

TRAFFORD COUNCIL

NEW CARRINGTON – PROPORTIONATE CONTRIBUTIONS PENDING MASTERPLAN

ADVICE

Introduction

1. I am asked to advise Trafford Council (“the Council”) as to the correct approach to “proportionate contributions” in the New Carrington allocation (“the Allocation”) under policies JP – Strat 11 and JPA30 pending the finalisation of the Masterplan required under criteria 1 of JPA30 in the light of:
 - (1) the judgment of the High Court in *Trafford Council v. Secretary of State & Peel NRE* [2026] EWHC 261 (Admin) handed down on 20th February 2026 (“the Judgment¹”) in which the inspector’s decision granting permission to Peel for B2/B8 development at Manchester Road (“the Peel Decision”) was quashed; and
 - (2) the decision in Voltage Park given on 22nd December 2025 (“the VP Decision”) allowing Blackrock’s appeal against the Council’s refusal of B8 development in the second phase of Voltage Park.
2. Of course, the Judgment addresses only the legality of the Peel Decision -it does not dictate a specific approach to decision making in other cases nor purport to lay down general rules. It is, however, necessarily based on the application of the correct legal approach to the facts there. I draw on its approach and that in other cases to set out what I consider to be a robust and legally correct and appropriate framework for decision making.
3. I understand that this Opinion will be made public and will be used to inform the Council’s position on all future applications and appeals pending the finalisation of the Masterplan.
4. In summary:
 - (1) the Judgment vindicates the Council’s interpretation of policy;
 - (2) the requirement for proportionate contributions is a fundamental part of the policy framework even in advance of the masterplan being completed;
 - (3) the consequences of any development not making a contribution are necessarily material planning considerations and, given the viability position and the shortfall in funding of necessary infrastructure, are self-evidently harmful to the delivery of the allocation;

¹ References to paragraphs of the Judgment are given as “[J:para no]”

- (4) those matters must be considered;
 - (5) it is not sufficient just to consider on highways whether a development assessed in isolation would cause “severe” impacts – the policy framework and requirement for major strategic infrastructure is a key element in the decision making;
 - (6) the reg 122 tests need to be applied in the context of that policy framework – and not independently of it. Any suggestion to the contrary in Voltage Park is wrong;
 - (7) the Council has moved forward on multiple evidential matters which make the interim case for the IPS interim contribution even stronger;
 - (8) the recent Government and GMCA decision to approve in principle to provide substantial funding to the Carrington Relief Road (“the CRR”) needs to be reflected in future decisions on the quantum of contributions; and
 - (9) faced with all that the Council should refuse applications where there is no proportionate contribution (subject to viability), resist any appeal on the basis set out in this Advice, and ultimately challenge as a matter of principle any grant without properly addressing the proportionate contribution issue.
5. I note that the contrary approach advocated by developers and epitomised by that of Peel in the Peel Decision has been found to be wrong in law.

The Allocation – relevant policy and its interpretation

6. We are here concerned with development sites within the Allocation.
7. The Allocation was made through recent, up to date, NPPF compliant policies JP Strat 11 and JPA30 of Greater Manchester’s Places for Everyone development plan document (“PFE”).
8. JP - Strat 11 (“Strat11”) makes the Allocation for 5000 homes and 350,000 sq m of employment. As the supporting text made clear it was to deliver “transformational mixed use development” (PFE para 4.72) and the “scale and mix of development *and associated infrastructure necessary* to ensure the development is sustainable and delivers inclusive growth” - thereby enabling New Carrington to “function as a sustainable neighbourhood within Greater Manchester rather than an isolated community” (para 4.73).
9. Fundamentally, Strat11 established that major sustainable transport and highway improvements (including the CRR and M60 Spur) were required for the Allocation:

“Major investment in active travel, public transport and highway infrastructure such as the Carrington Relief Road, improvements to

Junction 8 of the M60 and public transport corridors will be delivered to support the development of New Carrington ensuring it is well-connected to the rest of Greater Manchester” [Strat-11 Text]

10. The centrality of that infrastructure was accepted by the High Court: [J:33-34].
11. That infrastructure was necessary to deliver that basic premise and purpose of the Allocation and to avoid the local highway network being overwhelmed. There is no doubt that absent especially the CRR and the Spur but also distributor roads delivery of the Allocation will result in severe highway impacts. If this is put in doubt by any party it can readily be proved through the transport assessments underpinning the Allocation and, if necessary, by updated analysis.
12. JPA30 sets out the requirements which development under the Allocation would have to meet including Criteria 1 which provides, so far as relevant, that:

“Development... will be required to:

- 1. be in accordance with a masterplan.... The masterplan must include a phasing and delivery strategy as required by policy JP-D1²...The masterplan will be prepared in partnership with key stakeholders to ensure that the whole allocation is planned and delivered in a co-ordinated and comprehensive manner with proportionate contributions to fund necessary infrastructure”*** (underlining added)

13. As is standard for large, multi-landowner allocations requiring major infrastructure, that policy framework embodies an allocation wide approach to assessing infrastructure requirements and to the delivery and funding of it to secure for the whole that which is necessary for the whole (“the Allocation Wide Approach”) rather than a “Piecemeal Approach” of assessing the infrastructure needs of each plot in isolation from the wider whole.

14. As the judge held:

”the policy is one of seeking to distribute the costs of necessary infrastructure amongst the component sites and landowners” [J:72].

15. I note that in the *Manchester Road* challenge that understanding of the policy was not disputed. Instead, what was in issue was whether that imperative to distribute

² JP – D1 para 7 requires a delivery strategy to set out “what needs to be provided by when and who will fund and deliver it” [CB/130]

the costs of the whole across the whole applied pending the Masterplan with Peel and the SoS contending just that the Allocation Wide Approach did not apply in the absence of, and pending, the Masterplan.

16. As the judge held [74], adopting the central plank of the Council's case before him, despite the difficulties posed by the stage reached with the Masterplan:

“proportionate contribution[sic] is...a plain, prominent and clear aspect of the development plan and it is fundamental to its purpose”

which had to be, and had not been, addressed.

17. Thus, the Allocation Wide Approach is a central and essential feature of the Allocation.

18. I consider that any Piecemeal Approach is fundamentally inconsistent with it (as I develop below).

19. The Masterplan is the *policy compliant* route to delivering that Allocation Wide Approach delivering proportionate contributions – but, and this seems to me to be the fundamental point, the Allocation Wide Approach, as a matter of policy interpretation, is not disapplied or inapplicable pending the Masterplan as the Judgment makes clear.

20. Criteria 1 makes it plain that development must be in accordance with a masterplan which adopts the Allocation Wide Approach – such that all development is subject to the Allocation Wide Approach. The Judgment demonstrates that that approach and thus consideration of proportionate contributions applied in advance of the Masterplan.

21. On the detail, Criteria 1 provides that:

(1) development will be required to be in accordance with a masterplan for the allocation - thus rejecting a piecemeal approach;

(2) the Masterplan must provide a delivery strategy for the allocation as required by policy JP - D1 to “ensure the effective development and implementation of the infrastructure needed to deliver the vision and objectives of the Plan” [see J:35]. The vision and objectives of the Plan here are those in JP – Strat 11. The infrastructure is that required for the Allocation viewed as a whole. The delivery strategy will explain (D1 bullet 7) what will be provided by when and who will fund and deliver it; and

(3) the Masterplan will ensure that the whole allocation is planned and delivered in a co-ordinated and comprehensive manner with proportionate contributions – this is what I term the Allocation Wide Approach and a rejection of the Piecemeal Approach.

22. Many of the later criteria of JPA30 are dependent on Criteria 1 for their funding and flow from Criteria 1. Most particularly, under bullet 8, development of the allocation will be required to make provision for new and improved sustainable and highways infrastructure which is a reference to infrastructure required for the Allocation as a whole assessed on an allocation wide basis and having regard to the indicative transport interventions set out in Appendix D. Appendix D sets out the infrastructure needed for the allocation as a whole not least the CRR and Spur.

23. In the Peel case, Peel contended that the list of infrastructure was indicative only and that therefore it was not yet established that it was required. That is wrong for multiple reasons:

(1) the Judgment recognised the centrality of the infrastructure to the acceptability of the Allocation especially but not limited to the CRR and Spur (the two most value significant elements);

(2) the words “indicative” in bullet 8 and “necessary” in appx D have to be read consistently and in their context. It is entirely plain from the Strat 11 and JPA30 that the key infrastructure is “necessary”;

(3) that has never been put in doubt – and if it was now put in doubt would be readily rebutted by substantial evidence already available (and incidentally never challenged in the masterplanning consultation exercises to date); and

(4) even if it is properly described as “indicative” for now, that does not detract from the basic need for major highway infrastructure performing the functions of e.g. the CRR and Spur.

24. This understanding is consistent with the supporting text: para 11.386 – 11.387. The “study” there referred to shows what transport interventions “will be required to mitigate the impact of the Allocation”. Appendix D includes the “necessary” CRR and Spur identified in that study. Thus, the Allocation required major highway infrastructure which had been the subject of study and assessment at that stage.

25. Neither at allocation stage nor in the Peel or Voltage Park³ inquiries did any party dispute (or provide any evidence to call into question) the need for any or all of the “necessary” Appendix D measures to be delivered as part of the Allocation.

³ I did not attend the Voltage Park inquiry but have read all the key proofs, the statements of cases and the opening and closing speeches and have spoken to counsel who represented the Council at that inquiry.

26. The evidence as to the need for the main items of infrastructure seems to me to be overwhelming but in any future inquiry the full historic documentation showing the assessment of the need for that infrastructure could be provided to rebut any suggestion to the contrary.

27. That infrastructure was to be funded (in large part⁴) by the proportionate contributions under Criteria 1. Consistent with the words of JPA30, the supporting text stated (para 11.375):

“...The delivery mechanism must ensure that a mechanism is in place to secure proportionate contributions from all developers within the New Carrington allocation and deliver the wide-ranging infrastructure required. All development will be expected to make a proportionate contribution to necessary infrastructure including transport, social and green infrastructure”.

28. The correct interpretation of policy is a matter of law. The Judgment establishes and is authority for the proposition that

- (1) the requirement for proportionate contributions is a prominent and clear aspect of the development and “*fundamental to its purpose*” (emphasis added) [74];
- (2) pending the Masterplan the policy requirement for proportionate contributions has to be considered; and
- (3) a decision maker has to consider: (1) that fundamental feature: (2) whether to permit a site to come forward without a proportionate contribution; and (3) the effect of the absence of a proportionate contribution on the whole.

29. On the headline interpretation point, the Council’s position from the outset has now been vindicated by the High Court.

The Relevant Highway Impact Test

30. NPPF116 provides so far as relevant that:

“Development should only be prevented or refused on highway grounds if ...the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios”

⁴ Other sources of funding would be netted off from the total so as to leave the sums required to be contributed by development within the Allocation.

31. “Reasonable future scenarios” are newly defined in the Glossary as:

“a range of realistic transport scenarios tested in agreement with the local planning authority and other relevant bodies (including statutory consultees where appropriate), to assess potential impacts and determine the optimum transport infrastructure required to mitigate any adverse impacts, promote sustainable modes of travel and realise the vision for the site”.

32. The NPPG has not been updated since 2014 or to reflect this new wording. The three year timeframe indicated in the NPPG seems inconsistent with the words of the NPPF but in any event the “reasonable future scenarios” to consider are a matter for the experts. I return to “reasonable future scenarios” below.

33. In the Peel case, the interaction between NPPF116 and the development plan policies requiring highway infrastructure was discussed. The inspector had assessed the highway implications of the development as a standalone [J:65(3)] and only against NPPF116. That meant that he had omitted consideration “of the appeal scheme as a contributor to the effects of the allocation as a whole”: [J:77]. His approach was wrong:

“To divorce the policy support for the appeal scheme from the overarching policy framework for the large strategic allocation is a separate with potential consequences which a decision maker has to seek to identify and to engage with....” [J:77]

This is not to say that the Inspector should not have addressed the national policy threshold. Rather, the problem lies in using the result of that assessment in place of a central part of the strategic policy which is designed to ensure that this large allocation has a reasonable prospect of being delivered, and without unacceptable impacts. He needed to do both” [J:78].

34. There was thus a question to be addressed as to whether permission should be refused by reason of the burden which would evidently be placed on other developments if the appeal scheme made no contribution [J:79]. In *Persimmon North Midlands v. Secretary of State* [2011] EWHC 3931 (“*Persimmon*”) the adverse impact was judged “self – evident” [11]. Whilst it is a matter for evidence on viability and the means to deliver necessary infrastructure without

contributions from one or more sites the evidence I have seen to date clearly demonstrates that it is already difficult to viably deliver all the necessary infrastructure even with all sites contributing.

35. The Council's central point that the need for the contributions was not to be judged simply against NPPF116 in isolation from the wider whole was thus vindicated.

The Overall Position under Policy

36. The correct interpretation of policy and how it applies on the facts has thus been established. The approach of Peel and, in reliance on Peel's argument, the Inspector was wrong - it was based on a wrong understanding that the principle of proportionate contributions was not as a matter of interpretation parasitic on the Masterplan first having been adopted and it wrongly treated compliance with NPPF116 when impacts were assessed in isolation from the wider whole as providing a complete answer to the need for highway infrastructure.

37. Subject to any appeal (permission having been refused by the High Court), Peel will now return to a different inspector for redetermination.

Reg 122 compliance

38. Given the conclusions of the High Court on the correct approach to the policy, the issue looking forward is thus not as to interpretation of policy but how to demonstrate reg 122 compliance of the contribution sought.

The Voltage Park Approach

39. The Judgment was after the VP Decision and any "precedent" effect of it is thus necessarily tempered. The history of that case, in any event, demonstrates that a legally wrong turn was taken during it such that the outcome cannot be relied on in later cases.

40. I did not represent the Council in the VP Inquiry – whilst I have read the available material it may be that my understanding of the approach to the central issue in that case is not complete.

41. However, as I understand it, the Appellant there contended that *irrespective as to what the policy said* a relentless focus on the words of reg 122 was required and because reg 122 repeatedly referred to the "the development":

(1) it, its impacts and its infrastructure needs had to be judged in isolation from the wider whole (the piecemeal approach), rather than what I term the Allocation Wide Approach; and

- (2) consideration of the needs of the Allocation viewed as a whole to mitigate the impacts of the Allocation as a whole was wrong.
42. That appears to have been pursued as a legal point - turning on the correct interpretation of reg 122 (as well as a planning judgment on the facts).
43. Thus the necessity and “fairly and reasonably related in scale and kind” tests were to be considered only by reference to the impacts of the development in isolation and not the impacts of it on the wider whole.
44. Thus, so I am told, Council witnesses were cross examined on the basis that their evidence did not and could not show that any particular piece of infrastructure necessary for the wider whole was necessary for or fairly and reasonably related to the “development” viewed in isolation from the whole.
45. Witnesses for the Council appear to have accepted that they could not so show - hardly surprisingly given that that was not the legal or policy framework within which their evidence appears to have been constructed.
46. As I understand it junior counsel for the Council then advised that, in the light of the witnesses’ answers, she could not continue to pursue the Council’s case on the full contributions. The Council thus withdrew its opposition. The Inspector then decided to grant permission without the full contribution based on a development in isolation or piecemeal approach to assessing the necessary contributions.
47. The concession and the consequent Inspector’s approach would have been correct if the premise of the Appellant’s case - I hope accurately summarized above - was correct.
48. If I have understood the Appellant’s approach correctly, I have no doubt that it was not correct. But for the concession, I would have had no hesitation in advising the Council to challenge the decision of the Inspector on essentially the same basis as in the Manchester Road case.
49. The inspector does not appear to have been pointed to any of the directly relevant case law in opening when the focus on “development” in reg 122 was set out. The principal of multi-owner, master-planned major sites being required to make proportionate contributions to infrastructure required for the whole (and not just via CIL) is well-established including at the highest level of the Courts. Any suggestion that that is not reg 122 compliant or that you can only achieve that

through CIL is wrong. As long as the link between the development and the need for the infrastructure is not “trivial”, policy can require, and decision makers can require, contributions towards that infrastructure. An allocation wide approach is lawful and can, as here, be appropriate.

50. Whether it is appropriate in a particular case will of course turn on the facts – but the apparent proposition that a piecemeal approach is required by reg 122 and an allocation wide approach not permissible is wrong.

51. It is necessary to make good that headline point by reference to the statutory scheme and the case law. This analysis should be deployed should any developer seek to rerun the line in Voltage Park including to the High Court if necessary. No similar concession should be made in any future case as made in Voltage Park, and any rerun of the argument should be met with the retort that it is based on a fundamental legal misunderstanding.

The Correct Legal Approach to Contributions

52. S106 of the Town and Country Planning Act 1990 provides for the making of planning obligations restricting the development or use of land or requiring a sum to be paid to the local planning authority.

53. Regulation 122 of the 2010 Regulations provides that a section 106 obligation may only constitute a reason for granting permission if the obligation is: (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.

54. As established above, we are here concerned with major allocations covering multiple landownerships requiring major infrastructure and it is appropriate to focus on the s106 legal principles specifically relevant to that.

55. In headline terms:

- (1) pooled section 106 contributions (and policies to secure them) can be a legitimate approach to providing strategic infrastructure:
 - i. reg 123 of the 2010 Regulations as originally enacted and more so since removal of pooling restriction;
 - ii. former circular 1/97 para B13 – where the development “created some need” for the facility;

- iii. *Aberdeen City and Shire Strategic Development Planning Authority v. Elsick Development Company Limited* [2017] UKSC 66 [2018] 1 P&CR 14 (“*Elsick*”) @ [41] - so long as the development contributes to the cumulative effect, and in a non-trivial way
 - iv. *South Northamptonshire DC) v Crest Homes* [1994] 3 PLR 47 (“*South Northamptonshire*”) - “related”
- (2) such pooled contributions must meet the reg 122 tests (so a policy which required contributions towards infrastructure which did not meet those tests would be an irrelevant consideration: see *Elsick* @ [51]);
- (3) however, to determine whether the reg 122 tests are met one must have regard to the development plan: *Persimmon* @ [12]. A correct understanding of the policies thus provides an essential part of the context in which the reg 122 tests fall to be considered. It is wrong to look at reg 122 necessity and “fairly and reasonably related” requirements as independent of the policy framework (as appears to have been the approach in *Voltage Park*). In *Persimmon* the policy provided for an allocation wide approach (as here) and appropriate contributions. In that context it was held that it was “inappropriate to look at the proposal in isolation”. That was because where the development plan is predicated on an allocation wide and not a piecemeal approach assessing compliance with the reg 122 tests on a piecemeal basis is inappropriate – because it is directly contrary to the policy framework for the allocation which tells one what is necessary to make the allocation acceptable in planning terms. It may be said that *Persimmon* is not seeking to establish generally applicable legal principles (and of course it concerned the legality of the approach adopted by the inspector there rather than the *required* approach) but the logic is, to my mind, impeccable; and should be adopted by the Council in future decision making;
- (4) judgements are of course required (see e.g. *R (Hampton Bishop PC) v Herefordshire Council* [2013] EWHC 3947 - (upheld in the Court of Appeal) - in which Hickinbottom J stated @ [37] that “what is acceptable in planning terms is dependent on a complex web of policies and other material considerations and a series of planning judgements”). However in making those judgments the essential framework of the development plan has to be understood. Further, the development plan may, as here, itself reach judgements as to what is required to make development under the Allocation acceptable in planning terms. Here it did - it said an allocation wide approach and proportionate contributions were necessary to make development under the Allocation acceptable;

- (5) where the development plan makes major allocations across multiple ownerships requiring major infrastructure, in applying the reg 122 tests to an individual application for permission within the allocation it is necessary to look at the needs of the allocation as a whole and thus “*inappropriate* to look at the proposed development in isolation” from the wider whole: *Persimmon* @ [12] and a “unified approach” is justified: *South Northamptonshire* @p59-60. Again these cases do not purport to lay down principles of law in this regard but the logic is impeccable. Looking at the proposed development in isolation from the wider whole would be to overlook the overall impact of that application upon the allocation as a whole. This is the central point which the Judgment accepts; and
- (6) that does not permit the seeking of unrelated contributions. Policies cannot require contributions where there is no, or only a trivial, link between the infrastructure and the development proposed: *Elsick* or where the contribution sought is disproportionate.

56. On the fact of *Persimmon*, where policy requires the contribution to be assessed through an area action plan (or masterplan), pending its adoption (and in *Persimmon* absent an interim approach), it was “clearly correct” that it is not possible to conclude that the contributions on offer, absent the masterplan (or AAP) represented a fair proportion of the overall costs [21] and that alone could justified the refusal of permission.

57. “Certainty” as to the sums is not the test – as is made clear in *South Northamptonshire* @ [63A -B] a *bona fide* estimate is required.

58. Further, that case established that a broad approach can be permissible – [p61A]. There a generally applicable 20% levy on the uplift in land value was applied irrespective as to the specific impact any particular site would have on the need for any particular piece of infrastructure. That approach was permissible.

Persimmon Homes

59. It is appropriate to consider *Persimmon* in more detail.

60. Permission was refused on appeal because the “appropriate” contribution to the infrastructure required by the allocation as a whole could not be ascertained pending the area action plan required under policy. In the High Court, the applicant contended that adoption of the allocation wide approach was flawed –

a piecemeal approach was required. The High Court disagreed. In such cases the piecemeal approach was inappropriate.

61. The facts are similar to those which will arise with this Allocation:

- (1) permission was sought for 200 residential units [2] as part of a large 2000 unit allocation for an urban extension [4] south of Earl Chilton;
- (2) the allocation policy (CS Policy 2) required wide-ranging infrastructure to be provided [5]. Development under the allocation was required to be in accordance with an area action plan (“AAP”). “Appropriate” development contributions would be required. Piecemeal development would not be permitted;
- (3) as here, Persimmon sought permission *before* the AAP was concluded and offered various s.106 obligations related to its immediate site-specific impacts [5] – which “went some way towards meeting the identified infrastructure requirement” [9] but did not offer contributions to the wider infrastructure required for the allocation as a whole including the wider highway requirements;
- (4) the Inspector said absent the AAP he could not be confident that the offered contributions were sufficient to meet requirements of the AAP [6];
- (5) *Persimmon* claimed that it was sufficient that it just met its immediate impacts occasioned by the development of just 200 homes [5] without considering the wider whole. It was contended that the Council could not prove those contributions were inadequate [8] because it had not completed the AAP work to show what further contributions were required;.
- (6) the central proposition was that wider (allocation wide) requirements were: (1) not directly related to the development but only to the allocation “as a whole” [8]; (2) not fairly and reasonably related in scale and kind - that test was met by looking at the needs in isolation [9]; and (3) were thus not necessary.
- (7) the Council contended for an allocation wide approach and argued that it was not possible at that stage to calculate contributions for the overall infrastructure required for the allocation in advance of the AAP and that, until that could be ascertained, any deficit from this development would be likely to result in a greater burden on later development raising the prospect of a shortfall in total funding [9]/[11]; and
- (8) the Inspector agreed with the Council and the appeal was dismissed [9]-[10].

62. The High Court upheld the Inspector’s reasoning:

- (1) it was “self-evident” that the failure to require contributions from this particular developer in respect of the wider aspects of the allocation *may well* inhibit further development [11] – “self evident” because by definition absent contributions from all sites, the burden on other sites would increase or the infrastructure delivery would be imperilled;
- (2) centrally, given that the allocation and its infrastructure needs were part of the development plan, it was “inappropriate” to look at the development “in isolation” from the wider whole [12]. Fundamentally, the “whole” required wider infrastructure matters to be addressed including the wider highway network [13]. Those wider requirements were “directly attributable, though not exclusively so” [13] to the development and “some contribution” to them was “therefore necessary to make the proposed development acceptable in planning terms” – exactly the Council’s position here. Persimmon’s approach inappropriately limited the area of inquiry to the “immediate impact of the particular development of 200 houses... whilst overlooking the overall impact of those 200 houses upon the sustainable urban extension as a whole” [12].
- (3) It was “clearly correct” that absent the AAP it was not possible to conclude that the contributions offered by Persimmon represented “a fair proportion of the overall costs” [21] – with the necessary inference that a fair proportion of the overall costs was the basic requirement as here;
- (4) *Persimmon’s* narrow approach was thus rejected and the challenge to the refusal failed;
- (5) permission would though be capable of being granted once there was a “realistic assessment of the overall costs referable to that plan” [23]. That is what the Council sought to provide through the IPS here.

63. *Persimmon* has been cited with approval in multiple cases since and has not been disapproved in any masterplanned, allocation case requiring pooled and proportionate contributions under an AAP or Masterplan. The Court of Appeal in *Telford & Wrekin v SoS* [2014] EWCA Civ 507 [AB/182] “readily” accepted that there will be cases (as in *Persimmon*) where that approach would be capable of being reg 122 compliant: see [66].

South Northamptonshire

64. A more detailed consideration of this case is also instructive. The essential facts were that:

- (1) expansion of Towcester in multiple sites was proposed requiring major infrastructure including a bypass because the town's infrastructure could not cope with the scale of development;
- (2) a consortium of developers was to pay a "reasonable contribution" under policy;
- (3) in implementing that policy, the Council decided to impose a 20% levy on the uplift in land value consequent on the ability to deliver major development - a standardised broad brush formula which it was said was not specifically tied to the proportionate costs of the infrastructure necessitated by the expansion or the developer's impact on the need for the infrastructure.

65. Crest pursued a root and branch challenge to the policy and implementation of it (rather than await a decision based on that approach).

66. As to the policy itself. the "reasonable contribution" policy was lawful. Having noted the real world realities, the Court applied first principles, the Newbury tests and the principle that a benefit disproportionate to the adverse impact would not be fairly and reasonably related in scale and kind to the development. The policy ensured that contributions related to the development.

67. As to implementation of policy, there was a fundamental challenge on basis that:
(1) the 20% levy was not based on cost of provision of infrastructure; (2) there was no sufficient connection between any individual development and any specific infrastructure; (3) the approach did not address the necessity question; and (4) it amounted to a land tax

68. The Court of Appeal considered that challenge would be made out if the contributions were designed to generate a surplus for council but here:

- (1) the council's approach (recall 20% of LV uplift) was *genuine and bona fide*;
- (2) a broad view was permissible – in that case a flat 20% levy on uplift in land value bearing no necessary relationship with the extent of need for or the demand on the infrastructure to be funded;
- (3) the council was entitled to regard expansion of Towcester and the infrastructure required for it as a unity;
- (4) The infrastructure needs of the expansion were identified and not challenged;
- (5) an equitable contribution scheme was worked up comprising the 20% levy;
- (6) all money would be spent on infrastructure;

- (7) there was no evidence critical of elements used to work up the contributions; no challenge to the bona fides of the exercise and no claim of disproportionate gain to the council;
- (8) thus it was impossible to say the approach was unlawful in principle (although of course the challenge was not to a decision applying the approach on the precise facts of a particular development);
- (9) there was no evidence to suggest that the contribution arising would not meet the reg 122 tests;
- (10) “a genuine pre-estimate” of the developers proper contribution sufficed

69. Thus: (1) a policy requiring appropriate pooled contributions to the infrastructure required for a wide range of sites for residential development was lawful; (2) even a contribution calculated on the basis of the uplift in the value of each area of land by virtue of the policy/allocation was sufficiently connected to the individual developments; (4) the allocation wide or “unified” approach was justified; (5) there was no suggestion that the formula overall would generate an amount disproportionate to the total required – based on a genuine “pre-estimate” of the costs; (6) there was no evidence that the proportionate contribution required from the specific development was disproportionate to the impact of the proposed development on the need for infrastructure presently not there.

The CRR Funding

70. The recent funding decision in respect of the CRR (not the Spur) is potentially a very important material consideration in the Masterplan funding framework and in individual decision making. It is designed to unlock delivery and to ensure that the Allocation delivers on its promise of a sustainable new community. It will, if delivered, mean that the existing difficulty in terms of viably delivering all the necessary infrastructure will be mitigated and it may be that it means that the most recent IPS funding headline figure which needs to be raised from developer contributions changes with a consequent impact on the level of contributions and on viability.

Conclusion

71. I therefore reach the conclusions set out in para 4 above.

David Forsdick KC

Landmark Chambers

30th March 2026