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**Swindon Borough Council**  
**Community Infrastructure Levy**  
**Draft Charging Schedule**

**Examination in Public**

**Hearing Statement**

on behalf of

**Hallam Land**

**Hannick Homes**

**Taylor Wimpey**

## 1. Introduction

- 1.1 This Hearing Statement has been prepared on behalf of Hallam Land, Hannick Homes and Taylor Wimpey (hereinafter referred to as 'HHTW') further to the representations to the Draft Charging Schedule made on their behalf by David Lock Associates as set out in their letter of 30<sup>th</sup> May 2013. In that letter HHTW requested the right to be heard at the Examination in respect of the matters set out in their representations. As is explained in their original submissions, HHTW have a collective interest in the New Eastern Villages (NEV), and this statement represents their collective interests.
- 1.2 In their recent response to the Programme Officer confirming their intention to participate in the Hearing Sessions of the Examination, HHTW indicated that they were content to rely on their submissions of 30<sup>th</sup> May for the purposes of the Examination and did not intend to augment them by way of a further Written Statement. However, in an effort to assist the Inspector they identified that their representations, and interests, related most closely to the following 'Key Issues' as set out in his Discussion Paper that had been circulated to intending participants:
- Issue 1(i): Is the Schedule justified by **appropriate available evidence**, having regard to the national CIL Guidance (2014), NPPF (*the Framework*), the local economic context and infrastructure needs, the *Local Plan* (LP) and Infrastructure Delivery Plan.
  - Issue 1(ii): Overall, does it **strike the right balance** between helping to fund the new infrastructure required and the potential effects on economic viability of development across the Borough?
  - Issue 1(viii): What criteria will the Council use to determine whether **exceptional circumstances** are appropriate?
  - Issue 1(ix): Should there be a policy covering **instalment rates**?
  - Issue 2(i): Is the rate for residential development **reasonable and realistic** in relation to an appropriate balance between helping to fund new infrastructure and the potential impacts on economic viability?
  - Issue 3(i): Are the rates for residential use in the schedule **reasonable and realistic** in relation to an appropriate balance between helping to fund the new infrastructure and the potential impacts on economic viability.
- 1.3 Following the closing date for the submission of Hearing Statements, through the Programme Officer the Inspector has indicated that he would be assisted by a Hearing Statement on behalf of HHTW in respect of any questions of interest to them. This brief statement is a response to that request.

- 1.4 In addition to the questions cited above that HHTW have already indicated to be most relevant to their representations, the following additional question is also considered to be particularly relevant to their position:
- Issue 1(vii): What is the rationale behind sticking to the **S106 method for providing the necessary infrastructure for the major expansion areas** in the Borough? Is there not a danger that the limitations of S106 funding for multiple developments in Zone 1 residential areas will restrict the potential for funding for necessary infrastructure?
- 1.5 It is worthy of note that paragraphs 5.1 and 5.2 of Swindon Borough Council's Examination Statement Issue 1- Justification/Balance/Viability, puts the requirement for supporting Infrastructure for the CIL regulated sites at £199,838,450, with the corresponding CIL (at £55), generating only £9,602,562 of that need, or, 4.8%. However, through the imposition of Section 106 Agreements, the strategic allocations are required to contribute at least the full infrastructure costs, as well as providing improvements in education and transport, including highway links, that will be of wider benefit.
- 1.6 This Hearing Statement will focus on those questions considered to be most germane to the matters raised by HHTW in their earlier submissions. However, it is acknowledged that the matters raised in a number of the questions are interrelated, and every effort will be made at the Examination to assist the Inspector with testing the overall provisions of the draft Charging Schedule to ensure that it is sound, and will not inhibit necessary development and investment in the Borough by prejudicing its viability.

## 2. Response to Key Issues for Discussion

**Issue 1(i):** Is the Schedule justified by *appropriate available evidence*, having regard to the national CIL Guidance (2014), NPPF (*the Framework*), the local economic context and infrastructure needs, the *Local Plan* (LP) and Infrastructure Delivery Plan.

- 2.1 HHTW do not take issue with the appropriateness of the evidence base at a general level having regard to the relevant guidance.
- 2.2 However, for reasons set out in relation to Issue 1(ii) below, HHTW have concerns about the interpretation of, and conclusions drawn from, the evidence base in relation to the proposed CIL charge relating to retail development within Retail Zone 2, and in particular the inclusion of Swindon's New Communities within Retail Zone 2 rather than Zone 1. It is HHTW's view that there is little in the way of evidence to test the circumstances acknowledged in ED2-13 that the value created by large convenience stores may be needed to support the delivery of the wider infrastructure of Swindon's New Communities, and therefore the implications of the significant charge that is imposed by the draft Charging Schedule on retail development at the NEV.

**Issue 1(ii):** Overall, does it *strike the right balance* between helping to fund the new infrastructure required and the potential effects on economic viability of development across the Borough?

- 2.3 Overall, and subject to the caveats regarding the method for providing the necessary infrastructure for the major expansion areas set out below, it is considered that a reasonable balance is struck between helping to fund the new infrastructure and economic viability. The one exception is considered to be the proposed CIL charge relating to retail development within Retail Zone 2, and the failure to exclude Swindon's New Communities from the Proposed CIL charge.
- 2.4 In their initial representations HHTW commented that retail provision in locations such as the NEV is affected by the overall viability considerations as pertain to residential development, in terms of the requirements for substantial new infrastructure associated with its delivery. The concessions relating to residential development were based on an assessment of the viability of delivering the proposals for the strategic sites overall, and the scale and cost of new infrastructure for doing so. Part of those overall proposals is the delivery of a new district centre and several local centres, with associated public realm. To the extent that retail development may in other circumstances generate a GDV sufficient to provide headroom for a CIL levy whilst maintaining viability, any surplus generated in the NEV is needed to fund the substantial new infrastructure costs, not least of establishing new town centres.
- 2.5 WYG, in their Hearing Statement, have explained how the viability evidence is inadequate and fails to address substantial abnormal costs that have to be borne by retail development in the NEV in

terms of developing and establishing new town centres with associated public transport connections. It will be of little assistance to the Inspector to repeat the submissions made by WYG, suffice it to say that they are endorsed by HHTW in this respect.

- 2.6 The proposed CIL levy on retail development to be developed as part of the New Communities would be at odds with the viability evidence that supports the draft Charging Schedule. As is acknowledged in the CIL Viability Report (ED2-13) prepared by GVA in relation to urban extensions:

*It is difficult to generate a positive land value for some schemes, particularly in the low value areas, and for the larger schemes, say of 100 units and above that can require a significant amount of upfront investment for the provision of site preparation and infrastructure etc. (ED2-13, para. 3.7).*

- 2.7 With specific regard to the assessment of the viability of retail development, as WYG have correctly pointed out, the scenarios tested for convenience retail development do not include leasehold schemes which are now commonplace in the procurement of schemes of this nature. This is clear from the Viability Report (para. 4.7), and the results are also strongly caveated on the basis of their being for a hypothetical scheme and do not take into account sunk or abnormal costs but assume a single storey development with surface level parking (para. 4.8). It is clear from the Local Plan that the centres that are to be delivered as part of the strategic sites are to include above ground-floor uses and of a nature (such as offices) which it is acknowledged have insufficient viability to be burdened with a CIL large. It is also noted that:

*... many large food stores and supermarkets are developed as 'anchors' to larger mixed use developments, and as such the value created by these food stores is effectively used to support additional development; for example residential and commercial uses, particularly in low value areas. In such situations, the imposition of a significant charge would lessen the financial support they could provide to other uses within a scheme as a whole. (ED2-13, para. 4.9).*

- 2.8 In this instance not only does the retail development have to support additional development in the form of residential and commercial uses, but the substantial additional costs of delivering new town centres, including substantial and high quality public realm.
- 2.9 For the foregoing reasons HHTW consider that retail development to be brought forward as part of the new district and local centres to serve the New Communities should be excepted from the CIL levy proposed for development in Retail Zone 2. It should either be subject to a nil charge or, in the event of a reduced CIL charge to be introduced on residential development to overcome the limitations of Section 106, to the same reduced charge with a similar undertaking by the Council to reflect it in reduced S106 Obligations and an undertaking to direct the proceeds to investment in new public realm associated with the new town centres.

- 2.10 The approach in the draft Charging Schedule that implies that retail development that is to come forward to serve the New Communities is not burdened by the same overall infrastructure costs as the remainder of the new development area of which it forms a part, is counter-intuitive and a flaw in the schedule. It appears not to have been properly considered through the viability assessment, and is therefore not supported by the evidence base accompanying the draft Charging Schedule. Indeed, it would seem to be at odds with the acknowledgement in the viability report of the need for the value generated by large retail units to support additional development.
- 2.11 Clearly, given that the intention is that the NEV is 'consuming its own smoke' in terms of infrastructure, to then burden a part of it (the retail element) with a CIL rate, to contribute additionally towards the infrastructure requirements of the remainder of the Local Plan allocations, is, in fact, double charging.

**Issue 1(vii): What is the rationale behind sticking to the *S106 method for providing the necessary infrastructure for the major expansion areas in the Borough?* Is there not a danger that the limitations of S106 funding for multiple developments in Zone 1 residential areas will restrict the potential for funding for necessary infrastructure?**

- 2.12 HHTW consider that there is a danger that the limitations of S106 funding for multiple developments in Zone 1 residential areas will restrict the potential for funding the necessary infrastructure. In their original submissions HHTW expressed their concern to ensure that an effective mechanism is put in place for the delivery of education and also some elements of the transport infrastructure. In relation to the secondary education provisions to be made at the NEV, it is HHTW's view that they will deliver benefits for a wide range of developments beyond the NEV. Indeed, much of the urban area of Swindon is likely to fall within the catchment area for the new Secondary School facilities, and which could become the preferred choice for pupils from both the existing urban area and new developments not forming part of the NEV.
- 2.13 Under Section 106 it would only be legitimate to require the NEV to contribute a proportion of the funding for the new facilities, in addition to making the land available for them, to the extent that the need for them arises from the proposed development itself. In consequence, it is unlikely that the provision of the new Secondary School facilities can be secured in their entirety through Section 106 Obligations alone.
- 2.14 As proposed by Swindon, the intention is for the NEV to pay the full requirement for all of its infrastructure, including strategic highways improvements, education (including SEN) and transport delivery. This is being controlled directly by all-encompassing Section 106. However, the reality is that the improvements will benefit more than the NEV. Thus, other developments (for instance, the remaining South Marston and other allocations), will not contribute to the NEV burden. It could then be argued that such provisions should not be appropriate in a Section 106, as they would fail the

Regulation 122 test, as being, potentially, to the benefit of not only other permissions outside of the NEV, but also to the wider community.

- 2.15 In his question in relation to this issue the Inspector has alluded to the limitations of S106 funding. These limitations go beyond what can reasonably and legitimately be required having regard to the now statutory tests introduced through Regulation 122 of the CIL Regulations. In accordance with Regulation 123 limitations are also imposed on the extent to which Planning Obligations can be pooled towards infrastructure that may be funded by the levy.
- 2.16 In view of these limitations, which could result in a shortfall in the delivery of the education infrastructure, it is HHTW's view that the Regulation 123 list should be amended to remove the exclusion from CIL funding of education infrastructure at the NEV.
- 2.17 Whilst generally supporting the nil charge in relation to strategic sites, which correctly reflects the very substantial infrastructure costs by which the delivery of development at them will be burdened, to ensure the delivery of the education provisions at the NEV, bearing in mind the limitations pertaining to S106 Obligations, HHTW considers that a more effective approach might be to levy a small CIL charge on all strategic sites in exchange for a commensurate reduction in the Section 106 contributions relating to them. This is likely to provide a more equitable way of ensuring that the education infrastructure will be funded by those who will benefit from it, and a more effective method of ensuring the availability of funding to deliver it.
- 2.18 By way of illustration, the following, very crude, calculation has been undertaken to exemplify how a small levy could deliver the funding necessary for a well designed, modest scale Secondary School:
- *Assume 8,000 houses*
  - *Assume average dwelling size of 112.5 sq m*
  - *Assume CIL levy of £25 per sq m in the Zone 1 residential areas*
  - *8,000 houses @ £2,812.5 per dwelling (average)*
  - *Potential CIL levy of £22.5 million*
- 2.19 If such a levy were to be imposed it is essential that there is transparency to ensure that there would be no double-counting of Section 106 and CIL charges, and that there is a commensurate reduction in Section 106 contributions associated with the strategic sites. Moreover, there must be a mechanism for ensuring that any such funding generated by CIL is capable of being directed to the provision of education infrastructure at the NEV.



- 2.20 As stated in HHTW's original submissions, any levy raised on all strategic sites might also be expected to support the funding of such items of transport infrastructure that ought to be included in the Regulation 123 list. Such items are likely to include investment in public transport delivery.
- 2.21 The Council's response to this issue, set out in Section 7 of its Hearing Statement, is not fully understood. There can be no certainty that the major landowners will be willing to sign up to a single S106 Obligation, or, given the scale and number of sites, and by inference developers and land interests, involved, that they will be in a position to do so at a given moment in time. This would seem to require applications for all of the NEV, and other strategic sites intended to contribute to relevant infrastructure, to come forward at the same time. This is unlikely to happen in reality. Moreover, if the developers are not satisfied that the draft Obligations meet the statutory tests, then it is unlikely that they will be willing to sign up to them. The fact that three developers with substantial interests in the NEV are present at the current Examination raising issues in relation to the likely future Obligations, is testimony to the fact that they may not be acceptable to them.
- 2.22 Reference is made to a Legal Framework Agreement, to be signed by all of the NEV landowners, with such requirement being secured by a Grampian condition precluding commencement of development until it has been executed by every Landowner within the NEV. Moreover, it is understood that the same criterion will also be applied to the other Section 106-led schemes. Whilst, since the publication of the PPG, the use of negatively worded conditions requiring a planning obligation or other agreement to be entered into before development can commence is no longer outlawed and can be acceptable, the guidance is clear that they should be used only in exceptional circumstances. Those circumstances are where there is clear evidence that the delivery of development would otherwise be at serious risk and, as a pre-requisite, it has been discussed with applicants before planning permission is granted, also, crucially, the heads of terms or principal terms have been agreed prior to planning permission being granted (PPG, Reference ID: 21a-010-20140306). It is therefore inappropriate to use such an approach where heads of terms have not been agreed, and therefore there can be no certainty at the present time that such a condition can legitimately be used in this instance. Moreover, such an imposition leads to a major concern, not aired in the Local Plan arena, being that of deliverability of the NEV and the other Section 106-led schemes, should such a pre-condition be imposed.
- 2.23 For the reasons set out above it is considered that that the Council's response to the limitations of Section 106 is unrealistic, and is extremely unlikely to work in practice having regard to the number land interests involved in the NEV, and the lack of any development agreements between them. The Inspector is therefore urged to treat the suggested approach with the utmost caution, and to ensure that it is subject to careful scrutiny at the Examination.



**Issue 1(viii): What criteria will the Council use to determine whether *exceptional circumstances* are appropriate?**

- 2.24 The Council's position on this matter is understood to be that the use of Exceptional Circumstances Relief will be a rare occurrence, and therefore it has chosen not to make it available at the outset. By definition, since it would be relief under 'exceptional circumstances', it will be a rare occurrence, unless the levy that is set is not supported by robust viability evidence and as a result is set at an unrealistically high level such as to preclude development from coming forward.
- 2.25 Since the Council does not envisage turning on Exceptional Circumstances Relief, scant regard has been given to the criteria that the Council will use to determine whether it is appropriate. This risks a 'crisis management' approach where relief will only be switched on when market signals indicate a substantial problem with development delivery, and which is then difficult to correct within a short timescale. The historic problems of housing under-delivery, which are now manifesting themselves in an acute housing shortage nationally, bear witness to the dangers of an inflexible regulatory system without built-in checks, balances and corrective triggers.
- 2.26 The theoretical example put forward by the Council relates to specific cases in which relief might be given if it is switched on. The Inspector's question would seem to relate to higher level considerations which could indicate the need to turn on exceptional relief in the first instance. The criteria that should be used for such a determination should take into account evidence that the Council will compile through its ongoing monitoring of development delivery, including planning applications made, planning permissions granted and development starts. Moreover, since it is part of the core planning principles set out in the NPPF that plans should take account of market signals, the evidence of such signals should feed back into the monitoring of the impact of CIL. Macro-economic considerations should also be taken into account, including rising interest rates and house price indicators.
- 2.27 It is essential that robust criteria are defined to ensure that there is ongoing monitoring of the impact of the CIL levy to enable an immediate corrective response in order to avert any brake on the delivery of necessary development. Only in this way will the imposition of CIL be consistent with the core NPPF planning principle to proactively drive and support sustainable economic development to 'deliver' the country's development needs, and to objectively identify and then 'meet' the housing, business and other development needs of the area (para. 17). The recent report published by Savills entitled 'CIL: Is it Delivering' (27 October 2014) which indicates a 49% drop in the number of new residential planning permissions granted in the 12 month period following the introduction of a Charging Schedule in those authorities that already have one, endorse the need for robust monitoring arrangements, and, indeed, clear criteria for triggering exceptional circumstances.
- 2.28 The NPPF requirement is that CIL should 'support and incentivise' new development (para. 175). Robust monitoring criteria of the impact of the levy need to be defined at the outset to enable and trigger the immediate introduction of exceptional circumstances relief should there be evidence that the provisions of the Charging Schedule are having a contrary effect.

**Issue 1(ix): Should there be a policy covering *instalment rates*?**

- 2.29 For reasons set out in their original representations, HHTW consider that an instalment policy is essential, absent which it is unlikely that any significant scale of development can be progressed. However, HHTW consider that the instalment policy as proposed continues to require payments for large schemes at too early a stage in the development programme.
- 2.30 In the event of a CIL levy being introduced for the strategic sites, including the NEV, a revised instalments policy will be necessary based on actual development rates measured by occupation of dwellings, rather than lapsed time following commencement of development. This is essential bearing in mind the need to balance the substantial payments for infrastructure provision with development receipts.

**Issue 2(i): Is the rate for residential development *reasonable and realistic* in relation to an appropriate balance between helping to fund new infrastructure and the potential impacts on economic viability?**

- 2.31 For reasons adduced above, the nil charge for residential development in Zone 1 is essential having regard to the scale of infrastructure required and the intentions that it be delivered by the developers through S106 Obligations. The key issue is whether Section 106 is the most effective mechanism for securing the necessary funding, or whether a small CIL levy offset against reduced S106 contributions would be more appropriate.

**Issue 3(i): Are the rates for residential use in the schedule *reasonable and realistic* in relation to an appropriate balance between helping to fund the new infrastructure and the potential impacts on economic viability?**

- 2.32 Please see response to Issue 2(i) above.

### 3. Conclusions

3.1 The following key conclusions are drawn by HHTW from the responses to the questions in Section 2:

- The zero charge for residential development in Zone 1 is correct and essential to ensure an appropriate balance between development viability and infrastructure delivery under the current policy approach that the infrastructure to support the development of the Swindon New Communities shall be secured through S106 Obligations.
- Having regard to the limitations of S106 Obligations in the context of multiple developments, a small CIL levy (£25 per sq m) on residential development in Zone 1 might be a more appropriate and effective means of delivering necessary education and transportation infrastructure to support the New Swindon Communities.
- The Council's intended to approach to overcome the limitations of S106 Obligations through requiring all land interests to sign up to a Legal Framework Agreement secured through Grampian conditions, is aspirational and unrealistic. Furthermore, it is not compliant with the exceptional circumstances set out in the PPG under which such an approach is permissible.
- If a CIL levy is to be introduced for residential development in Zone 1 it will need to be accompanied by a commensurate reduction in S106 contributions and a mechanism to ensure that the proceeds of the levy are directed towards funding infrastructure at the strategic sites.
- The retail development proposed in association with the New Swindon Communities contributes to the infrastructure requirements and is burdened by the same overall abnormal costs as residential development. It should therefore equally be subject to the same nil charge as residential development, or reduced charge in the event that one is introduced.
- An instalments policy is essential and should relate to occupancy milestones and triggers rather than elapsed time following commencement of development in order to reflect development receipts and funding imperatives.

3.2 Any changes to the Charging Schedule in response to the above will require consequential changes to the Regulation 123 list and the draft Instalments Policy by which it is accompanied.