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For the attention of Head of Legal
Our ref CHBG/SHEF/NT1953.00214
Your ref 3/19/0790/OUT

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5 April 2024

Dear Recipient

Archers Spring Planning Application 3/19/0790/OUT (“Application”)

S106 Contribution to Panshanger Park

We represent Tarmac Trading Limited in its capacity as owner of Panshanger Park.

We understand that the Application is to be determined at the Council’s next Development Management Committee on Wednesday 10 April 2024.

Our client’s planning advisers, David Lock Associates, wrote to Jill Shingler (the then case officer for the Application) on 13 September 2019 highlighting that the applicant had not committed to make any contribution to Panshanger Park as required by Policy HERT3 of the District Plan.

Policy HERT3 says this:

“Policy HERT3 West of Herford

...

III. The development of around 300 dwellings to the north of Welwyn Road is expected to address the following provisions and issues:

... ***(n) contributions towards the Panshanger Country Park;”***

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We have now seen the officer's report for the Application which at 12.2 and 13.1 refers to a contribution of £337,133 "*towards the costs of provision, improvement and maintenance of parks and gardens and amenity green space facilities*", with Panshanger Park being identified as one of four named facilities together with additional unnamed "*gardens and amenity greenspaces in Hertford*" which could receive that contribution.

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the Council to determine the Application in accordance with the development plan (in this case the District Plan) unless there are material considerations to indicate otherwise.

Policy HERT3 requires a contribution to Panshanger Park (see part III, limb n)). So far as we can see from the officer's report, there are no material considerations that indicate that the Application should be determined otherwise in accordance with this policy requirement.

The officer's report therefore fails to correctly set out what the development plan requires in respect of HERT3 and fails to identify any material considerations that would justify a departure from the requirements of the development plan in this regard.

The contribution to Panshanger Park is required by the development plan to make the development acceptable in planning terms. Contributions to "other gardens and amenity greenspaces" may also be secured from the applicant *if* they meet the statutory test in the Regulation 122 of the Community Infrastructure Levy Regulations 2010 ("**CIL Regs**") i.e. 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. We have not seen any analysis to show that the contributions to the other three named facilities or the "other gardens and amenity greenspaces" has been justified in accordance with the CIL Regs.

The officers report also fails to distinguish between the part of the contribution that is required by policy and any part of the contribution that has been justified in accordance with the CIL Regs.

As the officer's report stands it risks failing to properly inform members of the Development Management Committee of the requirements of the District Plan and fails to assess whether the use of all or any part of the contribution for "other gardens and amenity greenspaces" is justified and meets the Regulation 122 test in the CIL Regs.

Our client is concerned that a failure to properly apply the development plan policy in relation to the Application will not meet the legal requirements for the determination of the Application.

We should be grateful if you would ensure that this letter is taken into consideration by members of the Development Management Committee before a decision is made on the Application.

Yours faithfully



CMS Cameron McKenna Nabarro Olswang LLP

Copy to: David Cassidy – Chief Executive
Yvonne Estop – Chair of DMC
Scott Hackner – Planning Officer