



**WOKING BOROUGH COUNCIL  
COMMUNITY INFRASTRUCTURE LEVY  
DRAFT CHARGING SCHEDULE**

**Consultation response on behalf of Landowner and Developer Consortium**

**August 2013**

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## 1.0 Introduction

1.1 This Representation has been prepared by Savills on behalf of a landowner and developer HBF Consortium comprising:

- The Home Builders Federation
- Barratt Developments Plc
- Bloor Homes Ltd
- Bovis Homes Group Plc
- Crest Nicholson
- Galliford Try Plc
- Gladedale Group Ltd
- McCarthy and Stone Retirement Lifestyles Ltd
- Persimmon Plc
- Redrow Plc
- Taylor Wimpey Plc
- The Miller Group Ltd

hereafter known as 'the HBF Consortium'.

1.2 This representation has been submitted to influence the emerging Community Infrastructure Levy (CIL) Charging Schedule proposed by Woking Borough Council (WBC). The representation is made in respect of the Draft Charging Schedule published for public consultation in the period to August 2013. Our clients' particular comments relate to the proposed rates for residential development.

1.3 The HBF Consortium has come together owing to certain concerns with the approach proposed by WBC, notably regarding the viability of the proposed rate for residential development. The HBF Consortium's members have significant land holdings across the WBC area which will likely contribute to the maintenance and delivery of the housing land supply (to meet identified housing needs). The rate of CIL is therefore of critical importance to our clients.

1.4 Where relevant this representation provides comment on the supporting evidence/existing guidance and also makes reference to policy documents, a list of which is contained at **Appendix 1**.

- 1.5 In setting the rate of CIL, the Community Infrastructure Levy, England and Wales Regulations 2010 (as amended) (“the Regulations”) state that **“an appropriate balance”** needs to be struck between **“a) the desirability of funding from CIL (in whole or in part)”** against **“b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development”<sup>1</sup>**. The term ‘taken as a whole’ implies that it may be acceptable for some schemes to be rendered unviable by the level of CIL charge; however, there is a clear requirement to ensure that most developments are able to proceed, not least due to the NPPF requirement for a deliverable five year housing land supply plus a 20% buffer provision for those Authorities which have persistently undelivered. The Government provides further guidance on the meaning of the appropriate balance from paragraph 8 of the Community Infrastructure Levy Guidance (April 2013<sup>2</sup>).
- 1.6 Likewise, the purpose of CIL must be to positively fund the infrastructure required to enable growth. This is clearly outlined in the Regulations which state **“A charging authority must apply CIL to funding infrastructure to support the development of its area”<sup>3</sup>**. The Planning Act 2008<sup>4</sup> defines infrastructure.
- 1.7 The HBF Consortium therefore considers that it is imperative that the evidence supporting CIL:
- clearly outlines the key infrastructure projects required to support development (this being the key test of the Regulations); and
  - outlines an up to date, consistent and well informed evidence base of economic viability in order to test various scenarios against CIL rates.
- 1.8 This representation outlines certain concerns with the Viability Appraisal prepared by Dixon Searle LLP (DSP)<sup>5</sup> (Section 4.0 of this representation). We have previously submitted these concerns to the Preliminary Draft Charging Schedule consultation, however we have not received any direct feedback on our concerns. We therefore set out our concerns again below for consideration prior to the submission of the Draft Charging Schedule for Examination.

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<sup>1</sup> Regulation 14(1)

<sup>2</sup> This document supersedes the previously published Community Infrastructure Levy Guidance – Charge Setting & Charging Schedule Procedures, 2010 and 2012

<sup>3</sup> Regulation 59(1)

<sup>4</sup> Section 216

<sup>5</sup> Community Infrastructure Levy Viability Study, Dixon Searle LLP, January 2013

- 1.9 Most importantly, we demonstrate our concerns that the authority is choosing to apply a CIL rate which does not reflect the realities of the economics of development and ignores the cumulative impacts of policy and infrastructure requirements, particularly on greenfield residential developments. We expand on these points further herein.
- 1.10 In accordance with Regulation 21(1) we request the right to be heard by the Examiner.

## 2.0 The Approach of National Policy

- 2.1 With regard to the preparation of Charging Schedules and supporting documentation it is important to have due regard to the available Government guidance and law, notably, the CLG Community Infrastructure Levy – an Overview (May 2011), CLG Community Infrastructure Levy Guidance (April 2013), CLG Community Infrastructure Levy Relief (May 2011), the Planning Act 2008 and the CIL Regulations 2010 (as amended). It is also important that the preparation of CIL is in the spirit of the National Planning Policy Framework (NPPF), notably that it is delivery focused and *‘positively prepared’*<sup>6</sup>. The HBF Consortium comments are based on these publications and the Regulations.
- 2.2 The (NPPF) outlines 12 principles for both plan making and decision taking, notably that planning should ***“proactively drive and support sustainable economic growth”***.<sup>7</sup> Furthermore, that plan making should ***“take account of market signals such as land prices and housing affordability”***. Furthermore, that ***“the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth”***.<sup>8</sup>
- 2.3 Further, the NPPF refers to the ***“cumulative impacts”***<sup>9</sup> of standards and policies relating to the economic impact of these policies (such as affordable housing) and that these should not put the implementation of the plan at serious risk. Existing policy requirements should therefore be considered when assessing the impact of CIL on development viability.
- 2.4 Recent Examiner’s reports for Mid Devon, (February 2013) and the Greater Norwich Development Partnership (December 2012) have set a clear precedent for CIL to be considered in the round, including the testing of policy-compliant levels of affordable housing.
- 2.5 The Government has also confirmed through the CIL Guidance, guidance on the preparation of CIL, notably:
- The need for balance (as per Regulation 14<sup>10</sup>); and
  - The need for *‘appropriate available evidence to inform the draft Charging Schedule’* (as per Schedule 212(4) (b)) of the 2008 Act).

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<sup>6</sup> Paragraph 182

<sup>7</sup> Criterion 3

<sup>8</sup> Paragraph 19

<sup>9</sup> Paragraph 174

<sup>10</sup> CIL Regulations 2010 (as amended)

- 2.6 The steer from Central Government is very much angled toward facilitating development, which should have a major material bearing on the preparation of CIL and the balance applied when considering Regulation 14(1).
- 2.7 The Guidance states that “***the levy is expected to have a positive economic effect on development across an area.***”<sup>11</sup> The Government also makes clear that it is up to Local Authorities to decide ‘how much’ potential development they are willing to put at risk through CIL. Clearly this judgement needs to consider the wider planning priorities.

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<sup>11</sup> Paragraph 8, CIL Guidance

### 3.0 Planning & Infrastructure Delivery

3.1 The Planning Act 2008 (as amended)<sup>12</sup> defines infrastructure as:

- **“(a) roads and other transport facilities,**
- **(b) flood defences,**
- **(c) schools and other educational facilities,**
- **(d) medical facilities,**
- **(e) sporting and recreational facilities, and**
- **(f) open space.”**

3.2 There is a requirement within the CIL Regulations to provide a list of **“relevant infrastructure”**<sup>13</sup> to be wholly or partly funded by CIL. It is also possible<sup>14</sup> for CIL to be used to reimburse expenditure already incurred on infrastructure, a tool which could have useful implications.

3.3 The HBF Consortium therefore considers that it is imperative that the evidence supporting CIL:

- clearly outlines the key infrastructure projects required to support development (this being the key test of the Regulations); and
- outlines an up to date, consistent and well informed evidence base of economic viability in order to test various scenarios against CIL rates.

3.4 One of the key tests of the examination of a Charging Schedule is that **“Evidence has been provided that shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole.”**<sup>15</sup> The assessment of viability against the pipeline of planned housing and other development within the joint Core Strategy is therefore an inherent test of the Examination.

3.5 The Guidance also makes clear the evidently narrow focus of the CIL Examination process permitted by the Regulations: **“The Independent Examiner should establish that:**

- **The charging authority has complied with the required procedures set out in Part 11 of the Planning Act 2008 and the CIL Regulations;**

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<sup>12</sup> Section 216 as amended

<sup>13</sup> Regulation 123

<sup>14</sup> Regulation 60(1)

<sup>15</sup> Paragraph 9, CIL Guidance 2012



- **The charging authority's draft charging schedule is supported by background documents containing appropriate available evidence;**
- **The proposed rate or rates are informed by, and consistent with, the evidence on economic viability across the charging authority's area; and**
- **Evidence has been provided that shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole.**<sup>16</sup>

3.6 Ascertaining the level of CIL is essentially a development viability exercise and owing to this it is critical that the level of CIL is based on robust and credible evidence. The CIL – An Overview document outlines that **“Charging Authorities wishing to introduce the levy should propose a rate which does not put at serious risk the overall development of their area”**<sup>17</sup>. It will therefore be important that the rate is based on reality and the viable level of funding towards the planned provision of infrastructure needed to deliver the development Plan. It is clear from the evidence available that CIL alone will not be able to fund all the infrastructure that is said to be required until the end of the current Plan period. This makes it more important to set the level of CIL based on what can be afforded rather than what may theoretically be desired, to reduce the risk of the shortfall being even greater.

3.7 The objective of CIL is fundamentally to assist with the delivery of development, as CIL receipts are used toward the funding of new major infrastructure (as per Regulation 59(1)<sup>18</sup>). The CIL Charging Schedule and supporting documentation must therefore outline the positive actions proposed from the Council to enable the actual delivery of major infrastructure, which may require additional ‘top up’ funding, or the Council using its powers under the Local Government Acts (2000 and 2003) and CIL Regulations to borrow money to ‘forward fund’ infrastructure delivery<sup>19</sup>. The HBF Consortium would be supportive of the necessary investment to ‘unlock’ and assist with development delivery.

3.8 The CIL Guidance also states that, at Examination, authorities should ‘*set out those known site-specific matters where section 106 contributions may continue to be sought*’<sup>20</sup>. We would suggest it prudent for this to be considered prior to the submission of the Draft Charging Schedule for Examination in order that it can be taken into account in finalising the proposed CIL rates.

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<sup>16</sup> Ibid.

<sup>17</sup> Paragraph 23

<sup>18</sup> CIL Regulations 2010 (as amended)

<sup>19</sup> Paragraphs 17 and 18, CIL – An Overview

<sup>20</sup> Paragraph 15

### Woking Core Strategy

- 3.9 Woking Borough Council adopted its Core Strategy in October 2012. The plan provides for the delivery of 4,964 net additional homes in the plan area between 2010 and 2027, of which 70% will be on previously developed land including 1,980 in Woking Town Centre, and 750 in the form of infill development in the remaining urban areas.
- 3.10 The CIL Guidance refers to the NPPF and states that, “**where practical, levy charges should be worked up and tested alongside the Local Plan.**”<sup>21</sup> It is important that CIL is seen in the context of the planned supply of housing within Woking and the authorities should make it clear within their supporting evidence how it is shown that the proposed rates do not threaten delivery of the relevant Plan as a whole.<sup>22</sup>

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<sup>21</sup> Paragraph 11

<sup>22</sup> Ibid. Paragraph 9

## 4.0 Viability Appraisal

- 4.1 The proposed CIL rates for the LPAs have been supported by a viability report produced by Dixon Searle LLP (January 2013). Owing to the key test of Regulation 14(1) it is important that the viability appraisals prepared are fit for purpose. It is clear that at Examination the Charging Schedule will need to be supported by **“relevant evidence”<sup>23</sup>**.
- 4.2 Through reviewing the viability appraisal provided by Dixon Searle LLP (DSP) we have identified a number of discrepancies that need to be addressed. The HBF Consortium thought it would be most appropriate in this instance to highlight these points in the DSP viability assessment, which we set out below.

### The Requirement for a Viability Study

- 4.3 The requirement to justify the Charging Schedule with evidence of viability is outlined by CIL – An Overview<sup>24</sup>, which notably also makes reference to setting differential rates. The CIL Guidance outlines **“charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area”<sup>25</sup>**. It will therefore be an important consideration to ensure that the evidence of viability adequately tests scenarios that reflect the key sites required to deliver the planned growth.
- 4.4 The fundamental premise is that to enable delivery, sites must achieve a credible land value and developers the required return on investment, otherwise development will be not come forward. This is recognised by the NPPF<sup>26</sup> and is ‘in-built’ within the CIL Regulations. It is also the basis of the definition of viability with the Local Housing Delivery Group report, Viability Testing of Local Plans.<sup>27</sup>

### The DSP Viability Study

- 4.5 The viability assessments are based on a series of residual valuation scenarios that models the gross development value achievable from different uses in different areas within the local authority, and discounts development costs, interest costs and developer profit. In principle, our clients consider the overall methodology of seeking to determine viability on a

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<sup>23</sup> Regulation 11(1) (f) / 19(1) (e), CIL Regulations (as amended)

<sup>24</sup> Paragraphs 25 and 26

<sup>25</sup> Paragraph 30

<sup>26</sup> Paragraph 174

<sup>27</sup> Section One

residual valuation exercise as being appropriate. The specific comments relate to the inputs and assumptions made.

#### *Benchmark Land Values*

- 4.6 Savills and the HBF Consortium have major concerns about the method by which the residential benchmark land value has been calculated. There is no factual sales evidence within the report and for this reason we request that the evidence relied upon is made publicly available.
- 4.7 Evidence in relation to benchmark land values constitutes information provided by the Council and the VOA Property Marketing Report 2009. Savills consider this evidence is rather historic and should be updated as land values have increased since 2009. DSP have also not provided any actual sales evidence from land agents or developers. Savills request that the consultation exercise in researching land values is undertaken with land agents in the area as the reliability on a few historic VOA land values is concerning.

#### *Typologies*

- 4.8 The typologies selected to be assessed for viability must “**reflect a selection of the different types of sites included in the relevant Plan**”, as per the CIL Guidance.<sup>28</sup> There should also be an assessment of the proportion of the planned supply of housing that falls within each typology tested. This is in order that the impact of the proposed CIL rate on the viability of the planned housing supply is explicit. This is in conformity with the CIL Guidance which quotes the NPPF<sup>29</sup> and states that authorities “**should show that the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole**”.<sup>30</sup>
- 4.9 DSP have not tested site typologies similar to potential future site allocations, which could form much larger strategic sites in excess of 100 units. The typologies used only test up to 100 unit flat schemes, however as identified in the SHLAA 2011, some promoted sites exceed DSP’s typologies quite substantially. Strategic sites are subject to large up front costs including promotion and infrastructure costs, which have not been tested in the typology scenarios.

#### *Affordable Housing Assumptions*

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<sup>28</sup> Paragraph 27

<sup>29</sup> Paragraph 173

<sup>30</sup> Paragraph 29, CIL Guidance, 2013

- 4.10 DSP have assumed the affordable housing levels will be set in line with policy set out in the adopted Core Strategy CS12 as a maximum level of affordable housing required on each scenario, including financial contributions for smaller sites. In principle, the HBF Consortium agrees with these assumptions. However, the HBF Consortium feel that a discount rate between 35%-65% of Market Value is a simplistic approach to affordable revenue and benchmarking against achieved revenues from Registered Providers should be undertaken.
- 4.11 The Council has decided to set two charging zones for residential use across the authority areas which will restrict the ability to reflect the varying levels of affordable housing required in different areas. A more comprehensive approach should be taken to allow for fluctuation between high value and low value residential areas.

#### *S106 Contributions*

- 4.12 It is imperative that throughout the preparation of CIL due regard is had to the Regulations that state that Section 106 planning obligations must be:
- ***necessary to make the development acceptable in planning terms;***
  - ***directly related to the development; and***
  - ***fairly and reasonably related in scale and kind to the development***<sup>31</sup>

The power to seek Section 106 contributions remains under CIL. Our clients are concerned about the scale of Section 106 contributions that will continue to be sought which, alongside the proposed CIL rates, will render the delivery of the allocated sites difficult.

- 4.13 Greater clarity is needed regarding the items which the authority consider will be funded through site specific S106 Agreements. At present, the uncertainty makes it difficult to assess the cumulative impact of CIL; therefore we would request that the authority provide guidance on their intentions in this respect, as per the requirements of the CIL Guidance<sup>32</sup>.
- 4.14 There is also a requirement in the CIL Guidance for authorities to prepare, as part of their background evidence, information on the amounts raised in recent years through s.106 agreements and the extent to which affordable housing and other targets have been met.<sup>33</sup>

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<sup>31</sup> Regulation 122

<sup>32</sup> Paragraph 15

<sup>33</sup> Paragraph 22

This information has now been provided as an appendix to the Draft Charging Schedule. However, there has been no analysis of the data in order to make effective use of it in supporting the setting of the CIL rates. The data should be used both as a benchmark to compare with the new total 'policy cost' of CIL and planning obligations combined, as well as being a useful tool for defining the distinction between infrastructure that will be paid for with CIL and that which will be paid for through Section 106 obligations.

- 4.15 A notional sum of £1,500 per unit has been adopted in the appraisal scenarios for s.106 contributions. Savills and the HBF Consortium believe this value is too low and does not reflect the increasing scale of contributions required on larger sites.

#### *Build Costs*

- 4.16 DSP have used a standardised build cost of £916 per sq m (£85 per sq ft) for housing and £1,042 per sq m (£97 per sq ft) for apartments and £1,352 per sq m (£126 per sq ft) for apartments over 6+ storeys taken from median RICS Build Cost Information Service (BCIS) results to Q3 2011. We consider that this information is now significantly out of date and that an update to the viability evidence should have been completed prior to the Draft Charging Schedule having been published for consultation. We suggest that this update is undertaken and the viability of the CIL rates checked prior to the submission of the Draft Charging Schedule for Examination.
- 4.17 We would note that smaller more complicated sites are significantly more expensive to build, especially for high end bespoke developers and specialist accommodation for the elderly, as they are not able to achieve economies of scale. The assumption that site typologies below national house builder size, generally 15 units or less, can be built to a cost of £916 per sq m, is a concern and is not representative of the economics of the development of the area. We suggest that the viability of the site typologies is reviewed in light of more up-to-date cost information.

#### *Promotion costs and abnormal costs*

- 4.18 The cost of promoting a site through the planning process can be considerable, especially with the larger strategic urban extensions. The viability appraisals provided by DSP do not seem to recognise or allow for these costs and we would therefore ask that they are considered in further detail prior to setting the CIL rates for submission for Examination.

- 4.19 Site abnormalities have also not been allowed for in the appraisal assumptions. Whilst Savills appreciate abnormalities are likely to vary significantly on a site by site basis, higher contingencies should be allowed for in the appraisals to account for issues such as contamination and other unforeseen development costs.

#### *Developers Profit*

- 4.20 The minimum profit margin that the lending institutions are currently prepared to accept, on residential development, is 20% on Gross Development Value. In recent months, the appeal decision relating to Land at The Manor, Shinfield, Reading has been made by the Planning Inspector.<sup>34</sup> We are of the opinion that this is an important case in terms of viability in planning and, whilst it is not directly related to CIL, it does address many of the factors that are under consideration here. In particular developer's profit. The decision states:

*"The appellants supported their calculations by providing letters and emails from six national housebuilders who set out their net profit margin targets for residential developments. The figures ranged from a minimum of 17% to 28%, with the usual target being in the range 20-25%. Those that differentiated between market and affordable housing in their correspondence did not set different profit margins. Due to the level and nature of the supporting evidence, I give it great weight. I conclude that the national housebuilders' figures are to be preferred and that a figure of 20% of GDV, which is at the lower end of the range, is reasonable."*

- 4.21 DSP have adopted a profit of 20% on Gross Development Value (GDV) on private dwellings and 6% on affordable housing. Savills would stress that the minimum acceptable profit margin for the HBF Consortium is 20% on GDV on all units, not just private. 20% on GDV is the minimum level developers would look to achieve based on lenders requirements. However, it should be stressed that for smaller, higher risk developments, the profit levels expected will be higher to reflect the increased risk.

#### *Professional Fees*

- 4.22 Fees should take account of the costs associated with bringing forward and implementing proposed sites, including outline planning costs, reserved matters and discharge of planning conditions costs, undertaking public consultation and environmental impact assessment (EIA) compliance. Figures for fees relating to design, planning and other professional

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<sup>34</sup> Ref: APP/X0360/A/12/2179141, 8 January 2013

services can range from 8-10% of development costs for straightforward sites, up to 20% for the most complex multi-phased sites. Again putting this in to perspective, we believe that the professional fees figures used in the viability appraisals for the larger site typologies are too low.

#### *Viability Cushion*

- 4.23 In reality, site specific circumstances will mean that the economics of the development pipeline will vary from the typical levels identified via analysis of the theoretical typology. This is inevitable given the varied nature of housing land supply and costs associated with bringing forward development. Therefore, there must be a viability cushion incorporated either into the benchmark land value or elsewhere through the CIL assessment process which would ensure delivery of sufficient housing to meet strategic requirements.
- 4.24 The Examiner's Report for the Greater Norwich Development Partnership references the importance of not setting the CIL rates up to the margin of viability. In particular, it highlights greenfield sites: "*The need for a substantial 'cushion' is particularly important on Greenfield sites where, as the Harman advice notes, prospective sellers are often making a once in a lifetime decision and are rarely distressed or forced sellers.*"<sup>35</sup> This statement notes that there must be allowance within the CIL rates to account for the variation in landowner aspiration, as well as the potential differences in costs and values of individual sites. This is in addition to the discrepancy noted in paragraph 4.16 above. The viability cushion should take account of the risks to delivery flowing from the potential for some sites to achieve a lower sales value than others. Indeed, DSP acknowledges that the level of CIL should not be charged up to the limit of viability; however Savills would like to see evidence of a viability buffer.

#### *Overall*

- 4.25 Our clients consider that whilst the general methodology of the viability assessments is in line with industry practice, the report provided by DSP contains some assumptions which concern the HBF Consortium and which may undermine the validity of the evidence that is being relied upon to justify the proposed CIL rates. As a result, the HBF Consortium cannot agree to a number of points that have been raised by the report and feels that the rates set

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<sup>35</sup> Paragraph 25,



have not been based upon a robust evidence base, where it can be concluded that development will not be put at serious risk.

4.26 The approach advocated by our clients in this representation accords with the CIL Guidance and the advice within the NPPF.

4.27 Our clients therefore request again that certain elements of the evidence be revised and made readily available, as summarised by the list below:

1. The relationship between the typologies and the planned housing supply;
2. Incorporation of a reasonable Developers Profit and professional fees;
3. Review of build costs as at the most recent index;
4. Evidence of benchmark land values;
5. Evidence of achieved sales values as opposed to marketing asking prices;
6. Analysis of historic s.106 contributions and details of the likely s.106 requirements following the adoption of CIL; and
7. Evidence of an appropriate viability buffer.

## 5.0 Effective Operation of CIL

5.1 Despite the narrow Regulatory requirements of the Examination, our clients urge WBC to make clear at the earliest opportunity the supporting documentation needed to operate CIL and to make it available for input/comment. Practically, this needs to be done prior to the Examination so that participants and stakeholders are able to comment on the effective operation of CIL. Whilst this supporting information is not tested at Examination, this information is critical to allow for the successful implementation of CIL and to demonstrate that the CIL has been prepared positively and supports sustainable development

5.2 The documentation should include:

- Guidance on how to calculate the relevant 'chargeable development'/level of CIL (cross referral to CLG guidance/Planning Portal – location of the Notice of Chargeable Development Form – further with regard to the RICS published guidance on Gross Internal Area – and what should be included).
- Guidance on liability to pay CIL/Appeals process.
- Policy for payments by instalments.
- Approach to payments in kind – notably valuation process for ascertaining land value and also the potential to accept land for infrastructure as a payment in kind.
- Guidance on relief from CIL and a policy on exceptional circumstances for relief from CIL.

5.3 We provide further comment on some of these points below.

### Payment of CIL – Instalments

5.4 The Regulations<sup>36</sup> and CIL – An Overview<sup>37</sup> are clear that the charging authority has the flexibility to adjust the timing of the charge and to outline the payment procedure. This flexibility extends to:

- Levy payment deadlines
- Instalments policy

5.5 With regard to the phasing of CIL payments, it is pleasing that WBC proposes an instalments policy and has given stakeholders the opportunity to comment on the proposed policy at this

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<sup>36</sup> Regulation 69B(1)

<sup>37</sup> Paragraphs 45 - 48

stage. In addition to the proposed thresholds, we would recommend that a threshold should be defined for larger schemes for which a bespoke payment method can be agreed in writing as part of the application process.

### Relief

- 5.6 The Community Infrastructure Levy Relief – Information Document (CLG, May 2011) outlines the Government’s position on **“exceptional circumstances”** which could warrant exception from CIL<sup>38</sup>. The first matter to note from the Regulations is that the offer of relief is discretionary on the charging authority<sup>39</sup>. It is noted that WBC does not intend to implement any discretionary relief. The HBF Consortium considers it imperative that WBC makes relief available from the date of the adoption of CIL, and that the Council clearly outlines its approach to doing so (in conformity with the Regulations). This will ensure that the overall delivery of the Core Strategy, and in particular affordable housing provision, will not be compromised by CIL.

### CIL Regulation 122 – Double Counting

- 5.7 With regard to the relationship with Section 106 the CIL Charging Schedule should be clear that ‘double counting’ of Section 106 contributions and CIL is not permitted by law. The revised CIL Guidance has reinforced this point and states: **“Where the regulation 123 list includes a generic item (such as education or transport), section 106 contributions should not normally be sought on any specific projects in that category.”**<sup>40</sup> Further, the Guidance is clear that charging authorities should ensure they are clear about their infrastructure needs and what will be paid through each route (s.106 or CIL), **“so that there is no actual or perceived ‘double dipping’”**.<sup>41</sup>
- 5.8 The key tests of CIL Regulation 122 should be outlined within the supporting documentation. In practical terms, owing to the need to publish a Regulation 123 List, it is likely that only site specific or immediately adjacent measures will continue to be funded by Section 106 (i.e. site access or immediately adjacent open space). As outlined, the costs of this on-site infrastructure will increase for larger scale development.

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<sup>38</sup> Paragraph 66 onward

<sup>39</sup> Regulation 55(3) (a)

<sup>40</sup> Paragraph 89

<sup>41</sup> Paragraph 85

- 5.9 The Government's position on the role of Planning Obligations is clearly outlined in the Overview document,<sup>42</sup> notably the statutory basis that they must be directly related to mitigating the impact of development, and that CIL payments and planning obligations do not overlap. This is also made clear in the NPPF<sup>43</sup>.

#### Reviewing CIL

- 5.10 The CIL Guidance outlines that the Government 'strongly encourages'<sup>44</sup> reviews to ensure that CIL is fulfilling its aim and responds to market conditions. If the CIL is set at too high a rate, the delivery of housing will be put at risk. Regular monitoring is required to ensure that any detrimental impact of the CIL on delivery is noticed promptly and remedied. It should be borne in mind that, in reviewing the CIL rates, the same charge setting process and procedures are required to be followed and therefore there will be an inevitable delay until any deficit in delivery can be remedied.
- 5.11 The Draft Charging Schedule indicates that the Council will review its charging schedule every five years. Owing to the current economic conditions Savills contend that reviews should be far more frequent and it may therefore be prudent to outline on adoption of CIL, a review period of a minimum of 12 months from adoption. Monitoring data and reviews should be regularly published, for example on the Council's website. Regular monitoring is key to ensure that CIL does not stifle development in the right locations.

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<sup>42</sup> Paragraphs 59 and 60

<sup>43</sup> Paragraph 204

<sup>44</sup> Paragraph 79

## 6.0 Conclusions

6.1 This Representation has been prepared by Savills on behalf of a landowner and developer HBF Consortium comprising:

- The Home Builders Federation
- Barratt Developments Plc
- Bloor Homes Ltd
- Bovis Homes Group Plc
- Crest Nicholson
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- McCarthy and Stone Retirement Lifestyles Ltd
- Persimmon Plc
- Redrow Plc
- Taylor Wimpey Plc
- The Miller Group Ltd

6.2 The HBF Consortium is concerned with aspects of the approach adopted by WBC towards CIL rates for residential development. Furthermore, we have concerns relating to the assumptions used in the viability models and would ask that DSP provide evidence on the aspects we have highlighted. We feel it necessary to stress that if the CIL level is set too high, it will almost certainly have a negative impact on a large proportion of development coming forward, especially bearing in mind the reliance on the proposed new neighbourhoods for growth. We believe that once the assumptions – as mentioned above – have been clarified, it will show the proposed CIL levels need reviewing.

6.3 As discussed throughout this submission, we do not believe that the supporting evidence has shown that the proposed CIL rates will not put at risk the delivery of the relevant Plan; rather to the contrary. The authority has selected to charge a rate that makes limited allowance and flexibility for site specific circumstances of viability through the provision of an appropriate viability buffer.

- 6.4 The CIL Guidance gives WBC the ability to set differential rates for strategic sites<sup>45</sup>, to reflect specific viability circumstances. The guidance also makes it clear that **“there is no obligation to impose a Community Infrastructure Levy for its own sake. Charging authorities can set a zero rate if they wish...”**<sup>46</sup> (emphasis added); we suggest the authorities review the proposed rates in respect of strategic sites.
- 6.5 The HBF Consortium remains open to meeting with WBC and its advisors to discuss amendments to the approach taken. We believe this should be arranged as soon as possible.

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<sup>45</sup> Paragraph 34

<sup>46</sup> Paragraph 38

## **Appendix 1: List of Documentation**

- Woking Borough Council Draft Infrastructure Capacity Study and Delivery Plan, December 2011
- Woking Borough Council Core Strategy, October 2012
- Woking Borough Council Community Infrastructure Levy – Infrastructure Funding Gap Topic Paper (no date)
- Community Infrastructure Levy Guidance, DCLG, December 2013
- Community Infrastructure Levy Draft Charging Schedule for Woking Borough Council, May 2013
- Community Infrastructure Levy Regulations 2010 (as amended)
- Woking Borough Council Community Infrastructure Levy Viability Study, Dixon Searle LLP, January 2013
- National Planning Policy Framework, DCLG, March 2012
- Planning Act 2008 (as amended)
- Report on the examination of the Draft Mid Devon District Council CIL Charging Schedule, David Hogger BA MSc MRTPI MCIHT, February 2013
- Report to the Greater Norwich Development Partnership – for Broadland District Council, Norwich City Council and South Norfolk Council, Keith Holland BA (Hons) Dip TP MRTPI ARICS, December 2012
- Viability Testing Local Plans – Advice for Planning Practitioners, Local Housing Delivery Group Chaired by Sir John Harman

ENDS