
From: Brown, Kerr [REDACTED]
Sent: 12 September 2023 16:34
To: Arron Beecham; Planning Appeals
Subject: FW: Appeal Ref: APP/Y1138/W/22/3313401 - Land at Hartnolls Farm, Tiverton
Attachments: 09-11-23 DCC , Simon Niles.pdf; 09-11-23 Pages from CIL Compliance Statement for Education obo MDDC.pdf; 09-22-23 Pages from CD63 14_00881_MOUT-DN and S106.pdf

Good afternoon

Please see the e-mail from the agent below

Kind regards

Kerr

From: Sarah Smith [REDACTED]
Sent: 12 September 2023 15:13
To: Brown, Kerr [REDACTED]
Cc: David Seaton <d.seaton@pclplanning.co.uk>
Subject: FW: Appeal Ref: APP/Y1138/W/22/3313401 - Land at Hartnolls Farm, Tiverton

Dear Kerr,

David Seaton has asked that I forward the email below to you.

Best regards,

Sarah Smith

PCL PLANNING LTD

13a-15a Old Park Avenue
Exeter
Devon, EX1 3WD
United Kingdom

[REDACTED]
www.pclplanning.co.uk

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From: David Seaton [REDACTED]
Sent: Monday, September 11, 2023 1:57 PM
To: Sarah Smith <s.smith@pclplanning.co.uk> | simon.niles@middevon.gov.uk [REDACTED]
Cc: tony@middevon.gov.uk [REDACTED] | Arron Beecham [REDACTED] | Tristan Peat [REDACTED] | Leanne Buckley-Thomson [REDACTED] | Robert Williams <rwilliams@cornerstonebaristers.com> | Gerry [REDACTED]
Subject: RE: Appeal Ref: APP/Y1138/W/22/3313401 - Land at Hartnolls Farm, Tiverton

Tony,

Since the point stems from your rebuttal, and presumably the relevant facts were checked prior to issue of that document, it may be expedient for you to reply disclosing the relevant documents in order to evidence your adopted position?

Kind Regards,

David Seaton BA (Hons) MRTPI
Managing Director

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13a-15a Old Park Avenue
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From: Sarah Smith [REDACTED]
Sent: Monday, September 11, 2023 1:52 PM
To: simon.niles@middevon.gov.uk [REDACTED]
Cc: tony@middevon.gov.uk [REDACTED] | Arron Beecham <abeecham@middevon.gov.uk> | Tristan Peat [REDACTED] | Leanne Buckley-Thomson [REDACTED] | David Seaton <d.seaton@pclplanning.co.uk>; appeals@middevon.gov.uk
Subject: Appeal Ref: APP/Y1138/W/22/3313401 - Land at Hartnolls Farm, Tiverton

Dear Mr Niles,

Please find attached a letter from David Seaton in respect of the above appeal.

Best regards,

Sarah Smith

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DPC:76616c646f72



Please consider the environment before printing this email

Your Ref
Our Ref DS/SJS/1883
Date 11th September 2023



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Simon Niles,
Devon County Council Education
County Hall
Topsham
Exeter
EX2 4QD

Dear Simon,

LAND AT HARTNOLLS FARM
APPLICATION REFERENCE: 21/01576/MOUT
APPEAL REFERENCE: APP/Y1138/W/22/3313401

I understand that DCC will be appearing at the roundtable session on infrastructure matters at this weeks inquiry into our client's appeal at the above site.

I note from Anthony Aspbury's CIL Regulation 122 compliance statement (copy attached) that, at paragraph 2.2.4 he sets out that:

"a new primary school is being constructed imminently close to the appeal site"

I presume this is a reference to the primary school provision that was included within the approval of a permission granted to the Chettiscombe Trust Estate on 12/06/2017 (14/00881/MOUT), relevant documents are included at CD63 of the inquiry library.

The appellant wishes to verify the accuracy of the above use of words and, to that end, requests clarification of the following points.

Can MDDC and/or DCC please confirm that, pursuant to Schedule 1, Part 2 of the S106 agreement dated 09/06/2017 clause 5.2 (extract attached), DCC did submit a plan showing the exact proposed boundaries of the School Land to the Owner and provide a copy of that plan please?

If that plan was served, whether, pursuant to clause 5.3 the Owner sought an alternative plan or the Expert determination procedure was invoked?

Whether, pursuant to clauses 5.4-5.9 the value of the school site has been agreed?

Whether, pursuant to clauses 5.10-5.12 the transfer of the school site has taken place?

Bearing in mind the need for this information to inform the inquiry I would be grateful for your expedient reply.

Kind regards,



David Seaton, BA (Hons) MRTPI
For PCL Planning Ltd

Enc. Tony Aspbury CIL Reg 122 compliance statement
S106 extract

c.c. Tony Aspbury
Arron Beecham
Triston Peat
Leanne Buckley-Thomson



ASPBURY
Planning
Your Vision, Our Focus

APPEAL BY WADDETON PARK LIMITED

PINS REF.: APP/Y1138/W/22/3313401

CIL REGULATION 122

COMPLIANCE STATEMENT

**IN RESPECT OF S106 CONTRIBUTIONS
FOR EDUCATION**

ON BEHALF OF MID DEVON DC

1.0 Introduction

- 1.1 This CIL Compliance Statement, prepared in accordance with CIL Regulation 122, on behalf of Mid Devon District Council ('the Council') as Local Planning Authority, relates to the Appeal by Waddeton Park Limited (PINS Ref.: APP/Y1138/W/22/3313401). It is concerned with a request by Devon County Council as Local Education Authority ('the LEA') for Section 106 contributions towards education provision.
- 1.2 The Council considers that the request for an education contribution sought is justified and proportionate and in all other respects reasonable and that it complies with Regulation 122.
- 1.3 In coming to this conclusion the Council relies substantively on the evidence provided by Devon County Council which is appended to this Statement. An officer of the LEA will be available to the Inquiry for the session (presently assumed to be a round-table session) to amplify the case for education contributions and to answer any questions that the Appellant or the Inspector may have.
- 1.4 The Council submits that the request for an education contribution is fully consistent with and justified by **Policy S8** of the MDLP and Paragraph 55 of the NPPF. That is the 'policy' basis of the request. Whilst the other documents relied on by the LEA, in the form of, amongst other things, national and local statements of education policy and good practice, do not it is acknowledged, form part of the Development Plan, or constitute SPD, they are, nevertheless clearly relevant material considerations to which due weight should be accorded. They provide both the rationale, underlying justification for the request for the contribution and its quantification. They have been published by the LEA and are in the public domain therefore. It would be neither procedural appropriate, nor practical to include such detail in a development plan policy.

2.0 Regulation 122 Criteria

- 2.1 Regulation 122(2) of the Community Infrastructure Regulations 2010 states that a planning obligation may only constitute a reason for granting planning permission if the obligation is:

- a. necessary to make the development acceptable in planning terms;
- b. directly related to the development; and
- c. fairly and reasonably related in scale and kind to the development.

These criteria are addressed below in turn.

2.2 **Necessity.**

2.2.1 It is axiomatic that housing of the type proposed (i.e., 'family' and not specialist housing) will generate children of schoolage. In the absence of any detailed breakdown of the size of houses at this stage, it is reasonable for the LEA to apply standard projections for pupil yield (primary, secondary and SEN) and that is what has been done in this case. These projections are soundly based on local evidence and this is normal practice throughout the country. That the Appeal Development will produce children of school age across the spectrum of educational needs is indisputable therefore.

2.2.2 The evidence provided by the LEA describes existing provision and the 'capacity' thereof and assesses the impact of the development on that existing provision through the projected pupil yield, including the likely impact on the relevant educational infrastructure, the need to mitigate that impact and the sums required (again based on a set of established and evidenced costs).

2.2.3 So far as *primary* education is concerned, there is a legitimate spatial dimension to the required mitigation. Thus, the objective of making primary education provision that is accessible by parents and children (on foot and by bicycle) (i.e., within 2-miles), which is embodied in national and local education policy and practice, and is also consistent with health and wellbeing policy and with the principles of sustainability, is clearly a sound, well-established and proper one in planning terms. In this context, the LEA evidence shows that the nearest primary schools (within the 2-mile radius) are either already at capacity or are projected to do so in the near future and that those particular schools cannot, for a variety of reasons, mainly related to the limitations of their sites, be extended. Whilst there may be spare capacity in primary schools in Tiverton beyond the 2-mile radius, this capacity is dispersed and involves parent/pupil journeys (in some cases *significantly*) beyond convenient walking/cycling distance.

This is likely to engage the need for dedicated school transport provision and/or to involve increased reliance by parents on the private motor car. Moreover, capacity at these more distant schools is likely to be taken up over time by development within their catchments.

2.2.4 Against this background, and in the knowledge that a new primary school is being constructed imminently close to the Appeal Site (and certainly within the 2 -mile radius), it is wholly reasonable for LEA to propose that the required additional primary school places are provided by contributing towards the delivery of that school. This is clearly a cost-effective solution for all parties and an efficient use of public (education) resources. It also affords young children from the same 'community' (i.e., the Appeal Development) to attend the same school and constitutes a significant additional social benefit, therefore.

2.2.5 Accordingly, the LEA has not treated the Appeal site as a component of the TEUE. The relationship to the TEUE and the Local Plan Policies that relate to it, is entirely incidental. The fact that the new primary school is actually provided initially under the TEUE policies and funded by the development therein is neither here nor there. It is not disputed, indeed is relied on, by the Appellant that there will be **interactions** with the other TEUE infrastructure, including the neighbourhood centre, the employment provision and recreational and leisure facilities. Moreover, sending pupils to the school there maximises the opportunities for shared journeys.

2.2.6 These are all proper planning considerations.

2.3 Relationship to the development.

2.3.1 It is clear from the evidence statement provided by the LEA that the requested contribution is directly related to the development. The basis of the calculation and the statistical relationship to pupil yield is comprehensively explained and justified. The LEA is manifestly not seeking contributions unrelated to the proposed development itself.

2.4 Fairly and reasonably related in scale and kind to the development.

2.4.1 Once again, the Local Planning Authority is satisfied that, on the evidence provided by the LEA, the education contributions sought are justified and proportionate and fairly and reasonably relate in scale and kind to the development.

2.4.2 The education contribution is now the *only* additional S106 Obligation sought by the LPA (other than the affordable housing contribution, which is not disputed). The Appellant is not, therefore in the situation where it is faced with a large suite of contributions which are economically onerous. The Obligation burden taken as a whole is not burdensome and falls within the ambit of liabilities that could have been reasonably anticipated by the Appellant.

3.0 CONCLUSION

3.1 In the submission of the Local Planning Authority, the requested educational contribution is justified and accords with terms of Regulation 122.

Agreement

Relating to Planning Obligation under Section 106 of the Town and Country Planning Act 1990 relating to Land East of Tiverton, South of A361 and both North and South of Blundells Road, Tiverton, Devon

Dated

9th June 2017

- (1) MID DEVON DISTRICT COUNCIL
- (2) DEVON COUNTY COUNCIL
- (3) THE CHETTISCOMBE TRUST
- (4) NATIONAL WESTMINSTER BANK PLC

- (b) The terms and conditions to which a connection to any available District Heating Facility is subject
- 4.2 In which case the Owner shall not be required to connect the Dwellings within that phase to a District Heating Facility

Part 2

Covenants with the County Council

Education

5 School Land

Location

- 5.1 As from the date of this Agreement the Owner shall permit the County Council to have access to the School Land at all reasonable times for the purposes of undertaking surveys and soil surveys and any other surveys reasonably required to enable the County Council to determine whether or not the School Land is suitable for its requirements PROVIDED THAT the County Council shall make good any damage caused in the exercise of its rights pursuant to this paragraph (or otherwise) to the reasonable satisfaction of the Owner within 20 Working Days AND FURTHER PROVIDED THAT the rights granted to the County Council pursuant to this provision shall terminate on the earlier of:
 - 5.1.1 12 months from the date of this Agreement;
 - 5.1.2 the date on which the County Council serves its notice on the Owner pursuant to paragraph 5.5 below
- 5.2 Within 12 months of the date of this Agreement the County Council shall submit a plan showing the exact proposed boundaries of the School Land agreed with the Council, together with any points of access and the proposed layout of the School development to the Owner (copied to the Owner's Agent) and the Owner and the County Council shall use reasonable endeavours to agree the exact boundaries of the School Land and the layout of the proposed development PROVIDED THAT:
 - 5.2.1 it shall be reasonable for the Owner to withhold approval of the said plan in the event that the location of the School Land or the proposed points of access either have not been agreed with the Council, or when considered in isolation or in connection with the location or likely location of the Community Centre Land would harm or reduce the development potential of the surrounding Land; and
 - 5.2.2 in the event that the Owner does not notify the County Council in writing that it does not approve the details submitted pursuant to paragraph 5.2 above within 60 Working Days the Owner's approval shall be deemed
- 5.3 In the event that the Owner (acting reasonably) notifies the County Council in writing that it does not approve the details submitted pursuant to paragraph 5.2 above, the County Council and the Owner shall use reasonable endeavours to agree an alternative plan showing the

exact proposed boundaries of the School Land together with any proposed points of access and the proposed layout of the School Land development PROVIDED THAT if no agreement has been reached within 20 Working Days the dispute shall be referred to determination by an Expert pursuant to Schedule 6

Value

- 5.4 Within 1 month of the agreement of the plans and details pursuant to paragraph 5.2 or 5.3 hereof the Owner shall serve written notice on the County Council containing its calculation of the School Land Market Value (the "Owner's Notice")
- 5.5 Within 3 months of receipt of the Owner's Notice, the County Council shall serve written notice on the Owner (the "County Council's Notice") confirming whether it accepts the Owner's calculation of the School Land Market Value or whether the County Council:
 - 5.5.1 Does not wish to acquire the School Land; or
 - 5.5.2 Disputes the School Land Market Value as set out in the Owner's Notice in which case the County Council's Notice shall contain full details of the County Council's calculation of the School Land Market Value
- 5.6 In the event that either:
 - 5.6.1 the County Council has not served the County Council's Notice within 3 months of receipt by the County Council of the Owner's Notice; or
 - 5.6.2 the County Council responds to the Owner's Notice within 3 months of receipt by the County Council to confirm that it does not wish to acquire the School Landthe Owner shall:
 - 5.6.3 pay the Education Land Contribution to the County Council or its Nominee on 200 Occupations or, if later, within 12 months of the County Council confirming that it does not wish to take a transfer of the School Land; and
 - 5.6.4 be free to deal with the School Land as it sees fit free from the constraints of this Agreement
- 5.7 In the event that the County Council responds to the Owner's Notice to dispute the School Land Market Value the Owner and the County Council shall use reasonable endeavours to agree the School Land Market Value for a period of 20 Working Days following the receipt of the County Council's Notice by the Owner (or such other period of time as the Owner and the County Council may agree)
- 5.8 If the County Council and the Owner have not been able to agree School Land Market Value following the expiration of a period of 20 Working Days following the receipt of the County Council's Notice by the Owner (or such other period of time as the Owner and the County Council may agree) the matter shall be referred to Expert Determination in accordance with Schedule 6

- 5.9 The County Council and/or its Nominee shall submit an application for the Necessary Consents for the School in accordance with the plan and details agreed pursuant to paragraph 5.2 or 5.3 within 3 months of the date on which the School Land Market Value is agreed or determined

Transfer

- 5.10 Provided that:

5.10.1 The School Land Market Value has been agreed by both the Owner and the County Council or determined through Expert Determination; and

5.10.2 The County Council and/or its Nominee has obtained all Necessary Consents for the School in accordance with the plan and details approved by the Owner pursuant to paragraph 5.2 or 5.3 above; and

5.10.3 The County Council has served a notice on the Owner requesting the transfer of the School Land

the Owner shall transfer the School Land to the County Council or its Nominee within 20 Working Days of the occurrence of the latest of above events and:

(a) In the event that the transfer takes place after the Commencement Date the total sum of the Primary School Contribution and the Secondary School Contribution payable by the Owner shall be reduced by a sum equivalent to 55% of the School Land Market Value as agreed between the Owner and the County Council or determined through Expert Determination (as appropriate) and the Owner and the County Council shall agree in writing amended instalment payments for the payment of the reduced sum of the Primary School Contribution and the Secondary School Contribution; or

(b) In the event that the transfer takes place before the Commencement Date the County Council shall pay to the Owner on the date of the transfer a sum equivalent to 55% of the School Land Market Value and paragraph 5.11 shall cease to apply

- 5.11 In the event that the School Land Market Value exceeds the sum of the Primary School Contribution and the Secondary School Contribution to be paid by the Owner the County Council shall on the date of the transfer of the School Land pay to the Owner a sum equivalent to the amount by which the School Land Market Value exceeds the sum of the Primary School Contribution and the Secondary School Contribution such payment to be in instalments to be agreed in writing between the Owner and the County Council

- 5.12 The transfer of the School Land shall include the grant of such rights over the Land as are necessary for the School Use and may be subject to such reasonable restrictions and reservations as the Owner may require to enable the proper functioning of the Development and to ensure that the development and use of the School Land shall not cause nuisance, annoyance or disturbance to the Occupiers of the Development including:

- 5.12.1 A covenant on the County Council or its Nominee (if appropriate) not to use the School Land in a manner which may cause nuisance, annoyance or disturbance for the occupiers of the Development save that use of the School Land for the construction and subsequent use as a School and all associated uses shall not be a breach of this covenant
- 5.12.2 Rights for the benefit of the Land to use all conduits in, on, under or over the School Land for the passage of Services to and from the Development together with the right to cleanse, maintain and repair any such conduits the Owner making good any damage caused to the reasonable satisfaction of the County Council or its Nominee (if appropriate) and complying with all reasonable requirements of the County Council or its Nominee (if appropriate) relating to the health, safety and welfare of pupils and staff attending the school situated on the School Land
- 5.12.3 Rights for the benefit of the School Land to use all conduits in, on, under or over the Land for the passage of Services to and from the School Land as may be required for the purposes of the School Use together with the right to cleanse, maintain and repair any such conduits
- 5.12.4 Rights to enter onto the School Land for the purposes of maintaining the Development or any Services, conduits, Service media or infrastructure associated therewith (including, without limitation, drainage infrastructure) where such works cannot reasonably be carried out from within the Land excluding the School Land subject to the Owner complying with all reasonable requirements of the County Council or its Nominee (if appropriate) relating to the health, safety and welfare of pupils and staff attending the school situated on the School Land
- 5.12.5 Rights of support
- 5.12.6 A covenant on the County Council or its Nominee (if appropriate) to maintain the School Land to a reasonable standard

6 Primary School Contribution and Secondary School Contribution

- 6.1 Due to existing capacity at local schools, the County Council hereby acknowledges that:
- 6.1.1 No Primary School Contribution is payable in respect of 12 Family Dwellings
- 6.1.2 No Secondary School Contribution is payable in respect of 194 Family Dwellings
- 6.2 The Owners hereby covenant with the County Council:
- 6.2.1 Once 12 Family Dwellings have been Occupied, any additional Family Dwellings ("the Extra Family Dwellings") shall be required to pay the Primary School Contribution in accordance with the following provisions:
- (a) No more than 25% of the Extra Family Dwellings comprised in a particular Phase may be Occupied unless and until 50% of the Primary School Contribution relating to the Extra Family Dwellings comprised in the relevant Phase has been paid to the County Council or its Nominee; and