

TOWN AND COUNTRY PLANNING ACT 1990

**APPEAL AGAINST THE DECISION OF BIRMINGHAM CITY COUNCIL TO REFUSE
PLANNING PERMISSION FOR THE DEMOLITION OF EXISTING BUILDINGS AND
CONSTRUCTION OF 83 RESIDENTIAL APARTMENTS AT 334-340 HIGH STREET AND
8-22 HARBORNE PARK ROAD, HARBORNE, BIRMINGHAM, B17 9PU.**

**CIL COMPLIANCE STATEMENT BY ANDREW FULFORD Bsc Ma MRTPI ON BEHALF
OF BIRMINGHAM CITY COUNCIL**

16th April 2024

Planning Inspectorate Reference: APP/P4605/W/23/3336011

Local Planning Authority Reference: 2022/06737/PA

1. Background

1.1 Paragraph 57 of the National Planning Policy Framework (the Framework) and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) set tests in respect of planning obligations. Obligations should only be sought where they are:

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

2. Policies

2.1 The Development Plan for Birmingham City Council is the Birmingham Development Plan (BDP) adopted in January 2017 and the Development Management in Birmingham (DMB) DPD adopted in December 2021.

2.2 The following policies within the BDP (CD 4.1) and the DMB DPD (CD 4.2) are referred to in support of the case that the proposed planning obligations meet the CIL tests:

BDP

Policy TP31: Affordable Housing

Policy TP44: Traffic and Congestion Management

Policy TP47: Developer Contributions

Development Management in Birmingham DPD

DM14: Transport Access and Safety

DM15: Parking and Servicing

3. Proposed Planning Obligations

3.1 The proposed planning obligations, included within the Section 106 Agreement, cover the following areas of infrastructure:

3.2 Affordable Housing - Contribution of £220,000 for off-site affordable housing

3.3 Policy TP31 requires the provision of 35% affordable housing for all residential schemes of 15 dwellings or more. The policy has a strong presumption in favour of on-site provision but does allow off-site to be provided in certain circumstances. The policy goes on to state that a lower percentage will only be accepted where it has been demonstrated to unduly impact on the viability of the scheme through the submission of an appraisal.

3.4 In this instance, affordable housing will be provided through a commuted sum of £220,000. This equates to the provision of approximately 5% off-site provision and will be spent on sites within the South Birmingham area. It has been demonstrated through the submitted viability appraisal that any higher contribution would unduly impact on the viability of the scheme. Furthermore, an off-site contribution has been accepted in this instance due to the difficulties in managing such a small number of affordable units within a much larger development.

3.5 Parking Monitoring and a Contribution of £25,000 to Undertake any traffic regulation orders

3.6 Policy TP44 of the BDP seeks to ensure that the planning and location of new development supports the delivery of the sustainable transport network and goes on to state that where the residual impact of development is severe permission should be refused. Policy DM14 of the Development Management in Birmingham DPD highlights that the safety of highway users should be properly taken into consideration and that any new development should not have an unacceptable adverse impact on highway safety. Policy DM15 emphasises that parking and servicing should contribute to the delivery of an efficient and sustainable transport system and that the operational needs of the development are met in terms of parking provision.

3.7 To help understand the impact on the local highway network from the lack of parking to be provided on the development (except for 2 disabled bays) the applicant has agreed to undertake 6 monthly parking surveys in local streets for a period of 3 years post the completion of development.

3.8 A contribution of £25,000 has also been secured to undertake any traffic regulation orders to address issues that are brought to the council’s attention as a result of the parking monitoring surveys. This figure is comparable to the figures secured on developments of a similar scale elsewhere in the City.

4. CIL Tests

4.1 The following table explains how the above planning obligations comply with the three tests set out in paragraph 57 of the Framework and Regulation 122 and Regulation 121 of the Community Infrastructure Levy Regulation 2010 (as amended) (“CIL Regulations”):

PLANNING OBLIGATION	Regulation 122 TEST 1 – NECESSITY	Regulation 122 TEST 2 – DIRECTLY RELATED TO THE PROPOSED DEVELOPMENT	Regulation 122 TEST 3 – FAIR AND REASONABLE IN TERMS OF SCALE AND KIND
Provision of affordable housing	The provision of affordable housing is required for the proposal to comply with the provisions of policy TP31 of Birmingham Development. Without a planning obligation securing the provision of affordable housing the proposal would fail to meet the housing needs of local area and would therefore be contrary to the provisions of paragraph 64 of the NPPF.	The provision of affordable housing as an off-site contribution will be spent in the local area and is therefore directly related to the proposed development.	The level of affordable housing does not exceed the Requirements of Policy TP31 of the BDP. The provision of affordable housing is therefore considered fair and reasonable as the proportion is below the policy requirement.

PLANNING OBLIGATION	Regulation 122 TEST 1 – NECESSITY	Regulation 122 TEST 2 – DIRECTLY RELATED TO THE PROPOSED DEVELOPMENT	Regulation 122 TEST 3 – FAIR AND REASONABLE IN TERMS OF SCALE AND KIND
Parking Monitoring	The undertaking of 6 monthly parking surveys in local streets for a period of 3 years post the completion of development will enable an assessment to take place whether zero parking provision has had an undue impact on the local highway network. If harm is identified the contribution of £25,000 may help to mitigate through the undertaking traffic regulation orders. The contribution is therefore necessary to accord with Policy TP44 of the BDP and policies DM14 and DM15 of the DMB DPD.	The obligation is directly related to the proposed development as surveys will monitor changes in parking levels post completion of the development to assess the impact to determine whether the £25,000 is required for mitigation.	The sum is of a scale necessary to introduce a TRO if required. If no notable changes in parking patterns are noted the financial contribution will be returned to the appellant. This is entirely reasonable and accords with the requirements of the Framework.

5 Conclusion

5.1 In summary, it is considered that the obligations sought are all necessary, directly related to the development and fairly and reasonably related in scale and kind to the appeal scheme. They are considered to comply with the CIL Regulations for the reasons set out above.