

# **Chiltern and South Bucks Community Infrastructure Levy Examination Hearing Statement**

Berkeley Homes (Oxford & Chiltern) Ltd

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## 1.0 Introduction

1.1 This Hearing Statement is prepared on behalf of our clients, Berkeley Homes (Oxford and Chiltern) Ltd (BHOC). It follows earlier representations that we submitted on their behalf to the Chiltern and South Bucks Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS) on 23<sup>rd</sup> August 2019 (ID ref. 54).

1.2 BHOCs specific interest relates to Land off Park Lane, Beaconsfield (the site). The site forms part of the wider 'East of Beaconsfield' allocation within the emerging Local Plan (Policy SP BP9) which is a strategic allocation for 1,600 dwellings and other uses.

1.3 We have also submitted separate representations on behalf of BHOC to the Draft Chiltern and South Bucks Local Plan 2036 - Publication Version (LP) consultation. These include BHOCs concerns relating to Policy BP SP1 (Developer Contributions to Support Growth).

### Summary of BHOCs concerns

1.4 The CIL evidence base recognises that there is a great deal of uncertainty regarding the scope of infrastructure required, and associated costs in relation to the strategic allocations (which includes the site). The evidence base specifically concludes that a nil CIL rate should apply across the strategic allocations<sup>1</sup>. Therefore the treatment of CIL should be simple for the strategic sites.

1.5 However, the draft CIL schedule identifies a CIL charge for residential uses of £150 per sq m save for "*Local Plan sites with a capacity to provide 400 / 10 per ha or more dwellings Infrastructure contributions via S106.*"

1.6 This wording is not clear in relation to the application of residential CIL rates within strategic allocations and indeed to which strategic allocations such rates apply.

1.7 In essence therefore, BHOCs concerns relate to the specific 400 unit/10ha threshold identified in the draft CIL Charging Schedule for such "*Local Plan sites.*" There is an absence of clarity around this wording in the DCS where, conversely it is clear that the evidence base concludes that all residential development within the identified strategic allocations should have a zero CIL charge. This is contrary to guidance within the Planning Practice Guidance (Para:022 Ref ID: 25-022-20190901) that "*an LPA should seek to avoid undue complexity*" in applying differential CIL rates

1.8 This concern is recognised by the Inspector through his question for Issue 2c within the Hearings Programme, which states:

*"Is the threshold of 400 dwellings/10 ha for a zero rate appropriate? Should the areas to which this applies be clarified and, if so, how? Are school sites within such areas exempted?"*

1.9 BHOC concerns regarding this absence of clarity are amplified by the response of the Council within the CIL Representations Document (ref. ED015) to BHOCs previous representations which states (ID ref. 55):

*"The CIL zero rating applies to thresholds not allocations. CIL is proposed to be adopted prior to the Local Plan and does not rely upon the Local Plan for its evidence. The Councils do not propose to make any modifications to the charging schedules as a result of this representation."*

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<sup>1</sup> See Local Plan and CIL Viability Assessment (June 2019) Executive Summary (para 5) (Document ED002).

- 1.10 BHOCs concerns, as set out within our earlier correspondence (ID 54) are amplified within this Hearing Statement.

### **Scope of Hearing Statement**

- 1.11 This Hearing Statement comprises the following sections
- Section 2 – Review of Evidence Base
  - Section 3 – Analysis
  - Section 4 – Suggested Amendments

## 2.0 **Review of Evidence Base**

2.1 The Local Plan and CIL Viability Assessment (June 2019) states within the Executive Summary (ES) (para 5):

*“an important part of the Council’s growth strategy involves proposals to release strategic scale sites from the Green Belt . . . therefore, a more specific approach has been taken to include considering the current stage viability potential of these strategic allocation sites.”*

2.2 The ES then goes on to state (para 5) *“the larger strategic site allocations which, as noted above, would be subject to nil-CIL charging”*.

2.3 The main report addresses this in more detail. At para 1.18 it is acknowledged that the report *“provides a high-level assurance that the proposed sites (including strategic Green Belt release sites) and the scale of development identified in the plan would not be subject to such a scale of obligations (including CIL) and policy burdens that their ability to be developed viably is threatened.”*

2.4 The Council has acknowledged that the timing of the Local Plan and CIL production is such that the emerging Local Plan needs to consider both if CIL is in place or not.

2.5 As such the emerging strategic allocation policies (including Policy SP BP9) have been worded to ensure that sufficient infrastructure/contributions are provided in any event. As such, the report then goes on to conclude (para 2.12.4) that if CIL were to be charged on the strategic allocations in addition to the provision of the infrastructure identified within the draft policy then this could lead to the possibility of *“double-dipping”*.

2.6 Specific viability analysis was undertaken in relation to each of the strategic allocations which is set out in Appendix 2a of the viability assessment.

2.7 It is therefore clear from the evidence base that the strategic allocations (including SP BP9) should be exempt from CIL due to the nature of the allocations and the infrastructure they are required to provide. Instead contributions would be sought through the s106 process.

### **Separation from the Local Plan**

2.8 The Council now seek to contend in their response that the CIL Schedule is separate from the Local Plan and does not rely upon the Local Plan for its evidence.

2.9 This is incorrect as the Viability Assessment prepared clearly relates to both the Local Plan and the CIL Charging Schedule. The proposed Strategic Sites (including SP BP9) are assessed within the evidence base and it concludes that they should have a CIL rate of zero.

## 3.0 **Analysis**

3.1 The current wording of the CIL Charging Schedule does not reflect the evidence base.

3.2 As noted above the evidence base is clear that “*the larger strategic site allocations which, as noted above, would be subject to nil-CIL charging*”. This should be reflected clearly within the CIL Charging Schedule.

### **Lack of Clarity within Draft Charging Schedule**

3.3 The DCS notes (para 3.11) that the viability assessment accommodates that large sites (400 homes or more, 10 hectares or more or 4,000 square metres or more) should be exempt from CIL and should continue to rely on S106 planning obligations. This is due to the scale of site-specific development mitigation and infrastructure requirements on large sites, such as new schools and roads.

3.4 However it goes on to state in respect of South Bucks that “*Local Plan sites with a capacity to provide 400 / 10 per ha or more dwellings Infrastructure contributions via S106*” have a CIL rate of £0.

3.5 At the outset we note that the reference to “*400/10 per ha or more dwellings infrastructure*” is entirely unclear.

### **Treatment of Strategic Allocations**

3.6 It is accepted that one interpretation of this is that “*Local Plan sites of 400 homes or more*” relates to the relevant strategic allocations (including SP BP9). The wording is however entirely unclear and should be amended (not least having regard to the guidance within the PPG highlighted above).

3.7 The potential implications of this lack of clarity are amplified by the fact that a number of the strategic sites, including SP BP9 are made up of smaller land ownerships/parcels and are likely to come forward via separate planning applications. This is clear within the draft wording of Policy SP BP9 which does not require or seek the submission of a single application for the entire allocation envisaging instead a site wide masterplan process.

3.8 Whilst the strategic allocations envisage substantial level of housing growth (approximately 1,600 homes in respect of SP BP9) a series of planning applications for both less than 400 dwellings and more than 400 dwellings are likely to come forward (and indeed are envisaged within the emerging policy).

3.9 For example land off Park Lane site, which forms part of the SP BP9 allocation has an anticipated capacity of 70-100 dwellings. Therefore, whilst forming part of the wider strategic allocation, and contributing to the infrastructure requirements identified within the draft policy, there is a risk that the current wording of the CIL charging schedule does not make it clear that should a planning application come forward on this site in isolation it will not be CIL liable, and subject to S106 provisions instead.

3.10 This lack of clarity has fundamental implications for the future interpretation of this policy. For example planning applications for 399 dwellings in strategic allocations risk being interpreted as CIL liable but applications for 401 dwellings would not.

3.11 It also risks a “*patchwork*” approach to planning applications within strategic allocations whereas some risk being considered CIL liable with others attracting S106 contributions. Such differentiation risks hampering development.

- 3.12 To provide clarity it is clear that the CIL Charging Schedule should be amended to make clear that planning applications within the relevant allocations (including SP BP9) are CIL exempt.
- 3.13 This will acknowledge that, consistent with the emerging Local Plan, separate planning applications may come forward within the allocation that are under these thresholds. Such an approach would be consistent with both emerging Local Plan Policy SP BP9 and the evidence base. It would provide the necessary clarity to all parties including the LPA, applicants and other stakeholders.

### **Comments on the Local Planning Authorities Response**

- 3.14 BHOC are concerned that the LPAs response to their earlier representation (ID 54) risks increasing this uncertainty.
- 3.15 Specifically it states that “*the CIL rating applies to thresholds not allocations*” such an assertion is entirely inconsistent with the evidence base which, as noted above, states “*the larger strategic site allocations . . . would be subject to nil-CIL charging.*”
- 3.16 Indeed such a response exacerbates BHOCs concerns regarding the potential interpretation of the CIL charging schedule.
- 3.17 The response goes on to state that “*CIL is proposed to be adopted prior to the Local Plan and does not rely on the Local Plan for its evidence.*” It goes on to state that the LPA do not propose to make any modifications to the charging schedules in response.
- 3.18 Setting aside the fact that the Local Plan and CIL evidence base documents are inextricably linked (indeed one of the key documents is the Local Plan and CIL Viability Assessment (June 2019)) this potential concern appears overstated. The designation of the relevant “*allocations*” will follow the adoption of the Local Plan and the CIL Charging Schedule could appropriately reflect this.

## 4.0 **Comments on Inspectors Question 2C**

4.1 In response to the Inspectors question we note:

- There is no basis for a threshold of 400 dwellings / 10 ha for a zero rate CIL rate being appropriate. We have identified no reference to such a figure within the CIL evidence base (which has instead assessed “*the larger strategic site allocations*”). These allocations form the appropriate basis for the identification of nil rated locations.
- Such locations are capable of identification either on a plan contained within the CIL Charging Schedule (which is a common approach within CIL Schedules) or instead through cross reference to the Local Plan.

4.2 Therefore, to ensure the draft CIL Charging Schedule is applied as intended by the evidence base, we suggest the following revised wording for the strategic allocations within the South Bucks table is used. We would also suggest that a plan accompanies the Charging Schedule to make it clear which of the strategic sites are included within the CIL exemption.

*“Development within the strategic site allocations as shown on the accompanying plan - Nil”;*  
or alternatively

*“Development within the strategic site allocations [ . . . to specify and including Site SP BP9] within the emerging Chiltern and South Bucks Local Plan 2016 – 2036 upon adoption.”*

4.3 If the former route is pursued then the accompanying plan should include site SP BP9 and the other relevant allocations. Section 5 of the draft CIL Charging Schedule document should also be updated to reflect the above.

4.4 This will make it clear that it applies to all development within the identified strategic sites and will allow for a number of smaller planning applications to come forward as envisaged by the emerging Local Plan without the risk of such applications requiring both CIL and s106 contributions.

4.5 We look forward to amplifying these comments with the Inspector at the forthcoming Examination.



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