

NT/SHF/P21-0026

10th March 2021

Sent by Email: idikemp@icloud.com

Inspector David Reed BSc DipTP DMS MRTPI
c/o Ian Kemp
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Droitwich
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Dear Sir

Response to Examination Documents 022A to 022C and 023

The Borough Council previously signalled an intent to provide updated Viability Assessments to the examination in EXAM004. These Viability Assessments were published in EXAM022A to EXAM002C on 8th March and comments have been invited on this new evidence by noon on Monday 15th March.

Prior to responding to the particular points raised in EXAM023, I would ask for urgent clarification on the role of this new evidence.

The adopted Development Plan and CIL Charging Schedule

Paragraph 34 of the NPPF requires that the contributions expected from development should be clearly set out in the Development Plan. This is achieved by Policy INF6 of the JCS which identified that the infrastructure required from developments must have full regard to the IDP which underpins the JCS according to paragraph 5.7.2 and which identifies the infrastructure required to support the housing and employment growth according to paragraph 5.1.5.

The CIL Charging Schedule was then examined and this assumed that educational infrastructure would be funded through CIL as set out in the second paragraph of EXAM022B. This was undertaken on the basis of assuming policy compliant development, including Policy INF6.

The submitted Tewkesbury Borough Plan was prepared in accordance with the Policy INF6 of the JCS and the operative CIL Charging Schedule as reflected in paragraph 5.52 to 5.54 of EB024a. It was understood throughout the preparation of the Tewkesbury Borough Plan that it was beyond the scope of this plan to review Policy INF6 or the evidence base upon which Policy INF6 relies, or to review the operation of the CIL Charging Schedule. This is understood to have been agreed by the Inspector in the second paragraph of EXAM003.

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The new approaches of the Borough Council

The Borough Council has however indicated in EXAM004 that it now intends to calculate infrastructure requirements in a wholly different way to that set out and tested in the JCS and to fund infrastructure requirements in a different way to that assumed in the operative CIL Charging Schedule. It remains unclear whether the Inspector considers that it is appropriate to assess these departures from the Development Plan and the CIL Charging Schedule within the scope of the current examination.

Even if it is considered appropriate to extend the scope of the examination in principle, the justifications for each of these proposed departures from the operation of the Development Plan and CIL Charging Schedule would need to be scrutinised to determine whether such departures are appropriate.

The new formulaic approach for calculating educational need

The justification for the different approach to calculating infrastructure requirements is set out in EXAM022B as being the County Council's new formulaic approach to calculating the need for educational infrastructure which is proposed in the emerging Local Developer Guide of the County Council.

The PPG (23b-004) identifies explicitly that it is not appropriate for new formulaic approaches to be set out in SPD's or supporting evidence base documents, such as the emerging Local Developer Guide of the County Council, as these would not be subject to examination. Indeed, the substance of the new formulaic approach will not be examined prior to adoption of the Local Developer Guide as this is not a Development Plan Document.

The PPG (61-008) clearly identifies that SPD's cannot introduce new planning policies into the Development Plan and that they should not add unnecessarily to the financial burdens on development. Therefore, if the new formulaic approach proposed in the emerging Local Developer Guide is to be introduced this would need to be examined as part of the Development Plan – and presumably within the current examination. You will of course be aware that the County's approach is to introduce policy which is neither a DPD, nor even an SPD.

In the circumstances it is plainly necessary to examine both the substance of this new formulaic approach as well as its implications on relevant policies of the Development Plan as part of the current examination.

The new formulaic approach of the County Council assumes that circa twice as many pupils will arise in every new dwelling than was assumed in the JCS. It has not been calculated in accordance with the relevant guidance, it is a significant outlier when compared to the formulae of other LEA's nationally or when compared with the formulae which arise from a survey conducted on behalf of Robert Hitchens Ltd in accordance with the relevant guidance, or when compared with that assumed in the adopted JCS. It will therefore be necessary to

robustly test the robustness of the evidential foundations of the new formulaic approach if the scope of the current examination is extended to encompass this such that it will be introduced to the Development Plan.

The need to test the substance of the new formulaic approach of the County Council if this is to be relied upon is underlined by the fact that EXAM022B and EXAM022C demonstrates that this renders a significant proportion of site typologies unviable. The robustness of the new formulaic approach therefore demonstrably has a material effect on the deliverability of the Development Plan.

The evidence in EXAM022B and EXAM022C alone demonstrates that a significant proportion of sites would be unviable as a consequence of the new formulaic approach. This result alone, if accepted, would require that the Borough Plan is modified to ensure that these sites can be viably delivered. This would necessitate modifications to ensure that the Borough Plan remained viable notwithstanding the new formulaic approach.

If following examination of the substance of the County Council's new formulaic approach, the County Council's position is accepted namely that every dwelling will contain circa twice as many children as assumed in the JCS, this will clearly not only have implications for the number of school places required but also for the overall housing requirement, the housing size mix, the affordable housing need, the spatial strategy, the deliverable and developable supply, and for the average number of travel flows arising from every dwelling. One effect of a material consideration cannot be taken into account without the corresponding effects also being taken into account. These other policies of the JCS would therefore also need to be drawn within the scope of the current examination alongside Policy INF6.

In this eventuality, it would be necessary for the Borough Council to assess the implications of all of the above and to provide the necessary evidence to the examination. All participants would then need to be afforded sufficient opportunity to respond to the substance of the new formulaic approach, the viability implications and the effects of the new formulaic approach on relevant policies.

If on the other hand, as assumed by the Council throughout the preparation of the Borough Plan and as acknowledged by the Inspector in the second paragraph of EXAM003, it is not appropriate to revisit the policies or background assumptions of the JCS including the formulaic approach to calculating educational needs and this therefore falls beyond the scope of the current examination, then the Borough Council needs to unequivocally confirm that Policy INF6 and its reliance upon the IDP of 2014 should continue to apply when determining planning applications in accordance with paragraph 33 of the NPPF and the PPG (23b-004). It would not therefore be necessary to spend time at the examination debating the substance, the viability implications or the implications on other policies that arise from the new formulaic approach.

In this context, EXAM022B and EXAM022C could be taken as providing some confidence that some site typologies sites would be viable if the new formulaic approach of the County Council was examined and found sound in a future examination such as that of the JCS Review, but

equally that some site typologies would be unviable. If this is the role of EXAM022B and EXAM022C it would not be necessary to examine the substance or implications of the new formulaic approach as the formulaic approach assumed in the JCS should continue to be applied when determining planning applications until such time as this is examined in a future examination and all relevant policies are reviewed accordingly.

The new approach to funding infrastructure

The justification for the different approach to funding infrastructure requirements, namely the reliance upon s106 rather than CIL to fund educational infrastructure contrary to the intended operation of the CIL Charging Schedule, is identified in EXAM022B as being the amendments to the CIL Regulations in 2019. Whilst the legislative amendments allow s106 monies to be collected in addition to CIL to secure off-site infrastructure, they do not require that s106 monies duplicate that which is received through CIL in accordance with the evidence that supported the CIL Charging Schedule.

The CIL Charging Schedule can and should continue to be applied in accordance with its intended operation. To do otherwise as proposed by the Borough Council requires that applicants fund education once through CIL as set out in the second paragraph of EXAM022B but then that they also pay for education again through a s106 planning obligation. Such a contribution would not accord with Regulation 122 as it would not be necessary to pay for the same infrastructure twice to make a development acceptable in planning terms.

The current examination

Pegasus Group respectfully request that the scope of the current examination is urgently clarified so that all participants are allowed the opportunity to respond accordingly without raising issues which are beyond the scope of the examination.

If, as proposed by the Borough Council, the Borough Plan is now proposed to depart from the JCS and CIL Charging Schedule this will have significant repercussions on numerous parts of the Development Plan which will need to be examined and participants afforded an appropriate opportunity to respond to this fundamentally different approach. However, it will not be necessary to engage in these issues if the new formulaic approach is beyond the scope of the current examination.

It appears that as described above there are broadly three options available for the current examination and we would welcome clarity on which the Inspector wishes to progress in order that representations are tailored accordingly:

- Option A – the substance and the implications including the viability implications of the new formulaic approach are beyond the scope of the current examination in accordance with the approach described in the second paragraph of EXAM003 such that these will not be tested, and the infrastructure requirements and funding mechanisms should

continue to be applied in accordance with the adopted JCS and operative CIL Charging Schedule;

- Option B – the substance and the implications of the new formulaic approach on other policies are beyond the scope of the current examination such that these will not be tested and the Council confirms that they will not be applied in the determination of planning applications, but the potential viability implications of the new formulaic approach will be tested to provide confidence that if the new formulaic approach is found to be sound in a subsequent examination the Inspector can have some confidence that some of the sites proposed in the Borough Plan will remain viable;
- Option C – the substance and the implications including the viability implications of the new formulaic approach will be drawn within the scope of the current examination such that each of these will need to be robustly tested and the policies reviewed accordingly.

Table A1 of EXAM022B and EXAM022C

It is appreciated that these have been prepared at very short notice, but regrettably they appear to contain a significant number of errors such that they should not be relied upon.

In EXAM022B and EXAM022c the average contributions requested or agreed through s106 agreements (excluding affordable housing) are calculated in Table A1 and both documents indicate that on average £7,433 per dwelling has been requested. However, this table is incorrect for numerous reasons including:

- At TEW2 it is identified that all of the s106 contributions were towards education. However, the s106 agreement for this application made contributions to other forms of infrastructure including public open space and did not make any contributions towards education as the County Council was the applicant.
- The first entry under BIS1 reflects a development of 450 dwellings which is not on a proposed allocation and which made a contribution of £15,188 per dwelling according to the s106 agreement rather than the £9,702 identified in Table A1.
- At BIS2, the s106 agreement provides for a contribution of £13,180 per dwelling (including £12,988 towards education), rather than the £12,242 identified in Table A1 (including £12,242 towards education).
- At BIS3, the planning application is for 121 dwellings rather than the 103 identified in Table A1. The County Council has objected to this application as they consider that this land is needed for the provision of a school and have therefore not currently requested any contribution.

- At COO1, the County Council has requested an average contribution of £16,419 per dwellings towards library and education rather than the contribution of £16,233 identified in Table A1 towards education alone.
- At COO2, the s106 agreement actually provides for £2,996 per dwelling (including £2,800 towards education) rather than the £3,429 (including £2,996 towards education) identified in Table A1.
- At GOT2, the outline planning permission was granted 30/11/16 with a s106 agreement rather than on 21/08/19 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.
- At MAI1, the planning application for 33 dwellings reflects a development adjacent to the proposed allocation rather than at the proposed allocation.
- At TOD1, there is no planning application according to the Council's website.
- At BRO2, there is a planning 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. Whilst the application remains to be determined and so not all of the requested contributions may be in the public domain, those which are available sum to £1,019,390 (including £6,113 towards education) rather than the £1,665,007 (including £4,101 towards education) identified in Table A1.

Once these errors are corrected there has been an average requested s106 contribution (excluding affordable housing and contributions yet to be requested on applications which have yet to be determined) for £11,968 rather than the £7,433 identified in EXAM022B.

Regardless of the preceding errors, Table A1 is misleading as it includes planning applications on sites proposed for allocation only, the majority of which were determined or the s106 contributions requested prior to the Borough Council or the County Council applying the new formulaic approach. They do not therefore reflect the current or future level of obligations sought. Additionally, Table A1 includes applications at COO2 and BRO1 which the new formulaic approach rendered unviable, and so on these reduced contributions were agreed. The contributions in Table A1 for these sites do not therefore reflect that which was requested and cannot be used to test the effect of the requested contributions.

In order to demonstrate the effect of the new formulaic approach on the deliverability of the Development Plan and the allocations which have yet to gain planning permission, only the s106 contributions sought on sites using the new formulaic approach of the County Council and which have not been demonstrated to be unviable should be considered. This applies to only BIS2 and COO1 in Table A1 upon which a s106 contribution of £12,988 and £16,419 has been

sought respectively. However, this is a very limited sample and so it is appropriate to consider other sites in Tewkesbury Borough that have been considered or determined on the basis of the new formulaic approach. Those of which Pegasus Group are aware include:

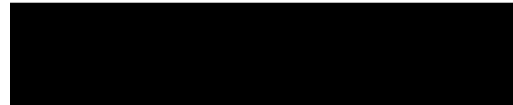
- Part Parcel 0250, Manor Lane, Gotherington (21/00019) on which £502,476 has been requested towards education and libraries alone on a scheme of 49 dwellings, or £10,255 per dwelling.
- Land North of Perrybrook, Brockworth (20/00608) on which £815,369 has been requested towards education and libraries alone on a scheme of 47 dwellings, or £17,348 per dwelling.
- Land off Rectory Close, Ashleworth (19/01227) on which £348,836 has been requested towards education and libraries alone on a scheme of 42 dwellings, or £8,306 per dwelling.
- Land off Ashmead Drive, Gotherington (19/01071) on which £820,973 has been agreed towards education and libraries alone on a scheme of 50 dwellings, or £16,419 per dwelling.
- Land at Homelands Farm, Bishops Cleeve – BIS2 (19/00758) on which £856,678 has been requested towards education and libraries alone on a scheme of 65 dwellings, or £13,180 per dwelling.
- Land off A38, Coombe Hill – COO1 (20/00140) on which £2,462,917 has been requested towards education and libraries alone on a scheme of 150 dwellings, or £16,419 per dwelling.

From these it can be calculated that on average the County Council has requested s106 contributions of £14,410 per dwelling towards education and libraries alone since it has been applying its new formulaic approach but, in some cases, this has been as high as £17,348. EB024a assumed that there would be an additional contribution of circa £5,000 towards other forms of infrastructure, such that as a result of the new formulaic approach of the County Council it would be expected that on average there would be requests for almost £20,000 per dwelling on average but often in excess of this.

It is therefore appropriate to consider the viability or otherwise of sites on the basis of a s106 contribution of circa £20,000 per dwelling. According to EXAM022B this would render 15 of the 22 site typologies unviable and according to EXAM022C this would render 8 of the 22 site typologies unviable, even without consideration of the necessary updates to a number of the variables which are referred to by Pioneer in the attached letter and which will all have a negative effect on viability. It is therefore apparent that if the substance of the new formulaic approach is to be subject to examination, and found to be sound, this will have a material effect on the deliverability of the Development Plan.

It is acknowledged that the Inspector has raised four particular questions in EXAM023. Pioneer have prepared responses to these on behalf of Robert Hitchins Ltd and Vistry Homes and these are attached to this letter.

Yours faithfully,



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Enc.

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**Response to Documents
EXAM022B and
EXAM022C**

In respect of:

**The Tewkesbury
Borough Local Plan
2011-2031
Examination**

Prepared by:

Pioneer Property Services Ltd

On behalf of:

**Robert Hitchins Ltd and Vistry
Homes**

Date:

11th March 2021



Summary

- In May 2020 the Council submitted their Plan for inspection and, as a fundamental part of its evidence base, was a Viability Study undertaken by Porter Planning Economics and published in September 2019 (EB024a).
- EB024a made various assumptions including of CIL contributions (£104 per CIL liable floorspace on typologies of 10 dwellings and under, a charge of £200 for sites between 11 and 449 units, and a charge of £35 on sites of 450 units) inclusive of education requirements of the County Council and the sites put forward for allocation were tested against these assumptions.
- However, in practice, the County Council have been requesting additional payments of c.£14.4k per unit on average, in addition to the £5k per dwelling for other forms of infrastructure assumed in EB024a (i.e. a s106 cost totalling just under £20k per dwelling) and consequently many interested parties submitted objections to the EiP on the basis that the evidential foundations of the submitted Local Plan were being undermined by the County Council, in terms of viability and deliverability. As a result the Inspector, on 6th February 2021 (EXAM 003), asked the Council seeking clarification regarding developer contributions and the viability study and the Council responded (EXAM 004) confirming the viability study would be updated. The Inspector by return (EXAM 009) requested that the levels tested should ‘reflect current s106 practice’.
- The Inspector stressed that in one scenario alternative s106 contribution levels should be the only amendment made. On the 5th of March 2021 the Council submitted EXAM022b to the Inspector (which the Programme Officer drew to respondents attention via email on the 8th of March 2021) which categorically confirms that a substantial number of sites identified in the emerging plan would now fall into the ‘unviable’ category – this is visually emphasised in the traffic light chart in EXAM022b Table A2.
- It is therefore self-evident that unless formal confirmation is given that the additional education contributions will not be sought that the EiP cannot continue without very significant modifications to the submitted plan such that this may be a fundamentally different plan to that which was submitted.
- The District Council have also at the same time submitted a second note (EXAM022c) which applies new sales prices and an adjusted BCIS index but without also adjusting other factors such as land values or addressing any other outstanding objections in respect of the viability methodology. This approach based upon a partial alteration of only some inputs gives rise to a

meaningless outcome which cannot be rationally relied upon. This evidence should be rejected out-of-hand.

- These are matters of critical importance given the already fragile Housing Land Supply position in Tewkesbury Borough and should not be once again left for determination through a promised 'early review' of the TBC Local Plan or the Joint Core Strategy; in terms of the impacts within Tewkesbury Borough these issues should be resolved through this EiP, or if this is impossible then the emerging Local Plan cannot reasonably be concluded to be sound.
- The following analysis provides an immediate response to the queries raised by the Inspector but, in essence, it is evident that the formal inquiry process must be clarified and the necessary evidence provided to resolve this issue prior to the examination progressing.

Introduction

- 1.1 The following paper has been prepared to respond to viability addendum documents EXAM022B and EXAM022C and the questions put by the Inspector on these documents within the Programme Officer's email of the 8th March 2021.

Timescales for Responses

- 1.2 Respondents have been given less than five full working days to respond on two viability addendum documents EXAM022B and EXAM022C ahead of discussion during the remaining Hearing Sessions in March 2021. The responses provided reflect the very limited time has been made available to consider the content of these additional assessments. This serious procedural concern needs to be seen in conjunction with the high level and problematic nature of the Council's evidence. If the TBC LP were to be adopted on the basis of this evidence then properly undertaken, individual site level viability testing would inevitably have to be accepted by the Council when applications are considered. This will lead to even greater delays in progressing schemes and will further damage planned housing supply. It is an outcome which is clearly contrary to Government planning policy objectives.

Outstanding Concerns

- 1.3 The Hearing Statement submitted in January 2021 by Pegasus and prepared by Pioneer on behalf of Robert Hitchins Ltd in response to the Inspector's List of Matters, Issues and Questions - Matter 6 'General Housing Policies' is accompanied by 'Hearing Statement Attachment A' which is a response prepared by Pioneer to EB024e.
- 1.4 EXAM022B and EXAM022C do not address most of the points raised within this response by Pioneer, and which were raised previously in response to the underpinning EB024a. Specifically points numbered 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16, 17,18, 20, 21, and 22 have not been tackled within Addendum 1 or 1a. Whilst this perhaps not surprising in Addendum A – because it only tests the increased s106 values as requested by the Inspector -- it is astonishing in Addendum 1a in which the Council has instructed their viability consultant to update some, but by no means all elements of the modelling through such as sales values uplifts and updated BCIS data. We note that the consultants have drawn conclusions based on this latter meaningless exercise which should accordingly be viewed with a high degree of circumspection.

- 1.5 The partial adjustments which have been made are highly selective and do not resolve the points raised in our above-referenced representations. These numerous concerns should not go unaddressed in the quest to understand the ‘real world’ impact of increased s106 costs. One of the most significant concerns is the basis of the Land Value Benchmarks being used in the Council’s viability evidence base – which have not been updated and have not been shown to be realistic demonstrated to be realistic. In particular they do not reflect that within a Borough such values differ markedly (despite sales values being recognised to do so), and they have not been adjusted for inflation in values (despite applying the same to sales values).
- 1.6 In terms of sales values none of the distribution concerns, particularly in respect of exactly how the zoned values have been derived, nor how the evidence ignores the existence of the second-hand market, have been addressed. It is also unclear why indexed uplifts are being applied to old evidence instead of properly updating the source evidence.
- 1.7 The other key point of concern is the lack of wider sensitivity testing. During the life of the Plan values will increase and decrease and costs are likely to increase – this is supported by the Council applying increased values and costs in 2021 compared to those tested in 2019, just two years before. Unlike costs, where inflation means that materials are unlikely to get cheaper, values can also go down within a short time frame and the impact on sensitive viability modelling is huge. The lack of sensitivity testing means that the viability evidence base only provides a snapshot in time to underpin a 20 year long Plan – the current values / costs approach used for site level testing is clearly inappropriate for this type of high level assessment of long range policies for which values can fluctuate up and down and costs increase significantly even within a 5 year window. Ignoring this results in a Plan testing process based upon evidence that is simply not fit for purpose and this is even more damaging in the context of the fragile housing land supply position in Tewkesbury Borough.

Section 106 Costs

- 1.8 EXAM022B and EXAM022C both stated that s106 costs have been identified for 12 sites within Tables A1 and A5 respectively and then uses this to calculate an average cost of £7.4k – this is just plain wrong and is subject to numerous errors as pointed out in the covering letter to this paper prepared by Pegasus on behalf of Robert Hitchins Ltd and Vistry Homes, which, when corrected, indicates an average of £12k per dwelling. However, this reflects ‘real world’ contributions which have been agreed prior to the new County s106 education formulaic approach. Therefore basing an average s106 cost based on these sites is misleading.

- 1.9 There are nine sites for which no s106 cost is presented within EXAM022B and EXAM022C Tables A1 and A5 and the new formulaic approach would be sought to be applied given that this is now standard practice across the County as many respondents will be able to attest – Robert Hitchins Ltd themselves have six sites where these s106 costs are being or have been sought.
- 1.10 Analysis by Pegasus (as detailed in the letter accompanying this paper) of the sites being subjected to the new formulaic approach suggest that on average c.£14.4k per unit is being sought by the County for education and libraries alone. Added to the allowance in EB024a for other infrastructure (c.£5k per unit) suggests a total s106 burden of just under £20k per dwelling. Furthermore, as a result of an unrealistically low average s106 cost being applied, sites with higher than average cost burdens will be concluded to be viable despite that this is completely inaccurate. In the real world these sites will remain unviable and homes will remain undelivered as a result further restricting the planned housing supply in the Borough.
- 1.11 These points must be borne in mind when considering the EXAM022B and EXAM022C claims in respect of the average s106 that is being charged on the sites tested. Any site which is yet to be subject to a signed s106 Agreement should be assumed to be subject to the new County s106 education formulaic approach – i.e. c.£14.4k per unit at minimum depending on site specific circumstances – and subject to indexation as the County approach requires (a 2019/20 base date is currently applied) – in addition to the EB024a £5k per unit s106 cost assumption for other infrastructure (also at minimum).

Benchmark Land Value

- 1.12 In addition to the concerns already raised (and which remain unaddressed) about the Benchmark Land Value assumptions within the Council's viability evidence base within prior responses to EB024a and EB024e, EXAM022B and EXAM022C within Tables A2 and A6 respectively fail to provide the actual residual land values being generated for each s106 sensitivity nor are any of the appraisals supporting the modelling undertaken published.
- 1.13 Given the key concerns raised about the validity of the Benchmark Land Value assumptions it is requested that this information is immediately disclosed for consideration and in any event within a sufficient timeframe ahead of any Hearing Sessions on which the outputs of EXAM022B and EXAM022C impact upon. This includes Matter 6 'General Housing Policies'.
- 1.14 It is apparent that the Benchmark Land Values used in the VA are essentially arbitrary and indeed no evidence has been presented by TBC which demonstrates that these are realistic.

If they are not, as market evidence demonstrates, then this has very serious implications for housing delivery.

- 1.15 Many housing sites are promoted and gain permission via promotion agreements or options which have been exposed to open market tender and subsequent negotiation, and it is almost always the case that the legal provisions of these agreements specify a minimum landowner return, being a figure below which the land will not be released and available for development. These minimum figures are either expressed as a return per gross acre or per net acre.
- 1.16 An analysis of the last 12 promotion agreements that RHL has completed, shows that the average minimum land value that needs to be achieved to enable the minimum landowner return to be achieved is £232,000 per gross acre, being £573,000 per gross hectare. This is before allowances for the deduction of planning costs are made, which will push the BLV higher. This is evidence of actual benchmark land values.
- 1.17 The Council's viability uses net per hectare Benchmark Land Values, but it can be seen that on the basis of a 75% net to gross conversion assumption (supported by the average position of c.74% suggested by Table 5.3 – page 33 - of EB024a based on Greenfield sites of 15 units or more) the above gross hectare figure suggests a £765k per net hectare benchmark land value for residential greenfield land. The circular argument that the land value must keep reducing to support ever increasing policy aspirations and infrastructure costs is simply not a 'real world' reflection of the fact that landowners are under no compulsion to release land for below what *they*, not the Council or anyone else, would wish to be a reasonable return. That is to say that the evidence on which the assessment is based should be exactly that – what is evidenced – and not what the Council thinks that landowners should achieve. The planning system operates in a market and not a command economy.

EXAM022B and EXAM022C Outcomes

- 1.18 It is noted that in both EXAM022B and EXAM022C Tables A2 and A6 suggest site COO1 to be unviable at £5k per unit s106 and Policy Layer 8 (i.e. full emerging TBC Local Plan JCS policy requirements).
- 1.19 The conclusion to EXAM022B unrealistically skews the modelled outcomes as it claims that the bulk of the sites tested are shown to be viable at the full Pre-submission TBC Local Plan position. It then immediately clarifies this is on the basis of sites being subject to 'up to' £10k s106 per unit.

- 1.20 For the reasons set out above under the assumption within EXAM022B that s106 will be on average c.£7k per unit has been miscalculated. Any sites for which s106 Agreements have yet to be signed should be assumed to be subject to the full potential County s106 Education cost based on the new formula at c.£14.4k per unit at minimum - depending on site specific circumstances – and subject to indexation as the County approach requires (a 2019/20 base date is currently applied) – in addition to the EB024a £5k per unit s106 cost assumption for other infrastructure (also at minimum). This totals just under £20k per unit at minimum.
- 1.21 Table A2 suggests that 54% of all tested sites (12 out of 22) cannot afford even £5k s106 per unit, increasing to 68% (15 out of 22) for s106 at £12.5k per unit (on the basis that 'marginal' sites as defined in EB024a and EXAM022B are in fact unviable). At £20k s106 per unit (which would reflect the costs faced by a site subject to the County education new formulaic approach plus other existing Council s106 costs) c.73% of the sites tested (16 out of 22) are unviable (including marginal sites on the basis these should be concluded to be unviable). The bulk of the sites tested are clearly not demonstrated to be viable at the full Pre-submission TBC Local Plan position in EXAM022B.
- 1.22 In EXAM022C, as already noted, selective adjustments are made that uplift sales values and update build costs but which do nothing to address many of the other concerns raised in the submissions made. In this regard it is relevant to highlight the following matters all of which our Client considers have been resulting in significant accumulated additional costs being imposed upon development over the last 12 months:
- a) Over the past 12 months it is our Client's experience that the Council is starting to impose Strategic Housing Market Assessment dwelling size mix outputs as requirements in Planning Conditions on newly permitted consents. This is resulting in developers being required to deliver more 1 and 2 bedroom homes than they would ordinarily do and the impact on viability is very significant in conjunction with a 40% Affordable Housing requirement and a tenure split being sought as a starting point by the Council at 75% Social Rent and 25% Shared Ownership. Concerns that EB024a and EB024e have not addressed issues raised in respect of housing mix assumptions at all are re-stated within point '11' of the 'Pioneer Response to EB024e' attached to the Hearing Statement for Matter 6 submitted on behalf of Robert Hitchins Ltd. EXAM022B and C also do not address this.
 - b) In addition to the new formulaic approach to s106 education costs being sought by the County, our Client advises that new guidance in respect of Highways (the

'Manual for Gloucestershire Streets' July 2020) published by the County is also resulting in significant increases in costs that are not reflected in the Council's viability testing and is another document being applied without any prior stakeholder / public consultation or consideration of impacts on development viability. This underlines the importance of sensitivity testing in respect of a range of development costs (not only s106) – an issue which remains unaddressed in the Council's viability evidence despite having been raised the November 2019 TBC Local Plan consultation response and the January 2021 Matter 6 Hearing Statement and attachment submitted on behalf of Robert Hitchins Ltd.

- c) It is our Clients experience that the electric car charging costs included in the Council's viability modelling are simply not reflective of real world costs given the additional utility infrastructure costs that the requirement results in. Concerns that EB024a and EB024e have not addressed this are re-stated within point '20' of the 'Pioneer Response to EB024e' attached to the Hearing Statement for Matter 6 submitted on behalf of Robert Hitchins Ltd. EXAM022B and C also do not address this.
- d) New Part L Building Regulations will add costs of c.£2k to £4k per plot from 2022 – this is not reflected in the Council's viability evidence. This is an issue highlighted in paragraph 6.2.11 of the Hearing Statement for Matter 6 submitted on behalf of Robert Hitchins Ltd and in point '17' of the 'Pioneer Response to EB024e'. EXAM022B and C also do not address this.
- e) The Council is already routinely seeking additional design standards outside of Plan policy through a Gloucester, Cheltenham and Tewkesbury Joint Core Strategy Affordable Housing Partnership 'Guidance Note to support the Section 106 and application of affordable housing planning policies'. This results in significant additional cost impacts and is taking place ahead of the adoption through the emerging TBC Local Plan of any Optional Technical Standards as set out within the National Planning Policy Guidance and without robust viability assessment. Concerns that EB024a and EB024e do not reflect these additional standard related cost implications are re-stated within point '14', '15', and '17' of the 'Pioneer Response to EB024e' attached to the Hearing Statement for Matter 6 submitted on behalf of Robert Hitchins Ltd. EXAM022B and C also do not address this.

- 1.23 As such, unsurprisingly, the selectively adjusted modelling outputs in EXAM022C paint an unrealistically positive picture than in EXAM022B. Even then, and against the arbitrarily set Land Value Benchmarks, c.36% of sites (8 out of 22) are suggested to be unviable at the levels of s106 that are likely to apply under the new County s106 formulaic approach in conjunction with Council s106 costs.
- 1.24 However, when assessed against realistic Land Value Benchmarks, taking into account the various other methodological concerns raised within our prior submissions, the many other concerns raised within 1.19 above (which have come to light and / or become increasingly apparent since the preparation of EB024a) and have a seriously negative impact on viability, and the lack of appropriate values / costs sensitivity testing (extending beyond selective sales values / build cost uplifts and different s106 scenarios) the bulk of the sites tested will not be viable.

Conclusion

- 1.25 Inspector's Question 1: For the detailed reasons set out above and within prior submissions to EB024a and EB024e, EXAM022B and EXAM022C do not adequately assess the impact of current practice in relation to higher s106 contributions.
- 1.26 Inspector's Question 2: EXAM022C makes only selective changes to the modelling inputs whilst disregarding a host of other concerns raised within prior submissions to EB024a and EB024e. It should therefore be disregarded as it is not robust.
- 1.27 Inspector's Questions 3 and 4: the new formulaic approach of the County Council departs from Policy INF6 of the JCS and the new approach to funding infrastructure of the Borough Council departs from the intended operation of the CIL Charging Schedule. These departures and the implications of these 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.
- 1.28 It is respectfully considered that the Inspector either (1) identifies that the new County s106 formulaic approach is beyond the scope of the current examination and therefore will not be tested such that the tested formulaic approach of the JCS should continue to apply or (2) the Inspector tests the substance, viability and consequences of the new formulaic approach.
- 1.29 If the approach '1' is taken, then the County Education s106 requests should be ignored for the foreseeable future. If approach '2' is taken:

- The evidential basis of the County Education s106 requests is not robust and as such will need to be modified to be closer to that identified in evidence prepared by Pegasus, the adopted JCS and LEA's elsewhere; and that on this basis there is no need to review any of the policies of the JCS (housing requirements, housing mix, spatial strategy etc);
- If, however the Inspector accepts the LEA's new approach, then:
 - a) as a matter of necessity all of the associated policies (housing requirements, housing mix, spatial strategy etc) should be reviewed such that it will end up with an exponentially increasing housing requirement across Gloucestershire with a particular need for larger properties; and
 - b) many sites will be found to be unviable (as demonstrated by the evidence) such that some solution will need to be found such as:
 - i) requiring a reduced level of affordable housing on sites including COO1 (as the affordable housing policy is already within the scope of the current examination); and/or
 - ii) requiring that the CIL Charging Schedule is reviewed alongside the TBP Local Plan; and/or
 - iii) requiring that the Council continue to fund educational infrastructure through CIL in accordance with the adopted CIL Charging Schedule.