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Inspector David Reed BSc DipTP DMS MRTPI
c/o Ian Kemp
PO Box 241
Droitwich
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Our Ref: 554/A3/MJK

13th March 2021

Dear Mr Kemp,

TEWKESBURY BOROUGH PLAN – VIABILITY ADDENDUM

On behalf of Cotswold Homes Ltd, we recently attended the hearing sessions in connection with Bishops Cleeve and also submitted a letter to the Inspector in January outlining our significant concerns connected to the way the council are applying CIL and S106 obligations in the Borough.

We have now been provided with a viability addendum report produced on behalf of Tewkesbury Borough Council (TBC) that seeks to justify higher levels of S106 contributions, above the level that was considered to be appropriate when the CIL charging schedule for the area was introduced and when determining the JCS, which set out what contributions are expected from developers as part of policy INF6.

We have been asked to comment on this new evidence provided by TBC by noon on the 15th March 2021, which unfortunately is insufficient time to allow us to respond in detail on what is a complex matter with significant potential consequences for housing delivery in an area that already has substantial issues in terms of a lack of five-year housing land supply (see recent Gotherington Appeal). We have asked for an extension of time for this information to be considered further but this has been denied; it is our opinion that this should not be a significant issue given that the current examination is not the appropriate arena within which to reopen the viability debate which should instead be undertaken as part of the JCS Review process.

We have seen the substantive representations on the matter produced on behalf of the Hitchins Group, and we support the concerns and issues they raise.

In summary we strongly object to S106 contributions being reconsidered in the way that TBC are proposing.

It is evident that the CIL Charging Schedule was examined and adopted on the basis that it would cover education contributions. The Council's current position is that whilst they recognise this, amendments to the CIL Regulations in 2019 now allow monies to be collected via S106 in addition to CIL and this is therefore, in their eyes, justification for requesting additional or duplicate contributions on education. This approach is at odds with the CIL tests set out under Regulation 122 which have to be passed in order for a S106 contribution to be deemed lawful; this is on the basis that it would not be necessary to pay for the same infrastructure (in this case education) twice to make a development acceptable in planning terms.

We do not believe therefore that discussing the viability impact of the county's education contribution requests over and above that required via CIL is of any relevance and misses the greater point that it should not form part of S106 requested obligations as it is not lawful for the County to request these through S106.

The TBC Borough Plan was prepared based on compliance with policy INF6 of the JCS and has proceeded to the advance stage it is at, on that basis. There has been no indication until now that it would look to review the requirements of INF6 and we believe that was the understanding of the Inspector having read EXAM003.

In light of these considerations we consider that the matter is fairly straightforward for the Inspector: the Borough Plan is not the appropriate avenue within which to reconsider these matters and TBC should instead be working with its partner authorities to review this as part of the JCS review, which will re-examine Policy INF6. Simply put, the soundness of the Borough Plan should be determined on the basis of INF6 and the adopted CIL level, as was clearly originally intended by TBC.

Notwithstanding this, it is acknowledged that you have requested responses to four particular questions in EXAM023 regarding the amended viability assessment put forward by the Council. As set out we have had insufficient time to examine the issues in detail but are supportive of the representations made by Robert Hitchins Ltd, which generally mirror our concerns. In the limited time afforded to us we would like to draw particular attention to the following points in relation to your specific questions.

1. Does the updated information adequately assess the impact of current practice in relation to higher S106 contributions?

No. The document has been drafted very quickly and this is evident in the form of a number of significant and misleading errors.

Table A1 which features in both EXAM022B and EXAM022c purports to provide the average contributions requested or agreed through s106 agreements (excluding affordable housing), concluding that this is £7,433 per dwelling. The following errors are identified however:

- TEW2 identifies all of the S106 contributions being towards education. None of these were towards education;
- BIS1 made a contribution of £15,188 per dwelling, not £9,702 as stated;
- BIS2 made a contribution of £13,180 per dwelling (including £12,988 towards education), rather than the £12,242 as stated;
- BIS3 is an application submitted by our client, Cotswold Homes. The table suggests it makes no contribution via S106 however the County have asked for £17,143 per dwelling in an early response when the scheme was 103 dwellings (91 of which were 'qualifying' dwellings for the purposes of determining the education contribution). They then objected on the grounds that the site should be allocated for a new primary school and have recently removed their objection having now identified a new site for a school. The Council have asked that Cotswold Homes amend the housing mix on the scheme to remove a number of larger homes and provide a greater proportion of smaller homes. Cotswold Homes have done this to satisfy the Council even though it has affected the commercial aspects of their land agreement; this change was undertaken on the assumption that S106 contributions would not exceed the levels tested as part of the CIL evidence base;
- GOT2 was granted on 30th November 2016 with a s106 agreement rather than on 21st August 2019 as inferred by Table A1. As a result, this planning permission was determined prior to the application of the County Council's new formulaic approach;
- TOD1 has no planning application according to the Council's website; and
- BRO2 is subject to an application for 106 dwellings rather than the 406 dwellings identified in Table A1 such that the average contribution per dwelling has been miscalculated in Table A1 to be circa four times greater than it actually is.

Notwithstanding all of these errors, and the fact that correcting them leads to an actual average figure of £11,968 per dwelling rather than £7,433, such an assessment using only these sites is misleading as they do not reflect the existing position being faced by applicants in terms of the current stance the County Council is taking when requesting education contributions.

As such, Table A1 should be re-calibrated to take account of recent and pending applications where the County Council have responded taking their formulaic approach to education. Such an assessment would suggest that it would be reasonable to conclude that on average a figure of £15,000 per dwelling should be attributed to education contributions via S106 alone; adding the £5,000 for additional infrastructure contributions which the Council assume to be applicable would suggest the assumption for S106 costs per dwelling should be circa £20,000 per dwelling. This is a very large and completely untested change from the figures that were subject to examination as part of the JCS and CIL Charging Schedule (which determined a maximum S106 burden of £8k per unit).

2. Should the updated sales values and/or build costs in Addendum Note 1a be taken into account?

Not without a root and branch exercise re-evaluating and assessing viability as a whole. Viability is a fluid process with many moving parts and with parts which are interrelated to and have complex implications on other parts. For example, land value has not been considered in the assessment work undertaken by TBC and no sensitivity analysis applied. The latter issue is particularly important because any downturn in the housing market will reduce revenues and render sites unviable.

3. In the light of the new viability information, are there any implications for the policies in the submitted TBP?; and

There could be significant viability issues relating to the site allocations because of the Council's new approach – but these are currently unknown given the paucity of the evidence submitted and lack of independent scrutiny.

4. Following on from (3), taken as a whole, would the policies in the submitted TBP together with those in the JCS undermine the deliverability of the TBP, and if so, what are the implications of this?

The new formulaic approach of the County Council departs from Policy INF6 of the JCS. The new approach to funding infrastructure of the Borough Council also departs from the intended operation of the CIL Charging Schedule in that it requires duplicate payments to effectively address the impacts of a development twice; this is also contrary to the CIL Regulation 122 test.

These departures, and their full implications, will need to be robustly examined if they are to be adopted by the Borough Council. EXAM022B and EXAM022C demonstrate that these departures seriously undermine the deliverability of the Development Plan including the Borough Plan.

It should be categorically stated that the approach of requiring education contributions via S106, on top of CIL, is currently at odds with the JCS and Development Plan more generally. As such the impact in viability terms is therefore irrelevant and should not be tested as part of the assessment. In turn, until such time as the JCS and CIL charging schedule is reviewed, including its viability, planning applications should not be required to pay additional S106 contributions for education over and above that collected through CIL, as a decision made on that basis would not be in accordance with the adopted Development Plan.

If, however, the County's stance on requiring education contributions via S106 is to be accepted as part of this examination, the following should take place to allow the soundness of the plan, in light of this new factor, to be properly tested:

- The viability should be properly reviewed with assumptions robustly evidenced. The existing factual errors alone are testament to the need for more thorough analysis;
- In particular, sensitivity analysis is required to test the potential impact that reductions in sales values in the coming years will have on deliverability, a reduction in this regard is highly likely when the current Stamp Duty Holiday elapses and the effects of the current recession feed into the housing market;
- Solutions will need to be found to the allocations being rendered unviable such as revisiting the affordable housing requirement; and
- The CIL charging schedule should be reviewed.

Examining these issues to ensure the plan is sound has significant implications for the plan and the timescales within which it could be adopted, at a time when an adopted plan is desperately needed to address the significant shortfall in housing land supply in TBC. This further reinforces our concerns that this is not the appropriate arena to undertake the review of viability that TBC seem to now want to be introduced into this process. They should be directed to progress this matter through the appropriate vehicle – the JCS Review and review of their adopted CIL charging schedule.

Yours sincerely

A black rectangular redaction box covering the signature of Matthew Kendrick.

MATTHEW KENDRICK
Director