

Advice Note – Section 106

South Heywood, Plot 3 – Outline Planning permission for 40,000 sqm of Use Class B8 (Storage & Distribution) (Application Reference: 22/01569/OUT)

1. Introduction

- 1.1 This advice note has been prepared by Avison Young, on behalf of our client Russell Homes and relates to the current outline planning application submitted to Rochdale Borough Council (ref: 22/01569/OUT) on the 09 January 2023 on Land on Plot 3 of the South Heywood Masterplan Off Pilsworth Road South Heywood, Rochdale.
- 1.2 This note has been prepared in response to comments raised on the application and sets out the applicant's position that there is no justified requirement for the Council to seek any planning obligations in relation to the application.
- 1.3 It is noted that the current outline application site, forms part of the wider South Heywood development which secured hybrid planning permission for:

'Part full / part outline planning application for the redevelopment of land at South Heywood, including the demolition of existing on-site buildings and structures. Full consent sought for the construction of a new link road between Junction 19 of the M62 and Pilsworth Road, together with associated junction improvements, landscaping and other works including the importation of material and engineering works in order to construct the link road. Outline consent (with all matters reserved for future approval except access) sought for a major mixed-use development comprising supporting residential uses comprising up to 1,000 dwellings (Class C3); employment uses (Classes B2/B8) comprising up to 135,460sqm Gross Internal Area (GIA); a new primary school (Class D1); Class A1/A2/A3/A5 uses comprising up to 2,500sqm GIA which includes no more than 499sqm of A1 uses; together with associated landscaping, open space and sports pitches, drainage, ecological enhancements, cycleway and footpath linkages, infrastructure and other works ancillary thereto.'

- 1.4 As part of this hybrid permission a significant S106 contribution package was secured including:
- Link Road Payment [approx. £22.6M];
 - Bus Services and Bus Stops Contribution [£1.05 million and £180,000 respectively];
 - Land for a Primary School;
 - Education Contributions;
 - Public Open Space;
 - Sports Pitches and Contributions;
 - Management Company;
 - Affordable Housing [15%, where viability can be demonstrated]; and
 - Air Quality Payment.

-
- 1.5 At the time of the decision, the above contributions were assessed and considered to be necessary, directly related to the development¹ and fairly and reasonably related to it in scale and kind, as required by Regulation 122 of the Community Infrastructure Level Regulations 2010 (as amended) ("CIL Regulations"), the NPPF and CS Policy DM2. It is noted that there have been a number of amendments to the scheme since its approval, in regards to land use split, which may have resulted in a reduced S106 package if reassessed.
- 1.6 It is also noted that the approved residential was the enabling development in unlocking the employment here, with the residential capital sales receipts covering the link road costs and other S106 contributions. As is set out below, it is demonstrated that these same S106 are adequate to cover the additional 40,000 sqm.

2. Requirement to provide planning obligations

- 2.1 In assessing whether there is a requirement to provide planning obligations for the current outline application, consideration of the requirements set out in the CIL Regulations and relevant national policy is required.
- 2.2 As set out in the PPG², planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:
- 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.
- 2.3 When considering the application against the above tests, it is our position that there is no requirement for any S106 contributions for the following reasons.
- 2.4 As set out above, the application site has an established fallback position for employment uses through the wider hybrid permission, which secured a significant package of contributions, some of which are already being delivered on site (namely the South Heywood Link Road). The current outline application accords with the approved land use, maximum height, access and landscaping parameters and as such the development is mitigated for under the original S106 package. The only difference to the established fallback position is the uplift in overall floorspace by 40,000sqm.
- 2.5 The Applicant has carried out all required technical assessments and determined that there are no additional impacts of the extra floorspace, a position that has been confirmed through the statutory consultees who have not raised any objections on highways or other technical grounds, nor have they requested S106. On this basis it is clear that planning obligations would not be necessary to make the development acceptable in planning terms and as such the first test would not be met.

¹ NB. It is noted that the contributions secured through the original application was justified on the basis of the residential element of the wider mixed use scheme.

² Paragraph: 002 Reference ID: 23b-002-20190901

-
- 2.6 In addition, it is noted that spatially nothing has changed between the hybrid consent and the additional Plot 3 development. As noted, the hybrid permission requires financial contributions for new bus stops, the positions of which will be determined by Transport for Greater Manchester (TfGM). The financial contributions from the hybrid permission, were for new bus stop infrastructure to cover the whole of the Heywood Masterplan area. This latest outline application covers the same spatial extent, as the hybrid permission, pertaining to the employment area, and thus there is no justified requirement for additional bus stops.
- 2.7 Whilst the quantum of development has gone up by 40,000 sqm, there is no evidence to suggest that more bus services are required to cope with demand directly caused by the current application (i.e. that buses are full and require additional buses to run to meet this demand). In fact, it could be argued that additional potential users from the development would only help to support the viability of the new bus services that is already being funded by the wider hybrid permission. Indeed, the Transport Assessment demonstrates that by way of trips, the quantum of movements is neutral. This is because the hybrid consent has secured non-material amendments to present. This includes the loss of residential land due to waste permit issues post hybrid consent, and the replacement with additional employment land. In parallel, the use class mix has changed. If we take the 2016 Outline Consent and the trips generated (70:30 Use Class split 135,460sqm) v Proposed Plot 3 (Use Class B8 at 40,000sqm) + 135,460 application (cumulative total 175,460sqm) including change in B2 / B8 split, then the total AM peak for all vehicles reduces by 2.1%, whereas the total PM peak for all vehicles increases by 3.2%. This is the equivalent of a reduction in 29 vehicles AM peak hour and an increase of 44 vehicles at the PM peak hour. This is a negligible variation. This is partly because Russells has already reduced the amount of B2 from 30% of 135,460sqm at the original outline planning consent, to 14% as per NMA (21/00390). For the proposed new drop-in outline application, Use Class B2 equates to 11% of the total 175,460sqm. As Use Class B2 creates more trips than Use Class B8, then the reduction in B2 has a markedly positive effect on trips.
- 2.8 Whilst the number of trips doesn't provide a direct like for like comparison for bus demand, it does offer some insight to demand, certainly given the neutral position.
- 2.9 In summary, it is noted that the application submission confirms that there are no adverse impacts created by the development and there are no objections from any statutory consultees, requests for S106, including from TfGM, nor evidence to require it. On this basis it is clear that any request for planning obligations would not be appropriate or in accordance with the test set out in the CIL regulations.