



CIL Compliance Statement - January 2026

**APPEAL BY ST MODWEN HOMES
AT LAND NORTH OF ROUNDS GARDENS**

RBC REFERENCE: R24/0111

THE PLANNING INSPECTORATE REFERENCE: APP/E3715/W/25/3373251

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1. Introduction

- 1.1. This statement relates to the Public Inquiry following an appeal by St Modwen Homes against the refusal of redevelopment of the former football pitch and tennis courts associated with the adjacent employment use, including demolition of the existing pavilion and all other remaining structures and enclosures relating to the previous use of the site; and the erection of 115 dwellings, accesses, landscaping, parking, drainage features and associated works.
- 1.2. This statement outlines how each of the obligations requested by the Local Planning Authority would comply with the tests set down in Section 122 and 123 of the Community Infrastructure (CIL) Regulations 2010 (as amended) (the Regulations). The obligations requested were also contained within the Council's Committee Report(CD5.2).
- 1.3. Rugby Borough Council adopted a CIL Charging Schedule on 1 April 2024.
- 1.4. Warwickshire County Council's CIL Compliance Statement outlines the requirements for the obligations they have requested and their CIL compliance. As such the following obligations are not covered within this statement:
 - Libraries
 - Education
 - Road safety
 - Highway works and sustainable transport; and
 - Public rights of way

1.5. The obligations requested from Rugby Borough Council are outlined below and will be discussed in Section 2 of this statement:

- Play and Open Space
- Health Care Facilities
- Affordable Housing
- Sports Provision
- Biodiversity Offsetting

2. Planning Obligations and CIL Compliance

2.1. Paragraphs 54, 56 and 57 of the Framework, policies D3 and D4 of the Local Plan and the Planning Obligations SPD set out the need to consider whether financial contributions and planning obligations could be sought to mitigate against the impacts of a development and make otherwise unacceptable development acceptable.

2.2. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) makes it clear that these obligations should only be sought where they are:(a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. If a requested planning obligation does not comply with all of these tests, then it is not possible for the Inspector to take this into account when determining the appeal.

Play and Open Space

2.3. Policy HS4(a) of the Local Plan states that residential development of 10 dwellings and above shall provide or contribution towards the attainment of the

Council's open space standards as set out within the policy. It also states that contributions through CIL/S106 will be sought from developments where the proposal would further increase an existing deficit in provision or where the proposal will result in the provision standards not being met within the ward or parish it is located within (contained within appendix 4 of the local plan). Policy HS4(b) states that new open space should be accessible and of high quality, meeting a set of criteria.

2.4. Appendix 4 sets out the surplus and deficits for each parish/ward and concludes the following for Benn Ward (reference 2):

Parish	Population	Provision	Children's Play (0.2ha per 1,000 pop.)	Natural and semi natural (2.5ha per 1,000 pop)	Amenity Greenspace (0.5ha per 1,000 pop)	Allotments (0.8ha per 1,000 pop)	Parks and Gardens (1ha per 1,000 pop)
Benn Ward	8,204	Current Provision	0.38	1.11	1.01	0	5.07
		Surplus/ Deficit	-1.26	-19.40	-8.01	-5.33	-7.23

2.5. The site is also directly adjacent to New Bilton Ward for which appendix 4 shows the following (reference 7):

Parish	Population	Provision	Children's Play (0.2ha per 1,000 pop.)	Natural and semi natural (2.5ha per 1,000 pop)	Amenity Greenspace (0.5ha per 1,000 pop)	Allotments (0.8ha per 1,000 pop)	Parks and Gardens (1ha per 1,000 pop)
New Bilton	8,298	Current Provision	0.54	4.19	4.63	3.58	7.82
		Surplus/ Deficit	-1.12	-16.56	-4.50	-1.81	-4.63

2.6. The above tables show that there is a deficit of all types of open space within both wards. It is deemed that Parks and Gardens could not be provided on site due to the nature of this typology however Caldecott Park is within the accessibility requirement of this site therefore a contribution can be made towards that existing provision. This park also includes children's play equipment as does York Street Play Area directly adjacent to the site. Therefore, this typology is not required on site as there is provision accessible to the site for which a financial contribution can be made towards this provision.

2.7. In relation to allotments it is deemed that this typology is not required to be on site in this case and there are no sites within the accessibility requirements therefore a contribution cannot be requested in relation to this.

2.8. There is a deficit of amenity greenspace and natural/semi-natural within the ward and there is no provision of either typology within the accessibility requirements of the site (300 metres and 720 metres respectively). Both of these provisions are therefore required to be provided on site (0.31ha of amenity greenspace and 0.69ha of natural and semi-natural). In relation to amenity greenspace there is a requirement for dwellings to be within 100 metres of a Local Area of Play which can be tied into this typology.

2.9. The Planning Obligations SPD states that where on site open space is not provided an off-site contribution is required towards Play and Open Space, subject to negotiation with the Council.

2.10. Interventions will be required within the central green space and the eastern green space to ensure space is used, naturally surveilled and does not attract anti-social behaviour. It is considered that in this instance an off-site

contribution can be made towards Children's Provision (i.e. LEAP) as there are two LEAP's which are accessible to the site (within 400 metres) and Parks and Gardens – Caldecott Park and York Street Play Area.

2.11. There are SUDs area proposed on site (0.72ha) however these are drainage features and not considered to be public open space.

2.12. The table below shows the amount of open space which should be provided on site. A contribution would be sought for the maintenance of the on-site open space in accordance with the SPD and calculated as follows:

Type – Open Space	On-site provision	Cost of Maintenance (per sqm)	Maintenance time period	Cost of maintenance provision
Amenity Greenspace	0.34ha	0.54	5	£9,180
Natural/Semi-Natural	0.86ha	0.57	5	£24,510

Note: the maintenance is calculated as provision (sqm) x cost of maintenance x time period.

2.13. The obligations for off-site provision in line with the above assessment is as follows:

Type – Open Space	Local Plan provision requirement	Cost of Provision	Off-site cost of provision	Cost of Maintenance	Maintenance time period	Cost of maintenance provision
Children and Young People	0.0552	12.65	£6,982.80	2.91	10	£16,063.20
Parks and Gardens	0.4140	37.72	£156,160.80	0.95	10	£39,330.00

2.14. The planning obligation is necessary to make the development acceptable in planning terms; is directly related to the development; and is fairly and reasonably related in scale and kind to the development. The formula used to calculate the cost for maintenance are provided by up to date costings for these types of open space and the obligations are based on the proposed dwelling number and related population growth in the area. The obligations are related in

scale and kind to the development and its impacts upon the surrounding publicly accessible open spaces.

2.15. The contribution meets the tests laid out in paragraph 58 of the National Planning Policy Framework and guidance on Planning Obligations in the Planning Practise Guidance. The contribution sought also fulfils the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended by the 2011 and 2019 Regulations).

Health Care Facilities

2.16. Paragraph 96 of the NPPF states that planning decisions should aim to achieve healthy, inclusive and safe places and enable and support healthy lifestyles, especially where this would address identified local health and wellbeing needs.

NHS Trust - University Hospitals Coventry and Warwickshire (UHCW)

2.17. UHCW have requested a contribution to address NHS revenue shortfalls for acute and emergency treatment. This is by way of a monetary contribution of £192,721.00 towards the funding gap in respect of A&E and acute care at University Hospitals Coventry and Warwickshire.

2.18. The request states that it is not possible for the trust to predict when planning applications are made and delivered and therefore cannot plan for additional development occupants as a result. It also states that the funding is negotiated on a yearly basis and this will eventually catch up with the population growth. It is rare that a development is permitted and delivered in the same year and therefore it seems difficult to accept that predication on population growth in line with Council's five-year housing land supply positions could not be made.

2.19. It is stated that the Trust's hospitals are now at full capacity and there are limited opportunities for it to further improve hospital capacity utilisation. The population increase associated with this proposal is stated to directly impact the Trust by adding 802 acute interventions. Due to this the Trust would be required to source agency staff to meet this additional demand until it is in receipt of ICB funding to enable recruitment of substantive posts to manage this additional demand.

2.20. This contribution has been considered and it is not considered that the payments to make up funding which is intended to be provided through national taxation can lawfully be made subject to a valid Section 106 obligation, and such payments must serve a planning purpose and have a substantial connection to the development and not be merely marginal or trivial. Notwithstanding the above, the legal requirements of reg. 122(2) of the CIL Regulations 2010 (as amended) are also not satisfied due to the quality of information submitted by UHCW. The contribution is not necessary, when funding for this type of NHS care is intended to be provided through national taxation. UHCW is unable to demonstrate that the burden on services arises directly from the development proposed, opposed to a failure in the funding mechanisms for care and treatment. The request made is to meet a funding gap over the forthcoming 12 month period and is requested on commencement of development, consideration should be given as to whether it is likely that this development is likely to be built out and occupied by residents from outside of the existing trust area within 12 months, and therefore be the source of burden on services as calculated. UHCW has not demonstrated through evidence that the burden on

services arises fairly from the assessment of genuine new residents likely to occupy the dwellings. Therefore, it has not been demonstrated that the request fairly and reasonable relates in scale and kind to the development proposed.

2.21. Further, the Council understands from the cases of *R(Worcestershire Acute Hospitals NHS Trust) v Malvern Hills DC and others* [2023] EWHC 1995 (Admin) and *R (University Hospitals of Leicester NHS Trust) v Harborough District Council* [2023] EWHC 263 that Acute NHS Trust funding from CCGs (or their successors ICBs) includes an element for population growth. The Trust's request does not appear to acknowledge this nor explain how much of the funding it receives from CCGs / ICBs is attributable to population growth.

2.22. The Council is not satisfied that the Trust has shown that there will be any residual funding gap, nor, if there is such a funding gap, what the size of that gap is. Therefore, it would be unlawful to require the payment of the contribution sought by the Trust.

2.23. It should also be noted that the request made is for 134 dwellings which was the number of dwellings originally proposed on the site. However, this was amended to 115 dwellings during the processing of the application. Therefore, it is not directly related to the development. Notwithstanding this, if the request was amended to relate to 115 dwellings the above assessment still stands.

NHS Coventry and Warwickshire Integrated Care Board(the ICB)

2.24. The ICB has requested a contribution of £250,080 in order to support the additional growth anticipated from the proposed housing development requests contributions for which may be by way of a new build facility or improvement

works which will be for the primary care and healthcare estate within the area of the planned development.

2.25. The total cost of this additional capacity would equate to £250,080. The detailed calculation for this contribution is set out in CD3.15. The contribution would be used for improvements to off-site primary medical care and healthcare facilities at one of the 6 practices specified within CD3.15.

2.26. The provision of a health care contribution for the ICB is required for compliance with policies D3 and D4 of the Local Plan (2019). The requirement of funding for Health Care provision at an identified local GP surgery or healthcare facility addresses the impacts of the development on existing and future needs of this vital infrastructure provision, helping to meet the overarching social objectives contained within the NPPF in achieving sustainable development, thus making the obligation necessary. The identified increase in patients would have a direct impact on the local health care facilities identified, as set out in CD3.15, arising from the additional demand on services directly related to the population generated from the development.

2.27. The extent of the ICB contribution is directly related in scale and kind to the development, the obligation is calculated using population projections applied to all developments of this typology. The obligation sets out current capacity of local services and how this proposal leads to direct impact, the developer is not obligated to provide contributions to address need in excess of that generated directly from the development, therefore, the contribution fairly relates in scale and kind to the development proposal.

Affordable Housing

2.28. Policy H2 of the Local Plan (2019) states that affordable homes should be provided on all sites of at least 0.36 hectares or capable of accommodating 11 dwellings or more. This policy further states that on previously developed land 20% affordable housing would be required and 30% for greenfield sites.

2.29. The provision of affordable housing on this site as a proportion of the housing proposed ensures this requirement is directly related to the proposed development.

2.30. Policy H2 of the Local Plan states the affordable housing provision target on a housing development of this size. If this level of affordable housing is not provided then robust evidence must be submitted to show the development would not be financially viable if the target level of provision was sought.

2.31. A viability assessment has been produced and submitted by the appellant. This was submitted with the original proposal and an addendum following the revised dwelling numbers proposed. This has been independently assessed on behalf of the Council and sensitivity assessed. It has been determined through this process that any financial contributions including the provision of affordable housing would make the scheme unviable.

2.32. A viability review mechanism is proposed to be secured within a S106 agreement. This would confirm whether the scheme's viability has improved over the original permission, the landowner/developer would become liable for additional developer contributions. If viable to provide affordable housing then this would be fair and reasonable in terms of scale and kind having regard to the particular viability circumstances of this case.

Sports Provision

2.33. Policy HS4(c) of the Local Plan states Public open space, sports and recreational buildings and land, including playing fields within Open Space Audit evidence and/or defined on the Policies Map and/or last in sporting or recreational use should not be built upon unless:

An assessment has been undertaken which has clearly shown the open space, building or land to be surplus to requirements; or

It can be demonstrated that the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

The development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.

2.34. The appellant submitted a Sports Mitigation Strategy (January 2024) in support of the application. This sets out the areas of the site covered by the sporting uses as follows:

- Sports Pitch – 10,700.7 sqm
- Sports Pavilion – 1,247.7 sqm
- Pavillion car park – 2155.2 sqm
- Tennis Courts – 1,901.9 sqm

2.35. The obligations relating to sporting uses on the site are to demonstrate that the loss from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location in line with Policy HS4 of the Local Plan.

2.36. A contribution towards tennis provision at Caldecott Park, toward football provision and scheme of provision of pavilion facilities and associated car parking alongside the football provision are sought.

2.37. It is considered that these obligations are necessary for the above reasons, they relate directly to the development as the sporting uses that would be lost within the proposal and they are fair and reasonably related in scale and kind to the development.

2.38. The provision of these obligations is required for compliance with policies HS4, D3 and D4 of the Local Plan (2019).

Biodiversity Impact/Offsetting

2.39. Policy NE1 of the Local Plan states that development will be expected to deliver a net gain in biodiversity and be in accordance with the mitigation hierarchy.

2.40. Habitat/biodiversity metrics were submitted with the application and revisions received. Agreement has not been reached on the metric provided to ensure a net gain is achieved.

2.41. It is therefore not known at this time if biodiversity net gain can be achieved on-site or will need to provide compensation for this impact in line with policy NE1 of the Local Plan. If required this could be achieved through a biodiversity offsetting scheme which means a scheme to compensate for any Biodiversity Loss, either through on-site mitigation and/or by off-site offsetting and/or by payment of an Offsetting contribution. It is necessary to secure this within a S106 Agreement to ensure the development would result in a net gain to biodiversity in accordance with policy NE1 of the Local Plan.

2.42. The need for biodiversity offsetting arises directly as a result of the impact of the proposed development on biodiversity on the appeal site.

2.43. The size and type of offsetting required to be provided would be proportionate to the calculated net biodiversity loss.

2.44. The financial contribution to WCC is based on a defined methodology used to calculate how many 'biodiversity units' need to be paid by a development to offset their biodiversity loss. The contribution compensates for the residual loss of biodiversity caused by the development based on the Defra Biodiversity Offsetting Metric used to measure biodiversity loss. WCC would use this money to funding long-term conservation projects in the area surrounding the Development which will deliver biodiversity gain.