

Dacorum Borough Council Community Infrastructure Levy



CIL Draft Charging Schedule (January 2014) Consultation

Representations Submitted on behalf of Grand Union Investments Ltd

Introduction

1. These representations have been prepared by Savills on behalf of Grand Union Investments Ltd (GUI) to provide comment on the emerging Community Infrastructure Levy (CIL) Charging Schedule proposed by Dacorum Borough Council (DBC).
2. They provide a response to the Draft Charging Schedule and supporting documents reviewing the soundness of these documents in relation to current and emerging CIL Regulations. This is to ensure that they do not lead to inappropriate methods of CIL charges that would restrain new development from being realised on sites within Dacorum.

Purpose of CIL

3. The Community Infrastructure Levy of England and Wales 2010 is used by local authorities to secure funding for strategic infrastructure improvements and works from developers of land when development occurs within the area.
4. The regulations are currently changing and revisions have been made to the 2010 Regulations via the recently adopted 2014 Regulations.
5. These revisions introduce new exemptions for certain residential development, and restrictions on the ability of local planning authorities to require developers to enter into highways agreements where the Levy applies.

Charging Rate

6. The National Planning Policy Framework (NPPF) is clear on the requirement that the planning system "*does everything it can to support sustainable economic growth*" (paragraph 19). Further, paragraph 173 makes clear the fundamental principle of ensuring development viability is not constrained by burdens of obligations or policy, and with regard to CIL the NPPF specifically states that CIL "*should support and incentivise new development*" (paragraph 175). Paragraph 173 is clear that a relevant planning consideration is the "*competitive returns*" to a willing land owner and developer to enable development to be deliverable. In order for the plan to be deliverable it must be flexible and responsive to changing economic cycles or circumstances (paragraph 174).
7. In setting the CIL rates, Regulation 14(1) of the 2010 Community Infrastructure Levy, England and Wales Regulations and 2013 CIL Guidance apply (as the draft schedule was prepared before the revised 2014 Regulations) and require local planning authorities to "*strike an appropriate balance between a) the desirability of funding from CIL (in whole or in part)*" against "*b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development.*" The term "*taken as a whole*" implies that it may be acceptable for some schemes to be rendered unviable by the level of CIL charge; however, there is a clear requirement to ensure that most developments are able to proceed.

8. Likewise, the purpose of CIL must be to positively fund the infrastructure required to enable development growth. This is clearly outlined in both sets of regulations that a “*charging authority must apply CIL to funding infrastructure to support the development of its area*”.
9. As part of this process the local authority is required to publish a Regulation 123 List which identifies the strategic infrastructure projects required to address growth within the area. This List accompanies and provides the evidence base for the proposed charging schedule and in this instance has been prepared by DBC to accompany the latest consultation on the Draft Charging Schedule.
10. The Regulation 123 List identifies the main forms of infrastructure that would be funded by CIL payments including early years’ education and childcare facilities, primary education, secondary education, health facilities, other social and community facilities (including community halls, youth facilities and libraries), strategic and local transport proposals, green infrastructure and open space, burial space, waste services and public realm improvements. The List does not identify any specific proposals. Within this Regulation 123 List, exceptions are identified which takes on board the potential for “*Payment in Kind*” on strategic sites and in relation to specific site allocations.
11. The overall cost of infrastructure for Dacorum has risen significantly from £120.7m (in December 2012) to £131.4m (in January 2014) with the funding gap increasing to some £65.46m. DBC therefore considers it necessary to charge a CIL that can address this deficiency in funds for strategic infrastructure.

| Infrastructure Funding Gap 2011-2031 Infrastructure Type | Total Identified Infrastructure Cost | Funding Gap |
|---|---|--------------------|
| Transport | £34m | £14.5m |
| Education | £67m | £39.8m |
| Green Spaces | £13.29m | £7.55m |
| Police | £0.7m | £0 |
| Waste | £3.1m | £1.1m |
| Sports Facilities | £8m | £0 |
| Burial Space | £1.8m | £1.34m |
| Community Buildings | £3.51m | £1.17m |
| Total | £131.4m | £65.46m |

Question 2 - Do you agree with the Council’s conclusions and its evidence on residential charging zones including the introduction of ‘nil’ charging zones at land at West Hemel Hempstead and Spencer’s Park?

12. In respect of the evidence to justify the Council’s charging zones and rates, it is not considered that this has been appropriately assessed.
13. In order to provide a basis for the Draft Charging Schedule which has been produced, Dacorum have used the Core Strategy as the basis for considering growth within the Borough and their housing programme which follows the slightly higher figure of 11,320 dwellings over the period 2006-2031 which includes a windfall element. Notwithstanding this assumption, it

should be emphasised that during the Examination on the Core Strategy the local authority confirmed that the Core Strategy would “*not satisfy recent household projections (c. 13,500 homes – CLG 2008 based household projections). Nor will it be sufficient to deliver on levels of housing needs identified in the Strategic Housing Market Assessment ... (c. 5,500 homes to 2031) and subsequent local housing assessments.*”

14. In response to this, the Inspector set out in his “Preliminary Findings in Matters relating to Housing Provision and the Green Belt”, published on 19th November 2012, that “*in summary there is insufficient substantive evidence to enable me to confidently conclude firstly that the figure of 11,320 dwellings represents full objectively assessed need...*”
15. The NPPF at paragraph 47 requires that the evidence base of a Local Plan should “*meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework including identifying key sites which are critical to the delivery of the housing strategy over the plan period*” and “*for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target.*”
16. Despite this conclusion by the Inspector, the Local Plan has been adopted subject to an Early Partial Review (EPR). This EPR is intended to consist of a full assessment of household projections and a full Green Belt review to ascertain anticipated housing growth levels. The soundness of this process is currently being contested as a result of a current High Court legal challenge.
17. At this current time therefore there is a degree of uncertainty over DBC’s planned housing supply under the recently adopted Core Strategy and as a result the required future funds for strategic infrastructure expected for the Borough. DBC’s currently planned housing supply does not address the full objectively assessed housing needs (which is subject to the High Court challenge on the Core Strategy) and therefore there is a current and future under-provision of housing in the Borough. This means that a viability buffer needs to be incorporated into the CIL rates (later discussed) to ensure that new development comes forward in a viable way. In particular, Berkhamsted as a market town has the highest CIL rate of all of the settlements across the Borough although the town’s actual needs (based on 2008 CLG household projections) requires a much higher level of housing growth than that currently planned by DBC - resulting in a significant under-provision to meet actual future housing and affordable housing needs. This should be taken into account when DBC consider the CIL rates for the town.

Question 5 – Do you agree that the introduction of the following policies will assist in the delivery of the housing objectives within the Core Strategy? Exceptional Circumstances Policy; Instalments Policy and Payments in Kind Policy.

18. The draft policies set out below that support the Draft Charging Schedule have the potential to support the delivery of housing objectives within the Core Strategy, however there are limitations identified within each of these draft policies. These limitations are set out below and are considered to have the potential to affect the viability of development and subsequently its delivery within the Borough.

19. Reference should also be had to the above points challenging the soundness of the housing policies contained within the Core Strategy and the impact on the CIL charging schedule and deficit of infrastructure costs.

Draft Exceptional Circumstances Relief Policy

20. Dacorum's draft Exceptional Circumstances Relief Policy sets out that:

"The Council will consider applications for Exceptional Circumstances relief on chargeable developments from landowners on a case by case basis."

To qualify for relief the Council must be satisfied that:

- a) A valid s106 agreement is in place for the chargeable development,*
- b) The value of complying with a section 106 agreement for the site would exceed the CIL charge for the development,*
- c) That paying the CIL charge in respect of the chargeable development would have an unacceptable impact on economic viability and,*
- d) That relief would not constitute State Aid."*

It goes on to state:

"Exceptional Circumstances Relief will rarely be granted and will only be available where

- a) It can be demonstrated that the requirements of the s106 provide items of infrastructure which have been identified as essential infrastructure within the Council's Infrastructure Delivery Plan.*
- b) The infrastructure items secured via the s106 are identified as being necessary to support development in a Development Plan Document or Supplementary Planning Document, or*
- c) The chargeable development would constitute a large scale major development¹."*

21. The draft Exceptional Circumstances Relief Policy (as with other draft policies) does not form part of the CIL charging schedule for Dacorum. These policies should be separated in order to adapt to changing planning and market conditions as required through later policy consultation and alteration.

22. Any exceptional relief now sought should not be restricted by the above guideline at part (b) setting out that the value of any s106 agreement would exceed the CIL charge for the development. This allows a greater degree of flexibility in the way in which exceptional circumstances can be considered for larger developments in that it is not necessarily the case that a development must have a s106 obligation that would exceed the envisaged CIL costs in order for it to be considered in relation to the above exceptions policy.

23. The draft Policy should also include relief for affordable housing as set out in the revised 2014 CIL Regulations (at Regulation 29(A)). This effectively allows CIL relief to be provided to developments that include affordable housing on site, which is recognition that the provision of affordable housing on site has an impact on the overall viability of the scheme. The payment of CIL in addition to any on site affordable housing provision has the potential to

¹ Defined as 200+ residential units.

impact significantly on viability which could limit the amount of development and housing scheme coming forward. This, in itself, would be in conflict with the Government's promotion of housing development to address the current housing need across the country and also against the principles of the NPPF seeking that *"the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed is viably threatened"* (paragraph 173).

24. We therefore request that the DBC insert a draft Social Housing Relief Policy to be in accordance with new Regulation 49(A) of the 2014 CIL Regulations.
25. Without the inclusion of this relief there is a direct impact on the quantum of affordable housing that can be delivered on site in developments.
26. We would encourage the Council to appoint an independent expert to assess submitted assessments for payment of CIL to ensure that the viability of schemes and the associated reports are being given the correct consideration particularly where Payment in Kind and Exceptional Circumstances Relief, are being sought.

Draft Instalments Policy

27. The draft Instalments Policy prepared by Dacorum is welcomed as it allows for developments to make CIL payments at staggered stages of the development and in particular for larger developments where tranches of the development will be brought forward in phases.
28. Dacorum have included a stepped approach to payment of CIL, however this is set to timescales and at certain points of the development commencing. It is emphasised that the timing of CIL payments is critical to the continuing viability of a scheme and by restricting the CIL payments to certain set times following commencement does not make allowances for sensitivities particularly in larger developments.
29. Such larger developments often require significant upfront infrastructure costs to unlock development and the additional burden of CIL could be prohibitive to the development.
30. Whilst the proposals go some way to help soften the significant burden of a potential CIL liability, we still believe there is ability for this to be improved further. We would recommend that the initial contribution (%) payable at the commencement of development should vary depending on the scale of the total CIL payment due. The timing and proportion of subsequent payments should then also vary by the scale of the CIL liability

Draft Payment in Kind Policy

31. We welcome the Council's proposed policy on Payment in Kind linked to the charging schedules and the initial steps taken to allow provision of 50% of the CIL contribution to be made in land terms rather than monetary where appropriate. However, it is not considered that this policy goes far enough and it should instead allow for up to 100% of CIL could be off set by a land payment in this form.
32. The latest changes to the CIL 2014 Regulations further sets out at 73A (3) *"where CIL is paid by way of an infrastructure payment the amount of CIL paid is an amount equal to the value of the infrastructure provided."*
33. This therefore makes allowances for infrastructure payments up to the full CIL amount. As such this draft policy should reflect these revisions and allow for full payment in kind on

development projects able to do so and where the infrastructure meets those infrastructure items set out in the Regulation 123 List.

Question 6 - Do you agree that the Council's approach to CIL will not undermine the delivery of the Core Strategy as a whole?

34. With regards the delivery of the Core Strategy and ensuring that development can be delivered across the Borough it is essential to consider the viability appraisal undertaken by BNP Paribas in relation to this Draft Charging Schedule. This is set out below.

Viability Appraisal & Proposed Methodology

35. Owing to the key test of Regulation 14(1)² it is important that the viability appraisals prepared are fit for purpose. It is clear that at Examination the Charging Schedule will need to be supported by "**relevant evidence**."³
36. The requirement to justify the Charging Schedule with viability evidence is outlined by CIL – An Overview⁴, which notably also makes reference to setting differential rates. We make reference to the 2010 Regulations as Dacorum's draft schedule pre-dates the revised 2014 Regulations. The CIL 2013 Guidance outlines "**charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area**"⁵. It will therefore be an important consideration to ensure that the evidence of viability adequately tests scenarios that reflect the key sites required to deliver the planned growth.
37. The fundamental premise is that to enable delivery, sites must achieve a credible land value and developers the required return on investment, otherwise development will be stifled. This is recognised by the NPPF⁶ and is certainly 'in-built' within the CIL Regulations. It is also the basis of the definition of viability with the Local Housing Delivery Group report, Viability Testing of Local Plans⁷.
38. Whilst we broadly agree with the approach used within the viability modelling, we have a number of concerns regarding the assumptions used by BNP Paribas and how these have influenced the modelling.

Assumptions

Profit

39. We are concerned over the level of developer profit that has been assumed by BNP Paribas. We note within the residential appraisals, a figure of 20% on GDV for the private and 6% on GDV for the affordable has been assumed, which we believe is too low and needs to be reconsidered.
40. The minimum profit margin that the lending institutions are currently prepared to accept, on housing (both private and affordable), is 20% on Gross Development Value (GDV). It is

² CIL Regulations 2010 (as amended)

³ Ibid. Regulation 11(1) (f) / 19(1) (e)

⁴ Paragraphs 25 and 26

⁵ Paragraph 30

⁶ Paragraph 174

⁷ Section One

industry practice to include this as a single GDV calculation, rather than the approach proposed by BNP Paribas whereby different profit levels are applied to the private market and affordable elements for the hypothetical development schemes.

41. An important appeal decision relating to Land at The Manor, Shinfield, Reading has been made by the Planning Inspector⁸. We are of the opinion that this is an important decision in terms of viability in planning, and whilst it is not directly related to CIL, it does address many of the factors that are under consideration here, in particular developer's profit. The decision states:

*"The appellants supported their calculations by providing letters and emails from six national housebuilders who set out their net profit margin targets for residential developments. The figures ranged from a minimum of 17% to 28%, with the usual target being in the range 20-25%. Those that differentiated between market and affordable housing in their correspondence did not set different profit margins. Due to the level and nature of the supporting evidence, I give it great weight. I conclude that the national housebuilders' figures are to be preferred and that a figure of 20% of GDV, which is at the lower end of the range, is reasonable."*⁹

42. The BNP Paribas methodology of applying circa 6% profit on cost to the affordable element was designed by the HCA to assist Registered Providers (RP) in preparing their bids and applying for HCA grant funding. Grant funding is no longer available and developers generally make their bids for sites without prior agreements from RPs; instead seeking RP partners after the sites have been acquired.
43. There is therefore a similar level of risk to the developer that an RP may not be found to take on the affordable element, or indeed it may take longer to do so. We are aware of many instances where developers have found it difficult to secure an RP and, where they have, the bids received can often be less than anticipated. We are also aware of instances where the RPs operating in an area are not willing to take the specified affordable dwellings as they are not the dwelling types required by their tenants; even though the affordable unit types were defined by the Local Planning Authority. The result of this uncertainty and risk is delays to the build programme and, consequently, increased holding and finance costs. Looking to the future – and after 2015 – there is greater national uncertainty about grant and social rent. As such, the developer will take a similar view on profit to the Market Housing to reflect this risk.
44. Taking account of the Inspector's decision, funding requirements and housebuilders target profits upon - which they base their bids - we are of the view that a profit of 20% on GDV for both Market Housing and Affordable is appropriate.

Benchmark Land Value

45. We note that BNP Paribas have assumed four different benchmark land values for the modelling, namely:
- Benchmark Land Value 1 - £1.355 million per hectare
 - Benchmark Land Value 2 - £901,000 per hectare
 - Benchmark Land Value 3 - £685,000 per hectare
 - Benchmark Land Value 4 - £306,000 per hectare

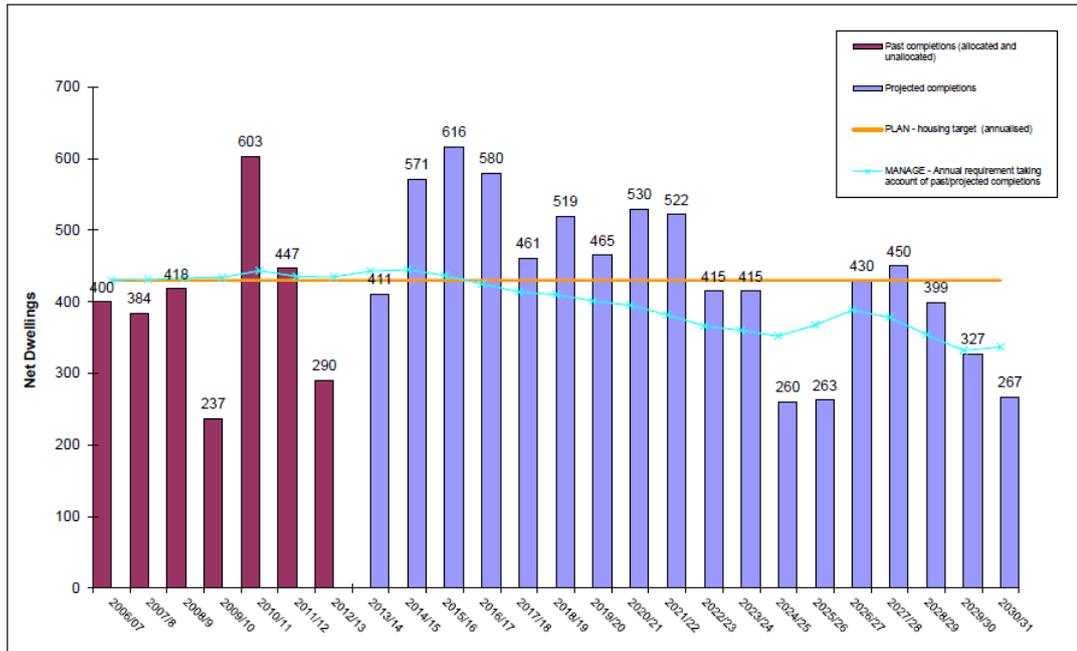
⁸ Ref: APP/X0360/A/12/2179141 – dated 8th January 2013

⁹ Paragraph 44

46. These benchmarks have been derived from looking at various sources and scenarios of possible developments.
47. Our principal concern is in respect to how BNP Paribas have arrived at Benchmark Land Value 1 i.e. £1.355m per hectare or £548,000 per acre. The concern is in relation to the deduction of social housing grant and the discount for planning risk. Paragraph 4.46 of the BNP Paribas Report states:
- “We have therefore adjusted the Cambridge residential land value of £2.9 million per hectare to £2.03 million per hectare to account for planning risk. Recognising that the VOA undertook its most recent study when Social Housing Grant was available for most sites, we have adjusted the land value to account for the reduction in grant availability resulting from the October 2010 Comprehensive Spending Review. This results in a further reduction of £0.675 million per hectare (based on a 30 unit scheme, with 25% affordable equating to 7.5 units at £90,000 grant per unit). The resulting serviced land value benchmark is £1.355 million per Hectare (Ha).”*
48. In terms of planning risk, we note that BNP Paribas have adopted a discount of 30% to the benchmark land value. However, we also note that Chelmsford City Council – on advice from BNP Paribas – applied a discount of only 20% to reflect planning risk within the benchmark land value. We see this as an obvious discrepancy and would be interested to hear the rationale behind the variance.
49. Turning now to the deduction for social housing grant, we believe this approach is not correct and needs to be addressed. The two key questions here are (i) whether affordable grant was available in 2010 and (ii) whether developers were reflecting grant in their acquisitions.
50. After the beginning of the economic crisis in later 2007, the availability of grant funding quickly reduced and was not available. In conjunction with this, share prices of the national house builders quickly dropped and they became extremely risk averse. The idea that house builders would take the risk they would achieve affordable grant – in order to meet their minimum returns – is not representative of events.
51. Crucially, we believe BNP Paribas need to remove their discount for social housing grant and planning risk. Once this has been completed, the appraisals should be re- run on the basis of the revised Benchmark Land Value 1 which we calculate to be £2.9m.

Buffer

52. We are pleased to see that BNP Paribas have acknowledged the use and importance of a viability buffer within viability modelling. As they quite rightly say, the regulations clearly state that rates should not be set at the margin of viability. Furthermore, Paragraph 7.4 states:
- “Other authorities have set their rates at a discount (buffer) to the maximum rate, with discounts ranging from circa 30% to 50%. We would recommend a buffer of circa 30% for Dacorum”*
53. We do not believe a buffer of 30% is sufficient bearing in mind the results of the Annual Monitoring Report dated 2012 / 2013.



Source - Figure 7.1: Core Strategy Housing Trajectory 2006 – 2031

54. This chart clearly shows that since 2006 (and ignoring the projections), only two of the years - i.e. 2010/11 & 2011/12 – have achieved the prescribed housing target. This equates to 28%.
55. On a cumulative basis, we calculate a total of 2,779 units were delivered compared with a plan – 430 units per year – of 3,010. This shows that even with market fluctuations, there is still an under provision (231 units) from 2006/7 – 2012/13. In addition, this shortfall in the Core Strategy housing numbers, does not take into account the fact that this is considered unsound as the Core Strategy and its associated housing numbers is not based on a full objectively assessed need. This relates to round 1 of the current High Court challenge concerning the adoption of what is considered an unsound plan.
56. We believe on the basis of the analysis, that it would be prudent to increase the buffer to 40% to account for the clear under delivery. It is also worth noting that – in addition to housing delivery – the viability buffer should also take account of the risks to delivery flowing from the potential for some sites to achieve a lower sales value than anticipated, the higher costs of zero carbon homes and the adoption of a threshold land value at the lower end of landowners' expectations. Hence, it is crucial to ensure a buffer of 40% is adopted.

Question 7 - Do you have any other comments on the Draft Charging Schedule or the associated documents?

57. Our clients strongly encourage the Council to proactively outline a review mechanism for CIL as part of annual monitoring (required by both the CIL and Local Development Regulations).
58. The CLG CIL Charge Setting and Charging Schedule Guidance outlines that the Government 'strongly encourages' reviews to ensure that CIL is fulfilling its aim and responds to market conditions. It may therefore be prudent to outline on adoption of CIL a review within 12 months.

Part C – Procedural Issues

59. It is our wish to reserve the right to attend the Public Examination on behalf of our clients Grand Union Investments (GUI) in relation to the CIL Draft Charging Schedule particularly given some of the points raised above in relation to the draft policies supporting the schedule and schedule itself.
60. We would also seek notification of when the Draft Charging Schedule has been submitted to the examiner; publication of the recommendations of the examiner and any such approval of the Draft Charging Schedule.