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Planning Policy, Planning Services,
Bath & North East Somerset Council,
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Dear Sir or Madam

Community Infrastructure Levy Draft Charging Schedule and Planning Obligations SPD Consultation Response on behalf of IM Group

I write on behalf of my client, IM Properties Limited, to make representations to the above consultation.

IM are the freehold owner of land at the former MoD Ensleigh 'North' site, Lansdown Road, Bath. In addition to this, IM are involved in the delivery of the Extension Land to MoD Ensleigh (Core Strategy reference B3C). As a major developer within the city, IM has a significant interest in the future growth of Bath and in B&NES draft CIL Charging Schedule and SPD which will influence growth and development.

This letter provides comments on both of the current consultation documents. This letter begins by providing comments to the Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule document before going on to provide comments on the Revision to Supplementary Planning Document (SPD) 4 Planning Obligations. Our comments are set out using the relevant sub headings to which we are commenting on each respective document, as set out below.

Draft CIL Charging Schedule

Strategic sites

The draft charging schedule states that 'Strategic Sites' will be subject to a levy of £50 per sqm. Policy B3C (Extension to MoD Ensleigh) is included within the list of strategic sites on page 10 (Definitions section). However, this site is omitted from the plans section of the charging schedule which illustrates all other strategic sites.

We seek confirmation that site B3C is included within this category and request a plan is also provided.

Draft Updated Planning Obligations SPD

Affordable Housing

In respect of paragraph 3.1.9 we consider it is unreasonable for a developer to have to provide such evidence i.e. Affordability and independently assessed HQI's at this stage of the development process. The registered providers control the affordability of intermediate homes by their offer and appraisals. We work with our RP partners and their employers agents to set such levels in accordance with our s106 obligation on the minimum HCA DQS standards

We challenge the statement at paragraph 3.1.13 that Extra Care (C3) is not affordable. This type of accommodation can be provided as affordable accommodation and supports the recent announcement by central Government that housing provision must address measures to tackle local authorities' failure to plan for an ageing population.

We consider that the proposed affordability test at paragraph 3.1.15, which sets an upper threshold of 25% is low and should be increased to an upper limit of 35%. The Council must recognise additional requirements such as lifetime homes and wheelchair homes, makes affordable properties more expensive.

The service charge limit set out in paragraph 3.1.21 should be explicit to exclude the registered providers' management charge.

We challenge the statement at paragraph 3.1.24 that affordable units should reflect the pattern of open markets. This is wholly contrary to the Market Assessment process. Affordable units should only be provided in line with a robust and justified evidence base which demonstrates the affordable housing need of the district and not provided to mirror the open market offer.

It is unreasonable for all 2 bed properties to provide accommodation for 4 people, likewise 3 bed properties for 5 people. We object to this statement at paragraph 3.1.25 as there are many circumstances where it is reasonable to provide 2 bed 3 person accommodation and 3 bed 4 person accommodation. The SPD should be reworded to allow more flexibility in this regard.

Phasing, as discussed at paragraphs 3.1.7 – 3.1.9, must be reworded to allow consideration of site specific considerations. Phasing should be flexible and determined on a site by site basis. The Council can agree and control this through planning conditions and obligations. Clustering in each phase should reflect the requirements of registered providers. Historically the Council has sought a small cluster which is contrary to the management requirements of providers.

We object to the statement at paragraph 3.1.43 that affordable housing should not share boundaries. Open market dwellings frequently share boundaries and it would be compliment in respect of tenure blind provision for affordable units to be treated the same.

Paragraph 3.1.49 should refer to a range of house types which represent the site characteristics, affordability and units delivered with no grant (or affordable rent) i.e. our standard market house types, a range that meets the HCA minimum unit sizes requirements and a range that meets the HCA requirements for Lifetime Homes. The council risk making all/many of the AH units delivered unaffordable due to their size.

We object to the requirement at paragraph 3.1.50 that 90% of units should lifetime homes. This is contrary to the welfare reform. Grant should pay for any upgrades over and above standard units as otherwise it is another subsidy by developers over and above free land. The threshold should remain at 10%.

In respect of paragraph 3.1.63, Protected Tenant provisions and staircasing, homes are not generally held in perpetuity. The council needs to ensure that any receipts from sales (as with Discounted market Homes) is re-provided for new AH elsewhere in BANES.

Mortgagee Clauses should not refer to the Mortgagee having to be "in possession" of the property. This causes problems for the RP securing loans against the AH units. Paragraph 3.1.76 should be amended accordingly.

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.

Green Infrastructure/On-site Open Space

We welcome the removal of quality standards for provision of open space, which set a regimented formula for the amount of open space which should be provided on site within the adopted Planning Obligations SPD. This historic approach limited the flexibility of provision and did not take into account site specific considerations.

In respect of the long term management and adoption of open space, we challenge the Council's requirement for a commuted sum to cover the cost of provision for a 20 year period. This is a significant increase from the adopted Planning Obligations SPD, which currently requires a period of 10 years. No evidence has been provided to justify this increase, which would represent a substantial commuted sum from developers.

Targeted Recruitment and Training & Mitigation

We strongly challenge the Council's request for a contribution to targeted recruitment on all residential developments over 10 dwellings, regardless of whether there is any loss of employment.

Whilst there is logic to seek a developer to find employees locally during construction, 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.

Planning obligations must meet the statutory tests set out in the Community Infrastructure Levy Regulations 2010 and the policy tests set out in the National Planning Policy Framework (NPPF). These tests apply in all cases, including where tariff style charges are sought. Obligations must be:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind.

We do not consider the obligations requested by the Council meet these tests for the reasons set out below. Most pertinently, this request is contrary to advice in the NPPG. Paragraph: 004 Reference ID: 23b-004-20140306 states in all cases, including where tariff style charges are sought, the local planning authority must ensure that the obligation meets the relevant tests for planning obligations in that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. The requirement that all development must provide a contribution to new employment does not meet these tests.

There is also no acknowledgement of circumstances a residential developer provides opportunities for home working, which are endorsed by the Council in the Core Strategy.

Education

The Council's draft Regulation 123 list sets out School Schemes, as listed in the Schools Organisation Plan as an item to benefit from CIL.

In addition to this, the draft Planning Obligations SPD seeks funding from developers of strategic sites to make either on-site provision or financial contributions towards primary school places.

Paragraph 3.9.3 states that the urban extension sites, including the Extension to MoD Ensleigh, result in the capacity of local primary schools being exceeded. In the case of Ensleigh, this is wholly incorrect. The Schools Organisation Plan sets out the capacity of local Primary Schools to already be exceeded, regardless of the development of site B3C. The Council have publically stated the requirement for a new primary school at Ensleigh in the MoD Ensleigh Concept Statement, prior to B3C being promoted for development. Therefore, this site is not the trigger which requires a new school.

Whilst the Council may have an existing shortfall for Primary Schools within Bath, 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.

The National Planning Policy Guidance (NPPG) states that where local planning authorities are requiring tariff style contributions to infrastructure, they should be flexible in their requirements. There should be not actual or perceived 'double dipping' with developers paying twice for the same item of infrastructure.

Given that education requirements are listed within the Regulation 123 list and the requirement for a primary school at Extension to MoD Ensleigh is not a new requirement, we raise significant objection to the inclusion of an additional S106 contribution towards education, above the requirements of CIL.

Paragraph 3.9.5 states that in respect of a new on-site school, the developer will be expected to pay the full cost of construction, including design fees and charges, furniture and equipment and provide the site free of charge. This requirement makes no acknowledgement of the Local Education Authority's 'Basic Needs' funding which is provided from Government to contribute to the cost of each pupil place.

It is wholly unreasonable to expect the developer to provide land free of charge, particularly at Ensleigh, where the land available for development of a school is of residential value. There is precedent in Appeal ref. APP/E0345/A/13/2197106 where is has been established by virtue of a local plan allocation for residential led development, that it is acceptable for a land owner to be unwilling to sell that land for anything less than residential value. If the Council do not wish to do this, they have the option to provide new primary schools on land within the ownership of the Council.

The draft SPD makes no acknowledgement of pooled contributions from other neighbouring developments which will create a demand for primary school places at Ensleigh. The Council can only lawfully pool up to five separate S106 contributions towards the implementation of a specific item of infrastructure. In the case of a new primary school at Ensleigh, the Council are intending to pool contributions from committed developments

at Ensleigh South (12 pupils), Ensleigh North (66 pupils), Hope House (7 pupils) and Extension to MoD Ensleigh (30 pupils). These committed developments provide a pupil yield of approximately 115 pupils. The Council are seeking a 210 primary school and have already confirmed they will have to fund the shortfall in demand of circa 95 places not generated by committed developments. This is severely at odds with paragraph 3.9.5 which requires the developer to fund the whole cost of a school. The SPD must explicitly state that B&NES will provide funding for the capital cost and land for the new primary school, to cover any surplus need not generated by these developments.

There is also no recognition that a new primary school may, in principle, be agreed by virtue of Ensleigh North prior to site B3C coming forward. Therefore, a site specific S106 obligation should be redundant and instead covered by CIL.

The Council has already pooled contributions from Ensleigh South and will imminently be collecting contributions from Ensleigh North and Hope House. Therefore, there is already an agreed contribution regime for Ensleigh, to the capital cost at £19,047.61 per primary age pupil and plus a pro-rata financial contribution in lieu of providing land at £1,976,800 per hectare. It is therefore totally unreasonable (and unlawful) to request that the owners of the Extension to MoD Ensleigh provide all the land for a new school, in addition to the above costs and the costs of CIL. On this basis, the requirement for a new school at site B3C, paid for by the developer, should be wholly removed from the SPD.

We look forward to future involvement in the emerging CIL Charging Schedule and other LDF documents. We trust that the comments provided herein are useful and will be fully taken into account when taking these current draft documents forward. If you require any further information please do not hesitate to contact me on 0117 988 5203 or Rebecca.Collins@gva.co.uk

Yours faithfully

[redacted]

Rebecca Collins
Principal Planner
For and On Behalf of GVA