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05 May 2016
Our Ref: MJR/15.130

Mrs Y.J Prichard
Planning Department
Vale of Glamorgan Council
Dock Office
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Barry
CF63 4RT

Dear Mrs Prichard

Planning Application reference 2015/01449/FUL
Northcliffe Lodge, Northcliffe Drive, Penarth

Planning Obligations

On behalf of our client, Celtic Developments (Penarth) Ltd, please find set out herein our response to the requests set out in your letter of 21st January 2016. Also accompanying this submission is a viability appraisal prepared by Pioneer Property Services Ltd which confirms the current viability constraints of the site, concluding that the scheme is unable to sustain any level of contribution. This is explained in greater detail in the accompanying report and covering letter.

Notwithstanding this, for completeness we consider it is appropriate to ensure that the obligations sought are compliant with the CIL Regulations (122 and 123). These place limits on the use of planning obligations in three respects:

- they put the policy tests on the use of planning obligations on a statutory basis, for developments that are capable of being charged the levy;
- they ensure the local use of the levy and planning obligations does not overlap; and
- they impose a limit on pooled contributions from planning obligations towards infrastructure that may be funded by the levy.

You will also be aware, that a planning obligation can only be taken into account when determining a planning application for a development, or any part of a development, if the obligation meets **all** of the following tests:

- necessary to make the development acceptable in planning terms
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

It follows therefore that any the scope of any obligation is limited by these statutory requirements for planning obligations. We consider each of the requests for their compliance with the legislative framework and policy.

Planning Policy
In addition to the legislative background, our consideration of your letter is also framed by the latest policy position in the Vale of Glamorgan. In this regard, the Development Plan comprises the Vale of Glamorgan Unitary Development Plan. Whilst outdated this plan has been through the rigour of independent assessment and it is the policies within that form the latest position.

We note that you have also referred to Supplementary Planning Guidance. We consider this in detail below with regards to the weight that can be attached to such documents in certain circumstances.

1. Affordable housing

The most up to date policy position is formed by the Unitary Development Plan, Policy HOUS 12 indicates that "***The Council will where there is a demonstrable need, seek to negotiate with developers for a reasonable element of affordable housing in substantial development schemes*** (defined by the explanatory text as being over 50 dwellings)".

It is noted that the Planning Obligations SPG indicates that the Council will seek a contribution on all sites over 10 and it seeks 30% provision of Affordable Housing on such sites which is a substantive material policy change from the UDP.

Case Law is clear that it is not the role of an SPG to introduce a new policy or amend an existing policy. In Westminster City Council v Great Portland Estates plc (1985) and R (on the application of JA Pye (Oxford) Ltd) v Oxford City Council (2002), it was made clear that guidelines relating to the control of development ought properly to be included in the Development Plan so that interested parties would not be deprived of the right to object. Supplementary Planning Guidance may be used to supplement existing policies in the development plan but not change them or introduce new policies.

PPW 8 also considers the role of SPG, it notes at para 2.4.2:

"The LDP should not delegate the criteria for decisions on planning applications to SPG which should only contain guidance and advice. Nor should SPG be used to avoid subjecting policies and proposals to public scrutiny and independent examination in accordance with statutory procedures."

We are concerned that the 2012 SPG fundamentally alters the Policy Position bypassing the formal Development Plan process. Given that the UDP was time expired, we consider it inappropriate to prey in aid SPG rather than a new Plan.

Given the issues that arose during the examination session on the 28th January and set out in the Inspectors Actions note to the Council we consider that no weight can be given the any emerging policy until the Inspectors report is received. We summarise some of the pertinent actions raised by the Inspector in relation to the shortcomings of the present policy position and evidence base:

1. Council to amend the benchmark land values used in the viability report to reflect realistic values in light of the available evidence;

2. Council to justify sales values in light of the evidence submitted by the development industry;
3. Council to clarify what allowances have (or should have) been built into the viability testing with regards to 'contingencies'/ 'opening up costs'/ 'abnormals' and to justify the approach advocated, with particular reference to any known infrastructure costs;
4. Council to incorporate sprinkler costs into the viability testing;
5. Council to consider the implications of the work arising from the Action Points on the viability testing, including any necessary changes to the policy percentage requirements set out in Policy MG4. All policy requirements to be based clearly on the results of the on the viability testing; and
6. Council to consider the need for changes to the identified thresholds within Policy MG4 as a result of the updated viability evidence. The thresholds should be based on clear evidence.

Plainly the evidence submitted by the Council to the Examination needs considerable work in order to ensure a robust viability position.

PPW 8 (para 2.8.1) indicates that the weight to be attached to an emerging LDP ***"does not simply increase as the plan progresses towards adoption."*** It indicates that Policies can change or be deleted and certainty regarding the context can only be achieved when the Inspector delivers the binding report. Given the issues related to the evidence base and further work required plainly limited if any weight can be given to the draft policy position.

And at para 2.4.7 it states:

"Once the LDP Inspector's report is received confirming the LDP policy approach, SPG should be formally approved by resolution of the local planning authority so that it can be given due weight."

Position

Given the significant issues raised by the Inspector, and the Welsh Government's policy position, clearly no weight can be attached to the LDP or the SPG until such time as certainty is achieved over the robustness of the evidence base and the content of the LDP Policy. Plainly this will not arise until such time as the Inspectors report is received.

Given the significant viability constraints outlined in the submitted report, it is our clients position that there is no affordable housing contribution.

2. Education

We have numerous queries in relation to the required s106 request and how they relate to the CIL regulations (para 122) which in order for us to advise our clients on their lawfulness.

In the first instance, it is evidently the case that there will be a lower number of children than would be expected in a 3, 4 or 5 bedroom house. Furthermore, in the local area (St Augustines Ward) as of the 2011 Census, there were 1523 flats with a population of 2104 persons – an average household size of 1.4 persons. Plainly given that the proposal is likely to attract a similar household composition, it is highly unlikely that it will give rise to the level of children envisaged in your Authorities request. We would request that this position is clarified for its compliance with the CIL regulations.

Notwithstanding the above, we note:

- **Primary Provision:** having reviewed the evidence base for the LDP, we note that within the Penarth Cluster of schools there is Capacity of 3709 compared to numbers on roll of 3420. This equates to 289 spare places.

- **Secondary Provision:** again, with reference to the base evidence for the LDP, it is noted that within the Penarth Cluster there is capacity of 4918 spaces with number on roll of 4672. A surplus capacity of 246 spaces.

With regards to secondary schools we note that Stanwell School is the catchment school. However, having reviewed the Schools PLASC (2015) return to the Welsh Government, it is clear that there are at least 523 pupils (table 1 over) (excluding pupils from the St Cyres Catchment in CF64 2 and CF64 3) presently within the school that derive from outside the catchment area that development pupils (if any) would take precedence over in admissions (by virtue of the fact that they live within the catchment).

Post Code	**No. Of Pupils on Roll at Stanwell (PLASC)**
CF5	31
CF11	54
CF62	91
CF63	151
CF64 1	252
CF64 2	318
CF64 3	566
CF64 4	169
CF64 5	336
Others	27
Total	1995

Table 1: Stanwell School PLASC Postcode data

There are a number of appeal cases that have considered precisely these circumstances and confirm that there is a need for flexibility over an Authorities approach given wider management issues and admissions criteria.

1. In the case of Barratt Homes (South Wales) v Merthyr Tydfil County Borough Council (appeal ref. APP/U6925/A/08/2087923). Though the appeal was dismissed, the Inspector considered the financial contributions being sought towards Education provision. He recognised that the secondary school that served the catchment area of the appeal site was at or near to its capacity, but that other schools within the county borough had a surplus of secondary school places. The Inspector further stated that given some of the pupils who attend the local secondary school were from outside the catchment area, the authority would be able to, over time, address the balance of pupil admissions to the school to ensure that in future a priority approach should be taken to allow local pupils to take up places in lieu of those outside the catchment. The Inspector concluded that in light of this, the appellant should not make any financial contribution to education provision in the locality. Another appeal

allowed in October 2008 in relation to a site in Burry Port, Carmarthenshire is referenced by the Inspector where a similar conclusion was reached and no financial contribution sought.

2. In rejecting a claim made by a South Wales LPA that a financial contribution totalling more than £300,000 should be made towards improving educational facilities in the area, an inspector decided that it was appropriate to take into account any spare capacity in an adjoining local authority The scheme, involving approximately 100 houses, required increasing the capacity at an English speaking comprehensive school, the council asserted. They estimated that the scheme would generate 20 secondary school places that required the payment of the requested sum. The appellants countered, arguing that a contribution of £50,000 was justified. This would enable pupils to travel by buses to another secondary school within an adjoining local authority area that had a surplus capacity of more than 300. The inspector agreed that the use of a secondary school in another local authority area as a means of meeting the needs of children living on the appeal site was risky because its capacity over time might change. Preference would be given to indigenous pupils within that local authority, he agreed. However, the school had substantial capacity and it would be more efficient to make best use of it, he concluded. In his view, it was sensible to take into account spare capacity in the adjoining local authority and therefore the appellants' contribution was reasonable (see Rhondda Cynon Taff 22/10/2010 DCS No 100-069-470).

3. In granting planning permission for a residential development in Hertfordshire an inspector decided that the local authority had failed to justify its request for various financial contributions. The inspector, in setting out his general conclusions on the issue, accepted that residential development would be likely to increase the population within the area and might in principle justify some extra facilities. However, in his opinion the council had failed to justify why the local infrastructure could not cope with the additional demands that would be placed upon it. National advice stated that where a development created a demand for additional infrastructure, there should be a clear audit trail between the contribution and the infrastructure provided. However, no trail existed. In his opinion, the council applied a 'blanket approach' to collecting financial contributions that were then pooled and potentially spent in locations that had little functional or geographic link to the development. This was completely unjustified, he decided, and allowed the appeal (see St Albans 27/11/2009 DCS No 100-065-661).

Our clients Position

Given the above considerations, we note:

1. there is more than sufficient capacity within the wider primary and secondary schools cluster which is a wider issue for management of resources;
2. there is a significant number of out of catchment pupils (over 500 pupils including out of county pupils) in attendance at Stanwell School that development pupils would take precedence over in admissions; and
3. as a flatted scheme it is unlikely to generate the same number of pupils as a 3, 4 or 5 bedroom housing scheme (given that average household size for flats in the local ward is just 1.4 persons).

As such, and notwithstanding the position on viability, we do not consider that the request is compliant with the CIL regulations.

3. Open Space

We are concerned that flatted schemes are treated in the same way as housing schemes in calculating an open space contribution in relation to childrens' play space. Particularly as similar flatted developments in the area give rise to an average household size of 1.4 persons.

As such, it appears to be contrary to the CIL regulations insofar as this is not reasonable and related to the development. Notwithstanding our clients' position on viability, if a request is to be sought, then it ought to half the children's play space standard to reflect the incidence of children living in flats than 3, 4 or 5 bedroom houses.

In order to consider the calculations in our viability report, the requirement should be reviewed in order to reflect accurately the low likelihood of children being resident at the development. Indeed, it would be unlawful to request a contribution that is not required.

4. Public Art

Our clients undertake to commission and provide a piece of public art on site themselves.

We trust that our comments will be taken into account in formalising the process with appropriate amendments made. Should you have any queries in the meantime however, please do not hesitate to contact me.

Yours faithfully,

Sam Courtney
Director

Enc.

CC. Jon Shields, Celtic Developments (Penarth) Ltd