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**Town and Country Planning Act 1990**  
**(as amended)**  
**S78 Appeals**

**Statement in support of planning obligations sought towards**  
**Hertfordshire County Council (non-highways) services**

Appeal by Stackbourne Limited under S78 of the Town and Country Planning Act 1990 (as amended) against the decision of St Albans City and District Council to refuse planning permission in respect of the outline application for redevelopment of the site including demolition of existing buildings to provide up to 100 residential units

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On behalf of Hertfordshire County Council (non-highways) services

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## 1.0 Introduction

- 1.1 It is widely recognised that some developments may impact on infrastructure and services and that planning obligations should be made to offset those impacts. Hertfordshire County Council (HCC) currently seeks contributions on residential developments for education, youth, childcare, waste and library facilities. Provision of fire hydrants is also routinely sought. In the case of the above proposal for 100 dwellings, financial contributions are sought towards education, library and youth services together with the provision of fire hydrants.
- 1.2 It is considered that the requirements of HCC as indicated previously in correspondence with St Albans City and District Council do meet the tests of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended 2019) and are in accordance with Policy 143B of the St Albans City and District Local Plan (adopted November 1994)
- 1.3 HCC's Growth and infrastructure Unit acts on behalf of Education, Youth, Childhood Support, Library, Waste and Fire and Rescue Services. Highway matters are dealt with by Hertfordshire Highways.

## 2.0 Planning Policy Context

- 2.1 The following policy is relevant:-

### Central Government Advice

- 2.2 The Government published revised a National Planning Policy Framework (NPPF) in February 2019. This sets out the Government's planning policies for England and replaces previous versions of the NPPF.
- 2.3 The NPPF sets out a "*presumption in favour of sustainable development*" which is seen as a thread running through both plan-making and decision-taking. The document states there are three overarching objectives to sustainable development; economic, social and environmental. The descriptions of the first two objectives emphasise the need for development to be supported by and have access to infrastructure and local services (paragraphs 8a and 8b, page 5).
- 2.4 Within Section 8: 'Promoting Healthy and Safe Communities', paragraph 94 states that: *'It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:*
  - a) *give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and*

b) *work with schools promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.*

- 2.5 In Section 4: Decision-making, the NPPF also states “*Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition*” (paragraph 54, page 15). Conditions cannot be used in relation to the payment of financial contributions to mitigate the impact of a development (Circular 11/95: Use of conditions in planning permission, paragraph 83).
- 2.6 The Community Infrastructure Levy Regulations 2010 (CIL) came into force in April 2010 and were subsequently amended in September 2019. They set out restrictions regarding the use of planning obligations within Regulation 122 which states, “*A planning 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;*
  - *Fairly and reasonably related in scale and kind to the development.*
- 2.7 HCC therefore consider the provision of necessary infrastructure and community services to be an essential part of the Government’s philosophy in relation to the creation of sustainable communities.

#### Development Plan Policy

- 2.8 The need for financial contributions is required under Policy 143B of the St Albans City and District Local Plan (adopted November 1994) and HCCs Planning Obligations Toolkit. Policy 143B of the St Albans City and District Local Plan sets out that ‘*The District Council will expect planning applications for the development of sites to include within them provision for the infrastructure consequences.*’

#### Background to County Council policy

- 2.9 The County Council has for many years sought contributions from developers towards the provision of services across Hertfordshire. Until summer 2007, saved structure plan policy was used to justify seeking planning obligations, together with local plan and other planning policies where appropriate. Given the changes to the planning system at that time and in an effort to clarify and simplify the County Council’s requirements, it produced guidance for developers and local planning authorities on the subject of planning obligations which could be used to support and inform existing local development plan policies and to assist in the provision of planning obligations related supplementary planning documents. The guidance is the Planning Obligations Guidance – Toolkit for Hertfordshire, published in January 2008 (“The Toolkit”) (Appendix A).

- 2.10 The production of the Toolkit reflected the advice which was provided at paragraphs B25-30 of Circular 5/05 “Planning Obligations”, which among other things required all tiers of government with legitimate land-use planning interests to be involved at an appropriate level and in a focused way in providing an evidence base and setting planning obligation policies.
- 2.11 Table 2 of the Toolkit (copied below at paragraph 3.6) sets out the standard base figures which are usually applied to developments of this scale according to dwelling size, type and tenure. An explanation of how contributions are worked out is set out at Section 12 and Appendix A of the Toolkit. Developments larger than 300 dwellings have historically been considered on a more individual basis as this tends to be the point at which specific on-site or off-site provision may be necessary.
- 2.12 The CIL Regulations discourage the use of formulae to calculate contributions. However, the County Council is not in a position to adopt a CIL charge itself. As a result, in areas where a CIL charge has not been introduced by the relevant charging authority, planning obligations in their restricted form are the only route to address the impact of a development on the services listed above (paragraph 1.1). In instances where the development is not large enough to require on-site provision such as a new school but is still large enough to generate an impact on a particular service, an evidenced mechanism is needed to form the basis of any planning obligation sought. Therefore, HCC views the calculations and figures set out within the Toolkit as an appropriate base for the obligations sought in this instance. This is particularly true in instances where an application has been submitted in outline allowing the number and mix of dwellings to change at the Reserved Matters stage making estimates of the likely occupancy profile of the site difficult to calculate.
- 2.13 It is noted that HCC has a responsibility to ensure that appropriate mitigation measures are in place prior to the need generated by a development site. With consideration of lead-in times for project delivery, HCC's policy is to seek payment of financial contributions at the earliest trigger i.e. prior to commencement of development. This also reduces risks of later trigger points.
- 2.14 HCC has not seen a draft Section 106 agreement for the above proposed developed. The County Council does not encourage the submission of S106 unilateral undertakings which it has not had an opportunity to comment on as a result of the requirements of CIL Regulation 122

### **3.0 Justification**

- 3.1 It is widely recognised at all levels of policy that some developments may impact on infrastructure and services provided by public bodies and that this impact should be addressed either via a CIL charge or use of planning obligations, as appropriate, to offset those impacts. The infrastructure and services affected by the appeal proposal are considered in more detail below. This statement should be considered in conjunction with the Toolkit in the absence of an adopted CIL charge.

- 3.2 As described within the Toolkit, the contributions sought from new development towards local service provision have been calculated on a per person basis. HCC has developed a census-based model which forecasts the number of people likely to emerge from a particular development (according to the size, type and tenure of each residential unit comprising the development) by age group. This information is then passed to service providers to establish whether or not the estimated additional people can be accommodated within existing service provision.
- 3.3 The cumulative impact of developments on local service provision is an important consideration. As set out in paragraph 10.2 of the Toolkit, the use of formulae and standard charges is a means of addressing the likely cumulative impact of development in a fair and equitable way and financial contributions will be sought where necessary to fund both on and off-site provision as appropriate.
- 3.4 The approach set out within the Toolkit, allowing planning applications to be dealt with in an equitable, fair and transparent manner, has been supported at appeals across the county, for example;
- Jane Campbell House, Waverley Road, St Albans  
APP/B1930/W/16/3148961  
31 October 2016 Paragraphs 38-45 (Appendix B)
  - Land to the East of Aspenden Road, Buntingford  
APP/J1915/A/14/2224660 (Secretary of State Called-in application) 26 May 2016, paragraphs 98-108 (Appendix C)
  - Sewell Park, Land rear of Nos 112-156B Harpenden Road, St Albans  
APP/B1930/A/12/2180486 & APP/B1930/A/13/2201728 (Secretary of State Called-in applications) 11 August 2015, Paragraphs 24 and 143 (Appendix D)
- 3.5 When applications are made in outline, HCC's standard approach is to request Table 2 of the Toolkit (as copied below in paragraph 3.6) is referred to and included within any Section 106 deed following identification of service requirements. This approach provides the certainty of identified contribution figures with the flexibility for an applicant and district council to agree or vary the dwelling and tenure mix at a later stage and the financial contributions to be calculated accordingly at that time, without the need to enter into a deed of variation in respect of these contributions. This ensures the contributions remain appropriate to the development and thereby meet the third test of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended 2019): "*fairly and reasonably related in scale and kind to the development*".
- 3.6 The tenure has been split into two "open market and other" or "affordable/social rent" owing to the difference observed in the Census information between these two groupings. It is believed the difference results from the affordable/social rent dwellings being used more efficiently (i.e. all the bedrooms will be used as bedrooms). The Toolkit calculations for this tenure incorporate a discount to take into account the possibility that

some people moving into the dwellings will already be resident within the area and therefore using services. The discount is not based on evidence as none was provided to HCC following numerous requests to the development industry and affordable housing providers. The discount is lower for services for younger age groups (e.g. nursery and primary education age groups) than for older age groups (e.g. secondary school age groups) as it is assumed younger children are more likely to be new to the service even if already resident within the area however, pupils already at a secondary school are less likely to change school.

<b>Bedrooms*</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5+</b>	<b>1</b>	<b>2</b>	<b>3</b>
	<b>HOUSES</b>					<b>FLATS</b>		
	<b>Market &amp; other</b>					<b>Market &amp; other</b>		
Secondary education	£263	£802	£2,561	£4,423	£5,662	£47	£444	£1,677
Youth facilities	£6	£16	£50	£82	£105	£3	£13	£41
Library facilities	£98	£147	£198	£241	£265	£77	£129	£164
	<b>HOUSES</b>					<b>FLATS</b>		
	<b>Social Rent</b>					<b>Social Rent</b>		
Secondary education	£62	£450	£1,676	£2,669	£2,405	£14	£261	£1,084
Youth facilities	£2	£8	£31	£51	£55	£1	£6	£21
Library facilities	£48	£91	£130	£156	£155	£38	£82	£107

\*uses an assumed relationship between bedrooms and habitable rooms  
All figures Index Linked to PUBSEC 175

(The PUBSEC index is the Tender Price Index of Public Sector Non Housing Smoothed All-In Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors)

3.7 For the purposes of illustration only, the populace projections set out within this statement are based on the following mix of units:

HOUSES			FLATS		
Tenure	A) Affordable (social rent only)	B) Open market, intermediat e etc	Tenure	A) Affordable (social rent only)	B) Open market, intermediat e etc
Number of bedrooms			Number of bedrooms		
1			1	3	5
2	10	16	2		
3	22	34	3		
4	4	6			
5 +					
<b>Total</b>	<b>36</b>	<b>56</b>	<b>Total</b>	<b>3</b>	<b>5</b>
			<b>Total Affordable (rented)</b>		<b>39</b>
			<b>Total Private</b>		<b>61</b>
			<b>Overall total</b>		<b>100</b>

3.8 The base costs set out within Table 2 of the Toolkit incorporate a discount in relation to one bedroom flats to allow for the possibility that the number of people shown to reside in one bedroom properties within the census data could be an anomaly (referenced in paragraph 12.9 of HCC's Toolkit).

#### 4.0 Education Provision

- 4.1 The County Council is the Local Education Authority and has statutory responsibility for the provision of education services. It has a duty to ensure that there are sufficient school places to meet the needs of the population. This provision includes nursery, primary, secondary and sixth-form education and special needs services and facilities.
- 4.2 Financial contributions are sought towards education provision as set out within Table 2 of the Toolkit, index linked to PUBSEC 175 (copied above at paragraph 3.6). For the purposes of illustration, applying the table to the proposed development mix set out at paragraph 3.7 would result in a contribution of £178,769 (index linked to PUBSEC 175).
- 4.3 Broadly, education contributions are calculated using a HCC developed census-based model which forecasts the number of children likely to emerge from different types, sizes and tenures of dwellings. The expected number of children is then multiplied by the cost of a pupil place resulting in a contribution figure. Further information on the model and the calculation is available within the Toolkit.
- 4.4 The migrant population and age profile information from the Census is incorporated into the model which allows for the child population resident in the development to change with time, as children grow older and population in the development starts to conform to an age structure in line with the wider community. The result is a forecast of population



that changes over time and often includes a peak in demand, in the short to medium term, for example, as the larger numbers of pre-school children in migrant households move into a primary school.

- 4.5 Based on the proposed development mix, the Census based model indicates that on a long term average there will be an additional 21 primary and 12 secondary aged school aged children residing within this development at any point in time. It is also estimated that there will be a peak of 39 primary school aged children and 14 secondary aged school aged children.
- 4.6 The long term average figure is used to calculate the impact on permanent school places and therefore is linked to the costs of permanent school extension (rather than the construction costs associated with new school construction). The difference between the long term average and peak figures is used to calculate the potential temporary impact on local schools resulting from the peak. The cost of accommodating temporary peaks is calculated based on reduced figures.
- 4.7 The capacity of local primary and secondary schools is an important part of the process of determining need for contributions and this is checked against a different forecast which uses actual data of 0 to 5 years olds living in an area as well as information on the numbers of children already in the education system to determine future demand for school places, whilst taking into account other developments which are proposed nearby. This information is used to ascertain whether there is sufficient space in local schools for the pupil yield from new development. This model has been developed for and is operated by the Children's Services Department. If there is considered to be insufficient capacity in local schools to cater for the development (and other sites if appropriate) contributions are sought.
- 4.8 Secondary education services are assessed on the basis of secondary education planning areas. The families living in the area predominantly attend St Albans secondary schools. Secondary demand is rising in the area with the latest forecast indicating that all schools will be almost at capacity by 2021. Beyond 2021, it is anticipated that additional secondary capacity will be required, with a deficit of places in the St Albans area from the 2022/23 academic year onwards.
- 4.9 Additional housing in the area would require additional capacity being put in to secondary schools in the area, which can be mitigated through the expansion of Samuel Ryder Academy in St Albans. Therefore as a result of this new residential development, and any others in the area, a financial contribution is sought towards secondary education services based on table 2 of the Toolkit (copied at paragraph 3.6 above) index linked to PUBSEC 175, to be used towards the expansion of Samuel Ryder Secondary School by one form of entry
- 4.10 The funding of this project will be through financial contributions secured from developments in the area, including this site, with any shortfall being met through alternative funding sources. The project will therefore be able to be delivered.

## 5.0 Youth Provision

- 5.1 HCC YC Herts Services for Young People (YCH) is governed by the Education Act 1944. To clarify the Government's expectations of Local Authorities (LAs) the Department of Education published the Statutory Guidance on Services and Activities to Improve Young People's Well-Being (June 2012). The guidance states LAs should provide *"young people with the positive, preventative and early help they need to improve their well-being"; "Youth work and youth workers can contribute to meeting the needs of the young people and reduce demand for more specialist services"; and highlights the importance of personal and social development which enables young people to "build the capabilities they need for learning, work and the transition to adulthood."*
- 5.2 YCH youth work work is delivered through planned curriculum programmes which are based on identified need resulting in recordable personal and social development outcomes. YCH supports young people by providing informal education opportunities to promote young people's personal and social development enabling them to make informed decisions, have a place in their community and ultimately reach their potential and make a successful transition to adulthood. This enables young people to:
- Make good decisions based on the information which is available to them.
  - Be confident that they can present their views including those of others and influence decisions.
  - Recognise when they need support and where they can go to access it, thereby building resilience.
  - Be able to recognise and develop healthy relationships.
  - Develop a sense of purpose, self-belief and recognise what they contribute to society.
- 5.3 Based on the illustrative mix set out at paragraph 3.7 above the census-based model estimates that 12 additional young people may reside in this development.
- 5.4 A financial contribution is sought towards youth services as set out within Table 2 of the Toolkit, index linked to PUBSEC 175 (copied above at paragraph 3.6). For the purposes of illustration, applying Table 2 to the illustrative mix would result in a contribution of £3,432 towards youth services (index linked to PUBSEC 175).
- 5.5 Pioneer Young People's Centre in St Albans is a busy and vibrant centre which is already used by significant numbers of young people in the area. The additional young people arising from this development, and others in the area, would result in the facility being over capacity. Contributions are therefore justified in order to fund additional provision.
- 5.6 Funding from this proposal, and others in the area, would be used towards re-providing the Pioneer Young People's Centre in a new facility, to include adapting / fitting out the new centre to meet the needs of the additional young people accessing the provision as a result of this development and others in the area. These changes, which will also

include purchasing additional equipment and youth work curriculum resources, will allow a greater number of young people to access this important facility.

- 5.7 The funding of this project will be through financial contributions secured from developments in the area, including this site, with any shortfall being met through alternative funding sources. The project will therefore be able to be delivered.

## **6.0 Library Provision**

- 6.1 The County Council has a duty to provide a comprehensive and efficient library service for everyone who lives, works or studies in the County. It believes that its libraries need to be updated to continue to improve the service offered and cope with additional demand brought about by new development.
- 6.2 Libraries are no longer a place solely to borrow books. They function as a community hub offering services and facilities to cater for a range of community needs including those of children, students, job seekers, and the elderly. Libraries offer free, authoritative, non-judgemental information services and supported access to online resources and services. They provide access to books, audio material, magazines, newspapers and community language material in both physical and digital formats, public computers, Wi-Fi and the internet, online services, ICT-based and other learning opportunities. They also offer neutral places to promote community wellbeing. New residential development will result in additional pressure on to the library service.
- 6.3 The migrant population and age profile information from the Census is incorporated into the model and allows for the residents in the development to change/age with time, as they grow older, as is seen in the education profiles for example. However, as all ages potentially use library services a single average number of total users is calculated, as opposed to the break down by Single Year of Age group used for calculating numbers in age sub groups e.g. 4-11 year olds.
- 6.4 Based on the illustrative mix set out at paragraph 3.7 above the census-based model estimates that 192 additional library users may reside in this development.
- 6.5 A financial contribution is sought towards library services as set out within Table 2 of the Toolkit, index linked to PUBSEC 175 (copied above at paragraph 3.6). For the purposes of illustration, applying Table 2 to the illustrative mix would result in a contribution of £15,423 towards library services (index linked to PUBSEC 175).
- 6.6 Marshalswick library is the local library facility which serves this development. Marshalswick is an extremely busy small Tier 2 library and its book stock is already under intense pressure. This is demonstrated by the latest set of Stock Performance Indicators for 2019-20, which show that Marshalswick Library is far out-performing other libraries of a similar size in terms of its usage by the existing population in the community. In 2019-20 Children's Stock issues were 83.5% above the average for small Tier 2 libraries. The pressure that the children's stock is under is reflected in the stock

turnover figures. Marshalswick's children's stock has an annual turnover of 9.57 compared to the average for small Tier 2 libraries of 6.40. The Performance Indicators for 2019-20 show that Marshalswick Library's children's stock turnover matches that of St Albans Central, which is the busiest large Tier 1 in the county. This demonstrates that Marshalswick's children's stock is already working incredibly hard with the existing community population and it does not have the capacity to meet the needs of an additional population influx arising from new residential developments

- 6.7 Any funding from this proposal would be used to increase capacity at Marshalswick Library, specifically in the children's area, meeting the additional demands placed on it as a result of new residents moving into the area. This project is therefore required in order to accommodate the additional residents arising from the new developments in the area, including this site.
- 6.8 The funding of the project will be through financial contributions secured from developments in the area, including this site, with any shortfall being met through alternative funding sources. The project will therefore be able to be delivered.

## **7.0 Fire Hydrants**

- 7.1 All dwellings must be adequately served by fire hydrants in the event of fire. The County Council as the Statutory Fire Authority has a duty to ensure fire fighting facilities are provided on new developments. HCC therefore seek the provision of hydrants required to serve the proposed residential units by the developer through standard clauses set out in a legal agreement or unilateral undertaking. If the developer does not provide the hydrants required as a direct result of their development the responsibility and cost would fall upon the County Council.
- 7.2 In addition, buildings fitted with fire mains must have a suitable hydrant provided and sited within 18m of the hard-standing facility provided for the fire service pumping appliance.
- 7.3 Paragraph 6.1(c) of BS 5588-5 2004 states that every building needs to have a suitable hydrant:
- Not more than 60m from an entry to any building on the site;
  - Not more than 120m apart;
  - Preferably immediately adjacent to roadways or hard-standing facilities provided for fire service appliances; and
  - Not less than 6m from the building or risk so that they remain usable during a fire (generally a water supply capable of providing a minimum of 1500 litres per minute at all times should be provided).
- 7.4 The requirements for fire hydrant provision are set out with the Toolkit at paragraph 12.33 and 12.34 (page 22). The provision of public fire hydrants is not covered by Building Regulations 2010 (Part B5 as supported by Secretary of State Guidance 'Approved Document B'), see Appendix F.



monitoring and reporting of Section 106 matters both internally to Members and service departments and externally to District/Borough Councils, developers and members of the public twice yearly. HCC related Section 106 matters are also subject to regular Internal Audit assessment.

- 8.2 When Section 106 funding is received, each contribution is allocated an individual account enabling each one to be individually managed, monitored and reported on.
- 8.3 Before Section 106 funding can be spent by a service provider a request needs to be submitted setting out amongst other details, the Section 106 funds being sought (including identifying the individual accounts) and the purposes/projects each will be used towards. This request is then assessed to ensure compliance with the terms of the Section 106 deed and the requirements of Section 106 contributions. The request must then be authorised by the Assistant Directors of HCC Property and Finance, the Assistant Chief Legal Officer and reported to the Executive Member for Resources. Members of the relevant electoral divisions are also informed.

## **9.0 Summary and Conclusions**

- 9.1 HCC seeks the above financial contributions based on the figures set out within Table 2 of the Toolkit (index linked to PUBSEC 175) together with fire hydrant provision to mitigate the impact of this proposed development.
- 9.2 It is considered that these requirements do meet the tests set out within Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended 2019).

- Necessary to make the development acceptable in planning terms:–

Recognition that contributions should be made to mitigate the impact of development are set out in planning related policy documents as outlined above. The provision of community facilities is a matter that is relevant to planning.

The development plan background supports provision of planning contributions. Policy 143B of the St Albans City and District Local Plan (adopted November 1994) covers the requirement for development to provide for its infrastructure consequences. The contributions sought will ensure that additional needs brought on by the development are met. The approach to seeking contributions as set out within the Toolkit is consistent, fair and transparent, providing certainty to all involved in the process.

- Directly related to the development:–

The occupiers of new residential developments will have an additional impact upon local services. The financial contributions sought above are based on the size, type and tenure of the individual dwellings comprising this proposed development following consultation with the service providers and will only be used towards

services and facilities serving the locality of the proposed development and therefore, for the benefit of the development's occupants (as set out within HCC's Toolkit and template Section 106 deeds).

Only those fire hydrants required to provide the necessary water supplies to the buildings comprising this proposal for fire fighting purposes are sought to be provided by the developer. The location and number of fire hydrants sought will be directly linked to the water scheme designed for this proposal.

- Fairly and reasonably related in scale and kind to the development:–

The financial contributions are calculated according to the size, type and tenure of each individual dwelling comprising the proposed development (based on the person yield) as set out above and within HCC's Toolkit.

Only those fire hydrants required to provide the necessary water supplies to the buildings comprising this proposal for fire fighting purposes are sought to be provided by the developer. The location and number of fire hydrants sought will be directly linked to the water scheme designed for this proposal.