

REF: APP/N5090/W/22/3307073

**PLANNING INQUIRY for BROADWAY RETAIL PARK, UNIT 1 TO 3,
CRICKLEWOOD LANE, CRICKLEWOOD, LONDON, NW2 1ES**

Inspector's main questions for the s106 session on 17 February 2023

The CIL compliance schedule does not address the Childs Hill School contribution. The Childs Hill school contribution is in relation to measures to improve pedestrian safety in connection with the school rather than a contribution to the school per se and as such should be covered by the highways elements of the compliance note.

Additional Comment from Highways

'If the B&Q development generates increased demand for school places and associated traffic during the morning and afternoon school peaks this will exacerbate the current problems.

'Accordingly, it is considered that funding for the school street proposals should be granted as a means of mitigating potential impact on school traffic and road safety in the vicinity of the development.'

Schedule 4 - Does the monitoring contribution satisfy the three tests having regard to Oxfordshire County Council v SSCLG [2015] EWHC 186, in which it was found that monitoring was part of the LPA function and not necessary to make the proposal acceptable? **Monitoring Agreement to be amended to include a minimum of £500 per obligation which needs monitoring to comply with regulations and government guidance set out below.**

To establish the monitoring fee the Council has complied with the change in CIL Regulations provided by The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019, which introduced paragraph (2A) in regulation 122 as follows:

“(2A) Paragraph (2) does not apply in relation to a planning obligation which requires a sum to be paid to a local planning authority in respect of the cost of monitoring (including reporting under these Regulations) in relation to the delivery of planning obligations in the authority's area, provided—

(a) the sum to be paid fairly and reasonably relates in scale and kind to the development; and

(b) the sum to be paid to the authority does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development.”.

Furthermore, the Council has followed the Government advice as set out in the Planning Practice Guidance:

How can local authorities fund reporting on planning obligations?

Authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that section 106 obligation. Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation. Monitoring fees should not be sought retrospectively for historic agreements.

Fees could be a fixed percentage of the total value of the section 106 agreement or individual obligation; or could be a fixed monetary amount per agreement obligation (for example, for in-kind contributions). Authorities may decide to set fees using other methods. However, in all cases, monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring. Authorities could consider setting a cap to ensure that any fees are not excessive.

Authorities must report on monitoring fees in their infrastructure funding statements...

Paragraph: 036 Reference revision 1 Sept 2019

Schedule 5 – Confirmation that this is a scheme not subject to public subsidy. How are eligible purchasers and renters selected and what is the Council's contribution to the process? Is provision likely to be managed by Registered Provider and if so has one been selected? **Scheme is not subject to public subsidy. Units will be managed by a RSL. To my knowledge no RSL has been identified as yet. LAR units nomination rights are reserved to the Council (Clause 1.9). Allocation will be in accordance with Housing Needs as identified by the Council. Shared Ownership subject to the income level restrictions specified on the definitions on page 28 of the draft agreement. London Living Rent similarly subject to income levels specified on page 27 of the draft agreement. Discounted Market Rent, achieved by rent levels on page 18 of the draft agreement.**

Schedule 6 - What is the Council's involvement/approach to monitoring the travel plans for both commercial and residential development? **The Council has a travel plan team within the Council who proactively monitor the content and operation of travel plans on individual sites such as this.**

Schedule 7 – What sort of circumstances could result in the payment of a employment skills contribution rather than the entering into of an agreement? What is the Council's approach/preference? **Payment is in the event of non provision of the identified level of apprentices. Money is to be paid to the Skills and Enterprise team to fund improvements to skills and employment training in the borough.**

Schedule 8 - Confirmation as to whether part 5 of the schedule is sufficient to ensure that the restrictions 'run with the land'. **Relates to CPZ restrictions. Understand that is the case but would be useful to know Inspector's specific concerns.**

Schedule 9 – Should the CIL compliance statement include the Bridge improvement works? **Yes should include reference. Although clause only requires reasonable endeavours.**

Schedule 11 – Is it likely that the wayfinding scheme would require any installations on land outside the remit of the agreement (for example, on railway land?) **It is considered that relevant wayfinding signage can be adequately installed on land within the remit of the agreement i.e. on public roads under the management of the Council and would not require the use of Railway Land or National Rail to be a signatory of this agreement.**

Schedule 13 – Is the timing of the submission of Cricklewood Green improvement scheme proposal appropriate if the first reserved matters application does not include matters relevant to the improvement of Cricklewood Green (for example, landscaping?). Or is it intended that reserved matters for each phase will be applied for at once? **Clause only requires the submission of a plan by first reserved matters not implementation. Needs to be tied to a development trigger and early submission of plan allows time for negotiation to achieve a satisfactory scheme to mutual satisfaction.**

Schedule 12 – similar timing query to sched. 13. **Clause only relates to an initial strategy. Due to the complexity of negotiation with the NHS it is considered that this process should start early in the process as per the draft agreement. Also allows for the potential of NHS partners to influence the layout of proposed health care space prior to construction.**

Schedule 15 - Bus improvements contribution (100k) – seeking further information as to how TfL uses this, and for how long are improvements funded? What guarantee is there that contributions will be ringfenced by TfL (given that they are not party to the agreement)? **Clarification sought from TfL. Following Comments received:**

'My understanding is the purpose of the money is to improve bus frequency (or increase bus capacity in other ways) between Cricklewood and Kilburn. We may pool the money with other s106 payments to make bus route changes, bus subsidy usually covers a period of up to 5 years. We can agree bus route changes mid contract for shorter periods.

The purpose of bus subsidy is to pump prime the service for initial period, with the intention that higher frequency (or other capacity measures) once established will be sustained by future revenue, either generally from use of the network induced by improvement, or specifically on the route that has changed.

When TfL makes a s106 request for payment, we would confirm in writing that we use the money as intended in s106. This is usually in the form of a letter. If pooling payments, we may agree a Bus Route Sponsorship Agreement with the Council, to cover more than one bus payments. More generally, we have a Planning Obligation Team that oversees this process and works with TfL Legal and us as case officers to ensure we act lawfully and in accord with the advice we provided through our planning responses.'

