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Date: 18 September 2014

Our Ref: FT/EB M6/0518-10

Your Ref:

By email only: [cil@bathnes.gov.uk](mailto:cil@bathnes.gov.uk)

Dear Sir or Madam

**RE: COMMUNITY INFRASTRUCTURE LEVY – DRAFT CHARGING SCHEDULE  
CONSULTATION SEPTEMBER 2014**

We represent the **South West HARP Planning Consortium** which includes all of the leading Housing Association Registered Providers (HARPs) in the South West. Our clients' principal concerns are to optimise the provision of affordable housing and to ensure the evolution and preparation of consistent policies throughout the region.

**Overarching Comments**

We welcome the opportunity to comment on the CIL Charging Schedule and underlying viability evidence. It is extremely important that the Council properly consider the overall impact of CIL on the delivery of affordable housing. We wish to ensure it is not squeezed by setting rates that are too high. This point was asserted by Greg Clark MP, Minister for Decentralisation and Cities in the following quotation taken from an article in Inside Housing on 20 April 2012:

*“A key point of the viability test for CIL [charge setting] is that it doesn't make socially important development unviable, including social housing. I would expect that to be at the forefront of examiner's minds”.*

The starting point should be delivering the level of affordable housing set by the Local Plan target as highlighted by the Examiner's report from the Mid-Devon District Council CIL examination (20 February 2013):

*“The Council should have taken all its policy requirements, including affordable housing into account when setting the CIL rate and on this basis it can be concluded that the viability evidence, on which the proposed charge of £90per/m<sup>2</sup> is based, is not robust.”*

The PPG endorses the above position. This directs the policy level of affordable housing to be reflected in the assessment of development costs when assessing the appropriate CIL rate/s for inclusion in a Charging Schedule (paragraph 020, reference ID 25-020-20140612). Indeed, one of the key matters for an Examiner to address is whether the Charging Schedule would “*put the delivery of the relevant Plan at risk*” (paragraph 038, reference ID 25-038-20140612).

We are therefore concerned that the Viability Assessment (May 2014) states that the Charging Schedule is based upon the premise that the “*viability of sites can be improved in the short term by varying the quantum of affordable housing*” (page 4). It is also mentioned later in the Assessment that as CIL is fixed and non-negotiable, it may be necessary to alter affordable housing both in respect to numbers and tenure (paragraph 6.5).

It is clear from the outset that this approach would not be appropriate.

## **Affordable Housing Policy**

It is noted that the Viability Assessment is not based upon the adopted Core Strategy's Affordable Housing Policy CP9. Whilst it applies sensitivity testing to the affordable housing target of 40%, it does not present testing at the affordable housing target of 15%, as required in CP9.

It is also noted that it is not clear from the Assessment how the geographical area/zones used within the CIL Assessment accord with the geographical zones used within CP9 and the responding affordable housing requirements. Paragraph 4.2 notes that the Assessment has had "*regard*" to the Affordable Housing Viability Studies accompanying the Core Strategy. The most recent viability report from the Core Strategy examination, Viability Study Update (December 2012), which formed the basis of discussions into the affordable housing target leading to amendments at the Examination stage, uses a greater number of market areas than within the CIL Viability Assessment. We request confirmation that the areas are the same.

Finally it is noted with concern that a tenure split of 75% social rented and 25% intermediate has been applied. The Adopted Core Strategy makes no policy tenure requirements, but indicates that tenure would be delivered in line with the most recent SHMA, site suitability and locally determined need. The 75/25 split is contained within the emerging Planning Obligations SPD, justified by the "*evidence from the 2013 SHMA*" (paragraph 3.1.28). This is incorrect, and will no doubt be challenged in the responses to the SPD consultation currently ongoing. The SHMA (2013) main report and addendum 1b<sup>1</sup> does not differentiate between social rent and affordable rent, presenting a requirement for total affordable rented (social and affordable rent tenures) need, and size, combined.

In line with our comments below in respect to the affordable housing values, we would expect the Council to test a range of tenure scenarios. This would be most appropriately accomplished through local benchmarking which would consider the proposed tenure split on identified sites.

## **Affordable Housing Values**

It is not immediately clear from the CIL Viability Assessment which values have been attributed to affordable units. Reference to the Three Dragons Viability Assessment (June 2010) is concerning, given this has been replaced by assessments from Ark (April 2011 and June 2011) and Andrew Golland Associates (December 2012). Of note, the two Ark Reports undertook critiques of the earlier 2010 viability study, leading to variation of the Core Strategy's affordable housing policy. For example, it was asserted that the purchase price attributed to intermediate properties in the 2010 study was substantially inflated, and that market pressures, as a result of a shortage in s106 affordable properties, had led to a premium of some £10,000 per dwelling in B&NES. It is not clear how the concerns of the later reports have been reflected in the assumptions of the CIL Viability Assessment.

The Ark Report (June 2011) clearly indicated that the purchase prices of affordable rent properties will vary greatly across geographical areas, and this is consistent with feedback received from local HARPs. The Golland Report (2012) affirms this at the broader scale, indicating that variations in affordable tenure has a distinct impact on a scheme's viability, noting in particular a significant range in purchase prices between social rent and intermediate units; for example a difference of some £36,000 per unit (page 35).

It is clear that the approach in the Ark Report (April 2011) is the most appropriate approach to base the CIL Viability Assessment upon; presenting the range of tenure options and the variations in purchase prices across geographical areas. This mirrors the approach undertaken in respect to market values, which vary distinctly across the District. The evidence from the Ark Report (April 2011) was collated from feedback from a number of HARPs, and we would affirm that the SW Consortium would be able to provide updated data as required.

It is noted that Table 1B of the draft Planning Obligations SPD provide supportable deficits based upon the two geographical zones covered by the affordable housing policy, the size of dwellings and the tenure. Whilst it currently neglects affordable rent, it is likely that this tenure will be included in the

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<sup>1</sup> References CD9/H4 and CD9/H4/2 at the Core Strategy Examination

final SPD to ensure that it complies with national policy. As such, there is an evidence base which should have been used within the CIL Viability Assessment.

### **Viability Cushion**

We support the decision to use a 'discount' of circa 30% from maximum rates (paragraph 6.14) to ensure the CIL rate reflects a range of potential development sites. However, Table 6.14.1 seemingly indicates that this viability cushion has not been applied across the entire District, with some areas indicating (based upon the identified discount of 30%) CIL should be at £85-91/m<sup>2</sup>. The failure to provide an appropriate viability cushion across the plan area could undermine the Spatial Strategy, with CIL in some locations rendering a range of potential sites unviable, or by compromising affordable housing delivery in those marginal locations.

### **Local Benchmarking**

Since the publication of the PDCS, there have been advancements in the accepted practice of viability testing in respect to CIL. It is now evident that the Council should assess a number of identified sites, as local benchmarks to ensure the reliability of the analysis and assumptions used. This principle was first established in the Purbeck CIL Examination, where the Inspector suspended the Examination:

*"... the evidence base is primarily based upon notional data, i.e.: modelling of typical development sites in the various zones throughout the District. I raised this concern regarding the need for locally worked examples in my initial questions, and again in my further questions. The DCLG CIL Guidance (April 2013) states (para 27) that a charging authority should sample directly an appropriate range of types of sites across its area in order to supplement existing data. I am postponing the Examination until the information that I need is forthcoming"* (Comments to the Council at the close of the Hearing, 11/10/2013).

The PPG affirms this approach (see Paragraph 019 Reference ID: 25-019-20140612).

No local benchmarking has been undertaken in the Viability Assessment. Whilst Appendix 4 considers the 6 Strategic Sites, the assessments on these sites is still based upon 'hypothetical scenarios' in terms of density, mix, affordable housing provision and s106 requirements. A number of these sites have reached a sufficiently advanced stage that the Council should be able to provide these details and undertake appropriate viability testing. It is also noted that Strategic Sites only account for some 24% of total housing delivery over the plan period, and as such, testing of Strategic Sites alone does not provide an appropriate evidence base to understand the impact of CIL on the delivery of housing, including affordable units, over the plan period.

### **Strategic Sites**

We support the identification of Strategic Sites by geographical areas, given this allows for appropriate on-site delivery and collation of s106 monies as appropriate. We feel it would be beneficial to insert some explanatory text into the DCS document to explain the distinction in approach between the Strategic Sites and other residential sites.

We make comments below in respect to the development assumptions; but with particular relation to the Strategic Site Assessments (in Appendix 4) we would note concern that there is a differentiation in respect to the cost of achieving CSH Level 4 (7.5% on Strategic Sites and 4% on other sites), a considerable differentiation in terms of build costs (£883/m<sup>2</sup> compared to values between £783-2,096/m<sup>2</sup>).

### **S106 Costs**

It is noted that the Viability Assessment uses a residual value of £1,000 per unit. It is not immediately evident where this figure is justified, with only the detail in respect to total s106 receipts included in the evidence base. The PPG is clear that historical s106 delivery is a key part of the CIL evidence base. Whilst total s106 receipts are useful as a general indicator of benchmark infrastructure funding delivery, it is necessary to undertake additional research to ascertain the most appropriate s106/unit assumption to use within the viability assessment. In line with practices elsewhere, recent historical

s106 receipts should be broken down by unit and obligation. Cross-matching these historical obligations with the draft Regulation 123 List will enable analysis of the remaining residual s106 contributions which will continue to be collated with the adoption of CIL.

In particular, we note concern in respect to the draft Planning Obligations SPD, which provides for additional s106 contributions to be secured after the adoption of CIL. Based upon the draft policies, we would question whether £1,000 per unit represents a realistic s106 assumption based upon the Council's adopted and emerging planning policies.

### **Development Assumptions**

We note above some concern in respect to the build costs used within the assessments. We support the identification that build costs vary across the District, and that a premium is applicable with the City of Bath based upon the material and design requirements arising from its World Heritage Site status. However, the variations seem significant, and we would encourage the Council in seeking to confirm these assumptions within the local benchmarking, with feedback from prospective developers.

It is noted that the site mix applied (paragraph 4.9) does not comply with the Council's adopted Core Strategy Policy that 60% of delivered dwellings are family homes, including provision of some 4 and 5 bed units. None of the site assessments include any 5-bed units.

It is also noted that the draft Planning Obligations SPD requires 90% Lifetime Homes, 10% wheelchair accessible dwellings and internal space standards for affordable units. It is not evident that these factors have been considered in the development assumptions.

The CIL Viability Assessment indicates that exceptional scheme costs would be reflected in the purchase prices of land, and as such is beyond the scope of the study. Whilst this may be reflective of hypothetical scenarios, it demonstrates the need to apply appropriate local benchmarking to sites identified as including abnormal costs, for example decontamination. Based upon the approach of the adopted Core Strategy to prioritise brownfield sites first, and the identification of a number of potentially contaminated sites in the housing land supply, it is necessary to ensure that consideration has been given to the viability of these sites. Whilst the Council may seek to use a lower land value within their assessments of viability, if the landowner or prospective developer does not allow for this discount, there is potential that sites will stall whilst developers await an upturn in the market to cover the desired uplift.

### **C2 and C3**

We support the Council's decision to exclude C2 development from CIL. However, we are disappointed with the Council's approach to specialist C3 units. Whilst paragraphs 6.17-6.20 seek to consider this issue, the tables do not make clear the development assumptions which have been used within the appraisals to justify a CIL charge.

The Council would be seeking affordable housing delivery as part of a C3 specialist extra care development; has this been factored into the appraisals?

It is noted that some developments would command a premium sale value above local markets; however this is not typical of the entire District.

Additional testing is required to justify the Council's current approach in relation to specialist C3 development.

### **Discretionary social housing relief**

The consultation document at paragraph 3.14 introduces the potential to apply the discretionary social housing relief introduced through Regulation 49A of the 2014 Amendments.

We would encourage the Council to adopt this relief at the outset.

## **Exceptional Circumstances**

Paragraph 3.16 includes reference to Exceptional Circumstances policy. We would encourage the Council to adopt this relief. We would firstly note that exceptional circumstances does not necessitate the entire CIL charge is afforded relief, but rather that the amount necessary to make the development viable is discounted. This provides a vital mechanism to ensure that delivery of marginal sites does not compromise the delivery of affordable housing, but rather that a local policy decision can be made in respect to varying either affordable housing or part of the CIL charge.

Additionally, without the use of an exceptional relief policy, the entire purpose of rural exception sites is compromised. It is evident that in some instances, a cross-subsidy mechanism would be required to bring forward land to build such developments upon. The market housing required should be the minimum required to make the development viable, however, if CIL is required to be paid on these market units, this then alters the number of units required to bring the development forward, with the perverse situation whereby additional market housing may be required on a rural exception site in order to pay CIL liability.

## **Instalment Policy**

We support the Council's decision to adopt an Instalment Policy.

## **Regulation 123 List**

It would be useful to provide additional detail in respect to the Regulation 123 List. For example, does Green Infrastructure include all aspect of recreation and open spaces, for example children's play areas.

Would onsite provision result in a decrease in CIL charge through an in-kind payment?

In respect to the Strategic Sites, it is not clear how the element of education payments meets the requirements that CIL charges do not allow double dipping. The current draft Regulation 123 list indicates that places required by the strategic sites are exempt from the CIL lists. However, it is supposed that s106 contributions for these places would be supplemented by additional Council funding as necessary, either directly or indirectly. As such, and given that CIL payments are not ring-fenced but placed into a single fund, how can the Council ensure that a developer is not in essence paying twice for the same infrastructure? The Council should look to the approaches undertaken elsewhere in respect to education contributions and Strategic Sites.

The Council's Infrastructure Delivery Plan contains detailed descriptions of the proposed projects over the plan period, with sufficient detail allowing determination of requirements over the next 5 years. We would encourage the Council to identify those projects subject to CIL funds to provide clarity to developers.

## **Review**

The Charging Schedule needs to set out its review arrangements. Evidently, review will be required after the lapse of a certain time period, however it is also important to identify indicators that will be monitored which could instigate an early review. In particular, we would note the importance of monitoring the delivery of affordable housing policy compliant sites, to ensure that CIL does not compromise the delivery of affordable units over the plan period.

The above comments are intended to be constructive. We would like to be kept informed of the Charging Schedule's progress, and given the opportunity to appear at the Examination. Please ensure that the **South West HARP Planning Consortium** is retained on the Local Plan database, with **Tetlow King Planning** listed as their agents.

Yours sincerely



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**SENIOR PLANNER**  
For and On Behalf Of  
TETLOW KING PLANNING

cc: Aster Group  
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Adrian Holloway, Bath and North East Somerset Council

Enc.: CIL Representation Form