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Dear Sirs

Community Infrastructure Levy: Preliminary Draft Charging Schedule Consultation

We act for Asda Stores Limited ("Asda") and are writing on behalf of Asda to make representations in respect of Solihull Metropolitan Borough Council's (the "Council") Preliminary Draft Charging Schedule (the "Charging Schedule").

Under Regulation 14 of the Community Infrastructure Levy Regulations 2010 ("CIL Regulations") the Council's primary duty when setting the level of Community Infrastructure Levy ("CIL") charge is to strike an appropriate balance between the desirability of funding the cost of infrastructure required to support development from CIL and its potential effects on the economic viability of development.

In our view, the approach taken to assessing the Charging Schedule does not achieve an appropriate balance between these two objectives.

We wish fundamentally to object to the approach taken to assessing the Charging Schedule, and to the disproportionate loading of CIL upon large retail development, on the following grounds:

1. The impact on policies promoting economic growth and employment opportunities;
2. The proposal to split small and large retail development;
3. The financial assumptions and viability assessments contained in the Council's Viability Study; and
4. Concerns about the Council's approach to setting CIL charges generally.

1. Impact on policies promoting economic growth and employment opportunities

We will not repeat the Council's Strategic Objectives, set out in its Submission Draft Local Plan, however, in order to achieve realise these Objectives; the Council will need to set an appropriate CIL charge. An appropriate CIL charge will encourage new development and promote redevelopment to create employment and ensure a range of shopping choices for consumers and enhance the vitality and viability in district and local centres.

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It is our view that if the charges set out in the Charging Schedule are adopted there will inevitably be several consequences across the Borough that will put the Council's ability to realise these Objectives. For example:

a) all other forms of development will receive a significant subsidy at the expense of large convenience retail development; and

b) there will be a corresponding disincentive (and market distortion accordingly) to investment in this sector of the economy.

The Government is keen to encourage the creation of additional employment across the economy and the retail sector is one of the largest employers and the largest creator of new jobs at the present time as well as being one of the most dynamic and innovative sectors within the UK economy.

<u>Asda example 1</u>

ASDA has a proven track record of investing in local communities and of creating jobs within these areas. For example, of the 123 colleagues recruited for the ASDA store in Tunbridge Wells, 76 colleagues live within 5 miles of the store and 87 colleagues were previously unemployed.

The supporting papers do not acknowledge this trend nor do they fully assess the role of retail within the national economy. They simply assert that convenience retail continues to be one of the better performing sectors in the UK and this implies that operators within it have the capacity to pay potentially very large sums of CIL.

Any CIL Schedule that imposes a CIL charge only on large format convenience retail would effectively undermine the retail function of local centres by detracting from their viability and vitality as large convenience retail developers would be discouraged from developing anchor stores in these locations by the imposition of CIL.

<u>Asda example 2</u>

Asda stores regularly rejuvenate and regenerate existing centres, and the surrounding areas, and draw new shoppers to them, which benefits the existing retailers, and those who open stores in Asda-anchored centres in their wake. For example in 2006, Asda opened a store in Romford, transforming a derelict brownfield site through an extension of an existing retail mall and creating 347 jobs. This helped to propel Romford into the top 50 UK retailing cities. Indeed, due to the success of the store in attracting more footfall to that part of the town's Primary Shopping Area, the local authority redrew the town centre boundary to include the edge of centre Asda store into the heart of the Romford town centre.

2. The proposal to split CIL rates for retail based on the size of the store

We consider that the Council's proposal to charge £150 per square metre for convenience retail development with a Gross Internal Area (GIA) below 550 sqm and £300 per square metre for convenience retail development with a GIA above 550 sqm outside of North Solihull is at odds with government guidance and with the Viability Evidence that purports to support the proposal.

Clause 13(1) of the CIL Regulations states that a charging authority may set differential rates for different zones in which development would be situated and/or by reference to different intended uses of development within those zones. It does not allow different rates based solely on the <u>size</u> of developments that are intended for the same use.

The evidence in the Viability Assessment does not justify the rates proposed for two classes

of convenience retail developments, nor indeed does it support the level at which the size threshold has been set.

CPRE state, in paragraph 7.5 of their report, that the size threshold adopted in their analysis is based on the *minimum and maximum retail sales areas* considered appropriate for distinguishing between a large and small convenience food store. Leaving aside the appropriateness of this threshold for the moment, there is a considerable difference between the net sales area of a store and its GIA.

The Guidance to PPS4[1], which still remains in force, defines the net retail sales area of a major food store as '*the sales area within a building (i.e. all internal areas accessible to the customer) but excluding checkouts, lobbies, concessions, restaurants, customer toilets and walkways behind the checkouts.*'

The GIA of a store, however, is generally defined as "*the area of a building measured to the internal face of the perimeter walls at each floor level*"[2].

By setting the proposed size threshold at 550 sqm, the Council appears to have confused these two concepts. A store with a net retail sales area of 550 sqm is likely to have a GIA significantly larger than this.

Further the precise net sales area of a particular development is unlikely to be known when planning permission for the scheme is granted and is frequently subject to change. Any CIL rates predicated on this basis will be both uncertain and extremely difficult to enforce.

In addition, the viability evidence produced by CBRE and published in the viability report appears to be incomplete and is not sufficiently fine grained to support the proposed size threshold. Only two types of purported convenience retail scheme appear to have been assessed, a 335 sqm store located in a 'mature suburb', and 'rural' food store of 4,400 sqm. There is no evidence that a sufficient range of store sizes has been tested to establish that the size of a store is the crucial factor in determining its viability profile. For example, it is perfectly possible that the difference in the viability profiles of the two stores is primarily affected by their location and not their size. The location of a scheme is clearly an extremely important consideration, as CBRE has stated that no development in the North Solihull Regeneration Area can carry CIL regardless of its type, size or intended use.

Finally, although CBRE state that additional viability testing was carried out for retail developments, this evidence has not been published. The report recommends a large retail rate of £300 per sqm, however the commercial appraisal outputs published at Appendix 4, only demonstrate the respective viability of CIL rates between £0 per sqm and £150 per sqm.

3. The financial assumptions and viability assessments contained in the Council's viability reports

The Viability profiling document also contains retail development assumptions that in our view are inadequate as they do not make sufficient allowance for Section 106 and/or Section 278 contributions which will need to be paid by developers in addition to the CIL payments.

Paragraph 4.29 of the Viability Assessment states that a contingency of 5% of build costs has been assumed for both commercial and residential developments. The contingency is intended to allow for "unexpected or site specific cost items such as site abnormal costs...demolition, remediation and on-site highways works. For the commercial scenarios it

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[1] Practice Guidance on Need, Impact and the Sequential Approach – DCLG December 2009
[2] RICS standard definition

also allows for any s.106 costs that are not otherwise addressed by CIL".

Residential developments, however, have been allowed a further £1,000 per unit for s.106 contributions above and beyond the 5% contingency applied for commercial schemes.

This approach is inherently flawed. Although the Council will not be able to pool s.106 contributions once CIL is adopted, the types of commonly pooled contributions tend not to make up a large proportion of the contributions sought from commercial schemes – which are usually focussed on site specific highways and access works, employment and training contributions, environmental mitigation works and other, site specific, requirements. Many of these types of planning contributions (detailed in appendix 1) will still be required after CIL has been adopted to make a retail scheme acceptable in planning terms, but would either not be required from residential schemes, or would be largely offset by the reduction to the 'pooled' or standardised contributions towards school places, NHS facilities, open and play space and emergency services.

By excluding the potentially large Section 106 costs and the costs of obtaining planning permission (examples of which are set out at Schedule 1 to this letter), the Council has underestimated the true cost of retail developments and artificially inflated the relevant benchmark land values used for the financial viability models. This will, in turn, have inflated the amount of CIL proposed for retail.

This is especially true when considering the proposed split between small and large retail stated in the Preliminary Draft Charging Schedule. Large retail developments will also bear the expensive costs of Section 106 Agreements and their financial contributions whereas the small retail developments are likely to escape these. For large convenience retail development, such as an anchor store for a new district centre, when combined with the proposed CIL charge of £300 per square metre this will make large proposed convenience retail developments in the borough commercially unattractive and unviable. This is particularly true given that a 4,000 sqm GIA store in Birmingham would attract a lower CIL rate of £150 per sqm.

Furthermore, the DCLG now requires (from 14 December 2012) local authorities to produce evidence of the amount of revenue raised by Section 106 contributions in their area – including whether affordable housing and other targets have been met. The proposed CIL levies for any individual sector can then be assessed against the contributions previously received, minus any contributions that developers would still have to pay notwithstanding any CIL payments, to see if they are realistic.

The evidence put forward by the Council does not appear to contain this. It is difficult to see how the Council can be certain that the proposed CIL levy will not prohibit the viability of retail development without having obtained this evidence.

4. Concerns about the Council's approach to setting CIL charges generally

The stated purpose of CIL is to raise revenue for infrastructure necessary to serve development. CIL is intended to address the imbalance of raising funds for infrastructure under the Section 106 route where larger schemes have effectively subsidised minor developments. However, CIL does not replace the Section 106 revenue stream – it will simply provide additional revenue for infrastructure.

In light of this, we have some further concerns:

Concerns relating to change of use and conversion projects

Although the Council has taken the economics of regeneration projects into account to some extent when conducting its viability assessments it does not appear to have given much weight to this consideration.

As you will be aware Regulation 40 of the CIL Regulations only permits developers to deduct pre-existing floorspace from the CIL calculation if it is "in lawful use." Lawful use is defined in Regulation 40 (10) and essentially requires part of a building to have been in use for a six month continuous period in the twelve months before the date of the planning permission permitting the development.

However, many regeneration projects on brownfield land or town centres involve demolishing, converting or redeveloping buildings that have lain vacant for some time. This is particularly true of schemes which involve changes of use from employment land, where the fact that a unit has been vacant for a considerable time is often a key factor in the Council's decision to grant planning permission for the scheme.

The Viability Assessment does not acknowledge that the economics of conversion schemes are very different to those of new build schemes. It is difficult to see how the Council can assess whether the imposition of CIL will put the majority of these schemes at risk without having considered its impact on their viability.

Concerns on CIL payments and the infrastructure requirements

The Charging Schedule, as drafted, does not make the connection between the CIL charges proposed and the infrastructure requirements of the particular developments upon which they are being levied..

By way of example, using the CIL figures proposed in the Charging Schedule for retail in the remainder of the Borough (£300.00 per square metre) the proposed charge would add £1,200,000 to the cost of a generic 4,000 square metre supermarket development. There is no evidence that this is necessarily the appropriate figure in terms of the related infrastructure costs that a retail development should be expected to carry but rather it appears to be a high level calculation based on the sector's assumed ability to pay.

As you are aware, Regulation 14(1) of the Community Infrastructure Regulations (as amended) states that:

> *(1) ... a charging authority must aim to strike what appears to the charging authority to be 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.*

The Charging Schedule does not contain details of the actual or estimated cost of infrastructure provided to support the local plan. Nor, indeed, does it suggest that additional infrastructure is actually required to support the level of development set out in its Core Strategy.

We accept that some superstores may individually necessitate the provision of specific local infrastructure but it could be argued that given the proliferation of modern supermarkets infrastructure requirements have reduced. For example, it is frequently the case that journey times fall as new supermarkets are opened. The inevitable consequence of this is

that most existing infrastructure is used less, not more, as a result of such developments. There is a concern that as local authorities will still seek site-specific commitments under the Section 106 regime as well as CIL that the two charges together represent an unreasonable double levy for infrastructure which is seemingly being placed onto a very limited category of development.

There is also a risk that some of the infrastructure projects identified by the Council to be funded by CIL will already have been funded by undelivered projects through existing Section 106 commitments. At present, Section 106 contributions paid to a council are repaid to the developer if the infrastructure has not been delivered within a certain period of time. These delivery periods are long, usually between five and ten years, and the onus is on the developer to check that the council has carried out the works and to request a refund if not. As you will be aware, there is no similar mechanism to allow developers to reclaim unspent CIL contributions.

ASDA's SUGGESTIONS

1. Exceptional circumstances relief

The Council has not indicated whether it considering offering exceptional circumstances relief. We urge the Council to do so.

The viability of any particular development scheme is finely balanced and will fluctuate depending on the costs involved in the development and the state of the economy when the development comes forward. By adopting exceptional circumstances relief the Council will have the flexibility to allow strategic or desirable, but unprofitable, development schemes to come forward by exempting them from the CIL charge or reducing it in certain circumstances.

Simply exempting schemes from certain Section 106 obligations is unlikely to be sufficient to counteract the negative impact of the CIL charge, particularly as not all schemes (in particular retail developments) would attract an affordable housing requirement which could be waived. Further, the types of strategic development which are most likely to be of concern to the Council, such as large regeneration or housing schemes, are precisely the types of development which are likely to carry heavy site specific infrastructure costs, which will be funded under Section 106, and are most likely to qualify for exceptional circumstances relief. We therefore urge the Council to adopt it.

2. Instalment Policy

We welcome the fact that the Council is proposing to introduce an instalment policy.

In setting its instalment policy, we would ask the Council to take into account the fact that many major development projects are implemented in phases and by adopting an instalment policy this should ensure that developers are not disadvantaged by submitting an application for full, rather than outline, planning permission. We urge the Council to adopt an instalment policy which ensures that developers are not disadvantaged by the decision to submit a full planning application for a phased development scheme.

3. Flat Rate Levy

A much fairer solution, accepting for the purpose of this argument the premise that CIL is necessary for the purpose of funding borough-wide infrastructure, would be to divide the Council's estimate of total infrastructure costs over the charging period (and in this connection, it is important to remember that the Government's guidance as recorded in the National Planning Policy Framework is that only deliverable infrastructure should be included) by the total expected development floorspace and apply a flat rate levy across the

borough and across all forms of development. That will have the least possible adverse effect upon the market for land and for development, and yet the greatest possible opportunity for the economy to prosper and thrive and for jobs to be created.

The potential impact of a flat rate levy on the viability of those types of development which are not currently identified as viable could be balanced by the Council's implementation of exceptional circumstances relief, as mentioned above.

It should be noted that within the borough over the planned period there is likely to be a limited number of large format retail developments.

Consequently, reducing the levy proposed per square metre on retail floorspace would not result in a proportionate increase in the levy required on other forms of commercial or other development. However, applying the current proposed levy could run the risk of diminishing substantially the number of such stores built, with a consequential loss of employment opportunities and investment.

Alternatively, we would request that the Council reduces the CIL charges for large scale retail developments to that of small scale retail developments to ensure consistency.

CONCLUSION

For these reasons, we would ask the Council to rethink its position and substantially alter its Charging Schedule in so far as it relates to retail development.

Accordingly, we would request that the Council:

- abandons its attempts to link CIL rates to the net retail floorspace of a particular retail scheme.
- Revisits its viability evidence, to ensure it takes account of planning costs and residual Section 106 and Section 278 payments for commercial developments;
- Adopts the exceptional circumstances relief exemptions allowed for under the CIL Regulations;
- Produces a draft staged payments policy (for all types of development) that ensures that developers are not disadvantaged by submitting an application for full, rather than outline, planning permission;
- Adopts a single flat rate levy across all development within its boundaries; and/or
- In the alternative, introduces a flat rate CIL levy for convenience retail, set at a level that doesn't render such developments unviable.

Yours faithfully

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Schedule 1

Section 106 Agreements

The types of contribution that could still feasibly be sought from a retail developer once the Charging Schedule has been adopted include:

- Cost of site-specific highways works: including junction improvements, road widening schemes, new access roads, diversion orders and other highways works;
- Cost of extending the Council's CCTV Network or Public Transport Network to include the scheme (including the costs of creating new bus stops, real time information and providing new bus services to serve the site);
- Monitoring costs of compliance with employment/apprenticeship schemes and travel plans;
- Environmental off-set contributions to mitigate the loss of habitat or greenery caused by the scheme;
- The cost of any remediation and decontamination works to be carried out by the Council on the developer's behalf;
- Payments for town centre improvements intended to mitigate the impact of the development on the town centre or neighbouring areas; and
- The costs incurred by the Council of maintaining any site specific infrastructure required by the development.