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Date: 17 April, 2014

CIL Draft Charging Schedule
Planning Policy
Worthing Borough Council
Portland House
44 Richmond Road
Worthing
BN11 1HS

Dear Sirs,

WORTHING BOROUGH COUNCIL, COMMUNITY INFRASTRUCTURE LEVY DRAFT CHARGING SCHEDULE – MARCH 2014

We write further to Worthing's consultation on the Worthing Borough Council Community Infrastructure Levy Draft Charging Schedule dated March 2014.

RPS wish to request the right to be heard by the Draft Charging Schedule examiner at the CIL examination and also request notification of; the draft schedule being submitted to the examiner; the publication of the recommendations of the examiner and the approval of the charging schedule.

RPS wishes to raise the following concerns:

Unrealistic/Unviable CIL levels

The Community Infrastructure Levy, An Overview, dated May 2011 (CLG Overview Note) makes it clear that contributions should not be set at levels which will discourage development. It states at paragraph 23:

“Charging authorities wishing to introduce the levy should propose a rate which does not put at serious risk the overall development of their area. They will need to draw on the infrastructure planning that underpins the development strategy for their area. Charging authorities will use that evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy upon economic viability of development across their area.”

Paragraph 25 goes on to indicate:

“Charging authorities will need to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the imposition of the levy upon economic viability of developments across their area.”

In the current economic climate, it can be very difficult to secure tenants and to fund developments. Setting levy levels which are too high will have a significant impact on the viability of schemes and the potential to secure major investment. Setting a CIL levy of £150 per sqm for retail use will have significant impacts upon the viability of potential retail schemes and the potential to secure major investment in Worthing.

It is essential that the levy rates set are realistic and allow for potential changes in rental incomes, yields and land value. This is particularly an important consideration when considering large retail developments.

A review of the neighbouring and surrounding local authorities has identified that the proposed retail levy of £150 sqm is out of scale with the levy rates being proposed by other local authorities, who have taken a more balanced and realistic approach. In particular for comparison retail floorspace the neighbouring/surrounding local authorities (who have begun work on their charging schedules) have proposed significantly lower levy rates.

Consideration needs to be given to reducing the proposed rate to a more realistic level which will not discourage inward investment into the area. Potential investors and occupiers may have to choose to locate to competing areas with more appropriate and realistic CIL requirements for retail development.

Retail Classifications

It is important that distinctions are made between different forms of retail uses within the charging schedule. Different styles of retail use generate significantly different income and are able to support very different land and rental values. Trading characteristics vary dramatically and turnover per square metre and indeed traffic generation per square metre vary substantially. As a minimum, retail warehousing should be distinguished from food supermarkets as both sectors have very different characteristics.

It is noted within the Community Infrastructure Levy Viability Assessment (October 2013) that a number of sample developments were used for the viability assessment, and the assessment of general retail was based on a 300 sqm roadside retail unit. It is not considered that this represents a fair or robust assessment of the viability of retail floorspace, especially for larger retail units/warehouses which may have considerable warehousing/back up space.

Quantum

The turnover, and indeed, the traffic generation associated with retail units is not directly proportionate to the size of a retail unit. Different operators can have significantly different trading characteristics. Applying contribution rates to some large individual operators could be prohibitive and significantly affect potential viability.

There should be allowances for quantum of development for individual units. A lower rate should be applied over an appropriate threshold, for example, for individual units over 10,000 sqm. This approach is applied in other systems such as rating and indeed planning application fees which make allowances for quantum, recognising that costs to one individual operator can be prohibitive. Consideration should be given to either identifying a cap, i.e. a maximum contribution that can be associated with an individual unit or differing rates should be applied above an agreed threshold.

Applying the proposed levy to larger individual retail operators over 10,000 sqm will result in exceptionally high and unjustified levels of contribution which will significantly influence potential investor's decisions and the viability of Worthing as a location for development.

Car Parking

For the avoidance of doubt ancillary car parking including undercroft and multi-storey car parking should be zero rated and specified within the charging schedule. It would prejudice the best and

efficient use of land if car parking was considered to be included within the GIA of retail or other commercial developments, and would fundamentally impact upon the viability of potential schemes.

An Inspector in his report on the examination of the Draft Barnet Community Infrastructure Levy charging schedule acknowledged that significant areas of car parking within a multi-storey building could generate a contribution which would jeopardise the viability of retail schemes. The Inspector went on to recommend that CIL charges on car parking spaces should be excluded and this change was supported by Barnet Council.

Discretionary Relief for Exceptional Circumstances

It is noted that Worthing does not intend to make discretionary relief available.

Worthing Council should ensure that it makes discretionary relief available for major developments involving substantial on and off site highways works and transport infrastructure improvements.

Regulation 55(1) of the CIL Regulations allows a charging authority to grant relief (relief for exceptional circumstances) from liability to pay CIL in respect of a chargeable development if: (a) it appears to the charging authority that there are exceptional circumstances which justify doing so; and (b) the charging authority considers it expedient to do so.

However, a charging authority may only grant such relief if:

- (a) it has made relief for exceptional circumstances available in its area;
- (b) there is a planning obligation under section 106 of TCPA 1990; and
- (c) the charging authority (i) considers that the cost of complying with the planning obligation is greater than the chargeable amount payable in respect of the chargeable development; and (ii) considers that CIL would have an unacceptable impact on the economic viability of the development

Moreover, paragraph 53 of the CLG's overview document recognises that the levy should not prevent otherwise desirable development from coming forward and discusses that relief can be given in exceptional circumstances. This should be recognised in your authorities' guidance notes. This is particularly so since Regulation 56 of the CIL Regulations requires a charging authority who wishes to make relief for exceptional circumstances available to publish a statement to this effect.

By safeguarding the option of a discretionary relief, Worthing will be able to assess major development on a case by case basis. In particular, we would strongly suggest that Worthing must maintain the flexibility to assess whether a Section 106 agreement would be the more appropriate mechanism than the levy. Obviously, CIL is payable "up front" on the grant of planning permission but, there is no guarantee how or when that levy would be utilised or, indeed, if at all for the chargeable development.

Furthermore, for any major scheme involving major highway and transport infrastructure works, there will obviously be a related Grampian condition attached to the planning permission meaning that those works would need to be completed by the required trigger date. The issue for any developer of a major retail or other development will always be deliverability and the risk that any development would be stifled until the CIL monies have been utilised for the specified development. This would be too large a risk for any developer and would prevent major development from coming forward in Worthing.

Accordingly, we respectfully suggest that for major proposals requiring substantive highway or infrastructure works, discretionary relief should be applied and planning obligations should be used to secure the works by the requisite trigger dates.

By reserving a discretionary relief for such exceptional circumstances in its area, Worthing will ensure that there is flexibility to safeguard potentially beneficial development and ensure that it is not prohibited by the application of CIL either (i) from coming forward in the first place because of the economic viability impact; or (ii) if it does come forward, the development is not stopped in its tracks due to deliverability constraints.

Which Infrastructure Should Be Funded By CIL And Which Should Be Left To Section 106?

As explained above, planning application proposals for 'major' developments can involve substantial on and off site highways works and improvements controlled by Section 106 and 278 Agreements. The proposals often promote the relevant infrastructure which can involve very substantial sums. The Worthing Charging Schedule should therefore recognise and acknowledge that in such circumstances, there will be a relief from the levy and Section 106 agreements will be used instead.

Of course this will also ensure that the local use of the levy and planning obligations do not overlap which, the CLG overview guidance note reiterates is essential (at paragraphs 64 – 66).

Conclusion

Paragraphs 23 and 25 of the CLG overview document emphasise that local authorities have to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the imposition of the levy upon economic viability.

It is believed that if a very high flat rate is applied to development for larger individual retail operators, it will have a significant impact upon the potential viability of proposals putting the development at risk and will prevent economic development coming forward.

Yours faithfully,



KAREN CALKIN
Planning Associate