Shropshire Council CIL examination
Closing statement

We have heard a range of objections. Those from the local development industry and lobby groups have been broadly supportive and those disagreements that there are relate to detail rather than principle and I think reflect well on the inclusive partnership approach this council has taken to planning and plan preparation since its formation. Working with the industry and our communities is a fundamental cornerstone of the way we work, and the national initiatives around localism contain much that we are doing already – if we did not have a consensus it is unlikely that we would be sitting here today.

We have however heard objections from Newark & Sherwood District Council (NSDC) over almost every aspect of our proposals – which will have no tangible impact on them or their area and have gone well beyond the state aid issues that they said yesterday were the reasons for their objection. Leaving aside the additional cost that this has resulted in, which probably include adding a day to this enquiry we believe that their appearance here is a thinly veiled attempt to promote their methodology and the service that they are offering – commercially – to other councils as stated on their website.

In our introduction to this session we stated that our approach is in accordance with the Regulations and Guidance. We would like to take this opportunity to demonstrate why we are of this view.

Starting with the Regulations, I would draw your attention to: *{attention was drawn in the hearing to those sections underlined}*

The Community Infrastructure Levy Regulations 2010

Setting rates

14. (1) In setting rates (including differential rates) in a charging schedule, a charging authority must aim to strike **what appears to the charging authority to be an appropriate balance between**—

(a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and

(b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

(2) In setting rates in a charging schedule, a charging authority may also have regard to actual and expected administrative expenses in connection with CIL to the extent that those expenses can be funded from CIL in accordance with regulation 61.

(3) In having regard to the potential effects of the imposition of CIL on the economic viability of development (in accordance with paragraph (1)(b)), a London borough council must take into account the rates set by the Mayor.

(4) For the purposes of paragraph (3), the rates set by the Mayor are the rates in the most recent charging schedule approved by the Mayor before the London borough council begins consultation on its preliminary draft charging schedule in accordance with regulation 15.

There was considerable debate at to what "the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area" actually means. NSDC seemed to argue that this means that this was very narrow and we should only look at the viability of various schemes and not the wider strategic objectives of the council for development across the area. This is bizarre – how can one set this levy without considering this county's ability meet those development objectives and priorities. Our interpretation is much wider – and supported by the words in brackets.

This can be illustrated by looking at the reality of Shropshire. We have a Core Strategy that contains a raft of development strategies and policies. One of these is a housing target. It is important to us that we meet this target – it emerged from a process of research, evidence and consultation. If we set the CIL too high we may not achieve this as developers may be deterred – the larger situation is important and material and it is not possible to consider CIL in isolation as NSDC urge us to.

This is supported by para 10 of the guidance.

Moving on to consider that Guidance, the first paragraph states:

> **Community Infrastructure Levy Guidance**
> Charge setting and charging schedule procedures
>
> 1. Section 206 of the Planning Act 2008 (The Act) confers the power to charge CIL on certain bodies known as charging authorities. The charging authority's responsibilities, if they decide to levy CIL, will be to: ..... This will involve consultation and .....

We have consulted.

> 6. The initial stage of preparing a charging schedule focuses on determining the CIL rate(s). When a charging authority submits its draft charging schedule to the CIL examination, it must provide evidence on economic viability and infrastructure planning (as background documentation for the CIL examination).

We have provided evidence on economic viability.

> 7. By providing additional infrastructure to support development of an area, CIL is expected to have a positive economic effect on development across an area in the medium to long term. In deciding the rate(s) of CIL for inclusion in its draft charging schedule, a key consideration for authorities is the **balance** between securing additional investment for infrastructure to support development and the potential economic effect of imposing CIL upon development across their area. The CIL regulations place this balance of considerations at the centre of the charge-setting process. In view of the wide variation in local charging circumstances, **it is for charging authorities to decide on the appropriate balance for their area and 'how much' potential development they are willing to put at risk through the imposition of CIL**. The amount will vary. For example, some charging authorities may place a high premium on funding infrastructure if they see this as important to future economic growth in their area, or if they consider that they have flexibility to identify alternative development sites, or that some sites can be redesigned to make them viable. These charging authorities may be comfortable in putting a higher percentage of potential development at risk, as they anticipate an overall benefit.

This is really the core – the 'balance' is at the centre of the issue. We are not willing to put urban development at risk – and the developers largely agree it will not be put at risk. Rural Shropshire is different to the towns – it is stunning and expensive. Development here is important to meeting the overall targets but we believe, and are supported by the industry in this, that the rural market is more robust and can bear a higher CIL. This is in part due to lower land prices for rural land.

> 8. In their background evidence on economic viability to the CIL examination, charging authorities should explain briefly why they consider that their proposed CIL rate (or rates) will not put the overall development across their area at serious risk. It is for charging authorities to decide what evidence they include. But, they might, for example, explain that they expect to be able to bring forward more sites (for authorities in England this might involve using their SHLAA evidence) or development to offset part of the risk to development as a result of the imposition of CIL, such that the imposition of CIL will not put the overall development of their area at risk.

This is what Shropshire has done in relation to the rural levy rate.

9. The independent examiner should check that:
   - the charging authority has complied with the required procedures set out in the Planning Act 2008 and the CIL Regulations (see paragraph 6 above)
   - the charging authority's draft charging schedule is supported by background documents containing appropriate available evidence
   - the proposed rate or rates are informed by and consistent with, the evidence on economic viability across the charging authority's area; and
   - evidence has been provided that shows the proposed rate would not put at serious risk overall development of the area.

NSDC have agreed on the 4th point. On the third point the rates are 'informed by' and are 'consistent with' the evidence. They do not exceed the Fordham's research and are less than the maximums so are consistent with – ie they don't contradict.

Although the examiner is already aware of this:

10. The **examiner should not use the CIL examination to question a charging authority's choice in terms of 'the appropriate balance'**, unless the evidence available to the examination shows that the proposed rate(or rates) will put the overall development of the area at serious risk. The examiner should be ready to modify or reject the draft charging schedule if it puts at serious risk the overall development of the area. In considering whether the overall development of the area has been put at serious risk**, the examiner will want to consider the implications for the priorities that the authority has identified in its Development Plan (for example planned targets for housing supply and affordable housing)**, or in the case of the Mayor's CIL, the implications for the London Plan. In considering whether the Development Plan and its targets have been put at serious risk, the examiner should only be concerned with whether the proposed CIL rate will make a material or significant difference to the level of that risk. It may be that the Development Plan and its targets would be at serious risk in the absence of CIL.

NSDC seem to be unhappy with our appropriate balance, but here we are required to consider the wider strategies.

20. It is for charging authorities to decide how to present appropriate evidence on how they have struck an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects of the imposition of CIL on the economic viability of development across their area. It is likely, for example, that charging authorities will need to summarise evidence as to economic viability in a document (separate from the charging schedule) as part of their background evidence that shows the potential effects of their proposed CIL rate (or rates) on the economic viability of development across their area.

Our Levy Rationale Background Paper does this.

22. There are a number of valuation models and methodologies available to charging authorities to help them in preparing evidence on the potential effects of CIL on the economic viability of development across their area. There is no requirement to use one of these models, but charging authorities may find it helpful in defending their CIL rates to use one of them.

The methodology that we have used – particularly our approach on existing / alternative land values - is widely used and accepted as being robust and reasonable.

23. The legislation (section 212 (4)(b)) requires a charging authority to use '*appropriate available evidence*' to inform their draft charging schedule. It is recognised that the available data is unlikely to be fully comprehensive or exhaustive. Charging authorities need to demonstrate that their proposed CIL rate or rates are informed by 'appropriate available' evidence and consistent with that evidence across their area as a whole.

We have done this – and filled in the gaps where we think they exist and have a reasonable likelihood yielding CIL. There is no point in employing consultants to examine development that is not typical to the area, or that which is obviously unviable.

24. A charging authority should thus draw on existing data wherever it is available. Charging authorities may consider a range of data, including:
• values of land in both existing and planned uses (see, for example, VOA Property Market Reports); and
• property prices (e.g. house price indices and rateable values for commercial property).

We have done this.

25. In addition, a charging authority may want to sample directly a few sites across its area in order to supplement existing data. The focus should only be on a limited number of sites, particularly those sites where the impact of CIL on economic viability is likely to be more significant. Where a charging authority is proposing to set differential rates, they may want to undertake more fine-grained sampling (of a higher percentage of total sites), to identify a few data points to use in estimating the boundaries of particular zones, or different categories of intended use. The focus in regulation 14(1)(b) on an area based approach to viability means that charging authorities need rely only on a limited approach to sampling, whether they are setting a uniform or a differential rate.

This is precisely what we have done – the grain is appropriate having a Shropshire-wide approach. If we had followed the NSDC of many zones we would need more evidence – but we have not.

26. In considering the effect of CIL on residential development, charging authorities in England may want to draw on the work done to inform their Strategic Housing Land Availability Assessments (SHLAAs) on maintaining a deliverable supply of land for housing, as required by PPS3.4 The methodology undertaken for the SHLAA and the knowledge it has given of viability in the local area should inform an authority's approach, but a charging authority may need to revisit their SHLAA to update it to reflect more recent changes that have an impact on viability across their area, (usually without changing the methodology). Charging authorities will also need to supplement their SHLAA with information about non-housing sectors, such as the retail and commercial sectors (for example, information on rental yields and property values), depending on the balance of development within their area.

The guidance clearly suggests that land availability is an important aspect of evidence. The evidence is not expected to be entirely based on a single type of viability study. We have drawn on the plethora of studies (SHLAA, employment land review, retail, hotels etc) and then filled in the gaps where required – bearing in mind the likelihood of development coming forward.

Evidence should inform the draft charging schedule

27. The legislation (section 212 (4) (b)) only requires a charging authority to use appropriate available evidence to '*inform* the draft charging schedule'. A charging authority's proposed CIL rate (or rates) should appear reasonable given the available evidence, but there is no requirement for a proposed rate to exactly mirror the evidence, for example, if the evidence pointed to setting a charge right at the margins of viability. There is room for some pragmatism.

Our evidence has *informed*, not rigidly dictated, our levy rates.

Factors to consider

28. In proposing a CIL rate (or rates), charging authorities should take into account other development costs arising from existing regulatory requirements, including taking account of any policies on planning obligations in the Development Plan (in particular those for affordable housing). In proposing the rate(s) of CIL to charge, a charging authority should consider the potential impact of exemptions or reductions relating to social housing and

many developments by charities, as these will reduce the amount of CIL revenue that they can collect.

We have done this.

36. Regulation 13 also allows charging authorities to articulate differential rates by reference to different intended uses of development (for example residential and commercial development) across their charging area provided that the different rates can be justified by a comparative assessment of the economic viability of those categories of development. Where an authority has applied differential rates in this way, the charging schedule should reflect those rates by reference to the intended use of development.

We have done this – very carefully.

37. An authority could set differential rates by reference to both zones, and the categories of development within its area. For instance, an authority might choose to divide its area into a higher and lower value zone and set differential rates by reference to those zones. It could go further and set differential rates for residential and commercial development within both the higher and lower value zones. However, charging authorities should be mindful that it is likely to be harder to ensure that more complex patterns of differential rates are State aid compliant, so for example, charging authorities need to be consistent in the way that appropriate available evidence on economic viability informs the treatment of a category of development in different zones.

We note that NSDC were not consistent in the way that they applied their viability study to their levy rates, with these being set at differing proportions of the maximums shown in their study. In our case, we have avoided a complex pattern of differential zones and differential categories. The huge size of Shropshire (much larger than NS district) and its very great variability have led us adopt a simple system of broad categories; we have set a levy rates that are appropriate for the area as a whole. This is entirely in accordance with paragraph 38 of the guidance.

38. Charging authorities that plan to set differential CIL rates should seek to avoid undue complexity, and limit the permutations of different charges that they set within their area. Charging authorities should not exempt or set a zero rate for a particular zone or category of development from CIL, unless they can demonstrate that this is justifiable in economic viability terms (which would require evidence of very low (i.e. at the margins of viability, such that any charge would be *de minimis*), zero or negative viability across that zone or category of development). However, if the evidence shows that their area includes a zone or category of development of low viability, charging authorities should consider setting a low CIL rate in that area or for that category (consistent with the evidence). Charging authorities should not seek to exempt individual development sites from CIL through setting a differential rate. CIL is based upon broad assessments and it will not be appropriate to seek to draw zones on the basis of the individual sites.

39. Resulting charging schedules should not impact disproportionately on a particular sector or small group of developers.

Shropshire's proposed levy rates will not impact disproportionately on a particular sector or small group of developers. However, given that we have so few planning consents for certain categories of development, a differential levy for a very specific category – such as Greenfield retail sites around Shrewsbury, for example – would be in danger of doing so, contrary to the guidance.

We consider that we have complied with the Regulations and the Guidance, and are therefore compliant with the State Aid rules.