

Appeal Ref: APP/R3650/W/23/3327643

LPA Ref: WA/2022/01887

Appeal relating to Land off Midhurst Road at Scotland Park,

Midhurst Road, Haslemere, Surrey, GU27 3DH

Appellant's Response to R122 Note – County Level Obligations

1 Documents Appended Hereto:

- 1.1 Appellants Response to R122 Noted - County Level Obligations as submitted at the First Inquiry ("the Previous R122 Note")

2 Introduction

- 2.1 This note updates the Appellant's position as to whether the County Level Obligations meet the tests of Reg 122(2) which are as follows:

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.

- 2.2 A planning obligation may only be taken into account in granting planning permission if all the CIL Regulation 122 tests are satisfied.

3 PROW Contribution

- 3.1 The Appellant continues to accept that the PROW Contribution meets the tests of R122.

4 Demand Responsive Bus Service Contribution ("DRBC")

- 4.1 Since writing the Previous R122 Note, there has been a material change in circumstances.

- 4.2 As at the date of the Previous R122 Note, the Council had published an article expressing their aspirations to establish a Demand Responsive Bus Service (DRBS) to meet the general travel needs to Haslemere and Godalming. This has now been delivered and is known as Surrey Connect.

- 4.3 As stated on the County Council's website¹ "Surrey Connect is a safe and reliable bus sharing service connecting you to your local community. It is available to everyone in Surrey in the

¹ <https://www.surreycc.gov.uk/roads-and-transport/buses-and-other-transport/community-transport/surrey-connect>

areas shown on the map². It is a digital on demand bus service, known as a Digital Demand Responsive Transport (DDRT) solution". The Connect service operates Monday to Friday 7am to 7pm and Saturday 8am to 6pm.

- 4.4 As the DRBS has now been delivered and is operational, there is no justification for seeking the DRBC from this development. The proposed development is acceptable in planning terms without the payment of the DRBC.

5 Conclusions

- 5.1 The Appellant accepts that the PROW Contribution meets the tests of R122.

- 5.2 The DRBC fails to meet any of the tests of R122.

- 5.3 The Appeal Scheme will be liable for CIL. This will generate a significant sum of money which the charging authority can direct towards the continued operation of schemes such as a DRBS as it sees fit.

² Which, for the avoidance of doubt, includes Haslemere

Appeal Ref: APP/Y1110/W/21/3270745

LPA Ref: 19/1647/FUL

Appeal relating to Land off Midhurst Road at Scotland Park,

Midhurst Road, Haslemere, Surrey, GU27 3DH

Appellant's Response to R122 Note – County Level Obligations

1 Documents Appended Hereto:

- 1.1 Email trail ending email from Matt Strong to WBC dated 19 January 2024 (timed at 11:21)
- 1.2 Article published by SCC dated 4 September 2023 entitled "On-demand bus service launches in Farnham and Cranleigh"

2 Introduction

- 2.1 At the conditions and obligations session on 18 January 2024, the Inspector noted that no explanation had been given regarding the principle or quantum of the contributions sought by the County Council. As a result, R122 compliance was difficult to assess. The Inspector asked for further information to be provided. The Appellant communicated the request to the County Council on 19 January 2024 and a response was received the same day (see attached email trail at document 1.1).
- 2.2 This note responds to the email of Matt Strong (Principal Transport Development Planning Officer of Surrey County Council) sent on 19 January 2024 (timed at 11:21) (a copy of which is appended hereto) which explains the County Council's case regarding the extent to which the requested contributions comply with R122.
- 2.3 Reg 122(2) of the CIL Regulations 2010 states:

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.

- 2.4 A planning obligation may only be taken into account in granting planning permission if all the CIL Regulation 122 tests are satisfied.

3 PROW Contribution

- 3.1 The Appellant accepts that the PROW Contribution meets the tests of R122.

4 Demand Responsive Bus Service Contribution (“DRBC”)

Is the Contribution necessary to make this development acceptable in planning terms?

- 4.1 The Appeal site is located circa 800 metres to the south of Haslemere town centre. As stated in the Transport Assessment (Chapter 12 of the Environmental Statement):

“3.27 The Department for Transport’s ‘Manual for Streets’ (MfS) recognises that walking “offers the greatest potential to replace short car trips, particularly those under 2 km” and encourages development in locations where the daily needs of residents are within walking distance, thereby reducing the need to travel by car. MfS refers to ‘walkable neighbourhoods’ as being typically characterised by having a range of facilities within 10 minutes’ (up to about 800 metres) walking distance of residential areas, which residents may access comfortably on foot.

3.28 The Site is located within a circa 10 minute walk distance of Haslemere town centre. The Site is therefore within a reasonable walk distance of Haslemere town centre where an extensive range of services and facilities are available. Furthermore, the Site is within a 1.1 kilometre walk distance of Haslemere rail station. As such the proposed development of the Site, offers the opportunity to deliver residential development where rail services are available within a reasonable walk/cycle distance.”

- 4.2 Further, as noted in the Transport Assessment (paras 3.29 to 3.36), residents of the Appeal scheme will have access to the following public transport facilities:

4.2.1 The bus stop on Lower Street (to the north of the Site) is within 800m. This stop gives access to bus services 18, 19, 70, 71, 504 and 505 providing access to a comprehensive range of local destinations. The bus stop in Lower Street is provided with seating, shelter, timetable information, and is generally of a standard that would encourage future use;

4.2.2 Further bus stops are located within Camelsdale Road (to the south-west of the Site). The bus stops in Camelsdale Road provide access to bus service 70;

4.2.3 The Waverley Hoppa provides a scheduled bus service (service 504) that operates Tuesdays and Thursdays and travels along Midhurst Road (past Scotland Lane). Additionally, Waverley Hoppa operate a ‘door to door’ service that can be booked in advance for registered users (typically those with accessibility difficulties or who are unable to access bus services).

4.2.4 Haslemere mainline rail station is located circa 700 metres to the north of the Site and is within a 1.1 kilometre walk or cycle distance of the Site. Haslemere station provides frequent rail services to London Waterloo, with a journey time of less than one hour.

- 4.3 In addition, there is an existing signed cycle route between the Site (via Phase 1) and Haslemere rail station.

- 4.4 As stated in the Transport Assessment:

“3.37 In summary, the Site is accessible to Haslemere town centre (by walking and cycling) where an extensive range of local services and facilities can be accessed. The Site is also accessible to passenger transport facilities in the form of rail and bus services.

3.38 The proposed residential development of the Site offers the potential to deliver residential development within an area where sustainable means of travel can be maximised. In developing a package of sustainable transport measures priority should be given to enhancing pedestrian and cycle links (and associated infrastructure) between the Site and Haslemere town centre (where bus services are accessible) and Haslemere rail station.”

- 4.5 In addition, a Residential Travel Plan has been submitted and approved. Compliance with the approved Travel Plan will be secured by planning condition. The Travel Plan secures a number of measures and initiatives that when implemented are likely to have a positive impact on the travel behaviour of future residents of the Site.

Summary for limb R122(2)(a)

- 4.6 The evidence demonstrates that the Appeal Site is in a sustainable location with a range of non-car based modes of transport available to the residents of the development. A Travel Plan will be implemented that will guide the residents in adopting sustainable travel options. Therefore, the development is acceptable in planning terms without the payment of the DRBC. In short, the DRBC is not necessary to make this development acceptable in planning terms.
- 4.7 Therefore, the contribution fails to comply with R122(2)(a) of the CIL Regulations.

Is the contribution directly related to the development?

- 4.8 The Demand Responsive Bus Service (“DRBS”) (to be delivered by SCC and funded by the Contribution) is not ring-fenced or prioritised for use by the residents of the Appeal Scheme.
- 4.9 The Appellant asked SCC to include wording in the s.106 which would have allowed residents of the Appeal Scheme free use of the DRBS when the service was fully funded by the DRBC. This wording was rejected by SCC. SCC also rejected wording which sought to ring-fence the use of the DRBS for residents of the Appeal Scheme during the period when the service was fully funded by the development.
- 4.10 Therefore, it appears that the DRBS is intended to be for the general use of the population of the town and the wider area.
- 4.11 The Council has previously published an article expressing their aspirations to establish a DRBS to meet the general travel needs to Haslemere and Godalming (see Doc 1.2). This supports the impression that SCC sees this development as an opportunity to obtain funding to deliver a service for the wider community. It is a long-established principle that s.106 contributions should not be used to remedy existing deficiencies in public services. Similarly, s.106 contributions should not be used in an opportunistic fashion to deliver the pre-existing aspirations of a local authority unless the development in question would otherwise be unacceptable in planning terms.
- 4.12 The contribution is not directly related to the development and also fails limb R122(2)(b).

Is the Contribution fairly and reasonably related in scale and kind to the development?

- 4.13 No evidence has been provided by SCC to explain how the quantum of the DRBC has been calculated. Therefore, there must be doubt regarding the reasonableness of the sum.
- 4.14 The outline element of the appeal scheme provides for “up to 110 dwellings”. If all 110 dwellings are delivered, the DRBC equates to just over £4,545 per Dwelling. Given that SCC would not agree to wording which would have allowed residents of the development to use the DRBS free of charge, it is difficult to understand how such a substantial contribution could be seen as being fairly and reasonably related in scale and kind to the development.
- 4.15 Therefore, the contribution also fails in respect of limb R.122(2)(c)

5 Conclusions

- 5.1 The Appellant accepts that the PROW Contribution meets the tests of R122.
- 5.2 The DRBC fails to meet any of the tests of R122.
- 5.3 The Appeal Scheme will be liable for CIL at £473.25 per m². This will generate a significant sum of money which the charging authority can direct to deliver schemes such as a DRBS as it sees fit.

Caroline Waller

From: Michael Eastham <Michael.Eastham@waverley.gov.uk>
Sent: 22 January 2024 09:08
To: Caroline Waller
Cc: Lucie Beckett; Hannah Keyte; Charles Collins; jason@pleete.co.uk
Subject: FW: URGENT: Scotland Park Phase 2 - SCC Reg 122 Compliance Statement [CW-LEGAL.FID4263646]

**** This is an external email, please forward any concern with it to '!Information Security Incident' ****

Dear Caroline,

I have received the email below from Matthew Strong at the County Highway Authority in response to your email to Elaine Bell sent at 8.28am on 19th January requesting the submission of a CIL Compliance Statement from Surrey County Council.

Kind regards,

Michael

From: Matthew Strong <>
Sent: Friday, January 19, 2024 11:21 AM
To: Michael Eastham <Michael.Eastham@waverley.gov.uk>
Subject: RE: URGENT: Scotland Park Phase 2 - SCC Reg 122 Compliance Statement [CW-LEGAL.FID4263646]

[This email originates from an external source **]**

Hi Michael,

Following the email below, please see comments below in blue:

In terms of Item 1 (PROW Contribution):

The financial contribution amount was calculated by Surrey County Council's Public Rights of Way (PROW) team. The contribution of £32,600 towards the PROW works will go towards improving/resurfacing 500m of path. A rate of £60 per metre has been used, meaning the PROW obligation for this development has been based on the following formula:

$500 \times 60 = £30,000.$

The additional £2,600 will go towards the legal side of this upgrade. The obligation is considered to be fair and reasonable, related in scale and kind to the development where the requirement is for enhancements to be made to promote sustainable modes of transport, to align with WBC's Local Plan, SCC's LTP4 and the NPPF.

In terms of Items 2 & 3: (DDRT Contribution):

The contribution amount was calculated by Surrey County Council's Passenger Transport team having considered the size and scale of the proposed development. They advised that the cost of running an annual DDRT service equates to £100,000 per annum. As such, the calculation for the DDRT obligation for this development has been based on the following formula:

$£100,000 \times 5 \text{ years} = £500,000$

The site is located away from Haslemere town centre, local facilities and public transport options. As such, the bus service will provide a meaningful alternative travel choice to the private vehicle for future residents. The obligation is considered to be fair and reasonable, related in scale and kind to the development where the requirement is for a service to be provided to promote sustainable modes of transport, to align with WBC's Local Plan, SCC's LTP4 and the NPPF.

Regards,

Matt Strong

Principal Transport Development Planning Officer

Pronouns: He/Him

Transport Development Planning

[Transport Development Planning - Surrey County Council \(surreycc.gov.uk\)](https://www.surreycc.gov.uk)



New [#HealthyStreetsForSurrey](https://healthystreets.surreycc.gov.uk/) guidance is live, designed to prioritise air quality, physical activity and community wellbeing. Visit <https://healthystreets.surreycc.gov.uk/>

From: Caroline Waller <>

Sent: 19 January 2024 08:28

To: Elaine Bell <>

Cc: Jason; Hannah Keyte <>; Charles Collins <>; Lucie Beckett <>; Michael Eastham

<Michael.Eastham@waverley.gov.uk>

Subject: Scotland Park Phase 2 - SCC Reg 122 Compliance Statement [CW-LEGAL.FID4263646]

Caution: This email originated from outside Surrey County Council.

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Dear Elaine

As you may know, yesterday was the conditions and obligations session at the Public Inquiry for the above appeal.

The Inspector expressed some concern regarding the County level obligations and, in particular, whether the Demand Responsive Bus Contribution (DRBC) meets the tests of R122 CIL Regs (in principle or in quantum).

As SCC was not present at the Inquiry, the Inspector will give SCC an opportunity to provide a written statement to explain how its contributions comply with the tests of R122.

By way of further background:

1. No concern was expressed regarding the principle of the PROW Contribution. However, the Inspector wanted to know how the contribution had been calculated. We (as the Appellant) confirmed that we felt the contribution was a reasonable estimate given the scope of the proposed works. However, the Inspector wanted more detail on this point.
2. As regards the DRBC, given that the Appellant's evidence is that the site is in a sustainable location, the Inspector would like SCC to explain why this contribution is necessary to make the development acceptable in planning terms and how it meets the other tests of R122.
3. In addition, the Inspector would like SCC to explain how the DRBC has been calculated.

The Inspector has set a deadline of 31 January 2024 for SCC to provide comments in writing should it wish to do so.

Kind Regards

Caroline Waller

Partner

*
clarke
willmott

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My office: Birmingham | Bristol | Cardiff | London | Manchester | Southampton | **Taunton**

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Surrey County Council highway maintenance and enforcement changes

Please note highway verge cutting, weed control and on street parking enforcement changes.



Date posted: 04 September 2023

On-demand bus service launches in Farnham and Cranleigh

Waverley residents living in Farnham and Cranleigh will be able to take advantage of a new on-demand bus service which is launching today (Monday 4 September 2023).

The new, shared bus service, funded by Surrey County Council, is available in areas of the county where there are fewer commercial services, to help make travelling sustainably easier. Rather than being restricted by traditional bus timetables, the accessible minibuses are available for everyone when they need them. It launched last year in Mole Valley and has proven very popular with over 20,000 passengers being transported around the district.

Fares are charged based on how many miles are travelled starting from £2 for adults.

Councillor Steve Williams, Waverley Borough Council's Portfolio Holder for Environment and Sustainability, said:

"I am delighted that parts of Waverley have been included in this first phase of the roll out of the on-demand bus scheme which was started up in Mole Valley. Waverley has many rural areas with limited access to public transport so I am pleased that residents in Farnham and Cranleigh will now have access to this new type of public transport. I hope that there will be an opportunity in future to roll this out to other parts of the borough, including Godalming and Haslemere."

“The promotion of Active Travel is a key theme in our Climate Action Plan and we have been calling on Government and Surrey County Council for increased investment in public transport in these areas to benefit both the environment and our communities. This new bus service is a significant step to improving our sustainable travel offering and I hope residents of Farnham and Cranleigh will now consider trying it out as a way of getting around.”

Journeys can be booked:

- Online at www.surreyconnect.org.uk
- Via the ‘Surrey connect’ app - available from Google Play (Android) or the App Store (Apple)

Buses run Monday to Friday from 7am to 7pm and on Saturdays from 8am to 6pm. Journeys can be booked with 30 minutes notice or up to 7 days in advance.

For more information, visit www.surreycc.gov.uk/surreyconnect

For more information on Waverley Borough Council’s Climate Strategy and Action Plan, including more information on Active Travel and the proposed Godalming Greenway Cycle route, visit our [Waverley Borough Council - Climate change strategy and action plan](#) webpage.

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