

Planning application number: S/0191/16/OL Trap Road

Village: Guilden Morden

Settlement category: Group village

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JUSTIFICATION OF SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

1. Introduction

- 1.1 When securing planning obligations from new development the Local Planning Authority must be satisfied that such requests are compliant with the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and paragraphs 203 and 204 of the National Planning Policy Framework.
- 1.2 One key principle of CIL is that central government recognised that most new developments were not making a contribution towards the provision of, or improvement to, community facilities/infrastructure as the scale of development did not trigger planning obligations in accordance with locally adopted planning policy. CIL ensures a charge is levied on all new development regardless of scale, based on a net impact of new development, and that irrespective of size, all new residential dwellings make a financial contribution.
- 1.3 There is still however a legitimate role for development specific planning obligations to enable a local planning authority to be confident that the specific consequences of a particular development can be mitigated. However, to ensure there is no overlap between planning obligations and CIL contributions, the CIL Regulations 122 and 123 place limits on planning obligations as follows:
 - Regulation 122 of the CIL regulations 6th April 2010 (and paragraph 204 of the NPPF) states that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:
 - (i) Necessary to make the development acceptable in planning terms;
 - (ii) Directly related to the development; and
 - (iii) Fairly and reasonably related in scale and kind to the development.
 - As of April 2015, Regulation 123 of the CIL Regulations set restrictions on the pooling of planning obligations. Local authorities can no longer pool more than 5 S106 obligations together (dating back to 6th April 2010) to pay for a single infrastructure project or type of infrastructure.
- 1.4 Regulations 122 and 123 of the CIL Regulations do not however preclude the use of tariff style contributions to secure planning obligations provided they meet the above requirements of Regulations 122 and 123.
- 1.5 The Planning Practice Guidance (PPG) confirms that tariff style charges may still be used (e.g. the formula set out in the Open Space in New Developments SPD) but that the local planning authority must ensure that the obligation meets the relevant tests for planning obligations in that 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. The District Council has been successful in

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defending the continued use of its tariff style policies during planning appeals, where specific schemes existed.

- 1.6 One example of this is in the determination of a recent appeal in respect of contributions towards several off site public open space projects and community infrastructure for a proposed development at the former Railway Tavern public house, Great Shelford (Ref: APP/W0530/W/15/3133015), which was allowed and granted planning permission at appeal. In this case the inspector concluded that the planning obligations requested by the Council were in accordance with the CIL Regulations and attached weight to them in making his decision (paragraph 10):

'I am also satisfied that the proposed contributions are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with CIL Regulation 122. I have therefore attached weight to them in reaching my decision.'

- 1.7 In respect of an appeal for 50 dwellings at Land to the north of Lanthorn Stile, Fulbourn (APP/W0530/W/16/3144909), where tariff style contributions were also accepted, the District Council sought an onsite LEAP, offsite contributions towards sports improvements and contributions towards a new youth building and where the inspector concluded as follows:

'Policies DP/1 and DP/4 of the DCP require contributions towards necessary infrastructure. The Council has identified deficiencies in outdoor sport facilities and indoor meeting facilities in Fulbourn. The development would create additional demand for such facilities and contributions towards new infrastructure would be necessary. The Council has identified projects on which the contributions would be spent.'

There is also an identified need for additional children's play facilities in the village. Provision could be made on site in this respect but financial provision for future maintenance would be required by means of a planning obligation.'

Cambridgeshire County Council has identified a need for contributions towards early years, primary and secondary education facilities and towards libraries and lifelong learning facilities. The adopted RECAP document requires financial contributions towards waste receptacles.'

The need for the various contributions has been demonstrated to be necessary and to meet the other tests in Regulation 122 of the CIL Regulations. The Council and the County Council have advised that the pooling restriction in Regulation 123 of the CIL Regulations would not be exceeded for the requested infrastructure contributions.'

- 1.8 At a more recent appeal for 35 dwellings at Greenacres Duxford (APP/W0530/W/15/3138791) the inspector concluded:

'In addition to the provision of a contribution to Duxford Primary School as described above, the measures provided for through the Section 106 Agreement dated 16 March 2016 include financial contributions to libraries and lifelong learning, community facilities, off-site public open space, household waste bins collection and a monitoring contribution. The proposal would also provide for 40% of the total net'

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dwellings to be affordable. I consider that these measures comply with the relevant development plan policies and supplementary planning guidance and meet the tests in Regulation 122 of the Community Infrastructure Regulations, 2010. In terms of Regulation 123 which requires obligations to relate to projects where fewer than five contributions have already been provided, I have no reason to believe that this test has not been met’.

- 1.9 South Cambridgeshire District Council has submitted a Draft Charging Schedule, under the Planning Act 2008 and Community Infrastructure Levy Regulations (CIL), for independent examination. Given the close relationship between the proposed rates and the Local Plan, the CIL examination cannot take place until the Local Plan has first been examined. The draft Local Plan was submitted for Examination in March 2014. The latest position and timetable for examination of the draft Local Plan is set out in the Statement of Common Ground.
- 1.10 The District Council does not have a planning obligations SPD and, although the basis of some of the contributions have a formulaic approach, as required by the now abolished planning obligations circular 05/2005, the contributions have regard to the Regulation 122 tests, as set out above, and monies are only sought to mitigate the impact of the development rather than remedy any existing deficiency. In addition, all contributions have regard to the pooling rules set out in Regulation 123.
- 1.11 The Local Planning Authority can confirm that there has **not** been more than 5 generic contributions towards (i) offsite sports space and (ii) offsite indoor community space in Guilden Morden since 6 April 2010 and therefore there is no specific requirement in the CIL Regulation to name specific projects as to how the money will be used. That said planning guidance recommends that decision takers understand how the money is likely to be used to mitigate the impact of the development.
- 1.12 In respect of this application, planning obligations are sought from South Cambridgeshire District Council for:
- a) **Household Waste Receptacles** being a contribution equivalent to £72.50 per house and £150 per flat;
 - b) **Public Open Space**
 - (i) Formal sports in the form of an offsite contribution
 - (ii) Formal children’s play space in the form of an offsite contribution
 - Informal children’s play space in the form of onsite space provision
 - (iii) Informal open space in the form of onsite space provision
 - c) **Indoor Community Space** in the form of an offsite contribution
 - d) **Monitoring Fees** being a contribution of £500.

2. Household waste receptacles

- 2.1 In conjunction with Cambridgeshire local authorities, the RECAP waste management design guide was adopted by South Cambridgeshire District Council on 13th March 2008. The guide contains a toolkit outlining the basis for planning conditions and obligations, and applicants should demonstrate that they have considered this in

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their application submission. It became a supplementary planning document under Cambridgeshire County Council's new Minerals and Waste Plan when adopted by the County Council on 22nd February 2012.

- 2.2 In accordance with the guide and development control policies DP/4 Infrastructure and new developments, developers are required to provide for the household waste receptacles as part of a scheme.
- 2.3 The local cost of providing and delivering each household waste receptacle has been calculated at £72.50 per house dwelling and £150 per flat dwelling to provide the relevant bins.
- 2.4 As above this request has been tested and supported during a number of planning appeals.

3. Public open space

- 3.1 Development Control Policy SF/10 adopted July 2007 states that *'All residential developments will be required to contribute towards Outdoor Playing Space (including children's play space and formal outdoor sports facilities) and informal open space to meet the additional need generated by the development in accordance with the standards in Policy SF/11'*. Policy SF/11 outlines the minimum standards for outdoor play space and informal open space as 2.8 hectares per 1,000 people, comprising:

- 1. Outdoor Sport – 1.6 hectares per 1,000 people
- 2. Children's Playspace – 0.8 hectares per 1,000 people
- 3. Informal Open Space – 0.4 hectares per 1,000 people

- 3.2 The Open Space in New Developments Supplementary Planning Document further divided the children's play space standard to 0.4 hectares for formal children's play space (i.e. equipped play areas NEAPS and LEAPS) and 0.4 hectares for informal children's play space (unequipped play areas i.e. LAPS). The SPD also sets out the threshold at where onsite provision will be required and therefore where it is appropriate to secure offsite financial contributions. It also provides a method by which offsite financial contributions will be calculated in respect of new development.

- 3.3 The open space requirements on a per dwelling is shown in Table 1 below

	Formal sports space	Formal play space	Informal play space	Informal open space
1 bed	21.4m ²	Nil	Nil	5.4 m ²
2 bed	28m ²	7m ²	7m ²	7m ²
3 bed	38.7m ²	9.7m ²	9.7m ²	9.7m ²
4+ bed	53.1m ²	13.3m ²	13.3m ²	13.3m ²

Table 1: Open space requirements per dwelling

- 3.4 Para 2.15 and 2.28 of the SPD explains in full detail how financial contributions (both capital and maintenance payments) are calculated in the event that the necessary provision of onsite open space is not satisfied in full.

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- 3.5 Contributions and/or provision towards Outdoor Sport, Formal Children's Playspace, Informal Children's Playspace and Informal Open Space are sought by the Local Planning Authority to mitigate the impacts of the proposed development.
- 3.6 Section 106 agreements pursuant to any outline approval will be drafted with the relevant tables enabling the final value to be calculated at reserved matters stage.

Outdoor Sports Provision

- 3.7 The Recreation and Open Space Study 2013, forming part of the Local Plan submission, showed that Guilden Morden needed 1.63 ha but has 3.00 ha i.e. a surplus of 1.37 ha of Outdoor Sport Provision.
- 3.8 Guilden Morden has one recreation ground with a cricket pitch; senior football pitch and a mini soccer pitch. The recreation study identified the need to extend the pavilion.
- 3.9 In accordance with policies SF/10 and SF/11 the applicant will be required to make a contribution towards the increase in demand for provision of outdoor sports provision to mitigate the impacts of the proposed development. Failure to make provision for outdoor sports space would mean that the development could not be considered sustainable in accordance with the requirements of the NPPF in particular Section 8.0 Promoting Health Communities.
- 3.10 Guilden Morden Parish Council has said that in order to meet the needs of future residents sports contributions are required to (a) provide outdoor gym equipment for use by both adults and teenagers. This would provide both fun and health benefits and would expect to cost between £15-20,000 and (b) provide improvement to its current "grassy humps which are used by youngsters of the village for biking on. The Parish Council envisages that they could not only be used for BMX (and other types) bikes but also hover boards. The expected cost is £25,000.
- 3.11 The off-site contribution towards the increase in demand for provision of outdoor sports provision is set out in Table 2 below. As an estimate the development would be required to pay £33,000 in accordance with the policy.

Dwellings with number of bedrooms	(£) Contribution per Dwelling
One bed	625.73
Two bed	817.17
Three bed	1,130.04
Four bed	1,550.31

Table 2: Contribution towards Outdoor Open Sports Space per dwelling

Formal and Informal Playspace

- 3.12 The Recreation and Open Space Study July 2013, forming part of the Local Plan submission, showed that Guilden Morden needed 0.82 ha Children's Play Space whereas the village had 0.04, i.e. a deficit of 0.78 ha of Children's Play Space.
- 3.13 Children's Play Space is defined as 'Designated areas for children and young people containing a range of facilities and an environment that has been designed to

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provide focused opportunities for outdoor play. Also includes informal playing space within housing areas’.

- 3.14 The open space in new developments SPD goes on to clarify that the ‘starting point for the mix of the Children’s play space will be 50% formal and 50% informal. A lower percentage of formal space may be acceptable if it can be demonstrated that provision of the LAPS / LEAPS / NEAPs hierarchy can be achieved appropriately with less than 50% formal provision’.
- 3.15 The open space SPD (on page 23) explains that a Local Area for Play (LAP) caters for a target age group of 2-6 and provides soft and hard landscaping with features and design to help stimulate imaginative play. A Local Equipped Area for Play (LEAP) has a target age group is 2-8 (focussing mainly at 4-8) and has 9 pieces of play equipment (which will comprise at least 6 pieces of play equipment for 4-8 year olds and at least 3 pieces of equipment for toddlers). A Neighbourhood Equipped Area for Play (NEAP) has a target age group of 8-14 and may comprise informal ball courts, wheeled sports facilities and/or more traditional equipped areas with a minimum of 8 pieces of play equipment suitable for the age group.
- 3.16 The SPD provides a ‘guide for when on-site provision will be sought’ in terms children’s space facilities (i.e. LAPs, LEAPs and NEAPs). For example the SPD suggests than a LAP is required at 10 dwellings, a LEAP at 50 dwellings and a NEAP at 200 dwellings. A LEAP requires an activity zone of 500 m2 and a NEAP requires an activity zone of 1200 m2.
- 3.17 Although the SPD may at first glance imply that the formal open space requirement is met through the provision of LAPs, LEAPs and NEAPs I do not take the view that the SPD intended that the provision of a LAP or even LEAP in isolation is sufficient to satisfy the formal children’s play space needs of a development alone, where (for example) less than 200 dwellings are proposed.
- 3.18 The reason why this view is taken is that the LEAP only caters for a target age group of 2-8, whereas a NEAP target age group 8-14. If the developer only provides a LEAP It is therefore suggested that the development is not providing a range of facilities or mitigating its impact on the basis that it is lacking in infrastructure for 8-14 years olds.
- 3.19 The SPD says that ‘Where full provision of outdoor play space is not made on site, additional land or funding will be secured through the Section 106 Agreement or via planning obligations / conditions for improvements and / or extension to existing recreation facilities. This will be based on considerations within the village or adjoining area and will be determined in consultation with the Parish and District Councils’. Logic would therefore suggest that an offsite contribution is needed to provide children’s play equipment for those age ranges not being provided for onsite.
- 3.20 Based on a likely housing mix the development would be required to provide 300 m2 of formal play space and 300 m2 of informal play space. As the site is not for 50 dwellings under normal circumstances it would not be required to provide onsite equipped space (i.e. the minimum size required for a LEAP is 500 m2).

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- 3.21 The open space in new developments SPD states that a LEAP serves an area of 450 metres distance (i.e. a 6 minute walk). The nearest play area to this site is around 350 metres away.
- 3.22 The open space SPD would require formal play space contributions as set out in accordance with the following table (on the basis that informal play space is provided onsite). Guilden Morden Parish Council has identified a that project that they wish be delivered as being a new playground at Guilden Morden primary school on the basis that the current equipment has been condemned and there is little prospect of it being replaced. The money would be used to provide either fixed or portable equipment.
- 3.23 The level of contribution is set out below and which would generate a contribution in the region of £49,000. Any residual monies would be used to help fund the shortfall of the BMX project which is classified as both sports and play).

Dwellings with number of bedrooms	(£) Contribution per Dwelling
One bed	0
Two bed	1,202.78
Three bed	1,663.27
Four bed	2,281.84

Table 3: Contribution towards formal children's play space per dwelling

Informal Open Space

- 3.24 The Recreation and Open Space Study July 2013, forming part of the local plan submission, showed that Guilden Morden needed 0.41 ha of informal open space and had no areas defined as informal open space.
- 3.25 In accordance with policies SF/10 and SF/11 the applicant will be required to make a contribution towards the increase in demand for provision of informal open space. The space requirement is set out in Table 1 above with the total provision to be calculated based on the approved housing mix.
- 3.26 The informal open space requirement (and informal play space requirement) is satisfied through the provision of a publically accessible green space proposed being located within the development.

Contributions towards the maintenance of open space and play facilities

- 3.27 Paragraph 2.19 of the Open Space in New Developments SPD advises that '*for new developments, it is the developer's responsibility to ensure that the open space and facilities are available to the community in perpetuity and that satisfactory long-term levels of management and maintenance are guaranteed*'. The Council therefore requires that the on-site provision for the informal open space and the future maintenance of these areas is secured through a S106 Agreement.
- 3.28 It is the Local Planning Authority's preference that the public open space is offered to Guilden Morden Parish Council for adoption but recognising that the Parish Council has the right to refuse any such offer.

4. Community Facilities

- 4.1 In accordance with Development Control Policy DP/4 infrastructure and new developments, all residential developments generate a need for the provision of, or improvement to, indoor community facilities. Where this impact is not mitigated through onsite provision a financial contribution towards offsite improvement works will be required.
- 4.2 The Council undertook an external audit and needs assessment undertaken in 2009, in respect of all primary community facilities in each village. The purpose of this audit was threefold (i) to make a recommendation as to the indoor space requirements across the District (ii) to make a recommendation on the type of indoor space based on each settlement category and (iii) make a recommendation as to the level of developer contributions that should be sought to meet both the quantity and quality space standard.
- 4.3 Whilst not formally adopted as an SPD, this informal approach was considered and approved at the Planning and New Communities portfolio holder's meeting on 5th December 2009 and has been applied since.
- 4.4 Firstly the audit recommended the provision of 111 square metres of indoor community space per 1,000 people.
- 4.5 Secondly the audit recommended that for Minor Rural Centres the indoor community space should be as follows:
- Rural Centres should have at least one good sized facility which offers access to community groups at competitive rates.
 - The centre should feature one main hall space suitable for various uses, including casual sport and physical activity; theatrical rehearsals/performances and social functions. The facility should also offer at least one meeting room.
 - All facilities, including toilets, should be fully accessible, or retro-fitted to ensure compliance with Disability Discrimination Act legislation wherever possible.
 - Facilities should include a kitchen/catering area for the preparation of food and drink. The venue should have the capacity for Temporary Events for functions which serve alcohol.
 - Where practical and achievable, new build facilities should be delivered with appropriate energy-efficiency measures in place, although this should be undertaken with the balance of expenditure/saving in mind, given the likely hours of usage.
 - Facilities should be designed to offer ease of management, as volunteers are likely to be primarily responsible for day to day upkeep.
- 4.6 Thirdly the audit also established a tariff in respect of providing and maintaining (i.e. capital and revenue) sums necessary to provide such facilities. These values formed the basis of contributions being sought from new development. The cost of providing offsite community space provision equates to £212 per person (comprising

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£166.50 for capital cost and £45.50 for maintenance cost). Further details of calculating the capital and maintenance costs are included at paragraphs 5.14 to 5.33 of the audit.

- 4.7 In accordance with the policy Guilden Morden needs 111 m2 of indoor community space whereas it has 85 m2 resulting in a deficit of 26 m2.
- 4.8 Based on the likely number of people arising from the development an area of circa 8 m2 is required.
- 4.9 Guilden Morden is served by Guilden Morden Village Hall which the audit said was a predominantly wooden building which is showing some signs of aging. Not ideal for sport/leisure pursuits, the hall has received some investment and has a newly finished kitchen/changing area. Plans for replacement are underway.
- 4.10 The audit highlighted a number of improvements and the Parish Council have said that they intend to use the money for the redecoration of the village hall followed by the installation of a new 4k/w PV system.
- 4.11 A financial contribution based on the approved housing mix will be required in accordance with the published charges as set out in Table 5 below.

Dwellings with number of bedrooms	(£) Contribution per Dwelling
One bed	248.08
Two bed	371
Three bed	513.04
Four bed	703.84

Table 4: Requirement for indoor community space per dwelling

5. Monitoring Fees

- 5.1 To ensure the proper and timely provision and perpetual usage of onsite infrastructure (including public open space, children's play areas and affordable housing) the District Council is seeking to secure a contribution towards fulfilling its monitoring function. Although the physical site monitoring undertaken by the Council will not have an end date as such, the Council considers it right to cap this at the time necessary to monitor the site throughout its construction and for a short time thereafter. The estimated number of hours result in a contribution of £500.
- 5.2 The District Council is aware of the Judicial Review for Oxfordshire County Council dated 3rd February 2015 where the Honourable Mrs Justice Lang determined that on straight forward matters (i.e. one off financial payments), securing a section 106 monitoring fee would not meet the tests as set out in CIL Regulation 122. Due to the nature of this application the District Council consider that securing a monitoring contribution does accord with the CIL tests and is not contrary to the views given by Mrs Justice Lang.
- 5.3 Furthermore the request for a District Council monitoring contribution was considered by the planning inspector when approving a previous application for 90 dwellings (APP/W0530/A/13/2209166) and in reaching his decision the planning inspector determined that 'In these circumstances I am satisfied that provisions set

out in the Agreement are compliant with paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy [CIL] Regulations 2010’.

- 5.4 The Council can confirm that it has also secured monitoring contributions in other developments (of smaller scale to this appeal site) as part of planning appeal decision post the Oxfordshire Judicial Review.

6. References

Open space in new developments SPD 2009

<https://www.scambs.gov.uk/content/open-space-new-developments-spd>

Recreation study 2013

<https://www.scambs.gov.uk/content/recreation-and-open-space-study-july-2013>

Community Facilities Assessment 2009

<https://www.scambs.gov.uk/sites/default/files/documents/Community%20Facilities%20Audit%20-%20Sept%202009.pdf>

RECAP waste management design guide

http://www.cambridgeshire.gov.uk/info/20099/planning_and_development/49/water_minerals_and_waste/6

National Planning Policy Framework 2012

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

Planning practice guidance

<http://planningguidance.communities.gov.uk/>