

Planning Department  
Mid Devon District Council  
Phoenix House  
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EX16 0SG

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Dear Teresa

### **Mid Devon District Council's CIL**

We write in response to the three individual papers prepared by Mid Devon District Council prepared following the recent examination and the questions raised by attendees and the Examiner on behalf of Devonshire Homes.

#### **Statement on the future role of affordable rent housing**

Our comment on this paper is focussed on the link, or lack of, between the viability evidence underpinning the CIL charge and adopted development plan policy.

The NPPF is clear in that, in planning for housing, that the plan making function should be *'based on adequate, up to date and relevant evidence about the economic, social and environmental characteristics and prospects of the area'*. The LPA has a number of adopted development plan document that relate back to evidence. One of these is the 'Meeting Housing Needs' SPD adopted in June 2012. Policy MHN/1 refers back to its 'parent policy' in the Allocations and Infrastructure DPD (AL/DE/2), which requires 2,000 affordable units to be provided between 2006 and 2026 *'of which about 60% should be social rented and 40% intermediate'*. Supporting text states that a higher proportion (70%) of social rented can be supported by evidence. Paragraph 8 of the SPD clearly states that affordable rent provision is a subset of the 40% intermediate housing element of the tenure split.

Paragraph 10 of the 2010 CLG guidance on CIL charge setting states that *'in considering whether the overall development of the area has been put at risk, the examiner will want to consider the implications for the priorities that the authority has identified in its development plan (for example, planned targets for housing supply and affordable housing (my emphasis))'*. The paragraph goes on to advise the examiner that his or her consideration should relate to the risk posed by imposition of the proposed CIL rate. What is clear from the examination is that the imposition of the proposed £90/sq m CIL rate will seriously undermine delivery of affordable housing.

Even when the LPA was asked to rework the viability exercise imposing a policy compliant affordable housing provision, they were unable to. Instead, the £40/sq m rate that was found to be just viable, except for in Crediton, was based on the correct policy compliant percentage, but not on the policy compliant tenure split. The £40/sq m rate is, based on the LPA's own evidence, is too high, when taking policy requirements into account. Our concern is that the policy requirement will remain, regardless of the convenient viability evidence, as will a CIL rate based on a lower affordable provision, thus impacting negatively on delivery of development further. The clear inference from the LPA's paper on the impact of the 35% affordable housing provision on the CIL rate is that a charge of £90/sq m will seriously undermine delivery of a corporate priority of the Council, that is, affordable housing. The further paper on the assumption regarding affordable rent puts another nail in the coffin of the unsustainable, untenable and unrealistic CIL charge of £90/sq m. Guidance on charge setting is clear; it is not for CIL to open up the debate on previously adopted development plan policy. It therefore follows that any assumptions in evidence underpinning the CIL charge should accord with the relevant development plan policy. It is insufficient for the LPA to draw attention to their discretion in development management decision making; this is understood and accepted. The CIL guidance does not however offer scope for a similar level of discretion in the interpretation of development plan policy; in fact, it states the opposite.

The responses from the various RPs in the paper are relevant insofar as they are in response to a question. We have not been informed what this question was and there is a distinct possibility that it could have been verging on one that is 'leading'. The evidence presented in the further paper on affordable rent should be discounted as it tells the examination next to nothing. The relevance of the SPD (adopted less than six months ago) is ignored by the paper, something which CIL guidance states should not occur.

The entire framework supporting the CIL charging schedule cannot be relied upon and needs urgent review before CIL can be imposed upon development in the plan area. The charging schedule must therefore be found unsound.

### **Infrastructure Priority List**

Our question to the LPA at the examination related to the amount of infrastructure that the LPA considered 'critical' for delivery of the levels of growth expected by adopted development plan policy. The need for this, in our view, was that the LPA were reluctant to contemplate a reduction in the CIL charge because of the increase in the funding gap. Paragraph 2.8 of the charging schedule infers that a funding gap of £25m is acceptable.

The basis for our query was whether, given the acceptance of a funding gap of a certain quantum, if the infrastructure required (as critical) is reduced, the charge may reduce on a proportionate basis

leaving what the LPA considers is an acceptable funding gap of £25m. The submitted infrastructure priority list does not address the question asked at the examination; this question remains hanging and unanswered. In this instance, however, this is a minor deficiency when compared with the other fundamental flaws as set out elsewhere and by others.

Reference to the Tiverton Eastern Urban Extension is telling. The 'funding estimate' of £20m is subject to a note, which states that '*other funding sources (are) being sought. May be development or CIL funded*'. This partially relates back to the issue raised by PCL planning on the lack of a regulation 123 list. The priority list relates to infrastructure which will be paid for by CIL and justifies the proposed CIL rate, yet this note infers that some may be funded via s106 contributions. This uncertainty is unacceptable; there should be absolute clarity on what is delivered via CIL payments and what is distinctly sought via s106.

### **Statement on the role of section 106 and CIL in paying for infrastructure**

We are aware of the contents of the letter submitted by PCL Planning and it is unnecessary to repeat its contents here. It is suffice to say, however, that we agree with its contents and its conclusion.

Paragraph 2 of statement states that the intention of CIL, in replacing s106 agreements, is to have a '*predictable (my emphasis) levy system*'; we concur, this predictability will be a key benefit of a charging regime where there is certainty on what will be paid by way of CIL and what will be paid by way of site specific s106 contributions. This predictability is, however, and unfortunately, notable in its absence.

Paragraph 3 of the statement refers to the 'forthcoming' 123 list. The fact that it is forthcoming two weeks after the examination is unacceptable. It is impossible for the Examiner to make an objective judgement on the acceptability of the CIL charge in the absence of the 123 list, which specifies the limitations on the use of planning obligations. This 'unknown' is significant and the charging schedule cannot be found sound without complete clarity on the matter.

### **Sales values**

We refer to the collated sales data submitted by PCL Planning. The Moorhayes information was provided by our client, Devonshire Homes, and it is intended as being helpful to the Examiner to have all the relevant data from three sources (Persimmon, David Wilson and Devonshire Homes) in one document. We have nothing to add, other than to note that the information is a statement of fact and shows that the sales values achieved is below the assumption in the LPA's viability evidence.

In conclusion, there are many detailed reasons why the charging schedule should be amended downwards, which I will not rehearse here, but there are also many reasons why the charging

schedule should be withdrawn and reworked before it is able to provide a sensible basis for collecting monies to pay for infrastructure in Mid Devon.

Yours sincerely

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