

DEVELOPMENT CONTROL COMMITTEE

MONDAY 21st MARCH 2022

LATE OBSERVATION SHEET

4.1 19/05000/HYB - DSTL Fort Halstead, Crow Drive, Halstead, Sevenoaks KENT TN14 7BU

On 15 March we received a further letter from KCC together with attachments relating to this proposal. A copy of the letter is attached for information excluding the attachments.

This letter gives an update on their request for items they consider must be provided within a planning obligation and which is summarised below.

It also raises a number issues about the assessments set out in the committee papers relating to CIL, S106 and the infrastructure needs of the proposal.

Summary of infrastructure and contributions required.

The letter attached partially updates the infrastructure contributions KCC are seeking but only in relation to education provision. A comparison of the contributions requested in 2019 and 2022 are set out below.

Infrastructure sought	2019 letter (750 residential units) Total sum sought in £	2022 letter (635 residential units) Total sum sought in £
Primary education	4,134,111	None
Primary school land	1.6ha parcel of land on site	1.6ha parcel of land on site
Secondary education	2,885,499	3,286,760
Secondary school land	2,016,451	2,789,485.1
Special education	None	391,991.85
Community learning	12,315	12,315
Youth services	49,125	49,125

Libraries	41,588	41,588
Social care	61,890	61,890
Waste	178,155	178,155
TOTAL £	9,379,134	6,811,301.05

There have been some significant changes to the education infrastructure that KCC states is required, between 2019 and 2022, though other contributions have not been revisited, despite the reduction in residential units on site.

There are attachments and other details that set out more information on these requirements.

Other issues raised.

The letter raises other issues, which are summarised below:

- KCC believe that SDC is of the view that it cannot and should not require educational contributions in addition to CIL and that this would be clearly wrong,
- If SDC is not going to guarantee financial provision for the KCC requirements through CIL then this will need to be provided through a S106 Agreement.
- If the above requirement is not met, then it would be unlawful to proceed.
- KCC's 2019 letter (for the larger scheme) was not referred to in the original committee report.
- Now that SDC have the up-to-date position (set out in this letter dated 15 March 2022) this would have to be reflected in the S106 Agreement.
- The developer should be required to pay for the school places generated by the development. If not, this will be challenged.
- There should be a recommendation to ensure that the full education contribution is provided.
- The minimum requirement for land for a school is 1.6ha to allow for future education planning need.
- If being reported back to committee, a draft copy of the committee report should be provided to KCC before it is publicly available.
- To notify KCC immediately if SDC consider the Regulation 122 tests are not met and allow them 10 working days to respond.

The letter is supported by a legal opinion.

Assessment

The letter and attachments raise a variety of complex issues. It was received at a late stage in the application process.

Officers consider that it would be appropriate for all information provided by KCC to be given full, due consideration. Currently, there are areas of disagreement on the issues raised by KCC. It is appropriate for the Council to make a planning judgement when considering the needs for infrastructure and the impact this would have on viability. This question needs to be reconsidered in light of the additional representations submitted. The changes in requirements provided by KCC will also need to be re-considered to assess if they meet the Regulation 122 test: to be necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development.

Initial informal legal advice has been sought. However, Officers have not been able to fully consider and assess the issues raised and their implications or obtain detailed legal advice on these matters. The applicant has been made aware of the correspondence but has not had time to fully consider the request or their response either.

The most robust way to respond to the issues raised by KCC would be for the Council to seek formal legal advice; to allow the applicant time to do the same if they wish; and to report the application back to Development Control Committee once the advice has been considered and taken into account.

Members will then be able to consider the application afresh with all the information they need to make a properly informed decision.

Amended Recommendation:

That the application be deferred for consideration of the latest information received and reported back to Development Control Committee in due course.

4.2 20/02988/OUT - Land North of Town Station Cottages, Forge Croft, Edenbridge, KENT TN8 5LR

On 17 March 2022 we received a further letter from KCC, together with attachments relating to this proposal. A copy of the letter is attached for information excluding the attachments.

Their letter gives an update on their request for items they consider must be provided within a planning obligation and which is summarised below.

It also raises a number concerns about the assessments set out in the committee papers relating to CIL, S106 and the infrastructure needs of the proposal.

Summary of infrastructure and contributions required.

The letter attached partially updates the infrastructure contributions KCC are seeking, but only in relation to education provision. A comparison of the KCC requests for contributions in 2020 and 2022 are set out below.

Infrastructure sought	2020 letter Total sum sought in £	2022 letter Total sum sought in £
Primary education	None	None
Primary school land	None	None
Secondary education	1,759,840	1,759,840
Secondary school land	5.3 hectare parcel of land on site	5.3 hectare parcel of land on site
Special education	None	209,885.40
Community learning	5,582.80	5,582.80
Youth services	22,270	22,270
Libraries	18,853	18,853
Social care	49,939	49,939
Waste	62,477.80	624,47.80
TOTAL £	£1,918,932.60	£2,128,818

There have been some changes to the education infrastructure that KCC states is now required, though the request for special education £209,885.40 towards Milestone Academy Special School expansion in New Ash Green. In addition, KCC have clarified that secondary education contribution, rather than being used District wide for a new school, would now be requested to be used *“towards a new Secondary School on the proposed site or for additional secondary provision within Sevenoaks District.”*

There are attachments that set out more information to justify these requirements.

Other issues raised.

The KCC letter also raises a number of other concerns, which are summarised below:

- KCC believe that SDC’s approach to not require educational contributions within the Section 106, rather than being covered by CIL is clearly,
- If SDC is not going to make financial provision for the KCC requirements through CIL, then this will need to be provided through a S106 Agreement.
- If the above requirement is not met, then it would be unlawful to proceed.
- Now that SDC have the up to date position (set out in this letter dated 17 March 2022), this would have to be reflected in the S106 Agreement.
- Suggest that Section 106 agreement is amended, to require any potential shortfall with CIL to be picked up and covered by a Section 106 contributions

The letter is supported by a legal opinion.

Assessment

The letter and attachments raise a variety of complex issues. It was received at a late stage in the application process.

Officers consider that it would be appropriate for all information provided by KCC to be given full, due consideration. Currently, there are areas of disagreement on the issues raised by KCC. It is appropriate for the Council to make a planning judgement when considering the needs for infrastructure and the impact this

would have on viability. This question needs to be reconsidered in light of the additional representations submitted. The changes in requirements provided by KCC will also need to be re-considered to assess if they meet the Regulation 122 test: to be necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development.

Initial informal legal advice has been sought. However Officers have not been able to fully consider and assess the issues raised and their implications or obtain detailed legal advice on these matters. The applicant has been made aware of the correspondence but has not had time to fully consider the request or their response either.

The most robust way to respond to the issues raised by KCC would be to for the Council to seek formal legal advice; to allow the applicant time to do the same if they wish; and to report the application back to Development Control Committee once the advice has been considered and taken into account.

Members will then be able to consider the application afresh with all the information they need to make a properly informed decision.

Amended Recommendation:

That the application be deferred for consideration of the latest information received and reported back to Development Control Committee in due course.