

Town and Country Planning Act 1990
Planning Appeal Under Section 78 of The Town and Country
Planning Act 1990

THE LONDON BOROUGH OF MERTON
Environment and Regeneration Directorate

Community Infrastructure Levy (CIL) Compliance Statement

Tesco Site 265 Burlington Road New Malden Surrey KT3 4NE

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Merton Planning Reference Number: 19/P2387
Planning Appeal Reference Number: APP/T5720/W/20/3250440

1. Introduction

- 1.1 This statement relates to the Public Inquiry for the Tesco Site 265 Burlington Road New Malden. This document outlines the manner in which each of the proposed obligations contained in the Section 106 unilateral undertaking would comply with the tests set down in Section 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).

- 1.2 Regulation 122 of the CIL Regulations at Paragraph 2 states that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:
- a) Necessary to make the development acceptable in planning terms;
 - b) Directly related to the development; and
 - c) Fairly and reasonably related in scale and kind to the development.
- 1.3 Paragraph 2A Regulation 122 states that 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.
- 1.4 The Planning Obligations to be secured through the Section 106 unilateral undertaking are as follows:
- CPZ contribution and permit free development
 - Residential Travel Plan (submission of draft and approval) and associated TP Monitoring Fee.
 - Pedestrian Crossing Facility and Junction Improvement contribution
 - Pedestrian and Cycle Infrastructure Contribution
 - Bus Service Contribution and (via s278 agreement) Bus Stop Works
 - car club
 - Affordable Housing onsite and early stage viability review that may result in additional onsite affordable housing and/or affordable housing contribution payment in lieu under clawback of development surplus
 - Alternative northern boundary landscape scheme
 - air quality impact contribution and impact service contribution
 - Carbon Offset contribution
 - Playspace contribution
 - Management and monitoring fee (invoicing, monitoring and allocation)

1.5 This Statement therefore considers compliance in respect of each of the obligations which are proposed in the Section 106 Unilateral Undertaking prepared by the Appellant and agreed by the London Borough of Merton.

2. Planning Obligation Compliance Schedule

2.1 Affordable Housing

2.2 Relevant Policies:

- The Council's policy on affordable housing is set out in the Core Planning Strategy, Policy CS8. For schemes providing over ten units, the affordable housing target is 40% (of which 60% should be social rented and 40% intermediate), which should be provided on-site. In seeking this affordable housing provision LMB will have regard to site characteristics such as site size, site suitability and economics of provision such as financial viability issues and other planning contributions.
- The Mayor's SPG on affordable housing and viability (Homes for Londoners) 2017 sets out that:
"Applications that meet or exceed 35 per cent affordable housing provision, by habitable room, without public subsidy, provide affordable housing on-site, meet the specified tenure mix, and meet other planning requirements and obligations to the satisfaction of the LPA and the Mayor where relevant, are not required to submit viability information. Such schemes will be subject to an early viability review, but this is only triggered if an agreed level of progress is not made within two years of planning permission being granted (or a timeframe agreed by the LPA and set out within the S106 agreement)..."

... Schemes which do not meet the 35 per cent affordable housing threshold, or require public subsidy to do so, will be required to submit detailed viability information (in the form set out in Part three) which will be scrutinised by the Local Planning Authority (LPA)."

- These requirements are reflected in the New London Plan – Consultation Draft (13th August 2018), which states that:

“to follow the Fast Track Route of the threshold approach, applications must meet all the following criteria:

1. meet or exceed the relevant threshold level of affordable housing on site without public subsidy;
2. be consistent with the relevant tenure split (Policy H7 Affordable housing tenure);
3. meet other relevant policy requirements and obligations to the satisfaction of the borough and the Mayor where relevant; and
4. demonstrate that they have taken account of the strategic 50 per cent target in Policy H5 Delivering affordable housing and have sought grant where required to increase the level of affordable housing beyond 35 per cent.”

- Provided that the scheme meets the 35% provision, meets the tenure split set out in policy CS8 and demonstrates that the developer has engaged with Registered Providers (RPs) and the LPA to explore the use of grant funding to increase the proportion of affordable housing, then the proposal could be dealt with under the Mayor’s Fast Track Route, which would not require the submission of additional viability information.

2.3 In accordance with the Mayor’s SPG, the applicant has agreed for onsite affordable housing scheme to be secured in the S106 unilateral undertaking comprising the provision of 35% affordable housing by habitable room, comprised of 85 London Affordable Rent (60%) and 58 Intermediate Units (40%). The S106 secures the delivery of the units at appropriate occupation triggers and the affordability of the units at their given tenure in perpetuity, subject to standard provisions for right to buy, stair-casing, mortgagee/chargee exclusions and a moratorium to protect affordability for on sale.

2.4 The GLA has confirmed that the affordable housing offering meets the Mayor’s Fast Track criteria. Accordingly an early stage viability review (triggered if an agreed level of progress in implementing the development isn’t reached within three years of the grant of planning permission) and associated clawback of additional onsite affordable housing capped at the 50% London Plan target using agreed development viability

surplus has been agreed by the applicant for inclusion within the S106 unilateral undertaking.

2.5 Subject to the findings of the early stage viability review, the developer would submit a scheme to the Council for approval setting out the location, quantum and tenure mix of the additional affordable housing units to the value of the surplus identified. A financial contribution for the provision of additional affordable housing in the borough in-lieu of onsite provision will be payable for surplus that is agreed as not being appropriate for on-site provision up to the policy cap in monetary value. It has been agreed that any additional affordable housing scheme and/or the financial contribution in-lieu can be delivered/paid at a later stage in the development with appropriate occupation triggers included in the S106 unilateral undertaking.

2.6 **Transport /Highway Works/Travel/ Travel Plans/ Travel Planning Monitoring Fee**

2.7 Relevant Policies:

- London Plan policies 6.3 and 6.12, Merton Local Plan CS policies CS20 and CS18 and SPP policy DM T2 seek to reduce congestion of road networks, reduce conflict between walking and cycling, and other modes of transport, to increase safety and to not adversely effect on street parking or traffic management; in addition, there is a requirement to submit a Transport Assessment and associated Travel Plan for major developments.
- London Plan policies 6.9, 6.10 6.13, Merton Local Plan CS policy CS20 and SPP policies DM T1 and DM T3 seek to promote sustainable modes of transport including walking, cycling, electric charging points, the use of Travel Plans and by providing no more vehicle parking spaces than necessary for any development.

Pedestrian Crossing Facility and Junction Improvement contribution

2.8 The anticipated distribution of traffic associated with the site is expected to give rise to a change in performance of the Claremont Avenue junction with Burlington Road and therefore a commuted sum was sought from the developer to provide the necessary junction improvements. Accordingly it has been agreed that the developer provides financial contribution of £100,000 towards a pedestrian crossing facility and junction improvements at this junction.

Bus Service Contribution and Bus Stop (s278)

- 2.9 The Bus Service Planning section within TfL has confirmed that bus route 131 is already near capacity in the vicinity of the site. Therefore, based on the predicted uplift in bus trips and current bus capacity, TfL have sought a bus services contribution of £450,000 (£90,000 per annum for 5 years) which has been agreed for inclusion in the Section 106 Unilateral Undertaking. The £90,000 p.a. would cover the cost of an extra journey in each peak period.
- 2.10 The applicant is required to pay to upgrade three bus stops so that they are fully compliant as accessible bus stops, which will be secured through a s.278 agreement, if permission is granted.

Residential Travel Plan

- 2.11 An obligation which will require details of travel plans to be provided has been sought and agreed for inclusion in the Section 106 Unilateral Undertaking, to cover the residential component. The travel plan will provide education on sustainable travel for employees, residents and visitors.
- 2.12 It is agreed that the travel plan shall be submitted for approval and implemented to encourage sustainable travel to and from the Development. The travel plan shall be based substantially on the Framework Residential Travel Plan as submitted as part of the planning application.
- 2.13 Monitoring surveys for Travel Plans (TP) secured through a planning obligation should be undertaken using TfL's standardised methodology. In order to cover costs for the managing and monitoring cost of the TP the Council will normally charge a fixed one-off fee of £2,000, which will be secured through the Section 106 unilateral undertaking.
- 2.14 The Section 106 unilateral undertaking requires that the Travel Plan be subject to ongoing review, with any reasonable recommendations made by the Council which would be adopted following such reviews as appropriate.

Pedestrian and Cycle Infrastructure Contribution

2.15 Healthy Streets is the framework of the Mayor's Transport Strategy, putting human health and experience at the heart of planning the city. This results in a healthier, more inclusive city where people choose to walk, cycle and use public transport. It outlines some practical steps to achieve this, including:

- improving local environments by providing more space for walking and cycling, and better public spaces where people can interact
- prioritising better and more affordable public transport and safer and more appealing routes for walking and cycling
- planning new developments so people can walk or cycle to local shops, schools and workplaces, and have good public transport links for longer journeys

2.16 The application includes a public realm strategy, which puts forward the following:

- Planting of street trees along west side of Burlington Road;
- Introduction of public seating opportunities;
- Provision of publicly accessible cycle parking;
- Introduction of a pedestrian crossing on the northern side of Burlington Road/ Claremont Avenue junction, facilitated through the provision of drop kerbs, tactile paving, warning signs and a coloured surface treatment which will
- emphasise the desire line to/ from Motspur Park station;
- Signage to help wayfinding to/ from Motspur Park station; and
- Improvements to 'the lane' which comprises an existing Public Right of Way (PRoW) along the southern boundary of the proposed development site. The improvements will include measures to discourage vehicle parking at the junction of the PRoW with Burlington Road, planting, seating and visual amenity which in part will be enhanced by the surveillance of the lane which will be achieved through the delivery of new homes

2.17 Having regard to the measures put forward the applicant has agreed to make the financial contribution towards improving the walking environment and cycle infrastructure around the site (£150,000), towards the development meeting the Healthy Streets objectives.

CPZ contribution and permit free development:

- 2.18 The following statement from the applicant's agent was published in the Planning Application Committee Meeting supplementary agenda page for the meeting of 13 February 2020 at which the planning application was heard:

"Redrow are aware of the concerns expressed by some residents in relation to the impact of overspill parking from the development at 265 Burlington Road.

As you know, the parking stress survey has shown that parking in the area is operating below 'stress' capacity and therefore this does not trigger the need for parking controls. Notwithstanding this, my client is prepared to offer a financial contribution within the s106 agreement to fund the cost of a CPZ consultation if this is considered necessary by Members (up to a maximum of £40,000). We would be grateful if this is put forward at tomorrow's committee meeting.

The s106 would also include an obligation that in the event a CPZ is introduced, residents of the development would not be eligible to apply for parking permits."

- 2.19 The Officer comment also published stated:

"Whilst the parking stress survey showed there to be spare parking capacity in surrounding roads, officers recognise that parking availability is a concern of existing residents and given the number of proposed residential units this offer from the applicant would go some way to relieve that concern and is welcomed."

- 2.20 As a result the proposed contribution and ineligibility of parking permits for occupants/users of the development would help to mitigate the impact of the development on local resident amenity and help to make the development more sustainable in that it would provide an incentive for occupiers/users to invest in more sustainable modes of travel.

- 2.21 The contribution would be payable upon the serving of a notice by the Council of a petition by residents living in Claremont Avenue, Cavendish Avenue, Belmont Avenue, Seaforth Avenue and Linkway requesting that the Council conducts a public consultation to review the establishment of a CPZ covering Claremont Avenue, Cavendish Avenue, Belmont Avenue, Seaforth Link and those roads over the level crossing.

- 2.22 The permit free status of the development will be secured through the amendment of the borough wide Traffic Management Order to include the area covered by the new CPZ once implemented.

Car Club

2.23 TfL and the Council transport planning officers recommended that three years free car club membership is secured for all new residents in accordance with standard provisions for this type of development, to reduce their reliance on unsustainable modes of travel including individually-owned high emission generating private vehicle journeys.

2.24 Accordingly the applicant has agreed to provide free car club membership for all new residents to be secured for three years in the S106 unilateral undertaking.

2.25 **Air Quality Contributions**

2.26 Merton Local Plan Sites and Policies Policy DM EP4 Pollutants seeks to minimise pollutants and to reduce concentrations to levels that have minimal adverse effects on people, the natural and physical environment in Merton. The policy states:

“To minimise pollutants, development:

a) Should be designed to mitigate against its impact on air, land, light, noise and water both during the construction process and lifetime of the completed development. ...”

2.27 The Council’s Air Quality Officer has confirmed that financial contributions are required to implement measures to address air quality impact issues during the sensitive period of development/construction where significant dust and construction vehicle/machinery results in adverse levels of emissions effecting the air quality of surrounding neighbourhoods.

2.28 Accordingly the applicant has agreed to a £22,000 towards the employment of a dedicated Air Quality Impact Officer over an 18 month period and a contribution of £9,000 towards the implementation of the Council’s Air Quality Action Plan to be secured in the S106 unilateral undertaking.

2.29 **Carbon Offset Contribution**

- 2.30 London Plan policy 5.3 and Merton Local Plan CS policy CS15 seek to ensure the highest standards of sustainability are achieved for developments which includes minimising carbon dioxide emissions, maximising recycling, sourcing materials with a low carbon footprint, ensuring urban greening and minimising the usage of resources such as water.
- 2.31 An on-site reduction of 203 tonnes of carbon dioxide per year in regulated emissions compared to a 2013 Building Regulations compliant development is expected for the domestic buildings. This is equivalent to an overall saving of 35%, which does not meet the zero-carbon target. The non-residential element would achieve a 41% reduction, which exceeds the emissions target set in London Plan Policy 5.2. So as to accord with the Mayoral and Local Plan requirements it is considered that the remaining regulated CO2 emissions must be met through a contribution to the borough's offset fund.
- 2.32 The Council's Climate Change Officer has reviewed the proposals and concludes that a carbon offset contribution of £651,060 is necessary. Payments to offset carbon shortfalls are used by Merton Council to fund measures which seek to reduce carbon generation in the borough; measures to date have included domestic energy efficiency grants, and improvements to Council property such as schools and leisure centres for insulating building envelopes and pipes, boiler controls, lighting motion sensors and renewable energy installations such as solar panels and heat pumps. The applicant has agreed that this contribution can be secured in the S106 unilateral undertaking.
- 2.33 **Play Space Contribution**
- 2.34 Relevant policy:
- 2.35 London Plan Policy 3.6 and draft London Plan Policy S4 require development proposals to make provisions for play and informal recreation based on the expected child population generated by the scheme. The Play and Recreation SPG expects a minimum of 10 sq.m. per child to be provided in new developments. The development will have a child yield of 198, resulting in a requirement for 1,980 sq.m. of on-site play.
- 2.36 The scheme would provide 2,758sqm of communal space provided at podium level of each Blocks A and B. A further 408sqm of amenity space is provided along Pyl Brook. The external amenity space would include Social space with communal table, barbecue and pergola, play areas and 'grow your own' planting beds.

- 2.37 In respect of play space, the applicant calculated the child yield for the development, using LBM's up to date guidance which requires the use of the GLA's Intelligence Unit's 2014 Population Calculator and Single Year Age (SYA) tool. This shows that the development will have a child yield of 198. Of this, 91 are expected to be under-fives, 65.1 are to be between five to eleven and 41.7 are to be 12-18 years old. It confirms that 1,980sqm of play space is required for 0-18 year olds.
- 2.38 In relation to younger age groups, this will be provided on site with 910sqm for 0-5 year olds and 651sqm for 5-11 year olds. This results in an onsite play space provision of 1,561sqm. Details of the proposed space, including quantum and types of play elements for each age group, have been agreed with the applicant to be secured by way of condition.
- 2.39 In terms of play provision for 12-18 year olds, officers consider that this may reasonably be addressed by way of a commuted sum contribution for to play area enhancement in the locality rather than a dedicated on site facility.
- 2.40 The specific amount to be sought by way of a commuted sum is £24,600 as this would provide a Multi Use Games Area of 400sqm for the 41.7 12-18 year olds, expected to be yielded by the proposed development and has been agreed by the applicant for inclusion in the S106 unilateral undertaking.
- 2.41 **Alternative Northern Boundary Landscape Scheme**
- 2.42 There is an indicative masterplan for the development of the wider Tesco site and remainder of the car park (but that does not form part of this current application) and the emerging Merton New Local Plan (Stage 2a Draft Local Plan) proposes the allocation of the wider site including the current application and this future development site under site allocation reference RP3.
- 2.43 The site allocation proposes the opening up of the overgrown north boundary of the site along the Pyl Brook. To address this a nature walk in this location with seating and biodiversity enhancement measures is agreed to be secured for the current application by condition and it is further proposed to link this up with that future development to provide a publically accessible path. The applicant has agreed that provision for this link can be included in the S106 unilateral undertaking, with the provision triggered if

the site allocation is adopted and future development is granted planning permission and implemented.

2.44 In terms of the CIL tests it is necessary to ensure that this walk becomes a publically accessible area in any masterplan development, it is directly related to the development as it is part of the site and required for any masterplan layout and it is fairly and reasonably related in scale and kind to the development.

2.45 **Monitoring**

2.46 Paragraph 2A Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) states that the inclusion of a planning obligation to cover the cost of monitoring (including reporting under these Regulations) may be a reason for granting planning permission 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.

2.47 The Council is seeking a payment of £33,550.53 towards covering the total costs that may be incurred (i.e not exceeding the Council's estimated total costs of £45,205.39 without allowing for local authority officer pay rate inflation) for monitoring the development over the lifetime of the S106 Unilateral Undertaking comprising the provisions agreed with the applicant as listed in this statement. The Council's assessment of the costs that may be incurred thereof is set out in Table 1 below.

Table 1 – Monitoring Fee Assessment

Monitoring Fee Component	SPD Calculation*	Hours	Estimated Costs**	Activity
Permit Free (residential and business units - 457 units)	£3,000.00	122.25	£4,315.43	Coordination with CPZ creation including with the updating of the Traffic Management Order, linking new addresses to the permit system, confirming lifetime customer permit free enquiries and permit application refusals (no permit no application fee) and associated disputes.
Residential Travel Plan	£500.00	13	£458.90	Monitoring trigger, requesting RTP report, Transport Planner's assessment of travel plans or otherwise. Travel Planners' costs for ongoing monitoring of the Travel Plan covered by separate planning obligation so not included.
Car Club	£3,000.00	20	£706.00	Monitoring trigger, requesting CC, Transport Planner's assessment of contracts, notifications and amendments.
Affordable Housing Onsite (143 units)	£6,000.00	618.5	£21,833.05	Contribution towards monitoring AH triggers, RP transfer, practical completion of Affordable Housing Units, coordinating nomination rights/nomination agreement completion, tracking sales and 30 x annual reviews including

				RP meetings, site inspections and reviews of leasing, tenure, stair-casing, right to buy and clawback
Early Stage Review	£1,000.00	29	£1,023.70	Review implementation submission, inspections, notices, trigger monitoring (36 months), arranging and managing appointment of external expert, assessment of 2 reports, managing reaching of agreement on assumptions/inputs, calculation of surplus and outputs of formulas, dispute resolution
Additional Affordable Housing Scheme (85 units)	£4,250.00	143.74	£5,074.07	Coordinating scheme assessment and approval, contribution towards monitoring AH triggers, delivery of PC/RP transfer/nominations for affordable housing. Apportionment of onsite costs including annual reviews RP meetings and inspections as per Affordable Housing Onsite.
Clawback - Surplus Profit Contribution	£500.00	14.50	£940.42	Contribution towards trigger monitoring, payment/invoicing management costs, Financial administration. Apportioned costs based on notional grant scheme – for coordinating affordable housing bid with internal departments, seeking approval by Executive/Cabinet, Securing

				Grant Agreement with RP, Monitoring of scheme delivery, contribution to reporting
Alternative Northern Boundary Landscape Scheme	£1,000.00	23.5	£829.55	Monitoring triggers (15yrs), landscape notice, coordinating assessment, approval and delivery
Air quality impact contribution (£9k)	£500.00	4.5	£158.85	Contribution towards trigger monitoring, payment/invoicing/financial management. Environmental Health internal spending coordination for the Air Quality Action Plan
Air quality impact service contribution (£22k)	£500.00	13.5	£476.55	Contribution towards trigger monitoring, payment/invoicing/financial management. Environmental Health new resource, internal spending coordination, £22k isn't sufficient for 18month resource, 10hrs towards recruitment process, contribution to reporting
Carbon Offset contribution (£651.06k)	£3,700.53	5	£4,150.36	Contribution towards trigger monitoring. Invoicing 2x instalments. Appointment of costs for Climate action plan projects – coordinating internal bidding and linking payments to funding and coordination of spending/reporting and scheme administration/finance management – based on development's proportion of latest local plan housing delivery targets, contribution to reporting

CPZ contribution (£25k)	£500.00	7.4	£261.22	Trigger monitoring involving coordination with Traffic and Parking officers regarding community engagement/petition. Invoicing, financial management, coordination internally pre-consultation, bidding & allocation and CPZ and implementation monitoring, contribution to reporting
Pedestrian Crossing Facility & Junction Improvement contribution (£100k)	£2,000.00	26	£917.80	Contribution to monitoring triggers. Invoicing 2x instalments, financial management, Coordinating Highways/Transport works design, tender/costing, delivery and inspection, programming spend allocation monitoring, contribution to reporting
Pedestrian & Cycle Infrastructure Contribution (£150k)	£2,500.00	26	£917.80	Contribution to monitoring triggers. Invoicing 2x instalments, financial management, Coordinating Highways/Transport works design, tender/costing, delivery and inspection, contribution to reporting
Playspace contribution (£24.6k)	£500.00	6	£211.80	Contribution to monitoring trigger. Invoicing 2x instalments, financial management and spend coordination for off-site MUGA, contribution to reporting
Residential Travel Plan fee (£2k)	£250.00	7	£247.10	Monitoring unique trigger, invoicing, financial management, coordinating spend and allocation

				towards TP implementation, contribution to reporting
Management and monitoring fee	£250.00	2.5	£88.25	Contribution to monitoring trigger. Invoicing, financial management, contribution to reporting.
Bus Service Contribution (£450k)	£3,600.00	50	£1,765.00	Contribution to monitoring trigger. Invoicing 5 x instalments, financial management, coordination, side agreement with TfL and TfL funds transfer, TfL activity report on each instalment/delivery, contribution to reporting
Registering the S106 UU and monitoring set ups	Nil	23.5	£829.55	PINS - Legal coordination post decision, LLC registration, website upload and filing. Exacom S106 system – upload and setting up monitoring/triggers. Contribution to annual report costs
TOTAL	£33,550.53		£45,205.39	

* [Merton Draft Planning Obligations SPD 2014](#) table 4 calculation

** Costs for stated activity and hours based on a Council officer charging rate of £35.30/hour.

*** Estimated Costs don't allow for inflation of local authority officer pay rates.

3. Conclusion

3.1 The proposed obligations are required to support a sustainable housing-led mixed used development, providing for:

- affordable housing to be maximised including an appropriate mix of tenures on-site to meet local needs,
- sustainable modes of transport and travel including walking, cycling and public transport,
- older age play and the opening up areas of natural value for protection and public recreation
- the control of air quality
- offsetting of/minimising climate impact

3.2 These obligations would meet the requirements of adopted planning policies and tests set out in Regulation 122 of the CIL Regulations to make the scheme acceptable in planning terms if the appeal is allowed. The provision of funding towards the costs of monitoring for the lifetime of the planning obligations and not exceeding the Council's estimate thereof would accord with Paragraph 2a of Regulation 122 of the CIL Regulations.