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Inspector David Reed BSc DipTP DMS MRTPI
c/o Ian Kemp
PO Box 241
Droitwich
WR9 1DW

Our Ref: 554/A3/MJK
29th January 2020

Dear Mr Kemp,

MATTERS STATEMENTS FOR TEWKESBURY BOROUGH PLAN EXAMINATION SESSIONS

On behalf of Cotswold Homes Ltd, we recently submitted our detailed response to the identified matters for the forthcoming examination. As these submissions identify, Cotswold Homes have a specific interest in emerging allocation BIS3 in Bishops Cleeve. We have submitted an application for this site and that is currently under consideration by Tewkesbury Borough Council (TBC).

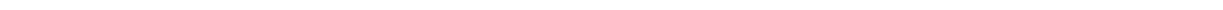
Separate to the identified matters that the Inspector has sought specific responses on, we wanted to write to him regarding the significant issues that relate to CIL and S106 contributions in the Borough. This predominately relates to the education contributions that are being sought by Gloucestershire County Council (GCC) in respect to current applications within Gloucestershire.

In summary GCC are currently seeking contributions towards education provision on all new development in TBC that equates to over £16,000 per plot; this is being sought in addition to site specific S106 contributions (specific highways improvements for example) and the CIL levy charged by TBC, which are considerable in their own right.

GCC are referring to their 'Local Development Guide' in respect to the justification for this scale of contribution. We made representations to the consultation undertaken on a 'refresh' version of this document in May 2020 and these representations sum up our position in respect to this matter, we enclose these for the Inspectors attention.

We won't reiterate the concerns raised the representations because they are clearly set out in the enclosures, but in summary our significant concerns are summarised as follows:

- When examining the CIL Charging Schedule linked to the Joint Core Strategy the Inspector in that case considered evidence that determined in TBC sites could be viable on the basis of a £200 per sqm CIL rate, allowing for S106/278 contributions equating to £8,000 per unit;
- As the Inspector in this case will know, the TBC Submission Plan's evidence base includes viability work that allows for S106/278 contributions of £5,00 per Dwelling and £1,000 per flat, because it is assumed that the introduction of CIL would reduce the need for such contributions;



- The adopted CIL lists assume that these contributions will be used to fund education improvements, the above did not assume that this would not be the case, what GCC are trying to do is essentially charging twice for the same infrastructure provision; and
- In light of these matters the viability of schemes across the borough are being put in jeopardy.

To change the S106 requirements from being broadly £8,000 per plot to well in excess of £20,000, when the education contribution request, plus other infrastructure provision such as access improvements are taken into account, is clearly inappropriate and is likely to decimate housing delivery in the area.

These issues are of serious concern for my clients and other developers in the area. They made an investment decision in respect to site BIS3 based, logically, on the adopted CIL schedule and the viability testing that underpinned it. If the GCC education contribution requests are applied on top of CIL and other contributions, then the land agreement will become unworkable and the site will be unviable. It is entirely inappropriate to change the goalposts like GCC has done, the CIL Charging Schedule examination, and other examinations across the county, such as that which the Inspector is embarking on are clearly the appropriate forums within which this issue should be considered, and the evidence presented in these forums all point towards the inappropriate nature of the level of contributions now being sought.

It is very puzzling for all involved in the development industry in TBC that they are presenting evidence to you as part of this examination which sets a completely different position to that adopted to the determination of planning applications. Therefore, we request that the Inspector asks them to clarify, urgently, what their position is on contributions – is it that set out in their own viability testing (i.e. CIL plus £5k per dwelling and £1k per flat) or a much higher figure mainly determined by GCC (i.e. in excess of £20k – 400% increase)? If it is the latter, then they need to explain, with accompanying evidence, how that will not render development they are currently proposing unviable.

We hope that the Inspector will take these considerable concerns into account as part of the forthcoming examination sessions and ensure that TBC adopt a plan, and contributions, that are based on robust viability evidence to avoid them simply applying the requests of GCC, that have no evidential basis. Doing the latter will cripple housing delivery in an area where housing supply and delivery is in a perilous state.

We understand that other parties are likely to also be writing in with their significant concerns regarding this issue and we have seen representations submitted on behalf of the Robert Hitchens Group and agree with these fully.

Yours sincerely

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MATTHEW KENDRICK

Director

Appendix A – Representations to GCC, May 2020



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Gloucestershire County Council
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Our Ref: 554/A1/MJK/CC
27th May 2020

Dear Sir / Madam,

REPRESENTATIONS TO GLOUCESTERSHIRE COUNTY COUNCIL'S 'LOCAL DEVELOPMENT GUIDE REFRESH 2020' CONSULTATION

On behalf of Cotswold Homes, we write in connection with the current consultation being undertaken by Gloucestershire County Council (GCC) regarding the level of contributions to be sought from developers via s106 agreements, in particular education contributions.

Our interest primarily relates to an emerging allocation in the Tewkesbury Borough Submission Plan at the former Nortonham Allotments in Bishop's Cleeve (Ref: BIS3), for which we recently submitted an application for 103 dwellings, public open space and ancillary works.

We have reviewed the 'Local Development Guide Refresh 2020' and have a number of concerns which broadly echo those raised by the House Builder's Federation (HBF), who have highlighted serious issues with the document and the effect that this could have on the viability of development sites across the county. In summary, our key concerns are as follows:

- This is a very limited 4-week consultation period during the COVID-19 pandemic which we consider to be inappropriate in respect to a policy document that could have wide ranging impact on viability in Gloucestershire, at a time when viability will already be brought sharply into focus by the COVID19 crisis;
- No significant evidence base has been produced in support of the revised Pupil Product Ratios (PPRs);
- During a recent (undertaken in May 2018), examination of the Joint Core Strategy Authorities' Community Infrastructure Levy (CIL) charging schedule it was clearly acknowledged that education contributions would be collected under this method rather than via s106, which would allow for S106 contributions towards education in the County to be reduced, rather than increased;
- The CIL examination considered a robust evidence base in respect to viability testing, including sensitivity testing, to ensure that sites would remain viable across the county even if authorities



chose to collect similar s106 rates to that in the past (which equated to circa £7k per dwelling in Tewkesbury);

- No evidence base has been produced by GCC in support of this new guidance to understand how such a fundamental change in the level of S106 monies being sought might affect the viability of allocated, committed or purchased sites, and furthermore, TBC as part of their Submission Plan has used alternative lower s106 contribution figures to demonstrate that their allocations are viable;
- There will be no independent examination of the 2020 Refresh Guide, meaning that this will be adopted without scrutiny and will unjustly become a 'material consideration' in the assessment of planning applications in respect to an issue that cannot be argued as subjective; therefore, it will undoubtedly be used to refuse applications that do not provide the financial sums being sought, without any evidential basis; and
- As a result, the increase in education contributions from circa £8,000 to £17,000 per dwelling, is unjustified and in our view potentially unlawful.

We will set out our concerns in more detail below.

The consultation period

We note the consultation period is only for four weeks (4th – 29th May), which is very short, especially during this unprecedented time of COVID-19 lockdown. Many staff across the development industry have been furloughed during the pandemic and as such have not been able to work and respond to this consultation.

In light of the situation, with our own applications we have agreed an extended consultation periods with officers, to ensure that all stakeholders and members of the public have a sufficient opportunity to review and provide a full response to the documents prepared. It is our opinion therefore that this consultation should be extended for at least a further four weeks (now that some restrictions have been lifted), to allow for additional responses to be submitted.

The consultation has not been well advertised and our clients only became aware of this when they were sent correspondence by a representative of another housebuilder. We would therefore also suggest that given the magnitude of potential effects this emerging guidance may have on the construction industry in Gloucestershire, a more wide-ranging consultation ought to be carried out to ensure that the development industry is fully aware of the intentions of GCC to increase requests for s106 contributions.

Revised Pupil Product Ratios

As part of the consultation, revised PPRs have been suggested by GCC, without any substantive evidence base being presented to provide justification for this. Accordingly, we have found it very difficult to ascertain how these new PPR's have been arrived and whether they are robustly based on tangible evidence.

We support comments made by the HBF and other representatives of the industry that GCC are failing to take into account internal migration within the county in respect to schools (i.e. a significant proportion of pupils in new developments will already attend local schools), and accordingly they have severely over-inflated the ratios as a result. As such, the contributions that will be sought from developers for education purposes will effectively double to circa £17,000 per dwelling, which will have significant implications on viability.

It is therefore critical that realistic PPRs are prepared, based on a justified and appropriate evidence base that needs to be properly presented as part of a consultation process to allow more informed investigation of how they have been arrived at.

CIL Examination

The CIL Charging Schedule for the Joint Core Strategy (JCS) authorities was adopted alongside the JCS in October 2018 and was brought into effect in January 2019.

A significant level of evidence was prepared in support of the CIL examination and hearings took place over two days in May 2018 (which as far as we understand, GCC participated in this). The examination process determined whether the schedules proposed were compliant in legal terms and whether they were economically viable, as well as reasonable, realistic and consistent with national guidance. The CIL adoption and charging schedule has therefore been subject to a high level of scrutiny through an independent examination process, and is justified.

Within the final report to the examination, the Inspector stated at paragraph 33 that *'with respect to section 106 infrastructure costs, it is assumed for the majority of generic sites that infrastructure requirements are likely to be met off-site through CIL. Therefore, section 106/278 infrastructure costs would be significantly scaled back and in many cases would not apply. Where site specific obligations are required, the evidence suggests that generally there will be sufficient headroom to fund these costs at past average levels'*.

This conclusion was based on the work undertaken by Porter Planning Economics Ltd and PBA as part of the examination. They undertook testing in relation to the 'generic' typology of sites across the county, using information provided by the JCS authorities relating to past s106 receipts (paragraphs 3.25 – 3.28 of document CILEXAM002(a)). They undertook sensitivity viability assessment testing of the generic sites with the following s106/s278 figures:

- £1,000 per unit
- £3,000 per unit
- £5,000 per unit
- £8,000 per unit

This determined that sites in Tewkesbury could remain viable, with a sustained CIL rate of £200 per sqm with s106/278 contributions of £8,000 per unit. This demonstrated that sites were viable even if the District authorities continued to operate s106 requests at past average rates. However, as set out, it was not anticipated that these past average rates would continue due to the introduction of CIL across the county.

Lack of evidence relating to viability of sites

As part of the current consultation GCC have prepared no evidence relating to the viability of allocated sites in the JCS and how these may be affected as a result of the increased levels of s106 contributions that would undoubtedly result from the adoption of the emerging guidance in its current form.

In contrast to this, TBC have recently submitted their Submission Plan for examination, which allocates sites across the District to support the aims of the Joint Core Strategy (JCS) to deliver enough homes and community infrastructure up to 2031.

As part of the Tewkesbury submission, a series of viability assessments have been undertaken in support of the allocations proposed. TBC have incorporated a calculation of £5,000 per dwelling and £1,000 per flat for s106/278 contributions, because it was anticipated that *'the introduction of CIL would scale back the need for these requirements'*. In fact, the review undertaken by TBC has excluded educational costs altogether as *'these requirements are expected to be off-site for the allocated sites and covered by CIL'* (paragraph 5.53 of the Viability Assessment September 2019 prepared by TBC).

The figures used by TBC are justified and logical, given that they were based on previous s106 receipts which amount to circa £7,000 per dwelling between 2010 – 2015.

As part of Tewkesbury's evidence base an assessment has been undertaken which demonstrates that already some of the sites proposed for allocation within the TBC Submission Plan are already marginal at best, let alone if GCC significantly increase the level of contributions sought in terms of s106/278 agreements. This is highly likely to result in viability assessments being prepared at the application stage, resulting in affordable housing levels being reduced. This is contrary to national guidance which states that the viability of allocations should be established at the plan-making stage, rather than at planning application stage (see paragraph 67 of the NPPF).

The viability and deliverability of existing and future allocated housing sites may be jeopardised, which is particularly significant given the current pandemic and likely economic impacts that will follow. Central Government's clear direction has been that the housing market and construction industry makes a significant contribution to the economy and therefore needs to be supported to allow the economy to bounce back; the introduction of this ill-conceived and unsubstantiated guidance will fatally undermine that.

Lack of independent examination

The introduction of CIL was intended to help fund the infrastructure gap identified in the JCS and reduce burdens on larger development. As already set out this went through a significant independent examination process and the levels of CIL and s106 were considered justified by the Inspector.

While CIL Charging schedules are not formally part of the Development Plan for an area, NPPG (Paragraph: 012 Reference ID: 25-012-20190901) outlines that such schedules, and relevant plans *'should inform and be generally consistent with each other'*.

In light of the conclusion of the Inspector dealing with CIL just two years ago, which identified 'headroom' of circa £8k per plot for S106 contributions, GCC's proposal to add a S106 burden of £17,000 per dwelling for education contributions alone, in addition to the CIL levy already charged, will mean that the proposed Developer Guide will clearly be in breach of the aforementioned NPPG guidance as it will be inconsistent with the CIL charging schedule and the substantial evidence base behind it.

The fact that GCC are now proposing to amend the Developer Guide and significantly increase the level of contributions to be sought from developers (far higher than any previous receipts by the charging authorities), without any independent examination being undertaken, is of huge concern to the development industry and could potentially severely undermine allocated housing sites which is a particularly serious issue in this time of crisis.

This approach is clearly not appropriate, nor is it correct in terms of the application on NPPG. Such a fundamental change should be done via an update to the CIL charging schedule or as part of the

emerging development plans for the area (such as the Tewkesbury Local Plan), to ensure consistency and independent scrutiny of evidence. This is currently clearly lacking in respect to the current approach and a significant flaw. We fail to see how this can reasonably become a material consideration in the assessment of planning applications when it has not been subjected to independent scrutiny.

Should GCC continue to proceed on this basis with no justifiable evidence or rationale for doing so, and no independent examination, the development industry will be forced to seek legal advice on the lawfulness of this approach.

Conclusion

These proposals by GCC are likely have significant impact on the delivery of allocated sites across the JCS authority area, resulting in viability cases being brought forward by developers and a reduction in levels of affordable housing being delivered on site. It is also highly likely that this will result in an increased number of appeals and costs applications being made against the JCS authorities.

The CIL examination took into account substantive levels of evidence relating to viability of the allocated sites. Sensitivity testing undertaken as part of the viability assessments relating to the examination utilised a figure of up to £8,000 per unit based on previous s106 receipts by the JCS authorities. This was considered a reasonable and robust approach, as it was anticipated that the requirements for s106/278 contributions would be reduced due to the introduction of CIL and this methodology was endorsed by the Inspector.

For GCC to now exponentially increase the level of S106 requirements being sought for education contributions alone, in addition to CIL that is meant to be funding such infrastructure, is unjustified and in our view unlawful. We therefore respectfully request that GCC review this consultation alongside the proposed revisions to the JCS instead so that it can be independently examined and scrutinised.

Should you wish to discuss this any further, please do not hesitate to contact us.

Yours sincerely

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MATTHEW KENDRICK
Director