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Dear Ms Davey

Mid Devon CIL Examination

Further to the submission of the additional documents by the Council we have the following comments to make.

Clarification on proportions of Social and Affordable Rent Housing

We have no specific comments to make on this issue, but support the detail found in the Jillings Hutton letter dated 7th December 2012.

Statements on "The roles of Section 106 and CIL in Paying for Infrastructure" and "Updated Infrastructure Priority List"

It is apparent that the Council have not taken on board any of the written (or oral) evidence that has been presented on this matter and that they continue to display a profound ignorance of the actual prescriptions of the CIL regulations. Their latest paper on S106/CIL contains a number of factually incorrect statements. In particular the following are fundamental and need to be commented upon.

Issue 1

> *"in compiling the necessary legislation to implement the levy the Government recognised that some elements of funding would be specifically related to on-site requirements and these were excluded from the levy regulations via section 123."* (paragraph 2, my emphasis)
>
> and
>
> *"Once the 123 list is in place Section 106 planning obligations and unilateral undertakings will be restricted in scope to matters which are not included on the list, and to on site provisions."* (paragraph 3, my underlining)

Regulation 123 itself makes no distinction whatsoever between on site and off site obligations. It's effect is to impose a blanket ban upon a Council requiring planning obligations (subject to a limit of 5 obligations) *"to the extent that the obligation provides for the funding or provision of relevant infrastructure"* [Regulation 123, (2)] i.e. that the Council cannot seek funding or provision of relevant infrastructure from the date that the charging schedule takes effect [or 06/04/2014, whichever is the earlier – see definition of 'relevant determination' Regulation 123 (4)].

Relevant infrastructure is also defined in Regulation 123 (4) as:

(a) *"where a charging authority has published on its website a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly are partially funded by CIL, those infrastructure projects or types of infrastructure, or*

(b) *where no such list has been published, any infrastructure"* (my underlining)

Thus, where no such list is published (as is the case in Mid Devon), then the Council cannot seek provision of, or funding towards, any infrastructure upon adoption of the charging schedule.

The definition of infrastructure is set out at Regulation 2 as:

"'infrastructure' has the meaning given in section 216(2) of PA 2008 as amended by regulation 63"

PA 2008 216(2), as amended by regulation 63, states:

"'infrastructure' includes-
- *(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 spaces."*

Thus it is plain that upon adoption of the CIL charging schedule the Council will be embargoed from seeking any S106 contributions to any of the above matters, whether on or off site.

However, there is no restriction imposed upon securing the provision of infrastructure via the imposition of lawful conditions and on site infrastructure

could still be required to be provided in this way, and developments would still need to meet the cost of compliance with any such conditions (such as the provision of a toddlers play area, or a new access).

Issue 2

It is clearly the Council's intent to introduce a regulation 123 list in the future (see paragraph 3) and that *"Changes such as this will lead to corresponding changes in the Council's Section 123 list which can be updated at any time."* (paragraph 5).

It is also plain that that the Council will seek to require developers to provide new infrastructure

> *"In relation to children's play areas for example provision on site will be expected for larger developments. In relation to the larger sites areas of informal recreation will be included as well as children's play areas. Other on-site characteristics will vary and can include matters as SUDS or biodiversity provisions"* (paragraph 6)

It is therefore plain that, whether via condition, or by varying the regulation 123 list, the Council are intent seeking to secure infrastructure provision on site and we do not accept that the Council's assertion that:

> *"the on-site provision of infrastructure will generally not involve significant levels of expenditure"*

evidence demonstrates that such levels are likely to be significantly higher that the Council estimate, or have allowed for in their appraisals.

The Council are simply being obtuse with stating that:

> *"It is therefore not possible to give a precise definition of what will not be covered in continuing on-site Section 106 costs after the introduction of CIL."*

Rather they are seeking to 'have their cake and eat it' – they are seeking to introduce CIL on that basis of 'low cost' appraisal – and then to increase S106 costs via the introduction of a regulation 123 list that will remove some items from the PA 2008 definition of infrastructure.

The intent of the Council is plainly set out. Our evidence to the examination is based upon the lack of a regulation 123 list. If such a list is introduced that increases the S106 'burden' (as the Council plainly intend to do) then this will simply reduce scheme viability further than the level examined.

Issue 3

At paragraph 8 the Council fall into possibly their most fundamental breach of the CIL regulations. They confirm that *"the two urban extension sites"* are *"exceptions"*. This cannot be the case. These two sites (AL/TIV/1) and (AL/CU/1) comprise a total of 3,100 dwellings out of a total of 5,134 dwellings that are allocated – some 60% of the total dwellings allocated over the plan period. If 60% of the site allocations need to be treated as "an exception" then this must say something about the "general rule".

The evidence that the Council has submitted to the CIL examination has taken a 'two tier' approach to analysing S106 costs – the viability evidence that the Council has submitted makes an allowance for some S106 costs, except in relation to the two urban extension sites. Thus the actual S106 costs associated with the two urban extension sites have been omitted from the appraisals that the Council have submitted. Thus the viability evidence that the Council has submitted for both of these sites has ignored significant actual costs that will need to be incurred before any occupation takes place.

The Council's confusion on this matter is all to apparent when one examines the submitted *"Infrastructure Priority List (as agreed with DCC – November 2012)"* which appears to have a new item included as the highest priority (namely Tiverton Eastern Urban Extension) that was not included on either of the tables that comprised part of the *"Priority List (April 2010)"* that was circulated by the Council during the hearing. This latest change belies the Council's approach – to switch cost items between S106 and CIL as circumstances suit. The importance of this 'emerging practice' should not be underestimated (for example - the Tiverton Eastern Urban Extension Access is a £20 million movement (the Council's **Note plainly seeks to 'keep open' the S106 funding route for this infrastructure).

However, such an approach cannot work. 'Exceptional circumstances' has a precise meaning in terms of CIL regulation (see regulation 55 – 57). For the Council to make any exception it must *"begin accepting claims for relief for exceptional circumstances"* [regulation 56(1)] i.e. to make any exception the Council must invite claims to be submitted *"in its area"*. It is plain that this procedure is area wide, not site specific, and that the Council has no control over which claims may be submitted (and which may not) across its area during any 'exceptional circumstances' period [which can be ceased via the procedure set out in regulation 56 (2)].

The Council appear to be suffering under a misapprehension that for those sites which, on their analysis, appear to be non-viable (the urban extension

sites at Tiverton and Cullompton) they can make 'CIL exemptions', for these sites, in due course. This cannot be correct on three grounds:

- Firstly CIL is not meant to be site specific (see paragraph 38, CIL Guidance)

- Secondly 3,100 dwellings cannot be an 'exception' to a residential CIL charge. The 60% majority must be the 'rule' and the conclusion drawn that the 'rule' must be incorrect.

- Thirdly the proposed practice of 'switching' items between CIL and S106 via producing (and amending) a regulation 123 list is plainly unacceptable. Such a practice would circumvent the CIL examination (which must examine the evidence before it which does not include a regulation 123 list), and prejudice the subsequent implementation of CIL.

Sales Values

We note that the Council have been given an extension of time to produce evidence to substantiate the sales values used in their appraisal work. The fact that further time is necessary belies the lack of rigorous analysis of this matter in the first place (as opposed to assumptions based on extremely limited research).

The Council's over estimation of sales values is a fact, as the attached spreadsheet (Appendix 1) of actual achieved values demonstrates. We trust that the information that the Council produces in due course will confirm the actual sales values that have been recorded by the developers of the three sites that have been agreed as the basis for assessment. In our view, bearing in mind the spatial distribution of development enshrined in the development plan the utilisation of an achievable sales figure in excess of £200/Square Foot would result in setting a charge which is on the margin of viability, particularly bearing in mind that sales values in Crediton have historically been below those achieved in Tiverton or Cullompton.

Conclusions

I trust that the above response demonstrates that the Council have failed to properly comprehend the CIL regulations. It is unfortunate that their approach is confused and unable to be implemented in practice (in accordance with the provisions of the CIL regulations). Where the regulations would allow some flexibility (the production of a regulation 123 list) the Council's proposed practice seeks to circumvent the actual costs of development at the time examination (for 3,100 new dwellings) and then to potentially re-introduce

such costs later. This approach is untenable and would clearly harm deliverability of the majority of development across the area. Any sound approach must be to ensure that the evidence presented to the examination accords with the legal position that will be introduced upon adoption of the charging schedule, not on a (yet to be defined) new position that may be set by the future publication of a regulation 123 list.

Finally, irrespective of the above conclusion the factual information shows that the Council have over estimated achievable sales income in their appraisal work. It is our evidence that they have also underestimated some costs other than those discussed in this letter (and those underestimates are set out in out evidence). In our opinion it is plain that the evidence demonstrates that the Council are seeking to set a charge right up to the margin of economic viability (and beyond) across the majority of new homes in their area, contrary to the advice set out at paragraph 29 of the CIL guidance. Bearing this in mind we conclude that:

- the charging authority's draft charging schedule is not supported by background documents containing appropriate available evidence
- the proposed rate has not been informed by and is not consistent with, the evidence on economic viability across the charging authority's area
- the evidence that has been provided shows that the proposed rate would put at serious risk the overall development of the area

and we therefore invite the Inspector to find the Council's proposed charging schedule unsound.

Kind Regards

David Seaton, BA(Hons) MRTPI
For PCL Planning Ltd

Appendix 1 - Compilation of Achieved Sales Data
Source: Site Developers

	Floor Area	Sales Income Achieved	£/SQFT
	Devonshire Homes - Tiverton		
Devonshire Homes	896	£ 184,950.00	£ 206.42
	647	£ 129,950.00	£ 200.85
	647	£ 115,000.00	£ 177.74
	647	£ 120,000.00	£ 185.47
	647	£ 124,950.00	£ 193.12
	809	£ 155,000.00	£ 191.59
	672	£ 152,950.00	£ 227.60
	672	£ 152,950.00	£ 227.60
	672	£ 152,950.00	£ 227.60
	896	£ 182,500.00	£ 203.68
	809	£ 179,950.00	£ 222.44
	809	£ 177,500.00	£ 219.41
	701	£ 149,950.00	£ 213.91
	896	£ 182,500.00	£ 203.68
	672	£ 140,000.00	£ 208.33
	672	£ 140,000.00	£ 208.33
	672	£ 140,000.00	£ 208.33
	672	£ 140,000.00	£ 208.33
	809	£ 174,950.00	£ 216.25
	896	£ 175,000.00	£ 195.31
	896	£ 183,000.00	£ 204.24
	701	£ 137,000.00	£ 195.44
	959	£ 217,500.00	£ 226.80
	672	£ 155,000.00	£ 230.65
Totals	**18,041**	**£ 3,763,550.00**	**£ 5,003.12**
Average	**784**	**£ 163,632.61**	**£ 217.53**

	Barratt Homes - Cullompton		
BARRATT HOMES built around you	1,190	£ 202,869.00	£ 170.00
	1,190	£ 202,869.00	£ 170.00
	1,190	£ 202,869.00	£ 170.00
	1,001	£ 217,000.00	£ 217.00
	1,308	£ 280,000.00	£ 214.00
	1,008	£ 191,995.00	£ 190.00
	1,001	£ 205,975.00	£ 206.00
	1,008	£ 207,855.00	£ 206.00
	1,190	£ 203,860.00	£ 171.00
	1,190	£ 186,515.00	£ 157.00
	1,190	£ 209,707.00	£ 176.00
	704	£ 145,956.00	£ 207.00
	1,001	£ 211,180.00	£ 211.00
	1,001	£ 202,189.00	£ 202.00
	1,308	£ 261,690.00	£ 200.00
	1,001	£ 229,883.00	£ 230.00
	1,001	£ 223,025.00	£ 223.00
	1,308	£ 240,300.00	£ 184.00
	1,308	£ 249,685.00	£ 191.00
	1,308	£ 273,080.00	£ 209.00
	1,308	£ 249,685.00	£ 191.00
	1,374	£ 269,950.00	£ 196.00
	1,001	£ 210,390.00	£ 210.00
	1,308	£ 254,886.00	£ 195.00
	1,190	£ 213,505.00	£ 179.00
	1,190	£ 205,075.00	£ 172.00
	1,374	£ 261,638.00	£ 190.00
	1,001	£ 208,076.00	£ 208.00
	1,374	£ 273,197.00	£ 199.00
	1,374	£ 276,348.00	£ 201.00
	1,001	£ 223,675.00	£ 223.00
Totals	**35,901**	**£ 6,994,927.00**	**£ 6,068.00**
Average	**1,197**	**£ 233,164.23**	**£ 202.27**

	Persimmon Homes - Cullompton		
PERSIMMON Together, we make a home	1,443	£ 249,995.00	£ 173.25
	1,228	£ 225,484.00	£ 183.62
	969	£ 194,995.00	£ 201.23
	950	£ 204,000.00	£ 214.74
	950	£ 204,700.00	£ 215.47
	800	£ 158,000.00	£ 197.50
	800	£ 153,995.00	£ 192.49
	720	£ 135,995.00	£ 188.88
	720	£ 136,000.00	£ 188.89
	720	£ 135,995.00	£ 188.88
Totals	9,300	£ 1,799,159.00	£ 1,944.95
Average	930	£ 179,915.90	£ 194.50

Overall Totals	**63,242**	**£ 12,557,636.00**	**£ 13,016.07**
Overall Average	**21,081**	**£ 4,185,878.67**	**£ 204.76**