Drivers Jonas Deloitte.

Scottish Widows Investment Partnership Property Trust

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Council of the London Borough of Barnet Community Infrastructure Levy Schedule

Statement of Position

Prepared on Behalf of Scottish Widows Investment Partnership Property Trust (SWIPPT)

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1 Introduction

1.1 Drivers Jonas Deloitte (DJD) and SNR Denton make these representations on behalf of Scottish Widows Investment Partnership Property Trust (SWIPPT), Although these comments do not follow exactly the Examiner's questions, they deal with the relevant issues and respond to the same questions.

1.2 The Council's position appears to be:

- Most of the anticipated development over the next 3 years will be residential.
- The CIL rate does not make residential development unviable.
- Ergo, it has met the test in Regulation 14 because an appropriate balance between funding of infrastructure from CIL and the potential effects taken as a whole on economic viability across the borough has been struck.

1.3 The approach relies heavily on the evidence and consultations with residential developers wholly focused upon delivering housing. In addition, the proposed levy is set to be broadly the same as current S106 Obligations on different types of residential development, but has not been tested for commercial schemes.

Infrastructure Planning

1.4 Understanding the policy objectives for the Borough is crucial to understanding whether the Council's approach meets the relevant tests. The Core Strategy objectives are based upon 'Three Strands Approach' to protect, enhance and consolidate. Barnet's suburbs and town centres should be enhanced and protected with growth consolidated in areas in need, predominantly to the west and focused on Brent Cross, Cricklewood, Colindale and Mill Hill East.

1.5 The Core Strategy identifies a huge expansion in population over the next 20 years. With this growth new business, retail, leisure facilities and jobs will be required to ensure Barnet is a desirable place to live, work and integrate socially. It recognises that housing development needs to be supported by infrastructure.

1.6 Town Centres have a strategic focus for commercial land uses in accommodating growth, not least because 95% of residents shop in Barnet. The performance of town centres is recognized as a challenge and a 'one size fits all' approach is not appropriate. Commercial investment is focused to the priority centres of Edgware, Chipping Barnet, Finchley Church End and North Finchley. A 2007 Review of the town centres highlighted that more retail, affordable car parking and better public realm were needed.

1.7 A low, single rate may be appropriate to deliver a specific piece of infrastructure e.g. Mayoral CIL. However, it is inappropriate and contrary to the more complex policy objectives of the Core Strategy. The Council has determined to support growth in the economy, rather than maximise funding, to incentivise development to come forward in current climate. We agree with this approach, but the proposed CIL achieves the opposite effect: in part because there is poor or no evidence of the ability of commercial development to fund CIL, or of CIL's impact upon it.

1.8 Even if the assumption in the DCS that only 5% of CIL revenue in 2013-16 will come from non-residential uses is correct it fails to recognise the need for commercial development (including retail) to support residential growth. However, that is not an assumption which can be reconciled with the Core Strategy objectives for development.

1.9 The viability evidence undertaken in setting the CIL charge must be:

- Credible
- Consistent
- Clear

2 Credibility

2.1 Credibility is created by solid foundations, sound and current data, appropriate "*elements*" and assumptions. We have set out below the assumptions which we disagree with, and proof of our evidence.

2.2 The main factors that affect the CIL recommendations (undermine its credibility) are rents / sales values, yields, and build costs, addressed in turn below.

Rents / Sales Values

2.3 The commercial data (Table 4.4.1 of the Viability Study) is collated from evidence between January 2009 and July 2011, published by Focus. We have updated this data set from August 2011 to December 2012, using the same source and the results vary significantly.

2.4 Focus data does not always reveal full details of transactions, e.g. reported achieved rents are not always analysed net of incentives such as rent free periods and capital expenditure. A commercial valuer would be required to check the evidence by discussing details of the reported transactions with the active agents. No such work has been carried out, and a hypothetical 'average' rent has been adopted. It is also not clear whether this averaged rental figure is derived from the same type of unit it is being applied to.

2.5 There are no clear trends in the movement in market rents and the table below serves to illustrate the volatility in the data and the risk of relying on such a source. The Viability Study data, and the new data is shown in **Table 1** below, with red representing a fall in rents, amber representing no significant change, and green representing a rise in rents.

Table 1 - Change in commercial rents - Source: FOCUS

Postcode Sector	Average Retail rents (Jan 09 – July 11)	Average Retail rents (Aug 11 – Dec 12)	Average Industrial rents (Jan 09 – July 11)	Average Industrial rents (Aug 11 – Dec 12)	Average Office rents (Jan 09 – July 11)	Average Office rents (Aug 11 – Dec '12)
NW9	6.54	24.40	n/a		25	37.21
NW4	18.48	15.67	n/a		14.14	16.18
NW2	20.78	20.00	n/a		n/a	9.49
EN4	22.29	24.08	n/a		n/a	9.70
EN5	17.18	22.76	n/a		13.85	17.74
HA8	23.45	18.29	10.08	9.96	19.69	15.42
N11	22.98	12.8	6.96	8.86	n/a	15.00
N2	24.51	23.84	n/a		n/a	25.43
N14	26.58	25.64	n/a		n/a	20.83
N3	25.90	23.59	7.77	7.81	17.42	16.82
N10	28.00	46.80	n/a		n/a	14.29
N12	29.43	24.02	11	6.29	14.69	17.09
NW11	27.73	19.34	n/a		19.35	20.97
N20	35.94	24.17	n/a		24.34	15.34
NW7	36.34	35.36	n/a		21.03	n/a

The source and apparently limited analysis of transactional data (including size of units and incentives) has affected the conclusions of the study and can not be relied upon.

Yields

2.6 Assumptions for retail and industrial yields are consistent with our evidence.

2.7 However, the office market in 'outer London' boroughs is particularly challenging, and very different to 'inner London'. Lettings for a scheme of 30,000 sqft will be subject to multiple tenancies, and will be let on short leases on a floor by floor basis. This means that there will be multiple voids at different times and shorter leases than traditional single occupancy buildings.

Yields for offices in 'outer London' boroughs are around 8.5%, rather than 7.5%.

Build Costs

2.8 The build costs assumed are purely reflective of the construction costs of the building structure. No car parking costs have been assumed in the appraisals. Every commercial scheme in the borough includes a proportion of car parking, as such the schemes tested are not reflective of the type of schemes likely to come forward. As evidence, we set out some of these schemes below:

- 128-140 High Street, Barnet EN5
- Units 11-15 Gateway Mews Ringway, London N11
- Colindale Business Park, Carlisle Road, London NW9
- Mill Hill Industrial Estate, Flower Lane, London NW7

2.9 The appraisals ought to assume car parking - surface, basement or multi-storey - which is usual in the Borough. Car parking is often offered as an incentive for these uses. In addition, the Council's policy DM17 maintains that the Council will expect development to provide parking in accordance with the London Plan standards.

2.10 This has two implications for the reliability of the viability work. First that the cost of constructing car parking has not been factored in. Second, that the impact of CIL charge (borough and Mayoral) associated with multi-storey and undercroft parking has not been considered.

2.11 A questionable approach to the build costs assumed is the lack of an allowance for demolition.

All commercial appraisals should include a proportion of car parking and the associated build costs should be reflected in the appraisals. All commercial appraisals should also include demolition costs as the appraisals are all intended to be reflective of "redevelopment proposals".

Other issues affecting credibility

2.12 Other anomalies in the appraisals affect the credibility of the work undertaken:

- Although the viability testing has been undertaken at 30% affordable housing, and the recommended residential CIL rates are based on 30% affordable housing, the Council's policy is for 40% affordable housing. The impacts of this additional 10% and its implications on the recommended CIL rate have not been considered. In seeking to adopt a simple CIL charge, critical evidence required to support a CIL rate has been omitted.

- Despite comments in the DCS, Mayoral CIL has not been accounted for in the appraisals. This is of particular concern when the ***maximum*** levels of viable CIL are being used to inform the Charging Rate and Mayoral CIL of £35psm has not been considered.

- Both the office and industrial appraisals include a hypothetical 27,000 sq ft net area and a 30,000 sq ft gross build area (90% G:N ratio). It is unusual for the same gross to net ratio for these two uses. Industrial buildings are valued on the basis of GIA (i.e. 100% ratio). Office buildings are usually higher than a single storey and include a significant amount of 'core space' to reflect staircases, lifts, and communal areas, thereby reducing their gross to net ratio to around 85%, even in new-build space.

- Purchaser's costs have not been included with regard to the investment valuation;

- Contingency costs and professional fees have been underestimated at 5% and 6% respectively. These are more likely to be 7-10% for contingencies and 10-12% for professional fees for these types of assumed schemes.

These are basic valuation and appraisal assumptions which have either been omitted or incorrectly accounted for in the appraisals. In addition to the above, these additional anomalies go right to the heart of the credibility of the work.

3 Consistency

3.1 The viability evidence must also be consistent. Our main concerns with the approach are:

- The Viability Study sets out that a nil rate is appropriate for office and industrial use, and the following ***maximum*** rates are likely to be viable for retail use:

Maximum Retail CIL Rates			
Nil Rate	Up to £136 psm	Up to £524 psm	Up to £925 psm
NW9, NW4, NW2, EN4, EN5, HA8	N11, N2, N14	N10, N12, NW11	N20, NW7

The residential CIL rates are, however, ***recommended*** at £210 psm, £250 psm and £350 psm. The Viability Study suggest (para. 1.5) that "*These [residential] rates leave a sufficient **margin** [our emphasis] below the maximum viable levels to account for specific site related issues*", and in 7.5, "*and continued potential volatility in the housing market over the next four years*."

- The recommended residential CIL rate is stated to have taken into consideration Mayoral CIL, site specific issues such as s106, and volatility in the housing market. No corresponding "margin" has been considered for the retail CIL rates, and the calculations relied upon to set the flat rate of £135psm are incorrect for the following reasons:
  - Retail testing does not include Mayoral CIL and therefore £136psm, £524 psm and £925 psm are not recommended rates and are already too high.
  - Build costs are underestimated - no provision for car parking or demolition costs.
  - Additional costs are incorrect such as fees and contingencies.
  - Purchaser's costs have been omitted.
  - No S106 costs have been allowed for in the commercial appraisals. This means that the Borough's stated policy of negotiating on s106 if viability is problematic is not supported by the CIL testing as no s106 costs were allowed in arriving at the maximum rates mentioned.

There is a clear inconsistency in the approach taken between residential and commercial viability testing.

- There are different accounts of the total level of CIL income estimated:

I. Section 6.3.3. IDP states that "*A broad estimate of local CIL income is expected to be in the region of £10m-£20m during the 2011-16 period.*"

II. Section 4.1.1 DCS states that the "*potential CIL income from the proposed rates is just less than £13m.*"

III. Appendix 2 DCS sets out the following total 'net chargeable floorspace':

- 34,602 sq m Regeneration / Estate Teams
- 52,163 sq m Residential Wards

The areas in (III.) total 86,765 sq m, although the text states that the total anticipated chargeable floorspace is 81,181 sq m. Applied to £135 psm, this equates to £10.9 million, i.e. less than the 95% of £13m.

- The calculation of total anticipated commercial floorspace is unjustified by the evidence. There is no mention of other uses such community, leisure facilities, student accommodation, and hotels which would all be subject to CIL. Where there are estimates, the source is not clear and they are inconsistent with other calculations. For example, the commercial floorspace calculations are based on previous averages which do not correlate with anticipated development. For example, we are acting on behalf of a client where a commercial scheme is being proposed for a town centre of almost 52,000 sq m of net additional commercial floorspace in a single scheme. This is consistent with the Core Strategy, but not the projection of 6,319 sq m of retail floorspace in the DCS. As a result, there is no consistency with the Core Strategy.

The lack of regard to commercial floorspace is apparent as its Appendices only references income from CIL and residential floor space coming forward in any detail; notwithstanding the inconsistencies set out above. The effect on potential commercial floorspace has been disregarded.

Clarity

3.2 The viability evidence must be clear. Our comments are below:

- There are discrepancies between the viability report and the viability appraisals:

Report	Appraisals
4.8 - 7% professional fees	6% professional fees
4.8 - 6 month letting void	No letting void
6.4 - s106 reduced to zero 6.5 - s106 of £20psm	£4,500 s106 £10,000 s106 £15,000 s106
Section 4 – Commercial Development	No s106 costs

- In relation to the residential appraisals, although a number of models have been created to test the viability of residential development, a single residential appraisal has not been presented as part of the viability evidence. Assumptions in relation to sales values for the affordable units have not been stated at all. In order for a viability consultant to be able to draw conclusions as to the soundness or not of the evidence, key assumptions (such as the sales values for affordable units) must be presented clearly. We can see no such evidence.

- We presume, but it is not clear, that the flat rate of £135psm was in some way based on the maximum retail rate of £136 psm for three retail postcodes. It would appear the Council has taken the ‘lowest common denominator’ of all the charge rates to arrive at the proposed flat rate CIL. If this is the case, then we strongly suggest that the Examiner re-reads the section we have written in relation to the lack of “margin” allowed for the retail CIL rates.

- Table 6.6.4 states that where sales values are £12,282 psm, the surplus per sqm equates to £6,733 psm. It is unclear how this surplus of £6,733 psm has been translated into a CIL charge. One can only assume that £6,733 psm, less “margins” for Mayoral CIL, site specific costs, and volatility in the housing market, have meant that in the highest value wards BNP Paribas has recommended a CIL rate of £350psm. These results were undertaken on 30% affordable housing, but no corresponding figures have been provided from any 40% calculations.

4 Summary

Assessment of Alternative Viability Assumptions – Retail

We have serious concerns that, in deciding on a flat rate of £135 psm based on the 'lowest common denominator' of all the CIL charges, the Council is mistaken to rely on the maximum rate of £136 psm for those retail areas with a £25 psf rent.

Implications of the Viability Assumptions

There is only one scenario presented for retail analysis, although four rental levels have been shown. No other evidence with regard to sensitivity testing (i.e. a change in yield or build cost) has been presented. Simply re-running the presented appraisals to include the identified missing inputs, we set out below the results:

Ref: 4.11.1 of VS	**Retail Rent**	**Revised RLV**	**EUV Benchmark**	**Surplus**	**Surplus per sqm**	**BNP *Maximum* Surplus per sqm**
NW9,NW4,NW2,EN4,EN5,HA8	£20	£1.74m	£2.85m	n/a	n/a	n/a
N11,N2,N14,N3	£25	£2.88m	£3.56m	n/a	n/a	£136psm
N10,N12,NW11	£30	£4.02m	£4.27m	n/a	n/a	£524psm
N20,NW7	£35	£5.17m	£4.98m	£0.19m	£136psm	£925psm

The resulting sensitivity to changes in inputs is self-evident. In relation to the results, we comment:

- The rental evidence on which a rent of £35psf is based is flawed. It is based on three transactions where the average unit size is 628 sq ft. The appraisals are based on 30,000 sq ft units and a prorata rental value can not be applied to a single large unit. Retail occupiers would expect to pay less for larger stores psf and this analysis has not been undertaken. The result for the higher value band is therefore misleading.

- The qualifying floorspace does not include car parking in this scenario. The true effect of CIL (Mayoral and Borough) is not therefore represented in this simple scenario and the stated maximum levels are not therefore appropriate.

- The majority of development and opportunities are focused on the west, where the majority of unviable retail is located. It is incorrect to assume that all retail delivered will be supported by residential land uses. N20 (Whetstone District Centre) and NW7 (Mill Hill District Centre) are different character areas within or on the edge of the Green Belt. Current policy is supportive of the Priority Town Centres where the majority of retail growth is expected.

Based on the ***location*** of the majority of the retail growth in the borough, the revised viability appraisals, and in keeping with the Council's 'simple rate' approach, we would request that a nil charge is applied for all retail uses.

The aim of ensuring that CIL simplifies contributions for smaller development schemes and aids the delivery of economic growth and development does not justify the single, flat rate proposed. These aims have misled the Council to:

- Lose sight of its clear and recent policy objectives for the borough, including those for infrastructure.
- Apply an inconsistent and unclear approach to assessing viability.
- Misunderstand the importance of all types of development to assessing the impact of CIL on development.

The precise wording sought is:

1.1.5;

Mayoral CIL	**Barnet CIL**			
	Retail	**Industrial**	**Office**	**Standard Charge**
£35 per square metre	**£0 per square metre**	**£0 per square metre**	**£0 per square metre**	**£135 per square metre**

1.1.7 – The London Borough of Barnet intends to set its own separate local CIL as a single, flat rates of £135 per square metre of net additional floorspace "except where a nil rate applies".

3.7.7 – in the box after the words "all use classes of development", add "*except retail (A1-A5), office (B1) and industrial (B2-8)*".

4.5.2 – delete no longer relevant.