BATH & NORTH EAST SOMERSET COUNCILS COMMUNITY INFRASTRUCTURE LEVY

DRAFT CHARGING SCHEDULE

Consultation response on behalf of a Housebuilder and Developer Consortium

September 2014

Contents

Executive Summary

This representation has been prepared by Savills (UK) Limited on behalf of a Local Housebuilder and Developer Consortium. It is made in respect of the Community Infrastructure Levy (CIL) Draft Charging Schedule for Bath & North East Somerset (B&NES) Council.

The Consortium notes the proposed differential CIL rates of £100 per sq m on residential sites in B&NES and £50 per sq m for the five strategic residential sites allocated in the Core Strategy. Whilst the Consortium welcomes the changes made since the publication of the Council's Preliminary Draft Charging Schedule and supporting evidence, there remain concerns with the approach proposed by the Charging Authority, notably:

- In light of the historic under supply of housing and recent adoption of the Core Strategy, it is clear that a significant boost to the housing supply is needed and that development is actively facilitated, encouraged and certainly not put at risk. This is the clear steer of the NPPF, and indicates the need for a cautious approach with the application of CIL.

- To secure the housing needed across B&NES it would be logical to introduce differential CIL rates, similar to the geographical split for affordable housing from the emerging Core Strategy. The evidence presented in this report indicates that this logical approach should be applied.

- Whilst the Consortium does not consider a £100 per sq m residential rate to be unreasonable in the higher sales value areas of B&NES, maintaining this flat rate in other lower value areas such as the Somer Valley, Keynsham and Chew Valley would impact on financial viability and development coming forward. A £50 per sq m residential rate is proposed in these lower sales value areas.

- The separate £50 per sq m residential rate for strategic sites should be replaced with a £0 rate. Consequently there should be a commitment to seek all site specific infrastructure requirements through Section 106 agreements.

- Some of the assumptions used for the viability appraisals are in our view incorrect or outdated, resulting in outputs which are not reflective of the market. This results in an overestimate of the viability of the sites tested, particularly in the lower sales value areas of Somer Valley and Keynsham.

- The Consortium is concerned that in the lower value residential sales areas, the single CIL rate has been set at a figure above the CIL rate which was calculated after applying a 30% viability buffer.

- For assessing viability, exclusive weight is put upon two theoretical BLVs which represent existing use values and no regard is had to the value at which land has actually traded. There must be a competitive return to the landowner in order to incentivise land release.

This representation is structured in seven sections.

- **Section 1** provides an introduction to the representation.
- **Section 2** provides planning and legal background.
- **Section 3** outlines specific points about the available evidence base, notably in respect of infrastructure delivery and the adopted Core Strategy. The section is supported by appendices and tables.
- **Section 4** provides scrutiny of the updated Viability Assessment (BNP Paribas, May 2014).
- **Section 5** analyses the proposed approach for strategic sites.
- **Section 6** outlines the position of the Consortium in respect of the effective operation of CIL.
- **Section 7** provides conclusions.

Where relevant this representation comments on the supporting evidence and existing guidance, also making reference to relevant policy documents, a list of which is contained at **Appendix 1**.

1. Introduction

1.1 This representation has been prepared by Savills (UK) Limited on behalf of a Local Housebuilder and Developer Consortium comprising (in alphabetical order):

- Bloor Homes
- Crest Nicholson
- Gladman
- Redrow
- Taylor Wimpey

1.2 Hereafter known as 'the Consortium'.

Purpose

1.3 This representation has been submitted to influence the emerging Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS) proposed by Bath & North East Somerset (B&NES) Council, published for public consultation in the period July to September 2014.

1.4 The representation is made in the context of the CIL (Amendment) Regulations 2014 and relevant statutory guidance (February 2014). These Regulations and associated guidance came into force on 24 February 2014. The DCS is therefore be subject to the requirements of these latest set of Regulations and Guidance.

1.5 The Consortium has come together to provide comments on the approach proposed by B&NES, the Charging Authority, regarding the viability of the proposed rates for residential development. The Consortium's members have land holdings across the B&NES area which will likely contribute to the maintenance and delivery of the housing land supply to meet identified housing needs. The rate of CIL is therefore of critical importance to the Consortium.

1.6 This representation builds upon those previously submitted by Savills at the Preliminary Draft Charging Schedule (PDCS) consultation stage in June 2012, a copy of which is enclosed under **Appendix 4**. It is now proposed by the Charging Authority that a single residential rate is applied to all sites of £100 per sq m irrespective of geographical location. Whilst this proposed rate may not appear too unreasonable in the higher residential sales value areas of Bath City Centre, Bath North and East and Bath rural hinterland, the Consortium are concerned that in other areas of the Charging Authority where sales values are lower, the rate is too high and is not supported by the Viability Assessment evidence. The Consortium consider that the methodology and assumptions used have skewed the Viability Assessment in these lower sales value areas. Consequently it is proposed that a lower rate of £50 per sq m is set for residential developments outside of the higher sales value areas.

1.7 This approach would tie in with the affordable housing policy providing a cinststent relationship between the 30% affordable housing requirement and a £50 per sq m CIL rate would create a very logical and straightforward approach.

1.8 We note that the rate for the five strategic sites allocated in the Core Strategy[1] has been proposed at £50 per sq m on the basis that site specific strategic infrastructure requirements such as primary schools and places as well as social infrastructure will be secured through section 106 agreements. The Consortium consider that to allow both comprehensive and timely delivery of these strategic sites in the next five years, it is most appropriate to secure all site specific infrastructure requirements via Section 106 agreements and to reduce the CIL rate to £0 per sq m as is proposed in the strategic urban extensions to the north of Bristol within South Gloucestershire.

CIL Funding

1.9 The desirability of funding from CIL is a key test of the Regulations. The purpose of CIL is to facilitate the delivery of development, including new housing to meet the key NPPF[2] objective for a significant boost in the supply of housing. The NPPF provides perspective on how *desirable* CIL funding may or may not be, in relation to the range of legal and planning mechanisms available to secure infrastructure delivery.

1.10 As stated in the Introduction to the PDCS representations, the Consortium's objective is not to dismiss CIL but to ensure that the level set in the Charging Schedule is robust, well evidenced and will not put at harm the overall delivery of housing in the charging area. To that end, the Charging Schedule must be founded upon sound and credible evidence and the methodology used to establish the proposed charges should be reasonable and fit for purpose.

1.11 In submitting this representation, the Consortium is only commenting on particular key areas of the evidence base. The comments build upon those previously submitted and address the key areas of concern that are outstanding.

1.12 We can also confirm that this representation submission represents our formal request to appear and participate in the forthcoming CIL Examination.

Savills Research – The 'Three-Way Trade Off'

1.13 Savills has recently published research that assesses the impact of CIL on development viability, notably the delivery of affordable housing[3]. This research, which is included in **Appendix 2** of this representation, demonstrates the trade off required to enable a deliverable five year **housing lan**d supply, in respect of the level of CIL balanced against affordable housing provision. The key finding of the report is that "*For local planning policies to be viable, there is a <u>three way trade-off between the costs of CIL, Section 106 funding of infrastructure and affordable housing policy, with the costs of local standards and the move to zero carbon being additional costs to be factored int</u>o the trade-off." (Emphasis added)*

[1] The strategic sites include Land adjoining Odd Down, Land adjoining Weston, the Extension to MoD Ensleigh, East of Keynsham, Land adjoining South West of Keynsham and Whitchurch.

[2] Paragraph 47, National Planning Policy Framework

[3] CIL – Getting it Right, Savills, January 2014 – included in **Appendix 2** of this representation

1.14 The research notes that the ability of an area to support CIL, Section 106 and affordable housing provision is largely driven by the strength of the local housing market. Where the housing market is stronger (higher £ per sq ft) the total "pot" available for these contributions increases. In contrast, lower value areas see reduced viability and subsequently a reduced "pot". It therefore becomes a question for local authorities to consider what the appropriate trade-off should be, taking into account adopted affordable housing policies.

1.15 In B&NES the split affordable housing policy of 40% and 30% in the higher and lower value sales areas respectively needs careful consideration against the proposed CIL rate of £100 per sq m. This rate, combined with the affordable housing policy in the lower value areas (30%) risks impacting on the viability and subsequent delivery of a number of sites. The Consortium have concerns with the residential sales value assumptions used in the Viability Assessment and section 4 of this representation analyses the figures against evidence obtained from recent schemes in the Charging Authority. It is concluded that a trade off between CIL and affordable housing will be needed if the delivery of the large sites within the lower value area is not to be threatened.

2. Summary of National Policy & Legal Context

2.1 In respect of the preparation of charging schedules and supporting documentation, it is important to have due regard to the available Government policy, guidance and law, notably:

- Law – Part 11 of the Planning Act 2008; Community Infrastructure Levy Regulations 2010 (as amended)
- Policy - National Planning Policy Framework (2012)
- Statutory CIL Guidance (as amended) (2014)
- Planning Practice Guidance (2014)
- Non-statutory Guidance

2.2 The Consortium's comments are based on these publications. Having regard to the policy and legislative changes made since the submission of representations at the PDCS stage in June 2012, a summary of the relevant context is provided below.

Legal

2.3 Section 212 of the Planning Act requires the Examiner to consider whether the "*drafting requirements*" have been complied with and, if not, whether the non-compliance can be remedied by the making of modifications to the DCS. The "*drafting requirements*" mean the legal requirements in Part 11 of the Planning Act and the CIL Regulations so far as relevant to the drafting of the charging schedule.

2.4 In considering the "*drafting requirements*", Examiners are required in particular to have regard to the matters listed in Section 211(2) and 211(4). This requires examiners to consider whether the relevant charging authority has had regard (as it must) to the following matters:

- Actual and expected costs of infrastructure;
- Matters specified by the CIL Regulations relating to the economic viability of development;
- Other actual and expected sources of funding for infrastructure; and
- Actual or expected administrative expenses in connection with CIL.

2.5 Regulation 14 of the CIL Regulations expands on these requirements, explaining that charging authorities must, when striking an appropriate balance, have regard to:

- The desirability of funding from CIL (in whole or in part), the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
- The potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

2.6 Examiners test compliance with the Planning Act and the CIL Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted development plan and appropriate evidence on infrastructure needs and development viability. Examiners also commonly test whether a Charging Schedule is economically viable, reasonable and realistic before recommending approval (with or without modifications) or rejection.

National Planning Policy Framework (NPPF)

2.7 It is important that the preparation of CIL is in the spirit of the NPPF, notably that it is delivery-focused and "*positively prepared*"[4].

2.8 The NPPF outlines 12 principles for both plan making and decision taking, notably that planning should ***"proactively drive and support sustainable economic growth".***[5] Also, that plan making should ***"take account of market signals such as land prices and housing affordability"***. Furthermore, that ***"the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth".***[6]

2.9 The NPPF refers to the ***"cumulative impacts"***[7] of standards and policies relating to the economic impact of these policies (such as affordable housing) and that these should not put the implementation of the plan at serious risk. Existing policy requirements should therefore be considered when assessing the impact of CIL on development viability.

2.10 The NPPF expressly states that CIL "***should support and incentivise new development***".[8] To comply with this policy, CIL charging schedules must be demonstrated to have positive effects on development. The absence of adverse effects on the economic viability of development, whether serious or otherwise, is not enough to justify CIL proposals. Charging authorities now have a positive duty when it comes to setting CIL rates and formulating its approach on the application of CIL.

2.11 CIL Examiners' reports, such as those for Mid Devon (February 2013) and Winchester City Council (October 2013), have set a clear precedent for CIL to be considered in the round, including the testing of policy-compliant levels of affordable housing and other policy costs.

Statutory Guidance

2.12 The 2014 CIL Guidance was published pursuant to powers in Section 221 of the Planning Act following the publication of the Community Infrastructure Levy (Amendment) Regulations 2014. This was soon followed by the publication of the Planning Practice Guidance (PPG), which confirmed the cancellation of all previous CIL guidance. On the 12th June 2014, the 2014 CIL Guidance was replaced by an electronic version which forms part of the PPG. This version supersedes the previous version published in PDF form in February 2014. Our representation is therefore made on the basis of the revised electronic 2014 CIL Guidance.

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[4] Ibid, Paragraph 182, March 2012

[5] Ibid, Criterion 3, March 2012

[6] Ibid, Paragraph 19, March 2012

[7] Ibid, Paragraph 174, March 2012

[8] Ibid, Paragraph 175, March 2012

2.13 The Guidance confirms in particular:

- The need for balance (as per Regulation 14[9]); and
- The need for "***appropriate available evidence to inform the draft Charging Schedule"*** (as per Schedule 211(7)(a) of the 2008 Act)[10].

2.14 The policy direction from Government is very much towards facilitating development. This policy imperative should have a major material bearing on the CIL rates. This applies to the evidence provided to support the balance reached between the desirability of funding infrastructure through CIL and the potential effects on economic viability of development across that area (applied when considering Regulation 14(1)).

2.15 A summary of the Guidance and key implications for the DCS is provided in Section 3 of this representation.

2.16 The Guidance states that the Government also makes clear that it is up to 'charging authorities'[11] to decide how much potential development they are willing to put at risk through CIL (the appropriate balance). Clearly this judgement needs to consider the wider planning priorities. Furthermore, the Guidance outlines that CIL receipts are not expected to pay for all infrastructure but a "***significant contribution***"[12]. The overall approach and rate of CIL will have to pay attention to the development plan and intended delivery.

Non-statutory Guidance

2.17 In addition to the regulations and statutory guidance, two specific non-statutory guidance documents have been published since the PDCS consultation stage which are directly relevant to the CIL rate setting process. These two guidance documents have been recognised by Inspectors elsewhere as valuable sources of advice regarding the approach to, and assumptions to be used in, the setting of CIL levy rates for residential development. The two documents are:

- Financial Viability in Planning, RICS (August 2012) and
- Viability Testing Local Plans, Local Housing Delivery Group (June 2012) (Harman Report)

2.18 Reference is made to these guidance documents where relevant throughout these representations.

[9] CIL Regulations 2010 (as amended)

[10] Paragraph 020, Reference ID: 25-020-20140612, CIL Guidance (revision date 12th June 2014)

[11] Ibid, Paragraph 004, Reference ID: 25-004-20140612 (revision date 12th June 2014)

[12] Ibid, Paragraph 096, Reference ID 25-096-20140612

3. Planning and Infrastructure Delivery

3.1 Evidence of infrastructure delivery and the relevant planning background is provided by this representation. This section provides commentary in respect of the updated CIL Statutory Guidance.

The Development Plan

3.2 A charging schedule should be consistent with, and support the implementation of, up-to-date relevant plans.[13]

3.3 Since representations were submitted at PDCS stage in June 2012, the Charging Authority now has an ‘up to date’ development plan for its area, in the form of the Bath and North East Somerset Core Strategy[14] which was adopted on 10 July 2014. The Inspector’s Report into the Core Strategy provided a summary of key changes to the plan. Of particular relevance to CIL and the Viability Assessment evidence are the following points:

- An increase in the overall housing provision to 12,960 dwellings (approximately 720 dwellings per annum) for the period 2011 – 2029
- The allocation of four strategic sites for housing to be removed from the Green Belt at Odd Down at Bath, East Keynsham, South West Keynsham and Whitchurch
- The removal from the Green Belt of additional land at East Keynsham as safeguarded land
- Setting different targets for the provision of affordable housing in different parts of the district to reflect the evidence on viability

3.4 Paragraph 1.33 of the Core Strategy states that the scale of new homes entails a significant uplift in past rates of delivery from around 380 (2001-11) to an annualised average of 700+ (2011-29). Representations submitted at the PDCS stage highlighted the cumulative scale of under delivery against the strategic housing requirement in the local plan up to 2010-11. Completions during 2011-2013 have remained below the required annual average and to recover from this shortfall, the annual rate of delivery required for the first five year period from adoption (2014-19) has been increased to 850 pa (4,250 dwellings over the 5 year period).

Housing Supply Components

3.5 It is necessary to analyse the various housing sources and their contribution to the overall supply of 12,960 dwellings in the Core Strategy. **Tables 1** and **2** below show the housing land supply components by area and within the next five years respectively.

[13] Paragraph 010 Reference ID: 25-010-20140612, CIL Planning Practice Guidance, 2014

[14] Bath and North East Somerset Core Strategy, Adopted July 2014

Table 1: Bath and North East Somerset Housing Land Supply Components by Area

Location	Total Housing	Overall Supply	Delivered	Five Year Supply (2014-19)
Bath	7,020	54%	813	2,513
Keynsham	2,150	17%	93	1,186
Somer Valley	2,470	19%	475	1,487
Rural Areas	1,120	9%	142	597
Whitchurch Green Belt	200	1%	0	150
Total	**12,960**	**100%**	**1,523**	**5,933**

Source: B&NES Strategic Housing Land Availability Assessment Housing Trajectory 2011-2029, March 2014

Table 2: Bath and North East Somerset Five Year Housing Land Supply Components

Source	2014-15	2015-16	2016-17	2017-18	2018-19
Market Delivery	417	741	1142	1068	951
Affordable Delivery	160	283	456	382	336
Total Delivery	577	1023	1597	1449	1287
Housing Trajectory	850	850	850	850	850

Source: B&NES Strategic Housing Land Availability Assessment Housing Trajectory 2011-2029, March 2014

3.6 The persistent past under delivery of housing has been acknowledged by the Inspector through the addition of a 20% buffer to the five year housing land supply[15]. Given the need to demonstrate a rolling five year housing land supply and therefore meet the Government's objective to *"boost significantly the supply of housing"*[16], it is extremely important that the Council delivers the target within the Core Strategy as a minimum, as failure to do so would have potentially significant consequences for the local housing market and exacerbate existing affordability problems. This is consistent with the Core Strategy which states at paragraph 1.26e that *"the 13,000 is not intended as a cap on housing delivery."*

3.7 Table 9 in the Core Strategy provides the monitoring framework for the plan which includes a target to provide around 80% of new housing between 2011 – 2029 on previously developed land. This is broadly consistent with the past delivery rates. Over the ten year period 2001-2002 to 2010-2011, 79% of housing development on average was delivered on previously developed land. This is highly relevant to the viability testing process as such sites are likely to incur non-standard development costs to cover requirements such as demolition, site contamination, remedial and stabilisation works. It is therefore important that the Viability Assessment covers this to reflect the types of sites coming forward in the Charging Authority area. This has not been the case however despite the evidence suggesting otherwise. **Section 4** of this representation covers abnormal and exceptional cost assumptions in detail.

[15] Paragraph 47, National Planning Policy Framework (2012)

[16] Ibid.

3.8 An estimated 1,000 dwellings are anticipated to be brought forward on strategic sites which have been released as part of the Green Belt review.[17] Strategic sites of the scale and nature proposed in B&NES require a significant amount of upfront infrastructure and a wide range of facilities to ensure they become suitable and attractive places to live, work and socialise. The planning obligations associated with these sites are significant and should not be underestimated. The Viability Assessment has acknowledged that in applying site specific Section 106 costs to these sites, the room to accommodate CIL is lessened and a lower rate should be proposed.

3.9 The Council are also heavily reliant on windfall development to meet their housing targets. Windfall development is unpredictable and we consider that care should be taken to ensure that the introduction of CIL does not adversely impact upon these unique and sporadic developments.

3.10 Given the Inspector's acceptance of windfall contribution to the overall housing supply, it is important to protect delivery from this source of supply and to do so adequate testing must be undertaken across a range of smaller development scenarios, with a range of values and affordable housing levels, in addition to the testing required for the identified strategic greenfield sites

West of England Strategic Housing Market Assessment

3.11 It is also important to note that the Council has commissioned (with the other authorities in the West of England area) a joint Strategic Housing Market Assessment (SHMA). This will provide, for the first time, a robust objective assessment of the housing needs for the West of England area. It is noted that there is an imperative to deliver the SHMA as soon as is practically possible given the implications for neighbouring authorities[18] and that the interim findings are due by December 2014. The Inspector's Report[19] also acknowledged that an early review of the Core Strategy may be triggered by the need for joint working among the West of England Authorities in response to the new SHMA that is in preparation.

3.12 B&NES Council have previously undertaken their own SHMA to support plan production. Their role and involvement in the joint SHMA with regard to the geographical extent of the study is still to be established. In any event, the outputs of the West of England SHMA will still be relevant to B&NES for the purposes of Plan review and the Duty to Co-operate across administrative boundaries.

3.13 Given the strategic housing issues across the West of England area, the likelihood is that the assessment output will find that a higher rate of housing delivery is required than is currently planned for in the adopted and emerging Local Plans. There is a very real possibility therefore that the evidence of housing need for B&NES will increase further, despite the short period of time since the adoption of the Core Strategy. Furthermore, the Inspector's Report on the Core Strategy Examination stated that the Council should aim to adopt a replacement plan by 2018 (previously 2021 but revised as a result of the SHMA timetable).

3.14 The above analysis of housing need and the land supply position within B&NES is important in setting the context for the proposed rates of CIL. The analysis demonstrates the challenges facing the Council in

[17] B&NES Strategic Housing Land Availability Assessment Housing Trajectory 2011-2029, March 2014

[18] Inspector's letter on the North Somerset Core Strategy dated 12 August 2014

[19] Paragraph 267, Bath and North Somerset Core Strategy Inspector's Report, June 2014

significantly increasing land supply to meet the Core Strategy target, together with any further increase that may be required in order to address the housing needs arising from the West of England SHMA.

3.15 Economic viability plays a key part in housing delivery and whilst we recognise that there is a need to introduce a CIL Charging Schedule in advance of the April 2015 cut off date, the timing for the introduction of the B&NES CIL threatens to add a significant further burden on residential development at a time when delivery has been below the level required.

3.16 In order to support economic growth and housing delivery, it is imperative that the Charging Authority set the rates within the Charging Schedule at a reasonable and achievable level which will not put in jeopardy the delivery of the strategic housing requirement. In practice, we consider that the Council should therefore take a cautious approach to viability testing, ensuring that the assumptions used are based upon a worst case scenario, and that a significant viability buffer should be incorporated into the methodology (as required by the 2014 Guidance) to ensure that only the extreme outlier sites are rendered unviable as a result of the introduction of CIL.

3.17 Furthermore, if the West of England SHMA indicates that there is a need to increase the housing requirement above the level in the Core Strategy, consideration will need to be given to the implications for this on land allocations within B&NES. It is imperative that the residential CIL rate is not set at a level which would impact on the ability of the authority to address future housing needs.

Applying the CIL Statutory Guidance

3.18 The CIL Statutory Guidance[20] must be followed in the preparation of a charging schedule. The Consortium wishes to outline observations against relevant aspects of the Guidance.

Table 3: CIL Planning Practice Guidance and Implications for Bath and North East Somerset Council

CIL Guidance (Reference ID)[21]	Topic	Guidance	Implications for Bath and North East Somerset Council
25-009-20140612	Rate setting	*"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."*	It is imperative that a CIL rate is not set which could have a negative impact on housing delivery. The distribution of the housing requirement in the Core Strategy requires contributions from a range of sites in locations across the authority area. This highlights the importance of testing a wide range of residential development scenarios and ensuring no source of supply is rendered unviable through the application of CIL.

[20] 2014 (as amended)

[21] CIL Guidance (as amended, 12 June 2014)

CIL Guidance (Reference ID)[21]	Topic	Guidance	Implications for Bath and North East Somerset Council
25-010-20140612	Positive duty	*"The levy is expected to have a positive economic effect on development across a local plan area."*	To be a success, CIL must facilitate development and enable infrastructure delivery required to support development.
25-010-20140612	Positive duty	*"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."*	Reliance must therefore be had on infrastructure evidence and viability evidence, with reasoned consideration of the views of the key stakeholders and delivery agents.
25-011-20140612	Positive duty	*"Charging schedules should be consistent with, and support the implementation of, up-to-date relevant Plans."*	The approach to viability testing must be grounded on the viability of all sites needed to support the delivery of the housing requirement identified in the adopted Core Strategy.
25-012-20140612	Spending	*"Charging authorities should think strategically in their use of the levy to ensure that key infrastructure priorities are delivered to facilitate growth and economic benefit of the wider area."*	A difference must be distinguished between “scheme mitigation” infrastructure and "strategic infrastructure" required to address the delivery of the whole plan (i.e. to address cumulative impacts).
25-020-20140612	Viability assessment	*"A charging authority should directly sample an appropriate range of types of sites across its area....The exercise should focus on strategic sites on which the relevant Plan relies, and those sites where the impact of the levy on economic viability is likely to be most significant."*	The viability inputs and assumptions in the testing of the generic site typologies must be realistic and reasonable. We do not consider this to be the case for all of those assumptions used in the Viability Assessment.
25-021-20140612	Viability assessment	*"A charging authority should take development costs into account when setting its levy rate or rates, particularly those likely to be incurred on strategic sites or brownfield land. A realistic understanding of costs is essential to the proper assessment of viability in an area."*	Reliance must therefore be placed on infrastructure and viability evidence, with reasoned consideration of the views of the key stakeholders and delivery agents. The additional costs of strategic and brownfield developments must be recognised.
25-022-20140612	Differential rates	*"If the evidence shows that the area includes a zone, which could be a strategic site, which has low, very low or zero viability, the charging authority should consider setting a low or zero levy rate in that area."*	An approach to differential CIL rates by scale and location (i.e. lower value housing market areas) is clearly consistent with national policy.
25-029-20140612	Infrastructure list	*"It is good practice for charging authorities to also publish their draft infrastructure lists and proposed policy for the associated scaling back of section 106 agreements at this stage* [Preliminary Draft Charging Schedule] *in order to provide clarity about the extent of the*	Infrastructure evidence on the onward use of Section 106 contributions should be published. It is clear that Section 106, whilst potentially scaled back in some cases, will continue to play an important role in relation to infrastructure delivery. The updated

CIL Guidance (Reference ID)[21]	Topic	Guidance	Implications for Bath and North East Somerset Council
		financial burden that developments will be expected to bear so that viability can be robustly assessed."	Guidance is clear that the sharing of infrastructure evidence should be earlier in the process.
25-039-20140612	Examination	*"The examiner should establish that the charging authority has complied with the legislative requirements set out in the Planning Act 2008 and the Community Infrastructure Levy Regulations as amended; the draft charging schedule is supported by background documents containing appropriate available evidence; the proposed rate or rates are informed by and consistent with the evidence on economic viability across the charging authority's area; and evidence has been provided that the proposed rate or rates would not threaten delivery of the relevant Plan as a whole."*	It is essential that the proposed CIL rates are consistent with the evidence produced. "Appropriate available evidence" must be published by the Charging Authority. This requires the full detail of the viability appraisals to be made available.
25-062-20140612	Payment in kind	*"…where an authority has already planned to invest levy receipts in a project there may be time, cost and efficiency benefits in accepting completed infrastructure from the party liable for payment of the levy. Payment in kind can also enable developers, users and authorities to have more certainty about the timescale over which certain infrastructure items will be delivered."*	The operation of Payment in Kind needs to consider the implications of the 2014 Regulations, which make clear that reductions in the CIL rate are not possible for infrastructure which is provided to mitigate the impacts of development (and hence typically "site specific").
25-063-20140612	Payment in kind	*"This document* [the Infrastructure Payments Policy Statement] *should confirm that the authority will accept infrastructure payments and set out the infrastructure projects, or type of infrastructure, they will consider accepting as payment (this list may be the same list provided for the purposes of Regulation 123)."*	The Council must produce an Infrastructure Payments Policy Statement.
25-084-20140612	Borrowing	*"Charging authorities are not currently allowed to borrow against future levy income. However, the levy can be used to repay expenditure on income that has already been incurred. Charging authorities may not use the levy to pay interest on money they raise through loans."*	The use of wider funding sources to enable infrastructure delivery should be considered.
25-094-20140612	Planning obligations	*"Charging authorities should work proactively with developers to ensure they*	This is an important principle that the Council should be aware of.

CIL Guidance (Reference ID)[21]	Topic	Guidance	Implications for Bath and North East Somerset Council
		are clear about the authorities' infrastructure needs and what developers will be expected to pay for through which route. There should be no actual or perceived 'double dipping' with developers paying twice for the same item of infrastructure."	
25-095-20140612	Planning obligations	*"The levy is intended to provide infrastructure to support the development of an area, rather than making individual planning applications acceptable in planning terms. As a result, some site specific impact mitigation may still be necessary in order for a development to be granted planning permission. Some of these needs may be provided for through the levy but others may not, particularly if they are very local in their impact. Therefore, the Government considers there is still a legitimate role for development specific planning obligations to enable a local planning authority to be confident that the specific consequences of a particular development can be mitigated."*	This is a key point, and distinguishes between the strategic infrastructure used to address cumulative impacts, which are required to deliver the plan as a whole and the scheme mitigation infrastructure used to mitigate the impact of the sites.
25-107-20140612	Grampian conditions	*"In England, the National Planning Policy Framework sets out that planning conditions (including Grampian conditions) should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. When setting conditions, local planning authorities should consider the combined impact of those conditions and any Community Infrastructure Levy charges that the development will be liable for."*	Grampian conditions must be used sparingly. The Charging Authority should publish a policy on the use of Grampian conditions.
25-108-20140612	Highway agreements	*"Charging authorities should take care to ensure that their existing or forthcoming infrastructure list does not inadvertently rule out the use of section 278 agreements for highway schemes that are already planned or underway, or where there would be clear merit in retaining the ability for developers to contribute towards specific local highway works through s278 agreements."*	The cost of Section 278 infrastructure is a relevant consideration for the viability evidence.

CIL Guidance (Reference ID)[21]	Topic	Guidance	Implications for Bath and North East Somerset Council
25-108-20140612	Highway agreements	*"Where section 278 agreements are used, there is no restriction on the number of contributions that can be pooled."*	Pooled Section 38/278 Agreements may represent a feasible alternative to pooled Section 106 contributions in relation to new/improved roads.

Source: Planning Practice Guidance - CIL, 2014.

Planning Obligations SPD

3.19 The CIL Guidance states that *"when a charging authority introduces the levy, Section 106 requirements should be scaled back to those matters that are directly related to a specific site… For transparency, charging authorities should have set out at examination how their Section 106 policies will be varied, and the extent to which they have met their Section 106 targets"*[22].

3.20 The 2014 CIL Guidance[23] also requires authorities to prepare, as part of their background evidence, information on the amounts raised in recent years through Section 106 agreements:

"...the charging authority should also provide information about the amount of funding collected in recent years through section 106 agreements. This should include information on the extent to which their affordable housing and other targets have been met."

3.21 Limited information on historic Section 106 contributions has been published as part of the DCS consultation. The Consortium would therefore ask for further detail on the anticipated Section 106 contributions to be sought by B&NES to ensure that a realistic figure is included in the viability appraisals. This information should be broken down by scheme type to enable a comparison on a cost per unit basis. This will help ensure that the combined total cost of Section 106 and CIL will not adversely impact the deliverability of any sites coming forward.

3.22 The assumptions within the Viability Assessment include a notional figure of £1,000 per dwelling for residual Section 106 post-CIL and BNP Paribas seek to justify this figure as follows:

"Based on the findings of the Council's analysis our appraisals test an allowance of £1,000 per residential unit to address any residual Section 106 costs. This is an estimate only and actual sums sought will vary according to site specific circumstances, however the figure is considered by the Council and BNP Paribas Real Estate to be a reasonable proxy for the likely sums to be sought after CIL is adopted. Further, we note that this figure is in line with those adopted by many other charging authorities and are therefore regarded as reasonable for testing purposes."[24]

3.23 The Consortium is concerned that limited evidence and justification has been provided for the £1,000 residual Section 106 allowance. Section 4 of the CIL Infrastructure Funding Gap Evidence Paper (July

[22] Paragraph 098, Reference ID 25-098-20140612, Planning Practice Guidance – CIL, 2014

[23] Ibid. Reference ID 25-018-20140612

[24] Paragraph 4.18, Community Infrastructure Levy: Viability Assessment (BNP Paribas, May 2014)

2014) lists recent schemes and affordable housing provisions, which have averaged 34% provision across nine sites. Additional tables break down Section 106 contributions by service area and use; however, there is no analysis of average contributions from the schemes listed and what would be sought once CIL rates are applied to area wide infrastructure. Given the publication of a Planning Obligations SPD and Draft Regulation 123 list, it is concerning that no explanation has been given to determine how the figure has been derived.

3.24 B&NES have provided a list of planning obligations that are likely to continue to be sought through Section 106 contributions (affordable housing notwithstanding) which is included in its consultation Planning Obligations SPD:

- Transport Infrastructure Works
- Public Transport (e.g. the provision of a new bus stop or bus lane to serve a development)
- Green Infrastructure
- Adoption of On-Site Green Space, Allotments and Landscaping Schemes
- Tree Replacement
- Targeted Recruitment and Training & Mitigation
- Fire Hydrants
- Education facilities (in relation to primary school provision related to the five strategic site allocations in the Core Strategy)
- Other Site Specific Measures

3.25 The Consortium appreciates the attempt to provide clarity regarding the items which the Council considers will be funded through site specific Section 106 Agreements. However, the cost assumptions within the Viability Assessment (up to a maximum of £1,000 per dwelling Section 106) would not be sufficient to provide the majority of those items referred to. We would therefore ask that more detail on the anticipated Section 106 contributions is provided to ensure that a realistic figure is included in the viability appraisals.

3.26 For example, in support of the Teignbridge CIL, Three Dragons undertook work to identify the level of Section 106 that should remain in addition to CIL.[25] In this instance, the research concluded that on large sites Section 106 obligations ranged from £1,620 to £3,900 per dwelling. From this they concluded that a minimum of £3,000 per dwelling should be included to cover the amounts typically payable for Section 106 items including play parks and community buildings etc.

[25] Teignbridge CIL Viability, March 2013

4. Updated Viability Assessment

4.1 Section 211 (7a) of the Planning Act 2008 (as amended), requires B&NES to use "*appropriate available evidence*" to inform the charging schedule. In the case of the DCS, B&NES has relied upon the Viability Assessment[26] produced by BNP Paribas as their '*appropriate available evidence'*. We have critically examined this report as part of this representation to determine if B&NES has satisfied the requirements of Section 211 (7a) in proposing the residential CIL rates within the DCS.

4.2 The fundamental premise is that to enable delivery, sites must achieve a competitive land value for the landowner and provide developers the required return on investment; otherwise development will be stifled. This is recognised by the NPPF[27] and is 'in-built' within the CIL 2010 Regulations (as amended). It is also the basis of the viability definition within the Harman report.[28]

4.3 Owing to the key test of Regulation 14(1)[29] it is important that the viability assessments prepared are fit for purpose, as it is clear that at Examination the charging schedule will need to be supported by "*relevant evidence*"[30]. Within the CIL 2010 Regulations (as amended), Local Planning Authorities (LPAs) must strike an appropriate balance and justify that balance with evidence at the Examination, showing and explaining how the rates will contribute towards the implementation of their relevant Plan.[31]

''Striking an Appropriate Balance''

4.4 B&NES will be aware that Regulation 14(1) of the CIL Regulations (as amended) sets out the key test against which the charging schedule is measured. The Regulations state:

"In setting rates (including differential rates) in a charging schedule, a charging authority must strike an appropriate balance between –

a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and

b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area."

4.5 Essentially CIL must not threaten the delivery of the development plan. A point highlighted in the CIL Guidance is that this test is at the "*centre of the charge-setting process...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. As set out in the National Planning Policy*

[26] Community Infrastructure Levy: Viability Assessment (BNP Paribas, May 2014)

[27] Paragraph 174, NPPF, March 2012

[28] Section One , Viability Testing Local Plans, Chaired by Sir John Harman, June 2012

[29] CIL Regulations 2010 (as amended)

[30] Ibid. Regulation 11(1) (f) / 19(1) (e), CIL Regulations 2010 (as amended)

[31] Paragraph 09, Reference ID 25-009-20140612, Planning Practice Guidance - CIL Guidance , 2014

Framework in England (paragraphs 173-177), the sites and the 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."[32]

The BNP Paribas Viability Assessment

4.6 We have reviewed the Viability Assessment[33] prepared by BNP Paribas and note that the assessments are based on a series of residential development site scenarios that model the gross development value (GDV) achievable across the authority area with varying scales of development. The development costs, interest costs and developer profit are then discounted. This Benchmark Land Value (BLV) is then deducted from the Residual Land Value (RLV) and the point at which viability changes from positive to negative is assumed to represent the maximum rate of CIL.

4.7 Having reviewed the updated Viability Assessment the Consortium have a number of concerns regarding the methodology used and assumptions made. This section of the representations outlines these concerns and explains why they have resulted in flawed conclusions which do not support the proposed residential CIL rates. The key assumptions to which we object are:

- Development Typologies
- Site Coverage and Density;
- Benchmark Land Values;
- Contingency;
- Build Costs; and
- Non-Standard Development and Site Servicing Costs

Development Typologies

4.8 The CIL Guidance states that the residential development scenarios selected to be assessed for viability must "***reflect a selection of the different types of sites included in the relevant Plan, and should be*** *consistent with viability assessment undertaken as part of plan-making*".[34] This testing should *"directly sample an appropriate range of types of sites across [the charging authority's] area….The exercise should focus on strategic sites on which the relevant Plan relies, and those sites where the impact of the levy on economic viability is likely to be most significant (such as Brownfield sites)"*[35]. This is in conformity with the CIL Guidance, which quotes the NPPF[36] and states that local planning authorities should establish that "***evidence has been provided that shows the proposed rate or rates would not threaten delivery of the relevant Plan as a whole***".[37]

4.9 A series of assumptions have been applied to nine development typologies used in the Viability Assessment, including unit mixes. Tables 4.9.1 and 4.9.2 in the Assessment detail the typologies and unit mixes

[32] Paragraph 009, Reference ID 25-009-20140612, CIL Guidance, 2014

[33] Community Infrastructure Levy: Viability Assessment (BNP Paribas, May 2014)

[34] Ibid. Paragraph 020, Reference ID 25-020-20140612, CIL Guidance (2014)

[35] Ibid. Paragraph 020, Reference ID 25-020-20140612, CIL Guidance (2014)

[36] Ibid. Paragraph 173, March 2012

[37] Ibid. Paragraph 039, Reference ID 25-039-20140612, CIL Guidance (2014)

respectively. The Assessment states that the typologies are *"guided by a range of actual developments within the District.These typologies are therefore reflective of developments that have been consented/delivered as well as those expected to come forward in the District in future."*[38]

4.10 Table 4.9.2 summarises the unit mix assumptions for each typology. This is provided again below in **Table 4.**

Table 4: Unit Mix Assumptions from the B&NES Viability Assessment

Site Type	1-bed flat	2-bed flat	3-bed flat	2-bed house	3-bed house	4-bed house
Unit size	50 sq m	70sq m	86 sq m	83 sq m	96 sq m	130 sq m
1	-	-	-	-	100%	-
2	-	-	-	29%	71%	-
3	20%	15%	-	30%	35%	-
4	-	-	-	70%	30%	-
5	10%	10%	10%	35%	35%	-
6	-	-	-	33%	67%	-
7	25%	20%	5%	25%	25%	-
8	-	-	-	30%	60%	10%
9	20%	20%	-	30%	30%	-

Source: Community Infrastructure Levy: Viability Assessment, BNP Paribas, May 2014

4.11 Having regard to the larger site typology assumptions, it is not clear where the mix assumptions have been sourced from. However the key question is whether these assumptions are appropriate and realistic to the B&NES housing market.

4.12 In an authority such as B&NES with a core city and varied hinterland, there are typically a range of housing typologies with certain typologies applicable to the core city and a different set of typologies more reflective of the remainder of the district. For example, it would not be uncommon to see a largely flatted development within Bath at a relatively high density but this form of development is much less common in the smaller towns and rural areas.

[38] Community Infrastructure Levy: Viability Assessment (BNP Paribas, May 2014)

4.13 This difference should in our view be reflected in the methodology used to derive the CIL rates. In so doing it should use only those typologies relevant to each area to establish the maximum chargeable CIL rate.

4.14 On residential development sites outside of Bath, developers will typically bring forward a mix of dwelling types and sizes which reflect prevailing market conditions. These may include a small proportion of apartments, but will typically comprise a mix of small, medium and large size family housing. We have analysed a number of recent planning applications for residential developments within B&NES and the results of the analysis are contained in **Table 5** below.

Table 5: Open Market Housing Mix of Sample Sites

	1-bed flat	2-bed flat	2-bed house	3-bed house	4-bed house	5-bed house
Site Of Alcan Factory, Nightingale Way, Midsomer Norton	2	16	5	42	45	-
Parcel 0058, Cautletts Close, Midsomer Norton	-	-	-	27	46	-
Land south of Orchard View, Sleep Lane, Whitchurch	-	-	5	6	14	6
Parcel 5400, Fosseway South, Westfield, Midsomer Norton	6	-	16	53	32	-
Parcel 4200, Parkhouse Lane, Keynsham	6	22	39	37	60	21
Total	**14**	**38**	**65**	**165**	**197**	**28**
Total Percentage	**3%**	**7%**	**13%**	**33%**	**39%**	**5%**

Source: Savills Research Sourced from the B&NES Planning Applications Website

4.15 When comparing the larger site typologies 6-9 from **Table 4** with the results from a representative selection of recent planning applications in **Table 5**, the results differ particularly with the apartment assumptions. This suggests that what the market has been delivering is different to the assumptions used in the Assessment. It is particularly noteable that in all but one of the typologies tested, there were no 4-bed houses and even in that scenario there were only 10%. In contrast, of the actual schemes analysed, 4-bed houses were the predominate house type.

4.16 The typologies used in the viability evidence do not reflect developments that have, or are, coming forward in B&NES. The mix of housing types and sizes in Table 4.9.2 of the Viability Assessment does not appear to have been "guided by a range of actual developments within the District."[39] It is essential that the typologies

[39] Paragraph 4.8, Community Infrastructure Levy: Viability Assessment (BNP Paribas, May 2014)

used in the viability testing process are reflective of the circumstances across the authority area. This is not the case, particularly in the Somer Valley where there is a greater emphasis on housing within actual schemes as opposed to apartments.

Site Coverage and Density

4.17 The Consortium's representation at the PDCS consultation stage raised concerns with the assumptions applied to site coverage. Guidance on this matter is provided in Appendix B of the Local Housing Delivery Group advice in 'Viability Testing Local Plans' (June 2012). The advice states that:

"Many viability studies model housing schemes assume a housing and plotting density per unit area. Such an analysis is a legitimate starting point and, provided the assumptions in relation to sales revenue and build cost are correct, produces a fully serviced land value per net developable area.

However, the assumption is then made that the net developable area (ie. Income generating land) equates to the area of land that is to be acquired following the grant of planning permission.

In all but the smallest redevelopment schemes, the net developable area is significantly smaller than the gross area that is required to support the development, given the need to provide open space, play areas, community facility sites, public realm, land for sustainable urban drainage schemes etc.

The net area can account for less than 50%, and sometimes as little as 30% on larger sites, of the site to be acquired (ie. the size of the site with planning permission). Failure to take account of this difference can result in flawed assumptions and inaccurate viability studies."

4.18 Table 4.9.1 in the Viability Assessment includes a column for 'net developable area (ha)' per typology; however, this is a simple calculation of area and density which provides the number of units in each instance. The residential appraisal results in Appendix 1 of the Assessment each assume a 100% net to gross site coverage.

4.19 As stated in the PDCS representation, small sites effectively have 100% coverage and applying a net density to the whole area would be appropriate for typologies up to and including 15 dwellings. For the 20, 50, 75 and 125 typologies however, for the reasons outlined in the guidance, it is highly unlikely that these will have 100% site coverage. We therefore strongly advocate either the inclusion of a gross to net reduction factor in these appraisals or an adjustment to the density to base this on the gross site area as opposed to the net.

4.20 It is also not clear from the Viability Assessment what evidence has been used to derive the density assumptions and no explanation has been provided as to whether these are based on an assessment of comparable sites in each of the defined typologies.

4.21 Given that the Council have published evidence on densities and site coverage as part of its SHLAA, this evidence should be assessed as part of the Viability Assessment review to ensure that viability inputs and assumptions in the testing of the generic site typologies are realistic and reasonable, based on evidence of sites that have come forward with planning permission.

4.22 As with the PDCS representation, the Consortium again refer to the assumptions contained in the historic guidance document ‘Tapping the Potential’. **Table 6** below reproduces the document’s illustration of gross to net ratios for different site sizes.

Table 6: Open Market Housing Mix of Sample

Site Size	Site Coverage
Up to 0.4 hectares	100% gross to net ratio
Up to 0.4 – 2 hectares	75-90% gross to net ratio
Over 2 hectares	50-75% gross to net ratio

Source: Tapping the Potential – Best practice in assessing urban housing capacity. URBED, July 1999

4.23 Based on the guidance in Tapping the Potential, the net site area for the typologies of 20 dwellings and above should be proportionally discounted ranging from 50-90% gross to net ratio. Development density, alongside site coverage, defines the amount of land required for development and will impact therefore upon the price that a developer would need to pay for the land to deliver a specified number of dwellings. When these assumptions are applied to the land area required for the development, they will dilute the residual land value significantly.

4.24 Rather than apply site coverage and density assumptions separately we have again used the example sites within the Somer Valley and Keynsham to establish an appropriate density based on the gross site area to be used in assessing the viability of the larger sites within these areas. **Table 7** shows the results of this analysis.

Table 7: Site Coverage and Density Analysis of Sample Sites

Site	Number of Units	Gross Site Area (ha)	Net Density
Site Of Alcan Factory, Nightingale Way, Midsomer Norton	169	5.13	33 dph
Parcel 0058, Cautletts Close, Midsomer Norton	112	3.44	33 dph
Parcel 5400, Fosseway South, Westfield, Midsomer Norton	164	7.31	22 dph
Parcel 4200, Parkhouse Lane, Keynsham	285	11.7	24 dph
Monger Lane, Welton, Midsomer Norton	135	5.78	23 dph

Source: Savills Research Sourced from the B&NES Planning Applications Website

4.25 Based upon the above analysis and assuming 100% site coverage (for the sake of convenience), the density of typical developments is 26 dph. We strongly consider that this figure should be incorporated into the Viability Assessment for the relevant typologies.

Benchmark Land Values

4.26 The Consortium have concerns relating to the methodology and assumptions made in the Viability Assessment in determining the Benchmark Land Values (BLVs). The PDCS representation highlighted concerns with the four BLVs applied and the absence of detailed justification. The only figures evidenced are from the Valuation Office Agency (VOA). Despite the Consortium's previous concern with the use of Bristol BLVs and the distorting impact this would have given the land value variations between Bristol and Bath (let alone between the different administrative areas of B&NES), together with the approach of applying four BLVs against the Residual Land Values, BNP Paribas have not reviewed or refined theirs assumptions.

4.27 If the CIL rate is to be founded upon realistic and reasonable inputs and assumptions, the Charging Schedule should be consistent with, and support the implementation of, the B&NES Core Strategy. Given that the majority of development is expected to come forward on previously developed sites and a large proportion of the supply is within the existing settlements (with the large scale Green Belt releases dealt with in a separate section of the Viability Assessment), the Viability Assessment BLVs 3 (secondary industrial or other employment use at £750,000 per ha) and 4 (other vacant land or community land within or adjacent to existing settlements at £500,000 per ha) would appear to correlate with the majority of site types coming forward through the Core Strategy.

4.28 The NPPF is clear that in assessing viability, there must be a competitive return for the landowner as this is required to incentivise the release of land for development. This is applicable to both previously developed and greenfield sites. We recognise that part of the rationale behind CIL is to capture a proportion of the increase in land value and that by its nature CIL will therefore have a bearing upon land values. However, it is imperative that realistic and reasonable benchmark land values are included within the Viability Assessment which are based upon an understanding of the values at which land is currently traded.

4.29 In relation to previously developed sites, it is reasonable in our view to assume that the competitive return required should be predicated upon the existing use value as a starting point. However, unless there is an incentive to the landowner to redevelop the site for an alternative use, it is unlikely to come forward. This is particularly the case where land is held as an investment as there will need to be a considerable upside in value in order to incentivise its disposal for a capital receipt as opposed to a rental income.

4.30 For this reason, on those typologies which are intended to reflect brownfield sites, we support the benchmark land value based on EUV provided that a 25% uplift is incorporated to incentivise the landowner. This figure is consistent with the only research we are aware of on this subject which was produced by Turner Morum on behalf of DCLG in 2011.[40]

4.31 Given the challenges facing housing delivery within B&NES and the finite nature of brownfield land, it is likely that Greenfield residential development sites will also be required to deliver the housing requirement.

[40] Cumulative impacts of regulations on house builders and landowners. Research Paper. Turner Morum, 2011

4.32 For the larger site typologies it is necessary to account in the benchmark land value for the costs and planning risk associated with site promotion. For simplicity we split the development process in two; firstly the 'promotion' phase which includes promoters profit, and then the 'delivery' phase from which the house builder derives their profit.

4.33 The second part of this (i.e. the 'delivery' phase) should adopt the same 20% margin as all other typologies. In order to account for the former, we recommend an adjustment to the benchmark land value. This approach is consistent with the Harman Report which states that:

"In such circumstances, the Threshold Land Value (at which a landowner will release land for development) is unlikely to represent the assessed value that will bring land forward for development. It will be necessary to take account of planning promotion costs and <u>the return required by the promoters of such sites</u>." [41][our emphasis]

4.34 Land promoters typically require 10%-20% of the land value in order to reflect the risk that they may expend significant costs in the promotion of a site without ever seeing a return. Put another way, the land promoter requires 10%-20% of the land value when the site is sold with planning permission to make it worth their resource and risk in promoting the site. The most accurate means of reflecting this in the Viability Assessment is to inflate the greenfield benchmark land values for all those sites where it is likely that promotion of the site will have occurred, i.e. greenfield site typologies over 100 dwellings.

4.35 For these reasons we strongly recommend that the greenfield benchmark land value is inflated by 20% to reflect the return required by the developer / promoter to reflect planning risk.

4.36 In summary, to ensure consistency with the NPPF and to provide the landowner with a competitive return, we consider that the benchmark land values must be uplifted by 20% – 25%. In some cases, this will still not represent a sufficient return to the landowner to incentivise the release of an asset which, in some instances, will have been within the ownership of the family for many generations. Nevertheless, the additional uplift to the benchmark land values will provide an incentive and help ensure that land supply does not reduce significantly.

Contingency

4.37 A separate contingency allowance should be included and we note that in previous Viability Assessments undertaken by BNP Paribas, a 5%[42] contingency figure has been applied as an *"industry norm"* which is a reasonable assumption upon which to establish viability for the purposes of setting a CIL charging rate. We therefore recommend that a minimum allowance of 5% is applied as a contingency allowance assumption in reviewing the Viability Assessment for B&NES.

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[41] Financial Viability in Planning, Page 31

[42] Table 4.39.1, Community Infrastructure Levy: Viability Study, prepared for Corby Borough Council,September 2013

Build Costs

4.38 The Viability Assessment has applied construction costs based on dwelling type and differentiates between areas, principally based on the higher costs required in Bath City Centre owing to the requirement to finish developments in Bath Stone. These costs were based on discussions with stakeholders as part of the B&NES Viability Study which dates back to 2010, as stated in footnote reference 7 of the Viability Assessment.

4.39 Whilst the principle of applying higher build costs to cover the material and finishing requirements in the higher sales value areas is supported, the evidence upon which they are based is substantially out of date, particularly given recent rates of build cost inflation as reported by the BCIS.[43] The £783 per sq m residential build costs for Keynsham and the Somer Valley are considerably lower than recent evidence would suggest. The mean BCIS build cost for general estate housing in B&NES is currently £983.[44] This is considered to be an appropriate representative figure given that ‘estate housing’ is more reflective of the types of developments that have and are anticipated to come forward in both Keynsham and the Somer Valley, as well as development coming forward via the SHLAA.

4.40 It is absolutely imperative that the up to date evidence of build costs is used in the Viability Assessment. A figure from 2010 is now substantially out of date and does not represent ‘appropriate available evidence’ as required by the CIL Guidance.

Non-Standard Development and Site Servicing Costs

4.41 Build costs do not just need to reflect the cost of building the individual dwellings; they must also factor in the other costs associated with the delivery of development. These costs typically include:

- Demolition;
- Abnormal Foundation Design;
- Flood Alleviation Works;
- Land Stabilisation;
- Decontamination; etc.

4.42 We acknowledge that not all sites will be burdened by such additional costs, but in our experience the vast majority have some abnormal costs. It is therefore important to establish a clear and robust understanding of viability across B&NES to build in an assumption relating to such costs particularly for those typologies where these costs are likely to have a significant bearing.

4.43 The further inclusion of an allowance for non-standard development costs is endorsed by the RICS Professional Guidance which states that:

[43] Construction Tender Price Indices, June 2014

[44] BCIS new build cost per sq m for the Bath area, correct as of 6 September 2014

"a typical viability assessment includes provisions for exceptional costs. This might include an unusual sewerage connection facility, high levels of site contamination and the need for extensive remedial works, flooding, site boundary and stabilisation works, particularly if there are substructure obstacles to overcome.

These exceptional site costs, or 'abnormals', inflate costs as well as adding to the timeframe for the delivery of a scheme. Historic costs may also be reasonable and appropriate."[45]

4.44 Given that policy DW1 of the Core Strategy prioritises the use of brownfield opportunities for new development in order to limit the need for development on Greenfield sites, it is concerning that no allowance has been made in the Viability Assessment for any abnormal or exceptional development costs. The study states in paragraph 4.26 that *"to apply a blanket allowance would generate misleading results. An 'average' level of allowance for certain costs (e.g. piling on sites with abnormal ground conditions) is already reflected in BCIS data, as such costs are frequently encountered on sites that form the basis of the BCIS data sample."*

4.45 Paragraph 4.26 then states that the appraisals include a contingency which will mitigate the impact of exceptional costs; however, this is not explicitly stated or evidenced. The Consortium is therefore concerned that the Viability Assessment has not factored any abnormal costs for the site assumptions. This is despite the majority of the Core Strategy housing supply coming forward on previously developed sites. The Viability Assessment should include appropriate average levels for each type of site and we would expect an allowance to be applied to the appraisals to take account of abnormals unless more specific information is available.[46]

4.46 We have analysed planning applications included in the B&NES SHLAA for viability and abnormal costs. A recent example at Radstock Railway Land [47]in the Somer Valley demonstrates the challenges with delivering sites in this lower sales value area which is also constrained topographically. The scheme, for approximately 190 dwellings, was accompanied by a viability assessment which concluded that with marginal viability the site could only accommodate a reduced package of Section 106 provision than would be required in accordance with the Councils Planning Obligations SPD. The viability assessment was independently assessed and the costings that were applied to the scheme within that assessment were not disputed. Consequently no education or open space contributions were sought on this site.

4.47 A further example in the Council's SHLAA demonstrates the challenges with site delivery. The 5.64 ha site at Welton Bibby Baron in the Somer Valley is proposed in the five year housing land supply. However, the SHLAA acknowledges that there a series of actions are required to overcome constraints including a contamination report and implementation of remediation works, demolition and site clearance, together with Flood Risk Assessment and implementation of mitigation works. The risks associated with delivering 150 units at this site between 2014 – 2019, compounded by lower sales values in the Somer Valley and the associated risks associated with delivering both CIL and site specific Section 106 obligations, should be carefully considered in reviewing the Viability Assessment and proposed CIL residential rate in this area.

[45] Financial Viability in Planning, August 2012

[46] Page 35, Viability Testing Local Plans

[47] Application reference 13/02436/EOUT

4.48 We have undertaken an analysis of the abnormal costs associated with residential development sites in an around the West of England area, the results of which are attached at **Appendix 3**. This analysis includes a broad range of sites to establish an average abnormal cost per dwelling. The average from this research is £12,069 per dwelling. In the absence of any alternative evidence, it would be prudent to incorporate this assumption into the viability assessments for the generic site typologies.

BNP Paribas Viability Appraisal Results

4.49 We have reviewed the Viability Assessment supporting the DCS, in particular the results of the viability appraisals run by BNP Paribas. The evidence in Appendix 1 of the Viability Assessment shows that various appraisals have been undertaken on site typologies and in housing market areas which are not relevant and these should not be used in assessing the viability in these market areas.

4.50 The two variables which differentiate the assessment results between the market areas are sales values and build costs. Based on the findings in Appendices 1 and 2, it would appear that the 'Chew Valley' and 'Bath N/W/A & CV (E)' are least viable overall. This is a function of the relatively low sales values yet higher build costs.

4.51 Indeed, in the Bath N, W, S & CV (E) area, the results of the site appraisals at the policy compliant 30% affordable housing level suggest that on larger scale sites of 50 dwellings and above, a CIL rate is not viable. In fact, there is only one instance where a positive value is obtained (125 unit scenario at BLV4) which is still below the proposed £100 CIL rate (this is before a 30% viability buffer has even been applied.

4.52 If the build costs for Keynsham and the Somer Valley are updated to current BCIS average figures for 'Estate Housing' as we recommend earlier, this would have a significant bearing on the output of the Viability Assessments for those locations. We strongly urge the Charging Authority to update the viability evidence on this basis and to revisit the findings prior to the examination.

Unviable Sites

4.53 Paragraph 6.6 of the Viability Assessment states that *"if a scheme is unviable before CIL is levied, it is unlikely to come forward and CIL would not be a factor that comes into play in the developer's/landowner's decision making. We have therefore disregarded the 'unviable' schemes in recommending an appropriate level of CIL."*[48]

4.54 The Consortium is concerned with this approach as authorities have a positive duty to show that their CIL rates are appropriate: *"A charging authority **must use 'appropriate available evidence'** to inform their draft charging schedule...Charging authorities need to demonstrate that their proposed levy rate or rates are informed by 'appropriate available' evidence and consistent with that evidence across their areas as a whole."*

4.55 Furthermore the guidance states at paragraph 25-022-20140612 that *"if the evidence shows that the area includes a zone, which could be a strategic site, which has low, very low or zero viability, the charging authority should consider setting a low or zero levy rate in that area."*

[48] Paragraph 6.6 - Community Infrastructure Levy: Viability Assessment, BNP Paribas, May 2014

4.56 If there is part of the district where the evidence does not support a CIL rate then the guidance is clear that the rate should be set low or at zero to reflect this. It is not appropriate simply to ignore it.

4.57 This inconsistency has been acknowledged by the Trafford Metropolitan Borough Council and Richmond upon Thames CIL examination reports. It is an inappropriate analysis of the viability results which has led to the corresponding CIL rate not being supported by 'appropriate available evidence.'

4.58 It must be remembered that the district wide Viability Assessment is a largely theoretical exercise based upon average costs and values. There may be sites which are deemed to be unviable in the viability assessment but which could nevertheless come forward because of a certain set of circumstances. Similarly, sites which are assessed as having a significant positive land value may have particular costs associated with their development which would render delivery unviable. It is for this reason that we have significant concerns about the methodology employed by BNP Paribas.

4.59 Basing the proposed rate of CIL on the maximum achievable and ignoring those typology assessments which result in development being unviable, fails to provide a balanced and rounded understanding of viability within the identified market areas. Consideration should be given to all of the appraisal outputs and, where appropriate, differential rates proposed where these are justified by the evidence.

Application of a Viability Cushion

4.60 Site specific circumstances mean that the economics of the development will vary from the typical levels identified via analysis of the theoretical typologies. This is inevitable given the varied nature of housing land supply and costs associated with bringing forward development.

4.61 This is recognised by the CIL Guidance which highlights the importance of a charging authority recognising the need for an appropriate balance when determining CIL rates: *"The authority will need to be able to show why they consider that the proposed levy rate or rates set an appropriate balance…between the need to fund infrastructure and the potential implication for the economic viability of development across their area."*[49]

4.62 It is therefore important that when setting the CIL rates for B&NES that the Council applies an appropriate viability 'buffer' as discussed in the CIL Guidance: *"It would be appropriate to ensure that a 'buffer' or margin is included, so that the levy rate is able to support development when economic circumstances adjust."*[50]

4.63 This is particularly important in the context of B&NES where the scale of the increase to the strategic housing requirement means that the Councils can ill afford to render otherwise suitable and deliverable residential sites unviable through the introduction of CIL.

4.64 This approach has been supported in the Greater Norwich Development Partnership Examiner's Report in relation to Greenfield sites: "*The need for a substantial 'cushion' is particularly important on Greenfield sites*

[49] Ibid. Paragraph 020, Reference ID 25-020-20140612, CIL Guidance (2014)

[50] Ibid. Paragraph 020, Reference ID 25-020-20140612, CIL Guidance (2014)

where, as the Harman advice notes, prospective sellers are often making a once in a lifetime decision and are rarely distressed or forced sellers."[51]

4.65 In our experience, **a minimum viability cushion of 30%** should be adopted to minimise risk to the housing supply, particularly when B&NES has such a significant history of under delivery. BNP Paribas have acknowledged this guidance and recommended the Council apply a discount of 30% to the maximum rate which is included in Tables 1.5.1 and 6.14.1 of the Viability Assessment.

4.66 The Consortium is concerned that in the lower value residential sales areas, the single CIL rate has been set above the CIL rate having applied a 30% viability buffer. This is even before any adjustment is made to address build costs and the density assumptions.

4.67 The Somer Valley is in the lower residential sales value area of B&NES as acknowledged in Table 4.2.1 of the Viability Assessment. Given that 19% of the overall housing supply is to be delivered in this area over the plan period, together with 60% of the Somer Valley supply anticipated to come forward in the next five years (1,487 dwellings), it is vital that CIL is set at a rate which does not threaten the scale of site delivery and viability.

Differential Rates

4.68 The CIL Guidance states that Charging Authorities should take development costs into account when setting their levy rates and these should include costs arising from existing regulatory requirements and any relevant Plan policies such as affordable housing.[52]

4.69 The Core Strategy affordable housing policy splits between a 40% target in central, north and east Bath, together with its rural hinterland, and a 30% target in south, north and west Bath and other settlements in the District. This is included in policy CP9 and covers all residential sites of five dwellings or more.

4.70 Whilst the policy also allows for viability considerations including *"whether there are exceptional build or other development costs,"* it is important to ensure that any CIL rate is set accordingly and takes into account the differential rate for affordable housing. It is therefore concerning that whilst the evidence for a differential affordable housing policy rate has been found sound and included in the Core Strategy, no corresponding differential CIL rate has been selected. This is despite the evidence suggesting that sales rates variations across the District would render a flat CIL rate difficult to argue. The Consortium is therefore concerned about the overall impact of meeting the affordable housing policy together with the proposed CIL residential rate, particularly in the lower value housing market areas.

Conclusion on the Updated Viability Assessment

4.71 For the reasons set out above, it is vital that the likely cumulative impacts of existing and proposed standards are fully assessed and that implementation is not put at risk[53].

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[51] Paragraph 25, Greater Norwich Development Partnership Examiner's Report

[52] Ibid. Paragraph 020 Reference ID: 25-020-20140612

[53] Paragraph 174, NPPF

4.72 As a result of this analysis, the Consortium believe that the methodology and assumptions used have skewed the Viability Assessment particularly in the lower sales value areas. It is not considered that a CIL rate of £100 per sq m can be supported on sites in the lower sales value areas of Bath N, W, S & Chew Valley, Keynsham and Somer Valley based upon the available evidence. To ensure that development is not compromised by CIL moving forward, that the Council is able to continually demonstrate a rolling five year housing land supply, and that an appropriate viability buffer is applied to reflect the variation in results and that CIL is not set at the margins of viability, it is proposed that a lower rate of £50 per sq m is set for residential developments outside of the higher sales value areas of Bath City Centre, Bath N & E and Bath Rural. This would better reflect the evidence and ensure that CIL does not unduly impact upon the delivery of housing.

5. Strategic Sites

5.1 The Consortium welcome the separate appraisals undertaken for the five strategic sites allocated in the Core Strategy[54] as follows:

- Land adjoining Odd Down
- Extension to MoD Ensleigh
- Land adjoining East Keynsham
- Land adjoining South West Keynsham
- Land at Whitchurch

5.2 It is important that large scale sites are tested as their inputs differ to smaller development sites owing to the up-front infrastructure requirements and costs of promoting the site through the planning process. Specific Placemaking Principles for each strategic site are set out in the Core Strategy which indicate significant additional infrastructure costs required of these sites. As a result of these appraisals, the Charging Authority propose a CIL rate of £50 per sq m.

5.3 We have a number of concerns regarding the assumptions used in the viability evidence and in this section we address each of these in turn.

Section 106

5.4 As previously stated, the associated planning obligations on strategic sites are significant and should not be underestimated. Paragraph 3.24 in this representation lists the obligations that will continue to be sought through Section 106 contributions as detailed in the Planning Obligations SPD. The Viability Assessment states that the Council has advised that strategic allocations will be required to make either on-site provision or financial contributions towards various infrastructure types including primary education. The Council has not costed these requirements and BNP Paribas has therefore tested a range of Section 106 requirements ranging from £1,000 to £15,000 per dwelling.

5.5 The Viability Assessment has acknowledged that in applying site specific Section 106 costs to these sites, the room to accommodate CIL is lessened and a lower rate should be proposed. Where the Assessment proposed a threshold of £5,000 Section 106 costs per dwelling, this would trigger a reduced CIL rate of £50 per sq m. The Charging Authority has seemingly accepted this assumption by accepting the £50 rate.

5.6 If the Section 106 charges were however higher than £5,000 per dwelling there would need to be a further reduction in the CIL rate to reflect this. This seems inevitable on some of the strategic allocations. Indeed the cost of primary education alone is likely to be in the order of £3,953.99 per dwelling based on the formula in the draft SPD.

[54] The strategic sites include Land adjoining Odd Down, the Extension to MoD Ensleigh, East of Keynsham, Land adjoining South West of Keynsham and Whitchurch.

Site Servicing Costs

5.7 For sites of the scale of the strategic allocations, there will be considerable costs associated with servicing and on-site physical infrastructure required to deliver serviced land parcels. This is a separate cost to community or social infrastructure and relates to the provision of services, highways infrastructure, drainage etc. The Consortium note an allowance of £10,000 per unit for site preparation, infrastructure and utilities costs has been included for the strategic sites. The Consortium consider this assumption, included without any evidence or justification, to be low and not reflective of the requirements to bring forward sites at the early planning stages. As a rule of thumb, the Harman Guidance indicates that the costs of strategic infrastructure is typically in the order of £17,000 - £23,000 per plot for larger scale schemes[55].

5.8 **Table 8** below extracts the site-wide infrastructure cost assumptions used in the Viability Assessment. It then compares these to the mid-point benchmark figure of £20,000 per dwelling contained in the Harman Guidance. The difference is considerable and very simply demonstrates the fundamental flaw in just one of the assumptions used in the viability testing of the strategic sites.

Table 8: Strategic Infrastructure Cost Assumptions

	Viability Evidence Assumption	Dwellings	Total Infrastructure Cost	Difference
Land adjoining Odd Down	£3,000,000	300	£6,000,000	-£3,000,000
Extension to MoD Ensleigh	£1,200,000	120	£2,400,000	-£1,200,000
Land adjoining East Keynsham	£2,500,000	250	£5,000,000	-£2,500,000
Land adjoining South West Keynsham	£2,000,000	200	£4,000,000	-£2,000,000
Land at Whitchurch	£2,000,000	200	£4,000,000	-£2,000,000

Source: Bath and North East Somerset Core Strategy (Adopted July 2014) and Preliminary Draft Charging Schedule, July 2014

Overall Site Density

5.9 As stated in paragraphs 4.17 - 4.25 above, site density plays an important role in the overall viability testing of CIL. The overall density on strategic sites, as tested by BNP Parabas in Appendix 4, are refereable to net development areas as opposed to gross areas. All of the strategic sites lie alongside Green Belt and in places other sensitive national and international designations. This will require extensive infrastructure, public open space, buffer and landscaping areas, as well as areas for ecological/heritage mitigation. These are clearly set out in the Placemaking Principles. This will result in gross to net developable ratios of at least

[55] Viability Testing Local Plans, Appendix B, page 44

2 to 1 which when factored into the calculations in Appendix 4 would lead to densities as low as 15-20 units per hectare.

Build Costs

5.10 As stated in paragraphs 4.38 - 4.48 of this representation, the overall build costs are underestimated by BNP Paribas. Given the location of some of these strategic sites on the edge of the Bath World Heritage City, alongside the Green Belt and in or alongside the Cotswold Area of Outstanding Natural Beauty and the requirements of the Placemaking Principles in these sensitive locations, this will result in higher build costs from the use of natural materials such as Bath Stone. These higher build costs are not adequately factored into the overall appraisals.

Interpretation of the Evidence

5.11 The Appendix 4 results for both of the strategic site allocations at Keynsham raise concerns as the appraisals indicate that the ability to accommodate CIL and Section 106 obligations. The RLV per gross hectare (at £50 sq m on the policies-compliant 30% affordable housing requirement and 40 dph density) result in 'amber' or 'red' value ranges. It would therefore appear that the viability evidence does not support the proposed rates of CIL.

5.12 Similarly, results for the largest strategic site at Odd Down on the policy compliant 40% affordable housing requirment, results in 'amber' or 'red' value ranges for the 40 & 30 dph densities on Section 106 values above £5,000 per dwelling. This would also suggest that the viability evidence alone does not support the proposed rate of CIL of £50 per sq m.

Conclusions

5.13 The Consortium's clear preference for strategic sites is that the infrastructure requirements be delivered through planning obligations rather than CIL for without this, the burden of CIL may fail to bring forward these sites and therefore deliver the Development Plan objectives. The key strategic objective of delivering a substantial contribution of affordable housing through these sites would also be put at risk. The approach of providing a zero CIL rate for strategic sites recognises more fully the costs of delivery of these sites and enables greater flexibility to address necessary infrastructure requirements through a bespoke Section 106 agreement which balances the costs and timing of infrastructure delivery.

5.14 For the avoidance of doubt, the Consortium do not accept that the assumptions and calculations used to inform the proposed strategic sites CIL rate are necessarily valid in future Section 106 negotiations. The Consortium therefore wishes to clarify that the assumptions used in testing the strategic sites will not prejudice any future negotiations on the viability of the individual sites, given that the costing of site specific Section 106 obligations has yet to be determined by the Council. The Viability Assessment should be varied by our comments and the assumptions should only be used to inform the CIL rates contained within the DCS and not any future negotiations regarding development viability.

6. Effective Operation of CIL

6.1 Despite the narrow Regulatory requirements of the Examination, the Consortium urges B&NES to make clear at the earliest opportunity the supporting documentation needed to operate CIL and to make it available for consultation. Practically, this needs to be done prior to the Examination so that participants and stakeholders are able to comment on the effective operation of CIL. Whilst this supporting information is not tested at Examination, this information is critical to allow for the successful implementation of CIL and to demonstrate that CIL has been prepared positively and supports sustainable development.

6.2 The Consortium welcomes guidance published as part of the DCS Consultation Paper on how to calculate the relevant 'chargeable development'/level of CIL. Further comments are provided on relevant operational aspects below.

Instalments Policy

6.3 We welcome the inclusion of an instalments policy as the requirement for a large capital payment at the outset of a project would impact significantly upon the amount of finance tied up in a project and hence development viability. The opportunity to consider the overall approach and phasing of larger scale developments should be considered as part of reviewing the Instalment Policy. The Instalment Policy should aim to reflect, as closely as possible, the timing of delivery of the development, to ensure that the CIL does not put unnecessary pressure on cashflow and viability.

6.4 Consequently, applying a single threshold of £35,000 CIL liability would not be appropriate on the strategic Greenfield sites included in the Core Strategy. Such sites have greater infrastructure cost requirements upfront as outlined in the previous section. A 33% CIL payment on a site within 60 days of development commencement, on top of the site infrastructure and utilities costs, could impact on development delivery. We would therefore recommend the Instalments Policy is amended to cover a scale of sums with proportionate instalments and payment requirements, instead of a single sum and fixed instalments regardless of scale.

Relief

6.5 Having had regard to Discretionary Charitable Relief and Exceptional Circumstances Relief, we note that B&NES will consider offering this option. We would remind the Council that such policies can only be applied if they are in force prior to an application being submitted, therefore the need for the policy will arise prior to it being made available.

6.6 We do not consider there to be any detriment arising from the Council making available such reliefs within policies as part of its charging schedule, as the Council will still retain control over the application of the policies. There are strict tests surrounding the availability and applicability of Exceptional Circumstances Relief. It would therefore only be applicable to those schemes that can justify the need for it and meet those strict tests.

6.7 The Consortium therefore request that B&NES make both Discretionary and Exceptional Circumstances Relief available from the adoption of CIL.

Payment in Kind

6.8 The CIL Regulations now allow for Payment in Kind through the provision of infrastructure. However, there remain notable deficiencies in the operation of CIL, caused primarily by the CIL Regulations, which places both B&NES and the development industry in a difficult position.

6.9 The scope to reduce the CIL liability via utilisation of Payment in Kind is therefore restricted to those items of infrastructure which are not required to mitigate the impact of a development, which for strategic sites would exclude most (if not all) site-specific and 'scheme mitigation' infrastructure.

6.10 Payment in Kind is therefore not a credible option, which further emphasises the need to ensure that the Regulation 123 List does not include any items of infrastructure intended to be delivered through Section 106 agreements on strategic sites.

Reviewing CIL

6.11 The CIL Guidance states that charging authorities ***'must keep their Charging Schedules under review'***[56] to ensure that CIL is fulfilling its aim and responds to market conditions. The Consortium therefore requests that regular monitoring is undertaken to ensure that any detrimental impact of CIL on housing delivery is noticed promptly and remedied. A review period of between 2-3 years from adoption, or sooner if there is a substantive change in market conditions or Central Government policy, should be publicly committed to by the Council.

[56] Ibid. Paragraph 044, Reference ID 24-044020140612, CIL Guidance (2014)

7. Conclusions

7.1 This representation has been prepared by Savills (UK) Limited on behalf of a Developer Consortium. As set out at the start of these representations the three key tests at Examination are that:

i. "*the charging authority's charging schedule is supported by background documents containing appropriate available evidence*";
ii. "*the proposed rate or rates are informed by and consistent with, the evidence on economic viability across the charging authority's areas*"; and
iii. "*evidence has been provided that shows the proposed rate would not put at serious risk overall development of the area*".

7.2 The assessment of planned development and its viability is therefore an inherent test of the Examination, making the following points significant:

- In light of the historic under supply of housing and recent adoption of the Core Strategy, it is clear that a significant boost to the housing supply is needed and that development is actively facilitated, encouraged and certainly not put at risk. This is the clear steer of the NPPF, and indicates the need for a cautious approach with the application of CIL.

- The cost assumptions for Section 106 contributions in addition to CIL is insufficiently low to cover the infrastructure types that will continue to be funded via Section 106.

- To secure the housing needed across B&NES it would be logical to introduce differential CIL rates consistent with the geographical split for affordable housing in the emerging Core Strategy. The evidence presented in this report indicates that this logical approach should be applied.

- Whilst the Consortium does not consider a £100 per sq m residential rate to be unreasonable in the higher sales value areas of B&NES, maintaining this flat rate in other lower value areas such as the Somer Valley, Keynsham and Chew Valley would impact on financial viability and development coming forward. A £50 per sq m residential rate is proposed in these lower sales value areas. Applying one flat rate across the entire Charging Authority is unreasonable when there is such a large standard deviation in sales values within the area.

- The Consortium's clear preference for strategic sites is that the on-site infrastructure requirements are delivered through planning obligations rather than CIL. This approach enables greater flexibility to address infrastructure requirements through a bespoke Section 106 agreement which balances the costs and timing of infrastructure delivery.

- Some of the assumptions used for the viability appraisals are in our view incorrect or outdated, resulting in outputs which are not reflective of the market. This results in an overestimate of the viability of the sites tested. This is particularly noticeable in the lower sales value areas of Somer Valley and Keynsham. If the build costs evidence was updated, the Viability Assessment outputs for these areas would be significantly affected.

- The Consortium is concerned that in the lower value residential sales areas, the single CIL rate has been set at a figure above the CIL rate which was calculated after applying a 30% viability buffer. Given that over a third of the B&NES housing land supply is anticipated to come forward in the lower value sales areas of Keynsham and Somer Valley, it is vital that CIL is set at a rate which does not threaten the scale of site delivery and viability.

- The proposed BLVs used in assessing viability evidence rely exclusively upon two theoretical BLVs which represent existing use value. No regard is had to the value at which land has actually traded or the need for a competitive return for the landowner in order to incentivise the release of land for development.

7.3 In light of this, the Consortium would recommend that B&NES consider the following:

- Provide further detail on the anticipated Section 106 contributions to be sought in order to ensure that a realistic figure is included in the viability appraisals to cover site specific infrastructure requirements.

- Revise and update the Viability Assessment to ensure that assumptions are based on current and realistic figures as recommended within this representation. The key areas of focus are on assumptions concerning development typologies, site coverage and density, BLVs, applying a contingency factor, build costs and abnormal/exceptional site servicing costs.

- As a result of this analysis, the Consortium believe that the methodology and assumptions used have skewed the Viability Assessment in the lower sales value areas. To ensure that development is not compromised by CIL moving forward, it is proposed that a lower rate of £50 per sq m is set for residential developments outside of the higher sales value areas of Bath City Centre, Bath N & E and Bath Rural.

- The separate £50 per sq m residential rate for strategic sites should be replaced with a commitment to seek all site specific infrastructure requirements through Section 106 agreements.

7.4 The Consortium feel it necessary to stress that if the CIL level is set too high, it will almost certainly have a negative impact on a large proportion of development coming forward, especially bearing in mind the reliance on the proposed strategic allocations for growth and historic undersupply in B&NES.

7.5 We would welcome the opportunity to meet with the Council in order to review the evidence and address the concerns raised, both for the non-strategic sites and also the strategic sites in so far as the Viability Assessment informs negotiations with developers on the infrastructure requirements via Section 106 agreements.

END

Appendix 1

List of Documentation

Appendix 1 – List of Documentation

- Planning Act (2008) (as amended)
- Community Infrastructure Levy Regulations 2010 (as amended)
- Community Infrastructure Levy Guidance, DCLG, Planning Practice Guidance Website, 2014
- National Planning Policy Framework, DCLG, March 2012
- Appeal reference APP/X0360/A/12/2179141, 8 January 2013
- CIL: The Countdown to April 2015, Savills / HBF, July 2014
- Savills, CIL - Getting it Right, January 2014
- Bath and North East Somerset Core Strategy, Adopted July 2014
- Bath and North East Somerset Core Strategy Inspector's Report, June 2014
- Community Infrastructure Levy: Viability Assessment, BNP Paribas, May 2014
- Bath and North East Somerset Infrastructure Delivery Plan
- Bath and North East Somerset Planning Obligations Supplementary Planning Document
- Bath and North East Somerset Strategic Housing Land Availability Assessment Housing Trajectory 2011-2029, March 2014
- Inspector's letter on the North Somerset Core Strategy dated 12 August 2014
- Teignbridge CIL Viability, March 2013
- Viability Testing Local Plans - Advice for Planning Practitioners, Local Housing Delivery Group Chaired by Sir John Harman, June 2012
- Financial Viability in Planning, RICS, August 2012
- Community Infrastructure Levy: Viability Study, prepared for Corby Borough Council, September 2013
- Greater Norwich Development Partnership Examiner's Report
- Tapping the Potential – Best practice in assessing urban housing capacity, URBED, July 1999
- Leicester City Council CIL - Preliminary Draft Charging Schedule, May 2014
- Cumulative impacts of regulations on house builders and landowners. Research Paper. Turner Morum, 2011

Appendix 2

Savills CIL – Getting it Right Publication (January 2014)

Appendix 3

Abnormal / Exceptional Costs Evidence

Location	Description	Units	Abnormals / unit
Bath	Former garage for demolition	9	£3,704
Gloucester	Former warehouse for conversion	26	£4,546
Trowbridge	Cleared site	79	£6,327
Gloucester	Former garden land	23	£8,816
Andoversford	Former garages / bus depot	39	£10,263
Stroud	Former sports ground	77	£10,863
Bristol	Former employment land	87	£10,905
Bishops Cleeve	Greenfield	450	£11,644
Taunton	Greenfield	80	£11,713
Barnstaple	Former garden land	28	£11,942
Bristol	Greenfield	192	£12,161
Bristol	Former industrial buildings	57	£13,509
Cullompton	Greenfield	261	£14,046
Yate	Greenfield	70	£14,743
Street	Greenfield	83	£18,096
Bristol	Greenfield	354	£19,697
Bristol	Greenfield	325	£22,202
Average			**£12,069**

Appendix 4

Bath & North East Somerset Preliminary Draft Charging Schedule – Representations submitted by Savills on behalf of the House Builder Consortium Group (June 2012)