

Brislington Meadows – Appeal Ref. 3308537

1. This Note has been prepared on behalf of the Appellant to addresses three matters:
 - (a) the Rule 6 Party’s late proposed amendments to conditions 19 and 20 concerning biodiversity net gain (“BNG”);
 - (b) the revised public art condition and supporting material received from the Council; and
 - (c) the information from Avon Fire & Rescue Service disclosed on the last sitting day of the inquiry by the Council.

Rule 6 Party’s late proposed amendments to conditions 19 & 20

2. We note that the R6 Party have withdrawn their request for the DEFRA BNG consultation response to be included as an Inquiry Document.
 3. The proposed amendment to Condition 19 and 20 suggested by Mr Ashdown is not agreed by Homes England.
 4. The guidance cited by the R6 Party was prepared by Natural England when Metric 3.1 was introduced in July 2022, after the submission and validation of the planning application. The Council have agreed the quantum of biodiversity units under metric 3.0 to be provided in order to deliver 10% BNG, based on the illustrative masterplan. At no point has the Council requested a change to Metric 3.1 during the course of the application or appeal.
 5. Neither the Secretary of State nor Natural England has published any guidance about transitional arrangements for applications submitted to the local planning authority prior to the introduction of mandatory BNG and an
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agreed metric. Therefore Homes England considers it would be premature to insert a qualifying clause in the manner suggested by the R6 Party. Such a premature approach risks becoming inconsistent with subsequent guidance and unenforceable. Further and in any event, the current proposed condition wording that was agreed between the parties at the Inquiry covers the requirement to amend the use of the metric, once required by legislation (*"The BNG Assessment shall use the Biodiversity Metric 3.0 Calculation Tool, unless an amended statutory Biodiversity Metric Calculator associated with the Environment Act 2021 becomes mandatory"*). As such, the proposed amendment is not necessary, particularly at this late stage.

Public Art Plan – draft planning condition

6. Following the discussion on the proposed public art condition at the Inquiry, it was Homes England's understanding that the Council would provide further clarification as to what the 'Public Art Plan' would need to comprise, and the justification for this being required. The council have not shared this information and have instead issued amended condition wording, along with two appeal decisions and a copy of the 2003 Public Art Strategy.
7. Homes England considers this amended wording to be less precise, less enforceable and less reasonable than the previous version of the condition. As such, the proposed condition continues to fail the tests in paragraph 56 of the NPPF.
8. The proposed condition is not precise. The Council do not provide any further details of what is required by the condition citing only a *'proposal for Public Art'*. The Council reference Core Strategy Policy BCS21 in the Reason but this only states *"New development should... enable the delivery of permanent and temporary public art"*. No information has been provided in terms of what the

Public Art proposal should contain nor any guidance around the scope, procurement / commissioning process or expected budget in order to inform the Appellant how to approach and deliver this. The belated disclosure of the 2003 Public Art Strategy does not assist either: this document is clearly out of date; it is not development plan policy or an adopted SPD; it appears to be under review; and, most critically, it does not contain the necessary detail to support the proposed condition.

9. In addition, the passing reference in Policy BCS21 without any further detail, for example in an SPD, does not provide an adequate justification for the condition.
10. Given the foregoing, the condition is also unreasonable, not least as it places the developer in the invidious position of not knowing what is required or how submitted information would be fairly determined and assessed by the Council.

Fire Hydrants – draft S106 planning obligation

11. In response to a question from the Inspector at the planning conditions and obligations inquiry session, the Council explained that the Fire Hydrants Contribution (£15,000 index linked) had been included at the request of Avon Fire & Rescue Service. Later during the session, the Council confirmed that Avon Fire & Rescue Service did not respond to the consultation in connection with the application under appeal, but that the Council was relying on the Service's response of 15 November 2019 to the pre-application request made by the Appellant (reference 19/05220/PREAPP). That response ("**the 2019 Response**") was subsequently disclosed to Homes England.
12. The 2019 Response related to the Barton Wilmore 300 home scheme with a very different layout to that shown on the submitted parameter plans and illustrative masterplan accompanying the appeal scheme. In this context and

for the reasons below, Homes England does not consider that the 2019 Response provides a sound basis to secure financial contribution.

13. Regulation 122 states that a planning obligation may only constitute a reason for granting planning permission if it is: (1) necessary to make the development acceptable in planning terms; (2) directly related to the development; and (3) fairly and reasonably related in scale and kind to the development. The proposed obligation does not satisfy these tests.
14. First, it has not been demonstrated that the financial contribution is necessary to make this development acceptable. This is particularly the case because: (1) the provision of hydrants will be a matter governed by Building Regulations (as the Council's SPD makes clear); and (2) there is no evidence that relates to the proposed development, rather it all concerns a different scheme.
15. Secondly, it appears that the financial contribution sought is intended to make a contribution towards the operation of the system of fire hydrants in the Council's area. No direct link to the proposed development has been identified. Further, this appears to be akin to the impermissible NHS funding contributions as no funding gap has been identified: see *R. (University Hospitals of Leicester NHS Trust) v Harborough District Council* [2023] EWHC 263 (Admin). As such, the financial contribution is also not fairly and reasonably related in scale and kind to the development.
16. For these reasons, Homes England submits that the fire hydrants financial contribution does not satisfy the tests in reg. 122 of the CIL Regulations and invites the Inspector to find accordingly in the decision letter. In that event, as a result of clause 2.4 of the section 106 agreement, the obligation to pay the contribution would cease to be enforceable by the Council.