Appendix B: Supporting housing delivery through developer contributions

Question 1 Do you agree with the Government's proposals to set out that:

i. Evidence of local infrastructure need for CIL-setting purposes can be the same infrastructure planning and viability evidence produced for plan making?

1.1 Yes, the Council agrees that the same evidence could be used, as aligning the two has the potent to avoid duplication of work and thus resources.

ii. Evidence of a funding gap significantly greater than anticipated CIL income is likely to be sufficient as evidence of infrastructure need?

1.2 Yes, the Council agrees this would be sufficient to demonstrate infrastructure need.

iii. Where charging authorities consider there may have been significant changes in market conditions since evidence was produced, it may be appropriate for charging authorities to take a pragmatic approach to supplementing this information as part of setting CIL – for instance, assessing recent economic and development trends and working with developers (e.g. through local development forums), rather than procuring new and costly evidence?

1.3 Yes, the Council agrees that this is a sensible suggestion.

Question 2 Are there any factors that the Government should take into account when implementing proposals to align the evidence for CIL charging schedules and plan making?

2.1 The proposal to simplify the preparation of, and requirements for CIL charging schedules may be well-meaning. The Government appears to believe that everything can all be achieved through the Local Plan making process, by virtue of aligning the requirements for evidence on infrastructure need and viability into one stage. This is perhaps overly idealistic as, in practice, the costs of development will often not be known until the detail of a scheme proposal is tabled. In addition, Planning Inspectors are not always able to grapple with site specific viability issues on certain sites.

Question 3 Do you agree with the Government's proposal to replace the current statutory consultation requirements with a requirement on the charging authority to publish a statement on how it has sought an appropriate level of engagement?

3.1 The Council agrees with the proposal. Such a summary could easily be produced in the style of a Regulation 22 Consultation Statement, once the necessary actions to raise awareness of the document have taken place.

Question 4 Do you have views on how guidance can ensure that consultation is proportionate to the scale of any charge being introduced or amended?

4.1 The Council has no specific comments to make at this stage.

Question 5 Do you agree with the Government's proposal to allow local authorities to pool section 106 planning obligations:
i. Where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106?

5.1 Yes, the Council agrees with the suggestion

ii. Where significant development is planned on several large strategic sites?

5.2 Yes. As proposed by Paragraph 56, removal of the pooling restrictions would be a welcome development. It is not always possible for a Local Authority to have advance knowledge of schemes coming forward (or the levels of any associated financial payments) until the point that a planning application and a supporting viability assessment have been submitted. Only at that stage can work begin on the draft S106 agreement, including discussions around financial obligations. Removal of the restriction is likely to be advantageous in terms of monitoring the use and allocation of Section 106 monies, and in funding both capital and revenue spend projects.

Question 6 i. Do you agree that, if the pooling restriction is to be lifted where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106, this should be measures based on the tenth percentile of average new build house prices?

6.1 It is difficult to form a view as to whether or not the removal of pooling restrictions based on the tenth percentile of average new build house prices would be effective or not, considering that no further detail is given in the document as to which boroughs/areas of the country may be affected (or disproportionately affected) by the measure. All development will generate infrastructure needs, irrespective of whether or not a borough has a CIL schedule in place.

Question 6 ii. What comments, if any, do you have on how the restriction is lifted in areas where CIL is not feasible, or in national parks?

6.2 It is not entirely clear what the purpose of this question is. Even though a CIL charge may not be feasible alongside Section 106, the requirements for developers to enter into and pay S106 charges will have always applied in such areas, and S106 would continue to apply as the main source of infrastructure funding in such locations. As such, the question of 'how' the restriction is lifted would appear to be a lesser issue than ensuring it 'is' lifted.

Question 7: Do you believe that, if lifting the pooling restriction where significant development is planned on several large strategic sites, this should be based on either:

i. a set percentage of homes, set out in a plan, are being delivered through a limited number of strategic sites;

7.1 Paragraph 55 notes that "lifting of the pooling restriction could significantly aid the funding of the infrastructure needed to support development". In the Council's view, this should apply irrespective of whether or not an authority has CIL in place, given that infrastructure needs will still be generated as a consequence of development.

7.2 As set out under Question 6, it is difficult to agree or disagree whether or not the removal of pooling restrictions based on the tenth percentile of average new build house prices would be effective, as no detail is given as to which boroughs/areas of the country may be affected (or disproportionately affected) by the measure. However, it should be noted that several large sites will often be served by the same infrastructure project for which contributions may be sought under Section 106 (examples including sustainable transport improvements such as a new cycle way, or the construction of a new school where Education does not figure on a Regulation 123 list). Lifting the restriction would be beneficial in such instances.

Question 7 ii. Or (should) all planning obligations from a strategic site count as one planning obligation?

7.3 The largest strategic sites will, by default, result in the greatest level of CIL and S106 funding as a consequence of the size and scale of the quantum of development to be hosted on the largest sites. It would not be realistic to record everything as a single obligation, moreover it could be argued that doing so would be very likely to create unnecessary complications for an Authority in terms of monitoring the use of such funds.

7.4 In practice, large strategic sites would be required to enter into planning obligations under S106 for multiple heads of terms, including on-site affordable housing, education, open space enhancements and child play facilities, with possible further obligations towards the provision of libraries, new healthcare and community facilities as a minimum. Some highway works improvements would also be very likely, in addition to any possible obligations entered into under Section 38 and/or 278 of the 1980 Highways Act.

7.5 It is not inappropriate to point out that various Government proposals over the last couple of years have sought to introduce greater transparency and clarity around the use of funding secured under S106 and CIL by local authorities. Those proposals and the push for transparency (as referenced in this document) would be undermined by introducing a process of one single obligation covering numerous heads of terms on large sites. Government should also note the fact that, under S106, both financial and non-financial obligations on a scheme are awarded equal legal weighting.

Question 8 What factors should the Government take into account when defining 'strategic sites' for the purposes of lifting the pooling restriction?

8.1 A 'strategic' site should be of (at least) borough-wide importance, if not of relevance across a wider sub-region. Government should take into account that such sites are typically large-scale development opportunities. The development of a strategic site will have the capability to deliver a large volume of a borough's housing target, easing the pressure for new office or retail floor space requirements. Strategic sites will also respond favourably to meeting any deficiencies which have been identified in a needs assessment - i.e. they can be suitable locations for new transport or social infrastructure, including schools and hospitals (if and where such facilities are required). Some form of public funding may also be involved.

Question 9 What further comments, if any, do you have on how pooling restrictions should be lifted?

9.1 The removal of pooling restrictions is welcomed where CIL already exists. However, seeking to retain them in areas where CIL has not been implemented suggests the Government is reaffirming its commitment to development tariffs, yet these have previously been criticised as being too rigid and slow to be implemented.

Question 10 Do you agree with the Government's proposal to introduce a 2 month grace period for developers to submit a Commencement Notice in relation to exempted development?

10.1 Yes, the Council agrees with the proposal.

Question 11 If introducing a grace period, what other factors, such as a small penalty for submitting a Commencement Notice during the grace period, should the Government take into account?

11.1 It is considered that a small penalty would be the best option.

Question 12 How else can the Government seek to take a more proportionate approach to administering exemptions?

12.1 Appropriate evidence and documents should be provided for clarification and justification.

Question 13 Do you agree that Government should amend regulations so that they allow a development originally permitted before CIL came into force, to balance CIL liabilities between different phases of the same development?

13.1 No, the Council does not agree with the suggestion.

Question 14 Are there any particular factors the Government should take into account in allowing abatement for phased planning permissions secured before introduction of CIL?

14.1 As per Question 12, appropriate evidence and documents should be provided for clarification and justification.

Question 15 Do you agree that Government should amend regulations on how indexation applies to development that is both originally permitted and then amended while CIL is in force to align with the approach taken in the recently amended CIL regulations?

15.1 Yes, the Council agrees with the suggestion.

Question 16 Do you agree with the Government's proposal to allow local authorities to set differential CIL rates based on the existing use of land?

16.1 No, the Council does not agree with the proposal. This not only risks over-complicating the process considerably, but there would be no benefit to the introduction of such a system where planning applications are seeking a change from a lower-value land use to residential, for which the infrastructure requirements would be at their greatest.

Question 17 If implementing this proposal do you agree that the Government should:
i. encourage authorities to set a single CIL rate for strategic sites?

17.1 No, the Council does not agree.

ii. for sites with multiple existing uses, set out that CIL liabilities should be calculated on the basis of the majority existing use for small sites?

17.2 Yes, the Council agrees - but with the proviso that this could only occur for small sites. There may be an element of tension basing CIL on existing use value when dealing with larger applications seeking a change from a lower-value land use to residential, for which the infrastructure requirements would be at their greatest.

iii. set out that, for other sites, CIL liabilities should be calculated on the basis of the majority existing use where 80% or more of the site is in a single existing use?

17.3 We agree in principle with the use of 80% as the threshold.

iv. What comments, if any, do you have on using a threshold of 80% or more of a site being in a single existing use, to determine where CIL liabilities should be calculated on the basis of the majority existing use?

17.4 We agree in principle with the use of 80% as the threshold. However, where a site is in multiple uses, the final version (or a separate document) may need to

advise how authorities should calculate this and if this would just be a basic calculation of floor space.

Question 18 What further comments, if any, do you have on how CIL should operate on sites with multiple existing uses, including the avoidance of gaming?

18.1 Appropriate evidence and documents should be provided for clarification and justification to clearly demonstrate the mix of uses and the proportion of floor space within each use class.

Question 19 Do you have a preference between CIL rates for residential development being indexed to either:

a) The change in seasonally adjusted regional house price indexation on a monthly or quarterly basis; or

b) The change in local authority-level house price indexation on an annual basis

19.1 It should be pointed out that house prices, like investments, can always rise and fall. The current BCIS methodology takes account of full construction costs and is recognised as the leading industry standard. Despite this, the amount of affordable housing required (or any other requirements secured under S106) in an area is entirely dependent on market viability. Upon completion, many proposals which are delivered are not fully reflective of local needs.

19.2 In the event of a downturn in the housing market and fall in house prices, a Local Planning Authority could quite conceivably find itself with no option but to accept a lower payment than had originally been calculated at the point of determining the planning application, being mindful of the three year lifespan of a planning permission and the release of monthly sales data from the Land Registry.

19.3 As house prices in London are currently falling, this proposal appears to create and 'build-in' additional gaps in infrastructure funding which previously did not exist. Moreover, the exact level of any such gap(s) could not be identified or assessed until the developer is finally ready to settle their bill, taking account of the most recent Land Registry data. Taking account of the fact that CIL is payable wherever self-contained dwellings are completed (except for where Social Housing relief has been granted) most Local Authorities will find themselves determining a high three-figure or four figure number of planning applications for residential schemes each year. The potential financial losses from this proposal, if implemented, could be considerable. Although house prices increased for many years, it is not clear what the rationale is for seeking to change the method of indexation at the present time. Neither does there appear to be any merit to the change.

19.4 When linking the indexation of a key source of infrastructure funding to average house prices, local planning authorities would find themselves placed in a strange situation. Increases in house prices would be required indefinitely in order to maximise the receipts available for infrastructure. However, following the laws of

'supply and demand', the supply of housing would need to be further constrained in order to make higher CIL receipts more likely. Does the Government wish to see an increase in the refusal of planning applications? Would additional powers of refusal be given to Local Authorities, without developers having a right to appeal in such cases?

19.5 Further consideration should be given to the fact that a borough's Infrastructure Delivery Plan (IDP) must identify the main infrastructure projects which are required over a given timeframe, and part of the IDP's role in plan-making is to provide information on funding gaps which can be ameliorated via the use of Planning Obligations.

19.6 It will not benefit the Local Authority, the Infrastructure Providers or the end users to create additional 'built-in' funding gaps for projects, particularly as the shortfall could not be quantified until a much later date. The Government would therefore need to commit to plug any funding gaps which result from a change of indexation methodology.

Question 20 Do you agree with the Government's proposal to index CIL to a different metric for non-residential development?

20.1 No, the use of BCIS should continue.

Question 21 If yes, do you believe that indexation for non-residential development should be based on:

i. the Consumer Prices Index?

21.1 No, see response to Question 20

ii. a combined proportion of the House Price Index and Consumer Prices Index?

21.2 No, see response to Question 20

Question 22 What alternative regularly updated, robust, nationally applied and publicly available data could be used to index CIL for non-residential development?

22.1 The Council thinks that BCIS should continue to be used.

Question 23 Do you have any further comments on how the way in which CIL is indexed can be made more market responsive?

23.1 The Council has no specific comments to make at this stage.

Question 24 Do you agree with the Government's proposal to:

i. remove the restrictions in regulation 123, and regulation 123 lists?

24.1 Yes, the Council agrees with the proposal.

ii. introduce a requirement for local authorities to provide an annual Infrastructure Funding Statement (IFS)?

24.2 Yes, in principle. The proposal could be supported, but the Government should note that many local authorities already include such information within their Authority Monitoring Report (AMR). There would be merit in Government clarifying whether the IFS should be produced as a separate report, or if it can be included within an AMR. In addition, the frequency of reporting should also be established, i.e. would an IFS need to be revised every 12 months.

Question 25 What details should the Government require or encourage Infrastructure Funding Statements to include?

25.1 This should cover the whole Section 106 programme and include information on monies received in the financial year of report coverage, and monies spent in the financial year of coverage, along with reporting key projects which have been delivered in whole or part using funds under S106. As an aside, some of the typical Freedom of Information requests which an authority will receive on Section 106 include: monies received and spent on affordable housing in a given year, heads of terms agreed for large regeneration projects, monies received in a given year covering the whole S106 programme, and monies spent in a given year on the S106 programme. With this in mind, a further benefit of the IFS could be to reduce the number of such requests using FOI, given that more of the required information will be in the public domain.

25.2 Information on CIL receipts and likely CIL receipts from schemes would be required in the IFS, together with detailed information on other funding sources outside of the Planning system (including monies from agreements signed under Section 38 of the Highways Act 1980 and/or payments from Transport for London. Where strategic infrastructure projects will be delivered, various localised Government grants or loans for specific area-based projects to incentivise development should also be listed).

Question 26 What views do you have on whether local planning authorities may need to seek a sum as part of section 106 planning obligations for monitoring planning obligations? Any views on potential impacts would also be welcomed.

26.1 This is a matter which, in practice, commonly happens in many local authorities. Relying on case law (examples including the Cherwell D.C. monitoring fees case of 2015 where the actual principle of a monitoring fee per se was not questioned by the Judge), has only served to cause confusion. A clear change to the rules, bringing S106 into line with CIL in this respect, would therefore be welcomed and supported.

Question 27 Do you agree that combined authorities and joint committees with strategic planning powers should be given the ability to charge a SIT?

27.1 The Strategic Infrastructure Tariff proposal is not of relevance for London Boroughs. London Boroughs already collect Mayoral CIL .

Question 28 Do you agree with the proposed definition of strategic infrastructure?

28.1 Yes, the Council agrees with the definition as proposed, and has no further comment.

Question 29 Do you have any further comments on the definition of strategic infrastructure?

29.1 The Council has no further comments at this stage.

Question 30 Do you agree that a proportion of funding raised through SIT could be used to fund local infrastructure priorities that mitigate the impacts of strategic infrastructure?

30.1 The Strategic Infrastructure Tariff proposal is not of relevance for London Boroughs. London Boroughs already collect Mayoral CIL .

Question 31 If so, what proportion of the funding raised through SIT do you think should be spent on local infrastructure priorities?

31.1 The Strategic Infrastructure Tariff proposal is not of relevance for London Boroughs. London Boroughs already collect Mayoral CIL .

Question 32 Do you agree that the SIT should be collected by local authorities on behalf of the SIT charging authority?

32.1 The Strategic Infrastructure Tariff proposal is not of relevance for London Boroughs. London Boroughs already collect Mayoral CIL .

Question 33 Do you agree that the local authority should be able to keep up to 4% of the SIT receipts to cover the administrative costs of collecting the SIT?

33.1 The Strategic Infrastructure Tariff proposal is not of relevance for London Boroughs as London Boroughs already collect Mayoral CIL. However, the percentage which authorities collecting SIT are allowed to keep for administrative costs should not exceed the levels which are afforded under Mayoral CIL rules. Currently this is set at 4%.

Question 34 Do you have any comments on the other technical clarifications to CIL?

34.1 It is not apparent how vacant sites or buildings, or vacant units within a building earmarked for development would be considered at this stage, particularly in

circumstances where 80% or more of the site is vacant, given that the text is silent on vacancy issues. Would any CIL charge be based on the previous use of the vacant site or buildings? Should such sites continue to be eligible for CIL relief, given that the land value would change dramatically when such sites have been converted to e.g. residential? From an operational standpoint, these issues will need to be clarified in the final version of the document (or preferably before its publication).

34.2 Moreover, it is likely that this proposal may consequently lead to a greater focus on development economics and the use of open book appraisals for specific sites. It may also run the risk landowners requesting greater certainty on minimum land value before entering into contracts. The caution is that this may make some landowners 'sit tight' and not make their land available for development until the 'price is right'. This could be counterproductive to the Government's desire to build more homes.

34.3 With reference to Paragraph 63, an alternative and simpler way of 'increasing market responsiveness' would be to look at the introduction of review clauses for CIL, as happens under Section 106. Planning permissions are valid for a three year period, noting that market and economic conditions can change considerably over such a timeframe. CIL becomes payable at the point of works starting on-site, while from the authority's point of view it must monitor the various trigger points at which obligations under the Section 106 would fall due for settlement throughout the build timetable. These obligations may include financial payments where it has been agreed that an obligation can be paid in instalments.

34.4 From time-to-time, applications will come forward where it has been agreed that a follow-on viability appraisal should be submitted prior to completion of the scheme. This follow-on appraisal is undertaken at the developer's expense, and includes the baseline data outlining cumulative sales receipts, and the difference in terms of profit (or loss) which the scheme has made from the projected totals which were anticipated and included in the initial viability assessment at the time of submitting the planning application.

34.5 Follow-on viability appraisals are often required where, for example, overage clauses have been used in the original S106 to secure top-up contributions for affordable housing in a buoyant market. The difference between the overage threshold (OT) and the cumulative sales values (CSV) gives an overage amount, of which a given percentage will be due for payment to the Local Authority.

34.6 An 'additional CIL' amount becoming payable as a percentage of the difference between the OT and CSV would therefore not result in any additional resource burden for the Local Authority, given it would already be monitoring the scheme for S106 purposes.