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Your ref:

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Dear Sir or Madam,

**Community Infrastructure Levy Draft Charging Schedule and Planning Obligations SPD  
Consultation – 24<sup>th</sup> July 2014-18<sup>th</sup> September 2014 – Consultation Response on behalf of  
Ediston Real Estate**

On behalf of our client, Ediston Real Estate ('Ediston'), we write to you to submit representations in respect of Bath and North East Somerset Council's (B&NES) Community Infrastructure Levy (CIL) Draft Charging Schedule and the Draft Planning Obligations SPD.

Ediston are a leading investment and real estate company, with a portfolio of properties across the UK. The portfolio Pinesgate Bath comprises two office buildings within a site of circa 2.2 acres. Ediston are among the leading investors in Bath, and are currently seeking to bring forward a significant amount of investment in Bath.

Ediston have recently submitted a full planning application at Pinesgate East, which if granted consent will bring forward a net increase of 15,490sqm GIA on this site, which is one quarter of the total target for delivery of Grade A office space in the Core Strategy and will be the first to be delivered in the city in two decades. This would make a significant contribution towards B&NES target of 40,000 sqm of office space.

Ediston intend to investment in additional properties in Bath in addition to Pinesgate, across a variety of use classes and consider themselves to be stakeholders in this consultation. We see continued potential to invest in new development coming forward in Bath, and have therefore taken an interest in this consultation exercise.

Ediston appreciate the requirement to levy contributions to mitigate the impact of development, whether it be via S106 or CIL, as long as it proportionate and appropriate to the level of development. We therefore make the following comments on the Draft CIL charging schedule and Draft Planning Obligations SPD.

**Draft Charging Schedule - Office Accommodation**

BNP Paribas carried out the viability assessment evidence base in respect of CIL for B&NES and their report was published on 28th May 2014. In their summary, at paragraph 1.5 (key findings) they state that

*'Office development is unlikely to come forward in the short to medium term. Although there is an adequate demand for space, this has not generated rents that would be high enough to support new development, particularly in Bath where build costs are significantly higher. We therefore recommend that the Council sets a nil rate for offices.'*

Edison welcome the acknowledgement that office development cannot shoulder the cost of statutory contributions in the current economic climate.

This matter has been further recognised by the Council's Economic Development team in their response to the planning application at Pinesgate East ref. 14/02619/FUL, stating:

*'The range of contributions sought should not be so onerous as to render the scheme unviable. It is noted that the Draft Charging Schedule (DCS) will not levy a contribution from office development, based on the evidence underpinning the document.'*

It therefore stands to reason that any charges levied, be they S106 or CIL, will have the same effect on office development; it will be made unviable. We therefore, support the findings of the BNP Paribas evidence in relation to office development.

### **Planning Obligations**

Review of the draft Updated Planning Obligations SPD does however, raise serious concern in respect of the proposed financial contributions expected by the Council for commercial development through the S.106 mechanism, as this appears wholly contrary to BNP's findings.

- Transport Infrastructure Works

The SPD seeks transport infrastructure works on a site specific basis, which we acknowledge can sometimes be required to make development acceptable. Any requirements to wider transport initiatives should be funded solely by CIL.

There is however, a need to recognise circumstances where the Council's own Transport Strategy seeks to construct transport work which may require land not within the Council's ownership.

- Tree replacement

We challenge the request for a contribution to tree replacement, suggested by the Council, which seeks replacement planting on public land. If trees are removed from a development site, the preference in the first instance should be for the developer to replace trees onsite at their cost, rather than making a contribution to the Council for trees to be planted elsewhere in the city.

- Targeted Recruitment and Training & Mitigation

We strongly challenge the Council's request for a contribution to targeted recruitment. Whilst there is logic to seek a developer to find employees locally during construction

which we support, there is no sound basis to apply a blanket approach to recruitment by seeking a contribution on all major developments, certainly in circumstances where there is no actual loss of employment space. The triggers suggested at 3.7.7 suggest a contribution will be sought regardless of the existing use of a site.

The suggested threshold for a contribution to loss of employment space is fundamentally flawed. When a planning application is made which seeks to change the use of an employment site, there is an existing policy mechanism which requires the applicant to demonstrate that the site is no longer suitable for employment use. In these circumstances, the site will have been marketed and typically vacant. Therefore, the Council should not be seeking a contribution to floorspace which is no longer in use.

Paragraph 3.7.15 states that the Council will seek a contribution on the basis of the total employment level of a premises being lost. This approach makes no recognition of circumstances of where buildings may not be fully let, despite marketing and attempts to fully occupy the floorspace. Furthermore, there is no recognition of circumstances where developments over 1000sqm deliver significant new employment floorspace, as at Pinesgate. In these circumstances, an obligation to employment would be 'double dipping'. The Council's Economic Development team have acknowledged that the pending planning application at Pinesgate East provides a significant opportunity for employment provision and business creation. Using HCA Employment density figures the development could accommodate circa 1,200 jobs and provide a £47m GVA per annum uplift for the local economy. Any contribution in addition to this is unreasonable and unnecessary to make the development acceptable.

There is also no acknowledgement of circumstances whereby an employer may relocate within the district, which results in limited loss of jobs. Or proposals where an employer may move to rationalise their accommodation size, which does not have a direct correlation to the number of jobs provided. This is becoming particularly prevalent in situations where employers 'hot desk' or provide home working opportunities, which are endorsed by the Council in the Core Strategy.

We express further concern that the Council has advised they are still seeking contributions to infrastructure in Bath Western Riverside through the S.106 mechanism.

#### *Updated BWR Planning Obligations Appendix C*

Firstly, whilst the Council presented an updated charging schedule for BWR to Cabinet on 16<sup>th</sup> July 2014, this document has not been published for public consultation as part of the draft updated planning obligations SPD. The public has not been given the opportunity to comment on this document. It would therefore be unlawful for the Council to adopt the BWR element of the SPD without formal consultation.

Secondly, it is evidently clear from the BNP assessment that office development cannot be delivered under the burden of statutory obligations. There is therefore no basis to seek obligations through S.106, when it has been accepted that CIL would render development unviable.

The application of a tariff style contribution by non-CIL charging authorities has been tested at appeal and I make particular reference to APP/N1160/A/10/2131893, where the Inspector concluded that proposed development may give rise to infrastructure improvements but there must be evidence to show what would be required (if anything) to make the development acceptable in planning terms and to allow it to proceed. In the absence of this, such infrastructure improvements are not necessary, directly related to the proposed development or fairly and reasonably related in scale and kind.

Again, in appeal reference APP/E0345/A/12/2178852, the Inspector states that whilst the Council had identified local projects on which money may be spent, it was impossible to conclude that tariff proposed was fair and reasonably related in scale and kind to the proposed development, therefore the request for transport contributions were dismissed.

Whilst the Council may have an existing shortfall to common infrastructure within Bath Western Riverside, it is not for new developments to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives that are not necessary to allow consent to be given for a particular development.

Higher value, non-marginal uses, such as residential development, is better placed to fund infrastructure required within BWR rather than seeking contributions from commercial uses which are marginal in profit terms. The items that the BWR Appendix is seeking to fund relate to infrastructure required for residential-led development rather than commercial development (e.g. education, health, libraries). The Council must recognise that if it has not been viable for recent residential developments at BWR to make a full contribution in line with the BWR SPD, is it not going to be viable for commercial development to contribute either.

### **Student Accommodation**

Bath is host to two major higher education institutions, which is itself an unusual characteristic for a city of Bath's size. This, however, reflect the prominent role that the City has in education and research across a range of academic and vocational disciplines; one which the Council is actively seeking to foster and develop through the 'City of Ideas' initiative.

Based on figures for the 2012/2013 academic session from the Higher Education Statistics Agency, there is a total of 22,925 students enrolled on courses in Bath; equating to 15,060 enrolled at the University of Bath and 7,865 enrolled at Bath Spa University. Taken as a proportion of the total population of Bath, given in the 2011 Census, this equates to 25.8% of the total population of the City (88,859).

The total number of bedspaces in university-managed accommodation is 5,278<sup>1</sup>, accounting for both universities. We have not been able to obtain figures of privately-managed student accommodation in the City, though our research suggests that

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<sup>1</sup> Figure excludes university-managed housing in an HMO style

there is only a very limited presence of privately managed, purpose built, student accommodation operators in Bath.

These figures present a sobering picture of the supply and demand dynamic, and based upon the available statistics, the quantity of managed student accommodation Bath can approximately accommodate only 23.0% of its student populace. The deficit of this accommodation must predominantly be accommodated within the private rented sector and Houses of Multiple Occupancy (HMOs).

The introduction of an Article 4 Direction across much of the city to remove permitted development rights changing residential dwellings (C3 Use Class) to HMOs (C4 Use Class). The driving factor behind this was the impact of HMO accommodation on neighbouring residents and communities, which has particularly focused in the Twerton-Oldfield Park corridor between the two universities. With this restriction on HMO accommodation, there is a more pressing urgency to deliver quality, managed student accommodation to meet the deficit in provision.

The adopted Core Strategy makes no provision to allocate sites or strategic development land for student accommodation, and therefore depends entirely on speculative development to bring forward new bedspaces. Furthermore, it is noted that both Bath Spa University and the University of Bath are encompassed entirely by Green Belt allocations, which significantly constrains their ability to deliver new managed accommodation, thus putting even greater emphasis upon the role of the private sector in bridging this gap.

The Universities alone cannot meet the required demand for student accommodation due to green belt restrictions, therefore the Council cannot meet its objective of reducing HMOs without looking to the private sector to assist with student housing delivery.

#### **Draft Charging Schedule – Student Accommodation**

Having reviewed the proposed CIL rates, we have significant concerns over the requirement of £200 per square metre (p/sq.m) for off campus student accommodation. This figure is derived from a viability study undertaken by BNP Paribas in May 2014, which stated that *'student housing let at commercial rents would be able to absorb a CIL contribution of up to £447 per square metre'*. This takes no account of underlying land values within the City. It does appear that B&NES by adopting such a high charge is seeking to tax student accommodation out of the city centre and onto universities campuses, which is not the purpose of CIL, to be used as a policy mechanism.

Whether or not the development is viable, the question should be whether the CIL level is 'reasonable', given the fact that the proposed level is double the amount to be levied on residential schemes district wide (£100p/sq.m) and quadruple the amount sought from strategic sites and urban extensions (£50p/sq.m) which we believe to have greater infrastructure impacts and demands.

Fundamentally, we question the appropriateness of student accommodation schemes contributing towards all infrastructure delivery programmes. The draft Regulation 123

List broadly identifies the following items of infrastructure as being potential beneficiaries of CIL revenues:

- Strategic transport infrastructure;
- Green infrastructure;
- Early-years provision;
- School schemes;
- Social infrastructure;
- Strategic energy infrastructure;
- Health and well-being infrastructure; and
- Strategic waste facilities.

The characteristics of student accommodation are unique with little or no impact on: education (paid for independently by students and the universities); child play provision; highways improvements which are required as a result of an increase in private vehicular trips (the majority of student accommodation is car-free) and; Libraries (Universities provide library services). There is also a much lower dependency on community, social and healthcare infrastructure as universities typically provide such spaces and facilities (for examples, student unions and societies, performance spaces, sports facilities and playing pitches, primary care clinics etc.) Therefore, we request that the proposed scale of contributions is reviewed to reflect the impact that student accommodation has on these aspects of infrastructure provision.

Having reviewed proposed and adopted charging schedules in other local authorities; the rate proposed by B&NES is substantially higher. Comparable preliminary, draft and adopted schedules across the south west have proposed rates of the following for student accommodation:

- Plymouth City Council (Adopted) - £60p/sq.m
- Wiltshire Council (Draft) - £70p/sq.m
- Bristol City Council (Adopted) - £100p/sq.m
- Cotswold District Council (Preliminary) - £60p/sq.m
- Exeter City Council (Adopted) - £40p/sq.m
- North Somerset Council (Preliminary) - £40p/sq.m
- South Gloucestershire Council (Draft) - £60p/sq.m

We respect the prerogative of the LPA to make its own choices base on local conditions; however, it is self-evident that the proposed levy of £200p/sq.m for off-campus student accommodation is substantially higher than those being charged in other local authorities.

The proposed CIL charging schedule is at a level where the attractiveness of Bath as a place to invest in student accommodation is impeded and this could have substantial implications for associated industries and the local economy as a whole. As such, Ediston would issue their strong objection to the Draft Charging Schedule as it stands.

Furthermore, the exemption for University on-campus accommodation, where the universities are not charged at all, and private developments levied at £200 sq.m is anti-competitive. It is also wholly contrary to the CIL regulations to use CIL as a policy

mechanism. Whilst the LPA may wish to support the aspirations of both Universities to grow, it cannot lawfully encourage this process through a CIL charging schedule.

We have examined the 2014 Viability Assessment prepared by BNP Paribas, and we can find no clear evidence, assessment or analysis of the student accommodation market. The executive summary and conclusion proclaim the assumption that student accommodation achieves positive residential values, and that the private sector is able to achieve higher rent levels. There is no data or assessment to clearly back these claims up throughout the document, nor any reasoned explanation as to why the two-tier approach is proposed.

Paragraph 4.7 suggests that B&NES have sought to engage with developers in March 2014 seeking evidence on development costs, land values, rents and yields, with no data being offered to the Council. No engagement with Ediston was made and my client is disappointed with the missed opportunity from the Council to fully inform the evidence base for the suggested CIL charging schedule.

We have further concerns regarding the assumptions made within the BNP Paribas viability appraisal, particularly in respect of their suggested land values which underestimates the cost of land within Bath City Centre.

The levying of such a high-rate of CIL will jeopardize and stymie delivery of student accommodation, given the varying cost of delivering development across such a sensitive and constrained context as Bath. Each development must account for its own impact and not for existing shortfalls, or for the impacts resulting from other developments. The approach presented here would discourage the development of lower value and complex sites in favour of sites with lower associated costs, particularly given the additional cost typically involved in bringing development forward in Bath. The costs and associated viability varies significantly between projects. The CIL approach may not allow for site specific circumstances (i.e. abnormal site preparation costs) to be factored in, which may have implications for viability (which according to the regulations would not be an acceptable 'exceptional circumstance').

With the above in mind, it is of deep concern that the Council is seeking to disproportionately levy off-campus schemes with such a high level of CIL contribution. The rationale as to why this two-tier approach to student accommodation has been chosen is not clear, nor is it justified by an evidenced approach. The clear outcome of this approach will be to place a disproportionate burden on new private managed accommodation coming forward within the city, and to relieve the burden on housing stock and communities from chronic reliance on HMO accommodation, which is an expressed objective of the Council and LPA.

The draft charging schedule states that on campus student accommodation will have submarket rents set out within a S106 agreement. It is assumed this is sought on the basis of encouraging students to live on campus, rather than in HMO accommodation. This again reads as an attempt to use CIL as a policy mechanism rather than a taxation tool. Whilst, it may be appropriate for the Council to secure affordable housing rates with a Registered Provider, through a S106 to ensure long term perpetuity, it is not considered appropriate or necessary for the Council to dictate the cost of on campus student accommodation.

It is fundamental that within the CIL charging schedule, that the Council provide a definition of 'on campus' accommodation which does not apply solely to university accommodation. There are many opportunities within the city to provide campus facilities and associated accommodation within the City, separate to the ownership of the universities. The Charging Schedule at present makes no acknowledgement that the universities are not the sole provider of education requiring accommodation within the city.

In bringing forward CIL it is required that the LPA take an evidence-based approach to determining and balancing the trade-off between raising funding for infrastructure needs and placing an undue financial obligation on developers, to the detriment of delivery on key planning objectives. In this task, and in relation to the proposed levy on off-campus student accommodation, we content that the LPA has not meet its obligations, and as such our client lodges their strong objection to the Draft Charging Schedule.

If you would like to discuss this matter further, please get in touch: [rebecca.collins@gva.co.uk](mailto:rebecca.collins@gva.co.uk) / 0117 988 5203.

Yours sincerely,



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**For and on behalf of GVA Grimley Ltd**