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Dear Ms. Donaldson,

Gloucestershire Local Development Guide Refresh – Targeted Consultation

On behalf of Taylor Wimpey (TW), I write to provide representations to the Gloucestershire Local Development Guide Refresh (hereafter referred to as the DGR), April 2020. TW has been actively engaged in land promotion and house building in Gloucestershire for many years. The business relies upon an understanding of land values, build costs (including planning and S.106/CIL) and the local housing market to identify viable opportunities to deliver new homes. TW also seek to provide appropriate provision of infrastructure relevant to all its development proposals, be it on-site or via financial contributions. Such infrastructure provision is considered critical to the quality, success, and sustainability of development proposals. However, such infrastructure provision should be reasonable and well-evidenced, and accord with Community Infrastructure Levy (CIL) Regulation 122 and National Planning Policy Framework (NPPF), both of which set out that all planning obligations must satisfy 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.***

As evidenced throughout the representations below, the DGR fails to meet these basic tests. For example, paragraph 56 demonstrates a substantial deviation from the tests by stating obligations sought are '*necessary to make the development sustainable*'. It is quite clear that the interpretation of the DGR is fundamentally flawed.

Extent and Scope of Consultation

The introduction of any policy or guidance relating to planning obligations or charges, present potentially very significant ramifications for housing development and delivery. It is critical therefore that ample consultation is undertaken to arrive at well-evidenced policies and guidance, that do not hinder housing delivery, or stifle the supply of land being made available for development as minimal land value expectations cannot be achieved. At the outset of these representations, we therefore wish to raise concern regarding the extent and scope of the consultation.

It is noted that the only consultation on the DGR is the current four-week consultation running until 29th May, and furthermore, that it is intended to place the final version Development Guide before council for approval in June 2020. The extraordinarily succinct timeframe to consider any

representations put forward prior to compiling a final version DGR and associated reports for council approval is alarming and gives the impression of a box ticking consultation. The DGR makes clear that it will not form part of the Development Plan (at page 42) however, it confirms it will be a material consideration in determining planning applications and appears to imply that the document will be akin to supplementary planning guidance (at paragraph 20). It is important to note Planning Practice Guidance (PPG) regarding the role of supplementary planning documents with it stating:

*“Supplementary planning documents (SPDs) should build upon and provide more detailed advice or guidance on policies in an adopted local plan. As they do not form part of the development plan, they cannot introduce new planning policies into the development plan. They are however a material consideration in decision-making. **They should not add unnecessarily to the financial burdens on development**” (Paragraph: 008 Reference ID: 61-008-20190315).*

For the DGR to be adopted with any credibility, and to prevent unnecessary delays to planning obligation negotiations, a more comprehensive consultation of the DGR and associated evidence base would be essential. Without more extensive consultation, it is feared that the DGR could result in all planning applications having to undertake viability testing, with consequences exacerbating the shortfall in supply of new homes in the County. In addition, the DGR potentially undermines the viability assessments undertaken for the Tewkesbury Local Plan and Gloucester City Plan which are well advanced and being prepared for examination. Moreover, the approach of the DGR is considered to err in law given the County has failed to undertake a viability assessment to support the policy guidance. This issue was considered to be a critical factor in the quashing of Charnwood Borough Council’s housing mix supplementary planning document (case ref: William Davis Ltd v Charnwood BC [2017] EWHC 3006 (Admin)).

Further, Planning Practice Guidance cautions against potentially excessive obligations in this regard and how charging authorities should clearly present infrastructure needs.

“Local authorities should ensure that the combined total impact of such requests does not undermine the deliverability of the plan (see [paragraph 34](#) of the National Planning Policy Framework for details).

*Where the levy is in place for an area, **charging authorities should work proactively with developers to ensure they are clear about the authorities’ infrastructure needs.***

*Authorities can choose to pool funding from different routes to fund the same infrastructure **provided that authorities set out in their infrastructure funding statements** which infrastructure they expect to fund through the levy.” (Paragraph: 166 Reference ID: 25-166-20190901)*

It is not clear how the County collaborated with the local planning authorities in the early stages of preparing the DGR. Nor does the DGR provide justification for the proposed charges in relation to the infrastructure needs of the County. The consultation should include an Infrastructure Funding Statement to present the full facts regarding the infrastructure needs for the period for which the DGR is intended and associated viability assessment.

PPG paragraph 170 Reference ID: 25-170-20190901 provides a useful summary of recent changes to the CIL Regulations that provide relevant context to the DGR;

“The 2019 amendments to the regulations removed the previous restriction on pooling more than 5 planning obligations towards a single piece of infrastructure.

This means that, subject to meeting the 3 tests set out in CIL [regulation 122](#), charging authorities can use funds from both the levy and section 106 planning obligations to pay for the same piece of infrastructure regardless of how many planning obligations have already contributed towards an item of infrastructure.

Authorities should set out in an infrastructure funding statement which infrastructure they intend to fund and detail the different sources of funding (see [regulation 121A](#))."

Having regard to the above, the Council should publish an Infrastructure Funding Statement alongside the DGR for greater transparency in relation to intended infrastructure for which funding is being sought. Given the inference that the DGR will only amount to interim guidance, the Council should be able to identify intended infrastructure for the interim period taking into account the stage of the development plan review for each local planning authority. As drafted, the DGR bluntly introduces planning obligation rates for infrastructure without any clarification on what infrastructure projects will be undertaken, viability testing and what sources of funding are proposed.

The need for further and extended consultation on this important document is only amplified by the recent and ongoing disruptions of COVID-19, including the fact that many professionals in the house building industry are subject to furlough measures.

Community Infrastructure Levy

Although it is recognised that the 2019 CIL Regulations technically enabled developer contributions for the same infrastructure projects to be collected via both CIL and S.106 obligations, there is no regard in the DGR that the CIL charging planning authorities secure funding for infrastructure for which the County Council is responsible. Rather, at paragraph 32 the DGR suggests difficulties arise between the LPAs receiving CIL payments and those funds being made available to the County for intended infrastructure. It is unreasonable for the County to seek to remedy the poor management of CIL funds between the administrations by effectively charging development twice for the same infrastructure via the DGR.

In this regard, it is prudent to recall PPG paragraph: 014 Reference ID: 25-014-20190901

"County councils are responsible for the delivery of key strategic infrastructure. Charging authorities must consult and should collaborate with them in setting the levy and should work closely with them in setting priorities for how the levy will be spent in 2-tier areas.

Collaborative working between county councils and charging authorities is especially important in relation to the preparation of infrastructure funding statements (see [Schedule 2](#) introduced by the 2019 Regulations) bearing in mind the potential impact on the use of highway agreements by the county council and the timely delivery of schools."

Despite paragraph 44 of the DGR acknowledging that there should be no overlap between CIL and S.106 obligations resulting in the developer paying twice for the same infrastructure, the DGR provides no details of safeguarding measures to prevent this. As such, there is a clear disconnect between the DGR and CIL charging. The resultant risk of 'double dipping' is unacceptable and will stifle housing delivery and land supply, especially on CIL liable non-strategic sites which are often key to maintaining some stability in housing land supply and delivery (NPPF paragraph 68). As highlighted above, such an outcome is clearly contrary to Government policy (NPPF paragraphs 34) and guidance (PPG paragraph 166 Reference ID: 25-166-20190901) in terms of boosting the supply of housing (NPPF paragraph 59) and ensuring that obligations do not overwhelm development proposals coming forward.

When CIL was introduced by the JCS authorities and Stroud District, it was clear that education infrastructure was a key component to which the levy would contribute. The DGR appears to simply disregard the education component of CIL which flies in face of PPG where it states;

“Authorities may have existing ‘regulation 123 lists’ dating from before the Community Infrastructure Levy regulations were amended in September 2019. These lists remain useful as important evidence to inform plan making and the preparation of charging schedules. By no later than 31 December 2020, authorities will replace these lists with infrastructure funding statements.” (Paragraph: 017 Reference ID: 25-017-20190901)

The DGR should provide detailed guidance on how the obligations will be considered on development proposals within the CIL charging local planning authority areas. It is not appropriate for the process to rely upon viability testing of every planning application as implied by paragraphs 45 and 79 of the DGR.

Maintenance Contributions

It is unreasonable for the DCR to seek contributions towards infrastructure maintenance. This does not comply with Regulation 122 in relation to obligations are necessary to make the development acceptable in planning terms. The future maintenance of infrastructure is the responsibility of the adopting authority. In addition, there are other revenue streams and dedicated budgets, such as council tax which can fund maintenance.

Education Contributions

It is acknowledged that DoE guidance confirms that all new schools are expected to include a nursery. However, it will not always be necessary to include nursery provision if there is ample provision in the local area. The nursery and pre-school sector is a buoyant private sector industry and the DGR should therefore clearly set out that the nursery/pre-school obligations will be considered on a site by site basis. This approach is appropriate on larger strategic sites where it may emerge that privately operated nurseries are an integral part to deliver viability local centres with a synergetic mix of uses.

Paragraph 98 of the DGR identifies an expectation for strategic allocations to provide both land and schools where the need is identified. However, to ensure that strategic allocations are viable, the DGR should set out how the calculation for obligations will factor in development land values in the scenario that the developer offers land for school provision. As highlighted above, the DGR is considered unlawful without detailed viability testing. Furthermore, the DGR does not account for circumstances whereby the Council can avail of other funding for school delivery. For example, it seems that the recently consented new secondary school at Leckhampton is being funded without the Leckhampton strategic allocation previously envisaged by the draft Joint Core Strategy.

Pupil Product Ratio (PPR)

Taylor Wimpey contributed to the Rapley’s commissioned research regarding PPR in May 2019. Representatives from TW were invited to attend a presentation of the Cognisant Research in September 2019. TW’s involvement in commissioning the research in no way amounts to any endorsement of the findings, as no formal consultation opportunity was provided. Regardless, there is a fundamental flaw in relying upon the PPR research to determined appropriate levels of education contributions per dwelling. Applying the PPR to access levels of education contributions for new housing developments has no regard to whether those pupils are already within the county education system or otherwise. TW suggest that up to 70% of occupiers of new homes on development schemes previously lived in the local area. As such, a large proportion of children assumed by the PPR are in fact already catered for within the education system. Department for Education guidance, Securing

Developer Contributions for Education (November 2019) makes this distinction to help arrive at more accurate, well-evidenced and reasonable education contributions from development.

“It is important that the impacts of development are adequately mitigated, requiring an understanding of:

- *The education needs arising from development, based on an up-to-date pupil yield factor;*
- *The capacity of existing schools that will serve development, **taking account of pupil migration across planning areas and local authority boundaries;***
- ***Available sources of funding to increase capacity where required; and***
- ***The extent to which developer contributions are required and the degree of certainty that these will be secured at the appropriate time.”***

It is wholly illogical therefore to derive education contributions based on the PPR without further analytical evidence. In this regard, the primary and secondary school obligations sought by the DGR is contrary to regulation 122 highlighted above.

Conclusion

It has been highlighting above that there are regrettable and fatal shortcomings with the DGR in respect of its evidence base and the lack of consultation during its preparation. In addition, concerns have been raised about the appropriateness of certain obligations being sought by the DGR and the methodology for calculations. Specific objection is submitted in relation to the reliance upon the PPR to determine education obligations without any adjustment for pupil migration within the County.

In light of these concerns, the Council is urged to withdraw the DGR to undertake further work and associated consultation steps in relation to a full detailed evidence base.

TW wish to helpfully engage and assist the County to ensure developers are provided with a clear and transparent understanding of what obligations can be expected in appraising development land opportunities. TW is always keen to ensure appropriate levels of infrastructure are delivered alongside development schemes to help create environments where people want to live. In this context, we are happy to work proactively with the County providing any further information or clarification in relation to the matters raised above.

We trust these representations are of assistance. Given the substantive nature of the concerns with the DGR raised above, we respectfully request a written response prior to the DGR proceeding to the Council/Cabinet approval stage.

Yours faithfully

Conor Flanagan MRTPI
Director