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Delivered by Email

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Dear Sirs

COMMUNITY INFRASTRUCTURE LEVY - PRELIMINARY DRAFT CHARGING SCHEDULE

We act on behalf of Sainsbury's Supermarkets Ltd and are instructed to submit representations to the Community Infrastructure Levy Preliminary Draft Charging Schedule published for consultation until 26 April 2013.

Sainsbury's representations relate primarily to the impact of the proposed CIL charging schedule on the viability of development. Their aim is to ensure that any charges sought under CIL do not act as a disincentive to investment in Solihull.

Infrastructure Delivery Plan

It is not clear from the consultation document, the infrastructure which is proposed to be funded by CIL. Notwithstanding this, as a point of principle, the connection between the needs generated by retail development specifically, as opposed to housing, and the proposed CIL Payment needs to be fully explained in subsequent stages of the charging schedule.

Section 205 of the Planning Act 2008 states that 'the overall purpose of CIL is to ensure that costs incurred in providing infrastructure to support the development of an area can be funded (wholly or partly) by owners or developers of land'. Section 216 of the Planning Act 2008 states that 'CIL regulations must require the authority that charges CIL to apply to it, or cause it to be applied, to funding infrastructure'. This section then defines 'infrastructure' as follows:

- a) *Roads and other transport facilities;*
- b) *Flood defences;*
- c) *Schools and other educational facilities;*
- d) *Medical facilities;*

- e) *Sporting and recreational facilities;*
- f) *Open spaces; and*
- g) *Affordable housing (being social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008 (c. 17) and such other housing as CIL regulations may specify).*

Legislation intends CIL to respond to demand for infrastructure generated by new development and does not allow for it to be used to support general aspirations for improvements. It is not currently clear whether the Infrastructure Delivery Plan reflects this.

Differential Retail Charges

The Preliminary Draft Charging Schedule proposes different charges for convenience retail development. A distinction is drawn between convenience retail and all other retail and further, the convenience retail is split by a size threshold, above and below 550 sq m. It is unclear from the consultation document whether the threshold in the charging schedule is referring to gross internal area or otherwise.

The CIL regulations only permit differential charges by reference to location or *different intended use of development*. The Consultation Paper on CIL Further Reforms (April 2013) states at paragraph 21 that “differential rates cannot be set in relation to the size of development”.

Consideration of CIL Charging Schedules elsewhere in the country demonstrates that to differentiate between types or sizes of retailing, it is necessary to clearly define different distinct uses. Only if the different intended uses can clearly and unambiguously be defined can a differential charge be considered. If that has been done then there is also a need to demonstrate through fine grained analysis that there is clear evidence of different viability characteristics for the different intended uses. In this regard, it is possible that a size threshold could be used, but only where it reliably marks out the difference in use and there is clear evidence of different viability above and below that threshold.

To support the proposed Preliminary Draft Charging Schedule, the Council needs to demonstrate that a distinction can be made between the genuinely different and unambiguously described uses i.e. firstly, between convenience retail and all other retail and, secondly, convenience retail above 550 sq m and below 550 sq m. This then needs to be supported by fine grain viability evidence to demonstrate the different intended uses possess different viability characteristics, which fit with the goods and size thresholds adopted.

In our view, this has not been done. The Preliminary Draft Charging Schedule does not unambiguously describe the difference in use between the convenience sector and other retail, and in particular does not support the proposed size threshold of 550 sq m. The viability evidence provides no justification for the size threshold other than simply stating that this follows advice of the author’s commercial retail agency team based on market knowledge.

The supporting viability evidence also needs to be reconsidered as it does not provide the fine grain analysis required by CIL guidance to provide robust evidence that the retail types can be considered distinct different intended uses and will exhibit significantly different viability characteristics. Further scenarios either side of the 280sq m threshold are required to remove the significant gap in testing between a 335 sq m convenience store and the next 'foodstore' test at 2,500 sq m. The assessment does not take account of the range of proposals that may come forward. It is considered unlikely that the viability of stores either side of the nominated 335 sq m gross threshold, for example, will be materially different.

In summary, the proposed differentiation on the basis of intended use and size, and the supporting viability assessment, is deficient in the way it approaches retail development. Accordingly, the proposed CIL charging regime is currently not properly justified and falls outside the scope of the regulations.

Summary

The infrastructure to be supported by CIL is not made clear, and the connection between the needs generated by retail development specifically and the proposed CIL Payment needs to be fully explained in subsequent stages of the charging schedule.

The proposed differentiation on the basis of intended use and size within the Preliminary Draft Charging Schedule, and the supporting viability assessment, is deficient in the way it approaches retail development. The Preliminary Draft Charging Schedule does not unambiguously describe the difference in use between the convenience sector and other retail, and in particular does not support the proposed size threshold of 550 sq m. It is also unclear as to whether the threshold applies to gross internal floorspace or otherwise.

The supporting viability evidence needs to be reconsidered as it does not provide the fine grain analysis required by CIL guidance to provide robust evidence that the retail types can be considered distinct different intended uses and will exhibit significantly different viability characteristics. Further scenarios either side of the 280sq m threshold are required to remove the significant gap in testing between a 335 sq m convenience store and the next 'foodstore' test at 2,500 sq m. The assessment does not take account of the range of proposals that may come forward

Accordingly, the proposed CIL charging regime is currently not properly justified and falls outside the scope of the regulations.

Yours sincerely

Turley Associates

CC: J. Powell - Sainsburys Supermarkets Ltd.