BRENTWOOD BOROUGH COUNCIL – COMMUNITY INFRASTRUCTURE LEVY EXAMINATION HEARING STATEMENT ON BEHALF OF ST MODWEN PROPERTIES

Matter 1 – Procedural Requirements

Issue 1 – Compliance with the Regulations
Q1. Has the Council complied with the requirements of the CIL Regulations (as amended) prior to submission of the schedule for examination?
Q2. What are the reasons for producing the Statement of Modifications (dated February 2023)?
Q3. Did the Council comply with the requirements of the CIL Regulations (as amended) insofar as the Statement of Modifications is concerned, having particular regard to Regulation 19?

We consider that these are matters that must be addressed primarily by the Council. However, St Modwen is satisfied that, following the statement of modifications to the Draft Charging Schedule, the Council has complied with the CIL regulations.

Matter 2 – Appropriate, Available Evidence

Issue 1 – Infrastructure Planning Evidence

Q1. Has the Council prepared an Infrastructure Funding Statement to support the proposed levy? If not, what are the reasons for this?

Q2. Has the Council adequately identified infrastructure needs, the total costs of the infrastructure, the anticipated funding from developer contributions and set out the choices about how these contributions will be used? Are the infrastructure needs sufficiently up to date?

Q3. What is the current funding gap, what is this based on and where is it set out?

Q4. When taking the above into account, has appropriate evidence been provided to demonstrate a need for the levy?

Q5. Is it clear to developers, decision-makers and local communities what infrastructure will be funded by the draft charging schedule and what would be secured through planning obligations?

These are matters for the Council to address. There is a significant infrastructure requirement at Brentwood Enterprise Park ('BEP'), which will be borne by the proposed development on the Site (in part through Section 106 obligations). After the costs of these infrastructure costs are reflected, there is no additional capacity to contribute towards CIL, as set out in the Statement of Common Ground ('SOCG') ('PSED1') between the Council and St Modwen.

Issue 2 – Viability Evidence

Q1. What is the justification for using a site capacity of 825 units at Officers Meadow (Strategic Site R03)?

We have no comment on this matter.

Q2. Does the appraisal methodology in the CIL Viability Assessment Update (August 2022) adequately reflect the costs of finance?

The August 2022 adopts a rate of finance of 6%. This pre-dates the September 2022 'fiscal event' which resulted in significant increases in government bond yields and the subsequent increases in the Bank of England base rate. Although there is no direct link between development finance rates and the Bank of England base rate, this change in rate does have a bearing, albeit indirectly. Whilst rates of finance will vary between lenders and borrowers, the adopted rate is now lower than rates typically applied in viability assessments which have now increased to circa 7%. Although the percentage increase may be seen as relatively small, when applied over the whole development period, this change can have a significant impact on the total amount of borrowing. For example, the appraisal that forms the basis of the Statement of Common Ground between St Modwen and the Council adopts a finance rate of 6%, resulting in a total finance cost of £22,050,688. If the rate is changed to 7%, the amount of finance increases to £25,050,952. The residual land value falls from £14,078,046 to £11,247,609, which equates to a 20% reduction and an increase in the deficit below the benchmark land value.

Q3. Has the Viability Assessment Update accurately considered the costs for strategic sites R01-R03? How have these costs been factored into account?

This matter is not relevant to BEP and therefore we have no comment.

Q4. The Viability Assessment Update sets out costs in Tables 7.1 and 7.2. Paragraph 7.30 states that the figures are based on October 2018 costs which have been indexed to July 2022. Is this approach accurate, justified and robust?

This matter relates to Officers Meadow, West Horndon and Dunton Hills and is not of direct relevance to BEP and we therefore have no comment.

Q5. What level of developer profit has the Viability Assessment Update used? Is it consistent with guidance in the PPG? (Paragraph: 018 Reference ID: 10-018-20190509)

The CIL VS applies a rate of profit of 15% of GDV to non-residential development. The PPG does not explicitly makes reference to any ranges of profit for non-residential development, but the rate applied in the CIL VS is not out of kilter with market expectations.

Q6. How does the Viability Assessment Update take into account different sales values across Brentwood? Are there any specific areas (and not just sites) where the levy would have a greater impact on viability?

This matter relates to residential development, which is not relevant to BEP so we have no comments.

Q7. How has Local Plan Policy MG06 been taken into account in determining viability, which requires an immediate update of the Plan? Is this relevant for the purposes of examining the draft charging schedule?

Policy MG06 relates to objectively assessed housing need. BEP does not include residential development, so we do not wish to comment on this matter.

Q8. How has Local Plan Policy BE01 been taken into account in determining viability, which states that, wherever possible, major development will be required to provide a minimum of 10% of predicted energy needs from renewables? Is the assessment based on appropriate and sufficiently up-to-date evidence in this regard?

Policy BE01 part b states that 'new non-residential development will be required to achieve a certified 'excellent' rating under the BREEAM New Construction (Non-Domestic Buildings) 2018 scheme, or other equivalent standards.

The CIL VS Update August 2022 indicates at paragraph 8.22 that the cost of BREEAM excellent "*ranges from just under 1% and 5.5% depending on the nature of the scheme with offices being a little under 2%. It is assumed that new non-residential development will be to BREEAM Excellent, and this increases construction costs by 2% or so. This is tested in the base appraisals*".

The CIL VS adopts a construction cost of £865 per square metre. If this includes a 2% uplift for BREEAM, this suggests that the base cost equates to £848 per square metre, which is shown in Appendix 11 as the median cost for "*284. Warehouses/stores – generally*" (i.e. £848 x 1.02 = £864.98 per square metre).

Although we recognise that the evidence base needs to be fixed at a point in time and it takes some time until an EIP is fixed, we would highlight that the equivalent BCIS figure today is £868 per square metre. If 2% for BREAAM is added to this figure, the total cost would increase to £885.36 per square metre. This would increase the total costs on BEP by £2.29 million, further eroding the residual land value.

Q9. Does the modelling in the Viability Assessment Update broadly test the viability of sites likely to come forward over the plan-period? If not, what should the Viability evidence have considered?

We have no comments on this matter. In relation to BEP, St Modwen have submitted a planning application and the scheme tested in the viability evidence is broadly reflected of the scheme that will be brought forward.

Q10. What are the reasons for the thresholds used for modelling employment uses? Are they based on appropriate available evidence and do they adequately reflect the type of development coming forward?

We have no comments on this matter.

Q11. How have 'logistics' uses been defined and are the costs and values associated with logistics uses based on appropriate local evidence? In particular, how was the value of £2,800 per square metre generated for this sector?

Although capital values for logistics space will vary (depending on rent levels which in turn are determined by size of unit and location; incentives offered (e.g. length of rent free periods); and investment yields), we consider that the £2,800 per square metre in the CIL VS is overstated for BEP.

Although the 4% yield used in the CIL VS August 2022 update was broadly reflective of market conditions at that time, yields softened to 5%+ following the September 2022 'Fiscal Event'.
As noted in the SOCG (PSED1), the Council and St Modwen have agreed a capital value of £2,557.87 per square metre for BEP. This is driven in part by lower rents for the larger units that are proposed at BEP in comparison to other logistics developments expected to come forward in the Borough.

Q12. How have the relevant buyers' costs been taken into account in the Viability Assessment Update? Are they accurate?

Purchaser's costs are deducted from the capital value of non-residential floorspace. The CIL VS deducts purchaser's costs at a rate of 4.5% of GDV, which is lower than the Stamp Duty Land Tax that would apply in most cases (5%) and makes no allowance for Sales Agent's fees (typically 1%) and legal fees (0.8%). This issue is corrected in the appraisal for BEP agreed as part of the SOCG, which deducts purchaser's costs at 6.8% of the GDV.

Although these differences may appear to be relatively small in percentage terms, when applied to a GDV in the region of £287 million (as per the appraisal agreed with the Council for BEP), the difference between 4.5% and 6.8% equates to an overstatement in scheme value of circa £6.62 million.

Matter 3 – Are the rates informed by, and consistent with, the evidence available?

Issue 1 – New Residential Development

Q1. Is the levy rate of £250 per square metre for new residential development in 'all other areas' justified by appropriate available evidence, having regard to the PPG and local infrastructure needs arising from the adopted development plan for the area?

Q2. Based on the information provided, what impact will the proposed levy have on the rate of housing delivery in Brentwood?

Q3. The PPG advises that it is appropriate to ensure that a 'buffer' or margin is included, so that the levy rate is able to support development when economic circumstances adjust. In all cases, the charging authority should be able to explain its approach clearly (Paragraph: 020 Reference ID: 25-020-20190901). How has this been reflected in the proposed rates in the charging schedule, having particular regard to previously developed land?

The development proposals for BEP do not include residential floorspace and, consequently, we have no comments on these matters.

Issue 2 – Strategic Residential-led and Mixed-Use Allocations

Q1. What is the justification for the different levy rates for strategic sites R01 – R03? In particular, how did the Council determine the site-specific levy rates for R02 and R03 and why are they not nil rated in the same way as the Dunton Hills Garden Village?

This matter relates to residential-led developments and we do not wish to comment.

Q2. How would non-residential uses be considered as part of the Dunton Hills Garden Village? For example, would retail and industrial uses be liable for CIL?

This matter relates to a residential-led development and we do not wish to comment.

Q3. Are the strategic site rates based on appropriate available evidence?

This matter relates to residential-led developments and we do not wish to comment.

Issue 3 – Older People's Housing

Q1. Is the charging schedule sufficiently clear what constitutes older people's housing?
Q2. Is the levy rate of £220 per square metre for older person's accommodation justified by appropriate available evidence?

BEP does not incorporate any older people's housing and we therefore do not wish to comment.

Issue 4 – Industrial and Distribution and Logistics

Q1. What is the justification for introducing a nil rate for the Brentwood Enterprise Park, but not other non-residential sites?

There are two key differentiating factors between BEP and other industrial and logistics sites. The first is BEP's scale (over 1.2 million square feet of floorspace) which results in very large units, where rents are typically lower than the rents for units of the size envisaged in the CIL VS. This reduces the capital value of BEP by circa £250 per square metre in comparison to smaller units[1].

[1] Applying a rent of £150 per square metre compared to the average of £136.93 per square metre agreed between the Council and St Modwen for BEP.

The second issue, as noted in the SOCG between the Council and St Modwen, is that BEP carries significant infrastructure costs that are 'atypical' for industrial and logistics developments. The SOCG notes that the additional highway and strategic infrastructure costs apportioned to BEP equate to more than £40,000,000. The specific highways interventions required are identified in paragraph 14 of the SOCG. In addition to this, the IDP identifies an additional £11,177,492 of strategic infrastructure and mitigation.

As a result of these significant additional infrastructure requirements (which do not affect other smaller logistics and distribution sites), BEP cannot viably absorb a CIL charge in addition to the other requirements.

A summary of the agreed viability appraisal for BEP is provided in Table 1 below.

Table 1: Summary of agreed viability appraisal for BEP

	Per sqm
Gross Development Value	£2,558
Purchaser's costs	(£174)
Net development value	£2,384
Construction	£865
External works and abnormal costs	£179
Infrastructure and mitigation	£455
Contingency	£43
Professional fees	£69
Sales fees	£60
Finance	£196
Profit	£384
Gross residual land value	£133
Acquisition costs	£8
Net residual land value	**£125**
Benchmark land value	£582
Deficit against Benchmark land value	**(£457)**

Clearly, other industrial and logistics developments which have higher GDVs (due to smaller units) and lower infrastructure cost burdens (reduction of costs of circa £455 per square metre) would be able to accommodate the Council's proposed CIL. The combined higher GDV (£250 per square metre) and reduced infrastructure cost burden (£455 per square metre) would push the residual land value of smaller schemes well above the benchmark land value of £582 per square metre.

Q2. Why does the charging schedule differentiate between greenfield and brownfield sites for general industrial uses, but not distribution and logistics?

This is a matter for the Council and their advisors to address, but the benchmark land value adopted for industrial and logistics development implicitly reflects the existence of secondary industrial buildings which need to be cleared prior to redevelopment.

Q3. What is the justification for excluding space associated with car parking and landscaping? Do the same reasons apply to other types of development, such as large retail or retail warehouse schemes?

On most logistics developments, car parking will be provided at grade and will therefore not constitute developable area for CIL purposes. The same point applies to landscaped areas. We have no comments in relation to retail and retail warehouse schemes, as these uses are no proposed at BEP.

Q4. Are the levy rates of £80 and £140 per square metre for industrial (on greenfield sites) and distribution and logistics uses justified by appropriate available evidence?

As noted in the SOCG agreed between the Council and St Modwen, BEP cannot viably absorb CIL due to its scale (resulting in lower capital values in comparison to schemes of standard scale) and its extensive infrastructure requirements.

Issue 5 – Retail

Q1. Are the levy rates for retail development justified by appropriate available evidence?

Q2. Is it sufficiently clear which types of retail development will fall into the different charging categories?

Q3. What is the justification for including a levy for retail development on Brentwood High Street, but not other forms of development in this location? Why are the circumstances relating to retail development different?

The development proposals for BEP do not include retail floorspace and, consequently, we have no comments on these matters.

Issue 6 – Instalments Policy

Q1. Is the proposed instalments policy justified and effective?

On the basis that BEP is to be nil rated, we have no comments on the Council's proposed instalments policy.