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20th December 2017

Dear Sirs

RE: Consultation on Notts County Council Planning Obligations Strategy – 2017 update Draft for consultation (November 2017)

I refer to the email and consultation letter received by the District Council on 13th November 2017 in relation to the above.

Firstly, the District Council would emphasise that in considering any request for Developer Contributions, it should be recognised that the NPPF places a requirement on Local Authorities to factor in the viability of a scheme including whether any developer contribution costs are reasonable and allow for a landowner/developer to make competitive returns in delivering a development. Therefore the overarching principles of the document need to acknowledge that it is imperative that in making requests for contributions, these need to be robust and backed by appropriate and up to date evidence to justify the level of contribution being sought. Requests need to be reasonable and wholly related to addressing the impact of any particular development. The District Council has previously been criticised by PINS in multiple appeals in respect of the lack and quality of evidence to support developer contribution requests including requests made by the County Council and therefore the formula for any calculations going forward should be clear in terms of the basis for the calculation, how they relate to the costs of the scheme they will be providing/contributing to, and how these fit with any already committed S106 plans. Requests should be backed by up to date factual evidence. A failure to provide such evidence may result in the LPA taking a decision that a request is not CIL compliant and thus unlawful.

In circumstances where the District Council is satisfied a robust viability argument has been made by an applicant, careful consideration will need to be given as to whether the respective development is still sustainable and that an appropriate level of infrastructure to support the development can still be achieved. This will often mean that the proportionate split of

contributions will need to be directed to the infrastructure most required in that location and further emphasises the need for a robust evidence base in support of developer contribution requests.

Moving now to specific comments on sections within the draft document, Officers at the District Council have had an opportunity to consider the Draft for consultation and would make the following observations:

Archaeology

The Council notes the section relating to Archaeology and that requests might be made towards commissioning relevant programmes of work and/or for safeguarding of archaeological interest or provision for excavation, recording and archiving. The Council is mindful the County Council has recently withdrawn its consultation service and that for future advice on planning applications there would be an associated fee. It is therefore questioned whether the County Council would be able to effectively monitor where such a request might be made, particularly if the District Council chose to obtain independent advice on a development proposal from someone other than the County Council. Furthermore, the areas of work referred to where a contribution might be sought are usually addressed via an appropriately worded condition and therefore the relevance of a section on archaeology within the document is questioned.

Education Provision

It is noted that where a development hits the relevant trigger, the cost per dwelling is proposed to go up by circa £460 for Primary Education. The increase in cost needs to be justified. There is also a lack of clarity on the issue of circumstance in which the figure applies or whether one looks at the build cost itself, which is clearly higher. It is accepted that where a development is large enough to generate a full new school on site that a build cost will be appropriate. This cannot be the case where the development is of a size whereby it would only need to provide an extension to a school (either permanent or temporary) in which case there should be some certainty and clarity that the formula figure per dwelling/pupil place will apply.

In the case of Newark and Sherwood District Council, you will be aware that Secondary Education is on the Council's Regulation 123 List for direction of appropriate funds from the Community Infrastructure Level. Your document needs to reference that in cases where this is the case, requirements may be flagged up but recognition will be given as to whether these are already covered. Consideration also needs to be given to cases where the catchment of a Secondary School spans more than one Local Authority boundary where it is covered by CIL on one side of the boundary but that developer contributions would be required in the neighbouring District and whether there are any implications for the Rule of 5 in terms of contributions being secured.

Another matter which needs to be appropriately considered is justification in terms of developer contributions towards primary school provision where it is deemed the nearest school is at capacity but the next nearest school (possibly out of catchment) is still within walking distance and has capacity. It should be explored as to whether the capacity at the nearest school has been taken by out of catchment pupils for example. Should a developer be required to make contributions towards the school which is at capacity if it is reasonable to direct pupils elsewhere?

Flood Risk Management

Paragraph 5 of this section is questioned in respect of whether new development could provide the catalyst for delivering wider flood alleviation benefits to existing communities and in these situations a contribution towards such works may be sought. The District Council is clear, having regard to the CIL regulations, that any request for a contribution would still need to be wholly related to the development and clear justification would need to be presented. In other words NCC could need to demonstrate that the development places further pressure on the flood risk of the area (in which case one would question the principle of its acceptability) and demonstrate that contributing to wider flood mitigation is the only reasonable and proportionate way to address such harm.

Highways and Transport

Any request for contributions again need tying down to being directly related to the impact of the development for example where requests are made towards off-site public transport and cycling/walking measures. This must include the scheme which is required and its overall cost which can be tied at the point of issuing a planning permission.

Library Provision

It terms of the suggested level of contribution towards Library provision, previously a building cost figure of £202.10 per dwelling (based on 2.4 occupants per dwelling) was given and this is included within the District Council's Developer Contributions SPD. It is noted that no such figure is included within the County Council's Draft Planning Obligations Strategy update. Whilst it is accepted that building costs can often be difficult to justify (on the basis that physical expansion is rare and refurbishment is difficult to justify as a direct consequence of the development proposed), is this intentional? If so, is there a danger that if in future on those rare occasions were significant expansion or replacement of a Library is required, will this be difficult to justify?

Despite numerous previous requests for an evidence base to justify contributions showing why a development will place an impact which cannot be reasonably absorbed by the existing infrastructure, such evidence is still lacking in consultation replies.

Natural Environment

The areas of work referred to where a contribution might be sought are usually addressed via an appropriately worded condition particularly if mitigation of impact is on the natural environment within the application site. The relevance of this section within the document is therefore questioned. In circumstances where a development proposal has an impact on the natural environment outside the site, robust evidence on how a development is having a direct impact and how the level of contribution has been calculated would need be given.

Waste Management & Recycling

As with any request this would need to be appropriately evidenced and justified. The scale of residential development referred to that would necessitate a contribution towards a new or improved recycling facility is that of large residential schemes. The District Council would query whether a more strategic approach should be taken towards such provision through the Plan process.

Additional comments

It is noted that where the level of developer contribution requests are proposed to increase, this will not presently correspond with the figures set out within the District Council's Developer Contributions Supplementary Planning Document. The Council is currently going through a Review of its Development Plan and a review of our own Developer Contributions Supplementary Planning Document will also take place. The County Council's Planning Obligations Strategy will not form part of the Local Development Framework but will form a material consideration. It is the Council's own Development Contributions SPD which will subsequently put any changes in to force should it be agreed that the triggers and level of contributions are appropriate and can be robustly justified.

As I have stated above it is for NCC to ensure that proposed requests are justified in the context of the CIL Regulations. If a request is made to the District which is not, in our opinion as decision-maker, CIL compliant the planning application will be assessed as such. This may result in some contributions not being sought.

Given the timing of the consultation and the lack of ability to report this to an appropriate committee of the Council, these comments are provided at Officer level. However the response will be reported to Members early in the new year and the Council reserves the right to provide further comments in due course.

I trust the above comments are of assistance and will be taken in to consideration before the Planning Obligations Strategy is formally adopted.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Russell', written in a cursive style.

Martin Russell
Assistant Business Manager
Growth and Regeneration