

Barnet Local Plan EIP – Note on Viability

Reason for producing this note

On Day 6 (Thursday 6th October) at the hearing session's, consideration of Matter 7 – Viability and Policy Requirements, Inspectors Philpott and Wildgoose requested provision of a Note to clarify the following points:

- The Infrastructure Payments Policy in addition to MM303, setting out modifications. Explaining any linkage with s.106 and CIL.
- The planning policy requirements for obligations that are not identified in the viability assessment and requirements and the coverage of s.106 and CIL. Including but not limited to contributions for CCTV, flooding, Decentralised Energy.
- How the figures in the viability assessment at para 4.31 (£1500 per residential unit and £20psqm for non-residential development) have been calculated and the policy requirements in the Plan that those figures cover. Categorise the policy requirements in terms of where they fit with viability calculations to ensure robustness.
- Making sure Plan is clear in terms of how policy requirements will be funded by CIL and/or S106 contributions. Explain how the CIL Regulations have changed and might allow for double dipping, whether there is intention to do that. Not asking for the approach to be re-run, just clarification of what the likely effects on viability may be.
- Clarification of the approach to SPDs, CIL and planning obligations. Is SPDs approach consistent with the NPPF.
- Consider funding gaps, look at amending the text in para 12.5.1 in light of the regulations/double dipping. Is there a need to reiterate the identification of sources of funding. Set out details of track record in terms of funding infrastructure.
- Consider circumstances where a proposal demonstrates that it is undeliverable or unviable with the full set of policy asks. Explain the hierarchy for the approach to viability in those circumstances and consider whether viability/planning obligations policy necessary Consider exceptional circumstances relief and how that might operate.
- Revisit para 12.6.4 in terms of priorities setting out the absolutes against the nice to haves and how that might work with the NPPF. Need to bring out where the flexibility is

The following format has been used in this Note to denote further proposed modifications to the submission version of plan as revised by the proposed modifications listed in EXAM 4.

~~Strikethrough text~~ to indicate text proposed for removal.

Underlined text to indicate additional text.

Background

This Note responds to all the points raised at the EIP hearing session. The Council's response is set out in the table below. which the Inspector's requested were addressed by the Council in this note, as set out in the table with comments.

Secondly the note sets out additional text to Main Modifications 303 and 304

Finally, the note explains how the residual s106 figure used by BNPPRE in the Whole Plan Viability Assessment was calculated and what contributions it covers.

Considerations

Council's Response on Viability

Point raised at Hearing session	Council response
<ul style="list-style-type: none"> The Infrastructure Payments Policy in addition to MM303, setting out modifications. Explaining any linkage with s.106 and CIL 	<ul style="list-style-type: none"> The Council refers to new paras 12.5.1B to 12.5.1HA as set out below at Section 1. These proposed modifications provide clarification on the Infrastructure Payments Policy, and the relationship between S106 and CIL.
<ul style="list-style-type: none"> The planning policy requirements for obligations that are not identified in the viability assessment and requirements and the coverage of s.106 and CIL. Including but not limited to contributions for CCTV, flooding, Decentralised Energy. 	<ul style="list-style-type: none"> The Council refers to proposed modifications to para 12.6.4 as set out below at Section 2
<ul style="list-style-type: none"> How the figures in the viability assessment at para 4.31 (£1500 per residential unit and £20psqm for non-residential development) have been calculated and the policy requirements in the Plan that those figures cover. Categorise the policy requirements in terms of where they fit with viability calculations to ensure robustness. 	<ul style="list-style-type: none"> The Council refers to its clarification at Section 3 below
<ul style="list-style-type: none"> Making sure Plan is clear in terms of how policy requirements will be funded by CIL and/or S106 contributions. Explain how the CIL Regulations have changed and might allow for double dipping, whether there is intention to do that. Not asking for the approach to be re-run, just clarification of what the likely effects on viability may be. 	<ul style="list-style-type: none"> Further text added as 12.5.1B to 12.5.1HA as set out below at Section 1.
<ul style="list-style-type: none"> Clarification of the approach to SPDs, CIL and planning obligations. Is SPDs approach consistent with the NPPF. 	<ul style="list-style-type: none"> The Council has reflected on this issue and considers that it is still appropriate to set out further details on Planning Obligations through an SPD. The SPD would include guidance on procedure, monitoring and further detail on the level of contributions that will be required. The SPD would also include an update to the 2014 Skills Employment, Enterprise, and Training SPD. There are however some amendments to policies in the plan required, to ensure that the SPD is not creating new policy. These changes are explained in the following EIP Notes.

	<ul style="list-style-type: none"> EXAM76 clarifies the Council's position on policy ECY03, EXAM48 clarifies the Council's position on TRC04 EXAM49, EXAM50 and EXAM52 clarify the Council's position on TRC02, TRC01 and TRC03 respectively. EXAM54 clarifies the Council's position on policy CHW01
<ul style="list-style-type: none"> Consider funding gaps, look at amending the text in para 12.5.1 in light of the regulations/double dipping. Is there a need to reiterate the identification of sources of funding. Set out details of track record in terms of funding infrastructure 	<ul style="list-style-type: none"> Further text added as 12.5.1B to 12.5.1HA as set out below at Section 1
<ul style="list-style-type: none"> Consider circumstances where a proposal demonstrates that it is undeliverable or unviable with the full set of policy asks. Explain the hierarchy for the approach to viability in those circumstances and consider whether viability/planning obligations policy necessary Consider exceptional circumstances relief and how that might operate. 	<ul style="list-style-type: none"> Further text added as 12.5.1B to 12.5.1HA as set out below at Section 1 The Council do not consider there needs to be a policy or 'hierarchy of approach' as it considers that is the planning judgement that needs to be made when assessing a planning application on its merits. Have added text to advise fundamental viability issues addressed by exceptional circumstance relief from CIL
<ul style="list-style-type: none"> Revisit para 12.6.4 in terms of priorities setting out the absolutes against the nice to haves and how that might work with the NPPF. Need to bring out where the flexibility is 	<ul style="list-style-type: none"> The Council refers to proposed modifications to para 12.6.4 as set out below at Section 2 The intention of this section is to bring together all the areas that S106 can cover according to the policies in the Local Plan. Further text regarding prioritisation added to 12.5.1A to confirm that contributions are policy requirements to be secured by s106 and only if in accordance with regulation 122.

Section 1 - Clarification on the Infrastructure Payments Policy, and the relationship between S106 and CIL.2

The Council proposes the following modifications to follow on from para 12.5.1A

12.5.1B The Council has a good track record of providing a range of infrastructure alongside development. It will continue to maximise the use of CIL and s106 to meet the infrastructure needs set out in the Local Plan.

Prior to the introduction of CIL in 2013, the Council collected 'tariff style' s106 contributions for education, libraries, open space, and health care). The Council has been working with the CCG to fund improvements to Barnet Hospital Urgent Treatment Centre and other health centres within the Borough using section 106 Health funding secured prior to the introduction of CIL. Health centre floorspace has been secured through section 106 agreements at Colindale Gardens and Grahame Park and the Council is working with the CCG and the developers to bring forward a new health centre. For libraries section 106 funding was used alongside other Council funding to improve libraries across the Borough. The Council also used S106 for improvements to Barnet's parks and open spaces. Education S106 contributions were used to supplement central government funding and expand schools to meet increased need through the Council's capital programme over the past 10 years. An example of this is Saracens secondary school in Colindale. Saracens was brought forward by land being provided under s106 with funding from central government - Department for Education (DfE). Another example of S106 funding is Millbrook Park Primary School. This was funded by DfE together with the 'tariff' style s106, secured from the development prior to the introduction of CIL in 2013. Land for schools has been secured at Colindale Gardens and West Hendon Estate. CIL and s106 funding has also been used to construct the Pupil Referral Unit in Whetstone. Land for a school and the construction of purpose-built school building has been secured under the section 106 for North London Business Park. Prior to the change to the CIL Regulations in 2019, CIL and s106 could not be used to fund the same infrastructure. The Council therefore used s106 to secure land for schools, with schools being funded by DfE.

12.5.1C The Council considers that the need for school places at secondary level is now met until the end of the decade. The picture for primary schools is more mixed, with some schools having falling rolls and others being oversubscribed, while other areas such as Colindale will have need met when planned schools such as at Colindale Gardens are brought forward. Therefore, the situation will need to be kept under review. Policy CHW01 allows for land/contributions to be sought for education if required to make particular large-scale developments acceptable in planning terms under the Regulation 122 tests.

12.5.1D Use of central government funding for education has allowed the Council to utilise its CIL to fund other substantial projects, most notably the refurbishment of leisure centres at Copthall and New Barnet. Over £30 million of CIL was spent on the Sports and Physical Activities project between 2015 and 2019. The Council has also funded improvements to community centres, improvement to early years facilities, infrastructure for social care and improvements to roads and pavements with CIL from the circa £100 million in CIL received to 2022.

12.5.1E On an annual basis the Council agrees allocations for Strategic CIL expenditure going forward. These priorities are reflected in the Infrastructure List of the Infrastructure Funding Statement (IFS) which is updated each year.

12.5.1F An Infrastructure Payments Policy, under section 73a of the CIL Regulation 2010 (as amended) was adopted by the Council alongside adoption of the new Charging Schedule on 1st April 2022. Under the Infrastructure Payments Policy the Council may accept one or more land and/or infrastructure payments in place of the whole, or part of, the CIL due in respect of a chargeable development.

12.5.1G The Council considers, that alongside continuing to make exceptional circumstances relief available, allowing infrastructure payments would ensure the most efficient method for delivery of infrastructure to support development alongside balancing any unacceptable viability impacts of the increase to the CIL rates, especially on strategic sites.

12.5.1 H As s106 contributions will only be sought in accordance with the Regulation 122 tests, it is not possible to prioritise which types of contributions are most important in the Local Plan, as the scale and type of contributions required will vary depending on the development proposed and the need to address its impact. If a proposal demonstrates that it is undeliverable with the full set of policy and section 106 obligation requirements, the preferred approach would be for the developer to utilise the exceptional circumstances relief from CIL procedure or the infrastructure payments policy rather than reducing section 106 contributions or not meeting policy requirements, although each planning application will need to be considered on its merits and a balanced planning judgement taken when planning applications are determined. Developers should note that if they are proposing to provide infrastructure in kind, it will need to be identified on the Infrastructure List, published in the Infrastructure Funding Statement,¹ and it cannot be necessary to the make the development granted by the relevant permission acceptable in planning terms (i.e. a section 106 requirement) under regulation 73A of the Community infrastructure Regulations 2010 (as amended).

12.5.1HA The Council will continue to use its powers in the most effective way possible to deliver infrastructure to support growth set out in the Local Plan. This will include securing other sources of funding through central government, Transport for London, the GLA, public sector borrowing where necessary and effective use of CIL and s106. In accordance with government guidance and the CIL regulations 2010 (as amended), the Council's Infrastructure Funding Statement will set out how CIL is proposed to be used (the Infrastructure List under regulation 121A(1)(a)) and what CIL and s106 funding is secured and spent on an annual basis.

Section 2 - Proposed Modifications to para 12.6.4 (in addition to MM304)

The items sought through a planning obligation will vary depending on the development scheme and its location. Considerations that may require S106 include:

- improvements to public transport infrastructure, systems, and services (Policy TRC01);
- contributions to the carbon offset fund where development can demonstrably not meet net zero carbon policy requirements on site (Policy ECC02);
- education provision (Policy CHW01);
- affordable or special needs housing (Policies HOU01 and HOU04);
- health facilities (Policy CHW01);

¹ The Infrastructure Funding Statement is published at the end of each calendar year as required by regulation 121A of the Community Infrastructure Levy Regulation (2010) as amended. It is available from the Council website <https://www.barnet.gov.uk/planning-and-building/planning/community-infrastructure-levy>

- small business accommodation and training programmes to promote local employment and economic prosperity (Policy ECY03);
- town centre regeneration, promotion, management, and physical environmental improvements including heritage and conservation (Policy TOW01);
- improvements to highways and sustainable forms of transport, including cycling and walking (Policy TRC01);
- environmental improvements including air quality (Policy ECC02);
- provision of public open space and improving access to public open space (Policy ECC04);
- other community facilities including policing (Policy CHW01); and
- ~~• other benefits sought as appropriate.~~
- Financial contributions to CCTV enhancements in town centres or the incorporation or replacement of CCTV cameras on redeveloped buildings in town centres (Policy TRC04)
- Contributions to ensure that parking impacts from new development are managed, such as monies to implement or vary controlled parking zones including restrictions on occupiers parking permits (Policy TRC03)
- Commitments to decentralised energy for the development (Policy ECC01);
- Contributions towards feasibility studies for decentralised energy (Policy ECC01);
- Contributions towards or in-kind improvements to address on site flooding issues (Policy ECC02A)
- Affordable workspace contributions (Policy ECY02) (A financial contribution would only be sought if the development does not meet the required standard onsite)
- Travel Plan Monitoring contributions required to ensure that travel plans are implemented, and outcomes achieved (Policy TRC01)
- Playspace and open space deficiency contributions where it is not possible to meet the required standard on site (Policy CDH07)

Section 3 - Residual s106 used by BNPPRE in Local Plan Viability Assessment (Core_Gen_01)

The 'Residual s106' figure at para 4.31 of the Viability Assessment (£1,500 per residential unit and £20psqm for non-residential development) is a common figure that has been used by BNPPRE in a number of the viability assessments they have carried out in London including LB Lambeth. It should be noted that with the introduction of CIL, the amount of money secured under s106 varies from site to site and is more difficult to calculate as authorities do not generally have the 'tariff style' s106 strategies that they had prior to CIL. The Council has agreed to use this figure in the Local Plan Viability Assessment as it is in excess of the figures currently being secured and anticipated to be received under the draft polices. The Council considered that it was better to go with an established figure. The same figure was used for the Barnet CIL Viability Assessment.

The residual S106 figure covers:

<p>Bus and public transport contributions</p> <p>Contributions to ensure that parking impacts from new development are managed such as monies to implement or vary controlled parking zones including restrictions on occupiers parking permits</p>

Small scale highways works such as crossovers and junction improvements around sites
CCTV contributions
Feasibility studies for decentralised energy
Travel Plan Monitoring
Improved public realm in town centres
Employment and training contributions which are payable if apprenticeships etc are not delivered on site

The residual section 106 figure does not cover:

Type of contribution	Reasoning
Contributions to address playspace and open space deficiency	Will only be required if a development does not meet the required standard on site, so considered a development cost.
Contributions to community infrastructure (under CHW01e)	Would only be required on large scale schemes where development as a whole was of a sufficient scale to justify provision on site - as indicated by the structure of the policies and the appendix to the viability assessment. EXAM54 Note on Policy CHW01 suggests a modification to the wording to say, 'large scale'.
Health and wellbeing (CHW02)	Would only be required on large schemes where development as a whole was of a sufficient scale to justify provision on site - as indicated by the structure of the policies and the appendix to the viability assessment.
Carbon offset contributions	Costs are already taken account of in the Local Plan Viability Assessment – (para 4.19)
Flooding contributions e.g. where a site is next to a river and deculverting and river restoration may be expected under ECC02Ai)	Would be counted as an exceptional cost for sites adjacent to rivers or in flood risk areas. The PPG requires that exceptional costs are reflected in the assessment of Benchmark Land Value, so the impact on financial viability is neutral.
Affordable workspace contributions	The emerging policy requirement seeking affordable workspace is reflected in the appraisals and is not secured as a financial contribution in residual s106 figure. A financial contribution would only be sought if the development does not meet the required standard onsite set out in the Policy.

An analysis of recently granted large schemes has shown the following 'residual s106' costs:

- 20/3906/FUL Crown Honda £576 per unit

- 19/4661/FUL Sainsbury's the Hyde £719 per unit
- 19/0859/OUT Colindale Station £145 per unit
- 21/2485/FUL Brent Cottage £790 per unit.

As the £1500 in the Viability Assessment is an overestimate of the current residual s106 costs, there is flexibility for it cover costs of s106 contributions that will be required in future through the Local Plan, including CCTV contributions

Conclusion

The Council invites the Inspectors to consider and recommend that the Council makes the additional further modifications set out in this paper recognising that those considered to be Main Modifications will need to be formally consulted upon following the examination hearing sessions.