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Dear Sir/Madam,

EAST DEVON DRAFT CHARGING SCHEDULE CONSULTATION

In respect of the above consultation please find set out below comments made on behalf of our client, Waddeton Park Ltd.

General Comments

We welcome the tandem approach to the preparation and examination of the Council's Community Infrastructure Levy (CIL) Review and the Cranbrook Plan DPD (CP DPD), which in this case is even more important for the reasons expressed below.

The documents are intrinsically linked and are important to the delivery of the existing East Devon Local Plan 2013-2031 (EDLP) and the existing EDLP provisions for SANG delivery (that makes explicit reference to the delivery of SANGS via CIL) which, in turn, is an essential pre-requisite to housing delivery (including the delivery of affordable housing in accordance with the EDLP). This is therefore the 'king pin' to the success of the Local Plan.

We are generally supportive of the proposed CIL exemptions including the nil charge for the Cranbrook Expansion Area however, we do have concerns regarding the Council's apparent reliance on the S106 regime in delivering SANGS mitigation, which represents a departure from the funding strategy assumed at the time of the EDLP's examination. These concerns are consistent with those expressed in our representations to the Publication Draft of the CP DPD on behalf of Waddeton Park Ltd.

CIL and SANGS Provision

EDLP SANGS Strategy

Currently, via the EDLP, the Council are committed to the timely provision of SANGS in order to prevent harm occurring to the integrity of the Exe Estuary and Pebblebed Heaths Natura 2000 sites.

This was a key matter in finding the EDLP sound. The Inspector's Report (IR), in the Assessment of Legal Compliance section, states that:

".....I consider that the HRA meets the legal requirements but, as stated above, the impact of development at the West End on the SPAs will need to be kept under constant review." (paragraph 121, page 25, our underlining)

In this context Strategy 47 of the EDLP requires that:

"The mitigation proposals, including those of the 'South-east Devon European Site Mitigation Strategy', will need to be implemented ahead of development being occupied and must provide for mitigation in perpetuity to ensure that development does not have a net adverse impact on the integrity of European designated wildlife sites."

and;

"Work will be undertaken to establish effective trigger points or markers against which to formally assess delivery of mitigation and therefore establish a basis to refuse planning permissions with a formal first review planned for April 2018."

with SANGs to be provided in accordance with Strategy 10 of the EDLP.

The EDLP confirms that there is a clear and direct relationship between SANGS delivery and the allocation of the Clyst Valley Regional Park, as Strategy 10 makes clear:

"Of particular relevance to the Habitat Regulations will be the need for continued checks and monitoring to ensure that any mitigation measures for built development, linked to Clyst valley Regional Park provision, achieve the ends envisaged and offers effective mitigation against adverse impacts that could otherwise occur. Each phase of any development occurring and park provision will be assessed and monitored."

The 'top slicing' of CIL (as the method for the provision of SANGS) was a key element of the SANGS delivery strategy is enshrined in EDLP. Strategy 47 states:

"Payment as part of the CIL contribution will typically be the expected approach and habitat mitigation will form the first draw on CIL funds.....To help ensure and secure timely delivery of mitigation, specifically SANGS, the Council has the option of exercising Compulsory Purchase Order powers to ensure availability of land."

SANGS Provision To Date

There has been no delivery review of SANGS provision to date, contrary to the comments of the Local Plan Inspector (that plainly informed his review of legal compliance) and the provisions of Strategy 47 of the DP.

Indeed, it has been confirmed by James Brown in a letter dated 17th April 2019 (enclosed) that *"the review referred to in Strategy 47 of the Local Plan has not been completed"*.

When assessed against the provisions of Strategy 10 it appears to us that there has been precious little progress in relation to SANGS delivery to date. This is a significant concern given the legal framework governing development in proximity to the Exe Estuary SAC, and the comments made by the Local Plan Inspector regarding the need for mitigation to be implemented ahead of development being occupied and kept under constant review.

Infrastructure Delivery Strategy Going Forward

While the Council is not obligated to provide an Infrastructure Funding Statement until 31st December 2020, the Draft Charging Schedule (paragraph 2.23) does provide an indication of the infrastructure projects or types of infrastructure that the Council intends will be, or may be, wholly or partly funded by CIL.

Included on that list is Exe Estuary Mitigation, Pebblebed Heaths Mitigation and the Clyst Valley Regional Park. This is welcomed considering the concerns that we expressed in our representations to the CP DPD regarding the Council's apparent intention to remove these items from its Regulation 123 List.

The Cranbrook IDP (which supersedes the Local Plan's IDP in respect of development within and resulting from the Cranbrook Plan Area) does however confirm that the infrastructure required for Cranbrook (including SANGs) is to be secured through the S106 regime (see para 1.11 of the Cranbrook IDP).

Departure from EDLP Strategy

One of our main concerns in respect of the CIL Review and the CP DPD is that they appear to be predicated upon a fundamentally different approach to HRA mitigation than that enshrined in the EDLP.

While the Cranbrook IDP identifies the delivery of SANGs mitigation for the Cranbrook Expansion Areas as being 'priority one', the Clyst Valley Regional Park is identified as 'priority two' (see Para 2.8 of the Cranbrook IDP).

This would appear to demonstrate a fundamental change to the strategy of the EDLP and the approach to the delivery of SANGS in the District. Indicating that perhaps the Council has become aware of its failures in both the delivery and review of SANGS and is therefore now seeking to pass the burden of SANGS delivery to developers to make direct provision.

This, in our view, demonstrates an abandonment of the approach to SANGS delivery that is enshrined in the EDLP, which was relied upon by the Local Plan Inspector in assessing the legal compliance of the EDLP.

The NPPG is clear that the Community Infrastructure Levy examination should not re-open infrastructure planning issues that have already been considered in putting in place a sound relevant plan.

It is quite clear that at present development is proceeding unlawfully (i.e. without adequate SANGS). The CP DPD and proposed CIL do not provide a workable solution to this as drafted.

Other Matters

The Draft Charging Schedule confirms that the Council is revising its charging schedule to reflect, amongst other things, amended legislation and to align with development being proposed in the emerging CP DPD.

Depending on the outcome of the examination of the CP DPD therefore, there may be a need to update the Draft Charging Schedule. The charging zone currently shown for Cranbrook is therefore somewhat presumptuous, as is the setting of a revised CIL Charging Schedule prior to a proper review of SANGS provision in accordance with Strategies 10 and 47 (which we are led to believe is to be undertaken as part of the GESP).

Please note that it is our intention to attend and, we hope, participate in the CIL Review Examination on behalf of our client, Waddeton Park Ltd. I would therefore be grateful if you could please keep me updated in this regard.

Kind regards,



David Seaton, BA (Hons) MRTPI

For PCL Planning Ltd

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Enc.

Date: 17 April 2019
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Dear Mr Seaton

SANGS delivery

I refer to your letter dated 4 October 2018 which sought a copy of the Strategy 47 (SANGS) review. I am aware that this request is still awaiting a response and I apologise that I did not provide this earlier.

The review referred to in Strategy 47 of the Local Plan has not been completed and so cannot be provided at this time. It was intended that the 5 year review of the delivery of habitat mitigation would be undertaken as part of the first review of the local plan which is also due after 5 years. However the delivery of habitat mitigation is being undertaken jointly with our partners at Exeter City Council and Teignbridge District Council through the South East Devon Habitats Mitigation Partnership. The partnership was established to oversee the delivery of habitat mitigation across the area of impact on the protected habitats and to co-ordinate delivery across the partner authorities. The review of the delivery of habitat mitigation is therefore a wider piece of work than simply looking at delivery in East Devon and needs to consider the delivery of habitat mitigation across the partnership area.

The partners are also working together on the Greater Exeter Strategic Plan (GESP). This will in effect form part of the first review of the Local Plan and so the review of habitat mitigation envisaged by Strategy 47 is being undertaken as part of the work on the GESP and will be published in due course. In the meantime we are working closely with Natural England and understand that they are content with the progress being made on the delivery

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of habitat mitigation across the partnership area which includes a number of on-site measures as well as the delivery of SANGS at Dawlish Warren and South West Exeter.

In recognising that the Cranbrook expansion and its DPD sits within this wider framework of need and assessment covered by the partner Authorities, it is entirely appropriate and in fact necessary for the Cranbrook DPD to demonstrate how it will provide the required mitigation (including SANGS provision) for the development that it is facilitating.

I trust that this provides a helpful response to your enquiry

Yours sincerely

James Brown
Cranbrook New Community Manager