

Town & Country Planning Act 1990 (As Amended)

**Planning Appeal
By
Laver Leisure (Oakamoor) Limited**

**Against the Refusal of Planning Permission By
Staffordshire Moorlands District Council:**

For a Reserved matters application proposing details for the appearance, scale, layout and landscaping for phase 1 of the leisure development comprising 190 lodges; erection of a new central hub building (providing farm shop, gym, swimming pool, spa, restaurant, cafe, games room, visitor centre, hub management and plant areas): reuse and external alterations to the existing office building to provide housekeeping and maintenance accommodation (including meeting rooms, offices, storage, staff areas and workshop); children's play areas; multi use games area; quarry park; car parking; refuse and lighting arrangements; and managed footpaths, cycleways and bridleways set in attractive hard and soft landscaping.

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

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 2023), 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 area covered by the Section 106 Obligation (**the Section 106**) has been reviewed against the Local Plan policies and the legislative test.

2. **The Section 106**

- 2.1 The Developers of the land have sent a draft version of the deed to the Council who have agreed it. It will take effect should the Inspector be minded to allow the appeal upon commencement of development. The deed conforms to the requirements of section 106 of the Town and Country Planning Act 1990 as amended.
- 2.2 The Deed is a unilateral obligation 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 a planning obligation in relation to the following:
- A contribution towards air quality mitigation, and
 - Monitoring fee – for the Council to monitor compliance with the 106.
- 2.3 The main body of the Section 106 contains the usual standard clauses, the Recitals set out the background in that High Peak Borough Council (the Council) is the local planning authority and that Laver Leisure (Oakamoor) is the land owner, capable of binding the land with the obligations contained in the deed.
- 2.4 Title to the site has been provided to the Council and is attached.
- 2.5 In relation to the Site, title is contained within title numbers SF377935, SF564636, SF364233 and SF564637. Laver Leisure (Oakamoor) Ltd (Company registration no. 06982054), the appellant, is the sole owner of the site and there are no other persons or bodies with a legal interest in the site that need to be party to the agreement.
- 2.6 Accordingly the Council is satisfied that the Owner is capable of binding the land for the purposes of section 106 of the 1990 Act.
- 2.7 Clauses 3.1.3 and 3.1.4 of the Deed provide 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 or imposes any limitations to the obligations on the decision letter then those terms of the Section 106 shall not be binding on the owner or shall be binding only to the extent indicated.
- 2.8 This is the second 106 relating to this site. The first agreement dated 26.10.16 (CD6.16) remains in force and is unaffected by the new deed, for the avoidance of any doubt this is stated in the new agreement. The first agreement provides for (in summary) submission of a travel plan and appointment of a travel plan coordinator 3 months before the site opens and restrictions on occupation of the holiday lodges as follows:
- The Holiday Lodges will only be occupied for holiday purposes for a period of not more than six consecutive weeks at any time and only in association with the main use of the Site as a leisure venue and not as a person's sole or Main Place of Residence – ("Main Place of Residence" meaning the primary home and normal place of residence of any occupier of a Holiday Lodge where they are registered to vote

- and/or for the purposes of council tax and health or other purposes)
- To preclude at any time the occupation as a Main Place of Residence in any letting arrangement including tenancy, lease or sale of any Holiday Lodge on the Site. And,
 - To maintain an up-to-date register of the names and address of Main Place of Residence of all owners and or occupiers of individual Holiday Lodges on the Site and to make the register available at all reasonable times to the Council.
- 2.9 Local plan policy SS12 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.
- 2.10 Further guidance on this policy is given in the Council's Developer Contributions SPD adopted in October 2023.

3. The Air Quality Contribution

- 3.1 Policy SD4 of the Staffordshire Moorlands adopted Local Plan 2020 sets out that the Council will protect people and the environment from unsafe, unhealthy and polluted environments by ensuring proposals avoid potential adverse effects; and only permitting proposals that are deemed (individually or cumulatively) to result in pollution (including air/ water/ noise/ vibration/ light/ ground contamination) if after mitigation, potential adverse effects are deemed acceptable. This may be achieved by either condition or planning obligation.
- 3.2 The Developer has updated their Environmental Assessment in respect of the appeal proposal and have consulted statutory consultees. The response from the Council's environmental health department is attached at Appendix B.
- 3.3 The environmental health section of the Council consider that a financial contribution is required to mitigate against the impact of the development on air quality within the AQMA management area at the Cellarhead crossroads, which is a busy junction between the A52 and the A520, the A52 being the main thoroughfare between the site, Stoke on Trent and the M6 beyond to the west and Ashbourne to the east. The A520 running north (Leek and Buxton) to south (Stafford).
- 3.4 The contribution of £4,500 will enable the Council to implement actions associated with the Staffordshire Moorlands District Council Air Quality Action Plan 2019 -2024 for the area, namely the real time monitoring of NOx and PM₁₀ data to feed into and inform actions designed to reduce emissions at this sensitive location.
- 3.5 The cost of monitoring for one year is £1,500, therefore the £4,500 contribution will allow for 3 years monitoring.

- 3.6 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.
- 3.7 The inspector should be aware that there is one other 106 for a development in the same area which contains an air quality monitoring contribution and that is attached at Appendix C. This agreement provides for a 1 year period to cover the construction and implementation period of that proposal. That development is for a proposed retirement complex on a relatively small site. The contribution for the appeal site is correspondingly larger and needs to include a much longer construction and implementation lead in time; hence the request for 3 years monitoring. Should these contributions be received at the same time then they will run consecutively for a 4 year period in total.
- 3.8 The air quality monitoring contribution is related to planning, directly related to the Development and reasonable in all other respects.

4. S106 Monitoring Contributions

- 4.1 In line with the revised Community Infrastructure Levy Regulations 2010 (as amended) Regulation 122 2(a), the Council also seeks a monitoring fee towards the monitoring and reporting of S106 contributions.
- 4.2 The Council fee is based on the Staffordshire Moorlands Developer Contributions SPD which requires £218.83 for every obligation trigger in the S106 agreement. Since there is only one obligation the total contribution will be £218.83 as set out in the agreement.

5. Conclusion

- 5.1 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.

APPENDIX A: TITLE

APPENDIX B: Environmental Health Air quality contribution request

APPENDIX C: s106 the Old Bowling Green Cellarhead