Statement of Common Ground on Community Infrastructure Levy (CIL) Delivery Workshops

17th September 2014

Wokingham Borough Council & SDL Consortia Group

1. General

1.1 On 19th and 20th August 2014, a series of Community Infrastructure Levy (CIL) Delivery Forums were held for each of the four Strategic Development Locations (SDLs).

1.2 Lead Officers from the Council on CIL, their legal (planning) representative from Dentons and SDL representatives attended the event.

1.3 The SDL representatives comprised Bovis Homes, Crest Nicholson, Croudace, David Wilson Homes, Gleeson, Kier, Miller Homes, Persimmon, Taylor Wimpey and University of Reading. Some of the client group have interests in more than one SDL. Crest Nicholson has interests in Arborfield as Development Manager for the Defence Infrastructure Organisation (DIO) and also in North Wokingham. David Wilson Homes has interests in South of M4 and South Wokingham, and Gleeson in both North and South Wokingham. Savills and Pinsent Masons represented all parties for the sessions. GVA Grimley attended the Arborfield session, and Barton Willmore the South of M4 session. The Homes and Communities Agency (HCA) also attended all of the workshops.

1.4 Each session commenced with presentations from the Council, which covered:

- The Council’s general approach to CIL
- The Council’s record of infrastructure delivery, including securing funding, building roads and schools and acquiring land.
- Key Legal Issues with CIL.
- The Draft Regulation 123 List.
- CIL income profiling (for South Wokingham SDL and Arborfield Garrison SDL)
- HCA Infrastructure Funding
- Infrastructure timing expectations.

1.5 The presentations were followed by a general discussion on issues such as the potential of a Framework Agreement and procurement approaches, along with the Regulation 123 List, income profiling, gap funding and the use of Grampian conditions. Key matters of infrastructure (highways, education and leisure/sport/community infrastructure) were considered for each SDL. The discussions are summarised in Section 3 below.

2. Objectives

2.1 The Workshops were arranged to address concerns raised by the SDL Consortia Group in their representation on the CIL Draft Charging Schedule
about a Council-led approach to infrastructure delivery under CIL. The workshops were intended to cover matters of infrastructure delivery in the scenario where the charging schedule submitted for Examination is adopted in its present form with the draft Regulation 123 list unchanged. It was agreed that issues of rates and viability were generally not to be discussed.

2.2 The objectives of the sessions were to:

- reach a common understanding of infrastructure delivery under CIL, on the basis proposed by the Borough Council.
- identify delivery challenges and potential solutions with a view to providing the early delivery of housing and associated infrastructure.

2.3 The Council explained that the approach taken to CIL is intended to provide greater certainty in relation to funding infrastructure delivery.

3. Issues Covered

Potential Framework Agreements

3.1 The Council highlighted the potential use of Framework Agreements (ensuring that key infrastructure items were agreed via a legally binding mechanism entered into by the majority of the SDL landowners prior to issuing planning consent) as an effective means to securing infrastructure in a CIL regime. Such an agreement would, in the opinion of the Council, have given the Council certainty, and clarity about SDL infrastructure costs, upon which a nil or low CIL rate could have been justifiably set for the SDLs. The Council's view was that a draft S106 agreement would not have provided sufficient justification as it was not legally binding. The Council's position remains as set out in its position statement and correspondence inviting the use of such Frameworks.

3.2 The SDL Consortia Group stated that such an agreement (with no guarantee of a planning consent) was unlikely to be acceptable to landowners or developers, dependent on the scope of such a Framework Agreement. It was noted that whilst not all landowners would need to sign, the window of opportunity for entering into such Frameworks in advance of the CIL setting process first offered in January 2013 had now closed.

Gap funding

3.3 It was outlined by the Council that CIL is intended to contribute towards the infrastructure gap required to support growth of the area. The Council stated that they are aware that forward funding is an important issue and it is something that they are committed to resolving. The Council will consider sources of its own capital funding (for example, reserves) in order to enable infrastructure delivery ahead of CIL receipts. It has also been successful in attracting Government funding for infrastructure projects and will continue to proactively pursue these funds. The SDL Consortia shall continue to assist the Borough, where possible, to obtain the necessary gap funding.
3.4 The HCA provided an overview of Large Scale Infrastructure Funding (LSIF) and the Local Growth Fund as a potential source of forward funding. LSIF is a loan for private sector bodies whereas Local Growth Funding from the Local Enterprise Partnership (LEP) is on a grant basis. Wokingham Borough has a provisional allocation of £24 million of Local Growth Funding earmarked for the delivery of relief/distributor roads. The final allocation is subject to liaison with the LEP. There was discussion over this acting as a recyclable funding stream to forward fund infrastructure. It was agreed that LSIF was of limited relevance as the gap funding was required by the Council rather than private sector developers under the Council-led approach to CIL. It was also noted by all parties that it was not currently permissible to use CIL to repay borrowing by charging authorities.

3.5 The SDL Consortia Group conveyed their concerns that without the appropriate gap funding in place and with the potential for Grampian conditions to be imposed, the delivery of the SDLs could be delayed. The SDL group also outlined that part of the identified infrastructure need/gap was the on-site provision of infrastructure directly related to and necessary for the SDLs.

Procurement

3.6 The Council highlighted that CIL receipts are effectively public money and that therefore EU Procurement Regulations would apply.

3.7 The Council put forward a suggestion that it would be willing to look at bespoke framework panels (similar to those already put in place by the HCA) either by SDL or type of infrastructure, so that CIL funding could legally be passed back to SDL developers to deliver certain infrastructure items. It was suggested that the HCA’s delivery framework panel could be used in the interim period, as all members of the SDL Group are currently represented on this panel.

Regulation 123 List

3.8 The Council has produced and submitted a draft Regulation 123 list in support of its Draft Charging Schedule. This outlines a proposal to restrict the use of Section 106 for both on/off-site infrastructure associated with the SDLs.

3.9 The SDL Consortia Group raised concerns around the ability of the Council to amend a Regulation 123 List in isolation of the CIL rate-setting process. The SDL Group also raised concerns about delivery arising from the proposal to split land from infrastructure, and hence the requirement for developers to still procure the land required to enable infrastructure which is to be CIL funded.

3.10 The Council confirmed that any amendments would be subject to appropriate local consultation as required by the Planning Practice Guidance and would also require Executive approval. No review of the Regulation 123 list is planned by the Council at the current time.
Income profiling

3.11 Income profiling was presented by the Council for two of the SDLs - the Arborfield Garrison and South Wokingham SDL sites - based on Strategic Housing Land Availability Assessment (SHLAA) trajectory. The SHLAA trajectory is based upon information received from the SDL consortia. The other SDLs were not profiled as the Council believed that they were unlikely to come forward under CIL.

3.12 The SDL Consortia Group stated that in order to have an increased confidence in the Council-led delivery approach, more accurate modelling is required for each SDL (taking into account the Council’s instalment policy, development phasing, the town/parish council top-slice and deductions for any existing floorspace).

3.13 The Council acknowledged this and requested that the SDL Consortia Group shared their latest refined phasing plans to aid this work.

Infrastructure Delivery Statement(s) (IDS) and Grampian conditions

3.14 The Council produced a draft Infrastructure Delivery Statement (IDS) dated May 2014, which was shared with the SDL Consortia Group in June 2014. The Council acknowledged that this is a working draft and that the purpose of the workshops was to develop and refine it with input from the SDL Consortia Group.

3.15 The SDL Consortia Group requested that the Council draft separate IDS’s for each of the SDLs (with an overarching parent document), which would sit alongside the legal CIL documentation (e.g. the Regulation 123 list) and be updated as required. It asked for details of gap funding, procurement and spending priorities to be set out in more detail. The Group also sought that the Council considers the formal status of the IDS. It needed to fulfil a meaningful function after the CIL examination. There was discussion about the tension between a ‘living’ document that could be the subject of ongoing discussions reflecting ongoing technical work and a formal planning policy document. It was agreed that the formal basis for such a document would have to be reviewed in due course.

3.16 The Council indicated that it was willing to do this.

3.17 The SDL Consortia Group highlighted their concerns about the potential for Grampian planning conditions to delay development under a CIL regime (particularly if the Council did not secure gap funding for infrastructure delivery). Grampian conditions would in normal circumstances be necessary in any development where phasing was an issue for the proper planning of the area. The Council outlined the potential option for Grampian conditions to be used only where a health and safety or significant amenity issue arose. This approach was welcomed by the SDL group. It was requested by the SDL Consortia that a pragmatic approach to Grampian conditions be set out in the IDSs or other suitable planning document. This should clarify the extent to which the approach would be influenced by matters such as funding availability,
spending priorities, planning risks for relevant infrastructure and the current procurement approach. The Council agreed to specify the circumstances whereby a Grampian condition would be likely to be applied.

Timing of SDL planning applications

3.18 The Council set out its intention for CIL to come into effect in early April 2015, when the pooling restriction is introduced. However, given the shared aspiration for as much SDL development to come forward under current Section 106 arrangements, the Council indicated that it would consider a minor delay to implementation if there was a genuine likelihood of a major SDL application being approved during this time. This would be subject to a risk assessment and a decision would be needed around December 2014/January 2015.

3.19 The SDL Consortia Group welcomed this flexibility and confirmed intentions for planning applications to be submitted for Arborfield Garrison SDL and further phases of North Wokingham SDL around September 2014. It was agreed that submission of heads of terms and draft S106 agreements with planning applications would be required if consents can be achieved by April 2015.

4. Actions

4.1 The following actions were agreed between the parties:

- The Council would develop updated Infrastructure Delivery Statements for each of the SDLs (to be supported by an overarching IDS). This will incorporate the themes discussed in the delivery forum. The Council would also consider the formal status of the Infrastructure Delivery Statement(s), Infrastructure Delivery and Contributions SPD (October 2011), and the Planning Advice Note - Infrastructure Impact Mitigation (March 2014).

- The Council would commission a legal advice note on the potential for the Council to set up a Procurement Framework Panel for infrastructure delivery to be shared with SDL Consortia Group.

- The SDL Consortia Group would discuss between themselves their interest in a Procurement Framework Panel for infrastructure delivery and notify the Council accordingly.

- The Council (in consultation with the HCA) would produce a timetable of key funding deadlines (where known) and support required from the SDL Consortia Group to achieve the necessary gap funding to enable Council-led delivery.

- The Council would develop its income and expenditure profiling for delivery of key infrastructure.

- The SDL Consortia Group would develop and share their masterplanning and phasing plans for each SDL, to assist the Council in profiling income and expenditure requirements.
The SDL Consortia Group would keep the Council informed on the likely timing of planning applications due to be submitted in Autumn 2014 and ensure that these are accompanied by heads of terms and draft Section 106 agreements to give them the best chance of being determined by April 2015.

Signed:

Louise Strongitharm
Wokingham Borough Council

Dated: 17 September 2014

Signed:

Charles Collins
Savills (on behalf of SDL Consortia Group)

Dated: 17 September 2014