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By e-mail

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Your ref:

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Dear Mr Opacic

Preliminary Draft Charging Schedule

We act for Asda Stores Limited ('Asda') and are writing on behalf of Asda to make representations in respect of Winchester City Council's (the 'Council') Preliminary Draft Charging Schedule (December 2012) (the 'Charging Schedule').

Under Regulation 14 of the Community Infrastructure Levy Regulations 2010 ('the CIL Regulations') the Council's primary duty when setting the level of Community Infrastructure Levy ('CIL') charge is to strike an appropriate balance between the desirability of funding the cost of infrastructure required to support development from CIL and its potential effects on the economic viability of development.

In our view, the approach taken to assessing the Charging Schedule does not achieve an appropriate balance between these two objectives.

We wish fundamentally to object to the approach taken to assessing the Charging Schedule, and to the disproportionate loading of CIL upon large retail development. We set out our objections under the following headings:

- (i) The impact on policies promoting economic growth and employment opportunities;
- (ii) The proposal to split retail development;
- (iii) The financial assumptions and viability assessments contained in the Council's Viability profiling document; and
- (iv) Concerns about the Council's approach to setting CIL charges generally.

1 Impact on policies promoting economic growth and employment opportunities

One of the stated aims of the Council's draft Local Plan is to create 'the framework for encouraging economic prosperity and generating sustainable economic growth' (paragraph 6.1). We believe that the proposed CIL charges will not allow the Council to achieve this aim.

The draft Local Plan:

- (a) identifies the need for an additional 33,524 square metres of retail floor space (paragraph 2.7);
- (b) identifies the need to ensure that Winchester retains its place in the sub-regional retail hierarchy (paragraph 3.7); and
- (c) acknowledges that retail is one of the five key sectors on which the district's economy is built (paragraph 6.6).

We note that under Policy CP8, the Council will support retail development 'through retention, regeneration and intensification of previously developed land at sustainable locations'.

It is our view that if the charges set out in the Charging Schedule are adopted, it will harm retail development in Zones 2 and 3 and undermine the Council's stated policy of supporting retail and retaining Winchester's place in the retail hierarchy. For example:

- (a) many other forms of development will receive a massive subsidy at the expense of retail; and
- (b) there will be a corresponding disincentive (and market distortion accordingly) to investment in this sector of the economy.

The Government is keen to encourage the creation of additional employment across the economy and the retail sector is one of the largest employers and the largest creator of new jobs at the present time, as well as being one of the most dynamic and innovative sectors within the UK economy.

Asda example 1

Asda has a proven track record of investing in local communities and of creating jobs within these areas. For example, of the 123 colleagues recruited for the Asda store in Tunbridge Wells, seventy-six colleagues live within five miles of the store and eighty-seven colleagues were previously unemployed.

The supporting papers do not acknowledge this trend, nor do they fully assess the role of retail within the national economy, beyond the unsupported assertion that large format retail continues to be one of the best performing sectors in the UK and this implies that operators within it have the capacity to pay potentially very large sums of CIL.

Asda example 2

Asda stores regularly rejuvenate and regenerate existing centres, and the surrounding areas, and draw new shoppers to them, which benefits the existing retailers, and those who open stores in Asda-anchored centres in their wake. For example in 2006, Asda opened a store in Romford, transforming a derelict brownfield site through an extension of an existing retail mall and creating 347 jobs. This helped to propel Romford into the top fifty UK retailing cities. Indeed, owing to the success of the store in attracting more footfall to that part of the town's Primary Shopping Area, the local authority redrew the town centre boundary bringing the edge of centre Asda store into the heart of the Romford town centre.

Despite identifying a need for an additional 33,524 square metres of retail floor space, the higher proposed CIL charges of £120 per square metre in Zones 2 and 3 are likely to be too high to encourage retail development.

In addition, ensuring Winchester retains its place in the retail hierarchy will be undermined by the proposed charge of £120 per square metre.

2 The proposal to split retail development

The proposed rates of CIL set out in the Charging Schedule that relate to retail are unclear. The Council provides the following definition of retail at footnote 1:

“Retail includes shops, supermarkets, retail warehouses, hairdressers, undertakers, travel and ticket agencies, post offices (but not sorting offices), pet shops, sandwich bars, showrooms, domestic hire shops, drycleaners, funeral directors and internet cafés.”

Essentially, this repeats the definition of A1 Uses set out in the Town and Country Planning (Permitted Development) Order 1995 (as amended). The Charging Schedule states that ‘Retail¹ (convenience stores, supermarkets and retail warehouses)’ shall be charged at £0 for Zone 1, £120 for Zone 2 and for £120 for Zone 3. The cross-reference to footnote 1, however, incorporates the definition of retail provided above. If it is intended that these charges relate only to convenience store, supermarkets and retail warehouses, then this cross-reference should be removed. If this is not the Council’s intention it is unclear what ‘Retail (all other development)’ refers to.

We also consider that the reference to ‘Retail¹ (town centre²)’ is also misleading. The definition of town centre at footnote 2 is limited to Winchester town centre only. We would suggest that ‘Retail (town centre)’ is replaced with ‘Retail (Winchester town centre)’ and instead of stating £0 for Zones 1 and 2, ‘not applicable’ is stated instead.

3 The financial assumptions and viability assessments contained in the Council's viability profiling document

The viability profiling document contains retail development assumptions that in our view are inadequate as they do not make sufficient allowance for:

- (a) Section 106 contributions which will need to be paid by developers in addition to the CIL payments; and
- (b) The costs involved in obtaining planning permission for a development scheme.

Appendix 6 of the non-residential viability study does not include Section 106 costs for retail development. The viability profiling document also does not take into account any planning costs within the non-residential development assumptions.

By excluding the potentially large Section 106 costs and the costs of obtaining planning permission (examples of which are set out at Schedule 1 to this letter), the Council has underestimated the true cost of supermarket developments and in doing so, has artificially inflated the relevant benchmark land values used for the financial viability models. This will, in turn, have inflated the surplus identified to fund CIL.

This is especially true when considering the proposed split between small and large retail stated in the Charging Schedule. Large retail developments will also bear the expensive costs of Section 106 Agreements and their financial contributions whereas the small retail developments are likely to escape these. When combined with the proposed CIL charge of £120 per square metre in Winchester town centre or Zones 2 or 3, this will make large proposed retail developments commercially unattractive and unviable.

Furthermore, the DCLG now requires (from 14 December 2012) local authorities to produce evidence of the amount of revenue raised by Section 106 contributions in their area –

including whether affordable housing and other targets have been met. The proposed CIL levies for any individual sector can then be assessed against the contributions previously received, minus any contributions that developers would still have to pay notwithstanding any CIL payments, to see if they are realistic.

The evidence put forward by the Council does not appear to contain this. It is difficult to see how the Council can be certain that the proposed CIL levy will not prohibit the viability of retail development without having obtained this evidence.

4 Concerns about the Council's approach to setting CIL charges generally

The stated purpose of CIL is to raise revenue for infrastructure necessary to serve development. CIL is intended to address the imbalance of raising funds for infrastructure under the Section 106 route where larger schemes have effectively subsidised minor developments. However, CIL does not replace the Section 106 revenue stream – it will simply provide additional revenue for infrastructure.

In light of this, we have some further concerns.

Concerns relating to change of use and conversion projects

Although the Council has taken the economics of regeneration projects into account to some extent when conducting its viability assessments, it does not appear to have given much weight to this consideration.

As you will be aware, Regulation 40 of the CIL Regulations only permits developers to deduct pre-existing floor space from the CIL calculation if it is 'in lawful use'. Lawful use is defined in Regulation 40 (10) and essentially requires part of a building to have been in use for a six month continuous period in the twelve months before the date of the planning permission permitting the development.

However, many regeneration projects on brownfield land or town centres involve demolishing, converting or redeveloping buildings that have lain vacant for some time. This is particularly true of schemes which involve changes of use from employment land, where the fact that a unit has been vacant for a considerable time is often a key factor in the Council's decision to grant planning permission for the scheme.

The viability proposal document does not acknowledge that the economics of conversion schemes are very different to those of new build schemes. It is difficult to see how the Council can assess whether the imposition of CIL will put the majority of these schemes at risk without having considered its impact on their viability.

Concerns on CIL payments and the infrastructure requirements

The Charging Schedule, as drawn, does not make the connection between the CIL charges proposed and the infrastructure requirements of the particular developments upon which they are being levied. Although the Council has provided an Infrastructure Delivery Plan covering infrastructure required during the Local Plan period, it identifies a CIL funding gap of £122,473,000. There is no connection between this figure and how the CIL charges are set.

By way of example, using the CIL figures proposed in the Charging Schedule for Winchester town centre or Zones 2 or 3, (120 per square metre) the proposed charge would add £480,000 to the cost of a generic 4,000 square metre supermarket development. There is no evidence that this is necessarily the appropriate figure in terms of the related infrastructure costs that a retail development should be expected to carry but rather it appears to be a high level calculation based on the sector's assumed ability to pay.

We accept that some superstores may individually necessitate the provision of specific local infrastructure but it could be argued that, given the proliferation of modern supermarkets, infrastructure requirements have reduced. For example, it is frequently the case that journey times fall as new supermarkets are opened. The inevitable consequence of this is that most existing infrastructure is used less, not more, as a result of such developments. As local authorities will still seek site-specific commitments under the Section 106 regime as well as CIL, the two charges together will be an unreasonable double levy for infrastructure which is seemingly being placed onto a very limited category of development.

There is also a risk that some of the infrastructure projects identified by the Council to be funded by CIL will already have been funded by undelivered projects funded by existing Section 106 commitments. At present, Section 106 contributions paid to a council are repaid to the developer if the infrastructure has not been delivered within a certain period of time. These delivery periods are long, usually between five and ten years, and the onus is on the developer to check that the Council has carried out the works and to request a refund if not. As you will be aware, there is no similar mechanism to allow developers to reclaim unspent CIL contributions.

Asda's suggestions

Exceptional circumstances relief

The Council has not indicated either way in the Charging Schedule that it will be implementing any exceptional circumstances relief.

The viability of any particular development scheme is finely balanced and will fluctuate depending upon the costs involved in the development and the state of the economy when the development comes forward. By adopting exceptional circumstances relief, the Council will have the flexibility to allow strategic or desirable but unprofitable development schemes to come forward by exempting them from the CIL charge or reducing it in certain circumstances.

Simply exempting schemes from certain Section 106 obligations is unlikely to be sufficient to counteract the negative impact of the CIL charge, particularly as not all schemes (in particular retail developments) would attract an affordable housing requirement which could be waived. Further, the types of strategic development which are most likely to be of concern to the Council, such as large regeneration or housing schemes, are precisely the types of development which are likely to carry heavy site-specific infrastructure costs, which will be funded under Section 106, and are most likely to qualify for exceptional circumstances relief. We therefore urge the Council to adopt this relief.

Instalment Policy

We also note from the Charging Schedule that the Council has not made a definitive statement either way about adopting an instalment policy.

Many major development projects are implemented in phases and by adopting an instalment policy this should ensure that developers are not disadvantaged by submitting an application for full rather than outline planning permission. We therefore also urge the Council to adopt an instalment policy.

Flat Rate Levy

A much fairer solution, accepting for the purpose of this argument the premise that CIL is necessary for the purpose of funding district-wide infrastructure, would be to divide the Council's estimate of total infrastructure costs over the charging period (and in this connection, it is important to remember that the Government's guidance as recorded in the National Planning Policy Framework is that only deliverable infrastructure should be

included) by the total expected development floor space and apply a flat rate levy across the borough and across all forms of development. That will have the least possible adverse effect upon the market for land and for development, and yet the greatest possible opportunity for the economy to prosper and thrive and for jobs to be created.

The potential impact of a flat rate levy on the viability of those types of development which are not currently identified as viable could be balanced by the Council's implementation of exceptional circumstances relief, as mentioned above.

Reducing the levy proposed per square metre on this floor space would not result in a proportionate increase in the levy required on other forms of commercial or other development. However, applying the current proposed levy could run the risk of diminishing substantially the number of such stores built, with a consequential loss of employment opportunities and investment in town centres.

Winchester City Council: Local Plan Part 1

We consider that the Council's consultation on the Charging Schedule is premature as it comes before its Local Plan Part 1 has been found sound, much less been adopted. We note that the Council submitted its Local Plan Part 1 to the Secretary of State in 2012 and is awaiting the Inspector's report (expected February 2013). Paragraph 4 of the Government's guidance on CIL, published in December 2012, states that 'charging schedules should be consistent with and support implementation of up-to-date Local Plans'.

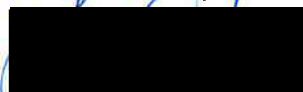
If the Inspector's report finds that the Local Plan Part 1 requires modification in order to be found sound, we consider that the Council should revisit its Charging Schedule (amending it where necessary) to ensure that it supports and is consistent with the Local Plan, before carrying out a further round of consultation. In the event that the Local Plan is found unsound, the Charging Schedule should be abandoned altogether pending an Inspector's decision on any revised plan.

Conclusion

For these reasons, we would ask that the Council undertakes a rethink of its position and substantially alters its Charging Schedule in so far as it relates to retail development. Accordingly we would request that the Council:

- (a) Adopts the exceptional circumstances relief exemptions allowed for under the CIL Regulations; and
- (b) Produces a draft staged payments policy (for all types of development) that ensures that developers are not disadvantaged by submitting an application for full, rather than outline, planning permission; and
- (c) Adopts a single flat rate levy across all development within its boundaries.

Yours sincerely



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Schedule 1

Section 106 Agreements

The types of contribution that could still feasibly be sought from a retail developer once the Charging Schedule has been adopted include:

- Cost of site-specific highways works: including junction improvements, road widening schemes, new access roads, diversion orders and other highways works;
- Cost of extending the Council's CCTV Network or Public Transport Network to include the scheme (including the costs of creating new bus stops, real time information and providing new bus services to serve the site)*;
- Monitoring costs of compliance with employment/apprenticeship schemes and travel plans*;
- Environmental off-set contributions to mitigate the loss of habitat or greenery caused by the scheme;
- The cost of any remediation and decontamination works to be carried out by the Council on the developer's behalf;
- Payments for town centre improvements intended to mitigate the impact of the development on the town centre or neighbouring areas; and
- The costs incurred by the Council of maintaining any site-specific infrastructure required by the development.

Planning Costs

The costs of obtaining planning permission from the Council for a development scheme can be significant. These are not just limited to the Council's own fees for submitting an application and obtaining pre-application advice but also include:

- The professional costs involved in appointing consultants to prepare the application;
- Legal costs involved in negotiating the underlying legal agreements;
- Costs of negotiating appropriate planning conditions and obligations with the Council;
- Consultation costs, particularly for larger schemes which will need to show evidence of early community engagement; and
- If permission is refused, or challenged by an aggrieved third party, the costs of an appeal to the planning inspector or a judicial review challenge in the High Court.