



## Report to Planning Committee – Appeal Decision

**Application Number: 2018/0558**

Location: 26 Vale Road, Colwick

Proposal: Section 73 application to amend Condition 12 (approved plans) on 2008/0287 (demolish offices, car parking & storage areas & erection of 44 dwellings with associated roads & sewers) and amend previously agreed Section 106 planning obligation to omit the integrated transport and public open space contributions, and reduce the education contribution from £120,820 to £75,000 on viability grounds.

[It should however be noted that the financial contribution for education has increased since the original S106 Agreement. At the time of the decision, this resulted in a total contribution requirement of £247,175. The difference between the education contribution required by the County Council is **£172,175** (£247,175 - £75,000)]

Permission was refused by the Borough Council on the 6<sup>th</sup> December 2018 on the following grounds:

The proposed delivery of this development without the full payment of the education contribution would result in a significant shortage in the number of school places required to meet with the needs arising from this development. The proposal therefore represents unsustainable development, contrary to the objectives of national and local planning policies, in particular Section 2 (achieving sustainable development) and Paragraph 94 of the National Planning Policy Framework and Policy 19 of the Aligned Core Strategy.

On the basis that the proposal is unviable with full policy compliant planning obligations, the Borough Council accepted that the obligations relating to integrated transport and public open space may be omitted. Full support was given to the plan amendments as these would improve the design and appearance of the development.

An appeal against this decision was subsequently lodged with the Planning Inspectorate. This appeal has been **allowed** and planning permission has been granted for the development with a reduced education contribution.

The following assessment was made by the Planning Inspector in relation to the reduced education contribution:

*“18. Policy 19, of the ACS, requires developers to make contributions towards infrastructure to enable the cumulative impacts of development to be managed, where appropriate. The policy justification also states that “consideration will be given to changes in economic conditions over time and scheme viability”. The Nottinghamshire County Council’s Planning Obligations Strategy 2018 (SPD) explains the requirement for planning contributions towards education provision at appendix 5. The document sets out that a contribution will only be sought where there is insufficient capacity in local schools. It also identifies that a contribution would not be sought from development that is solely for apartments as these would be unsuitable for families.*

*19. The County Council has identified that the local primary and secondary schools are at capacity. It requests a combined sum of £247,175 to increase school places in Netherfield Primary School and Carlton le Willows Academy. Paragraph 94 of the National Planning Policy Framework (the Framework) discusses the importance of education provision. It explains that a sufficient choice of school places should be available to meet the needs of existing and new communities. It also gives great weight to the need to create, expand or alter schools. Taking the above into account, there is clear justification that an education sum is necessary. I am satisfied that the method and approach to identifying the required education sum is robust and it has been clearly identified where the contribution would be spent. Furthermore, it is not in evidence that the infrastructure objectives would breach the pooling requirements of the Regulations. Subsequently, I am satisfied that the education requirement, the method of calculation and recipient of the sum meets the statutory tests of Regulation 1224 as being necessary and reasonable.*

*20. However, although the original scheme would have provided the requested obligations, the Council’s review of the Viability Appraisal confirms that the scheme cannot make any contributions without becoming unviable. Nevertheless, the appellant has offered a reduced education sum of £75,000 in an attempt to partially off-set the impact of education provision. The Government’s PPG advises that local planning authorities are encouraged to apply flexibility in their approach to viability5 and negotiate where supported with a viability assessment.*

*21. The Framework seeks to significantly boost the supply of housing. This site is within a large settlement, on previously developed land and subject to an extant approval. As such, it is a good housing site within a sustainable location. Importantly, the proposal includes a substantial number of one- and two-bedroom units, with limited access to private garden areas and which would not be particularly attractive to occupation by families. Subsequently, this would lessen the demand for local school places.*

*22. There is agreement between the parties that the viability assessment is both accurate and robust. I am satisfied that if a full education sum was required, the development would be unlikely to occur with the site leading to further stagnation. Although I recognise the conflict with the SPD in terms of education provision, I am satisfied that the full requirement for education contributions would make the scheme unviable.*

23. Consequently, although there is a significant shortfall in terms of the required education contribution that would be normally expected, I am cognizant of the housing delivery objectives of the Framework as well as the sustainability credentials of this site. Moreover, I am satisfied that when the viability appraisal is taken into account, the proposal would make a reasonable contribution towards education provision. As such, the proposal complies with policy 19 of the ACS which seeks developer contributions to contribute towards the delivery of necessary infrastructure, where appropriate. As in the Mansfield case<sup>6</sup>, I find that a reduced contribution would still serve a useful purpose. Moreover, to not make it would leave a greater financial shortfall for the Council. Furthermore, I am content that the submitted Unilateral Undertaking would properly secure the offered education sum.”

In terms of the overall planning balance, the Inspector concluded, as follows:

“29. Although the proposal would not fully accord with the SPD, the proposal would comply with the Development Plan and the Framework. The Framework seeks to significantly boost the supply of housing and establishes that viability is a material consideration in decision making. As such whilst I apply substantial weight to the education needs of the proposal, I attached greater weight to the Development Plan as a whole and the key objectives of the Framework.

30. For the above reasons, and having taken all matters into account, the appeal is **allowed**, and planning permission given subject to the appended conditions and the associated Unilateral Undertaking.”

**Recommendation:** To note the information