PART B: REPRESENTATIONS ON BEHALF OF MACMULLEN ASSOCIATES LTD

Introduction

These representations are prepared and submitted on behalf of MacMullen Associates Ltd who represent a number of clients who have ongoing development interests in Bath.

These representations are structured in two parts. Initial consideration is given to the overall funding gap which has influenced the level of CIL that the Council is seeking to set. This is followed by some more specific considerations relating to the draft CIL provisions for student accommodation.

Aggregate Funding Gap (AFG)

The Infrastructure Funding Gap Evidence Base that informs the draft charging schedule identifies two 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 allevation 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. 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 on Student Accommodation

The emphasis of Policy B5 of the Adopted Core Strategy is to direct future student accommodation to the campuses of Bath's two principal universities. There is a presumption to refuse planning permission for further student accommodation in the locations where bespoke providers are most likely to seek to deliver it, that is where it would adversely affect the realisation of other aspects of the vision and spatial strategy for the city in relation to housing and economic development. Given the scarcity of development opportunities in Bath, owing to the extent and importance of the heritage assets, it is difficult to envisage many opportunities where proposals for off-campus student accommodation in locations where it will be attractive to, and deliverable by, bespoke providers, will not compete with the realisation of objectives for housing and economic development.

The differential CIL rates proposed for student accommodation would appear to be driven by an ambition to support the objectives of Policy B5 of the Core Strategy, rather than deriving clearly from the viability evidence. That is a wholly incorrect approach to setting a CIL levy.

It is germane to consider the Preliminary Draft Charging Schedule published in June 2012, prior to the revision, examination and adoption of the Core Strategy in its current form. In that Schedule not only was the proposed charge for off-campus provision much lower (at £100 per sq m), but the Council proposed to levy a charge on 'on-campus' provision by the University sector, albeit at a lower rate (of £60 per sq m). The Summary of the Viability Study Conclusions set out in Table 1 of the Preliminary Draft Charging Schedule stated as follows:

> *Student housing generates positive residual values, although the degree to which developments can absorb CIL contributions is dependent on the rent levels set. There is a significant differential between rents in the private sector and the University Sector, **although both types of development are viable**. Student housing would, however, be able to absorb a CIL contribution of between £90 to £140 per square metre, but we recommend a rate of £60 per square metre to allow a risk for margin. (Table 1, p.8, emboldening added).*

There is no explanation in the current evidence base of how viability of provision of student accommodation has changed in the interim period since June 2012 to support a doubling of the charge for off-campus provision (which is £60 higher than the maximum rate considered to be viable in 2012), but a fall in the viability of on-campus provision by the University Sector such that it can no longer support a CIL levy. It is pertinent to note that there has been no change in the proposed levy on other forms of commercial development between the two draft charging schedules, which would be expected if the change was accounted for by an improvement of national economic circumstances.

It is germane that on-campus provision will largely be on land already in the ownership of the Universities, some of which has been removed from the Green Belt to permit University expansion. It therefore has no alternative development value, resulting in a potentially low cost for its acquisition. In contrast, off-campus providers must compete in the market against others seeking to acquire scarce land resources in Bath for not only student accommodation, but also other commercial and residential developments.

Furthermore, development costs of developing on-campus are likely to be considerably lower for the following combination of reasons:

- Location of the University campuses away from the sensitive historic core of the City of Bath with its important heritage assets, giving greater flexibility in design (for modular building etc.).

- Predominantly greenfield sites with no / low site reclamation costs.

- In consequence of the above, lower procurement costs (professional fees etc).

None of the above would seem to be factored into the consideration of viability.

The only justification given for the zero charge on ‘on-campus’ provision seems to be the assumption that sub-market rents will be charged, to be secured through S106. However, there is no benchmark set for the deflection from market rents that will justify a zero CIL charge, or provision for levying a charge ‘on-campus’ if rents are set at a level between market and the level below market rents at which a CIL levy becomes unviable. Moreover, there seems to be no allowance for the fact that the level of rent charged by the University Sector affects the levels that private operators can charge for accommodation of a similar standard and specification. Given that a substantial quantum of University sector accommodation is projected to be delivered to support growth during the Core Strategy period, and given the scarcity of ‘off-campus’ development opportunities, this is likely to outstrip the delivery of private schemes. The proportionate increase in provision by the University sector relative to that by bespoke providers, is likely to impact on the rental levels that can be charged by the private sector.

Finally, the Schedule does not permit a levy to be charged in circumstances that the University sector chooses to enter into an agreement with a private provider to deliver on-campus accommodation at market rents. Any requirement for on-campus provision to be delivered by the University sector at sub-market rents would be unenforceable in planning terms, and a violation of private property rights.

For all of the foregoing reasons it is concluded that the proposed CIL levy for student accommodation is insufficiently justified by a robust evidence base. It is concluded that the proposed differential in charges between on- and off-site student accommodation is not justified by the evidence base, and is driven by an attempt to support planning policy aspirations rather than deriving from robust viability evidence.

Development Appraisals

With regard to the development appraisals, there are a number of deficiencies with them which are outlined below:

- ***Development Costs:*** The construction costs for an on-campus student development are too high in view of the comparative ease of development on greenfield sites away from the sensitive heritage areas of the city. There is likely to be a 5-10% reduction in development costs over off-campus, city centre schemes. Professional fees are too low for both, especially city centre schemes, and should be circa 12.5%.

- ***Developer Profit:*** Both appraisals are fundamentally flawed in that they ignore developer's profit on the land purchase. It is normal practice to apply the developer's profit to all costs. Therefore, the 20% margin should apply to development and land costs. As currently shown, if properly computed, the profit margin is only 13.5% of the total development cost, which is too low for either developer or funding institution. If the profit is increased to include the appropriate profit on land value, then the residual amount available for CIL must decrease correspondingly.

- ***Nomination Schemes - Unrealistic Negative Land Value:*** The nomination scheme appraisal shows a negative land value. It must therefore be assumed that the appraisal is flawed, failing which the development would not be undertaken. However, it is understood that, with such schemes, the University underwrites the rent, resulting in a better yield and in turn an improved gross development value. The same yield has been used for both the private and nomination schemes. However, given the greater security of income with a nomination scheme, that would result in a lower yield and a consequentially higher gross development value. Taken together with the lower construction costs (see first bullet above) results in a nomination scheme returning a positive land value. A yield of 4.75-5% and lower construction costs returns a similar gross development value to a private scheme, returning a similar residual land value, and therefore viability for the same CIL rate. There is therefore a fundamental flaw in the nomination scheme appraisal in terms of yield, which suppresses the gross development value to an artificially low level.

- ***Incomplete Development Appraisals:*** it is assumed that a 'nomination' scheme is a university-owned, developer-procured scheme? If so, a university-owned, built and let scheme has not been appraised. The evidence base is therefore incomplete in that it has not properly tested all reasonable and relevant development scenarios relating to student accommodation.

Conclusion

Having regard to the serious deficiencies in the evidence supporting the AFG, together with the more specific evidence and provisions of the draft charging schedule relating to student accommodation, the emerging CIL provisions require comprehensive reconsideration. The evidence base is both flawed and incomplete, resulting in false conclusions relating to the viability of on-campus developments to support a CIL levy. The findings in the Preliminary Charging Schedule that a levy for on-campus developments would be a viable proposition, would seem to be more accurate, and no justification has been given for moving away from that position. The only conclusion that can be drawn is that it has been prompted to support the strategic planning policy objective to focus future provision on the University Campuses and away from the city centre where it might compete with other development priorities for scarce land resources. That is a wholly incorrect basis for setting differential CIL charges for similar development types in different locations.

The draft Schedule is therefore unsound, and should not be submitted for Examination pending review of the above matters, and re-consultation on a revised charging schedule with supporting evidence base.