

KT/1732A/55(02December13)Solihull

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02 December 2013

Dear Sir/Madam

SOLIHULL MBC COMMUNITY INFRASTRUCTURE LEVY: DRAFT CHARGING SCHEDULE CONSULTATION DOCUMENT, OCTOBER 2013

With reference to the above and on behalf of our client, Wm Morrison Supermarkets plc ('Morrisons'), we write to thank you for providing us with an opportunity to comment on the above document. Morrisons is a major food and grocery superstore retailer which operates stores at Warwick Road, Solihull, Stratford Road, Shirley, and Chester Road, Castle Bromwich.

We previously objected to the proposed CIL rates for convenience retail development as set out in the Preliminary Draft Charging Schedule in March 2013.

In terms of the current consultation, we maintain our **objection** to the proposed CIL rates for convenience retail development. In particular, we note that at £300/sq.m for convenience stores of greater than 550 sq.m, the proposed levies for retail development are significantly higher than those being proposed by other LPA's. By way of example, the Districts of Shropshire, Huntingdonshire and Plymouth have adopted rates of between £0 and £100/sq.m which are significantly lower than the charge being proposed by Solihull.

We are gravely concerned about the viability of the proposed CIL rates for new retail developments. Levies of this level are likely to have a significant adverse impact on the overall viability of future large-scale retail developments, particularly when taking into account other costs for local infrastructure works and other contributions required as part of typical S106 agreements (such as highway works which are typically expensive to ensure large scale retail developments function well).

We consider that the proposed charge will put undue risk on the delivery of food retail proposals, and will be an unrealistic financial burden which is likely to pose a significant threat to potential new investment and job creation in the Borough, particularly at a time of economic recession and low levels of development activity.

In this regard, our client has instructed Aspinall Verdi Limited to review the Draft Charging Schedule and supporting documentation from a viability perspective, given their expertise in this field. Please see the enclosed representation which provides specific comments.

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We trust that the above and enclosed are helpful. However, if you have any queries or require any further information, please do not hesitate to contact Peacock and Smith at the address above.

Yours faithfully



PEACOCK & SMITH
Enc.

**Solihull Metropolitan District Council: Community Infrastructure Levy Viability Study
Representation on behalf of W.M. Morrison Supermarkets Plc.**

28 November 2013

This representation has been prepared in the context of the consultation that Solihull Metropolitan District Council have launched in respect of their Community Infrastructure Levy: Draft Charging Schedule (October 2013) and Viability Study (revised August 2013). We are instructed by W.M. Morrison Supermarkets Plc. to make representations on their behalf.

Introduction

AspinallVerdi is a niche firm of Chartered Surveyors and Chartered Town Planners specialising in property development and regeneration consultancy. We have direct experience of advising both public and private sector clients with respect to development viability, CIL, S106 and planning gain matters. The firm has a thorough understanding of property markets, valuation, development economics, and delivery.

This representation has been prepared by Atam Verdi, BSc (Hons) MRICS, Registered Valuer. Atam is a founder Director of AspinallVerdi and has 20 years post qualification experience in the planning and development consultancy sector. He has been based in London and Leeds and has advised on projects throughout England.

This submission has been prepared with the support of Peacock & Smith town planning consultants to W.M. Morrison Supermarkets Plc.

For the purposes of these representations we have reviewed the following documents:

1. Solihull Metropolitan District Council Community Infrastructure Levy: Preliminary Draft Charging Schedule, Council's Response to the Representations, August 2013
2. CBRE Community Infrastructure Levy: Viability Study, December 2012, revised August 2013 (track changed)
3. Solihull Metropolitan District Council Community Infrastructure Levy: Draft Charging Schedule, Consultation Document, October 2013

We understand that the proposed charges for retail developments have remained unchanged between the PDCS and the DCS. These are:

- | | |
|--|----------|
| • Supermarket / Convenience Stores > 550 sqm | £300 psm |
| • Convenience retail < 550 sqm | £150 psm |

Viability Appraisals – 'Black Box' Approach

One of the principle reasons for introducing CIL was to overcome concerns that the use of planning obligations (S106's) could be perceived to be *"unfair, sometimes lacking transparency and accountability"*¹ and the Government intended/believed *"that CIL will provide a new, fairer and more transparent mechanism for the collection of more generalised developer contributions"*².

¹ Community Infrastructure Levy, Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy – Consultation – July 2009, paragraph 1.27

² Community Infrastructure Levy, Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy – Consultation – July 2009, paragraph 5.10

This intention has been carried through to the CIL Regulations³ where at paragraph 9 and 10 it states that:

The independent examiner should establish that:

- the charging authority has complied with the requirements set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations
- the charging authority's 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 shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole.

The examiner should be ready to recommend modification **or rejection** of the draft charging schedule if it threatens delivery of the relevant Plan as a whole. (our emphasis)

It is important to note that the above guidance is issued by the Secretary of State under section 221 of the Planning Act 2008 and is therefore mandatory guidance.

In this respect we would comment that the Council has not provided the appropriate evidence because we are not aware that the CBRE appraisals have been published and not all of the appraisal assumptions have been made explicit. At the most basic level CBRE have not stated the Threshold Land Value that has been adopted to appraise the CIL. Furthermore, we cannot see how the other various appraisal assumptions have been applied and which are missing. We therefore have no way of commenting on the CIL rate other than to say that at £300 psm this is one of the highest CIL rates in the country.

In this respect the Planning Advisory Service advises that the best practice is to ensure that...*"you understand all the assumptions and information sources that have been used in your viability study, Avoid 'black box' appraisal models."*⁴

We would therefore request that the CBRE residual appraisals are made available as part of the consultation.

In this respect many of queries from our original PDCS representation are still valid and the key outstanding issues/questions are highlighted in yellow below.

³ DCLG Community Infrastructure Levy Guidance April, 2013

⁴ http://www.pas.gov.uk/3-community-infrastructure-levy-cil-/journal_content/56/332612/4070829/ARTICLE

Specific Comments

The following comments have been made by reference to the specific consultation questions on pages 12-13 of the PDCS Consultation Document and cross-referenced to the paragraph numbers in the CBRE CIL Viability Study report.

Question (CBRE paragraph reference)	Comment
1. Do you believe that the proposed charges are an appropriate balance between funding infrastructure and the potential effects (taken as a whole) of the imposition of CIL on economic viability of development across the Borough ? If not why not?	
7.6 – 7.9	<p>No.</p> <p>Whilst we acknowledge that the Foodstore CIL rates proposed (£300 psm) represent a significant discount (approx. 52%) on the Foodstore typology (Site 15) (para 7.6), we have not been provided with a copy of the appraisals in order to comment on the efficacy of the headline CIL rate in Table 7.2.</p> <p>Similarly, from Table 7.1 and 7.3 it appears that the Small Convenience Store typology (Site 16) turns from 'green' to 'amber' somewhere between £150 psm for CIL and £350 psm for CIL. Given that the proposed Small Convenience charging rate is £150 psm this represents between 0% and 58% discount for the appropriate balance. We are not sure how much has <i>actually</i> been assumed for the Appropriate Balance.</p> <p>We note that an 'amber' result means that the RLV (residual land value) is <i>between</i> the EUV (existing use value) and the BSV (benchmark site value) (para 5.2). This is fundamentally not transparent and flawed, because:</p> <ul style="list-style-type: none"> • CBRE has not quoted what the EUV or the BSV is for comment? • The BSV is the relevant threshold and not the EUV – why would any commercial landowners sell a site at below the BSV? <p>See our further comments below on land values.</p> <p>We would also note that the Solihull CIL rate for foodstores is one of the highest we have seen nationally. CBRE also note the challenges in the national property market, but don't seem to have reflected these circumstances in their work. Production and analysis of further evidence will indicate that this CIL rate is too high.</p>
2. Do you believe there is adequate evidence on infrastructure planning and economic viability to introduce a CIL? If not what additional evidence do you believe is necessary?	
	We focus our comments in terms of economic viability in this representation. The comments herein need to be addressed.
3. Do you agree with the separate charging zones for residential development and the CIL rates based on these zones ? If not what changes do you believe are necessary to make them	

Question (CBRE paragraph reference)	Comment
appropriate?	
	No comment
4. Should there be different residential rates based on the percentage of affordable housing to be provided on the site? If so what should the threshold be?	
	<p>No. The affordable housing level should be set first. The CIL rate follows.</p> <p>See the Report on the Examination of the Draft Mid Devon District Council Community Infrastructure Levy Charging Schedule (February 2013). Here the Inspector determined that the proposed residential CIL rate did not reflect the Council's target for the provision of affordable housing and because the rate was set too high, there was a serious risk to affordable housing provision and thus the overall development of the area. The Inspector commented that the affordable housing targets - will remain the starting point in the consideration of any planning application. The key test is therefore whether or not the assumptions upon which the proposed level of CIL are based would undermine the delivery of the [Plan] targets, particularly with regard to affordable housing provision.</p>
5. Do you agree with the differential rates for the different types of retail development and are the thresholds appropriate? If not what changes do you believe are necessary?	
Table 4.5	<p>No.</p> <p>We note from Table 4.5 that the Foodstore (Site 15) is based on 4,400 sqm (47,362 sqft). This is way below Morrisons standard foodstore size of 70-75,000 sqft.</p> <p>Similarly, the Small Convenience store typology (Site 16) is based on 355 sqm (3,821 sqft). This is above the normal requirements for convenience stores which are up to 3,000 sqft (280 sqm) in order to stay within the Sunday Trading threshold.</p> <p>We would recommend that the viability study is re-run on the following basis (having regard to our other comments below).</p>
6. Do you agree with the rates for the other types of development? If not what changes do you think are necessary to make them appropriate?	
	No comment.
7. Do you agree there should be a nil rate for the development types not listed (ie including office, industrial & agricultural developments)? If not why not?	
	No comment

Question (CBRE paragraph reference)	Comment
8. Do you believe the Council should allow CIL payments to be made in instalments, and if so what should they be?	
	<p>Yes.</p> <p>Payment by instalment is essential to ease the burden on the developer whose cashflow is weakest at the time of commencement on site.</p> <p>We would support such a policy as set out on page 10 of the PDCS Consultation Document.</p>
9. Do you believe the Council should offer additional exemptions in the circumstances listed above ?	
	<p>Yes.</p> <p>The Authority should include an exceptional circumstances test for viability. As described above foodstores are often used for enabling development and therefore there may be specific circumstances where the Authority wants a scheme to go ahead for the 'greater good' but the CIL makes this unviable. Also, notwithstanding CIL, foodstore operators often pay substantial S106 contributions which could be in excess of the CIL levy.</p>
10. Any other comments?	
	Yes – see below.
1.7 benchmarking sites	The CBRE report refers to benchmarking values against notional comparable sites, but does not specify what these comparable land value are?
3.1-3.14 methodology	We concur with CBRE that the correct methodology is the Residual Land Value methodology less the Benchmark Land Value = margin for CIL. We prefer the terminology 'Threshold' Land Value to benchmark land value as this conveys the requirement of a 'willing seller' as required by the NPPF and RICS guidance.
3.15 benchmark site value	<p>We agree that the Threshold Land Value is as defined by the RICS Financial Viability in Planning Guidance document (1st Ed. GN94/2012) is the appropriate benchmark. The Council should review this guidance prepared by the RICS and in particular professionals experience in land transactions and the valuation process.</p> <p>However, in a development context the Threshold Land Value <i>is</i> the Market Value having regard to the proposed development – and not the notional Existing Use Value. For example, the existing use could be anything e.g. greenfield agricultural value or high yielding surface car park. The EUV is impossible to quantify at an area wide level because by</p>

Question (CBRE paragraph reference)	Comment
	<p>definition it is site specific.</p> <p>Where landowners consider that there is prospect of securing developments on their site that yield high value (e.g. retail), their aspirations to secure higher land values will be prevalent. Landowners are likely to “hold out” until they have explored their potential returns fully and may not sell the site if the proposed returns are below their expectations.</p> <p>The buoyancy of the land market for food retailing (as opposed to other less value uses) further augments expectations of high return. This is particularly relevant for sites that have the potential for the delivery of retail schemes.</p> <p>Landowners will have recourse to the residual method of appraisal and will calculate the prospective land payment that they can negotiate from a developer. It is unlikely that they will adjust upwards an Existing Use Value, rather reflect the alternative use value.</p> <p>In any event, CBRE have not set out what land values they have included in the appraisals for the benchmark/threshold values and no evidence has been produced to support these.</p>
Table 3.2 Commercial Sites	<p>We note that the Foodstore scheme (Site 15) is based on a ‘Rural’ location. What does this mean? – that greenfield agricultural land values have been included? That the site is in single ownership with limited abnormal costs? In many instances a Foodstore will be required to be in the town centre where the costs of site assembly and abnormal costs are significantly greater than in a rural location.</p> <p>Similarly, the Small Convenience store (Site 16) is stated to be based on ‘Mature Suburbs’ location. Again what does this mean? What land value has been applied to this location? How does this compare with a town centre location?</p> <p>It is unlikely that foodstore development will take place on a Greenfield site and CIL modelling work needs to reflect the costs and implications of brownfield development (i.e. land assembly, demolition, site preparation/ decontamination, holding costs etc). Such costs are significant.</p>
4.24 infrastructure / utilities works and site abnormal costs	<p>These have been excluded. However, we would suggest that this is unrealistic. In reality there will inevitably be site specific S106/S278 costs and (more than likely) some abnormal costs associated with major retail development.</p> <p>For example, typical site specific S106 costs are £0.5m plus a similar amount for S278 costs.</p>
Table 4.5 – plot ratio	<p>Whilst this table sets out the required car parking spaces, it does not set out the plot ratio i.e. the size of the site assumed for the hypothetical typology. Supermarket development comprises more than just footprint and car parking e.g. circulation roads, landscaping, service yard etc. It is therefore impossible to translate this into the site size requirement to</p>

Question (CBRE paragraph reference)	Comment
	benchmark the value against the Threshold Land Value. We would suggest using a ratio of n35% as a maximum for a foodstore.
Table 4.5 – headline ERV, Rent Free and Yield	<p>The property market review (Appendix 2) does not provide any evidence for the convenience retail rent assumptions in Table 4.5.</p> <p>The yield assumptions (5% for Foodstores) is below that quoted in Table 2.1 (5.8%). This would have a significant impact on the GDV of the scheme and viability.</p> <p>We note that 12m rent free has been included for the Small Convenience scheme and a similar rent free period should be included for the Foodstore.</p>
Table 4.5 – Build Costs	CBRE have included build costs of £1,025 psm and £793 psm for foodstores and small convenience respectively. We have checked this against the BCIS for the West Midlands (website accessed 22 April 2013) and this records median build costs of £1,070 psm and £938 psm. These are significantly above (particularly the small convenience typology) the CBRE costs which will have a significant impact on viability.
Table 4.5 – Profit	<p>Profit should be a minimum of 20% based on GDV and:</p> <ul style="list-style-type: none"> • the timescale often incurred by the developer to assemble sites • the lengthy planning application process and Local Authority requirements to obtain consent • the funding risks etc.
Table 4.6 – professional fees	[Professional fees] are stated in the table to be 10-15% - which is it? We would recommend that 15% is more appropriate for foodstore development with all the attendant cost of planning and technical reports to deliver complex schemes.
4.29 - Contingency	Contingency is stated to be an allowance for abnormal costs and S106 costs. This is not the case. Contingency is a fund for unexpected costs that may occur during construction. It is required as part of the funding process to ensure that a scheme is adequately profitable and therefore fundable. Contingency is not to be a proxy for other costs that are foreseeable at the start of a scheme e.g. S106s (see above).
5.4 – CIL treated as a cost (sixth bullet point)	CBRE state that they have treated CIL as a development cost in its calculation. Whilst this may be the case, we are not sure how CBRE have achieved this as the methodology described within the report would surely result in a circular argument/formula?
7.7-7.9 - Results	<p>These results tables are meaningless given the 'black box' approach to appraisal and reporting.</p> <p>It is impossible to comment on the results given that the Threshold Land</p>

Question (CBRE paragraph reference)	Comment
	Value is not reported.

Summary and Conclusions

We are pleased to have been given this opportunity to comment and we look forward to reviewing the DCS (Draft Charging Schedule) at the next stage of the process. The work undertaken to date has been substantial, however, in our view makes several optimistic assumptions and significant omissions. Further work and revisions are needed in order to reflect market characteristics more accurately, as follows:

1. The use of 'black box' appraisals is not recommended and the Council should publish the detailed appraisal models so that the explicit appraisal assumptions (values and costs) can be scrutinised.
2. The Threshold Land Value assumptions should be made explicit based upon market evidence wherever possible.
3. CIL should not be set at the margins of viability and there are various (on the face of it) minor issues that combined together will have a significant impact on viability so as not to discourage development e.g. the plot ratio; build costs, site specific S106/S278, contingency etc. The appraisals need to be fundamentally reviewed to include these costs.
4. The level of developers' profit should be increased.

Right to be Heard at an Examination in Public

We would like to register our interest to be heard at the Examination in Public.

Please also can you notify us of the next stage and specifically when/if the Draft Charging Schedule is submitted to an Independent Examination.

Contact details

Please would you register our interest as follows:

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