

Our Ref: LF/23061

16 October 2024

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Dear Ms Palmer

### **Response to Consultation Comments**

#### **S62a Application**

#### **S62A/2024/0057 Former Friends School Field, Mount Pleasant Road, Saffron Walden, CB11 3EB**

Further to your email of the 10 October 2024 advising of the receipt of additional comments and allowing an additional 5 working days in which to respond, we have reviewed the comments and respond as set out below.

#### **Sport England**

The response is noted, the Applicant is confident that any issues associated with ball strike can be fully addressed and is willing to have the matter dealt with by the imposition of an appropriately worded condition.

It should be noted that the site was historically used as playing fields without any mitigation being included, therefore this would be an improvement on that earlier arrangement and if the Authority and Sport England are correct, the Appellant could simply re-use the field with no mitigation included.

#### **UDC & ECC S106 Matters**

The Applicant contacted the case officer on the 27 August 2024 to progress a s106 on a without prejudice basis. We were advised on the 17 September that the Council's solicitor would touch base with the Applicants solicitor that week. That did not happen. The Council's solicitor first contacted the Applicants solicitor on the 30 September, with a completed Legal Agreement being required by the 4 October. We did not receive any Heads of Terms from ECC until the 4 October.

**Steven Barker**

Director  
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**Liz Fitzgerald**

Director (Managing)  
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It is unreasonable for the Council to state that the Applicant has refused to engage any further on the Undertaking and in fact were still including changes in the document on the 3 October before having to finalise and sign the document on the 4 October in order to comply with the PINs requirements.

A failure to complete and submit the Undertaking, as required by the PINs guidance, would have left the Applicant at a much greater risk than completing a document.

We respond to the concerns of the Authorities, as set out in their CIL statements:

#### Indexation

An alternative indexation has been provided for education as requested by ECC.

CPI have been used as a general indexation point, but the definitions clearly allow for an alternative to be agreed.

Alternative indexation has also being used that refer to the Index of Retail Prices.

It is considered that the correct indexation has been used and that none of the Solicitors raised concerns with the proposal at the time of review/drafting.

#### Public Open Space, Sports Pitches and Club House

The Local Planning Authority has a slightly different apportionment of contributions as they have seemingly split the open space differently to that contained in the Undertaking.

As set out in the supporting letter, we have included the woodland and adjacent open space in with the Club House and Sports Pitches contribution, as this is a more sensible apportionment across the site. This division was agreed with the Town Council.

Once regard has been given to this arrangement, the cumulative total of contributions remains the same.

Within the relevant Obligations the payment of the maintenance contribution is clear. Payment is to be made upon transfer of the land to either Town Council or Management Company as appropriate.

#### Biodiversity Net Gain

This has been properly addressed within our covering letter supporting the Undertaking submission.

The Obligations facilitate a maximum provision on site and then the delivery of off-site credits, having regard to a new metric that needs to be submitted to and agreed in writing by the Council.

To require a Provider such as the Environment Bank to provide annual reports is excessive and unnecessary, as they are governed by the requirements of the Environment Act and by being part of the Biodiversity Gain Site Register.

The approach taken has been deemed acceptable as part of other Undertakings submitted to PINs as part of s62a applications and not raised as objectionable by the Local Planning Authority.

#### NHS Contribution

There is no justification provided for the payment of a contribution at the 10<sup>th</sup> occupation. The NHS consultation response clearly demonstrates that there is no, clearly identified or costed scheme that this would go towards and therefore an earlier contribution would not mitigate against any impact immediately, or any more speedily than the 50% occupation.

#### Education and Skills Plan

We are not sure what the Council's concerns are in respect of this matter, the Obligations within the Undertaking commit to an Employment Skills Plan and follow the requirements of the ECC Guidance.

#### Education Contributions

The Undertaking commits to payment prior to the first occupation.

#### Essex Highways

The comments from the Highway Authority are noted and we have already made representations in respect of parking, we would simply reiterate the highly sustainable nature of this site and its access to non-car modes of transport.

Condition 3 is considered to be superseded by the proposed contribution within the Undertaking. Conditions 7 & 8 are addressed within the Undertaking.

#### Lead Local Flood Authority (LLFA)

In response to the comments from the LLFA, the drainage consultant Infrastructure Design Limited (IDL) has provided the below responses to each comment.

*Further clarity is required around water quality. Appendix A2 where the Simple Index Approach has been demonstrated is illegible in its current format.*

This was simply a compression error in the document, the Simple Index Approach Tool is re-attached separately for clarity.

*• Whilst it is acknowledged that a catchment approach is being utilised, some areas of the site particularly at/around the site entrances should use a Medium Pollution Hazard Level, unless a more site-specific transport risk assessment can be provided.*

IDL confirm that although the Hazard level for some roads are 'Medium', the pervious pavement underlain by 300mm minimum depth of soils with good contamination attenuation potential was already included within the design which results in a sufficient level of pollution mitigation. This has been demonstrated in

the Simple Index Tool summary enclosed. It is clear from this, that summaries for each type of source are provided, these being;

- i) Residential Roofs
- ii) Individual Drives
- iii) Residential Parking Areas
- iv) Parking Area to Sports Club
- v) Access roads near to site entrances (medium pollution risk)
- vi) Access roads serving small catchments.

Overall, IDL re-affirm that all sources of potential pollution are adequately treated before reaching any receptor.

*• It should be demonstrated how the runoff from all roofs will be sufficiently treated.*

IDL has confirmed that this was included in the P02 revision of the Drainage Report, albeit it was hard to read due to the compression issue with the Simple Index Tool. As outlined above, separated sheets with better legibility of the Tool are attached.

*• There appears to be a discrepancy between areas draining to SA-02 (0.203ha on the catchment plan, 0.118ha in the modelling). A value for urban creep should be applied to all residential catchment areas in accordance with BS8582.*

In accordance with the Essex Design Guide, 10% urban creep for all roof has been applied from the outset. Therefore, there is no change to the design in this regard. However, IDL accepts that a modification to the calculations/plans should be made for SA-02, but this does not affect the strategy put forward. For ease, this modification has been picked up in a Rev P03 version of the Drainage Strategy Report which is enclosed with this letter (split into two parts due to file size). However, if the Inspector does not wish to accept a further report iteration at this stage, a standard condition can simply be imposed on the permission requiring a final drainage strategy to be submitted for approval as it has been clearly demonstrated that the strategy put forward is acceptable in principle.

*• There appears to be a discrepancy between the depth of some of the soakaways shown on the drainage plan compared to in the modelling.*

As above, IDL has accepted that a modification to the calculations/plans needs to be made, but this does not affect the strategy put forward. Again, this modification has been picked up in the P03 version, but equally could be addressed at the condition stage given it does not impact on the overall strategy.

#### UDC Response

The Council suggest that they have provided case law to establish the position to be taken in respect of open space, yet no case law is provided, only reference to 3 appeal decisions, one of which (West Berkshire) predates the NPPF and is therefore

not relevant to the application of the presumption in favour of sustainable development. The Council go no further to explain how these cases are relevant to the determination of this application nor provide any copies of those appeals.

As the Inspector will be aware, each application must be determined on its own merits and if other appeal decisions and case law are to be referred to, they should be provided and demonstrated how those particular decisions are applicable to this application proposal. What does appear to be the case from the brief summary provided is that, unlike this site, the land in the two cases post the NPPF appear to be land that was available to the public and was used as public open space, whereas this site has never been open to the public for general use and this application will enable such access to the land.

The Council continue to reference the need for a scheme to be "*exemplary*". They have not indicated where this is a requirement of policy.

In respect of play space on site, the application does include a large area of sports provision in the form of sports pitches and associated clubhouse, this seems to be ignored when considering the proposals. Further, the extent of open space is within both the woodland and around the site, including to the western boundary of the site. The extent of provision within the adjacent Friends School site is well in excess of that required for that development in isolation. It must be born in mind that the District Wide Design Code is guidance and not policy. There is no corresponding policy within the Local Plan that requires the proposal to be within 10 minutes of facilities. Moreover, if this is not a sustainable location with ready access to facilities, then no other urban site within the area will be.

The Council's comments make reference to Policy SW17 of the Neighbourhood Plan. Policy SW17 states:

- 1. Play areas must be in locations central to the development, be well-overlooked and built in durable materials.*
- 2. The provision of amenity green space must be in a single well-placed location and not divided into small pockets. The "Litmus Test" as described in paragraph 11.5.9 must be considered. It must also be usable; any area which is unusable, sloping or by a road should not be counted towards the greenspace requirements.*
- 3. A fenced and dedicated dog park in Saffron Walden would be welcomed.*
- 4. Community projects to create or regenerate outdoors community amenity space will be welcomed for consideration.*
- 5. Development land may not be divided into separate parcels so as to reduce the overall size of the development and reduce liability for provision for amenity space.*

It should be noted that there is no paragraph 11.5.9 within the document and there is no express area set out in this policy for provision. It is also worth highlighting that this is a significantly changed policy from that contained within the Regulation 16 version. This earlier version (Policy SW27) contained the requirement for 7.61ha

of informal open space per 1,000 people as criterion 1. Whereas as can be seen from the attached Examiners Report (Enclosure 1 - relevant pages are 44-46), criterion 1 was deleted as there was "*little information on deliverability or viability*". The assertion to this requirement is therefore misleading and does not form part of the requirement of Policy SW17.

It is also worth highlighting that Paragraph 14 of the NPPF does not apply, as the Neighbourhood Plan does not make provision for any housing allocations, nor does it seek to meet any identified housing need. The Examining Inspector removed any housing delivery from the submitted plan.

The Authority appear to have mis-interpreted the pitch proposals, all three football pitches can be provided, but clearly cannot be used simultaneously. Additionally, this site could not meet the entire Saffron Walden shortfall, nor should it be expected to. Just because a scheme meets only some of the identified shortfall for the wider area, does not mean this should be a negative point against the proposal.

Further, it is noted that the Council's Environmental Health Officer has raised no issue in respect of noise.

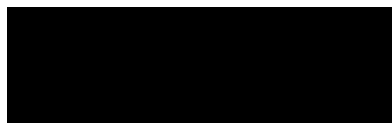
Lastly, it is not typical for an Authority to set out neutral factors in respect of a development and moreover, it is flawed that an Authority with a lack of a 5-year housing land supply and a 58% housing delivery rate would only afford a 'moderate neutral weight' in favour of the delivery of much needed housing and affordable housing in one of the most sustainable locations within the District.

#### NHS Contributions

The additional comments from the NHS are noted, the Undertaking makes provision for the contribution and a blue pencil clause is provided to allow the Inspector to make a judgement on whether the request is CIL compliant given the lack of understanding around the costs of any works, if the works can be delivered and more over if the contribution is proportionate to the overall works proposed.

We trust the above assists in the determination of the application, if anything further is required, please do not hesitate to contact me.

Yours sincerely

A solid black rectangular box redacting the signature of Liz Fitzgerald.

**Liz Fitzgerald**  
Managing Director

Enclosure 1 - Examiners Report for SW Neighbourhood Plan  
Enclosure 2a) - Drainage Strategy Report Rev P03 (Part 1+2)  
Enclosure 2b) - separate Simple Index Approach Tool