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Trafford LDF: Core Strategy Examination

COMMENTS IN RESPONSE TO COUNCIL'S PROPOSED CHANGES FOLLOWING HEARING SESSION 9

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1. RESPONSE

1.1 In respect of the Matters Arising from Hearing Session 9 – Planning Obligations 10 March 2011, the Inspector invited the council to suggest changes to the Core Strategy in response to 4 matters. Two of the issues are relevant to the issues raised by Emery Planning Partnership and our response to these is set out below:

4. For clarity, transparency and to provide policy hooks for the draft Planning Obligations SPD should the following matters also be referred to in the text of policy L8:

1.2 It is appreciated that the council will be providing an SPD to deal with Planning Obligations. However, these issues go to the heart of the Core Strategy and how its policies will affect development across the borough and it is essential that clear policy hooks are established within the Core Strategy.

1.3 It is not clear whether the council is seeking to achieve these contributions through CIL or through planning obligations. The Core Strategy Policy refers only to Planning Obligations. The draft Planning Obligations SPD (although it is recognised that this is not subject to scrutiny here) makes reference to CIL. Clarification is required.

- **The types of development to which the policy refers;**

1.4 The council's suggested changes indicate that contributions will be sought for all new development (including mezzanines), redevelopment and changes of use. This is considered to be too vague and the policy should set out what obligations will apply to different types of development.

1.5 For example, the council has already stated that contributions towards indoor sports facilities including swimming pools and gyms will not apply to schemes of less than 10 houses.

1.6 In addition, it is assumed that there will be some types of development that will not be required to pay contributions for example householder developments. I would also be unreasonable for planning obligations to be attributable to all changes of use. For example, an application for a change of use from one commercial use to another is unlikely to place any additional demands on services. This should be explained in the revised policy.

1.7 Clarification on the type and threshold of development to which each contribution will apply should be set out in the policy for both the required element and the negotiated element.

- **How contributions will be collected with reference to the Trafford Developer Contribution Thresholds and the Negotiated Element;**

1.8 The policy does not clarify how contributions will be collected through Section 106 Agreements.

- **How the collection of pooled contributions relate to the CIL tests;**

1.9 One of the tests for CIL is that the obligation is directly related to the development.

1.10 It is still not clear how the collection of pooled contributions will relate to the CIL tests and this should be explicit for each of the contributions.

1.11 For example discussion in relation to Matter 8 revealed that whilst a contribution towards indoor sports facilities will be required where a development is more than 1,800m from such a facility, the money will be spent within a 3km radius. This is not directly related to the development and therefore does not meet the tests for CIL or a planning obligation.

1.12 To be sound the policy must set out how each of the pooled contributions will be spent to ensure they relate to the development in question.

- **Monitoring the use of and the refunding of any unspent contributions;**

1.13 The policy still does not set out how contributions will be spent. We would recommend that the local planning authority is required to report to committee with where particular contributions are to be spent. This approach is taken in the adjacent Stockport Authority.

1.14 We also consider that the 15 year default period is too long. We consider that the money should be spent within a much shorter timescale for example 5 years in order for it to be directly related to the development in question.

- **The approach towards maintenance payments and overage;**

1.15 The approach taken to overage is still unclear. We accept that if a reduction in contributions has been agreed on the basis of viability at the time of grant of planning permission, it would be acceptable to include an overage provision within the Section 106 Agreement. However, where contributions have been provided in full accordance with the council's up-to-date requirement at the time of the grant of planning permission, it would be unreasonable to include an overage provision, particularly on the basis that the council intends to pool contributions over a number of years in any event.

1.16 Paragraph B7 of Circular 05/05 states that *'planning obligations should never be used purely as a means of securing for the local community a share in the profits of*

development'. An attempt to capture uplift retrospectively as suggested by the overage provision would constitute a tax on profits.

- **Clarity that viability considerations will be taken into account to ensure that 'tariffs' are realistically set and regularly reviewed so as not to thwart delivery, and that viability will also be taken into account on a site-by-site basis?**

1.17 Paragraph L8.10 does acknowledge that developments may not be viable having regard to necessary contributions. It is essential that this is retained in the policy.

5. Paragraph 17.8 is negatively worded. Should it be given to re-wording it more positively?

1.18 Paragraph 17.8 is still considered to be negatively worded. In order to achieve the plan objectives it is essential that development comes forward. The policy must recognise that whilst a development proposal may fail to meet a certain plan objective due to viability, for example the delivery of affordable housing, in the vast majority of cases development would result in numerous other plan objectives being met.

1.19 We object to the continued use of the example regarding affordable housing. This example is extremely ambiguous and its inclusion in the wording leaves questions as to how it may be applied in practice.

1.20 We identified at the hearing session that it was unacceptable that the council could effectively include a clause to refuse applications for residential development on the basis that the affordable housing level has been reduced, even where it has been proved that the required level of affordable housing is unviable. This seems unnecessary, particularly given that the council is seeking to introduce an overage clause into Section 106 agreements to address such circumstances. Such an approach would be concerning given the growing shortfall in meeting the overall housing requirement. The failure to deliver housing in the short term will only increase problems of affordability in the short, medium and long term. This also reinforces our previous concerns at the council's reliance upon addressing viability on a site-by-site basis.