



Haringey Community Infrastructure Levy Draft Charging Schedule

Representations by Tottenham Hotspur Football Club

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1.0 Introduction and Context

Introduction

- 1.1 These representations are submitted on behalf of Tottenham Hotspur Football Club (“THFC”) by Savills (UK) Limited (“Savills”) on Haringey Council’s Community Infrastructure Levy (“CIL”) Draft Charging Schedule (“DCS”).
- 1.2 Savills is the UK’s leading property consultant¹ with considerable professional expertise in a wide range of technical disciplines including planning, valuation and land sales. Allied to this, the company’s market leading residential sales agencies across the country transact a considerable number of residential properties each year. The residential and commercial research departments provide forecasts for a broad range of sectors which are highly regarded across the industry. This provides us with a wealth of first hand transactional information, including sales values.
- 1.3 Both Savills’ planning and development teams have acted for a range of private and affordable residential clients in Haringey and therefore have an in depth knowledge of the issues relating to housing delivery and economic viability.
- 1.4 The Company has a dedicated CIL team comprising both planners and surveyors across the UK and the team is currently actively involved in over 40 CIL charging schedules on behalf of a wide range of developer and landowner clients. Savills has a national commission with the Home Builders Federation to represent its members through locally formed consortia as well as providing central research and consultancy support. Savills is also working closely with both CLG (where it has a secondee within the CIL team) and with many of the consultants that are acting on behalf of charging authorities in setting CIL to assist in improving the practical implementation of CIL.
- 1.5 Savills has been THFC’s planning advisor since 2000 and in addition to securing the various NDP consents, has also carried out valuations for both THFC and the Council as part of the NDP. This property, planning, CIL and local market experience informs these representations.

¹ By UK profit and turnover 2012

- 1.6 THFC occupies the current White Hart Lane Stadium in North Tottenham. The stadium lies within Northumberland Park Ward; one of the most deprived areas within London and the UK as a whole according to the most recent indices of deprivation. Nevertheless, the Club understands that CIL is necessary in principle to assist with the funding of infrastructure alongside other funding sources.

Context

- 1.7 THFC has been working closely with Haringey Council (“the Council”) to regenerate North Tottenham and in particular, Northumberland Park. The need for urgent regeneration in this area was brought into sharp focus by the August 2011 riots, which began in Tottenham. The area has been the subject of increased effort on the part of the public, private and third sectors ever since (e.g. the Tottenham Task Force led by Sir Stuart Lipton).
- 1.8 The planning policy context is particularly important in this case. The NDP lies within the Upper Lee Valley Opportunity Area as identified in the London Plan. Opportunity Areas are London’s principal sources of brownfield land and have been identified as Opportunity Areas because of their capacity to accommodate a significant amount of the capital’s housing and commercial development. The GLA is launching the adopted Planning Framework for the Upper Lee Valley Opportunity Area in July. The Planning Framework contains specific reference to both the NDP scheme and the High Road West area.
- 1.9 The Council’s recently adopted Local Plan identifies much of Northumberland Park (including the NDP) as an Area of Change for which it intends to bring forward an Area Action Plan. The NDP and the area around it is therefore of strategic importance both to Haringey and to London as a whole.
- 1.10 The Council is currently consulting upon its High Road West Masterplan and in particular, three levels of intervention around the Love Lane Estate area ranging from the creation/re-provision of 600 to 1,650 homes. The Council is also seeking to create up to 600 new jobs and a wide range of supporting social infrastructure. Much of this development will be liable for both the existing Mayoral CIL and Haringey’s proposed CIL. The impact of the combined CIL charges could therefore have a significant effect on the Council’s regeneration efforts around the NDP.

- 1.11 In September 2011, THFC secured planning permission and associated consents (HGY/2010/1000-4) for a scheme for the redevelopment of the White Hart Lane Stadium and land to the north.
- 1.12 The application site boundary is appended as **Appendix A**. The NDP has three components. The “Northern Development”, which includes the Sainsburys foodstore; the new stadium in the centre; and the “Southern Development”, which includes new housing.
- 1.13 In March 2012, the Council approved amendments to the Northern and Southern Developments alongside a package of funding measures and revisions to the S.106 planning obligations, in an attempt to improve the viability of the NDP as a whole. The scheme now comprises:

Northern Development (Phase 1)

- a new 7,201m² (net sales) Sainsburys foodstore;
- up to 8,721m² (gross) of brand centre/stadium-related space;
- up to 3,238m² (gross) of education space (Northern Development);

Stadium (Phase 2)

- a new 56,250 stadium;
- replacement ‘Spurs Megastore’ and new Club museum;

Southern Development (Phase 3)

- up to 285 new homes;
- new 2,400m² (gross) health club;
- up to 12,600m² of health centre/education space.

- 1.14 The revised Northern and Southern Developments were approved several days before the Mayor’s Crossrail Community Infrastructure Levy (“CIL”) came into force.
- 1.15 The amended Northern Development commenced in September 2012 and a new Sainsburys store occupying the ground and first floors will open in November 2013.

- 1.16 THFC and its principal co-sponsor, Middlesex University have bid successfully for a new 800 pupil University Technical College (“UTC”) to cater for students aged 14 to 18. The UTC will provide a wide range of courses focusing on science, health and sport and is currently scheduled to open in September 2014. The preferred location for the new Tottenham UTC will be the upper floors of the Northern Development.
- 1.17 THFC has been assembling the land necessary to implement the NDP since 2002 through private treaty acquisitions, spending approximately £100m (as at January 2013) in the process. However, THFC has not yet been able to secure the acquisition of Archway Sheet Metal Works Ltd (“Archway”) and associated interests on Paxton Road. In July 2012 the Council made a compulsory purchase order (“the CPO”). Qualifying objections, including those from Archway triggered an inquiry, which was held over three sittings during March and April 2013. The Secretary of State’s decision on whether or not to confirm the CPO is still pending. Under the NDP scheme, the new stadium and correspondingly, the Southern Development cannot proceed until Archway’s interest has been acquired.
- 1.18 The NDP itself therefore benefits from a set of operable planning permissions that are not liable either for Mayoral or Haringey CIL. However, THFC’s interests extend beyond the current NDP permissions in several important ways.
- 1.19 First, if the Club chooses to make any amendments to any part of the main NDP scheme (including the proposed stadium) or revised Southern Development that are of such significance that they are incapable of being dealt with through either the S.96A (non-material amendment) or S.73 (minor material amendment) procedures, any new permission would incur liability for Mayoral CIL and potentially Haringey CIL even if there were no increase in floorspace. That liability would be significant and would erode previous efforts to improve the viability of the NDP.
- 1.20 The Club is concerned that the levying of Mayoral and Haringey CIL at a combined rate of £50/m² on new housing would significantly undermine efforts by the Club, the Mayor of London and indeed the Council to improve the viability and deliverability of the most important regeneration project in Haringey. The Club and the Council both objected to the £35/m² for Haringey during the setting of Crossrail CIL.
- 1.21 Secondly, the Club is concerned that the full catalytic effect of the its £430m investment in Tottenham (and significant investment by the public sector) will not be realised to its full

potential if the combined impact of the Mayoral and Haringey CIL prevents or at least delays the implementation of redevelopment around the NDP.

- 1.22 Thirdly, the government has recently consulted upon a raft of proposed reforms to the CIL regime. The reforms are being considered in response to feedback received from charging authorities and developers alike on the practical operation of CIL. The proposed reforms are aimed at making CIL more workable. Nearly all of the proposed reforms will have a direct and potentially beneficial impact upon the deliverability of the regeneration in Tottenham. The proposed reforms are being widely supported by the development industry and the Club has also submitted representations generally supporting the proposed reforms.
- 1.23 Fourthly, on 24 April (two days after Haringey published its DCS) the government revised its guidance on CIL. The guidance re-emphasises the need for charging authorities to strike an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area. The guidance also emphasises the need for charging authorities to adequately demonstrate and justify how a proposed CIL contributes towards the implementation of the relevant plan and supports the development of their area.
- 1.24 The new guidance reiterates section 212 (4) (b) of the Regulations, which require a charging authority to use appropriate available evidence to inform the draft charging schedule whilst also taking account of any policies on planning obligations in the relevant Plan. The Council cannot be criticised for the timing of the publication of its DCS, but it does mean that the most up-to-date guidance has not been taken into account by the DCS.
- 1.25 Given this context and irrespective of any concerns the Club may have about the proposed rates within the Eastern Charging Zone or how they have been arrived at, THFC urges the Council to await the outcome of the proposed reforms before progressing any further as many of the measures being considered are likely to make CIL more workable, particularly in more marginal areas such as Tottenham.
- 1.26 For the reasons stated in the following section, THFC does not believe that the Council's DCS meets either the tests in Regulation 14(1) or 14(4) of the CIL Regulations 2010 or paragraphs 4, 8 and 21 of the statutory guidance published by the government under S.221 of the Planning Act 2008.
- 1.27 THFC therefore urges the Council to withdraw the DCS, address the deficiencies identified in these representations and re-consult upon an amended version. In doing so, THFC also

urges the Council to await the outcome of the government's proposed reforms to CIL and to make use of those provisions that will aid it in setting and operating its CIL charging schedule. The Club views these representations as part of the process of its wider engagement with the Council and looks forward to the opportunity discussing its concerns further with the Council ahead of the examination.

2.0 Comments on Approach and Implementation

Appropriate Available Evidence

- 2.1 It is only possible to establish whether or not the Council has met the fundamental test within Regulation 14(1) of the CIL Regulations if adequate information about the evidence it has relied upon is made available. For the reasons set out below, THFC believes that the Council's DCS is not supported by appropriate available evidence.
- 2.2 Specifically, THFC believes that the Council does not appear to have considered (or at least made available if it has considered) the following two pieces of evidence that are cited in the statutory guidance:
- Information on the amounts it has raised in recent years through S.106 planning obligations (including the amount of affordable housing it has delivered through S.106 against its targets).
 - Evidence specifically demonstrating that the PDC rates will not prejudice the development of strategic sites, for example the High Road West Masterplan area or the wider Northumberland Park Area of Change. Indeed there appears to have been no consideration whatsoever given the potential impact of the Council's CIL on strategic sites in either the DCS or the Update Viability Study (BNP Paribas Real Estate, April 2013).
- 2.3 Option 3 of the three approaches currently being consulted upon by the Council in its High Road West Masterplan envisages the potential delivery of 1,600-1,650 new homes over the next 15 years. The High Road West Masterplan area alone therefore represents a significant proportion of the minimum 8,200 new homes the Council is seeking to deliver over the Local Plan period.
- 2.4 The Updated Viability Study that underpins the DCS is instead based upon a methodology that considers the residual land values of a range of generic developments without any apparent reference to either strategic sites or the potential impact of the CIL rates on the Council's ability to meet its development plan requirements. There appears to be no evidence in either the DCS or the Viability Study that any market testing has been carried out, particularly in respect of the strategic sites that carry the greater burden of delivering the Council's development plan targets.

- 2.5 Section 3 of these representations sets out THFC's concerns about some of the viability assessment key inputs based upon its own market testing.
- 2.6 Once the procedural deficiencies and viability assumptions have been addressed, THFC urges the Council to consider the possibility of a separate rate (nil) in the key regeneration areas identified as being of strategic importance in the development plan. One such area would be the Northumberland Park Area of Change which lies within an Opportunity Area, encompasses the Council's own emerging masterplan for the area west of the NDP on the High Road and most importantly for THFC, is centred on the NDP which will represent a £430m private sector investment to act as a catalyst for the regeneration of the area.

Meeting the Regulation 14(1) Test

- 2.7 The Council must demonstrate and the examiner must be satisfied that an appropriate balance has been struck between the desirability of using CIL to fund the infrastructure required to support growth and on the other hand, the potential impact (taken as a whole) of CIL on the viability of development across an area.
- 2.8 Paragraphs 8 and 29 of the statutory guidance and paragraphs 173 and 175 of the National Planning Policy Framework make clear that the assessment of development viability across an area should be carried out in the context of the deliverability of the development plan.
- 2.9 For the reasons cited in paragraphs 2.1 to 2.4 above, THFC believes that the Council has not relied upon (or at least not made available) the necessary appropriate available evidence to demonstrate that it has met the Regulation 14(1) test.
- 2.10 Section 3 of these representations also seeks to show that the Updated Viability Study is based upon incorrect land values assumptions. This potentially means that the impact of the imposition of CIL on the viability of development across Haringey has been underestimated and therefore the appropriate balance required by Regulation 14(1) has not been achieved.

Payment by Instalments

- 2.11 Both Regulation 69B(1) and the statutory guidance make clear that a charging authority has some flexibility over the timing of the charge extends to CIL payment deadlines and payment by instalments. The Council has chosen to have an instalments policy which the Club welcomes.

- 2.12 Section 11 of the DCS sets out the Council's proposed instalments policy. For CIL payments lower than £500,000 a single payment must be made not more than 60 days after the commencement of development. Where the CIL liability is greater than £500,000, the first payment of either £500,000 or half of the total sum payable must be made 60 days after the commencement of development, and the remainder 240 days after commencement.
- 2.13 The Club believes that the current approach may not be suitable, insofar as it does not relate to how much of the actual development is actually built. Developers normally only have access to certain levels of funding throughout the construction process and this is often dependent on sale volumes and market conditions. Payments of up to £500,000 so soon after the commencement of development (and in all likelihood before any income arising from the development) could render many developments unviable in cashflow terms. THFC would prefer to see triggers based upon unit completions or as percentages of the overall development (an approach often adopted in S.106 legal agreements).
- 2.14 The *timing* of CIL payments is therefore of critical importance, particularly as the definition of chargeable development (Regulation 9) makes it clear that in instances of full planning approval the chargeable development is that entirely consented. Whilst Regulation 9(4) effectively permits a staged payment approach to outline consents (where phasing is proposed), it is normally the practice to only pursue outline (or hybrid) applications for the largest and most complex sites. The majority of planning proposals will still be submitted in full.
- 2.15 THFC therefore urges the Council to consider the introduction of a revised instalments policy ahead of the DCS being submitted for examination. It should cover:
- the commencement of the instalments policy on adoption of CIL;
 - the number of instalments that can be made by development size (in terms of value and area); and
 - the timing of payments post-commencement, based on a proper consideration of build out rates.
- 2.16 It may also be appropriate to define a threshold for much larger sites which a bespoke payment method for CIL will be agreed in writing with the Borough through the application process.

Exceptional Circumstances Relief

- 2.17 “Community Infrastructure Levy Relief – Information Document” (CLG, May 2011) outlines the government’s position on the “*exceptional circumstances*” that might warrant exception from CIL (para. 66 onward). The first matter to note from the Regulations is that the offer of relief is discretionary on the charging authority (Regulation 55(3) (a)). The CIL Guidance states at paragraph 31 that “*use of an exceptions policy enables the charging authority to avoid rendering sites with specific and exceptional cost burdens unviable should exceptional circumstances arise.*”
- 2.18 Several charging authorities have chosen not to include an exceptional circumstances relief (including the Mayor of London) for fear that it might open up separate debates on the viability of individual projects once a CIL has been set.
- 2.19 The existing provisions are in fact so tightly drawn that we believe that they have not yet been applied in practice anywhere in the UK. The government’s proposed reforms recommend the removal or adjustment of the requirement for there to be a S.106 agreement which is higher than the CIL liability, so that it may apply where the CIL would have an unacceptable impact on economic viability and the grant of relief would not constitute State aid.
- 2.20 We note that the Council does not propose to make use of the discretionary “exceptional circumstances relief” provisions that currently exist. As the Mayoral CIL similarly does not contain this provision, the Council may well be left with no flexibility in the event that an important regeneration project is rendered unviable by the combined CIL charges. THFC fears that this may put at risk the Council’s ability to deliver the growth targets in its adopted Local Plan.
- 2.21 The Council’s decision not to include any exceptional circumstances relief rather compounds the Club’s concerns about what it believes are flaws in both the DCS and the Viability Study that underpins it. If the Club is right that the Regulation 14(1) test has not been met, the exceptional circumstances relief would at least have provided the Council with limited scope to salvage strategic development schemes otherwise rendered unviable.
- 2.22 THFC therefore urges the Council in revisiting the DCS, to consider the introduction of this relief either in its current form or ideally, in one of the amended forms being considered by the government in its proposed CIL reforms (see paragraphs 2.39 to 2.67 below).

CIL and the Infrastructure Funding Gap

- 2.23 Ascertaining the correct level of CIL is essentially a development viability exercise and owing to this it is critical that the level of CIL is based on robust and credible evidence. The statutory guidance at paragraph 9 requires examiners to establish that the *“proposed rate would not threaten delivery of the relevant Plan as a whole.”* It will therefore be important that the rate is based in reality and the viable level of funding towards the planned provision of infrastructure needed to deliver the development plan. It is clear from the Council’s own evidence that CIL alone will not be able to fund the predicted £230 million that is said to be required for infrastructure up until 2026 (the timeframe of the Local Plan). This is not unusual in our experience, but does make it more important to set the level of CIL based on what is viable rather than what may theoretically be desired, to reduce the risk of the shortfall being even greater.
- 2.24 The statutory guidance is welcome in that it specifically requires charging authorities to identify the total cost of infrastructure it desires to be funded in whole or in part by the levy (infrastructure funding gap). In order to do this the charging authority must consider what additional infrastructure is needed in its area to support development (paragraph 12). The process of demonstrating this should also identify a CIL *“infrastructure funding target”*. (paragraph 14). This target is not presently clear as it is not explicitly stated.

CIL Regulation 122 and Avoiding Double Counting

- 2.25 The relationship between Section 106 the CIL charging schedule should be clear in order to avoid the possibility of double counting, which is not permitted by law. The revised CIL guidance has reinforced this point and states: *“Where the regulation 123 list includes a generic item (such as education or transport), section 106 contributions should not normally be sought on any specific projects in that category.”*
- 2.26 The statutory guidance is clear that charging authorities should ensure they are clear about their infrastructure needs and what will be paid through each route (S.106 or CIL), *“so that there is no actual or perceived ‘double dipping’”*.
- 2.27 The key tests of CIL Regulation 122 should be outlined within the supporting documentation. In practical terms, owing to the need to publish a Regulation 123 List, it is likely that only site specific or immediately adjacent measures will continue to be funded by Section 106 (i.e. site

access or immediately adjacent open space). As outlined previously, the costs of this on-site infrastructure will increase for larger scale development.

2.28 The government's position on the role of planning obligations is also clearly outlined in the Overview document, notably the statutory basis that they must be directly related to mitigating the impact of development and that CIL payments and planning obligations do not overlap. This is also made clear in the NPPF.

Draft Regulation 123 List

2.29 The DCS contains a Draft Regulation 123 List. The list is generic and states that CIL will be directed towards six categories of infrastructure:

- state funded education facilities;
- transport projects and safety and quality improvements of existing networks;
- public open space improvements, leisure facilities;
- enhancements to local libraries and museum;
- contribution towards decentralised/renewable energy networks; and
- surface water management.

2.30 The Club welcomes the Council's decision to include its Draft Regulation 123 List within the DCS and notes the reference to the more detailed list of infrastructure in the adopted Local Plan.

2.31 Different charging authorities have interpreted the requirements under Regulation 123 quite differently and indeed CIL charging schedules have been adopted alongside lists that are as brief as that proposed by the Council (e.g. Redbridge, Wandsworth) and others that are more detailed and list the individual infrastructure projects that will be funded by CIL (e.g. Newark & Sherwood, Huntingdonshire). The Club is aware that there are advantages and of either approach.

2.32 However, one of the key disadvantages of generic lists (as proposed for Haringey) is the risk of double charging, particularly in the absence of specific guidance that deals with the interrelationship between CIL, S.106 and s.278 obligations, which may also be providing infrastructure that will also be funded through CIL.

- 2.33 The more generic approach to Regulation 123 lists broadly coincides with the first of the adopted CILs. However the government's clear direction of travel (as signalled by the recent amendment to the Regulations and accompanying guidance as well as the proposed further reforms) is towards much greater clarity, transparency and engagement on the preparation of Regulation 123 lists.
- 2.34 One of the proposed reforms, namely the ability to offset the cost of directly providing infrastructure against CIL liability would in principle enable charging authorities to express their Regulation 123 lists in general terms as the risk of double-dipping much more likely to be mitigated.
- 2.35 However the Council is proposing a widely drawn Regulation 123 list but without the apparent safeguards to ensure that developers do not end up paying twice for the same infrastructure projects. THFC urges the Council to reconsider its approach to the Regulation 123 list.
- 2.36 As a starting point, the Club would wish to see the Council's Infrastructure Delivery Plan (IDP, April 2013) form a clearer basis for the Regulation 123 List. This would enable the Council to set out a comprehensively the list of infrastructure that will be needed to support growth and development in the Borough over the lifetime of the Local Plan (2013-2026). It would also enable the Council to match those infrastructure needs more directly to the Local Plan: Strategic Policies, in accordance with NPPF paragraph 175 and the CLG Guidance at paragraph 12. In addition, it is crucial that the IDP factors in any other funding sources into consideration of the funding gap (e.g. New Homes Bonus and government grants).

Supporting Documentation

- 2.37 Despite the narrow regulatory requirements of the charging schedule examination, THFC urges the Council to make clear as soon as possible the supporting documentation needed to operate CIL and to make it available for comment. Practically, this will need to be done prior to the publication of the next stage draft charging schedule for examination. Whilst this supporting information is not tested at examination (at least under current legislative requirements), it is still critical to the successful implementation of CIL for the reasons expressed above.
- 2.38 The Club believes that the documentation should include:

- guidance on how to calculate the chargeable amount of CIL (with reference to relevant CLG guidance, the standard the Notice of Chargeable Development Form and relevant RICS guidance on area measurement);
- guidance on liability to pay CIL and on the appeals process;
- a policy for payments by instalments (based on a consideration for build out rates);
- a clear approach to payments in kind, including the valuation process for ascertaining land value and also the potential to accept land for infrastructure as a payment in kind;
- guidance on relief from CIL and a policy on exceptional circumstances for relief from CIL (see representations at paragraphs 2.17 to 2.22 above); and
- guidance on what will remain to be funded through S.106 contributions.

Timing in Relation to Impending CIL Reforms

2.39 THFC is concerned about the timing of the Haringey CIL in relation to the likelihood of further reforms to the CIL regime. The proposed reforms are aimed at improving the workability of CIL and there are several in particular that would significantly improve the Council's prospects of successfully introducing and operating a CIL in Haringey without prejudicing its regeneration efforts in Tottenham.

Extension of Transition Period

2.40 The government is proposing to extend the deadline for further restrictions on pooled planning obligations from April 2014 to April 2015. This proposal is largely in response to the relatively small number of local authorities that are likely to have a CIL in place by April 2014. In practice, this may encourage many authorities to delay the introduction of their CILs, which will coincide with gradually improving economic conditions and therefore a greater capacity for development to absorb the impact of CIL and still remain viable.

2.41 This seems particularly important in the context of regeneration efforts in Tottenham where the viability of most development (particularly housing) is marginal at best.

Rate Setting and Evidence

2.42 The government is proposing to require local authorities to adopt a more evidence-based approach to demonstrating that they have met the Regulation 14 test and to explain how the levy rates will contribute towards the implementation of their development plans.

- 2.43 On the face of it, the proposed change is minor but would be welcomed by the Club as it should provide another safeguard to CIL rates being introduced at a level that has too high an impact on economic viability across an area.

The Infrastructure List

- 2.44 The proposed reforms recommend that the proposed list of infrastructure that will be funded through CIL (the “Regulation 123 list”) should form part of the evidence base during the rate setting process (i.e. at draft charging schedule stage) and in advance of the examination.
- 2.45 This is an important reform. The Regulation 123 list does not formally comprise part of the CIL and is therefore not subject to the same testing process. Our experience from other CILs is that it is quite common for a local authority to be setting a CIL without any real attempt to understand the items of infrastructure the CIL will be put towards and in what order or priority that infrastructure should be delivered and how that infrastructure will actually support the growth needed to meet development plan requirements.
- 2.46 The development industry will very much welcome the greater transparency this will bring to the process and there are clear implications for the Council’s regeneration efforts in Tottenham and the identification of the specific infrastructure required to support that regeneration. The Club has specific concerns about the Draft Regulation 123 List which are expressed below.

Consultation on the Infrastructure List

- 2.47 There is presently no requirement on a charging authority to consult upon changes to its Regulation 123 list. The proposed reforms will introduce a requirement for local authorities to carry out a proportionate consultation prior to making any changes to its list.
- 2.48 THFC would welcome this change which introduces more transparency to the operation of the Regulation 123 list. This will provide the Club and its partners with a legitimate opportunity to comment upon and influence the prioritisation of the provision of infrastructure projects in Haringey.

Section 278 Agreements

- 2.49 The restrictions imposed by the CIL Regulations on the use of S.106 obligations do not currently apply to S.278 agreements leaving it open for local authorities to use a combination

of CIL and S.278 to fund road infrastructure improvements. Indeed we are aware of several local authorities doing this as a means of circumventing the limitations on S.106 planning obligations.

2.50 The proposed reforms will close this loophole and in doing so, should reduce the risk of developers double charging for the same piece of infrastructure through both CIL and S.278.

2.51 This is potentially an important reform that would be welcomed by THFC.

Payments in Kind

2.52 The Regulations currently allow a local authority to accept one or more land payments in satisfaction of whole or part of a CIL liability. The proposed reforms intend to widen this to allow a developer to provide infrastructure as well as land in lieu of CIL. There are related reforms covering the inclusion of design costs and fees within the payments in kind and also whether payments in kind should be limited by the EU capital value ceilings (currently £173,934 for services and £4,348,350 for works).

2.53 This is another potentially important reform. There is a very real risk under the current provisions of double charging whereby a developer pays CIL, but ends of carrying out the infrastructure necessary for its development to proceed as there is little prospect of that infrastructure being funded from CIL proceeds in the foreseeable future.

2.54 This reform would be welcomed by the Club as it will significantly reduce the risk of double charging.

Phased Payments

2.55 The proposed reforms recommend the widening of the current provisions for phased payments to apply not just to outline but to full planning permissions. This will allow each phase of development to be treated as a new chargeable development therefore enabling CIL to be spread across a development.

2.56 This reform would be welcomed by THFC as it will mitigate the impact of CIL on the cash flow of a development. The reform would be to the wider benefit of any subsequent planning applications required to facilitate the implementation of the Council's regeneration efforts in Tottenham.

Commencement of Development

- 2.57 Development is currently taken to have commenced when a “material operation” begins to be carried out at which point, CIL will be payable. The proposed reforms to phased payments will allow site preparation works to be treated as a discreet phase. As no new floorspace is being created during the site preparation phase, there would be no CIL payable during that phase, which would potentially ease the burden of CIL on development cash flows.
- 2.58 This is a particularly important reform on developments with high site preparation costs and would therefore be of benefit to the regeneration of Tottenham, which will involve the recycling of previously developed sites – some of which are likely to be contaminated former industrial sites.

Approval of Reserved Matters

- 2.59 The proposed reforms intend to set the date at which CIL liability crystallises (i.e. the date at which planning permission first permits development) as the date of the final approval of the last reserved matter associated with the permission or phase.
- 2.60 This reform could ease the burden of CIL by deferring the point at which it actually becomes payable, which will be welcomed by the property industry and will be of corresponding benefit to the wider regeneration of Tottenham.

Vacancy Period

- 2.61 Regulation 40 currently allows existing floorspace to be deducted from the amount of floorspace that is used in the calculation of CIL liability. However, there are a number of provisions that in practice narrow the application of this relief. For example, the building must have been in use for a continuous period of 6 months within the 12 months leading up to the grant of planning permission for the development in question.
- 2.62 The proposed reforms recommend the removal of the vacancy test so that any existing floorspace can be deductible provided the use of that floorspace has not been abandoned.
- 2.63 This is another potentially important reform that would be welcomed by THFC and should also be embraced by the Council as the greater ability to deduct existing floorspace will improve the viability of individual development schemes.

Abatement Provisions

- 2.64 The proposed reforms recommend widening the existing abatement provision on S.73 applications to all new applications so that only the most recent permission triggers CIL liability, rather than multiple liabilities being triggered. Although this provision would be welcomed by THFC, there is no indication of what happens when a scheme that has previously been approved prior to the introduction of CIL in an area is then amended through an application other than a S.73 and whether then, CIL liability arises. The question is pertinent in relation to any changes to the NDP stadium that cannot be accommodated through either the S.73 (minor material amendment) or S.96A (non-material amendment) processes.

Social Housing Relief

- 2.65 The proposed reforms recommend giving local authorities the discretion to apply social housing relief to discount market sales within an area in addition to social rented and shared ownership housing.
- 2.66 Giving local authorities the ability to exercise discretionary relief across a wider range of affordable housing tenures would be welcomed by THFC and will be of particular importance to the wider masterplan area around NDP, where (in accordance with its own planning policies) the Council is seeking to dilute the social rented housing stock that presently saturates Tottenham.

Discretionary Relief in Exceptional Circumstances

- 2.67 This is potentially the most fundamental reform of all. It may in effect provide an important safeguard by allowing the possibility of viability testing on a project by project basis in the same way that S.106 obligations are negotiated. Whilst we do not believe it likely that the reforms will remove the S.106 requirement altogether or that local authorities will adopt the relief if the S.106 requirement is removed altogether, it may provide an important cross-check to ensure that important regeneration projects are not thwarted by CIL.

3.0 Comments on Viability and Proposed Rates

BNP Paribas Real Estate Viability Appraisal

- 3.1 The proposed charging schedule is based upon the Updated Viability Study (BNP Paribas Real Estate, April 2013). Regulation 14(1) makes clear that it is important that the viability appraisal prepared is fit for purpose. Regulation 11(1)(f) and Regulation 19(1)(e) requires that the charging schedule is supported by “*relevant evidence*” at the point at which it is submitted for examination.
- 3.2 The requirement to justify a charging schedule with evidence of viability is outlined in “CIL – An Overview” (paragraphs 25 and 26), which notably also makes reference to setting differential rates. The CIL Guidance (2012) at paragraph 23 refers to taking an “*area based approach*” and at paragraph 30 that “*charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area*”.
- 3.3 NPPF paragraph 173 outlines the need for “competitive returns” for both developer and landowner. The viability exercise must therefore also be aimed at demonstrating the need for flexibility in seeking CIL payments. It should not be assumed that all development can afford to pay or that all development should be charged the same levy. It must also be recognised that in certain exceptional circumstances it would be prudent to have a mechanism for granting relief where viability is an issue.
- 3.4 The fundamental factors for development to proceed are that sites must achieve a reasonable land value and developers a reasonable return on investment. In the absence of either of these factors, development would not normally proceed. The requirement to ensure these factors are taken into account in the negotiation of planning obligations and setting of CIL charging schedules is now enshrined in the NPPF and built into the CIL Regulations.
- 3.5 The viability assessment is based on a series of residual valuation scenarios that model the gross development value (GDV) achievable from different uses in the Borough and then deducting development costs, interest costs and developer profit to arrive at a residual land value payable for the purchase of the land.
- 3.6 According to the viability study, the following charges were deemed viable across a range of residential scenarios:

- Residential development in West Haringey: £265/m²
- Residential development in Central Haringey: £165/m²
- Residential development in East Haringey: £15/m²

3.7 We have identified below where we believe the viability study assumptions are incorrect. The most significant areas of discrepancy relate to land value assumptions and the methodology in arriving at the proposed rates.

Benchmark Land Values

3.8 The viability study assumes the following benchmark land values:

- Higher residential land benchmark: £4.0m/ha
- Medium residential land benchmark: £2.75m/ha
- Lower residential land benchmark: £2.05m/ha

3.9 These land values are based on two comparable land sales and an opinion from the VOA for residential land values adjusted to reflect factors such as discount for planning risk, the lack of grant and higher density development.

3.10 The table below lists a number of unconditional land sales that are considerably higher than the benchmark land values assumed and the comparable evidence obtained. In essence this means that the Council have underestimated the level at which a landowner is likely release land for development (the NPPF para. 173 “competitive return”). The likely consequence of this is that less land will be brought forward for development. Regeneration schemes are thwarted and the Council raises less CIL receipts for infrastructure funding.

Address	Site Area (ha)	Date of Sale	Achieved Price	Achieved £/Hectare
734-736 Seven Sisters Road	0.966	Dec-11	£11,546,629	£11,953,032
St Josephs College	2.8	2006	£23,925,311	£8,544,754
Kingsgate House	1.1	Mar-12	£6,269,663	£5,699,694
The Venue II, Land at Gilson Place, N10	0.35	Aug -11	£1,913,120	£5,466,057
Pembroke Works, Campsbourne Road, N8	0.25	Sep-11	£2,025,656	£8,102,624
Site behind and including 686 & 700-702 High Road, N17	0.211	Jun-11	£1,169,697	£5,543,588
Hale Village, The Pavilions, N17	0.19	Nov-10	£8,599,660	£45,261,368
734-736 Seven Sisters Road, N15	0.966	Dec-11	£12,435,277	£12,872,958
St Luke's Woodside Hospital, N10	2.4	Mar-12	£28,462,078	£11,859,200

* Indexed to March 2013 using Savills Land Index

3.11 The results of the Council's viability study appraisals have determined that the maximum viable rate of CIL for each site type in Tottenham, compared against the three benchmark land values is as follows:

Site Type	Resi Land Value (Higher)	Resi Land Value (Mid)	Resi Land Value (lower)	Former Employment Land
Type 1	Not Viable	Not Viable	Not Viable	£240
Type 2	Not Viable	Not Viable	Not Viable	£240
Type 3	Not Viable	Not Viable	Not Viable	Not Viable
Type 4	Not Viable	Not Viable	Not Viable	Not Viable
Type 5	Not Viable	Not Viable	Not Viable	Not Viable

3.12 BNP Paribas have therefore recommended to the Council that it sets a CIL rate for Tottenham (which forms part of the East Haringey Zone) of £0-£50/m², which is inclusive of the prevailing Mayoral CIL at £35/m². It is not clear how this figure has been arrived at based on the results above and we would agree with BNP's identification of the following three risks at para. 6.12 of the viability study:

"The first is that individual sites might incur exceptional costs (decontamination, difficult ground conditions etc) and as a result the residual land value could fall. Developers will try and reflect such costs in their offer to the landowner, but the extent of any issues is not always fully apparent until the land value is fixed. Where sites have an existing use, an owner will not be prepared to accept a reduction below the value of the current building to accommodate exceptional costs on a redevelopment;

Secondly, values could fall or normal build costs could rise over the life of the Charging Schedule, adversely affecting scheme viability;

Thirdly, imposing a high rate of CIL in the Council's first Charging Schedule could 'shock' the land market with a consequential risk that land supply falls."

3.13 We would also note that the majority of developments highlighted in the five year housing supply are within the East Haringey Zone and are also over 50 units, which fall within Site Types 3, 4 and 5 of the viability study. These sites are generally considered unviable based on the appraisals undertaken by BNP Paribas.

3.14 In light of the THFC's comments above and in the context of the existing Mayoral CIL rate of £35/m², the Club believes that there is simply no viability headroom for the Council to charge CIL in the East Haringey Zone. The rate should therefore be set at £0/m².

Affordable Housing

- 3.15 The viability study does not state the value of the affordable housing which has been included within their appraisals. We would request that BNP provides evidence of the values assumed for the affordable housing so that we can comment further. We would also recommend that if it hasn't already, the Council seeks confirmation from its preferred Registered Providers that affordable housing values are in line with those assumed by BNP Paribas in the viability study.

4.0 Conclusions

- 4.1 These representations have been prepared by Savills on behalf of THFC.
- 4.2 They are submitted in the context of significant public sector investment in the area and the Club's own £430m investment in the Northumberland Development Project, which will form the catalyst for the wider regeneration of Northumberland Park – one of the most deprived wards in London.
- 4.3 The Mayor has already introduced the Crossrail CIL at a rate of £35/m² on nearly all new development in Haringey and THFC is concerned that the Council does not further compound marginal viability and prejudice the regeneration of Northumberland Park Tottenham more generally.
- 4.4 THFC believes that the Council has not demonstrated that it has met the test set out in Regulation 14(1) or the requirements of the statutory guidance. Key evidence appears to be missing and the Council does not appear to have given any specific consideration to strategic sites identified within the development plan. Without a proper assessment of the impact of CIL on those sites, the Council could be prejudicing the delivery of its development plan targets. The Club is concerned that in the case of the Northumberland Park Area of Change, the catalytic effects of the NDP will not be optimised.
- 4.5 The Council has decided not to include exceptional circumstances relief within its CIL, which could provide the Council with no leeway on those schemes that are rendered unviable because of the combined CIL charge. Some of those schemes may be key regeneration schemes in parts of the borough that need development most, such as Tottenham.
- 4.6 The apparent lack of any apparent market testing in either the DCS or the Viability Assessment has allowed the Council to misjudge the tipping point at which a landowner will ordinarily decide to bring forward development. THFC fears that this may lead to less development coming forward; less regeneration taking place; and less CIL being raised.
- 4.7 The Council has decided that it does not wish to await the outcome of the government's proposed further reforms to CIL, which the Club believes would significantly assist the Council in introducing a fair and workable CIL in the borough: one that will stand a greater change of raising funds for infrastructure without prejudicing development viability.

- 4.8 For these reasons, THFC urges the Council to withdraw the DCS, address the deficiencies identified in these representations and re-consult upon an amended version. In doing so, THFC urges the Council to consider the possibility of a separate rate (nil) THFC for the Northumberland Park Area of Change and to await the outcome of the government's proposed reforms to CIL and to make use of those provisions that will aid it in setting and operating its CIL charging schedule.