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26 April 2013

FT/EB M5/0322-01 CIL

**By email:**

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Dear Sir or Madam

**RE: CONSULTATION ON THE PRELIMINARY DRAFT CHARGING SCHEDULE OF THE COMMUNITY INFRASTRUCTURE LEVY**

We represent the **West Midlands HARP Planning Consortium** which includes all the leading Housing and Registered Providers (HARPs) across the West Midlands. Our clients' principal concerns are to optimise the provision of social / affordable housing and to ensure the evolution and preparation of consistent policies throughout the region.

### **Overarching Comments**

We welcome the opportunity to comment on the CIL Charging Schedule and the underlying viability evidence. Our main concern is to ensure that the delivery of affordable housing is not squeezed by CIL charges that are set too high. We consider that protecting the delivery of affordable housing should be a fundamental consideration for local authorities when setting the rate of CIL.

The starting point should be delivering affordable housing development plan targets. We consider it extremely important that the Council properly considers the overall impact of CIL on the delivery of affordable housing. Greg Clark MP, Minister for Decentralisation and Cities stated on 20 April 2012 in an article in Inside Housing that:

*"A key point of the viability test for CIL [charge setting] is that it doesn't make socially important development unviable, including social housing. I would expect that to be at the forefront of examiners' minds."*

The importance of ensuring affordable housing delivery was recently highlighted by an Inspector's report from the Mid-Devon District Council CIL examination.

*"The Council should have taken all its policy requirements, including affordable housing, into account when setting the CIL rate and on this basis it can be concluded that the viability evidence, on which the proposed charge of £90 per sqm is based, is not robust."*

The Council will need to consider the rates they finally decide upon in Draft Charging Schedule in the context of the relevant guidance. Paragraph 29 of the December 2012 CIL guidance states that local

authorities should take account of policies within the development plan when setting their charging schedule particularly their affordable housing targets. Furthermore, one of the four key considerations for the independent examiner to assess at examination is whether the Charging Schedule would *“threaten delivery of the relevant Plan”* (para 9, CIL). The affordable housing target is a key driver of housing targets in Local Plans and the CIL Charges must be at a level which will not frustrate delivery.

We recognise that the Council's Viability Study, dated December 2012, was undertaken prior to DCLG's publication of the replacement guidance on CIL, issued 14 December 2012. However, as indicated in the guidance, with the exception of those draft charging schedules already submitted for examination, the 2012 guidance replaces the 2010 guidance as a basis for examination. Our representations highlight issues which we believe arise from the 2012 guidance and are not fully addressed within the PDCS, to ensure comprehensive consideration prior to the publication of a draft Charging Schedule for consultation in the future.

Our representations are as follows:

### **Section 106 Contributions**

CIL Guidance 2012 sets out clearly that:

*“As background evidence, the charging authority should also prepare and provide information about the amounts raised in recent years through section 106 agreements. This should include the extent to which affordable housing and other targets have been met”* (para 22, pg 8).

The Council's supporting material does not include a comparison of the cost of CIL compared to current Section 106 agreements. It also fails to consider the extent to which affordable housing targets have historically been met in the borough. DCLG guidance clearly stipulates that information on a Council's ability to meet its affordable housing targets should be included within the evidence base.

Once this evidence is available it will be possible to establish whether the proposed CIL levels are likely to prejudice affordable housing.

### **Developer Contributions and the Draft Regulation 123 List**

The limitations introduced by CIL for the collating of developer contributions, via Section 106 agreements, needs to be considered in more detail in respect to the Infrastructure Delivery Plan, dated September 2012. From the projects listed, it is evident that a number of these projects have identified both developer contributions and CIL as sources of funding. In line with industry concerns, the 2012 guidance notes the importance of ensuring clarity in infrastructure needs and funding sources to prevent *“actual or perceived ‘double dipping’, with developers paying twice for the same item of infrastructure”* (para 85). Our concern is to make sure that the authority is clear about the level of planning obligations that will be requested once CIL is adopted since that will affect the ability to provide affordable housing.

Additionally, CIL Guidance 2012 notes that charging authorities are encouraged to provide a draft Regulation 123 list for the examination of a draft Charging Schedule (para. 86), and the recently published consultation on further CIL reforms asks whether a draft 123 list should become a compulsory part of the CIL evidence base, published at the same time as the PDCS (para 29, p9, DCLG April 2013). Given these policy indications, a draft Regulation 123 list should be attached to the Draft Charging Schedule consultation. Our concern is to ensure that everyone is clear about what infrastructure will be provided (and, ideally, when it will be provided) in order to support development in the area.

### **Section 106 Guidance**

The identification of 'likely infrastructure requirements' for allocated housing sites in the draft Local Plan is to be commended. Following the 2012 CIL guidance, these identified infrastructure requirements must be

re-evaluated with consideration of CIL. There is the need to address unallocated sites, and formulate a “*proposed approach to the future use of any pooled section 106 contributions*” (para 89) across the borough to provide certainty and encourage development in line with the draft Local Plan visions. As recommended by the CIL Knowledge Partnership and the Planning Advisory Service, this will indicate the need to create a Supplementary Section 106 guidance document as part of the “appropriate evidence” for the CIL examination<sup>1</sup>.

### **Use of Affordable Housing Mix**

We note that the draft Local Plan indicates that the affordable housing mix will be based upon the Supplementary Planning Draft Document: Affordable Housing (Policy P4). The viability evidence has assumed a tenure mix of 65% affordable/social rent and 35% intermediate. However, both the draft Local Plan and draft SPD note the intention that this mix can vary according to site-specific factors, and will be reviewed annually. To ensure a robust evidence base it would be necessary to undertake viability of alternate schemes of mix, particularly on allocated sites.

### **Residential (C3)**

From the Viability Study, it is evident that Site 3 (in the Mature Suburbs) is unviable with a £75/m<sup>2</sup> CIL charge. Currently, this unviable result is ignored in the analysis;

*“All of the sites other than those located in the North Solihull Regeneration area are capable of supporting a CIL charge”* (para 6.3, p26).

The Viability Study clearly indicates that Site 3 could not support any CIL rate. While accepting the Council is seeking an appropriate balance, as required by Regulation 14, it is felt a justification is needed to substantiate the imposition of a CIL of £75/m<sup>2</sup> in this area, and consideration of whether other similar sites will be prevented from coming forward with the imposition of a £75/m<sup>2</sup> CIL rate in the Mature Suburbs.

### **Viability of Allocated Sites**

The selected sites for viability testing do not differentiate between allocated housing sites, and sites identified as potential windfall housing development. As required by the 2012 guidance, it is particularly important to test the viability of allocated sites.

*“As set out in the National Planning Policy Framework in England, the ability to develop viably the sites and the scale of development identified in the Local Plan should not be threatened”* (para.8).

We request that the draft Charging Schedule identifies the sites selected for viability testing which are allocated sites, and if additional viability testing is required on untested allocated sites, this occurs before the draft charging schedule is consulted upon.

### **Geographical Differentiations**

Regulation 13 allows the setting of differential rates as a way of dealing with different levels of economic viability making the levy more flexible to local conditions. Recognising that Solihull has distinct local differences across the borough, the general approach to geographical zoning is not contested. However, these boundaries must be defined by “*reference to the economic viability of development within them*” (para 22, p8, CIL Guidance 2012).

It is noted that there is a degree of discrepancies between the Property Market Review Maps contained within Appendix 2 of the Viability Study, and the area boundaries identified in the PDCS. As it is not possible to identify the locations of the sites chosen for viability testing, it is requested that these

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<sup>1</sup> <http://www.pas.gov.uk/pas/core/page.do?pageld=3203285>, accessed 17/04/2013

boundaries be analysed in greater detail, by testing sites located on the geographic peripherals of the zones, to ensure deliverability of housing schemes is not compromised. We would be particularly interested to ascertain if Site 3 from the study falls into one of these peripheral areas.

### **Older People's Housing (C2)**

We support the Council's decision to undertake an evaluation of viability on two residential care sites (Site 32 and Site 33). However, we wish to raise a number of issues.

Firstly, there seem to be a number of errors in respect to the Use Class of these two sites throughout the Viability Study document. We presume these two sites are indicative of a C2 Use Class, and request that these irregularities are corrected in the next stage of consultation.

In assessing the viability of these two sites, it is evident that one of them is unable to support the proposed £25m<sup>2</sup>. Given the need for this type of development identified in the SHMA 2009, and the Council's objective of securing appropriate accommodation for an ageing population (Policy P4, draft Local Plan) it seems inappropriate to continue with a proposed charge without further evidence to demonstrate that it will not inhibit the delivery of such sites. The statement in the Viability Study justifying this charge needs evidence to substantiate this approach:

*"Whilst Site 32 is only showing a marginal ability to support CIL, from our market knowledge and awareness of activity in this market we consider that a low CIL charge of £25 psm could be appropriate."*  
para 7.23, pg 32, Viability Study, CBRE, 2012

The Viability Study is based upon significant market research, and the inability of the evidence to indicate viability for the C2 site means that this statement is unreliable and not based upon evidence, as required by the CIL legislation.

### **Older People's Housing (C3)**

We are concerned that the Council has not tested the effect of CIL on older people's housing which falls within the C3 Use Class. We would like to draw the Council's attention to the Corby viability study which tested the viability of CIL for Extra Care development.

*"6.36 In our experience, Extra Care Housing Schemes have gross to net floor space ratios of between 55% and 60% due to the additional communal areas.*

*6.37 It is therefore considered that the viability of Extra Care Housing is very different from standard C3 housing and care homes, and our calculations show that they would be unable to absorb a CIL tariff.*

*6.38 Our appraisals of retirement housing (i.e. a McCarthy and Stone type development, where residents have their own flat or house and buy in additional services and support as required) indicate that such developments are unlikely to generate positive residual land values. Our appraisals assume a 70% gross to net ratio, accounting for additional common areas required in such developments. This factor, along with a slower sales rates, combine to adversely affect viability."*

para 6.36-38, pg 43. Corby Borough Council. Community Infrastructure Levy: Viability Study

Solihull has not considered the effect of CIL charges on this type of development so it is impossible to tell whether the CIL charges will disproportionately impact specialist older people's housing. The latest Government guidance (2012) specifically states that:

*"charging schedules should not impact disproportionately on particular sectors or specialist forms of development"* (para 37, pg 12).

Solihull identified the need to provide affordable extra care housing for older and/or disabled persons in the draft Local Plan, based upon the prediction that there will be an increase of 7,000 households for persons over 75 by 2028, resulting in them representing 21% of the total households in the borough. Given this identified need and Council's policy support for alternative forms of older persons accommodation, we consider additional viability work should be conducted to clarify the impact on the delivery of older persons accommodation of Use Class C3.

### **Older People's Housing (C2 and C3)**

Having regard to the above two comments, the Council should consider the formulation of a charge for all older persons housing development rather than dividing the charging schedule solely on the Use Class Order. This would better reflect Regulation 13 which refers to "intended use" rather than Use Classes.

### **Phased Payment Policy**

We support the Council's proposal to introduce an instalments policy, to facilitate the payment of CIL. We note the Council has not linked final payments to occupation of the property and suggest this would assist in the delivery of sites.

### **Exemptions and CIL Relief**

Including an exceptional circumstances policy allows some flexibility for the Council to ensure housing remains deliverable on a few specific sites, particularly in the current depressed market. Exceptional circumstances policy will only be applicable in a very small number of cases where the cost of items in a Section 106 agreement are greater than CIL and where the exemption from CIL would not constitute State Aid. We consider that within the short and medium term allowing exemptions would assist the delivery of affordable housing in Solihull.

### **An Affordable Housing CIL Rate**

The PDCS consultation document raises the issue of introducing a lower CIL rate for sites where the affordable housing target in the draft Local Plan is met.

The CIL Regulations provide two situations in which charging authorities may set differential CIL rates:

- "1) *A charging authority may set differential rates—*
- (a) for different zones in which development would be situated;*
  - (b) by reference to different intended uses of development."*

(para 13, pg 12).

The proposition of charging a different rate based upon the level of affordable housing provided by development does not accord with these Regulations. Firstly, the levels of affordable housing do not reference different zones in which development would be situated. The draft Local Plan applies a 40% affordable housing target across the whole of the borough and this approach should be upheld by the CIL charging schedule. The recent DCLG CIL guidance (2012) states that:

*"Charging schedules should be consistent with and support implementation of up-to-date Local Plans in England"* (para 4, pg 5).

Secondly, affordable housing does not constitute a different intended use and so differential rates cannot be set for this reason. We consider that the Council should set a rate of CIL which is compatible with their adopted affordable housing target at the Draft Charging Schedule stage.

We note that the recently published consultation on reforms to CIL (DCLG, April 2013) proposes allowing differential rates by reference to the scale of the development. However, even with this change to the Regulations, setting a differential CIL rate according to the level of affordable housing would still not meet the requirements of the Regulations.

**Effect of CIL charging schedule on cross-subsidy rural exception schemes**

We are awaiting the Inspector's final report on the draft Local Plan, in accordance with the comments we previously submitted, we have the following observations to make on rural exceptions schemes (Policy P4(b)).

If the Inspector requests a change to the draft policy to allow the use of market housing to finance affordable housing delivery on rural exception sites, we are concerned that the £150/m<sup>2</sup> charge will impede the delivery of affordable housing through such cross-subsidy schemes. A higher rural charge will threaten the viability of such schemes, reducing the delivery of affordable homes in rural locations. We suggest that the Council revisit its viability evidence to test the effect on cross-subsidy schemes and the level of affordable housing they are able to deliver with the £150/m<sup>2</sup> charge. We consider that this would accord with the DCLG guidance:

*"a charging authority should sample directly an appropriate range of types of sites across its area in order to supplement existing data" (para 27, p9)*

Depending on the results of any retesting the authority could, instead, commit to using any CIL raised in connection with a rural exception site within the local area, making sure that the community and the development benefit from any contribution.

The above comments are intended to be constructive. We would like to be kept informed of this Community Infrastructure Levy's progress and consulted on further stages; please ensure that the **West Midlands HARP Planning Consortium** are retained on the LDF database, with **Tetlow King Planning** listed as their agents.

Yours faithfully



**FELICITY TOZER**  
For and On Behalf Of  
TETLOW KING PLANNING

Encs

cc: Bromford Group  
Family Housing Association  
Midland Heart Ltd  
South Staffordshire Housing Association  
Waterloo Housing Association  
WM Housing Group