4 (updated by paragraphs 64 and 65 of the NPPF) the development is required to provide at least 35% affordable housing. The appellant has agreed to provide 40% affordable housing, comprising 25% First Homes and 75% Affordable Rented Units.
- **Self-build and custom housebuilding plots:** There are no policies within the Development Plan that require this provision. However, the appellant has opted to provide 8% self- and custom-build plots on site, totalling 3no. units. The Council have no objection to this provision and thus have sought to secure it through the Section 106 Agreement.
- **Biodiversity Net Gain:** The appeal scheme includes provision of a minimum 10% biodiversity net gain to be delivered both on and off-site. The Section 106 Agreement seeks to secure this net gain in line with the submitted application documents. It will ensure that the appellant secures a suitable 'receptor site' upon which the required biodiversity net gain can be delivered. In the event that the receptor site cannot be secured, it imposes a cascade to ensure that a suitable alternative site can be secured and, as a last resort where no site can be secured, a financial contribution is made to the Council. It also secures a Biodiversity Management Plan for delivery of the agreed net gain.
- **Carbon offset contribution:** The Agreement requires the appellant to submit a Sustainability and Energy Statement to confirm the energy strategy for the development and the residual carbon emissions from the Regulated Energy use for the development. A Carbon Offset payment will be calculated to achieve net zero carbon emissions.
- **NHS contribution:** The NHS Hertfordshire & West Essex ICB have requested a financial contribution from the appellant to mitigate the impact of the development on local healthcare services arising from new patient registrations. As set out in the draft Section 105 Agreement, this contribution is

for the expansion and reconfiguration of the Red House Surgery in Shenley and/or the digitisation of patient records at this Surgery.

- **Ambulance Service contribution:** The NHS East of England Ambulance Service NHS Trust have requested a financial contribution as the appeal development is likely to have an impact on emergency ambulance stations within the vicinity of the application site. It is suggested in their response to the application consultation that monies would be allocated for provision of additional medical equipment to manage an increased number of incidents from the growing population, and towards recruiting, training and providing new equipment for additional Community First Responders. A formula has been provided setting a price-per-dwelling.

4.0 CIL Tests

- 4.1 An explanation is set out below of how each planning obligation sought complies with the three tests set out at paragraph 57 of the NPPF and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). The exception to this is the Ambulance Service contribution, which the Council are reviewing in discussion with the NHS Trust. This is detailed at paragraph 4.7 below.

4.2 **Obligation: Affordable Housing**

Test 1 – Necessity

The provision of affordable housing on major residential developments is a requirement to comply with the NPPF 2021, the development plan (Core Strategy policy CS4) and the Affordable Housing SPD. Without provision of an adequate amount of affordable housing, the development would be contrary to the development plan and paragraph 65 of the NPPF.

Test 2 – Directly related to the proposed development

The appeal scheme is for a major residential development which triggers an affordable housing provision. The obligation is therefore directly related to the development.

Test 3 – fairly and reasonably related in scale and kind to the development

The level of affordable housing being sought exceeds the minimum requirement set out in the development plan and the Affordable Housing SPD. However, the appellant

has volunteered to provide this level; the Council has not imposed it. On these grounds the obligation is considered to be fairly and reasonably related in scale and kind to the development.

CIL compliance

Affordable housing does not fall within the definition of infrastructure for the purposes of CIL regulations, as defined by Section 216(2) of the Planning Act 2008 (as amended).

4.3 Obligation: Self-build and custom housebuilding plots

Test 1 – Necessity

Whilst this obligation is not a requirement of the development plan, the appellant has argued that provision of 8% self- and custom-housebuilding plots as part of appeal scheme's housing offering forms part of their case for very special circumstances. If the Inspector is minded to allow the appeal on the grounds that very special circumstances do exist, it follows that this obligation would be necessary.

Test 2 – Directly related to the proposed development

This obligation has been volunteered by the appellant as part of the scheme's market housing offering, and their case for very special circumstances. It therefore directly relates to the proposed development.

Test 3 - fairly and reasonably related in scale and kind to the development

As noted above this obligation would not ordinarily be sought by the Council as there are no policies within the development plan related to self- and custom-housebuilding. However, given that the appellant has volunteered this obligation as part of the appeal scheme's case for very special circumstances, it is considered to be fairly and reasonably related in scale and kind to the development.

CIL compliance

Self- and custom-build housing does not fall within the definition of infrastructure for the purposes of CIL regulations, as defined by Section 216(2) of the Planning Act 2008 (as amended).

4.4 Obligation: Biodiversity Net Gain

Test 1 – Necessity

Policy CS12 of the Core Strategy requires that all development proposals conserve and enhance the natural environment of the borough, including biodiversity, in order to maintain and improve environmental quality and contribute to the objectives of the adopted Greenways Strategy and the Hertsmere Green Infrastructure Plan.

The requirement for development to deliver biodiversity net gain is emerging and will apply from November 2023 for developments in the Town and Country Planning Act 1990, unless exempt. However, the draft Biodiversity Net Gain SPD sets out that all applications for 5 or more dwellings should demonstrate a 10% biodiversity net gain and be accompanied by biodiversity net gain information. Whilst this document is not formally adopted, it is considered to be a material consideration.

On the above basis it is considered that an obligation to secure biodiversity net gain is necessary.

Test 2 - Directly related to the proposed development

Documents relating to the appeal scheme's ecological impact, including a biodiversity metric, were submitted at application stage. The appellant committed to delivering 10% biodiversity net gain, including off-site enhancements, and had already identified a receptor site upon which they intended to deliver this. This was considered to be acceptable by the Council. Furthermore delivery of biodiversity net gain is now being sought by the Council on major developments in line with the above policies. On this basis the contribution would be directly related to the proposed development.

Test 3 - fairly and reasonably related in scale and kind to the development

It is acknowledged that delivery of 10% biodiversity net gain will not be required by the Town and Country Planning Act until November 2023, and that the Council's draft SPD is not yet adopted. However, the SPD is a material consideration, and the Council has begun to seek biodiversity net gains of at least 10% on major developments in light of the emerging legislation as introduced by the Environment Act 2021. As the appeal scheme proposes major residential development, particularly on a greenfield site where there is potential for net biodiversity loss, this obligation is therefore considered to be appropriate.

CIL compliance

Biodiversity net gain does not fall within the definition of infrastructure for the purposes of CIL regulations, as defined by Section 216(2) of the Planning Act 2008 (as amended). The draft biodiversity net gain SPD sets out that further guidance on how

off-site biodiversity net gain will be secured, monitored and enforced, including the role of planning conditions and Section 106 obligations, is expected to follow from DEFRA and Natural England in due course. However, it is expected that Section 106 obligations are likely to be necessary where off-site enhancements are being delivered. This is the approach the Council has taken on a previous major development.

4.5 Obligation: Carbon offset contribution

Test 1 – Necessity

Hertsmere Core Strategy policy CS16 requires development to achieve reduced levels of energy consumption and the use of energy from renewable resources. Policy CS17 states that the Council will further encourage all new development or major refurbishment to incorporate energy from decentralised and renewable or low carbon sources. All large scale development will be required to incorporate on-site renewable energy generation, unless it is not feasible or viable or alternative decentralised and renewable, low carbon sources can be identified.

The Climate Change and Sustainability Interim Planning Policy Position Statement (2020) is a material consideration. It was produced following the Council's declaration of a climate emergency in September 2019, and seeks to provide clarifications on existing sustainability and climate change policies until the new Local Plan and any supplementary documentation is fully adopted.

The Position Statement clarifies, in relation to Policy CS16, that consideration as to how net-zero carbon on a proposed development site, or offsetting it where that cannot be achieved, will be encouraged in order to demonstrate compliance with para 148 of the NPPF. In relation to policy CS17, the Position Statement clarifies that applicants are required to positively consider how they might strive for net-zero carbon emissions on site. In particular it notes the environmental objective of the NPPF, and paragraph 152 of the NPPF which states that the planning system should support the transition to a low carbon future in a changing climate.

The draft Carbon Offset Fund Supplementary Planning Document (2022) details how Hertsmere Borough Council will operate a Carbon Offset Fund to collect carbon offset payments arising from planning applications in order to meet targets for net zero development. For residential development, it applies to schemes of five or more dwellings as set by the carbon scheme threshold. It is therefore applicable to the appeal scheme.

Test 2 – Directly related to the proposed development

The appeal scheme exceeds the carbon scheme threshold of five dwellings and therefore the draft Carbon Offset Fund SPD is relevant as a material consideration. Policies CS16 and CS17 are also relevant to the appeal scheme, as noted above, and require developments to achieve reduced carbon emissions. Given that the development is out Outline stage, the draft planning obligation seeks submission to the Council of a Sustainability and Energy Statement which confirms the energy strategy for the Development and the residual carbon emissions from the Regulated Energy use for the Development. It also sets out a formula for the Carbon Offset Payment. As such the payment required can be calculated at a later stage. This contribution is therefore directly related to the proposed development.

Test 3 - fairly and reasonably related in scale and kind to the development

Whilst the Carbon Offset Fund SPD is in draft form and carries limited weight, it is a material consideration and plays a role in delivering the environmental aims of the NPPF, particularly with regards to supporting the transition to a low carbon future in a changing climate.

As noted above the obligation has been modified due to the development being at Outline stage so that an appropriate contribution can be calculated once all variables are known.

On this basis the obligation is considered to be fairly and reasonably related in scale and kind to the development.

CIL compliance

Carbon offsetting does not fall within the definition of infrastructure for the purposes of CIL regulations, as defined by Section 216(2) of the Planning Act 2008 (as amended). The draft Carbon Offset Fund SPD notes at paragraph 7.3:

“The Community Infrastructure Levy (CIL) is not an appropriate mechanism for collecting carbon offset payments as it relates to a fixed charge per square metre and does not account for the varying performance of developments in terms of carbon emissions and the individual circumstances of each scheme.”

It is therefore most appropriate to secure this obligation through the Section 106 agreement.

4.6 Obligation: NHS contribution

Test 1 – Necessity

This obligation has been sought by the NHS Hertfordshire & West Essex ICB. It was noted in their request that this contribution would be required to mitigate the impact of the development on local healthcare services arising from new patient registrations.

The case officer for the appeal scheme sought to clarify this request with the ICB during assessment of the application. It was suggested by the ICB that they would need to mitigate the cumulative impact of any development in Shenley arising from this development and any other speculative applications that may be received following the 'setting aside' of the borough's Regulation 18 Draft Local Plan. In particular, the Outline scheme for up to 195 dwellings at Shenley Hill (22/1539/OUT) was considered to potentially impact (cumulatively together with the appeal scheme) on the capacity of the Red House GP surgery to accommodate new patients. This application has since been refused, though at the time of the ICB's response it was pending determination.

The ICB considered that, whilst the Red House could potentially accommodate the increase in population arising from the appeal scheme alone, it would not be able to accommodate the cumulative impact of the appeal scheme and any other speculative applications in the area.

It is noted that the application proposed at Shenley Hill has been refused. Nonetheless, the appeal scheme would contribute additional strain to the Red House surgery in terms of patient registrations, noting that it is currently at capacity and that any further speculative applications granted planning permission in the area would add to this strain. On balance the Council therefore consider that this contribution would be necessary.

Test 2 – Directly related to the proposed development

This obligation seeks to mitigate the impact of the appeal scheme arising from increased population, and the strain this may put on local healthcare services. In this sense it is directly related to the proposed development.

Test 3 - fairly and reasonably related in scale and kind to the development

The financial contribution being sought is based on a calculation per-dwelling provided by the ICB. This is based on the likely number of new patient registrations multiplied by the amount of additional GP floor space required. The response notes that the contribution will be focussed on the Red House Surgery, which has a branch in Shenley at Andrew Close.

The contribution is considered to be fairly and reasonably related in scale and kind to the development, given that it will mitigate the impact upon the local healthcare services arising directly from the development.

CIL compliance

It is noted that the medical facilities fall within the definition of infrastructure for the purposes of CIL regulations, as defined by Section 216(2) of the Planning Act 2008 (as amended). The improvement, operation or maintenance of medical facilities can therefore be funded through the allocation of CIL monies.

However, whilst the ICB may apply for CIL funds to cover the requested obligation, there is no guarantee that the funds would be allocated for this particular need.

The Council's Infrastructure team have been consulted and consider that it would be appropriate for the requested obligation would be CIL compliant provided that the agreement clearly specify the location where the monies would be directed. Therefore the Red House surgery has been named in the draft agreement.

4.7 Obligation: Ambulance Service contribution

The Council are in the process of both internal discussions and conversations with the NHS East of England Ambulance Service NHS Trust regarding this requested financial contribution.

Upon further review, the Council would require additional information from the NHS Trust to evidence that the appeal site would generate a specific need, and to justify the funds requested. If this cannot be confirmed, the NHS trust would need to make a request for strategic CIL funding arising from development in general.

On this basis, the Council would suggest that the request from the NHS Trust may not meet the CIL tests based on the information before us. Any clarifications received from the NHS Trust in the course of the Inquiry will be presented to the Inspector.