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Date: 6 November 2023
Our ref: 60628/01/JK/SaG/27164976v1

Dear Ian

Draft Transport Strategies Consultation Pursuant the Charnwood Local Plan Examination

We write on behalf of our client, St Philips Land Ltd ('St Philips'), in respect of Leicestershire County Council's draft Transport Strategies to Enable Growth in the Borough of Charnwood ('Exam 75') (hereafter 'the Transport Strategies'). As you will be aware, the Transport Strategies document has been prepared in response to concerns raised by the Inspectors in their letter, dated 23rd May 2023, following the conclusion of the Matter 8 hearing session for the Charnwood Local Plan examination for Charnwood Borough Council ('the Council').

Specifically, the Inspectors have raised concern regarding the need to secure effective mitigation for the effects of the draft Plan's growth on the local and strategic road network, relating to Policy INF2 and the Infrastructure Delivery Schedule. To address this, the Inspectors have sought the details underpinning the Council's Transport Strategies for four areas of the Borough, together with indicative costs, which are addressed by the Consolidated Addendum Viability Report, prepared by Aspinal Verdi in August 2023.

St Philips has concerns with the approach set out in the Transport Strategies that could result in planning obligations being sought (in this case commuted sums) that do not satisfy the requirements set out in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended). St Philips controls land at Cotes Road, Barrow-upon-Soar, which forms part of site allocation HA49 of the draft Plan and is the subject of a current planning application (LPA Ref. P/23/0238/2).

There is concern that imposing mandatory contributions on development at Cotes Road, which is not expected to give rise to impacts on all of the transport infrastructure identified in the Transport Strategies, would not only contravene the CIL Regulations and conflict with paragraph 57 of the National Planning Policy Framework ('the Framework'), but could also jeopardise the deliverability of much-needed housing. These concerns are set out in further detail below.

Transport Strategies to Enable Growth in the Borough of Charnwood

It is acknowledged that the Transport Strategies document has been completed to support the delivery of the Charnwood Local Plan 2021 to 2037, involving strategies for Loughborough Urban Centre, Shepshed Urban Area, North of Leicester and Soar Valley. The latter is relevant in the context of allocation HA49 of the draft Plan and St Philips' current planning application.

As cited in paragraph 3.1.4 of the document, it should be noted that the *“the strategies are not intended to deal with more localised impacts of a particular development site. There will continue to be a requirement for developers to assess and determine their site-specific impacts and mitigation requirements.”*

The report continues this approach in paragraph 3.13, namely that *“the new allocations are predominately made up of non-strategic sites and instead comprise a large number of relatively smaller developments across wider geographic areas, such that the cumulative impact of the developments causes the severe impacts identified since it is clear that no individual development will be able to deliver the necessary mitigation. This requires a coordinated approach to ensure appropriate infrastructure and other services can be funded. Managing impacts on an ad-hoc case-by-case basis through the planning process will not support sustainable development in this instance.”*

The transport strategy considers an area-wide approach is appropriate in order to create a *“positive way to enabling growth to come forward, where otherwise the County Council as the Local Highway Authority would find itself in a position of not being able to support an allocated site coming forward as a planning application on the basis of cumulative impacts.”*

Key Issues

In aligning with the Regulation 122(2) of the CIL Regulations, paragraph 57 of the NPPF is clear that planning obligations must only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonable related in scale and kind to the development.

As confirmed in the related Planning Practice Guidance (PPG), planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms¹.

The Council must ensure that policies in the new Charnwood Local Plan requiring developer contributions for transport infrastructure on behalf of the county Council are evidenced in such a way that is demonstrably compliant with the CIL tests.

The Council must be certain that the evidence underpinning the Transport Strategies is clear that planned development in the Borough would demonstrably lead to impacts on all of the transport infrastructure identified, such that financial contributions levied on a standardised rate (e.g. calculated on a per dwelling basis) can be sought to mitigate those impacts.

¹ Planning Obligations PPG (2019), para. 002 Reference ID: 23b-002-20190901

It is not clear from the Transport Strategies document how infrastructure related impacts expected to arise from individual development sites such as allocation HA49 have been calculated. For example, whilst it states at paragraph 4.1.2 that the work has been informed by the most up-to-date data and transport modelling forecasts available, these modelling assessments do not appear to have been provided. It is therefore unclear as to how impacts in identified locations and highway corridors have been calculated when determining the type and level of mitigation required, and the extent to which all allocated housing sites would generate those impacts.

As currently indicated within the draft transport strategy, the identified areas of transport infrastructure that planned development on site allocation HA49 is required to contribute towards in line with the area-wide approach set out in the document includes the following:

- Footway improvements to the railway station from key development site(s): £70,000 (estimated cost)
- Cycle route improvements to the railway station from key development site(s): £1,400,000 (estimated cost)
- Cycle parking facilities at the railway station: £13,000 (estimated cost)
- Highway improvements to A6/A6004 One Ash Roundabout: £3,600,000 (estimated cost)
- Highway improvements to A46/A6 further improvements (additional to Broadnook): £9,300,000 (estimated cost)

At this stage, it is not clear that the proposed development subject to the current planning application at the site will result in impacts to the A6/A6004 One Ash Roundabout or A46/A6 corridor either on its own or in combination with the remainder of the allocation site. An exercise using the Pan Regional Transport Model (PRTM) is currently being undertaken with the County Council and St Philips' transport consultant (Pell Frischmann) which will allow for impact to be modelled at any junctions identified as having a significant change in traffic flows. It is noted that in previous PRTM exercises undertaken in respect of an adjacent site, neither junctions identified above were required to be modelled.

It is important that the County Council does not seek to mitigate existing deficiencies on the transport network by securing developer contributions from future schemes. Development proposals are only required to mitigate their own impacts; to fund improvements to address existing deficiencies would not be compliant with the CIL Regs.

It is the case that each development proposal must be properly assessed through the planning application process to undertake its impacts and what, if any, improvements to relevant infrastructure are required by way of mitigation.

It is also unclear as to how the identified infrastructure will be fully funded within the plan period. The Transport Strategies document concedes in Section 5.2 that the County Council will be reliant on developing bids and business cases to secure Government funding as well as funding from developments. The County Council will be reliant on pooling contributions from developers, which may not be spent on infrastructure until funding gaps are met with public expenditure. Indeed, Paragraph 5.2.4 of the Transport Strategy illustrates the County Council's approach in spending the money raised is to *"pool such contributions from developers with this funding being used for priority projects only when the money has been received."*

The approach of pooling funding brings into question whether the identified infrastructure would actually mitigate the impact of a development, noting that the potential lengthy timeframe to obtain the required amount from various developments could be several years. This will also be compounded by the impact of inflation on build costs, which has not been fully assessed at this stage. This is an important point as in order to be effective, it must be demonstrated that the new Charnwood Local Plan is deliverable over the plan period.

This concern is further emphasised within the Viability Report, which concludes in paragraph ES19 that *“further work is required to monitor and manage the infrastructure requirements (particularly schools and highways – County Contributions) depending upon the business case for additional public sector funding. Detailed infrastructure requirements will also be assessed on a planning application basis having regard to the CIL Regulations.”*

Without a business case to indicate how public funding can be established, it is unclear whether the County Council can calculate the proportion of each infrastructure project’s cost that would need to be met by developer contributions.

As currently presented within the Viability Report, which intends to reflect the transport costs referred to in the Transport Strategy, Table 6.12 provides the total off-site highways costs (including sustainable transport measures and passenger support). For the wider Charnwood area this equates to £19,675 per dwelling. Similarly, the viability report sets out in Table 6.19 that the total S106 education cost per dwelling is £15,813 for the wider Charnwood area. It is indicated in paragraph 7.1 that:

“... the first run of the appraisals was based on a high Section 106 figure derived from an uplift in off-site transport costs and higher education costs as shown in Tables 6.12 and 6.19 above. The result of applying these figures was that the full range of typologies would be unviable except for just two large greenfield sites in the Wider Charnwood area and the Rural Exception Site typology. All of the other typologies were considered to be unviable, many by significant margins.”

The above calls into question the deliverability of relevant development in the Borough if it is expected to meet the S106 contribution costs that would be required by the County Council. It is apparent therefore that other funding sources will be required in order to meet the full cost of the infrastructure requirements set out in the Transport Strategies.

On a related note, Table 9.1 of the Viability Report demonstrates the maximum total s106 obligations (including off-site transport and education costs) per dwelling with it broken down into the following requirements:

- Leicester Fringe – Brownfield: £10,400
- Leicester Fringe – Greenfield: £15,800
- Loughborough / Shepshed – Brownfield: £10,200
- Loughborough / Shepshed – Greenfield: £16,900
- Wider Charnwood – Brownfield: £26,500
- Wider Charnwood – Greenfield: £35,400

However, it is unclear how these figures were calculated in Aspinal Verdi's assessment and how they relate to the identified costs highlighted in Table 6.12. Clarity is sought as to what is identified as a cost and what the required level of contribution to be sought from developments should be.

It is also noted that the Council has not sought to defend the requirements imposed on developers through the Interim Transport Contributions Strategy in various recent appeals. One such example was the appeal concerning land North of Barkby Road, Syston (APP/X2410/W/23/3325902), where the Council's Statement of Case indicates that:

“During the processing of the application the Appellant and the Highways Authority discussed contributions toward sustainable travel, in addition to the off-site junction improvements, travel packs, bus passes, STARS and the TRO. A value of around £450,000 was being considered. The figure now described as an interim Charnwood transportation strategy sum is roughly £2 million more than previously considered by the Appellant.

6.4 The Appellant has not agreed that the contribution sought by the Highways Authority, described as a “contribution under the Interim Charnwood Transport Contribution Strategy of £2,445,323.71” is compliant with Community Infrastructure Levy Regulation 122, but has offered, in the Statement of Common Ground, to revert to the £450,000 contribution previously considered, as a contribution toward sustainable travel in its stead.

6.5 Since the receipt of the Highways Authority request on 17 August 2023, Charnwood Borough Council has requested that the Highways Authority provide evidence to support the requested “contribution under the Interim Charnwood Transport Contribution Strategy of £2,445,323.71.”

6.6 Pending receipt, and review of that evidence Charnwood Borough Council cannot, and does not defend this component of the Highways Authority requested contributions. However, Charnwood Borough Council reserves a right to revise its position in the event that evidence is submitted to the Inquiry by the Highways Authority. However, the figure following the interim Charnwood transportation strategy is roughly £2.4 million more than previously requested by the highway authority and considered by the Appellant.”

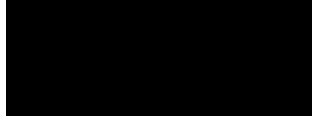
It is apparent in respect of the above appeal that the Council has asked the County Council (as the local highway authority) to provide evidence to substantiate its calculation – evidence that is yet to be provided. Consequently, the Council's stated position in its Statement of Case is that it “*does not defend this component of the Highways Authority requested contributions*” at this time. The dispute between the two authorities therefore highlights the discrepancy on the approach that would likely result in unnecessary costs and delay for the appellant.

In addition, the appeal at Former Ronkswood Hospital Site in Worcester (APP/D1835/A/13/2202841) which considered a similar county-wide approach under the former Worcestershire Transport Strategy to that currently advocated was upheld with the inspector concluding “*the evidence has shown that the residual cumulative impact would not be severe and a contribution to mitigate this impact would not be compliant with CIL Regulation 122.*” This reaffirms the fact that impacts must be assessed on an individual basis through the planning application process as it will not necessarily be the case that such schemes will always give rise to residual cumulative impacts on transport infrastructure such that mitigation would be required.

Conclusion

In summary, St Philips remain concerned that the draft Transport Strategies to Enable Growth in the Borough of Charnwood and Viability Report are contrary to CIL Regulations 122 and paragraph 57 of the NPPF. As such, an approach will not be relevant to the mitigation of the impact concerned with the development or fairly and reasonably related in scale and kind to the development. The evidence as to the extent to which relevant development coming forward on proposed allocation sites would impact on those elements of transport infrastructure for which improvements are identified is not clear, nor is it apparent as to how such measures could be fully funded in an appropriate timeframe. It is therefore necessary for the evidence to be re-visited and approach revised, such that the new Charnwood Local Plan is deliverable and its policies sound for the purposes of the NPPF.

Yours sincerely



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