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Dear Sirs,

## Solihull Community Infrastructure Levy (CIL) - Draft CIL Charging Schedule and Draft Regulation 123 List: Formal Representations on behalf of the Police and Crime Commissioner for West Midlands

We act for the Police and Crime Commissioner for West Midlands (PCCWM) and are grateful to Solihull MBC for the opportunity to comment on the Solihull Community Infrastructure Levy (CIL) Draft Charging Schedule and Draft Regulation 123 List. You will recall that representations were submitted on behalf of the PCCWM to the Preliminary Draft Charging Schedule in April 2013.

We are instructed to make representations on local development documents in respect of securing policy reference in such documents to, amongst other matters:

- recognise the community need for securing safe environments with crime reduction made a priority;
- ensure the timely and effective engagement of the police and other emergency services to ensure effective delivery of infrastructure projects required as a result of development growth with the recognition that the police are a social infrastructure delivery agency; and
- in appropriate cases, seek financial contributions towards the additional expenditure burden placed on the Police Force as a consequence of development proposals and growth.

We are grateful for the opportunity to comment on the Community Infrastructure Levy (CIL) - Draft Charging Schedule, and Draft Regulation 123 List contained in the Infrastructure Delivery Plan (IDP).

1. The PCCWM is a non-profit making social and community service provider which will need to respond to and support the growth agenda in the Solihull MBC Local Plan and as such it should be exempted from payment of CIL. We therefore **SUPPORT** the proposal

to have a nil CIL rate for 'All other uses' which would include, for example, offices and all sui generis uses (with the exception of car dealerships which have their own classification). We support the modification, following consultation on the Preliminary Draft Charging Schedule, to exclude training centers with residential accommodation from CIL liability. Effectively this means that all the PCCWM's operational facilities will not be liable for payment of CIL.

2. In order to provide the social and community infrastructure necessary to fulfill the Solihull Local Plan vision and growth objectives which promote safe and secure environments, as well as to satisfy the statutory service levels required by the PCCWM, there is an urgent need for the PCCWM to receive financial contributions towards essential infrastructure from funds raised through CIL and Section 106 Agreements to bridge its funding gap. Provision of police stations and safety facilities are important in ensuring that the national and local strategic objectives of providing community facilities which help to create environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion are met.
3. The PCCWM are extremely concerned that the Local Plan's intention to support appropriate levels of policing and the proposed inclusion of an infrastructure funding Policy P21 is undermined by the wording of the Infrastructure Delivery Plan (IDP). They **OBJECT** to the wording relating to police infrastructure in the IDP which risks undermining the social infrastructure objectives for the police emergency service and consequently threatens the soundness of both the Local Plan and Community Infrastructure Levy (CIL) Charging Schedule.
4. The IDP is a supporting evidence document for the CIL and as such must be considered reliable and accurate to be a 'sound' basis for policies and proposals. The IDP is **UN SOUND** in its suggestion that the Police would be unlikely to benefit from Section 106 or CIL monies arising from new development. Given the shortfall in funding of Police infrastructure, which is acknowledged by the Council in the IDP, this could result in a failure to provide the infrastructure needed to deliver the community safety objective set out in the Local Plan. This approach is contrary to national policy and the custom and practice in other local authority areas, as set out below.
5. The IDP states in Table 4.5.1 of Section 4.0 'Social Infrastructure' in relation to Police and Community Support that the proposed growth as set out in the Submission Draft Local Plan for the four areas would require additional policing and notes that PCCWM has already experienced difficulties in relation to funding capital infrastructure to accommodate the demands arising from development growth. However, in the table under 'Delivery Potential', it is confirmed that it is unlikely that developer contributions would be allocated to Emergency Services, although it acknowledges that there is an identified funding gap.
6. The negative wording in this document is further reinforced in Appendix A 'Infrastructure Delivery Plan Schedule' under 'Emergency Services' that states whilst sources of funding for these specific requirements would be Section 106, CIL, or future equivalent, "As far as the Council is aware, none of the Authorities within the West Midlands Metropolitan Area have historically paid S.106 contributions to emergency services as these are revenue-funded by Central Government and Council Taxes." This gives the impression that the Council has considered the options for police funding without giving the matter detailed objective consideration.
7. The PCCWM do not feel it is relevant or helpful for the Council to make reference in the IDP Appendix A to their belief that historically S106 contributions have not been paid to emergency services within the West Midlands Metropolitan Area. There are many examples elsewhere in the country where planning authorities have included the Police within S106 agreements to receive developer contributions. For example in Thames Valley and Leicestershire developer funding has been secured for the police authority with sums of monies obtained ranging from £5,000 (for an extension to a business centre) to £660,000 (where a Sustainable Urban Extension was proposed). This

illustrates that it is appropriate for police infrastructure to be funded in part from developer revenue.

8. The clear support for the provision of police infrastructure in the Submission Local Plan is in danger of not being realised through this apparent inconsistency in the Council's approach to the matter. The wording in the IDP undermines PCCWM's case by suggesting that CIL contributions would be unlikely to be allocated towards police infrastructure.
9. The PCCWM formally request that reference in Table 4.5.1 on Page 76 of the IDP which refers to it being unlikely that developer contributions would be allocated to Emergency Services should be deleted. In addition, the sentence in Appendix A under 'Emergency Services' that states that "As far as the Council is aware, none of the Authorities within the West Midlands Metropolitan Area have historically paid S.106 contributions to emergency services as these are revenue-funded by Central Government and Council Taxes" should also be deleted. The PCCWM is not dissimilar to many Council services in that it receives funding from a number of sources, however, as with other infrastructure providers, this is not sufficient to respond effectively to the level of growth proposed. In order to ensure the continued provision of an appropriate level of infrastructure by the PCCWM the identified funding gap will need to be 'plugged' by developer contributions, primarily gathered through the CIL.
10. The PCCWM formally recommend that Police infrastructure be included in the 'Regulation 123 List' which Solihull MBC will base on their IDP. Without developer contributions towards this essential infrastructure the CIL and the IDP will be unsound as the national and local planning policy strategic objectives would be undermined. The PCCWM clearly has a statutory duty to secure the maintenance of an efficient and effective police force for its area and, of course, the Council is also statutorily required to consider crime and disorder and community safety in the exercise of its duties with the aim of achieving a reduction in crime and helping to create environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. Our detailed justification is set out below:

## National Planning Policy

11. The **National Planning Policy Framework (NPPF)**, March 2012, paragraph 156 sets out the strategic priorities for local planning authorities, including, 'the provision of health, security, community and cultural infrastructure...' Security is therefore a national strategic planning objective for local authorities.
12. Police Stations and safety facilities are strategically important community facilities which help to create environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion, policy aims contained in the NPPF (paragraphs 58 and 69).
13. The '**Community Infrastructure Levy - An overview**' produced by the Department of Communities and Local Government, May 2011, states at paragraph 12; '*The Planning Act 2008 provides a wide definition of the infrastructure which can be funded by the levy, including transport, flood defenses, schools, hospitals, and other health and social care facilities. This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, district heating schemes and police stations and other community safety facilities. This gives local communities flexibility to choose what infrastructure they need to deliver their development plan.*'
14. It is therefore clear that police stations and safety facilities fall within the broader definition of 'infrastructure' which would be eligible for receipt of funds raised through the Community Infrastructure Levy (CIL) in respect of identified projects/needs. This national

acceptance of police stations and other community safety facilities in this regard is further supported at a local strategic policy level.

15. The **'Community Infrastructure Levy Guidance'**, Department of Communities and Local Government, December 2012, states that the Charging Authority is responsible for applying the levy revenue it receives to *'funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area'*.
16. Paragraph 12 requires that a charging authority must, *'identify the total cost of infrastructure that it desires to fund in whole or in part from the levy. In order to do this, the charging authority must consider what additional infrastructure is needed in its area to support development and what other funding sources are available...based on appropriate available evidence.'* Paragraph 14 states that, *'The Government recognises that there will be uncertainty in pinpointing other infrastructure funding sources, particularly beyond the short-term. The focus should be on providing evidence of an aggregate funding gap that demonstrates the need to levy the Community Infrastructure Levy'*. Paragraph 15 requires that, *'The charging authority should set out at examination a draft list of the projects or types of infrastructure that are to be funded in whole or in part by the levy.'*
17. Paragraph 35 states that *'Regulation 13 also allows charging authorities to articulate differential rates by reference to different intended uses of development provided that the different rates can be justified by a comparative assessment of the economic viability of those categories of development. The definition of "use" for this purpose is not tied to the classes of development in the Town and Country Planning Act (Use Classes) Order 1987, although that Order does provide a useful reference point.'*
18. In respect of the PCCWM funding has been cut across the country as part of the Comprehensive Spending Review in October 2010. This will reduce funding by 20% in real terms over the next four years. Almost two thirds of this has been cut in the first two years. The PCCWM has already experienced difficulties in relation to funding capital infrastructure to accommodate the demands arising from development growth, a situation which is likely to become magnified by the increased pressure on infrastructure as a result of the Local Plan growth agenda. It is clear that there is limited public funding available for capital investment. Developer contributions will continue to play a significant part in meeting infrastructure requirements.

## Local Planning Policy

19. The Solihull Draft Local Plan, currently under Examination, Policy P21 'Developer Contributions and Infrastructure' states, 'Developer contributions in the form of Community Infrastructure Levy will contribute towards strategic infrastructure required to support the overall development in the Local Plan'. It confirms that the Council will work in Partnership with infrastructure providers and other delivery agencies in updating the Infrastructure Delivery Plan, including, the 'West Midlands Police to deliver safe development and communities'(Para. 13.3.3).

## Examples of Precedent

20. It is the case that there are a number of authorities that have fully endorsed developer contributions for policing, a number of the more recent adopted and emerging examples are summarised below: -
  - **Black Country** Core Strategy, adopted February 2011, highlights the fact that the provision of appropriate infrastructure in a timely manner underpins the whole transformational and regeneration strategy. Policy DEL1 'Infrastructure Provision' sets out the strategic policy requirements for the four Black Country local

authority areas, Sandwell, Dudley, Walsall and Wolverhampton, in respect of ensuring appropriate levels of and funding for infrastructure needs arising from the scale of growth proposed in the Core Strategy. The policy states that, 'All new developments should be supported by the necessary on and off-site infrastructure to serve the development, mitigate its impacts on the environment, and ensure that the development is sustainable and contributes to the proper planning of the wider area' and that this will be 'secured through planning obligations, the Community Infrastructure Levy, planning conditions or other relevant means or mechanisms' The Policy Justification text for DEL1 explains that 'The scale of growth proposed in the Core Strategy will have significant impacts on the local environment and the capacity of a range of infrastructure and facilities. Without appropriate investment, future development will be neither sustainable nor acceptable. The definition of infrastructure in this context is wide, 'including... locally specified requirements, such as crime prevention measures';

- **Shropshire** Core Strategy, adopted February 2011, contains policies that confirm that facilities, services and infrastructure include police and emergency services. Policy CS9 'Infrastructure Contributions' confirms that development that provides additional dwellings or employment premises will help deliver more sustainable communities by making contributions to local infrastructure in proportion to its scale and the sustainability of its location, including key infrastructure as identified in the LDF Implementation Plan (approved April 2012) and under the terms of the adopted CIL Charging Schedule (approved January 2012). The Implementation Plan identifies a number of specific capital investment police authority projects to be partly funded by CIL contributions. These include, a replacement Headquarters and relocation, replacement and extensions to a number of specified police section stations;
- **Forest of Dean** Core Strategy, adopted February 2012, confirms at Policy CSP.4 'Development at Settlements' that additional infrastructure provision arising from the needs of the development will be sought by way of developer contributions. The policy goes on to say that this includes community infrastructure such as library or health provision or facilities for emergency services;
- **South Buckinghamshire** Core Strategy, adopted February 2011, includes Core Policy 6 'Local Infrastructure Needs' that states that new development will be required to provide for the necessary infrastructure needs arising from the proposal, either directly or via an appropriate contribution. The justification refers to emergency services alongside education, health and cultural facilities in its definition of social infrastructure;
- **Wyre Forest** published an Infrastructure Plan in September 2012 to complement the adopted Core Strategy, December 2010. Policy CP7 'Delivering Community Wellbeing' aims to achieve stronger communities, improve health and wellbeing and promote communities that are safe and feel safe. It states, 'New development proposals must contribute towards the retention and formation of sustainable communities within the District... As an indicative guide, the Council will require developer contributions with regard to the following areas of social infrastructure:... Health and community safety (includes emergency services) facilities and services'. The Infrastructure Plan includes detailed information on the forthcoming infrastructure requirements for the Police service both capital and revenue investment with a breakdown of funding sources and the funding gap for which developer contributions will be sought;
- **Rugby** Core Strategy, adopted June 2011, includes an infrastructure policy CS10 'Developer Contributions' which allows for contributions to be sought from developers towards infrastructure including, contributions to a wider 'pot' of funds where multiple developments have cumulative impacts and require combined comprehensive mitigating measures. The Community Infrastructure Levy Draft

Charging Schedule, which went out to consultation in September/November 2012 is accompanied by a Community Infrastructure Levy Infrastructure Study, September 2012. The Draft Charging Schedule identifies the residual funding which CIL receipts from liable developments will help bridge, including a funding gap for the Warwickshire Police of £3,885,217. The infrastructure study explains that the Safer Neighbourhood Teams project will need to expand in response to the projected housing growth generating the funding gap;

- **South Staffordshire** Core Strategy has been found sound by the Inspector and is currently subject to a High Court challenge. Infrastructure Delivery Plan, March 2011, identifies community safety as a legitimate social infrastructure to receive developer funding. Whilst the Delivery Plan states that Staffordshire Police are reviewing policing and at present no new infrastructure has been identified, the Plan is regarded as a 'living' document subject to change as infrastructure needs evolve; and
- **South Worcestershire** Development Plan (SWDP), covering Malvern Hills, Wychavon and Worcester City local authority areas, Proposed Submission version will shortly be submitted for examination supported by the Infrastructure Delivery Plan. Proposed Policy SWDP 'Infrastructure' paragraph C requires development to provide or contribute towards provision of infrastructure and SWDP 37 'Indoor Leisure and Community Facilities' footnote 51 explains that community facilities comprise buildings and associated land for uses including emergency services. Location specific policies, such as for example, SWDP 50 'Evesham Allocations', include a requirement at paragraph F for developments to contribute towards wider infrastructure, including 'viii. Extension to West Mercia Police's Section Station in Evesham. The SWDP supporting Infrastructure Delivery Plan sets out the detailed infrastructure funding requirements, including specific Police Authority requirements. It states that the majority of the police costs identified 'will need to be funded through the planning system.' The total Police Authority capital infrastructure cost is estimated to be over six million pounds.

## Legal Advice

21. Ian Dove QC was instructed on the matter of planning obligations and police contributions by the Association of Chief Police Officers in relation to issues arising in respect of securing contributions towards Police services as part of the development control and Community Infrastructure Levy regime. His Advice, dated 8th October 2012 and updated on 26th December 2012, both documents enclosed, confirmed that in his view, there is no difficulty in the proposition that contributions towards police infrastructure are infrastructure for the purposes of CIL under Section 216 of the Planning Act 2008.
22. In policy terms, he confirms that this is reinforced by the reference to security infrastructure in paragraph 156 of the National Planning Policy Framework 2012. In his advice, he adds that infrastructure should not of course be limited to buildings. He states, '...In my view there is no difficulty in the proposition that contributions towards Police infrastructure is infrastructure for the purposes of the 2008 Act. In policy terms this is reinforced by the reference to security infrastructure in paragraph 156 of the National Planning Policy Framework. Furthermore it should be infrastructure is of course not limited to buildings.'
23. In setting the level of the CIL schedule, Regulation 14 of the Community Infrastructure Levy Regulations 2010 requires the planning authority to strike a balance between viability of development and the desirability of funding the "total cost of infrastructure required to support the development of its area" taking account of other sources of funding.

24. Ian Dove QC confirmed that it follows that the test is posed in relation to the inclusion of items within the CIL schedule posed by Regulation 14 is very different to the test under Regulation 122. The latter relates to planning obligations and requires the three tests to be passed in relation to site specific planning obligations. He confirms that in setting the CIL schedule the test is different; what is required is an understanding of the costs of infrastructure “required to support the development of its area”.
25. Regulation 61 of the 2010 Regulations enlarges the powers of the charging authority to include the reimbursement of expenditure which has already been incurred. He states, ‘...plainly it would be perverse for a charging authority having levied monies against CIL schedule in which Police contributions feature to then fail to pass that element of the levy on which was intended to support the provision of further Police infrastructure.’
26. He concludes that there will be a relationship between the infrastructure on the local authority’s infrastructure schedule and the development which is anticipated across the local authority’s area, but because it is an overarching calculation, questions of necessity and direct relationships do not arise. Provided that the infrastructure is required for the development of the area, he confirms that it qualifies for inclusion on the Schedule. The two factors which will then potentially reduce the level of the levy are other sources of funding for the same infrastructure and issues related to development viability.
27. In addition, Ian Dove QC confirms that there is no reason in principle to suggest that contributions towards Police Infrastructure cannot be sought from a Section 106 obligation from an individual site, provided it is demonstrated that either on-site or off-site infrastructure is necessary and directly related to the impact of the development which is being granted consent and it will be necessary to demonstrate that any contribution will in fact be used in order to pay for infrastructure which will actually be delivered.

## Summary

28. In order for the PCCWM to support the level of growth proposed in the Solihull Local Plan there will be a funding gap for both capital and revenue expenditure. Contributions will be required from monies raised through the Community Infrastructure Levy and S106 Agreements to help fund the provision, improvement, replacement, operation and maintenance of strategically important community facilities which will help create environments where crime and disorder, and the fear of crime do not undermine quality of life or community cohesion.
29. The PCCWM are keen to be engaged in discussions to identify community safety and security infrastructure funding requirements on an ongoing basis during the Plan period since inevitably the current IDP represents a snapshot in time. This will ensure the maintenance of an appropriate service level for the community to meet strategic safety objectives. As shown in the IDP, it is inevitable that development on the scale currently proposed in the Local Plan would place a significant financial burden on the PCCWM to retain and maintain an acceptable level of policing infrastructure with a consequent funding gap.
30. NPPF, paragraph 177, stresses that it is important to ensure that there is a reasonable prospect that planned infrastructure is delivered in a timely fashion and that to achieve this infrastructure and development policies should be planned at the same time. It would therefore be desirable and appropriate for the Regulation 123 List to include the police infrastructure projects as legitimate recipients of CIL funding rather than undermining the inclusion of Police infrastructure by stating that, whilst included in the IDP, the Police are unlikely to receive CIL contributions.
31. Precedent exists for the Police to receive CIL funding and Counsel’s opinion confirms that contributions towards police infrastructure through CIL are appropriate under S216 of the Planning Act 2008.

32. In summary, the PCCWM formally request that:

- the following statement in the IDP, '*It is unlikely that developer contributions would be allocated to Emergency Services...*' be removed;
- the following statement in the IDP Appendix A, "*As far as the Council is aware, none of the Authorities within the West Midland Metropolitan Area have historically paid S106 contributions to emergency services as these are revenue-funded by Central Government and Council taxes.*" be removed;
- they are actively engaged on an on-going basis in the future reviews of the IDP to ensure that the evolving needs of the PCCWM are kept up to date; and
- they are prioritised for receipt of CIL and S106 Agreement developer funding to contribute towards meeting the funding gap to enable them to respond effectively to the proposed level of growth in the Solihull Local Plan with the provision of police stations and safety facilities important in ensuring that the national and local strategic objectives of providing community facilities which help to create environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion are met.

My Client should be grateful if you would ensure that these representations are reflected in modifications to the Infrastructure Delivery Plan.

We look forward to receiving confirmation that you have registered this letter.

Yours faithfully,

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