Consultation Draft-
April 2017

Planning Obligations

Supplementary Planning Document

Extracts from the Consultation Statement
education provision at Cranbrook would be funded under S106 and not through CIL but this does not appear to be the case as things stand but may be considered as part of the proposed CIL Review.

The CIL and S106 details do not currently therefore provide any certainty over education provision that is required to mitigate development. DCC requires further certainty that requests for CIL funding will be supported. This is partly facilitated through the current IDP review and the priorities placed upon education items, but further detail should be given in the SPD to explain this.

The SPD does not refer to any other items of infrastructure for which DCC is responsible. Most requests made will be for education and transport purposes but the SPD should acknowledge that requests may also be made for libraries, youth provision and health.

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<th>6753</th>
<th>Planning Issues on behalf of Churchill Retirement Properties</th>
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<td>We note in paragraph 6.8 that the Council will take responsibility for drafting the S106 agreement. This must be done quickly and without delay in order not to hold up development post planning.</td>
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<td>Viability (paragraphs 6.21 and 6.22)- It is suggested that a “full open book” appraisal is provided. Using an “open book” approach runs contrary to accepted practice. As planning permissions run with the land, it is only appropriate to use generic viability appraisals that use industry acceptable inputs. This position is supported by the RICS guidance (Financial Viability in Planning) which states in paragraph 2.5.2 that applications should disregard the applicant as planning applications “run with the land”. Inputs to the Financial modelling should “disregard either benefits or disbenefits that are unique to the applicant”. It goes on to say that “the aim should be to reflect industry benchmarks as applied to the particular site in question”. This contradicts the requirement in the SPD.</td>
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<td>RECOMMENDATION: Paragraph 6.21 to omit reference to “open book viability appraisal” and replace with “In order to do this we would require an assessment of the viability based on industry accepted inputs, assumptions and benchmarks”.</td>
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See comments in response to David Lock (3209) about open book assessments

Viability Appraisals consider the use of the land and the scheme proposed, and not the applicant. PPG makes specific reference to older person’s housing stating “the specific scheme format and projected sales rates may be a factor in assessing viability”.

The inclusion of overage clauses on all developments was the subject of a paper to Strategic Planning Committee on Feb 20th 2017. This paper clearly sets out the council’s rationale behind overage. It was endorsed by members. The drafting of this paper was in part informed by the comments received in response to the SPD, and it was originally planned that both
Overage- The inclusion of an overage clause on all developments is contrary to best practice and guidance and it has been established through a number of significant appeal decisions that confirm that an overage should not apply to small scale single phased developments. Restrictions in relation to start on site timeframes were considered more appropriate in such cases.

The use of overage clause on small, single phased schemes introduces uncertainty to the development process and also restricts commercial activity making it difficult for residential developers to secure funding and adversely affecting land value.

RECOMMENDATION:

Replace the requirement in Paragraph 6.23 for an overage clause on all developments and replace with an acknowledgement that an overage clause for small and single phased developments is inappropriate and that a re-appraisal should be considered where there is a longer term, multi phased development. Care should be taken when drafting such re-appraisal provisions in order that they do not result in earlier phases becoming uncertain as to the amount of the development to be provided on site.

Vacant Building Credit- It might be advantageous to add the following explanation about how VBC works:
Calculation of Vacant Building Credit

The target percentage of affordable housing should be recalculated to take into account the two gross floor areas (the original building and the proposed replacement building) to arrive at a net affordable housing target. This will be the revised maximum target for that site.

The formula to arrive at this is straightforward: A = Area affordable housing target (%) papers would go to the same committee. Although this was not possible, members can be assured that officers considered the SPD responses when drafting the report to SPC.

As explained in the SPC report, the use of overage clauses in the way East Devon apply them, does not introduce uncertainty or require a re-appraisal. They rely instead on a Development Account of actual costs and values submitted at the completion on the scheme. Overage is only payable on any super-profit, and this in fact ensures the developer's percentage profit is not undermined.

To assist clarity additional guidance on how overage works will be provided on the Council's website alongside the current Viability Guidance Notes

The application of Vacant Building Credit, was also covered in the report on viability considered at the Strategic Planning Committee on Feb 20th 2017. The paper clearly sets out the council's approach to VBC, and member re-endorsed the principles behind how it will be applied.
Coefficient = 1 - (Existing building area / Proposed building area) 

Net affordable housing target = A x Coefficient

So, by way of example, a vacant retail building in Sidmouth of 865m2 which is being redeveloped for 26 dwellings with a gross internal floor area of 1,607.1m2 would normally have a policy target percentage for affordable housing of 50%. The calculation of the revised target for this site would be as follows:

Policy target affordable housing (A) - 50%

Coefficient = 1 - (865/1,607.1) = 0.46176342

Net affordable housing target (A x coefficient) = 23.09%

Therefore the revised target percentage is 23.09% which will remain unaltered if the proposed GIA remains the same, for example, but the number of dwellings changes. This also simplifies the calculation where flatted developments have common areas that have to be taken into account in the overall internal area.

Viability at Outline- Churchill Retirement Living is not likely to submit an outline planning application.

Confidentiality- While we understand the need for the public to be confident that planning obligations are being negotiated in a professional manner, there is also a need to maintain commercial confidentiality. This is especially the case where local authorities are seeking an open book approach. There is a conflict here between the council’s requirement for open book viability and a need for viability appraisal being made available to the public. In an open book scenario the amount of redactions would make the viability assessments that could be published virtually meaningless. The council are more likely to get support from developers if the principles of generic, industry benchmarks and assumptions are required in development viability appraisals.

To assist clarity additional guidance on how VBC works in practice will be provided on the Council’s website alongside the current Viability Guidance Notes.

Again members can be reassured that officers considered the SPD responses in relation to VBC when drafting the report to SPC.

The Council’s position is that viability assessments should be made public unless the applicant requests confidentiality and makes it clear which sections are confidential.
The same applies to the CIL Additional Information Form which we also believe is not required to validate a planning application.

Paragraph 6.13 refers to the council's legal fees for the completion of a Section 106 legal agreement. Reference should be added here to the need for the fees to be reasonable and justified.

The section on viability recognises the national and local policy expectation that a number of policy aspirations would have to be subject to viability. The need for all or any viability assessment to adopt an open book approach does not appear to be specific requirement of such assessments. The nature and structure or any assessment should be informed by the particular circumstances of the site and proposed development in question. The SPD may recognise that the expectation is simply that assessing viability should lead to an understanding of the scale of planning obligations which are appropriate.

Whilst we understand that CIL contributions are non-negotiable and can't be reduced, it is our understanding that mitigation of effects on a European site may be achieved by a number of means and not necessarily through financial contributions.

Whilst it is noted that Policy Strategy 34 seeks an overage clause where affordable housing falls below targets, viability assessment should generally should be based on current costs and values in decision-taking. Planning applications should be considered in today’s circumstances as is indicated in the Planning Practice Guidance. The SPD should recognise that overage may not be appropriate - particularly in all circumstances. Moreover there is no reference in Paragraph 6.23 to the time limit on overage. It is unreasonable, in addition, to require overage to be an open ended commitment. Nor is there any reference to what constitutes a level at which it applies. There is no basis set out, and consulted on, and agreed with the development industry, to demonstrate that a workable or realistic form of overage could exist.

Policy requires. The requirement is not to submit a planning obligation per se but to submit some information that explains how (which can be done often most easily with reference to a planning obligation) the scheme complies with Strategy 34.

The NPPF and Planning Practice Guidance clearly set out the requirements and guidance for detailed viability testing at the decision making stage. The Section of the PPG entitled “How should viability be assessed in decision-taking?” clearly states that “This should be informed by the particular circumstances of the site and proposed development in question. Assessing the viability of a particular site requires more detailed analysis than at plan level.” The request for open book viability appraisals is therefore fully consistent with planning policy.

Local Plan policy Strategy 34 has been adopted and requires overage to be applied in all cases when a less then policy compliant level of affordable housing has been accepted. The SPC report considered on Feb 20th 2017 (as mentioned above) provides further detail on this. Additional guidance on how overage works in practice will be provided on our website, including hopefully
We have substantial concerns about the need for this section of the SPD. It is inherent in any proposals that basic viability is tested prior to an application so the need for this section is questioned. In addition, S 106 agreements as a standard practice allow for a cascade mechanism in some form where viability is an issue and therefore the need for this within the SPD is unnecessary.

As drafted the section appears to divert attention from dealing with matters at outline stage and constrain the bringing forward and early implementation of proposals that are key parts of the Local Plan. It will be incumbent on the Local Planning Authority to adopt a positive approach to ensure that development can come forward promptly.

Late payment charges are too high.

some model section 106 clauses. We have received several applications where numerous viability appraisals have been submitted. For example, there has been a particular issue for a scheme that has been subject to various design changes and amendments during the consideration of the planning application. As result numerous updated viability work was submitted.

We have also experienced an issue in relation to changing viability on schemes as they move through from outline where a greater reliance is placed on assumptions, to viability assessment for detailed schemes, where there is more certainty. This has, for example, been a particular issue on a site that has changed hands between securing outline permission on the basis of one viability appraisal, and then a revised viability report has been then been submitted reflecting the scheme at detail (see also the comment in relation to viability at outline).

In practice, we actively work with applicants to try and identify and resolve any viability challenges at the earliest opportunities, and indeed we are required to consider viability at whichever stage we are to. However, even with a agreed viability at outline, or detailed stage, there is still nothing to stop