

Colne & District Committee Update Report 6th February 2020

19/0834/FUL – Full: Major: Erection of 25 dwellinghouses, changes to estate layout, proposed area of open space, surface water drainage scheme and stream diversion and changes to previously approved turning area and landscaping details adjacent to site entrance (Amended Scheme) at Land to the North of The Meadows, Colne.

With regards to the NHS request for contribution this is not supported as follows:

Health Authority Contribution Request

Planning legislation allows for conditions to be placed on developments to make them acceptable. It also provides for the possibility of payments being made through section 106 agreements for infrastructure affected by a development. The law surrounding this is as follows:

Section 106 of the 1990 Act provides as follows:

(1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A and 106C as “a planning obligation”), enforceable to the extent mentioned in subsection (3)—

(a) restricting the development or use of the land in any specified way;

(b) requiring specified operations or activities to be carried out in, on, under or over the land;

(c) requiring the land to be used in any specified way; or

(d) requiring a sum or sums to be paid to the authority (or, in a case where section 2E applies, to the Greater London Authority) on a specified date or dates or periodically.

(2) A planning obligation may—

(a) be unconditional or subject to conditions;

(b) impose any restriction or requirement mentioned in subsection (1) (a) to (c) either indefinitely or for such period or periods as may be specified; and

(c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the obligation is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period....”

The relevant parts of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (“the CIL Regulations”) are as follows:

(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.

(2) A planning obligation may only constitute a reason for granting planning permission for the development 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.

Section 216(1) of the Planning Act 2008 together with Regulation 59 of the CIL Regulations requires charging authorities to apply CIL payments to “supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure”.

Section 216(2) defines “infrastructure” as follows:

“infrastructure” includes—

- (a) roads and other transport facilities,
- (b) flood defences,
- (c) schools and other educational facilities,
- (d) medical facilities,
- (e) sporting and recreational facilities, and
- (f) open spaces”

The request for contributions for health care services does in my view overall fit into a category of infrastructure that could, if necessary to make the development acceptable, fall within a category of infrastructure that can be funded through a section 106 agreement. However that does not mean to say that the contribution being requested meets the tests set out in the CIL Regulations detailed above.

Case law is clear that planning permissions cannot be bought or sold hence any sum to be paid to a planning authority must be for a planning purpose which should in some way be connected with the land in which the developer is interested.

The issue for Committee is whether the funding has a direct connection to the development and whether this would be fairly and reasonably related in scale and kind to the development.

Robust evidence is required to support a request for a contribution. In London for example a model has been produced which attempts to provide robust and up to date evidence on the need for a contribution. The model is referred to as the HUDU model. This looks at the specific circumstances of each development in its own location reflecting the population characteristics of the area.

The evidence supplied with this request does not in my view go far enough to support the view that the impacts of the individual development is directly related to healthcare deficiencies. A flat rate is applied to all developments which will inevitably result in some developers over providing and some underproviding. The model does not factor in demographic modelling of the area and does not for example look at any percentage of the population that may move into the developments and that they are already resident in the area thus not increasing the demand on services.

Whilst more accurate evidence could be provided were the model to be finessed as it stands it is not sufficiently robust to prove the level of contribution fairly reflects the impact the development would have on acute services.

This is an important issue that will arise in other developments in the Borough. In order to get an independent view on this we have obtained Counsel's opinion on this. That advice is legally privileged but supports the view that the evidence is not sufficiently robust to be able to support a requirement for the contribution requested.

Committee are therefore recommended not to require a contribution as the evidence is not robust enough to confirm that the funding is directly enough related to the development and is fairly and reasonably related in scale and kind to the development.

In terms of the LCC Education contribution request this is calculated based on the number of bedrooms producing a pupil yield for the development. In this case the request is for secondary school places. Based on the original scheme this part of the site proposed 23 units which would have resulted in a yield of 3.25 this scheme proposes 25 smaller bed units which would result in a yield of 2.34. Therefore the proposed scheme would not result in increased requirement than the present approved scheme. This contribution is not supported on this ground.

A revised landscaping scheme is required in order to ensure a satisfactory scheme and in particular the tree on Plot 4 needs to be provided as per the previous scheme as a replacement for the TPO trees removed along the Red Lane frontage.

LCC Highways have requested revisions to the layout. It is understood from the agent that this proposed scheme accords with the s.38 agreement signed off by LCC, however, this is a separate legal agreement between LCC and the developer and does not relate to the planning merits of this proposal. In particular the adopted pedestrian link to The Meadows is not clear on the submitted layout 7280/P/002 Rev C and this needs to be addressed. Therefore further discussion is required to address this.

A revised drainage strategy is required for the proposed layout – comments from LLFA are still outstanding.

The recommendation to Delegate Grant Consent still stands subject to satisfactory drainage scheme, comments and proposed conditions and

amendments to the highway layout and appropriate landscaping subject to the revised conditions below:

Remove Condition 3 for the requirement of the education contribution.

Revise Condition 4 Construction Phasing:

Prior to commencement of this part of the development, a plan and written-brief detailing the proposed phasing of the site shall have been submitted for approval in writing by the Local Planning Authority. Development shall not commence unless and until the scheme has been submitted and approved. Such detailing shall include details of the works involved in each phase and how each phase is to be completed in terms of the completion of roads, building operations, foul and surface water sewers and landscaping, and each phase shall be substantially completed before the next successive phase of the development is commenced. The approved scheme shall thereafter be carried out in strict accordance with the plan and brief.

Reason: To secure the proper development of the site in an orderly manner.

Revise Condition 5 open space:

A scheme for the management (including maintenance) of the open space area shall be submitted to and approved in writing by the Local Planning Authority within three months of the date of this permission. The approved scheme shall be carried out in full accordance with the agreed scheme before the 32nd dwellinghouse of both phase 1 and 2 combined is completed or within a two year period whichever occurs sooner.

Reason: To ensure the site is properly maintained and managed in the interests of visual amenity.

Revise Condition 19 landscaping:

Notwithstanding the previously approved landscaping plan, within three months of the date of this decision, a revised detailed landscaping scheme shall have been submitted to and approved in writing by the Local Planning Authority for this part of the development. The scheme shall be submitted at a scale of 1:200 and shall include the following:

- a. the exact location and species of all existing trees and other planting to be retained;
- b. all proposals for new planting and turfing indicating the location, arrangement, species, sizes, specifications, numbers and planting densities;
- c. an outline specification for ground preparation;
- d. all proposed hard landscape elements and pavings, including layout, materials and colours;
- e. the proposed arrangements and specifications for initial establishment maintenance and long-term maintenance of all planted and/or turfed areas.

The approved scheme shall be implemented in its entirety approved form within the first planting season following the substantial completion of the development. Any

tree or other planting that is lost, felled, removed, uprooted, dead, dying or diseased, or is substantially damaged within a period of five years thereafter shall be replaced with a specimen of similar species and size, during the first available planting season following the date of loss or damage.

Reason: To ensure that the development is adequately landscaped so as to integrate with its surroundings