

**WINCHESTER CITY COUNCIL
COMMUNITY INFRASTRUCTURE LEVY**

On behalf of Housebuilders' Consortium

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1.0 Introduction

1.1 This Representation has been prepared by Savills on behalf of a Housebuilders' Consortium comprising:

- Bloor Homes
- Hazeley Developments
- McCarthy & Stone
- Persimmon Homes

Hereafter known as 'the Consortium'.

1.2 This representation has been submitted to influence the emerging Community Infrastructure Levy (CIL) Charging Schedule proposed by Winchester City Council (WCC). The representation is made in respect of the Preliminary Draft Charging Schedule placed for public consultation in December 2012. The Consortium's particular comments relate to the need for the Council to clearly identify the appraisal inputs which define the CIL rates proposed and the need for greater clarity in respect of the mechanisms for delivery of the infrastructure funding gap (CIL, S106 etc) as per the tests outlined by the very recent Government CIL guidance (i.e. a draft 'Regulation 123 list').

1.3 The Consortium has various land holdings across the District, all of 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 the Consortium, as should the National Planning Policy Framework (NPPF) requirement for a deliverable five year land supply be to WCC.

1.4 This report has been prepared to highlight the need for clear and robust viability evidence produced by WCC and also the need to set out the mechanisms for the delivery of the infrastructure as identified in the Council's Infrastructure Delivery Plan. Comments are also provided on CIL mechanisms including relief, instalments and review.

1.5 The Consortium is aware that the Council's Local Plan has recently been examined and the Inspector's report is due shortly. In accordance with the Community Infrastructure Levy Regulations (2010) (as amended) and the CIL Guidance (2010), an Authority is required to base its CIL on an up to date development plan (i.e. adopted) and it is therefore recommended that the Local Plan be found sound before the Council's CIL Charging Schedule is put forward to Examination to ensure it has been based on robust and up to date evidence.

1.6 The Consortium provides comment on the following:

- Winchester City Council Preliminary Draft Charging Schedule (December 2012)
- Winchester City Council Residential Viability Report (November 2012)

- Winchester City Council Non Residential Viability Report (November 2012)
- Infrastructure Delivery Plan Interim Update (November 2012)

1.7 In setting the rate of CIL, Regulation 14(1) of the 2010 Community Infrastructure Levy, England and Wales Regulations (as amended) (No. 948) states 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”**. 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. The Government provides further guidance on the meaning of the appropriate balance at paragraph 8 of the recent CIL Guidance (December 2012), this states:

“By providing additional infrastructure to support development of an area, the levy is expected to have a positive economic effect on development across an area. In deciding the rate(s) of the levy for inclusion in its draft charging schedule, a key consideration is the balance between securing additional investment for infrastructure to support development and the potential economic effect of imposing the levy upon development across their area. The Community Infrastructure Levy regulations place this balance of considerations at the centre of the charge-setting process. In meeting the requirements of regulation 14(1), charging authorities should show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant Plan and support the development of their area. As set out in the National Planning Policy Framework in England, the ability to develop viably the sites and the scale of development identified in the Local Plan should not be threatened”.

1.8 Likewise, the purpose of CIL must be to positively fund the infrastructure required to enable growth. This is clearly outlined by Regulation 59(1) which states **“A charging authority must apply CIL to funding infrastructure to support the development of its area”**. Section 216 of the Planning Act 2008 (as amended by section 115 of the Localism Act 2011) states that **“CIL regulations must require the authority that charges CIL to apply it, or cause it to be applied, to supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure”** and 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,**
- **(f) open spaces, and**

- ***(g) affordable housing (being social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008 (c. 17) and such other housing as CIL regulations may specify)***

- 1.9 There is a requirement under Regulation 123 to provide a list of “**relevant infrastructure**” to be wholly or partly funded by CIL. It is also possible also under Regulation 60(1) for CIL to be used to reimburse expenditure already incurred on infrastructure, a tool which could have useful implications.
- 1.10 The Consortium therefore considers that it is imperative that the evidence supporting CIL outlines an up to date, consistent and well informed evidence base of economic viability in order to test realistic scenarios against CIL rates.
- 1.11 Although the Consortium understands the Council has an emerging Local Plan which is at an advanced stage and identifies strategic sites and overall housing numbers, it is not clear what appraisals inputs have been used to derive the CIL levels proposed.
- 1.12 Given the focus of CIL as being supportive of development, it is important that the test of viability considers those sites/ areas which are central to the delivery of the Council’s development vision (the emerging Local Plan). It would not be acceptable to simply dismiss some sites as being rendered unviable purely because some are considered to be viable without due consideration of wider planning and corporate objectives of the Council. There needs to be a reasonable ‘viability buffer’ so that development at the margins is not unduly prejudiced.

Relationship with Section 106 Planning Obligations

- 1.13 It is also imperative that throughout the preparation of CIL that due regard is had for CIL Regulation 122 that states 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’***
- 1.14 The power to seek Section 106 contributions remains under CIL. The Council has identified an infrastructure funding gap. However there are minor discrepancies in the figure between the Preliminary Draft CIL Charging Schedule which outlines a funding gap of £122m and the IDP Interim Report which identifies an infrastructure funding gap of £125m. The Consortium requires confirmation of the correct figure and clarity in respect of the mechanisms for delivery (CIL, S106 etc) as per the tests outlined by the recent Government CIL guidance (i.e. a draft Regulation 123 List).

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, CLG Community Infrastructure Levy Guidance (December 2012), the CLG Community Infrastructure Levy – an Overview (May 2011), CLG Community Infrastructure Levy Relief (May 2011), the 2008 Planning Act and CIL Regulations 2010 (as amended 2011 and 2012). 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. The Consortium comments are based on these publications and the Regulations.
- 2.2 The National Planning Policy Framework (NPPF) is clear on the requirement that the planning system **“does everything it can to support sustainable economic growth”** (paragraph 19). Further, paragraph 173 makes clear the fundamental principle of ensuring development viability is not constrained by burdens of obligations or policy, and with regard to CIL the NPPF specifically states that CIL **“should support and incentivise new development”** (paragraph 175). Paragraph 173 is clear that a relevant planning consideration is the **“competitive returns”** to a willing land owner and developer to enable development to be deliverable. In order for the plan to be deliverable it must be flexible and responsive to changing economic cycles or circumstances (paragraph 174) and owing to this the rate of CIL must be ascertained based on a viability buffer and not at the margins. The inputs to the viability appraisal methodology are important in that regard.
- 2.3 The steer from Central Government is very much angled towards facilitating development, which should have a major material bearing on the preparation of CIL and the balance applied when considering Regulation 14(1).
- 2.4 The Government has also confirmed through Community Infrastructure Levy Guidance (December 2012) on the preparation of CIL, notably:
- The need for balance (as per Regulation 14)
 - The need for *‘appropriate available evidence to inform the draft Charging Schedule’* (as per Schedule 212(4) (b) of the 2008 Act)
 - The need to explain, at Examination, how CIL and S106 will operate when a CIL has been adopted
- 2.5 The Guidance states at paragraph 8 that **“CIL is expected to have a positive economic effect on development across an area”**. 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; it does however seem obvious that a large degree of discretion is being afforded to the Council in making this judgement.

- 2.6 The Guidance also makes clear the evidently narrow focus of the CIL Examination process permitted by the Regulations. Paragraph 9 states: “***The Independent Examiner should establish that:***
- ***The charging authority has complied with the requirements set out in Part 11 of the Planning Act 2008 and the CIL Regulations;***
 - ***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.”***
- 2.7 This representation outlines recommendations for the viability appraisals (Section 5).
- 2.8 In conclusion to this representation the Consortium comments on how the proposed approach to CIL should be clarified so that it meets the forthcoming tests of Examination.

Supporting Documentation

- 2.9 Despite the narrow Regulatory requirements of the Examination, the Consortium urges the Council to make clear at an early stage the supporting documentation needed to operate CIL and to make it available for input/ comment. Practically, this needs to be done prior to the publication of the next stage Draft Charging Schedule for Examination. Whilst this supporting information is not tested at Examination, this information is critical to allow for the successful implementation of CIL, notably buy-in from key stakeholders, including the Consortium. The CLG CIL Guidance clearly outlines the importance of developers to the formation of CIL charging schedule (paragraph 49).
- 2.10 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 (based on a consideration for build out rates).
 - 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.

- 2.11 The Consortium notes that a number of matters related to the implementation of CIL provided by the Regulations are optional. The Consortium strongly suggests that the Council permits the maximum possible flexibility available, otherwise it places at risk the successful delivery of the proposed Local Plan.

3.0 Planning & Infrastructure Delivery

- 3.1 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 Government has recently published revised Guidance on CIL (December 2012). The CIL Guidance 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”** (Paragraph 23). This is reiterated at paragraph 9 of the CIL Guidance which requires examiners to establish that the **“proposed rate would not threaten delivery of the relevant Plan as a whole.”** 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 that CIL alone will not be able to fund the predicted circa £122 million gap that is said to be required for infrastructure. 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.
- 3.2 The revised CIL Guidance is welcome in that it specifically requires charging authorities to identify the total cost of infrastructure it desires to be funded in whole or in part by the levy (infrastructure funding gap). In order to do this the charging authority must consider what additional infrastructure is needed in its area to support development (paragraph 12). The process of demonstrating this should also identify a CIL **“infrastructure funding target”** (paragraph 14). Paragraph 15 requires charging authorities to set out a draft list of the projects or types of infrastructure that are to be funded in whole or in part by the levy. The Council’s ‘target’ is not presently clear as it is not explicitly stated, and whilst it is appreciated that WCC could not have foreseen the revised Government Guidance, it is clearly now the case that a draft ‘Regulation 123 list’ needs to be made available.
- 3.3 The Consortium does not dispute the fact that an infrastructure funding gap likely exists, and hence that in principle CIL is justified. The Preliminary Draft Charging Schedule identifies a funding gap of £122m whereas the IDP Interim Report identifies a gap of £125m. Clarity on the correct figure is requested. In addition it is considered that the supporting evidence should clearly identify not only the alternative funding sources (e.g. New Homes Bonus, Government Grants) but should also set out an appropriate balance for infrastructure priorities (paragraphs 12 - 14 of the CIL Guidance make this clear). It also needs to be made clear through a Regulation 123 list what CIL will fund and how the remainder of the infrastructure requirements will be funded, i.e. S106. The Council appears to have this evidence in its IDP. It will also be critical to ensure that S106 costs, either with or without CIL, are not too high as to render schemes unviable (Paragraphs 9 and 23 of the Guidance on CIL (December 2012)).
- 3.4 The objectives of CIL are fundamentally to assist with the delivery of developments as CIL receipts are used toward the funding of new major infrastructure (as per CIL Regulation 59(1)). 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 (2010 as amended 2011 and 2012) to borrow money to 'forward fund' infrastructure delivery (see CIL – An Overview paragraphs 17 and 18). Our clients would be supportive of the necessary investment to 'unlock' and assist with development delivery.

- 3.5 This highlights the need for CIL to be worked up alongside the key infrastructure decisions of the Local Plan, which is signalled by the National Planning Policy Framework (NPPF).
- 3.6 The Infrastructure Delivery Plan (IDP) does outline the projects/ infrastructure for which CIL will be collected which will assist with focussing spending proprieties. It also identifies that infrastructure which will be funded by S106. It however still needs to be ensured that the Council has a clear Regulation 123 list and that there is a clear link between the infrastructure requirements in the plan, the infrastructure evidence and the draft CIL spending list (Reg 123).

Relationship with Section 106 and Section 278 Contributions

- 3.7 Site specific Section 106 and Section 278 contributions will still likely be required post CIL adoption, this is now recognised by the Government as outlined in the updated Guidance (notably paragraphs 84 - 91) as well as increased costs associated with Code for Sustainable Homes Level 4 requirements and future requirements for Level 5 towards zero carbon (as per paragraph 29 of the CIL Guidance).

Emerging Local Plan

- 3.8 The Council has prepared a Local Plan which has been through various stages of consultation and was submitted for Examination which took place in October and November 2012. The Community Infrastructure Regulations (2010) (as amended) and the CIL Guidance (2010) requires Authorities to base CIL on an up to date development plan (i.e. adopted). Paragraph 11 of the CIL Guidance states that the ***“Government expects that charging authorities will implement the levy where their ‘appropriate evidence’ includes an up-to-date relevant Plan.”*** The thrust of the CIL Guidance at paragraphs 84 - 91 is clearly towards the preparation of up to date evidence of CIL (verses Section 106) to proactively inform the key infrastructure delivery decisions. It is therefore recommended that the outcome of the emerging Local Plan be determined before the Council's CIL Charging Schedule is put forward to Examination to ensure it has been based on robust and up to date evidence. If changes are required to the Local Plan or it is found unsound, the Council would be prudent to await revisions and final adoption before progressing its CIL Charging Schedule. This will ensure that the planned level of growth and key policy requirements would be fully known. This allows robust decisions to be made on priorities for the infrastructure required to support the planned growth and those factors that are central or critical to the delivery of the plan.

Payments in kind / Bespoke CIL Rule

- 3.9 CIL Regulation 73(1) permits the payment of land in lieu of CIL. This is an interesting tool which could be proactively interpreted where the land in question is provided for infrastructure, for example for transport provision or open space. The Preliminary Draft Charging Schedule mentions this mechanism however it is silent on the Council's approach to this.
- 3.10 The emerging Local Plan acknowledges that there will be releases of land on the edge of the main settlements (Winchester and the larger settlements). These sites, some of which are identified in the IDP, may need to deliver site specific measures, for example:
- Community buildings (i.e. Schools, Health, Community Halls)
 - Play areas/ Open spaces
 - Site accesses
 - Roads
- 3.11 It would not be appropriate for these facilities to be provided to only effectively then 'pay double' through the imposition of additional CIL charges (this is clearly contrary to the CIL Guidance – paragraph 85, as it would potentially be contrary to both Regulations 122/ 123). An effective 'land in lieu of CIL' mechanism is essential, otherwise development could incur disproportionate and unjustified infrastructure costs. This would need to permit developers to offer land either as payment or to take into account the value of land which is retained for the use of infrastructure. It is acknowledged the Council is proposing bespoke CIL rates for the larger strategic sites and the IDP identifies that the majority of infrastructure for these is to be delivered via Section 106. This approach is supported by government guidance notably paragraphs 27, 29 and 34 of the CIL Guidance. As mentioned the Council needs to be clear what CIL will fund through a Regulation 123 List particularly as there may be concern that CIL may be used to fund site specific measures for the strategic sites. It is also key that the Council provides the background evidence and viability justification for the rates proposed.
- 3.12 Proposing differential CIL rates for specific areas alongside implementing a mechanism for payments in kind will aid in providing greater plan effectiveness and flexibility and the Consortium recommends both these mechanisms be adopted by the Council.

Retrospective Infrastructure

- 3.13 It is also important to note that CIL monies can be effectively used retrospectively towards infrastructure already committed (Regulation 60(1)). Our clients suggest that the Council outlines clear 'ground rules' for the application of this, as the purpose of CIL is to support new development (i.e. be forward looking). There may however, be instances whereby development which is committed in planning terms (i.e. consented) would benefit from timely delivery of infrastructure

improvements which could be commenced as capital spend in the short run against the predicted future CIL receipts. The Preliminary Draft Charging Schedule is absent on details of retrospective funding measures and the Consortium urges consideration of this in forming the Draft Charging Schedule.

4.0 Effective Operation of CIL

Geography

- 4.1 The geography of the planned development is an important consideration in setting CIL rates. It is noted that the Council proposes differential charging rates based on geography/ site allocation location. As outlined the recent Government Guidance on CIL is positive about this approach. It must however be ensured that the Council has a robust evidence base for the rates proposed including appraisal inputs. In addition it must be ensured the Council has a Regulation 123 List to identify the infrastructure required to be paid for by CIL and that there is not an unreasonable burden on other developments to fund strategic sites if there is a funding gap.
- 4.2 In formulating the Regulation 123 List, the focused set of infrastructure priorities will likely have to fund some strategic improvements owing to the importance in delivering the wider Local Plan objectives. These objectives will need to be balanced against the ‘meaningful proportion’ required back to the local community as per the Localism Act and NPPF Paragraph 175 (25% for those areas with Neighbourhood Plans). The District/ County Council split in CIL receipts (80%:20%) should also be factored. Paragraph 48 of the CIL Guidance states that **“Collaboration with County Councils is important, not only in setting the levy rate (or rates), but also in agreeing priorities for how the levy will be spent in two-tier areas, where they are responsible for delivery of key strategic infrastructure. Where possible, priorities for spending the levy should take account of County Councils’ infrastructure spending priorities in the light of the aggregate funding gap and other infrastructure funding sources”**.

Payment of CIL – Instalment policy

- 4.3 With regard to the payment of CIL, Regulations (69B(1)) and CIL – An Overview (paragraphs 45 - 48) are clear that the charging authority has the flexibility to request the timing of the charge and hence to outline the payment procedure. This flexibility extends to:
- Levy payment deadlines
 - Instalments policy
- 4.4 With regard to the phasing of CIL payments, paragraph 9.1 of the Preliminary Draft Charging Schedule states that the CIL Regulations do allow authorities to adopt an instalment policy. However it goes on to state that the Council does not need to state its intention to adopt an instalments policy until the CIL Charging Schedule is adopted. The Consortium strongly recommends that the Council does fully consider the approach to payment of CIL prior to its implementation so all parties are clear on when payment will be required and the level of this.

- 4.5 The phasing of CIL payments should be aligned with the usual phasing for payment of Section 106 contributions. Large amounts of capital sums are not available so early on in a development and could impact on the viability and deliverability of schemes. Many sites, particularly the larger ones, are built according to a phasing strategy and it may therefore be appropriate to define a threshold where a bespoke payment method for CIL will be agreed with the Council through the application process.
- 4.6 Any instalment policy should cover the following:
- The commencement of the instalment policy on adoption of CIL
 - The number of instalments that can be made by development size
 - The timings of payments post commencement – based on timeframes which have regard to availability of capital and average build rates
 - The minimum development threshold which instalments would not apply (it is suggested that this be set as low as possible)
- 4.7 As highlighted developers only have access to certain levels of funding throughout the construction process and this is often dependant on sale volumes, market conditions and lending criteria. The benefit of the Section 106 system (as was), was the ability to negotiate phasing of payments and if necessary renegotiate via a deed of variation. The imposition of CIL, particularly without an instalments policy, effectively removes this flexibility.
- 4.8 The timing of CIL payments is therefore of critical importance, particularly as the definition of chargeable development (Regulation 9) makes it clear that in instances of full planning approval the chargeable development is that entirely consented. Whilst Regulation 9(4) effectively permits a staged payment approach to outline consents (where phasing is proposed), it is normally the practice to only pursue outline (or hybrid) applications for the largest and most complex sites. The majority of planning proposals will still be submitted in full.
- 4.9 Phasing of payments (instalments) should be tailored to recognise funding constraints and cash flow of development. Payments under the default ‘within 60 days of commencement of the chargeable development’ system as per the Regulations would only be suitable for very small developments in which there was certainty that development would be built very quickly and the funding would be available to pay the CIL charge. Many developments require significant upfront infrastructure costs to unlock development and the additional early burden of CIL as per the default system would be very prohibitive.
- 4.10 It is therefore advised that any phasing of CIL payments should accord with the longer build rates expected and on this basis longer timescales for the payment of CIL should be proposed as part of an instalments policy.

Relief

- 4.11 The recent CIL Guidance outlines the Government’s position on **“exceptional circumstances”** which could warrant exception from CIL (paragraph 31) notably the need for the value of a Section 106 Agreement to exceed the CIL. This highlights the importance of achieving a sound evidence base in the formation of the CIL.
- 4.12 The first matter to note from the Regulations is that the offer of relief is discretionary on the charging authority (Regulation 55(3) (a)). The CIL Guidance states at paragraph 31 that **“use of an exceptions policy enables the charging authority to avoid rendering sites with specific and exceptional cost burdens unviable should exceptional circumstances arise”**. Paragraph 8.2 of the Preliminary Draft Charging Schedule states that more details will be included within the Council’s Draft Charging Schedule on its position in respect of relief in specific exceptional circumstances.
- 4.13 The Consortium considers it is imperative that the Council makes available relief from the date of the adoption of CIL, and that it clearly outlines its approach to doing so (in conformity with the Regulations). This is even more pertinent given that the Local Plan identifies housing numbers for non-strategic/ smaller settlements but no specific sites at this stage. Clarity should be provided on the Council’s stance on relief and the level of detail required for the viability assessment to qualify for this.

CIL Regulation 122 – Double Counting

- 4.14 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 and is clearly a matter to avoid as per the recent Government CIL Guidance (paragraph 85). 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 (earlier in the process as per the Government guidance), 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). The costs of this on-site infrastructure will however be substantial for larger scale development (as controlled by approved plans, conditions and Section 38/278 agreements).
- 4.15 The Government’s position on the role of Planning Obligations is clearly outlined in the NPPF (paragraph 204). What is clear is that Section 106 may still be sought post CIL adoption which therefore needs to be factored into viability.

Administration Costs

- 4.16 With regard to administration costs, the CIL Guidance (paragraph 43) outlines that **“up to 5%”** of CIL receipts can be used to administer the process. This is potentially a considerable element of funding

and likely in excess of what is required. The Council must provide clarity on whether it proposes to charge an administration cost for CIL. It is clear that Regulation 61 intends administrative costs to be as a proportion of CIL 'proceeds', not as an additional charge. This is indicated by paragraphs 42 and 43 of the recent CIL Guidance (2012) and has been accepted by Havant Borough Council which has removed the additional administrative costs which were applied in its Draft Charging Schedule (now found sound at Examination).

- 4.17 The Council will also be in receipt of pre-application fees, planning application fees and where relevant New Homes Bonus which also needs to be factored with resourcing of planning administration. The Council should be efficient in the collection of CIL in order that the majority of funding be spent on Infrastructure.

Reviewing CIL

- 4.18 At the Conservative Party Conference in October 2012 the Planning Minister Nick Boles highlighted the difficulties with introducing CIL, and expressed concern that Councils are setting 'unrealistically' high rates. Boles urged Local Authorities to avoid setting too high CIL rates at the beginning, and given the current economic conditions suggested setting a modest rate. It is important to remember that CIL is not simply a blunt development tax, but should be used to facilitate development and provide for infrastructure associated with planned growth which can be reviewed.
- 4.19 With regard to reviewing CIL, the Consortium strongly encourages the Council to proactively outline a review mechanism for CIL as part of annual monitoring (required by both the CIL and Local Development Regulations). This is particularly important given the Council is proposing to allocate further sites in a Site Allocations (or similar) document, many of which will be defined as larger sites and therefore requiring site specific infrastructure which will affect their ability to pay CIL. The recent Government CIL Guidance outlines that the Government 'strongly encourages' reviews to ensure that CIL is fulfilling its aim and responds to market conditions. The Preliminary Draft Charging Schedule indicates that an update will be undertaken every year, but this will just concern an annually updated index of inflation to keep the levy responsive to market conditions. The Council also needs to review the actual Charging amounts frequently, i.e. at a set timeframe or when new policy documents, for example, the Site Allocations DPD, is produced, and the Consortium recommends this approach be outlined on adoption of CIL.
- 4.20 It would not be appropriate to base the CIL rate on predicted uplift in the market. The regular review mechanism can be used in these circumstances. It may therefore be prudent to base the viability appraisal methodology on inputs and typologies which permit easy review.

5.0 Viability Appraisal

- 5.1 The proposed CIL rate has been supported by the report produced by Adams Integra dated November 2012. Owing to the key test of Regulation 14(1), it is important that the viability appraisal prepared is fit for purpose. It is clear that at Examination the Charging Schedule will need to be supported by **“relevant evidence”** (Regulation 11(1) (f) / 19(1) (e)).
- 5.2 Following a detailed review, the Consortium considers that the Council should update and review the charging schedule as outlined by this representation. It is important that the Viability Appraisal is grounded at the Draft Charging Schedule stage.
- 5.3 The Consortium is willing to meet with the Council and any third party advisors to discuss how the viability appraisal may be improved to reflect more reasonable assumptions.

The Requirement for a Viability Study

- 5.4 The requirement to justify the Charging Schedule with evidence of viability is outlined by CIL – An Overview paragraphs 25 and 26. The CLG CIL Guidance (2012) at paragraph 30 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”**.
- 5.5 NPPF paragraph 173 outlines the need for ‘competitive returns.’ The viability exercise must also be aimed to demonstrate the need for flexibility in seeking CIL payments. It should not be assumed that all development can afford to pay or that all development should be charged the same levy. It must also be recognised that in certain circumstances relief may be offered where viability is an issue.
- 5.6 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 stifled. This is recognised by the NPPF and is ‘in-built’ within the CIL Regulations.

The Study

- 5.7 The viability assessment produced is based on a series of residual valuation scenarios that models the Gross Development Value (GDV) achievable from different uses in the District and deducts development costs, interest costs and developer profit to arrive at a residual land value to inform the purchase price of the land.
- 5.8 According to the viability study, the following charges were deemed viable across a range of residential scenarios:

- Infill sites within South Hampshire Urban area and the SAs North of Whiteley, North of Winchester and West of Waterlooville: **£0 per square metre**
- Market Towns and Rural Areas: **£80 per square metre**
- Winchester Town: **£120 per square metre**

5.9 Our independent research identifies much more intricate pricing variations dependant on areas to that of the above and this should be reflected in the charging schedule. Should the above rates become adopted, we expect there will be some developments which will not be able to accommodate the proposed CIL and it is expected that developers will renegotiate S106 contributions and affordable housing to offset the CIL.

5.10 Section 6 of the Council's residential viability report assesses land values in Winchester District. Information has been sourced from the Land Registry and from discussions with agents – we note that no sales evidence has been provided. A record of the agents spoken to and the evidence relied upon to form these conclusions would help determine the validity of these statements. Savills for instance, one of the leading agents for development land in the Winchester District, was not approached to provide any feedback on land values.

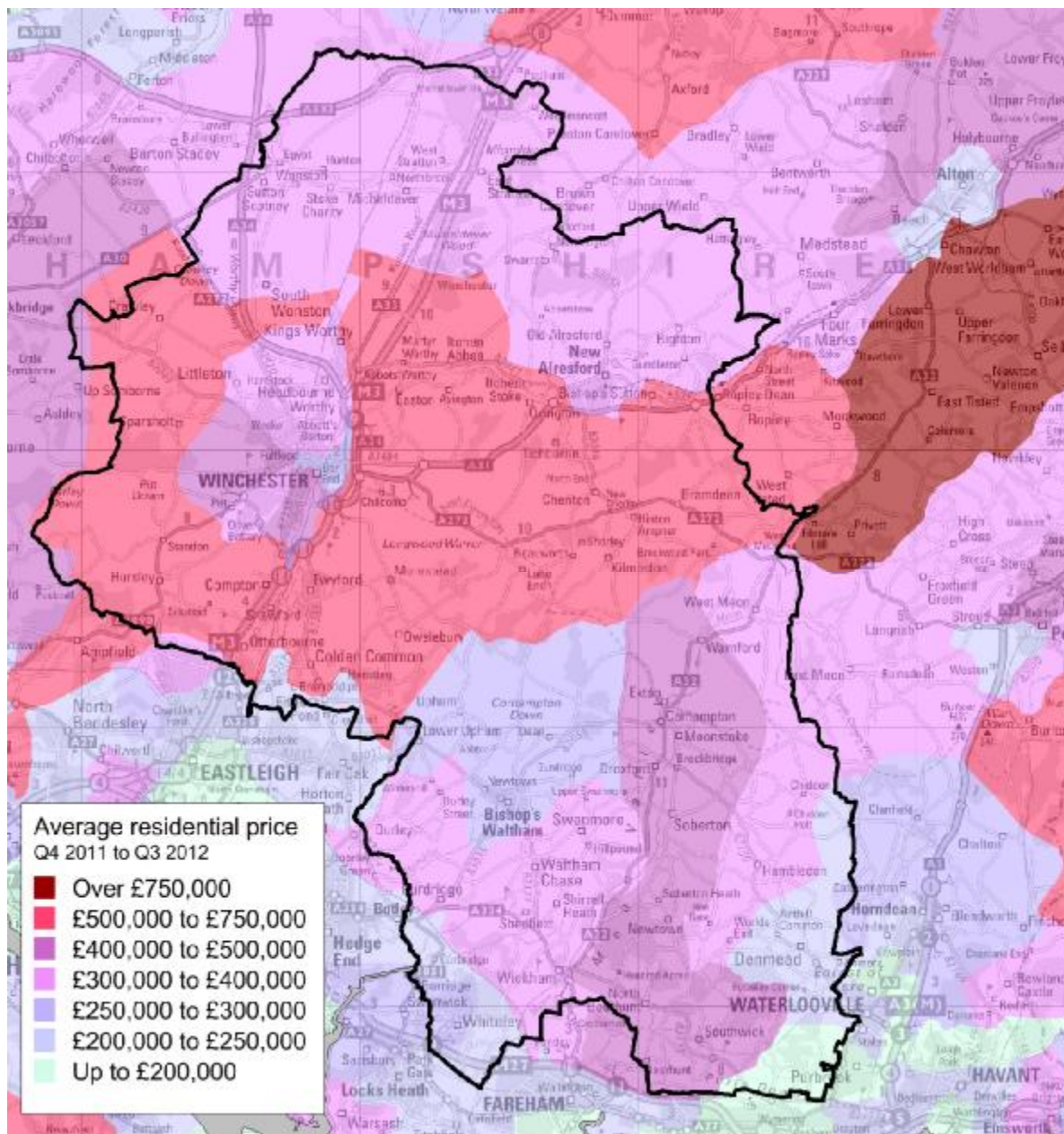
5.11 The Consortium believes that the values used in the appraisals are too simplistic and do not reflect different areas and forms of development within the District.

5.12 In analysing sales values, we believe the lack of evidence is not sufficient for the purpose of this report. We note the recent published CIL Guidance (December 2012) states that evidence should be provided in order to establish appropriate CIL charges:

“The legislation (Section 211 7a) requires a charging authority to use ‘appropriate available evidence’ to inform their draft charging schedule. It is recognised that the available data is unlikely to be fully comprehensive or exhaustive. Charging authorities need to demonstrate that their proposed CIL rate or rates are informed by ‘appropriate available’ evidence and consistent with that evidence across their area as a whole.”

5.13 The Consortium is of the opinion that the property prices identified within the report do not reflect the true values within the district. Whilst new build properties in Winchester are supporting values around £340-390 per sq ft, this is only in the best areas that provide enough premium for the development to be delivered. The lesser ‘suburbs’ of Winchester do not support similar values and the proposed rate will subsequently curb future development. The regional disparity in the District is highlighted in Figure 1; the Charging Schedule should look to adopt similar boundaries in the Consortium's opinion.

Figure 1: Winchester City Council Average Property Prices



Source: Savills Research/ HM Land Registry

Evidence

- 5.14 The viability assessments have been made at various levels without evidence or justification. The value levels within the report are not reflective of the different markets within the District. Amendments to the value levels used in the viability appraisal must be considered and evidence of values provided.
- 5.15 Sensitivity analysis should be provided to show a range of values.

- 5.16 The sales rate assumptions will affect the cash flow of a development and therefore the residual land value and the viability of the proposed CIL rates, particularly for larger schemes. In revising scenario appraisals any pre-sales considered and any timescale assumptions must be reflective of the current market conditions.

Build Costs

- 5.17 Adams Integra have spoken to developers and cross-checked their findings with the RICS Build Cost Information Service. Generally we agree with this approach however not enough evidence has been provided to justify the proposed levels. Ideally a list of developers and schemes should be provided as the house builders approached might not reflect a cross section of the developers likely to be building.
- 5.18 It is the opinion of the Consortium that these costs are low in comparison to recent developments that have been undertaken in the District with most developers indicating that a build cost this low would be reflective of larger scale developments. With the majority of developments in Winchester being smaller infill sites, we expect the build cost would be significantly higher. A higher build cost would be expected to make an allowance for the high specification expected of new build houses against high land values and sales values. Due to the limited appraisal scenarios, there does not appear to be any consideration given to the relationship between sales values, specification and build cost.
- 5.19 We have assumed that the build costs are on a Gross Internal Area (GIA) basis, although this is not stated in the Report. BCIS build costs do not always include the costs of external works and infrastructure. According to the HCA, analysis completed by BCIS for the Housing Corporation in 2007 indicated that the average cost of external works and infrastructure on residential schemes started since 2003 was equivalent to an additional 27% of building costs, including a wide range of site specific circumstances. This should be factored into the build costs.
- 5.20 Adverse ground conditions, contamination or demolition have not been accounted for within the report. These costs can have significant impacts on land value and could be the difference between a scheme being viable or unviable.

Contingency

- 5.21 Within the report there is no reference to any contingency and this needs to be addressed. A contingency is needed to reflect the risks associated with development, namely any cost implication that arises after construction has started. A contingency would also allow for changes in the Code for Sustainable Homes in the next couple of years to meet the government targets of zero carbon housing (Code 6) in 2016.

Professional Fees

- 5.22 Professional fees of 5% have been used in the appraisal scenarios. Professional fees can vary significantly according to the size and complexity of a development. In Savills experience of calculating development appraisals, a minimum fee of 10% of build costs for smaller scale developments is typically used. Lower professional fees can be justified for large scale developments but these rarely fall below 8%. It is also noted that there have not been any cost inputs associated with planning and associated application costs.

Finance Costs

- 5.23 Having regard to current banking practices and feedback from developers an interest rate of 7.5% is appropriate. This figure is inclusive of entry, exit and monitoring fees. It is important not to disregard the smaller scale developers as their lending rates are higher than national house builders. The rate used should be all-inclusive.

Developers Profit

- 5.24 It is the view of the Consortium and generally accepted industry practice (particularly in the finance sector) that profit should be linked to total build cost (including the land cost); certainly with prevailing finance conditions any development with a profit margin under 20% on the whole cost is virtually un-fundable, unless the facility is below 50% of the total build cost in which case developer profit margins will be significantly more to reflect the risk on equity.
- 5.25 Savills is of the opinion that a higher profit margin of 25% profit on cost is in line with the current levels of risk associated with new build developments which is the equivalent to 20% on GDV. This is supported by the recent appeal decision APP/X0360/A/12/2179141 for Land at the Manor, Shinfield, Reading RG2 9BX which the Inspector concluded with regard to profit that the national housebuilders' figures was preferred and a figure of 20% on GDV was reasonable (paragraph 44).

Code Level 4 and 5, and Zero Carbon

- 5.26 The report does not include a figure in the appraisals to achieve Level 4 of the Code for Sustainable Homes. In the Consortium's experience the additional costs associated with building to these standards is approximately 7.5%.
- 5.27 Whilst the future application of Code for Sustainable Homes Level 6 is in some doubt, it is reasonable to assume that Code Level 5 will be required by 2016 in accordance with the current government timetable. This requirement will take effect within three years of the anticipated date for the implementation of the CIL Charging Schedule. It is a known and quantifiable cost and, given the period of time in which it will be required in relation to the adoption of the CIL Charging Schedule, its impact should be considered.

- 5.28 Various research reports have been produced on behalf of the Department for Communities and Local Government to establish the increase in costs that reflect the requirement for Code Level 5, the latest of which was produced by Davis Langdon in October 2011. The average uplift in build costs in reaching Code Level 5 on Greenfield urban extensions is estimated at 18% higher than reaching Code Level 4. Whilst there may be some saving in this higher cost, as technology improves and if there is further policy flexibility on the definition of zero carbon, it is highly likely that a further significant build cost will be incurred from zero carbon policy. This is a material factor that should be taken into account when assessing the risks to delivery and the size of the viability buffer that should be applied.

Land Value Assumptions

- 5.29 The guidance from the RICS contained within their guidance note 'Financial Viability in Planning' (August 2012) states that when considering the value of the Development for planning purposes the **'Site value should equate to the Market Value subject to the following assumption; that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan.'**
- 5.30 The Market Value as defined by the RICS is 'the estimated amount for which the asset should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.'
- 5.31 Savills would also highlight a recent appeal decision relating to the use of Market Value and the recently published RICS Guidance 'Financial Viability in Planning'. Appeal reference APP/X0360/A/12/2179141 Land at the Manor, Shinfield, Reading RG2 9BX for the University of Reading at paragraph 38 states that a competitive return in the context of land and/or premises equates to the Site Value (SV), that is to say the Market Value subject to the assumption that the value has regard to development plan policies and all other material considerations. This accords with the RICS guidance.
- 5.32 Further guidance from the Local Housing Delivery Group (LHDG) – Viability Testing of Local Plans (2012) also states that;
- 5.33 *"In order to determine an appropriate Land Value planning authorities should take up-to-date advice from local agents and valuers. This is likely to give a more locally accurate picture than relying on nationally available datasets. The land price data published by the Valuation Office Agency (VOA) should be treated with considerable caution given that it may refer to transactions for fully serviced land before taking account of local policy costs."*
- 5.34 In addition paragraph 173 of the NPPF states that the cost of any requirement should provide competitive returns to a willing landowner and willing developer to enable the development to be

deliverable. It is clear that the objective is to ensure that land comes forward for development and as highlighted in appeal reference APP/X0360/A/12/2179141 at paragraph 65, a land value that equates to the existing use value (EUV)/current use value (CUV), would need to provide an incentive to the landowner to sell the site. This therefore demonstrates that any land value would need to be considerably above the EUV/CUV.

5.35 Adams Integra has assumed the following benchmark land values with no evidence:

Type	Land Value (per ha)	Land Value (per acre)
Agricultural	£450,000	£182,112
Employment	£900,000 - £1,500,000	£364,225 - £607,041
Residential	£2,200,000	£890,327

5.36 Savills notes that Adams Integra has not provided any evidence to support their assumed land values. We are of the opinion that different land values should be provided to illustrate market values. Land values can differ significantly throughout the District and landowners' aspirations are still affecting the deliverability of developments by demanding higher than market values.

5.37 Savills is of the opinion that the threshold land value assumptions should be backed up by sufficient evidence, as they would be for any valuation exercise.

Section 106 Costs

5.38 The Consortium would like clarity on how much allowance has been made to account for S106 contributions within the appraisals. Some sites will inevitably pick up some S106 contributions and this should be taken into account.

Viability Buffer

5.39 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 site typologies. This is inevitable given the varied nature of housing land supply and costs associated with bringing forward development. Therefore, there must be a viability buffer 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. The viability buffer should also take account of the risks to delivery flowing from the potential for some sites to achieve a lower sales value, the higher costs of zero carbon homes and the adoption of threshold land values at the lower end of landowners' expectations. The lack of any allowance for a viability buffer, between the theoretically viable level of CIL and the proposed levels of CIL is a major concern. Savills has recommended a 30% buffer for other local authority representations and believe this is the minimum level Winchester City Council should be applying.

6.0 Conclusions

6.1 This Representation has been prepared by Savills on behalf of a Housebuilders' Consortium comprising:

- Bloor Homes
- Hazeley Developments
- McCarthy & Stone
- Persimmon Homes

Known as the 'Consortium'.

6.2 This report has been prepared to highlight the need for clear and robust viability evidence produced by the Council and also the need to set out the mechanisms for the delivery of the infrastructure as identified in the Council's Infrastructure Delivery Plan. The seeking of the adoption of the CIL Charging Schedule should also not run in advance of the Local Plan being found sound. Comments are also provided on CIL mechanisms including relief, instalments and review.

6.3 There are a number of matters which need to be addressed before the publication of the next stage Draft Charging Schedule, principally the advancement of an up to date development plan, confirmation of infrastructure required to be funded by CIL (Regulation 123 List) and further details on the viability appraisals.

6.4 The Government has recently published revised CIL Guidance (December 2012), partly in response to concerns in the development industry about the effective operation of CIL. The publication of the Guidance provides WCC with an opportunity to respond effectively at the draft stage.

Proposed CIL Rates

6.5 The Viability Assessment should be re-addressed to consider the following issues which have been identified within Section 5:

- The source of the appraisal inputs is not evident and therefore the appropriateness of these cannot be assessed
- Higher professional fees need to be factored as 5% is considered low
- Build costs needs to be reassessed, particularly to reflect the more niche developments in Winchester City Centre
- Need to reassess evidence on land values as Savills has shown different figures
- No allowance for S106 is evident and this needs to be factored and made clear
- Need for a viability buffer

- 6.6 It is recommended that these issues be addressed to ensure the Council can demonstrate a sound evidence base for the proposed CIL rates.

Planning/ Conformity

- 6.7 The Consortium urges the following items to be included within the Draft Charging Schedule:

- It is imperative that a mechanism which allows Payments in Kind is included within the Draft Charging Schedule, to allow developments to provide land and avoid effectively ‘paying double’ through the imposition of CIL charges. An effective ‘land in lieu of CIL’ mechanism is essential, otherwise large strategic development would incur disproportionate and unjustified infrastructure costs. The Council is proposing bespoke CIL rates which is in accordance with government guidance.
- Instalments – the Consortium strongly recommends the Council makes its instalments policy clear. It is advised that any phasing of CIL payments should cover longer time periods to reflect the complications of development finance, and should accord with appreciation for build out rates, in considering longer time based payments.
- Relief – the Consortium considers it is imperative that WCC makes available relief from the date of the adoption of CIL, and that it clearly outlines its approach to doing so, and the level of detail required for the viability assessment to qualify for relief.
- An indication of the draft Regulation 123 list should be provided with updated infrastructure evidence.
- The approach to administrative costs should be clarified to ensure that these are taken from CIL proceeds, not charged in addition.
- A proposed review period should be confirmed and it is recommended this is made frequent in light of the volatility of the property market and the forthcoming Site Allocations document which will identify further larger sites.

- 6.8 The future Examination of CIL will address four key aspects:

1. Compliance with the procedures set out in the Planning Act 2008 and the CIL Regulations

- 6.9 It is too early to comment on this aspect of the Examination process.

2. The charging authority draft charging schedule is supported by background documents containing appropriate available evidence

- 6.10 Prior to commencing the next stage draft CIL Charging Schedule, the Council should draft a Regulation 123 Infrastructure list in close consultation with key delivery stakeholders including housebuilders. An important input to this list will be an understanding of the costs of the site specific

infrastructure requirements of growth area. This is in order to outline a robust infrastructure target to be funded via CIL.

3. The proposed rate or rates are informed by, and consistent with, the evidence on economic viability across the charging authority's area

6.11 As outlined, it is requested that more detail be provided on the appraisal inputs to ensure the Council can demonstrate a sound evidence base. The considerations outlined in section 5 should be responded to, and the Viability Assessment revised accordingly.

4. Evidence has been provided that shows the proposed rate would put at serious risk overall development of the area

6.12 The present approach of proposed CIL rates appears to have taken into consideration land values, build costs and associated infrastructure costs and it is not considered that the levels proposed would render a significant proportion of planned development as unviable. This needs to be robustly demonstrated by the Council in its evidence base.

ENDS