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3 December 2012
Our ref: JA/LNH/DC/C-0204682-04

Dear Mr Peart

Representations to the London Borough of Barnet CIL Draft Charging Schedule, Statement of Modifications

On behalf of our client, Scottish Widows Investment Partnership Property Trust (SWIPPT), we submit representations in respect of the Statement of Modifications to the London Borough of Barnet (LBB) Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS).

Right to be Heard

Drivers Jonas Deloitte with SNR Denton, on behalf of SWIPPT, will be attending the Examination in respect of our original representations and we will produce a Position Statement, by 13 December, as requested. Regulation 21 provides a Right to be Heard at the Examination by the Examiner in relation to the **modifications**. Please receive this letter as confirmation that we wish to be heard with respect to our representations on the modifications in the Statement of Modifications (SoM).

Representations to the SoM

These representations follow our letter of 7 September 2012, which provided our representations to the DCS. The numbering below refers to the paragraphs of the DCS amended by the SoM.

3.8 Community Facilities and Infrastructure

As amended, this section suggests that the Council will be using CIL receipts to fund, or part fund, community infrastructure which attracts CIL.

The first point to make is that it is based on the mistaken assumption that only "the Council, public bodies or regulated utilities" are likely to provide community facilities or infrastructure which does not benefit from charitable relief. There are many occasions where larger developments are required to fund or provide such facilities as part of their development and/or through section 106 obligations (and, indeed, this

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seems to be the assumption behind comments in amended paragraph 3.11).

Leaving aside both these issues, the potential accounting problems which might ensue and any state aid issues, the promises in paragraph 3.8.3 that "*an equivalent amount of CIL [will] be used towards the self same delivery of the infrastructure should this be required to make the development viable*" cannot with any certainty be used into help justify making such facilities liable to CIL. A charging authority is under no obligation to use CIL receipts for any specific project or type of project (or, indeed, at all) and can quickly and easily change its IDP and/or any regulation 123 list. It could easily decide not to use CIL in the way suggested in this paragraph. This uncertainty serves only to cast further doubt on the Council's overall assessment of viability.

The Council has also made the statement under 3.8.1 that *"any CIL charge levied upon public [or community] infrastructure would represent an additional cost that could push delivery of the project beyond the available funding envelope and make such development unviable."*

We have seen no viability evidence to support the charging of CIL on community facilities and so it can not be assumed that this would be viable. Notwithstanding the fact that no viability evidence has been undertaken to support CIL being applied to community facilities, we are of the strong view that the level of viability testing undertaken for the whole Draft Charging Schedule is limited, and we will be commenting on this further in our Statement of Position.

3.10 Regeneration and Development Areas and Priority Estates and Town Centres

It is welcome that the Council recognizes the potentially significant effect of CIL on the viability of large developments. It is, however, highly selective to suggest that viability is only a challenge for the regeneration areas and priority estates. There are other areas of proposed development which enjoy equal encouragement in planning policy and which have "*specific site constraints combined with high onsite infrastructure requirements*", including town centres.

The amended wording suggests that the impact of CIL on regeneration areas and priority estates can be mitigated through a flexible approach to negotiating section 106 obligations. Although we have doubts that this will be possible even in those cases, the Council's overall consideration of the impact of CIL on development viability is fatally undermined by the fact that it has failed to consider whether such an approach could assist other types of development.

We understand that no additional viability testing has been carried out to confirm that "*viability is a particularly pertinent concern for these areas*", however, if we are to follow the Council's viability evidence, we know that Brent Cross Cricklewood (NW2) and Colindale (NW9) have been tested for the viability of retail development as part of the retail postcode viability approach and the results of the viability appraisals suggest that a nil rate should be charged in these locations for retail use.

There is much confusion over the purpose of this part of the Draft Charging Schedule. In summary we would comment:

- One can only assume that because the postcodes of NW2 and NW9 are within the non viable retail postcodes and that Colindale is in a "*low value*" residential ward, then this is the viability testing that leads LBB to make these comments. It should be noted that there are four other retail postcodes within this unviable retail grouping and surely if NW2 and NW9 are to be noted as having 'viability as a particularly pertinent concern' then the other four postcodes of NW4, EN4, EN5 and HA8 must also be given the same treatment.

- If viability is an issue in these areas it is clear that on residential sites, the Council intends to use negotiation to reduce planning obligations or the level of affordable housing required; this latter approach is of no benefit to commercial schemes which have no such ability. It is unclear how the viability on commercial schemes could be meaningfully assisted through section 106 negotiations as explored further below.

3.11 Relationship Between CIL and Planning Obligations

Firstly, we wish to note as above:

(a) there can be no guarantee that CIL receipts will be available to fund on site infrastructure. The use of "*will not be precluded*" does not in itself commit the Council to assisting with all or any of the costs. Simply put, developers cannot be as "*reassured*" as the Council suggests; and

(b) where the CIL liability is high, even flexibility in negotiating section 106 obligations is unlikely to make a development viable.

Secondly, through the CIL Regulations where a Charging Authority sets out that it intends to fund an item of infrastructure via CIL then that Authority cannot seek a planning obligation contribution towards the same item of infrastructure.

Under 3.11.3 the Council maintains that it is committed to offering a fair and balanced approach to planning obligations and to providing clarity for developers. The Council is in the process of updating its guidance on planning obligations in a revised Supplementary Planning Document (draft December 2012) intended for adoption in Spring 2013. The DCS further states in 3.11.4 that the updates to the planning obligations and affordable housing SPD will provide clarity on how the balance between CIL and planning obligations will be effectively struck. The Council makes the statement that it is intended that the approach set out in these two documents will enable development viability concerns within the planning process to be effectively managed. We have reviewed the planning obligations SPD although the affordable housing SPD is not yet available for comment. We cannot therefore see that the approach set out in the published document will enable viability concerns to be effectively managed on commercial schemes. We confirm that we will be submitting representations on the SPD.

The viability testing undertaken by BNP Paribas does not include an allowance on developments for section106 contributions other than for affordable housing which in any event has been included at a now incorrect level of 30%, and therefore not policy-compliant, of 40%. Indeed it is clearly stated in the Updated BNP Paribas viability study under 6.4 that the viability assessment has been undertaken based on a Section 106 requirement of zero for all viability appraisals. This means that the Council is not in a position to comment on the viability of development that is subject to planning obligations and to CIL because the Council has not undertaken any viability testing whatsoever to support the CIL charge alongside site specific mitigation and section 106 contributions in accordance with its current or proposed policy documents. Consequently, the Council cannot say with any certainty that reducing section 106 burdens where there is a high CIL liability will assist in overall viability.

In summary the Council is not in a position to comment on the viability of overall development in the Borough of Barnet based on the viability assessments undertaken to date which do not reflect realistic schemes that are likely to come forward in the Borough. In addition, any testing that had been previously done incorporating section106 contributions is now out of date and does not reflect the revised planning obligations SPD.

4.3 Exceptional Circumstances Relief

Although Exceptional Circumstances Relief might well be welcome by some developers, its impact for large developments will be minimal. CIL liability for most large schemes is likely to be far higher than the cost of section 106 obligations. We have experience of this acting on behalf of our client in Edgware.

1.1.1 / 1.1.3

These will now need to refer to the Community Infrastructure Levy (Amendment) Regulations 2012.

Summary

As expressed at the start of this letter, we confirm our attendance at the examination on 21 December on behalf of our client to discuss these and our earlier representations. In the meantime, we look forward to receipt of any further Council response by 18 December.

As a key landowner in a priority town centre in the LBB, SWIPPT is committed to investing in and enhancing Edgware town centre in line with the adopted Development Plan. Accordingly, on behalf of the landowner, we seek to continue our dialogue with officers at the Council on the key issues raised in our representations.

Please contact me or my colleague Joanne Dennis-Jones (0207 303 2279) should you have any questions regarding this submission.

Yours sincerely

pp **Jill Astley**
for Deloitte LLP (trading as Drivers Jonas Deloitte)