PART B: REPRESENTATIONS ON BEHALF OF WHITBREAD PLC

Introduction

These representations are prepared and submitted on behalf of Whitbread plc. Whitbread are the developers and operators of branded Premier Inn Hotels, a leading budget hotel chain which is widely acclaimed across the UK for offering exceptional value for money hotel accommodation.

These representations are structured into three parts. Initial consideration is briefly given to the national and local policy context to which regard must be had when setting the CIL levy. Critical analysis of the Draft Charging Schedule is then initially focused on the overall funding gap which has influenced the level of CIL that the Council is seeking to set. This is followed by a detailed critique of the proposed levy for hotels, and the evidence base that supports it, informed by Whitbread's 'real world' experience of developing and operating hotels, including the company's very recent experience in the City of Bath.

Policy Context

National Planning Policy

It is clear from the NPPF that viability and deliverability are central to achieving sustainable development:

> *Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore,* ***the sites and 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****. To ensure viability, the costs of any requirements to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. (para. 173 – emboldening added).*
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> *Where practical, Community Infrastructure Levy charges should be worked up and tested alongside the Local Plan.* ***The Community Infrastructure Levy should support and incentivise new development****, particularly by placing control over a meaningful proportion of funds raised with the neighbourhoods where development takes place. (para. 175 – emboldening added).*

The recently published Planning Practice Guidance (PPG) provides the most up-to-date detailed policy guidance relating to the introduction of a CIL Levy. The guidance is clear in that:

> *Charging authorities should set a rate which does not threaten the ability to develop viably the sites and scale of development identified in the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London). They will need to draw on the infrastructure planning evidence that underpins the development strategy for their area. Charging*

authorities should use that evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential impact upon the economic viability of development across their area. (Paragraph: 009 Reference ID: 25-009-20140612).

The levy is expected to have a positive economic effect on development across a local plan area. When deciding the levy rates, an appropriate balance must be struck between additional investment to support development and the potential effect on the viability of developments.

This balance is at the centre of the charge-setting process. In meeting the regulatory requirements … charging authorities should be able to show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan and support development across their area. (Paragraph 009 Reference ID: 25-009-20140612).

Bath and North East Somerset Core Strategy (Part 1 of the Local Plan) (Adopted July 2014)

In the adopted Core Strategy the importance of hotel development to the local economy is acknowledged. Integral to strategic Objective 3 (Encourage economic development, diversification and prosperity) is**:**

- *Enabling tourism to continue to make an important contribution to the economy of Bath and promoting the tourism potential of other parts of the District e.g. by facilitating the provision of visitor accommodation.*

This is reinforced by Objective 4 (Invest in our city, town and local centres), a contributory factor to which is:

- *Enabling appropriate tourism opportunities in the city and town centres.*

Section 2 of the Core Strategy identifies a number of strategic issues relevant to Bath, which includes the following:

5. The strategy for the city must sustain the critical contribution of tourism to the economy. This means protecting and enhancing the characteristics that make the city special and ensuring that an appropriate level and range of visitor accommodation is maintained.

Deriving from all of the above considerations, the spatial strategy for Bath,that is set out in Policy B1, includes:

8a: Manage the provision of 500-750 new hotel bedrooms to widen the accommodation offer for the city, increase overnight stays and the competitiveness of Bath as a visitor and business destination.

Summary

What follows from the above is that the delivery of hotel accommodation in central Bath is a strategic objective of central importance to achieving sustainable economic development in the city. Therefore, having regard to national policy and guidance relating to CIL, any levy that is set relating to hotel accommodation must be such that it will not threaten the ability to deliver the required scale of new hotel bedrooms identified in the plan.

CIL Funding Gap

The Infrastructure Funding Gap Evidence Base that informs the draft charging schedule identifies two Aggregate Funding Gaps (AFGs) (para. 3.5). The higher figure, of £234 million, represents the projected gap for the total cost of all infrastructure projects identified in the IDP. It includes a very high number of initiatives that are identified as 'desirable', but are not 'essential' to support growth. A second, much lower, AFG of £85 million is also identified which is the projected gap for funding 'key' and 'strategic' infrastructure. Having identified these two AFGs, the Council continues to test the projected CIL income against the much higher AFG of £234 million.

The requirement for CIL should be tested against 'essential' strategic infrastructure required to deliver growth. Therefore, the starting point for testing the current CIL should be the projected AFG of £85 million. The Council's use of the higher AFG figure results in a three-fold escalation in the scale of the deficit, which cannot be justified and can only be taken as an attempt to support the very high CIL levies proposed in the draft charging schedule.

With regard to the evidence base, education and transport are key contributors. However, a significant proportion of each of these categories is not appropriate for CIL levy since it relates to requirements arising specifically from proposed developments, and therefore should be delivered through S106 Obligations. Moreover, there are significant inconsistencies identified in the schedule. For example, CIL funding is identified to contribute to the delivery of new primary schools and early years facilities at Bath Western Riverside and MoD Endsleigh, together with education infrastructure at MoD Warminster Road. This is inconsistent with the approach taken to the strategic sites at Keynsham and Odd Down which are expected to be wholly funded by development. In the case of the Bath Western Riverside site the scale of development is much greater than the strategic sites that are expected to fund new primary schools in their entirety.

Similarly, in relation to transport proposals, it is unclear how the new hourly service from Bath Spa to Severn Beach is 'essential' to support Core Strategy growth given that few residents from Bath are likely to have cause to make that journey. Whilst it might result in additional local stopping services between Bath and Bristol, at a time when the Great Western Mainline is subject to electrification, which will shorten journey times between Bristol and London, any enhancement of local stopping services using the same track is likely to enhance congestion and run counter to the objectives of electrification. It is therefore far from clear that this proposal will be attractive to operators and come to fruition.

Provision of Green Space (Formal, Natural and Allotments) makes a substantial contribution to the essential infrastructure sum. However, it is unclear how this is justified since the growth that comes forward in line with the Core Strategy will be expected to consume its own smoke in this respect through appropriate on-site provision and/or off-site contributions. It is therefore far from clear what is legitimately included in this sum.

A substantial sum is also allocated to the relocation of the Avon Street Car Park. Since this is intended to accommodate development, then at least a significant element of this sum should be developer funded.

It is also unclear how the substantial sum for Pulteney Weir / decommissioning of Radial Gate amounts to essential infrastructure. If this is part of the flood alleviation works necessary to deliver Western Riverside, or other strategic development sites, then it should be developer-funded by those whose sites it will protect. Moreover, flood alleviation infrastructure is not included in the Regulation 123 list. As such, expenditure on such works should not be included in the items that contribute to the AFG assessment for the purposes of determining an appropriate level of CIL.

At the present time the schedule at Appendix 1 is overly complicated and does not provide a clear and robust evidence base to support the AFG, and therefore the CIL charges sought. It needs to be revised as follows:

- Inclusion only of essential infrastructure.
- Exclusion of ‘unquantified’ items.
- More detailed scrutiny of potential funding sources for the reduced schedule, and in particular developer funding for items directly related to proposed strategic sites.

Preliminary analysis suggests that the AFG for essential infrastructure may significantly decrease once greater clarity is provided. It is noteworthy that the assessed AFG has increased sharply from £57.7 million in the Preliminary Draft Charging Schedule published in 2012 to £85 million in the current evidence base. No explanation is given as to the reason for this significant increase. However, it is apparent that, in the intervening period, the Council has compiled an evidence base around a ‘wish list’ of every conceivable infrastructure requirement rather than one that is properly focused on strategic infrastructure that is essential to deliver the Core Strategy growth, and that cannot legitimately be funded through S106 contributions.

Having regard to the foregoing, it is concluded that the identified AFG, and the Infrastructure Funding Gap Evidence Base from which it is derived, is not a robust basis for setting a CIL charge. It requires comprehensive review and reassessment, properly focused on strategic infrastructure necessary to deliver Core Strategy growth, and more finely tuned to provide a more accurate differentiation between infrastructure that can funded through S106 contributions, and that which can legitimately be included as a CIL provision having regard to the Regulation 123 list.

Proposed Levy for Hotel Accommodation

It is accepted that there is insufficient viability to support a CIL levy on hotel accommodation away from Bath. The definition of the zone where it is deemed to be viable, and that where it is not, appears to coincide with the administrative boundaries of the city. It has not been properly justified by viability evidence. Moreover, the contrast in projected viability depending on which side of the administrative boundary a site falls, would appear to be stark. It is not clearly explained or demonstrated how viability can escalate from nil to permitting a levy of £100 per sq m over such a short distance. This would indicate that, if a levy is justified within the administrative area of Bath, it is set at too high a level and will potentially prejudice the achievement of the strategic economic objectives for the city, and therefore would not be consistent with delivering sustainable development.

The nearest comparator against which to benchmark the proposed CIL levy on hotel accommodation in Bath can be found Bristol. In the adopted Charging Schedule a levy of £70 per sq m has been set. This is some 30% lower than in Bath. However, it should be noted that Bristol is a much larger city than Bath, with greater economic diversity and a stronger business base, in particular office sector. As such, the market for hotels is likely to be stronger. In addition, it is less constrained than Bath in terms of the heritage environment, and has a potentially greater range of sites and opportunities for delivering hotel accommodation. This impact upon land values and development costs, and in consequence viability. For reasons outlined below, it is considered that both land values and development costs have been grossly underestimated in the development appraisals relating to hotel accommodation in Bath. If £70 is held to be a viable CIL levy in Bristol, then this indicates that the proposed levy in the draft Charging Schedule for Bath is much too high bearing in mind the factors outlined above that are likely to impact negatively on hotel viability in Bath compared with Bristol.

The clear guidance in the PPG is that a charging authority must use ‘appropriate available evidence’, including direct sampling of an appropriate range of development types across its area, in order to supplement existing data. Moreover, where they decide to set differential rates, the guidance is that they may need to undertake more ‘fine-grained’ sampling, on a higher proportion of total sites, to help them to estimate the boundaries for their differential rates (PPG, Paragraph 019 Reference ID: 25-019-20140612). Such fine-grained analysis does not appear to have been undertaken, rather the administrative boundaries of the city of Bath have been crudely adopted for the purposes of applying the differential rates.

The proposed levy for hotel accommodation in Bath is too high, and is likely to result in such forms of development, particularly schemes incorporating fewer than 120 rooms, being unviable and/or unable to succeed against alternative development types in the very competitive market for very limited development opportunities in Bath. Bearing in mind the importance of tourism to the local economy, the acknowledged deficit of hotel bed spaces in Bath (through the Visitor and Accommodation Study), and the Core Strategy objective to deliver up to 750 additional rooms, this could have a very serious impact on the ability to the deliver the economic strategy for the City to *“… increase overnight stays and the competitiveness of Bath as a visitor and business destination”* (Adopted Core Strategy, Policy B1: Bath Spatial Strategy). The particular impact on hotels of less than 120 bedrooms is likely to affect the scale of hotel operation most likely to seek representation in Bath, including budget and boutique operators which are both acknowledged in the Core Strategy evidence base as being under-represented in the City. Moreover, in view of the constraints imposed by the heritage asset, opportunities for hotel operators to deliver schemes of more than 120 bedrooms in the preferred locations are likely to be extremely limited, and those that are available are likely to be subject to strong competition from competing development types.

Whitbread have very recent experience of procuring new hotel accommodation in Bath, through the recently opened (November 2013) Premier Inn at James Street West, which probably remains the most recent new hotel development in the city pending the opening of The Gainsborough. They can therefore comment authoritatively on the development appraisals that have informed the draft charging schedule from a 'real world' perspective of hotel developer and operator in the City. They have a number of concerns about the hypothetical scenarios that are projected in the evidence base, and which in their view, as a 'real world' commercial developer and operator in the City, and indeed UK-wide, are flawed in a number of respects.

Their concerns can be summarised as follows based on the assumptions in the BNP Paribas hotel viability appraisal that assumes a hotel comprising a total floor area of £30,000 sq ft (2,787 sq m), which equates approximately to an 80-bedroom Premier Inn;

- ***Land Values:*** the assumed land value (£681,600) is unrealistically low. For a city centre site commanding the rental level assumed in the development appraisal, the land value would approximate to £1,400,000 on a forward funded basis, or £1,200,000 if bank funded and sold to a purchaser at lease completion (the difference being in the SDLT saving). The bank funded option is assumed in the viability development appraisal. Based on the recently opened Premier Inn at James Street West, and assuming a development based on bank finance, the 'real world' land value could be in the order of £14,500 per room, some £6,000 per room higher than assumed in the development appraisal. Furthermore, as alluded to above, in reality, a city centre site capable of accommodating a medium sized hotel, will be subject to competition from competing land uses (in particular student accommodation and residential), which may be able to command equal or higher land values.

- ***SDLT / Purchase Costs*:** there is an error in the computation in that SDLT and purchase costs have been added rather than deducted, a difference of £78,400. Furthermore, with a higher land value of the order projected the first bullet above, these costs will escalate (by £50,000).

- ***Demolition Costs:*** these are unrealistically low for a city centre location. They should be adjusted upwards to at least £75,000, and possibly more depending on site constraints.

- ***Construction Costs:*** these are unrealistically low for a site in the centre of the World Heritage City of Bath, with attendant design constraints (largely precluding modular building) and associated abnormal costs of development (requirements for Bath stone elevations, location constraints etc). They should be adjusted upwards by circa £200,000.

- ***Professional Fees:*** these are too low given the complications of working in the World Heritage City of Bath. Moreover, they should incorporate all requirements for surveys, reports, statutory undertakers etc. To this end they should be escalated by £150,000 (i.e. no less than 12.5%).

Revised Development Appraisal

On the basis of the Council's development appraisal, adjusting the inputs as outlined above to reflect the 'real world' scenario derived from Whitbread's recent experience of procuring new hotel accommodation in Bath, gives a very different outcome in terms of the viability of the proposed CIL levy on hotel accommodation:

- ***Proposed CIL Charge of £100 per sq m:*** at this level the Council's appraisal shows a profit of 10%. This is an insufficient return on risk for a developer in the city centre of Bath or to secure bank funding.

- ***Nil Charge:*** even at a nil charge the Council's appraisal shows a profit of only 13.5%, which is likely to be an insufficient return on risk for either a prospective developer or funding institution.

Conclusion

For all of the foregoing reasons it is concluded that there are serious deficiencies in the Council's evidence base underpinning its Draft CIL Charging Schedule. Not only is the assessment of the overall funding deficit, which informs the target at which CIL is aiming, far from robust, but the specific levies proposed for individual development types are not grounded in 'real world' evidence and economics.

Based on their very recent experience of bringing forward, procuring and operating new hotel development in Bath, Whitbread have reviewed and adjusted the inputs to the Council's development appraisal relating to hotels. The outputs from the Council's appraisal adjusted to reflect 'real world' inputs returns very different viability scenarios which indicate that the proposed CIL levy on hotels will preclude viable schemes of development from coming forward. If this is the case, it could have very serious implications for the delivery of the economic objectives of the Core Strategy, and for sustaining the local economy to which tourism is a major contributor.

For all of the foregoing reasons it is concluded that:

- There is a lack of clarity in the evidence relating to the infrastructure funding gap. The total target amount that the charging authority is seeking to raise through the levy, and its appropriateness, therefore cannot be satisfactorily established.

- The proposed levy is not based on robust viability evidence that reflects 'real world' land transactions and development costs.

- The differential rates, between the City of Bath and the rest of the district, and between Bath and the adopted rates in Bristol, have not been justified by economic viability evidence. Direct sampling of an appropriate range and types of sites across its area, in order to supplement existing data, as required by the PPG, does not appear to have informed the process. Therefore the authority has failed to use 'appropriate available evidence' (PPG, Paragraph 019 Reference ID: 25-019-20140612) to support its draft Charging Schedule.

- In consequence of all of the above, the authority cannot demonstrate that it has struck an appropriate balance between using CIL to fund infrastructure required to support the development of its area, and the potential impact of the imposition of CIL on the viability of a development, as required by Regulation 14(1) and endorsed through the PPG. The proposed levy on hotel developments will potentially render such development unviable, and therefore prejudice the achievement of strategic objectives that are central to delivering sustainable development in the district. As such, an appropriate balance has not been struck.

For the reasons outlined in the foregoing submissions, the proposed CIL levy on hotel accommodation is therefore incompatible with delivering sustainable development, and is therefore not compliant with the NPPF.

Having regard to the foregoing it is concluded that the draft Schedule should not be submitted for Examination pending review of the above matters, and re-consultation on a revised charging schedule with supporting evidence base.