

Community Infrastructure Levy
Planning Policy
Bath and North East Somerset Council
PO Box 5006
Bath
BA1 1JG

Our Ref: 21475/A3/PR/NH

11th September 2014

Dear Sir/Madam

CIL AND PLANNING OBLIGATIONS SPD CONSULTATION

This letter makes representations on behalf of our clients, Curo Enterprise Limited, in response to the above consultation. Our clients are preparing to submit a planning application for residential-led mixed use development including up to 700 homes at Mulberry Park, the former MOD Foxhill site, Bradford Road, Bath.

Proposed Residential Charging Rate

Regulation 13 of the Community Infrastructure Levy Regulations 2010 (as amended) states that differential rates may be set (amongst other things) "*for different zones in which development would be situated*" or "*by reference to the intended number of dwellings or units to be constructed or provided under a planning permission*".

The Planning Practice Guidance (Paragraph: 021 Reference ID: 25-021-20140612) states that:

"Differences in rates need to be justified by reference to the economic viability of development. Differential rates should not be used as a means to deliver policy objectives."

At present, only two different charging rates for residential development are proposed: one for strategic sites (£50), and another for all other sites (£100).

The charging schedule's proposed distinction between strategic and non-strategic sites is in our view based on policy objectives rather than economic viability evidence. The "strategic sites" identified in policies B3A, B3C, KE3A, KE4 and RA5 of the Core Strategy to which the lower rate would apply are the following greenfield sites:

- B3A Land adjoining Odd Down - 300 dwellings
- B3C Extension to MOD, Ensleigh - 120 dwellings
- KE3A Land adjoining East Keynsham – 220 to 250 dwellings
- KE4 Land adjoining South West Keynsham – 180 to 200 dwellings
- RA5 Land at Whitchurch – 200 dwellings

In comparison to these sites, our clients' proposed development at Mulberry Park would be significantly larger, be on brownfield land (with consequential site clearance and decontamination costs) and would provide for a greater degree of on-site infrastructure (including a primary school). Our clients' site will therefore be subject to considerably higher development costs than the strategic sites.

Notwithstanding these higher development costs, our clients' site would, under the proposed charging schedule, be liable to pay CIL at twice the rate of the greenfield strategic sites.

In our view it is illogical and contrary to objective 2 of the Core Strategy for the Council to use CIL to provide a financial incentive (through a lower CIL rate) for the development of greenfield sites ahead of larger brownfield sites.

In addition, there is no reasonable basis for an assumption (implicit in the proposed Charging Schedule) that strategic allocations are any less viable than other sites of similar size. Other sites of comparable size (and therefore subject to the same level of site-specific infrastructure requirements) to the strategic sites may come forward from a number of sources, including:

- Policy DW1 provides for a review of the Core Strategy's housing numbers policies to coincide with the publication of the West of England SHMA in 2016. In our view it is likely that further sites of comparable size to the Strategic Allocations will need to be identified at that point.
- Large brownfield sites, such as our clients' site, may come forward any point, and indeed paragraph 2.22 and policy B1 of the Core Strategy identify other large brownfield former MOD sites at Ensleigh (Lansdown), and Warminster Road (Bathwick) which are expected to come forward for housing.
- Other large housing sites may come forward in accordance with the presumption in favour of sustainable development – which is now enshrined in Core Strategy policy SD1 – particularly if the Council falls below its housing trajectory and is unable to demonstrate a five year supply of deliverable housing sites.

In light of the likelihood of other large sites coming forward, our view is that a lower CIL rate should apply to all large sites¹ rather than just those identified as strategic sites.

This would also accord with the BNP Paribas *Community Infrastructure Levy: Viability Assessment* (May 2014) ("VA"), which found that a lower rate should be applied to the strategic sites because S106 obligations of greater than £5,000 per unit are likely to be sought from them (see VA para 7.7). The requirement for S106 contributions at this level would apply equally to other large sites. S106 requirements for larger sites would arise from:

- the need to provide on-site public open space in accordance with Local Plan 2007 policies B2 and SR.3;
- the need for transport improvements, including to public transport, which are directly related to the development site;
- the need to provide on-site community facilities, sport recreation or play facilities;
- the potential need for on-site school provision (for sites of more than 300 units – see Draft Planning Obligations SPD paragraph 3.9.18).

¹ Further viability testing would be needed to establish the threshold number of dwellings used to define 'large sites', but on the basis of evidence currently available around 120 units may be appropriate.

Each of these requirements arises as a result of adopted policy and, on the basis of the proposed Regulation 123 list, would not be paid for by CIL.

Setting a lower CIL rate by reference to a site size threshold rather than by reference to specific identified sites would 'future proof' the CIL charging schedule and allow it to be applied appropriately to sites that may come forward later in the plan period. This may avoid the need for an expensive and time consuming re-examination of the CIL charging schedule which could otherwise be required as early as 2016 when the review of the Core Strategy housing requirement policies occurs.

In terms of what the lower rate applicable to large sites should be, our view is that, while a rate of £50psqm may allow larger greenfield sites to remain viable, large brownfield sites like our clients' site at Mulberry Park cannot sustain this level of CIL. This is illustrated in the following section. For this reason, in our assessment a nil rate should be set for larger sites. Alternatively, large brownfield sites need to be specifically identified as subject to a nil rate.

Specific Problems for Mulberry Park

The viability evidence prepared to support the CIL charging schedule does not test the viability of a site that is any way comparable to our clients' site at Mulberry Park. Indeed no brownfield sites or sites larger than 300 dwellings are modelled, despite the Core Strategy's reliance (discussed below) on residential completions on large brownfield sites. These are very serious omissions in light of Planning Practice Guidance (Paragraph: 019 Reference ID: 25-019-20140612) which states:

*"In addition, a charging authority should directly sample an appropriate range of types of sites across its area, in order to supplement existing data. This will require support from local developers. The exercise should focus on strategic sites on which the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London) relies, and **those sites where the impact of the levy on economic viability is likely to be most significant (such as brownfield sites)**" (our emphasis)*

In our view the draft CIL charging schedule is therefore not based on appropriate available evidence as required by Section 211(7A) Planning Act 2008.

Our clients' site at Mulberry Park lies within the 'Bath South' sub market area. The most relevant site considered in the Viability Assessment (VA) is site type 9, a scheme of 125 houses and flats in the Bath N, W, S & CV (E) sub market (see Appendix 1 Part 2 of the VA). The viability of site type 9 has been tested in the VA on the basis of the following assumptions:

- Residual S106 costs of £1,000 per unit (as per VA paragraph 4.18)
- 30% affordable housing
- CIL at £100psqm CIL
- No allowance for exceptional costs such as remediation of previously developed sites (see VA paragraph 4.2.6-4.27) or for on-site provision of a primary school

Those assumptions are found to generate the following residual land values based on the different benchmark land values (BLV) modelled:

BLV1 (higher)	Resi land	BLV2 (lower)	Resi land	BLV3 Secondary employment	BLV4 vacant sites/community
-£3,345,114		-£2,505,114		-£1,575,114	-£1,325,114

This causes very significant concern about the impact of the proposed CIL rate on the viability of the Mulberry Park development. This concern is increased by the facts that (a) at Mulberry Park

there will be significant site clearance and remediation costs which are not factored into the VA's assumptions and (b)'residual' S106 costs including on-site greenspace, transport infrastructure and a primary school will significantly exceed the £1,000 per unit allowed for in the VA.

Therefore, on the basis of the available evidence, it appears that the Mulberry Park development could not sustain CIL at £100 or indeed any CIL.

Mulberry Park is identified by the Council as beginning to deliver completions from 2016/17. It is an important site for the delivery of the Council's housing trajectory (as set out in Core Strategy diagram 3a) and is needed to deliver the Plan's strategy for Bath as set out in policy B1.

The proposed rate of CIL threatens the delivery of the Mulberry Park development and other brownfield redevelopments and therefore undermines delivery of the Core Strategy. Accordingly, the draft Charging Schedule is contrary to NPPF paragraph 173 which states that:

"the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened"

For these reasons a nil CIL rate should apply to Mulberry Park and other large brownfield sites.

Concerns over Practical Delivery of CIL Infrastructure

In addition to our aforementioned concerns about the impacts on viability of the proposed charging schedule, we also have concerns about the proposed regime for the delivery of necessary on-site infrastructure.

For example, the inclusion of "*Green infrastructure to deliver the requirements set out in the Green Infrastructure Strategy, including (...) (excluding on site provisions)*" on the Reg 123 list in our view reflects muddled thinking. The result of this would be that smaller schemes adjudged to not require on-site green space provision would just pay the levy, whereas larger sites would be required (by adopted policy) to use S106 to provide on-site green infrastructure in addition to paying the levy. This element of 'double paying' for green infrastructure is a further argument as to why a lower CIL rate should apply to larger sites. The same issue applies to "social infrastructure, including social and community facilities".

A further concern is the physical delivery of the necessary green infrastructure. Paragraph 3.6.1 of the Draft Planning Obligations SPD asserts that "*the Council expects that the majority of green space and allotment facilities will be delivered by CIL*". We question whether this is realistic and whether the Council has the funding, skills and capacity to acquire sites, submit planning applications, engage contractors and then build out green space and allotment facilities to deliver *the majority* of green space required? In our experience this would be a significant departure from the usual approach of developers delivering green infrastructure. If the Council does not consider that it will itself be able to physically deliver the green space for the area's future development, then it needs to adjust its VA assumptions to reflect the cost to developers of doing so.

There is a similar problem with the proposed arrangements for the delivery of school schemes. The Draft Planning Obligations SPD (at paragraph 3.9.18) states that any development of 300 or more residential units may need to provide a school on-site. However, the cost of doing so has simply not been reflected at all in the VA which (as noted above) assumes only £1,000 per dwelling in residual S106 contributions. Consequently, the impact on the viability of large schemes (such as our clients' site) of delivering on-site schools in addition to paying CIL, has not been considered.

Finally, the Regulation 123 list includes the vague category of "Health and Well-being Infrastructure". This items needs to be more closely defined to avoid later uncertainty as to

whether S106 can be used to deliver specific infrastructure which may fall within the broad category.

Conclusions

For the reasons outlined in this letter we consider that further viability work needs to be undertaken to consider the impact of and practicalities of the proposed CIL regime in relation to the delivery of large brownfield sites and other large sites that may come forward but are not Core Strategy strategic allocations.

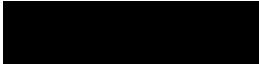
At present the available evidence suggests that the proposed CIL charging schedule would risk rendering unviable the development of the large brownfield sites, including our clients' site at Mulberry Park, on which the Core Strategy relies. For the reasons outlined we therefore do not consider that the currently proposed charging schedule and Regulation 123 list would be capable of being approved by an examiner.

It appears to us that the most appropriate solution would be to apply a zero rate to apply to large sites (as noted above, and subject to further viability testing, large sites may be defined as those of 120 units or more).

The draft Planning Obligations SPD also needs to be reconsidered to ensure that it dovetails with the CIL Regulation 123 list and, most importantly, to ensure that there is an effective mechanism for delivery of the infrastructure needed to support the future development planned in the District.

We trust that the Council will carefully consider the issues identified in this letter in deciding how to proceed.

Yours faithfully



PETER ROBERTS
Associate