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Our Ref **DS/SJS/9850**
Date **31st October 2016**

Spatial Planning
Torbay Council,
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By email to:
future.planning@torbay.gov.uk

Dear Sir/Madam,

TORBAY CIL EXAMINATION – AMALGAMATION OF HOUSING PROVIDER REPRESENTATIONS

1.0 Introduction

1.1 You will note that at previous stages of the emerging CIL process separate representations were made by Cavanna Homes and Linden Homes/Taylor Wimpey, as well as Waddeton Park Limited. In order to assist with the smooth running of proceedings it has been agreed that PCL Planning Ltd will act for all of these parties at the examination.

1.2 In preparation for the CIL examination on 09/11/2016, and the publication of the hearing agenda for that session, we have reviewed our previous representations and considered the representations made by others.

1.3 We have undertaken a review of those policies and proposals in the DP that may give rise to financial mitigation matters. The scope of those matters is extensive and is further elaborated upon in the recently consulted upon SPD on (Planning Obligations and Affordable Housing, September 2016).

1.4 We have reviewed the viability analysis work undertaken on the Council's behalf.

1.5 We have also considered the Council's Revised Proposed Modifications to the submitted draft charging schedule (September 2016). In order to assist the examination we wish to make the following comments in writing now.

2.0 The potential funding gap

2.1 We simply question whether, in accordance with the provisions of the CIL regulations, a funding gap can be created by a historic debt for an item of already provided infrastructure, as opposed to future provision?

2.2 We note the PPG states that:

> *"Information on the charging authority area's infrastructure assessment that was undertaken as part of preparing the relevant Plan....This is because the plan identifies the scale and type of infrastructure needed to deliver the area's local development and growth needs." (25-016-20140612)*

2.3 We note that the Infrastructure Delivery Study (Baker Associates and Roger Tym and Partners, 13/01/2012) that formed the evidence base to the plan covered a broad range of infrastructure items that we now find in the SPD on Planning Obligations (that will not be examined). We note that document (at paragraph 5.2.19, page 22) lists the transport schemes that are listed in LTP3 and this includes the South Devon Link Road (with funding secured in December 2011). We note the predicted benefits in terms of business and tourism travel but see no clear link with accommodating the level of growth set out in the plan (which covers the period after the funding was secured). We note the need for the Council to provide match funding and note the statement that *"This was opened in December 2015, but the bulk of the £20 million borrowed by the Council to help fund it remains to be raised."* (Submission Draft Charging Schedule Revised Modification, September 2016, section 5). We struggle with the choice of language used by the Council. Obviously, this loan has already been raised. We ask a simple question - was this loan secured against future CL receipts or not?

2.4 If the loan repayment is deducted from the funding gap for the plan period then we note the comment, in the revised modifications (as section 5), that overall the TIDS identified an infrastructure funding shortfall of £160,000 between 2010-2031 of which £52,000 is considered to be critical infrastructure. We presume that each of these figures has three missing zeros? We also note that many of the items listed have other funding provision already in place (for example sewerage infrastructure provisos thorough the Water Act) so that there is obvious 'double counting' contained within these figures.

2.5 We conclude that the Council has not clearly established that a significant funding gap actually exists when existing secured funding arrangements and other established funding routes (such a the levying of water rates and development charges via the Water Act) are taken into account.

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3.0 Viability Matters

3.1 As a general comment we find the information provided by the Council opaque. It is unclear what assumptions have been made and we are concerned that there are considerable inaccuracies with many of the assumptions used by the Council's consultants in their financial modelling to the extent that if more accurate/reasonable assumptions had been used then different conclusions would have been reached. We will return to this point in the final agenda matter, but it must be mentioned now since it hampers an ability to comment upon viability implications for both strategic and small sites.

The viability implications of the proposals for strategic sites

3.2 We understand that the definition of a strategic site is '30 dwellings or more' (TLP, page 262).

3.3 We note that the CIL rate proposed for developments of such scale is:

- £30 if within a built up area based on top 20% deprivation (Zone 1)
- £70 if elsewhere within the built up area (Zone 2)
- £140 if outside the built up area (Zone 3)
- Zero if within a future growth area (Zone 4)

Lack of evidence

3.4 We cannot trace any evidence that is before the examination that demonstrates that the financial implications of some of those proposed differential rates have been considered. The closest we can trace is Table 5.1, page 38 of the PBA 2016 report, and Appendix C to the Burrows-Hutchinson (BH) addendum report of August 2016.

3.5 It is plain that the Council's information base does not specifically consider the matter of areas of deprivation (Zone 1) at all. We therefore conclude that there is no evidence before the examination to enable a consideration of whether the proposed CIL rate of £30 per metre for Zone 1 is appropriate or not (irrespective of whether the scale of development is 4-14 dwellings or 15+ dwellings).

3.6 We find no specific evidence based on the 4 Charging Zones that are proposed that clearly demonstrates any viability differences that would justify giving rise to such differential rates. For example where is the evidence that demonstrates why, for a scheme of 15 units or more, a CIL charge of £140 per sq metre is appropriate outside the built up area, whereas in Zone 4 it should be £Zero, even though future growth areas are, in part, outside the built up area of Torbay? We note that the PPG states that:

> *"A charging authority which chooses to differentiate between classes of development, or by reference to different area, should do so only where*

there is consistent economic viability evidence to justify this approach." (ID 25-021020140612).

3.7 We conclude that appropriate evidence to reach such conclusions has not be placed before the examination and it appears to us that there is a lack of consistency in the way that the information presented by the Council has informed the charging rates proposed.

3.8 We also note that it is the responsibility of each charging authority to ensure that their charging schedules are state aid compliant and the *"it is likely to be harder to* ensure *that more complex patterns of differential rates are state aid compliant"* (PPG ID 25-024-20140612).

3.9 Bearing our conclusion on the information base above we are not convinced that the proposed CIL is state aid compliant.

Flaws in information provided

3.10 In relation to the modelling carried out on the Council's behalf (which we do not accept is realistic or reasonable) we note that they identify a potential *'margin available for CIL'* (see BH, Appendix C) of between:

- £191-£256 per square metre in Zone 1
- £409-£423 per square metre in Zone 2
- £527-£598 per square metre in Zone 3
- £262-£394 per square metre in Zone 4

3.11 On *the* face of the Council's information there is scope to charge CIL, at the rates proposed, in all proposed charging zones. That scope appears greater outside the built-up area than within it.

3.12 We note that appendix B to the BH report sets out new build data for zones 1,2 and 3 (Table 1). It then sets out average values (in £/psm) for zones 1,2,3 and 4. We wonder how the average values for zone 4 have been derived? On the face of it there appears to be no data for zone 4? We note that the final column in table 2 appears to be based upon a mix of zone 2 and zone 3 values. It is unclear why zone 3 values have predominately been used (as opposed to zone 2 values). In our opinion, zone 4 areas should not be treated as though they are outside the built-up area (particularly for larger schemes) since these development zones are proposed urban extensions where achievable values are unlikely to be significantly different from the urban areas that they adjoin.

3.13 Further, we do not understand why *'CIL availability margins'* are quoted for non-Zone 4 development of 15 units of more within the Zone 4 column of appendix

C? Where a variance is quoted (of £163 per square metre on average), what is the evidence/reason for that variance? We note table 2 (at appendix B of the BH report) suggests a reduction in sales revenue between zones 3 and 4 for schemes of 15 units or more (of £200 per square metre) despite there being no revenue data for zone 4 (see table 1, appendix B, BH report). It is important to understand if this variation in appendix C is because of assumed sales revenue variations, or another reason? We therefore conclude that there is no clear information before the examination to enable a consideration of whether the proposed CIL rates for Zone 4 are appropriate or not.

Omission of costs to development in the assessment of strategic sites

3.14 We note that appendices A and B to the Burrows-Hutchinson addendum report (August 2016) does carry out some analysis of sales values across Zones 1,2 and 3, but this is restricted to sales data only. This is but one variable important in reaching a robust conclusion upon viability (and hence the ability to sustain CIL payments without having a detrimental impact upon the economic viability of development across the plan area). What is also important to know is data on sales rates (since slow sales rates increase holding costs) and margin (since it is normal practice to need to take a higher margin a sales area which carries greater risk i.e. low value/low sales rate areas). The Council have not published any information on these important variables. Therefore it is not possible to ascertain how this sales data impacts upon overall scheme viability within any of the 4 zones identified by the Council. We conclude that it is highly likely that the Council have ignored these real and important development costs when carrying out the limited modelling work that they have undertaken thereby convincing themselves that there is greater value in development than will actually exist.

3.15 We also refer to our comments set out in the 'assumptions' section of this submission which refer to both strategic and small sites equally. That section sets out the concerns that our clients have with a number of incorrect assumptions that have been used in the modelling work carried out for the Council.

4.0 Small sites in built up areas

4.1 We note that the Council's own information (BH report) concludes that the proposed CIL rate for small sites is likely to prejudice development coming forward in zone 2.

4.2 We are not convinced that, when correct assumptions are applied (which they have not been), that the evidence justifies the sharp step in increase in CIL rate between zone 2 and zones 3 and 4.

5.0 The assumptions and evidence used in the viability studies

Sales Rates

5.1 PBA do not consider this variable. If this variable is to be excluded then an upwards adjustment needs to be made in finance costs to reflect the likely increase in holding cost in unproven/poor areas for sales (which includes parts of the plan area). Please note that, for simplicity, we have not made an adjustment to the summary appraisal attached to assist comparisons (although, in reality, one would need to be made).

Build Costs

5.2 This item is particularly opaque. We note (PBA 2016, paragraph 4.5.1) *that "Residential build costs are based on actual tender prices for new builds in the market place"*. We do not find table 5.5 in the report so it appears that the actual build costs used have not been clearly disclosed, although it appears that this data relates to Q1 2015. We note that the example appraisal included as Appendix A utilises an average build cost of £1.202 per square metre. We also note that the PBA 2014 report utilised a build cost of £1.028 per square metre (please note the rate of build cost inflation between the 2014 and the 2016 PBA reports). We note that the BH report does not consider the matter of build costs at all.

5.3 We therefore conclude that although sales data has been updated to reflect current circumstances, build costs have not. Bearing in mind the significant inflation in build costs over recent years we conclude that the build costs used in the appraisal are an underestimate of likely build costs that will be incurred. Please note that whilst we make this point we have not varied the PBA assumptions when undertaking our modelling work.

Abnormal Costs

5.4 We note that PBA exclude abnormal costs from their build cost figure. In practice there is not normally a development site that does not require some level of abnormal cost to be met if development is to proceed. Quite what that abnormal cost is always a site specific matter but, from experience, an allowance of circa 10% should be made to ensure that overall viability is not affected.

Developers' Margin

5.5 It is incorrect to split the margin 20% and 6%. Housebuilders require a 25% overall (blended) margin. PBA project a significantly lower margin than that.

S106 costs

Lack of appropriate evidence

5.6 We note the guidance that *"the charging authority should also provide* information *about the amount of funding collected in recent years through section 106 agreements. This should include information on the extent to which their* *affordable housing and other targets have been met."* (ID 25-018-20140612). We cannot trace this information.

What has been modelled?

5.7 It is plain that when PBA undertook their 'Whole Plan Viability Assessment' in 2014 that the assumption made was that S106 costs would be £4,000 per unit.

5.8 PBA 2016 is less clear. Table 3.2 states zero, then mentions exceptions for smaller schemes. For larger schemes a list is set out. The draft SPD makes no such distinctions. It is plain, as set out in the SPD on (Planning Obligations and Affordable Housing, September 2016), that the Council's intent is to continue to seek significant S106 payments.

5.9 We note that, at paragraph 4.6.4 PBA state that:

> *"The infrastructure requirements anticipated for the majority of small sites (under 10- dwellings) are likely to be met through off site delivery of infrastructure such as schools expansions, open space enhancements or transport improvements. The Council informs us that this infrastructure will be met through currently established programmes (such as the County Council's schools programme) and the CIL and identified on the Regulation 123 infrastructure list as appropriate". (our underlining).*

5.10 This is clearly inconsistent with the recently published draft SPD on planning obligations and affordable housing. That document makes it clear that the Council are seeking to levy significant S106 costs from new development.

5.11 We note that the only example appraisal included in the PBA 2016 report (at appendix A) is for a small scheme, with no S106 costs included which is consistent with PBA's misunderstanding of the Council's position.

5.12 In relation to larger schemes PBA state (at paragraph 4.6.5) that:

> *"The Council informs us that on some of the larger sites, the approach to infrastructure requirements will vary and will be considered through S106. The Council are planning on applying no CIL on larger sites, therefore sufficient headroom needs to be available to fund likely S106 requirements." (our underlining)*

5.13 This comment is plainly incorrect. Large sites can still potentially come forward in zones 1,2 and 3.

5.14 We also note that there is a further incorrect statement made at paragraph 5.3.8 of PBA 2016:

"The Council have indicated that they wish to continue to use S106 agreements on sites of 15 or more dwellings. The avoid any issues around 'double dipping' it is therefore considered that as the Council will use S106 to mitigate impact on these larger sites that <u>the CIL rate is zero for sites of 15 or more dwellings</u>." (our underlining)

5.15 The proposed CIL rate is not zero for sites of 15 or more dwellings. The Council is seeking CIL payment and S106 from sites of 15 or more dwellings (except in Zone 4).

5.16 It is therefore clear that the PBA modelling work was carried out using incorrect assumptions about both S106 and CIL payments. It is plain that, in relation to S106 costs, the Council's evidence base does not correlate to the proposed charging schedule and S106 practice. We conclude that appropriate available evidence to support the proposed charging schedule has not been put forward by the Council on this matter.

The scale of inaccuracy

5.17 In order to understand the scale of this inaccuracy we have tried to understand what level of S106 contribution was used in their 2016 modelling work (since that information is not clearly disclosed). Based on the information that has been published a figure of <u>£zero</u> per unit seems a reasonable assumption to make? (as per PBA 2016, table 3.2, page 23). This assumption would seem to correlate with the analysis set out at paragraph 5.3.9 which we take to be an assessment of 'fat left' after all other costs.

"As the Council has indicated that it will seek only S106 from sites of 15 or more it was considered a useful exercise to demonstrate the level of S106 that could be afforded on a per market dwelling basis to meet the infrastructure requirements arising from these types of developments. The potential level of contribution per dwelling type is set out below:

- *£8,952 for a flat*
- *£10,593 for a two bed house*
- *£13,223 for a three bed house*
- *£16,652 for a 4+ bed house"* (PBA, 2016, paragraph 5.3.9, page 40)

5.18 PBA identify a possible average S106 payment of £12,355 per unit. This is about half of the actual S106 costs that the Council will seek in practice (having regard to their draft SPD). There is a shortfall of circa £12,500 per unit when considering this variable in isolation. It should be noted that it certainly appears that this 'headroom' was identified on the basis of <u>£Zero</u> CIL (see PBA, 2016, paragraph 5.3.8). We conclude that the PBA modelling work identifies only a very small margin for CIL (or S106) for sites of 15 units or more and that this analysis does not correlate with the margin available for CIL identifies in Appendix C to the BH report.

5.19 Thus, in relation to S106 costs we point out that the draft Regulation 123 list is narrow – thus the council are not 'regulation 123' disbarred from seeking perceived impact on most matters via S106. It is inconceivable to think that the Council is not going to expect their perceptions of development impact to be mitigated. The Council's perception of likely development impacts is set out their draft SPD on planning obligations (website link). The 'shopping list' set out in that document is long and the costs associated with that list considerable. We have modelled a typical development proposal (attached) against that SPD and we arrived at a likely S106 figure of £23,000 per unit. This is, on average, some £10,500 per unit greater than PBA conclude that development is likely to be able to support (disregarding the other important omissions from their modelling work). This is a significant cost to development that the PBA modelling work has not taken account of.

6.0 Realistic Appraisal

6.1 It is distinctly unhelpful that the Council have not published the actual appraisals, the results of which are then reported in Table 51, page 38 of PBA 2016 and appendix C of the BH report. This 'masks' the way that the modelling work has applied the variables in practice. We note that the only example appraisal supplied (at appendix A, page 50 of PBA 2016) is for 2 dwellings outside the built-up area near Brixham. This is not a form of development that is, in any way, representative of the likely type of development that will be needed, in scale and geography, to come forward if the delivery of the TLP is not to be prejudiced. Again, we conclude that the Council have failed to provide appropriate evidence to demonstrate that delivery of the plan would not be threatened by the proposed CIL.

6.2 In order to try to understand the scale of the threat posed we attach a 'typical' appraisal to demonstrate the points made in this letter.

7.0 Conclusions

7.1 We are not convinced that it is possible to justify a CIL charge based predominately on the historic costs associated with a piece of grant funded/assisted infrastructure that has been provided.

7.2 The viability information:

- omits to assess a number of important costs to development
- omissions in the information and it appears that the data, such as it is, has been modelled in such a way as to seek to justify pre-determined conclusions about how the Council wish to proceed.

7.3 The charging bands proposed do not relate to any clearly distinguishable areas that can be defined on the basis of robust viability evidence.

7.4 The charging bands, by scale, are not clearly supported by any robust financial modelling.

7.5 The guidance issued by the Government advises against undue complexity. Adding complexity by having proposing a 'matrix' of scale and indistinct geography is the most complex charging structure that we have yet seen. We consider that it is not appropriately justified, and probably not state aid compliant.

7.6 Accordingly we consider that the proposed CIL is not sound.

Kind regards,

Oh behalf of PCL Planning Ltd

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Model Appraisal

50 houses; part brownfield, part greenfield site on edge of urban area; redevelopment of former employment building (in part) of 10 FTE, and 1 pair of cirl buntings heard in hedge on edge of site 20% affordable provision (1/3x1/3x1/3)   Site size 2ha (net) Mix 25% 2 bed units 50% 3 bed units 25% 4 bed units

Development Value

		Units	SqM	Total Sq M	£/SqM	Total Value
Private Units						
12 x 2 bed houses		12	75	900	2,700	2430000
25 x 3 bed houses		25	90	2250	2,700	6075000
13X 4 bed houses		13	115	1495	2,700	4036500
Affordable Housing	(1/3 x 1/3 x 1/3)					
Social Rent	1x 4bed	1	115	115	1,080	124200
	1x 3 bed	1	90	90	1080	97200
	2x2 bed	2	75	150	1080	162000
Affordable Rent	2x2bed	2	75	150	1350	202500
	1x3bed	1	90	90	1350	121500
Shared Ownership	2x2bed	2	75	150	1755	263250
	1x3bed	1	90	90	1755	157950

Gross Development Value **13670100**

Developer Profit
@25% **2734020**

Plot Build Cost

		Units	SqM	Total Sq M	£/SqM	Total Value
Private Units						
12 x 2 bed houses		12	75	900	1,216	1094400
25 x 3 bed houses		25	90	2250	1,216	2736000
13X 4 bed houses		13	115	1495	1,216	1817920
Affordable Housing	(1/3 x 1/3 x 1/3)					
Social Rent	1x 4bed	1	115	115	1,216	139840
	1x 3 bed	1	90	90	1,216	109440
	2x2 bed	2	75	150	1,216	182400
Affordable Rent	2x2bed	2	75	150	1,216	182400
	1x3bed	1	90	90	1,216	109440
Shared Ownership	2x2bed	2	75	150	1,216	182400
	1x3bed	1	90	90	1,216	109440

Total Plot Build Cost **6663680**

Other Build Costs				
Externals	@5% on build costs			333184
Abnormals	@10% on build costs			666368
Opening Up Costs	£5,000 per unit			250000
Professional Fees				
	@6% on build costs including externals			399821
Contingency				
	@4% on build costs including externals			266547
S106 costs				
	@£23,000 per unit			1,150,000
CIL				
	@£70 per sq metre	4,645	70	325150
Site Acquisition				
Site Purchase Value	@£550,00 per net dev Ha			1,100,000
Stamp Duty				0
Purchaser Costs @1.75% on land cost				19250
Finance Costs				
@6.5% on net costs				11174000
Profit/Loss				**-237920**

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