

06 April 2020

Delivered by email

The Planning Policy & Economic Development Team
Runnymede Borough Council
Runnymede Civic Centre
Station Road
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Dear Sirs

**Runnymede Borough Council Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS)
Consultation: Representation on behalf of [REDACTED]**

Purpose

This concise letter has been prepared by [REDACTED] Viability service on behalf of [REDACTED] [REDACTED]. It forms a representation to the Runnymede Borough Council ('the Council') Community Infrastructure Levy ('CIL') Draft Charging Schedule ('DCS') and supporting evidence base, which has been published for consultation until Monday 6th April 2020.

[REDACTED] is promoting land at Ottershaw East ('the site') as an allocation (proposed allocation: site reference SL12) for residential development within the emerging draft Runnymede 2030 Local Plan ('the draft Local Plan'). The site is located within 'Charging Zone A' within the CIL DCS and would be liable for CIL on residential (Use Class C3) development at a rate of £380/m² if the CIL DCS was to be adopted in its current form.

The purpose of this written representation is to highlight to the Council technical objections and legislative compliance issues in relation to the proposed CIL charges¹ set out in the CIL DCS and the technical viability evidence base utilised to inform and underpin the CIL DCS.

The focus of this representation is upon the *Viability CIL Viability Testing Final Report* (November 2019) ('the CILVR') prepared by Andrew Golland Associates ('AGA'), and the subsequent *Runnymede CIL Technical Background Document* (December 2019) ('the TBD'), which is not attributed to an author but is assumed to have been produced by the Council.

Should the Council continue to place reliance on the CIL DCS and technical evidence base without resolving the issues identified within this representation then [REDACTED] will have no alternative but to address the soundness of the CIL DCS and its evidence base beyond this representation and at Examination in Public ('EIP') before the appointed Examiner.

¹ Note: [REDACTED] has been instructed to focus comments on traditional C3 residential use. Absence of comments in respect of other typologies or uses should not be deemed to reflect endorsement, agreement or support.

Novel Coronavirus

We would note that, in the intervening period since preparation and publication of the CILVR and TBD, the Novel Coronavirus ('COVID-19') has been declared by the World Health Organisation ('WHO') as a "Global Pandemic" on the 11th March 2020. Travel restrictions have been implemented by many countries. The pandemic has escalated significantly in the UK and globally – impacting severely on financial markets, UK economic activity and employment, and first driving stagnation in the UK housing market, followed by enforced paralysis.

Market activity is being impacted in many sectors. As at the date of this letter, we consider that we can attach less weight to previous market evidence for comparison purposes to inform viability appraisal inputs previously adopted within evidence base documents. Indeed, the current response to COVID-19 means that we are faced with an unprecedented set of circumstances on which to base a judgement. There is 'material valuation uncertainty' as per VPS 3 and VPGA 10 of the RICS Red Book Global.

Construction work and sales activity has been halted by all volume housebuilders, leaving sites mothballed indefinitely until restrictions on movement are lifted. Stock remains part-constructed and supply chains (for labour and materials) interrupted. Reputable industry commentators project a short-medium period of sales price suppression as movement restrictions are eased (on a phased basis), property chains require re-establishment and housebuilders heavily incentivise in order to seek to build sales momentum and replenish cashflow. This represents a best-case scenario, whereby a protracted period of recession would lead to far deeper and further embedded falls in property prices.

This is a live issue, which is constantly evolving. Consequently, a higher degree of caution should be applied in viability assessment, and a greater level of pragmatism than would normally be the case is appropriate.

In the context of the above it is strongly recommended that the Council reconsiders the following:

- (a) the validity of the viability evidence in light of material alteration in economic and property market circumstances; and
- (b) the programme for submission, Examination and adoption of the CIL DCS. This now appears irrationally and impractically timed.

We are aware that other Local Authorities, for example Brighton and Hove City Council, have opted to postpone taking CIL adoption forward until Autumn 2020 at the earliest. Until then S106 and S278 Agreements will continue to represent the mechanisms by which planning obligations are secured on sites granted planning permission.

Technical Inputs and Matters

Up-to-date Market Evidence

It is considered that the CILVR, and consequently the TBD, are lacking in appropriate and up-to-date evidence to underpin current market assumptions for use in viability testing.

For example, paragraph 3.4 of the CILVR confirms that evidence of house prices utilised to inform viability testing was drawn from second hand property transactions occurring between 2015 and mid-2017, which was cross-checked against new build sales at the time. The report then loosely proceeds to state that, "*the data used here indexes that data set forwards to September 2019*".

A charging authority must use 'appropriate available evidence' (as defined in the section 211(7A) of the Planning Act 2008) to inform the preparation of their CIL DCS.

The setting of development value is a critical component of viability testing. The CILVR should not be based upon outdated and loosely indexed evidence. It should be updated to reflect transaction evidence over (at least) 12 months prior to publication. This evidence should be strongly weighted towards new build transactional activity, given that re-sale evidence can be misleading where units transacted differ from the types and sizes of dwellings required for delivery via the emerging Local Plan. Given the current disruption caused by COVID-19, it is recommended that evidence is 're-based' using two quarters (ideally four quarters) of transactional evidence once the property market 'reopens' to ensure the impact of COVID-19 is reflected in the viability evidence.

Similarly, it appears that construction costs are base dated at September 2019 (based upon Appendix 1.4 of the CILVR on p.79). This means that the inputs are actually already in excess of six months old prior to the evidence even being consulted upon, which is objectionable.

Analysis of Key Housing Sites

We have specifically reviewed the appraisal results for Ottershaw East, which are set out on p.19 of the CILVR and have the following concerns:

- **Density** – the summary excerpt from appraisal model on p.19 suggests a density of 33.5 dph, but this is inconsistent with the developable area identified in the 'on-site infrastructure' costs table above.
- **On-site infrastructure costs** – it is not stated as to how these costs are calculated. Moreover, it is unclear as to whether the cost allowances (for external works and on-site infrastructure costs) are sufficient to meet all roads, sewers, POS and utility services costs. It would be proper practice to engage with promoters to determine this². Whether input has been sought is unclear.
- **Marketing** – it is unclear what allowance is made, if any.
- **Sales costs** – it is unclear what allowance is made, if any.
- **Sales legal fees** - it is unclear what allowance is made, if any.
- **Finance** – it is unclear how and what finance costs have been applied within testing and whether the debit rate applied has been set against both land and development costs, as is appropriate.

It is requested that clarification is provided by AGA and the Council.

The results of AGA's appraisal are set out in paragraphs 4.17-8 and indicate a residual land value ('RLV') of £25.7m. Assuming this is predicated on the gross land area of 14.1ha, this equates to £1.82m per gross ha or £738,000 per gross acre).

However, the CILVR proceeds to set out the RLV per ha for Ottershaw East at £4.14m/ha within Table 6.4 on p.72, utilising the area described as the 'developable area for residential development', which is also utilised to calculate the density (i.e. 30dph). The latter density is usually calculated on the net developable

² MHCLG (2019) PPGV: Paragraph: 006 Reference ID: 10-006-20190509

area. This suggests that the full 14.1ha should represent the gross land area against which a BLV is determined (on a rate per ha basis). As a result, the RLV per ha for Ottershaw East would be expected to reduce commensurately.

The CILVR proceeds to compare the RLV to an existing use value ('EUV') of £982,000, albeit this EUV is not substantiated further.

Benchmark Land Values (BLVs) & Buffer

PPG Viability ('PPGV') states explicitly that BLVs should, "...be informed by market evidence including current uses, costs and values wherever possible"³.

PPG CIL also requires that Charging Authorities ensure an appropriate 'buffer' is introduced so that CIL rates are not set at the 'margin' of viability. It is noted that the Council proposes to introduce a buffer of 50% back from the maximum CIL rates demonstrable via viability testing. This is supported as pragmatic.

PPGV subsequently requires plan makers to:

*"...establish a reasonable premium to the landowner for the purpose of assessing the viability of their plan. This will be an iterative process informed by professional judgement and must be based upon the best available evidence informed by cross sector collaboration. For any viability assessment data sources to inform the establishment the landowner premium should include market evidence..."*⁴

Crucially, PPGV confirms that the BLVs set must reflect the "...reasonable expectations of local landowners"⁵.

There is no evidence within the CILVR of local market analysis to inform the BLVs applied within viability testing.

Instead, Chapter 6 of the CILVR firstly makes reference to BLVs ranging from £2.6m/ha to £8.1m/ha (by location) as being utilised within the viability evidence base to inform the emerging Local Plan and the setting of relevant policies (see Table 6.2 on p.69).

However, rather than adopting these BLVs consistently with the emerging Local Plan, the CILVR proceeds to shift to adopt a BLV recommended by the Council. Paragraphs 6.10-11 on p.70 state:

"The Council have however recommended that given that many sites in the Borough are commercial that a commercial LVB should be adopted for sites coming forward in the urban area or previously developed land in the Green Belt. This is at £2 million per hectare and this is the figure used in the A320:Longcross Viability report.

This £2m per hectare figure has been adopted here as a benchmark for the study."

This approach has no basis in appropriately analysed evidence. There is no further analysis of "*premium deemed to be required*".

³ MHCLG (2019) PPGV: Paragraph: 014 Reference ID: 10-014-20190509

⁴ MHCLG (2019) PPGV: Paragraph: 016 Reference ID: 10-016-20190509

⁵ MHCLG (2019) PPGV: Paragraph: 016 Reference ID: 10-016-20190509

This is inconsistent with the judgement handed down by Holgate J in *Parkhurst Road Ltd v Secretary of State for Communities and Local Government and Anor* (2018) in which Holgate J confirms that application of an arbitrary premium in excess of the EUV is unsatisfactory in reflecting the workings of the market, and which has been subsequently reflected in PPGV.

Confusingly, the Council's TBD proceeds to subsequently develop the BLV setting further beyond the CILVR by making reference to an 'RLV' (being the £2m/ha used in the CILVR) and a 'Worst Case BLV', which represents the BLVs utilised within the evidence for setting policies within the emerging Local Plan (i.e. in Plan-making).

Comparison of appraisal results with the BLVs used in Plan-making is set out in Table 5-2 (p.23) of the TBD and shows a far lower set of maximum CIL rates when adopting the rational buffer of 50%.

Paragraph 5.10 of the TBD suggests that the 'Worst Case BLVs' are likely to "reflect brownfield land in an existing residential use", and would therefore be of limited relevance; however the rationale for this is not explained or qualified at all.

Paragraph 5.14 of the TBD subsequently proceeds to state that the following:

"The PPG note on Viability states that BLV should be based on EUV plus an uplift to incentivise the land owner to sell or 'EUV+'. It should be noted that the Borough Council does not consider an uplift of 100 fold to be a reasonable figure for 'EUV+' and therefore in reality some sites will have more scope to pay CIL than is indicated in Table 5-3. These sites are indicated with a (G) in Table 5.3 to indicate their predominantly greenfield status."

PPG CIL requires that, "*charging schedules should be consistent with, and support the implementation of, up-to-date relevant Plans*"⁶.

PPG CIL requires that development costs, including "*any policies on planning obligations in the relevant Plan, such as policies on affordable housing and identified site-specific requirements for strategic sites*", should be taken into account when setting CIL rates – particularly those on strategic sites or brownfield land⁷. It is the responsibility of authorities to create realistic and viable charging schedules⁸.

PPG CIL also confirms that CIL evidence should be prepared in accordance with PPG on viability, and specifically that the policy requirements for developer contributions are deliverable⁹. PPG for Viability ('PPGV') requires that viability assessment at the plan making stage should ensure policies are realistic and the total cumulative cost will not undermine deliverability of the relevant Plan¹⁰. Moreover, policy requirements (including CIL) should be clear for the industry so that they can be accurately accounted for in the price paid for land¹¹.

It appears that AGA and the Council is now adjusting downwards (significantly) the BLVs set within the Plan-making process in order to generate elevated 'surplus' RLV for setting elevated CIL rates.

⁶ MHCLG (2019) PPG CIL: Paragraph: 011 Reference ID: 25-011-20190901

⁷ MHCLG (2019) PPG CIL: Paragraph: 021 Reference ID: 25-021-20190901

⁸ MHCLG (2019) PPG CIL: Paragraph: 015 Reference ID: 25-015-20190901

⁹ MHCLG (2019) PPG CIL: Paragraph: 015 Reference ID: 25-015-20190901

¹⁰ MHCLG (2019) PPGV: Paragraph: 002 Reference ID: 10-002-20190509

¹¹ MHCLG (2019) PPGV: Paragraph: 001 Reference ID: 10-001-20190509

Unless AGA and the Council produce local evidence of land transaction prices (re-weighted as necessary) in accordance with PPGV to demonstrate minimum reasonable landowner expectations are met at the BLVs proposed, then it is our strong opinion that BLVs for development sites must be increased within the CILVR to be consistent with those used in Plan-making (in Table 6.2 on p.69 of the CILVR and deemed wrongly as 'worst case by the TBD') in order to avoid landowners from being dis-incentivised to dispose of land for development and posing a risk to Plan delivery.

On the above basis, the CILVR and TBD are flawed and fail to provide a sound evidence base for determining available maximum surplus for CIL rate setting.

It is unclear from the LPCVR whether the process of setting the premium in excess of the EUV has reflected the iterative process required within PPGV. No market evidence is presented within the LPCVR in order to demonstrate that the BLVs are reasonable and realistic. It is requested that such evidence is provided in order to demonstrate that the methodology for setting the BLVs within the LPCVR is sound and based upon appropriate available evidence for stakeholder review.

Construction Costs

The CILVR briefly summarises the construction cost inputs applied to site typologies within appraisals at Appendix A1.4. Whilst a base date of September 2019 is referenced, there are shortfalls in transparency. No source is stated and there is no copy of the underpinning data (even in summary) to provide proof of the accuracy of the figures reported. This should be rectified.

Garages

No specific allowance appears to be made in the CILVR for the costs of constructing garages, which appears to represent an oversight. Equally, the GIA of garages (including external) will form part of the CIL liable floorspace, which must be accounted for within viability testing.

Contingency

It does not appear that any contingency allowance has been incorporated within the CILVR viability testing.

Due to the risk of unknowns and abnormal escalation upon greenfield sites it is deemed reasonable to increase the contingency allowance to 3% of construction costs. A 5% allowance should be introduced for site typologies upon previously developed land.

Sustainability related construction and development costs

Appendix A1.6 of the CILVR refers to such costs being calculated at a (rounded) £10,000 per unit. Several clarifications are requested:

- How have the SANG/SAMM costs been calculated? Does this allow for any land requirements and associated costs / compensation?
- How are the accessibility and renewables costs rates calculated? What sources of evidence are being used to underpin these costs, and what is the base date for this?

Abnormal/Exceptional Costs

The CILVR has not allowed for abnormal costs within viability testing of residential site typologies. It is essential that:

- (a) The viability testing (and application of policy costs thereafter) includes a sufficient buffer back from the margins (i.e. maximum limits) of viability. This will ensure that viability testing

results and conclusions/recommendations are not presented at levels that risk rendering development sites unviable when subject to the introduction of abnormal works costs.

- (b) The BLVs are increased to represent the serviced land values (i.e. assuming that abnormal costs have already been met through works undertaken by the landowner prior to disposal for development).

Such costs cannot be accommodated by the landowner if adopting BLVs that reflect a “raw material view” operating on a ‘EUUV plus’ basis as doing so would risk reducing land values to remove a suitable incentive for disposal.

The exclusion of abnormal costs from the viability appraisals will markedly overstate the appraisal results – given that abnormal works can be costly and will frequently be incurred early in a sites development (hence having a more pronounced cashflow impact).

Development Programme & Cashflow

Paragraph 57 of the NPPF confirms that transparency in the preparation of all viability assessments is essential. It states:

“All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.”

PPGV elaborates on the NPPF by confirming the importance of transparency for improving data availability and accountability:

“Any viability assessment should follow the government’s recommended approach to assessing viability as set out in this National Planning Guidance and be proportionate, simple, transparent and publicly available. Improving transparency of data associated with viability assessment will, over time, improve the data available for future assessment as well as provide more accountability regarding how viability informs decision making.”¹²

The CILVR is inconsistent with both the NPPF and PPGV in this respect for it does not provide any details regarding the development and sales programmes applied to site typologies, nor does it provide any cashflows. It is a ‘black box’ and opaque approach which makes it challenging for stakeholders to fully analyse the data and for any reliance to be placed upon the results. This must be resolved.

A320 Mitigation Scheme

The TBD simply subtracts a £/m² rate for contributions of relevant sites to the A320 mitigation scheme, from the deemed available £/m² sum for CIL as determined within Table 5-3. This is a highly imprecise exercise, as the costs of A320 mitigation should be accounted for as a distinct cost within viability appraisals. This is due to the timing of the mitigation (presumably secured via S106 Agreement) being likely to have a cashflow impact (for example in rolling up additional debt finance costs), which is not accounted for in the approach used in the TBD.

Simultaneously, given the substantive concerns set out regarding various points of methodological approach and appraisal input, it is questionable whether there is the necessary ‘headroom’ to apply A320 mitigation costs alongside CIL liability – given significant doubts remain regarding the validity and robustness of the CIL viability testing results.

¹² MHCLG (2018) PPGV: Paragraph: 010 Reference ID: 10-010-20180724

Conclusions & Next Steps

This representation has set out objections to the Council's CIL DCS consultation. The objections relate to a series of technical deficiencies and matters of non-compliance with relevant Government guidance and the CIL Regulations 2010 (as amended).

We request that AGA and the Council revisit the issues identified, update the underpinning viability evidence base to resolve the existing deficiencies, and adjust the proposed CIL rates for residential development typologies accordingly prior to submitting the CIL DCS to PINS for independent examination. At present the CIL DCS is unsound and should not be adopted.

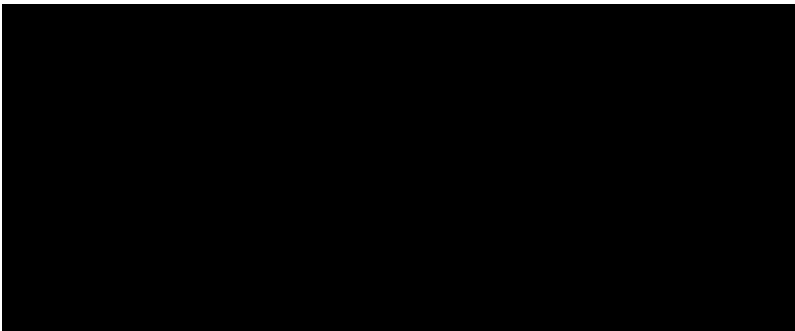
In addition, in the context of the evolving COVID-19 pandemic, it is strongly recommended that the Council reconsiders the following:

- the validity of the viability evidence in light of material alteration in economic and property market circumstances; and
- the programme for submission, Examination and adoption of the CIL DCS. This now appears irrationally and impractically timed.

Finally, [REDACTED] requests the following of the Council:

- (a) [REDACTED] is granted the right to appear before the Examiner at the CIL Examination of the CIL DCS.
- (b) [REDACTED] is notified that the CIL DCS has been submitted to the Examiner (via PINS).
- (c) [REDACTED] is notified of the publication of the recommendations of the Examiner and the reasons for those recommendations.
- (d) [REDACTED] is notified of the approval of the CIL Charging Schedule by the Council and the date for adoption / implementation.

Yours sincerely

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