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Dear Sir/Madam,

CIL Draft Charging Schedule:
Response submitted on behalf of St James

On behalf of our client, St James, please find below representations made in response to Three Rivers District Council's CIL Draft Charging Schedule consultation.

St James is a member of The Berkeley Group, a UK leader in the visionary delivery of major urban regeneration schemes. St James has established a reputation as a design-conscious developer who continues to regenerate and transform previously run down sites into attractive developments where design has a positive impact on the environment. These representations are submitted to safeguard St James' future development interests within the district and help ensure the viability of future investments is not threatened by Three River's emerging CIL Charging Schedule.

Whilst we are generally supportive of the approach taken by the Council, we have a few concerns regarding certain elements of the Draft Charging Schedule. The representations respond to the proposed charging rates for residential development, the implementation of an instalment policy and the inclusion of discretionary exceptional circumstances relief. Comments are also provided regarding the relationship between CIL and S106 contributions.

Residential Charging Rates

An essential component of the CIL Regulations is to ensure that the proposed Charging Schedule rates are viable. Three Rivers should use evidence to strike an appropriate balance between the desirability of funding infrastructure through CIL and the potential effects, taken as a whole, of the levy on the economic viability of development across their area. This "balance" has to be considered alongside other policy considerations contained in the Local Plan and any scaled back Section 106 planning obligations. It is important that the CIL charges for the District are not set at a level that could have an unacceptable negative impact on the economic viability of development, contrary to the objectives of the CIL Regulations and the NPPF.

We welcome the viability testing that has been undertaken by Lambert Smith Hampton. However, we consider the proposed rates for residential development are set too high. We recommend the residential charging rate is reduced and suggest the Council applies a rate for residential development that lies at the lower end of the potential charging spectrum based on viability evidence.

Specifically, we are concerned that the proposed residential charging rates (£180 per sq m in Area A and £120 in Band B) could adversely impact on land supply and create a significant barrier to delivering homes in the most sustainable locations in the borough. Adjustment of the residential charging rate is considered essential for the delivery of housing and the objectives of the Local Plan. Not all schemes within a given area will be equally valuable due to site specific circumstances and abnormal costs. Furthermore, it is important that contributions from residential development are not used to subsidise the infrastructure associated with other uses, such as new offices.

In this regard, we urge the Council to undertake further viability assessment work on the impacts on development of the proposed residential CIL charges to supplement the work already set out within the Lambert Smith Hampton Viability Assessment Update (May 2014).

Instalment Policy

The inclusion of the proposed instalment policy within the draft schedule is welcomed. This approach suitably recognises that increased flexibility in paying the levy is essential for developers because they only have access to certain levels of funding through the construction process. Funding is dependent on sale volumes, market conditions and lending criteria. Significant upfront costs are often needed to unlock development. If the District Council were not to offer flexibility and the ability to pay in instalments, this would be likely to threaten the deliverability of development projects.

It is important that any instalment policy covers 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; and
- The minimum development threshold which instalments would not apply (this should be set as low as possible).

The inclusion of an instalment policy is supported. The timing of CIL payments is of critical importance to the ability of developers to bring forward development. The CIL Regulations allow CIL charging authorities to put in place policies for the payment of CIL in instalments to the charging authority, rather that requiring full payment upon commencement of development. Within the current economic context it is considered appropriate to introduce this level of flexibility.

The phasing of payments is important in recognition of funding constraints, the cash flow of development and the build rates expected. The flexibility offered through the proposed staged payments will assist to ensure that the viability and long-term delivery of residential development is not affected within Three Rivers.

<u>Exceptional Circumstances and Payment in Lieu</u>
The draft Charging Schedule should be revised to include provisions that allow for applications for discretionary relief to be made. The CIL Regulations provide for discretionary relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay the levy. This is in recognition of the importance of ensuring that the levy does not prevent otherwise desirable development.

Three Rivers is urged to include provisions to allow for the submission of exceptional relief applications on a case by case basis. This would provide flexibility to allow for necessary reductions of CIL liabilities in cases where there would otherwise be an unacceptable impact on economic viability.

Regulation 55 (as amended) confirms a charging authority may grant relief ("exceptional circumstances") from liability to pay CIL in respect of chargeable development if: (a) it appears to the charging authority that there are exceptional circumstances which justify doing so; and (b) the charging authority considers is expedient to do so. Exceptional circumstances relief can only be granted where:

a) The LPA has opted to make exceptional circumstance relief;
b) A planning obligation under S106 has been entered into; and
c) The Charging Authority considers that the cost of complying with the planning obligation is greater than the CIL amount payable and it would have an unacceptable impact upon economic viability.

Regulation 56 requires the charging authority to publish their intention to offer exceptional circumstances relief prior to implementing CIL. It is considered necessary for Three Rivers District Council to confirm a commitment to offer relief, thereby allowing a degree of flexibility for applicable schemes.

<u>Implementation and the Relationship between S106 and CIL</u>
Authorities are required to set out how Section 106 policy will operate alongside CIL in the future. The following principles should apply:

- Non-financial obligations may continue to be required by Section 106 with site specific financial contributions sought where required to mitigate the impact of the development. However, infrastructure which does not address the direct impacts of development will transfer over to CIL;

- Once CIL has been introduced S106 will not be able to be negotiated for projects or infrastructure identified in the CIL funding list; and
- Up to five contributions towards a type of infrastructure or a project can be pooled under Section 106 provided it is clear that they will not be funded through CIL.

To ensure a smooth transition, St James request that the introduction of CIL be timed so as to allow the implementation date to follow two to three months after adoption of the Charging Schedule. This will allow time for Section 106 agreements that have already been negotiated to be resolved, prior to the implementation of CIL.

<u>Summary</u>

While elements of Three Rivers' draft Charging Schedule are welcomed, we recommend the CIL rate be reduced for residential development. We urge the Council to undertake further viability assessment work to ensure that the CIL charging schedule finds an appropriate balance between securing funding to meet future infrastructure needs and ensuring development remains viable. This work should further consider the impacts on development of the proposed residential CIL charges.

The inclusion of an instalments policy is welcomed. Increased flexibility in paying the levy is essential for developers because they only have access to certain levels of funding through the construction process. The instalment policy is therefore necessary to ensure the viability and long term delivery of development is not affected.

In addition to requesting lower CIL levels for residential development and changes to the structure of the instalment policy, we urge the Council to bring forward measures in relation to discretionary relief, as noted above.

We trust the above comments will be taken into account in finalising the Three Rivers' CIL Charging Schedule. We would be most grateful to be kept informed of progress. In the meantime, please contact us should there be any queries regarding the above.

Yours sincerely

p.p. P Potential

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