

**Town & Country Planning Act 1990 (As Amended)**

**Planning Appeal**

**By**

**Bloor Homes NW (the Appellant)**

**Against The Refusal Of Outline Planning Permission By Staffordshire Moorlands District Council For residential development with access considered (all other matters reserved) at Land to the east of Froghall Road, Cheadle**

**STATEMENT PURSUANT TO REGULATIONS 122 & 123 OF THE COMMUNITY INFRASTRUCTURE REGULATIONS 2010 (AS AMENDED)**

LPA Ref: SMD/2021/0610

PINS ref: APP/B3438/W/24/3351035

## 1. **Legislative and Policy Background**

1.1 Since April 2010 the test for determining the lawfulness of planning obligations (otherwise known as section 106 obligations) has been set out in the Community Infrastructure Levy Regulations 2010 (as amended) **(CIL Regs)**.

1.2 Regulation 122 of the CIL Regs applies for the purposes of any planning obligation which the Inspector may require in the Appeal in accordance with Regulation 122(1). Save any reasonable sums that may be requested in order to pay for the cost of monitoring compliance with a Section 106, an obligation may only constitute a reason for granting planning permission for the development if the obligation is:-

- necessary to make the Development acceptable in planning terms
- directly related to the Development and
- fairly and reasonably related in scale and kind to the Development

1.3 These three pre-requisites are the same as set out in paragraph 57 of the National Planning Policy Framework **(NPPF)**.

1.4 This statement has been prepared taking into account the NPPF (December 2024), National Planning Practice Guidance **(NPPG)** and PINS Guidance "Planning obligations: good practice advice" updated 26 April 2023.

1.5 In particular the PINS Guidance addresses the following evidence requirements for proving an obligation meets the tests:-

- the relevant development plan policy or policies, and the relevant sections of any supplementary planning document or supplementary planning guidance
- quantified evidence of the additional demands on facilities or infrastructure which are likely to arise from the proposed development
- details of existing facilities or infrastructure, and up-to-date, quantified evidence of the extent to which they are able or unable to meet those additional demands
- the methodology for calculating any financial contribution necessary to improve existing facilities or infrastructure, or provide new facilities or infrastructure, to meet the additional demands
- and details of the facilities or infrastructure on which any financial contribution will be spent.

1.6 For the purposes of this exercise the key areas covered by the Section 106 Obligation **(the Section 106)** are reviewed against the Local Plan policies and the legislative test.

## 2. **The Section 106**

- 2.1 The developers of the land in concert with the landowner (and with the consent of the landowner's mortgagee) have agreed a deed (referred to variously as the agreement or 106) with the Council and the County Council that conforms to the requirements of section 106 of the Town and Country Planning Act 1990 as amended.
- 2.2 The deed is an agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) in relation to the planning application, which, if successful on Appeal, would require planning obligations in relation to the following:
- Provision of Affordable Housing;
  - Contributions – air quality mitigation contribution, playing pitch contribution, health care contribution, primary school contribution, a bus service contribution and contributions towards highway improvements for pedestrians;
  - Custom Build and Accessible Dwellings;
  - Open space, public open space and future maintenance of those spaces (including play equipment to be located on site); and
  - Monitoring fees - travel plan monitoring fee and monitoring fees to monitor compliance with the 106 and travel plan to the Council and County Council.
- 2.3 The main body of the Section 106 contains the usual standard clauses, the Recitals set out the background in that Staffordshire Moorlands District Council (the Council) is the local planning authority and Staffordshire County Council (the County Council) is the Highways and Education Authority for the area in which the site is located.
- 2.4 Title to the site has been provided to the Council and is attached at Appendix A.
- 2.5 Title to the appeal site is contained within title number SF609123. Mr Edward Pemberton is stated as the land owner of the Site and is party to the deed.
- 2.6 Bloor Homes Ltd has the benefit of an option to purchase Mr Pemberton's part of the appeal site dated 16 April 2021 and this is registered at the Land Registry on on title number SF609123. Bloor Homes Ltd are party to the deed.
- 2.7 The land is also subject to a legal charge in favour of Natwest Bank and they are also party to the deed.
- 2.8 The Council is satisfied that Mr Pemberton is capable of binding the land for the purposes of section 106 of the 1990 Act and that all parties with an interest in the land are party to the agreement.

- 2.9 Clause 3.9 of the Deed provides that if the Inspector (on behalf of the Secretary of State) finds that any of the provisions in the Section 106 are not in accordance with the CIL Regs then it allows those parts of the Section 106 to be deleted and the remainder of the Section 106 to still be binding.

### Planning Obligations

Staffordshire Moorlands Local plan policy C1 states that new development should only be permitted where:

“the utility, transport and community infrastructure necessary to serve it is either available, or will be made available by the time it is needed. All development proposals must therefore either incorporate the infrastructure required as a result of the scheme, or make provision for financial contributions and/or land to secure such infrastructure or service provision at the time it is needed, by means of conditions or a planning obligation in line with the Developer Contributions SPD, or any subsequently adopted Community Infrastructure Levy.”

Further guidance on this policy is given in the Council’s Developer Contributions SPD adopted in October 2023.

The following contributions/mitigation measures are contained in the 106 agreement.

### Provision of Affordable Housing

2. In accordance with Local Plan Policy H3 and the developer contributions SPD and as set out in Schedule 1 the landowner will provide 33% affordable housing of which 60% are proposed to be for affordable rent and the remaining 40% will be for shared ownership.
- 2.1 The landowner will provide an affordable housing scheme with each and every reserved matters application setting out the exact numbers, type and tenure of the Affordable Housing Units to be provided and the location of the Affordable Housing Units and its phasing in relation to the occupancy of the Open Market Dwellings.
- 2.2 Across the site as a whole 50% of the affordable housing units must be completed and transferred to a registered provider before 50% of the open market dwellings are practically completed, and the remaining affordable housing units must be completed and transferred to a registered provider before 80% of the open market dwellings are practically completed so ensuring the affordable housing will come forward before the site is completed.
- 2.3 The affordable housing units are subject to a minimum size and specification to ensure compliance with the Nationally Described Space Standards and the accessibility standards set out in the Optional Requirement M4(2) of the Part M of the Building Regulations.
- 2.4 The agreement contains detailed provisions as to how these units will be made available to persons with a local connection to the Cheadle

Area as well as fall back provisions if for example a registered provider cannot be found or a person with a local connection cannot be found.

- 2.5 The affordable housing provisions are consistent with planning policy, directly related to the Development and reasonable in all other respects.

### **3. Custom and Accessible Dwellings**

- 3.1 The 106 agreement at Schedule 2 requires 5% of the dwellings on the site up to a maximum of 10 units to be provided by the landowner on the site. The policy and statutory basis for the Custom/Self Build provisions are set out in the statement of common ground for self build and custom house building, CD13.7.

- 3.2 The deed requires the landowner to agree a marketing strategy with the Council and then to market the land for at least 12 months, if marketing is unsuccessful the land may then be utilised by the landowner without restriction.

- 3.3 In addition to the custom/self build units the landowner will provide a minimum of 50% accessible dwellings on the site, that is a dwelling that meets the criteria set out in Part M4(2) Schedule 1 of the Building Regulations 2010, and 6 wheelchair accessible dwellings, that is a dwelling that a Dwelling which meets the criteria set out in Part M4(3) Schedule 1 of the Building Regulations 2010. The mix of property types is consistent with local plan policy H1.

- 3.4 The Custom and Accessible Dwelling obligations are consistent with planning policy, directly related to the Development and reasonable in all other respects.

### **4. Playing Pitch and Play Area Contribution**

- 4.1 Policy C2 of the Local Plan Policy provides for contributions to be sought for the provision of play and leisure facilities as set out in that policy and further detail for this is set out in the Council's developer contributions SPD at paragraph 4.24 – 4.26.

- 4.2 The 2017 Playing Pitch Strategy referred to in policy C2 showed a current shortfall in Cheadle for both adult and mini 7v7 football pitches. The report also identified a future shortfall in the Cheadle area for adult, youth 11v11, mini 7v7 and mini 5v5 pitches. The County Football Association (FA) has supplied current team data and compared with 2017 there has been an increase in participants of adult, youth and mini football in rural areas and in youth and mini in Cheadle.

- 4.3 The contribution will be calculated by formula and utilising the number of dwellings as set out in Schedule 4. The per dwelling figure was obtained by utilising the Sports England Playing Pitch Calculator in accordance with the Council's developer contributions SPD based on inputting the most recent pitch data in the Cheadle area from the FA. The contribution will be payable to the Council prior to occupation of 10% of the dwellings in every phase.

- 4.4 In accordance with local plan policy C1 and the developer contributions SPD the agreement further requires a play area to be provided on site of a minimum of 400 sq m in size) for the provision of play for toddlers and juniors up to the age of 14 years old and in compliance with the requirements for a Locally Equipped Area for Play as set out in Annex 2 to the Agreement, and is also attached as appendix B of this statement. The play area must be open to the public before occupation of 50% of the dwellings on the site.
- 4.5 The contribution to playing pitches in the Cheadle area and provision of play area is consistent with planning policy, directly related to the development and reasonable in all other respects.

## **5. Open Spaces and Maintenance**

- 5.1 Policy C2 of the Council's Local Plan Policy supports provision of local green spaces. Schedule 4 of the agreement provides that the landowner must submit a Public Open Space Scheme with each and every reserved matters application which shall specify the location, layout, proposed public access (if any) and planting details, timing of delivery in relation to completion of the Dwellings within that Phase and the future management and maintenance of the Public Open Space and Play Area. The landowner must implement and maintain the open spaces and play area in accordance with the scheme once approved.
- 5.2 The deed recognises that there are areas on the appeal site consisting of open space that are not to be sold to occupiers of the dwellings, some of which are open to the public (eg the play area) and some of which are not (eg landscaped areas) but both of which require management and maintenance.
- 5.3 The deed requires the owner to choose whether to carry out this task itself or to appoint a management company to do it.
- 5.4 The developer also proposes to provide allotments on the site, in compliance with local plan policies C1 and C2, and while these are not directly referred to in the agreement will be required as part of the layout of the site to be consented with the reserved matters application(s) and will fall within the meaning of Public Open Space as defined in the agreement for the purposes of maintenance.
- 5.5 The necessity for future management and maintenance of open spaces and the play area is supported by planning policy, is directly related to the Development and reasonable in all other respects.

## **6. Air Quality Contribution**

- 6.1 Policy SD4 sets out the Council's policy on pollution control. Schedule 5 provides for a payment of £50 per dwelling to monitor air quality in the Cheadle area.
- 6.2 During the course of the application the appellant produced an updated AQ assessment to address the concerns raised previously by the

Council's Environmental Health service (CD2.26). The environmental health section responded on 16th December 2021 and stated as follows:

"... despite the acceptance of the report and the potential benefits of the proposed mitigation, there is inevitably some uncertainty around modelled data particularly at receptors currently close to air quality objectives.

There is a need to improve air quality monitoring within Cheadle to ensure AQ objectives are not breached and that changes in air quality as a result of this (and other developments) in the area can be assessed. It is recommended therefore, that the applicant is asked for a contribution of £50 per proposed property to support and implement better local air quality monitoring in the area, namely the real time monitoring of NOx and PM10 data and possibly to support a further feasibility study into local sustainable travel in the area. This should either be as a condition of the planning permission or secured via a s.106 agreement."

6.3 The contribution requested is £50 per proposed property; originally the contribution was calculated from 228 units after a quote was sought for 2 standard monitoring devices for 24 months ie £12,150. Although the number of units able to be accommodated on the site is now likely to be less than 228 this contribution would still be likely to cover the main cost of 2 devices for 24 months. The table is an extract from a quote obtained for the monitoring devices from a specialist supplier Zephyr.

Zephyr Air® Quality Monitors Subscription:

	Length of Service Subscription	Cost/ per unit GBP (exc VAT)		
		1- 5 units	6- 15 units	16- 30 units
<b>Zephyr - Standard</b> <i>NO<sub>2</sub>, NO, O<sub>3</sub> &amp; Particulates (PM<sub>10</sub>, PM<sub>2.5</sub>, PM<sub>1</sub>)</i> <i>Temperature, Relative Humidity and Pressure</i>	12 months	£4,050	£3,915	£3,780
	24 months	£6,075	£5,820	£5,550
	36 months	£7,900	£7,530	£7,145
	48 months	£9,500	£9,070	£8,575
	60 months	£10,995	£10,440	£9,850
<b>Zephyr - Enhanced</b> <i>NO<sub>2</sub>, NO, O<sub>3</sub>, CO, H<sub>2</sub>S, SO<sub>2</sub> &amp; Particulates</i> <i>(PM<sub>10</sub>, PM<sub>2.5</sub>, PM<sub>1</sub>)</i> <i>Temperature, Relative Humidity and Pressure</i>	12 months	£5,400	£5,265	£5,135
	24 months	£8,000	£7,800	£7,490
	36 months	£10,500	£10,100	£9,615
	48 months	£12,700	£12,140	£11,520
	60 months	£14,660	£13,970	£13,225
<b>Zephyr - Enhanced+</b> <i>NO<sub>2</sub>, NO, O<sub>3</sub>, CO<sub>2</sub>, CO, H<sub>2</sub>S, SO<sub>2</sub> &amp; Particulates</i> <i>(PM<sub>10</sub>, PM<sub>2.5</sub>, PM<sub>1</sub>)</i> <i>Temperature, Relative Humidity and Pressure</i>	12 months	£5,670	£5,535	£5,400
	24 months	£8,500	£8,200	£7,880
	36 months	£11,000	£10,600	£10,100
	48 months	£13,350	£12,750	£12,100
	60 months	£15,395	£14,675	£13,900

6.4 In the proof of evidence of Mr J Coxon on behalf of the appellant he states that:

"An Air Quality Assessment (AQA) was submitted in support of the application. As noted within the committee report (CD4.2, Section 6, subheading 'Environmental Health Officer'), the Council's Environmental Health Officer accepts the conclusions of the AQA and

does not object to the application, subject to a Section 106 contribution to improve air quality monitoring within Cheadle (the consultation response is provided at CD3.29). The Appellant is of the view that the contribution is not strictly necessary, given that the submitted (and accepted) Air Quality Assessment does not indicate that any receptors are predicted to witness air pollutant concentrations close to the Air Quality Assessment Levels (AQALs), and also the off-site highway improvement measures which have already been put forward as part of the planning application, which would result in associated beneficial air quality effects (see CD2.26, Sections 6 and 7.4). Nevertheless, the Appellant does not object to the proposed contribution, subject to the Council demonstrating that it is necessary.”

6.5 The Environmental Health section has responded as follows:

“The appellant is correct the air quality (AQ) report was “generally” accepted. However, despite the acceptance of the report and the “potential” benefits of the proposed mitigation, it was also noted in the response that it was inevitably some uncertainty around modelled data particularly at receptors currently close to air quality objectives. It was then stated that there is also need to validate these predictions (notably PM 10 & 2.5 ) to demonstrate that the many assumptions in the model were accurate. The mechanism to do this was to install a couple of continuous AQ monitors that also monitor for PM (10 & 2.5) improving air quality monitoring within Cheadle to ensure AQ objectives are not breached and that changes in air quality as a result of this (and other developments) in the area can be assessed.

Further justification: despite the assertion by the applicant that Air Quality Assessment does not indicate that any receptors are predicted [to] breach AQO as a result of the development, it does note an increase/ impact. The reason that this increase does not cause a obvious breach, is essentially due to a rather large reduction in the general air quality values between the calculated based year (2019) and the opening year (2025), which essentially predicted a reduction in all NO<sub>2</sub> values the values across Cheadle by approximately 10ug, so all values are predicted to be substantially below AQO. Should this large decrease not materialise then the increase in emissions due to established (albeit predicted to be small) increase in emissions could more readily impact (% wise) on the emissions. It is also noted that the results for particulate matter (PM) are only based on modelled data, so the level of uncertainty associated with these measurements is significant. It would therefore be beneficial to establish some PM monitoring for Cheadle to test the models assumptions.

The proposed highway mitigations are welcomed but whilst it is hoped that the conversion of existing zebra crossing on A522 Leek Road to signalised pedestrian crossing and widening on A522 Leek Road approach to A522 Leek Road/A522 Leek Road/A521 High Street/A522 Tape Street mini-roundabout), may will have some beneficial side effects on Air Quality, this has not been demonstrated in the AQ report, so it is not considered that these can be taken as actual a mitigation measure at this time. Certainly, the conversion of that Zebra crossing to a signalised crossing could potentially increase traffic



delays and queuing traffic at certain times. The provision of monitoring though would enable this theory to be validated.”

6.6 In his proof Mr Coxon goes on to state that:

“With regard to construction dust, the impacts would be negligible, subject to a construction management plan (to be secured by condition). With regard to operational effects, the impact of the additional road traffic would have negligible effects on the local Air Quality subject to the implementation of the proposed off-site highways works (i.e., the conversion of existing zebra crossing on A522 Leek Road to signalised pedestrian crossing and widening on A522 Leek Road approach to A522 Leek Road/A522 Leek Road/A521 High Street/A522 Tape Street mini-roundabout).”

6.7 The Environmental Health response to this statement is that

“The first part of this statement is not disputed, the second part is essentially the same as [above] but to reiterate, the proposed off-site highways works have not been demonstrated to provide any air quality benefits (though it is hoped) provision of modelling would allow these to be assessed. If they do prove successful then this may offer further options to improve air quality around Cheadle.”

6.8 If the Inspector finds that the contribution is necessary and meets the CIL criteria then the contribution is indexed so it will not lose value if development does not commence immediately and will be payable to the Council prior to Commencement of Development. The sensors can be installed relatively quickly and it is hoped this will allow for base line monitoring to take place before construction works begin.

6.9 The air quality monitoring contribution is supported by planning policy, directly related mitigating the impact of the development and reasonable in all other respects.

## 7. **Primary School Contribution**

7.1 Policy C1 ensures that developments contribute to the provision of local services where necessary to make a development acceptable in planning terms, and is supported by the developer contributions SPD.

In its last response made to the Planning Inspectorate on November 29th 2024 (CD3.40) the County Council confirmed that there was sufficient capacity to accommodate children living in the new proposed dwellings at High School but in respect of primary school provision stated as follows:

“It has been identified that the level of housing growth proposed for Cheadle in SMDC’s Local Plan will necessitate a new primary school to be delivered within one of the residential development sites.

A fair, transparent, and consistent approach must be taken across large developments proposed in the Cheadle area. As a new school will be necessary to accommodate the level of development proposed

in the area, this site will be required to contribute proportionally to the cost of providing the new school. We will therefore be requesting a contribution towards primary school provision.

We have been advised that the cost of a new 210 place primary school (1 form entry) would be in the region of £7.3 million (excluding acquisition of the necessary land). This cost is from 2022 Q2 and are currently being updated. The most up to date cost will be utilised in the S106 should the application be approved.”

- 7.2 The response went on to specify an amount but since the application does not now propose a fixed number the 106 deals with the amount by way of formula in Schedule 7.
- 7.3 The contribution is Indexed so it will not lose value if development does not commence immediately and will be payable to the County Council in staggered payments, 30% on or before commencement; 30% on or before occupation of 30% of the dwellings and the remaining 40% on or before occupation of the remaining 60% of the dwellings.
- 7.4 The contribution is supported by planning policy, directly related mitigating the impact of the development and reasonable in all other respects.

## **8. Health Contribution**

- 8.1 Local plan policy C1 supported by the Council's developer contributions SPD requires new development to provide or meet the reasonable costs of providing on-site or off-site infrastructure, facilities and/or mitigation necessary to make a development acceptable in planning terms.
- 8.2 The Staffordshire and Stoke on Trent Integrated Care Board responded to the last consultation on this application on the 24<sup>th</sup> March 2024 (CD3.35). It sets out exactly how the contribution is calculated and rationale for the request. The contribution will be applied to future adaptation/expansion of premises within the Moorlands Rural PCN.
- 8.3 At Schedule 6 the deed provides for the requested contribution to be calculated pro rata the number of units (in accordance with the 24.3.24 consultation response) that will ultimately be delivered on the site.
- 8.4 The contribution is indexed so it will not lose value if development does not commence immediately and will be payable to the Integrated Care Board prior to Commencement of Development on each phase.
- 8.5 The Health Contribution is supported by planning policy, directly related mitigating the impact of the development and reasonable in all other respects.

## **9. Bus Service, Highways Improvements and Travel Plan**

- 9.1 Local plan policy C1 requires new development to provide or meet the reasonable costs of providing on-site or off-site infrastructure, facilities

and/or mitigation necessary to make a development acceptable in planning terms. Policy T1 is specific to highways and provides that development which generates significant demand for travel or is likely to have significant transport implications (as identified within a Transport Assessment) will, where appropriate:

- Contribute to improved public transport provision
- Contribute to junction improvements, traffic management and highway infrastructure
- Provide proactive facilities and measures to support sustainable transport modes
- including on-site features to encourage sustainable travel methods e.g. cycle path links, cycle storage facilities, bus stops etc
- Provide and actively promote travel plans.

9.2 In their consultation responses to the application (CDs 3.19 and 3.20) Staffordshire County Council as highways authority have identified that bus services along the A521 Froghall Road are limited and pedestrian footpaths from the appeal site to the town centre require creation/improvement, including formal pedestrian crossing facilities in Cheadle town centre so as to improve the sustainability of the proposal and safety of pedestrians.

9.3 A travel plan to be appended to the 106 agreement is required and has been agreed with the County Council. The landowner will pay the County Council £10,000 to monitor compliance through the submission of an annual performance report. This report must be submitted for the first 5 years of the first dwelling being occupied. Modifications suggested by the County Council must be made.

9.4 Schedule 8 of the 106 sets out the sums to be applied to an improved bus service (£715.00 per dwelling), a sum (£50,000) for pedestrian improvements comprising of dropped crossings and tactile paving on both sides of the road between the appeal site and Cheadle town centre and £17,000 for formal pedestrian crossing facilities in Cheadle town centre.

9.5 The contributions are indexed so they will not lose value if development does not commence immediately and will be payable to the County Council prior to occupation of the dwellings save for the Travel Plan Sum which is due prior to the Commencement of Development.

9.6 The highways contributions and travel plan arrangements are supported by planning policy, directly related to mitigating the impact of the development and reasonable in all other respects.

## 10. **S106 Monitoring Contributions**

10.1 In line with the revised Community Infrastructure Levy Regulations 2010 (as amended) Regulation 122 2(a), the Council and the County Council will seek a monitoring fee towards the monitoring and reporting of S106 contributions.

- 10.2 The County Council fee is £2,070.00 comprising 3 hours time @ £230 per hour for each obligation (x3). Ie, £230x3x3 = £2,070.00
- 10.3 The Council fee is based on the Staffordshire Moorlands Developer Contributions SPD, £218.83 for every obligation trigger in the S106 agreement plus £583.72 for affordable housing monitoring.

## **11. Conclusion**

- 11.1 This note has been prepared by the Council in order to assist the Inspector when considering the Section 106 and sets out in policy terms how the various planning obligations have been assessed or calculated and how they are to be delivered. The Council confirms that the contributions are considered to be compliant with Regulation 122 of the CIL Regs.
- 11.2 The only remaining outstanding matter relates to the rationale for the County Council monitoring fee which the County Council have been asked to provide.

Nicola de Bruin, solicitor  
On behalf of Staffordshire Moorlands District Council  
24.1.25 as amended 30.1.25

Appendices attached to version dated 24.1.25