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12 June 2015

Dear Sir / Madam

East Devon Community Infrastructure Levy – Consultation on Revised Draft Charging Schedule (April 2015)

I would like to thank you for the opportunity to comment on the proposed changes to the Community Infrastructure Levy (CIL) charging schedule.

The answers to the specific questions are set out below.

1. The Council's response to the Inspector's concerns regarding the assumptions in the Viability Study relating to the net developable area and infrastructure/Section 106 costs for the Cranbrook expansion areas is set out in the 'East Devon Community Infrastructure Levy (CIL) additional report in response to Inspector's concerns'. Does this additional evidence justify the retention of the £68 per square metre rate proposed in the Draft Charging Schedule?

- 1.1. Having been involved in previous CIL examinations and rate setting processes, Devon County Council understands the difficulties involved in implementing CIL, particularly in relation to large development sites. On one hand, funding constraints and complexities over the delivery of infrastructure on the Regulation 123 list favour the use of planning obligations and highway agreements¹, whereas on the other hand, pooling restrictions encourage authorities to utilise CIL instead.
- 1.2. As such, we recognise that there is no perfect solution when it comes to implementing CIL at Cranbrook.
- 1.3. Having said this, the county council would, on balance, prefer to see the delivery of critical infrastructure needed to secure delivery of future development of Cranbrook determined through the planning obligations process rather than by using the community infrastructure levy. This would most simply be achieved by zero rating CIL at Cranbrook. The reasons for this approach relate to the funding gap, and the need to ensure delivery of infrastructure in phase with development. More commentary on these issues is provided below.

¹ From hereon where planning obligations are referred to this also means to include highway agreements where appropriate.

CIL Funding Gap

- 1.4. Analysis suggests that application of CIL as proposed at Cranbrook will, if taken in isolation, result in a significant funding gap. The primary concern of the county council is to ensure that sufficient funding is secured in order that development can proceed in parallel with the critical infrastructure necessary to make the development acceptable.
- 1.5. This critical infrastructure includes the provision of a third primary school (£7m), a fourth primary school (£5.5m), new highway junctions (£1.3m) and the Crannaford crossing (£5.1m) totalling some £18.9m. Any funding shortfall arising from CIL secured at Cranbrook, unless supplemented by CIL receipts from elsewhere in the district, would necessarily put the delivery of this critical infrastructure in doubt. The county council would therefore welcome clarification from East Devon District Council in respect of their proposals for managing CIL receipts across the district so as to ensure funding is in place for strategic development delivery.
- 1.6. It is accepted that using a planning obligations approach does not necessarily mean that future development at Cranbrook will be able to fully fund all of these facilities; however it does allow a balance to be struck between infrastructure and other demands on funding such as affordable housing costs. It also allows the specific viability of the development proposals at Cranbrook to be taken into account, and provides scope for a direct link between development and infrastructure provision.
- 1.7. In addition to the impact of any funding gap on the delivery of this vital infrastructure at Cranbrook, the county council also has concerns about the mechanism for delivering infrastructure items that appear on the 123 list (i.e. not through planning obligations). These are set out below.

Infrastructure delivery issues

- 1.8. The relationship between the use of planning obligations and CIL is defined by the Regulation 123 list. The role of this list is to set out which infrastructure will be funded through CIL and, consequently, prohibit the use of planning obligations or s278 highways agreements to secure the infrastructure included within it, in order to prevent developments paying twice for the same infrastructure ('double dipping').
- 1.9. The county council has concerns that the Regulation 123 list which was published on 13th March 2015 creates ambiguity with regards to transport infrastructure and also, that it does not take into account the county council's previous comments requesting that education provision at Cranbrook should be excluded from the 123 list.
- 1.10. With regard to development access, the latest evidence on CIL "*East Devon Community Infrastructure Levy (CIL) additional report in response to Inspector's concerns*" states in paragraph 4.5 that accesses will be delivered through CIL, and therefore, as a result, not by the developers. However the county council's general approach with regards to highways access, is that developers should demonstrate that a safe and suitable access can be delivered, and then should be responsible for construction of that access. If the delivery is left to another organisation, using CIL funds, then there is risk of delay. A key reason for this is that CIL funds which are collected by the district council have to be prioritised. It may be the case that the already overstretched CIL funds may need to fund alternative infrastructure as a priority over these accesses, meaning the development could not start until the

access was provided. While a temporary access could be provided as part of the permission, this would be abortive work and also there would be no control over the phasing of the development and when the access would be upgraded to its final design.

- 1.11. With specific regard to education, as per previous comments, the county council considers that the Regulation 123 list should be amended to exclude education provision at Cranbrook. This would have the effect that education facilities could be provided through planning obligations. This would potentially allow the developer to construct the school facilities and would also bring certainty to the phasing of the development and the provision of education infrastructure. This would be the county council's preferred approach as it has so far been successful at Cranbrook.
- 1.12. In accordance with the above, the county council would therefore propose that highways accesses and education facilities at Cranbrook be delivered through planning obligations and removed from the Regulation 123 list.
- 1.13. In doing so it is recognised that a means of addressing restrictions on section 106 pooling restrictions will need to be established, however the county council would prefer there to be a more explicit relationship between development phasing and infrastructure provision, which can best be achieved by using planning obligations. In terms of pooling restriction, it is not currently anticipated that the education requirements or highways accesses will be at serious risk – due to the scale and nature of the applications that have already been submitted by the New Community Partners.

Summary and Devon County Council's proposed way forward

- 1.14. The county council is concerned about effective delivery of infrastructure at Cranbrook due to the funding gap inherent in the proposed CIL mechanism and the fact that critical infrastructure, including education and access, is not then tied to the delivery of the development.
- 1.15. It is therefore recommended that these items be removed from an amended Regulation 123 list. To reflect this change in approach, further revisions would need to be made to the CIL Charging Schedule to reflect the increased residual s106 costs. This could require new viability evidence and would further delay the implementation of CIL in East Devon, and in order to avoid delay, county council is of the view that the option of setting the CIL rate at Cranbrook to zero, and amending the Regulation 123 to fully exclude Cranbrook be considered.
- 1.16. It is understood that an early review of the CIL rate for Cranbrook is being proposed by East Devon District Council and Devon County Council is keen to work with the District Council to ensure that this is informed by the most appropriate infrastructure strategy.
- 1.17. Further to the above, Devon County Council would suggest that any charging rates applied in relation to Cranbrook follow the 'Cranbrook plan area' which is included in the latest Local Plan document.

2. Do you have any general comments relating to the Council's proposed changes to the CIL Draft Charging Schedule not covered by the above question?

2.1. Devon county council wishes to make the following comments on the revised Charging Schedule and revised draft Regulation 123 list.

Education

2.2. As set out above, it is considered that the item on the Regulation 123 list that currently states 'Education', should be reviewed to exclude Cranbrook. It is also considered appropriate to clarify that 'education' includes early years, children's centre facilities and special education needs would be included within this definition. We would also like to clarify that home to school transport be sought through planning obligations. As such, it is suggested that this item is altered to state "Education including early years, children's centre facilities and special education needs, excluding Cranbrook. For clarity, home - school transport is not included within this definition." (In addition, we would also exclude the Mosshayne/Tithebarn Green strategic site, see comments below).

Transport

2.3. The definition 'strategic transport' is considered to be too vague. 'Strategic transport' may refer to a number of distinct items such as:

- Highways England managed roads
- Any transport infrastructure facilitating the development of more than one site
- Any transport infrastructure provided in relation to a strategic allocation

2.4. The range of possible definitions outlined above could be expanded and the county council considers that greater clarity is required.

2.5. The previous draft version of the Regulation 123 list set out which transport schemes were to be funded by CIL and therefore which schemes could not be subject to planning obligations. The county council is of the view that this list of schemes should be re-instated and updated. Officers are keen to work with East Devon to update this list as necessary.

2.6. It should also be made clear that development accesses must continue to be provided by developers, and therefore should not appear on the Regulation 123 list.

Definition of 'on-site' development

2.7. The Regulation 123 list sets out that 'on-site' infrastructure refers to anywhere within the red line of a planning application. However it is felt to be appropriate to widen this definition to relate to the mapped areas that are allocated in the Local Plan (i.e. the outline of the allocation) and adjoining land. This slightly wider definition is likely to aid infrastructure delivery in large allocation areas with multiple land ownership or on land controlled by the developer that is not within the red line.

2.8. Again it is considered that clarity around whether the provision of accesses is through CIL or planning obligations is also required.

- 2.9. Furthermore, Devon County Council considers that bus enhancements to serve new development areas should be funded by s106, rather than CIL. Bus service enhancements are directly related to new developments however are not necessarily contained 'on-site', due to the nature of the service. Further clarification with regards to transport schemes is therefore requested.

Axminster area

- 2.10. Planning applications submitted for the allocation area north and east of Axminster have identified the need for the applications to take up more land than previously anticipated in order to meet the allocation requirement. The CIL charging area for the north and east of Axminster shown on the map should be increased to take account of the new planning application areas, otherwise the development will be subject to two CIL charges; this would add unnecessary complications and also would not properly reflect the viability of the development.

Blackhorse / Mosshayne/ Tithebarn Green

- 2.11. Our concerns regarding a funding gap set out above in relation to Cranbrook also apply to the Blackhorse / Tithebarn Green / Mosshayne strategic development sites. The CIL contribution would be significantly less than what has been sought through planning obligations from the recent planning application at Mosshayne, which, at the time of writing, has a committee resolution to grant. Clearly this level of contribution is acceptable as it is set out in the s106 Heads of Terms within the committee report (prepared in collaboration with the developers). There are also existing section 106 agreements relating to permissions at the Blackhorse / Tithebarn Green part of the strategic development area.
- 2.12. It is considered that the whole of the Blackhorse / Mosshayne / Tithebarn Green strategic development sites should also be zero rated and excluded from an amended Regulation 123 list. Certainly from a county council perspective the exclusion of education and transport infrastructure at Blackhorse / Mosshayne / Tithebarn is necessary to secure a robust approach to infrastructure delivery. In reconsidering charging areas or exclusion areas, it will be important to recognise the potential for extant planning applications to be resubmitted within the CIL regime - potentially replacing section 106 agreements previously entered into.

Summary of changes that Devon County Council is seeking

- To zero rate the Cranbrook Plan Area and Blackhorse / Mosshayne/Tithebarn Green allocation areas.
- To amend the CIL charging area for the North and East of Axminster allocation area.
- Amend the Regulation 123 List to state 'except Cranbrook, Blackhorse / Tithebarn Green / Mosshayne areas' on all relevant items.
- To amend the Regulation 123 list education item to "Education including early years, children's centre facilities and special education needs, excluding Cranbrook and Blackhorse / Mosshayne / Tithebarn Green. For clarity, home - school transport is not included within this definition.
- To further define 'strategic transport', including a list of items and clarifying that development accesses are to be provided through planning obligations.
- To amend the definition of 'on-site' infrastructure so that it applies to the allocation boundary and adjoining land rather than planning application boundary.

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Strategic Director Place Heather Barnes

I trust the above will aid in the examination of the East Devon Community Infrastructure Levy. If you have any questions relating to this letter please do not hesitate to contact the strategic planning team.

Yours faithfully



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Chief Planner