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Dear Andrew

**COMMUNITY INFRASTRUCTURE LEVY**

I am writing to update the advice on Community Infrastructure Levy ('CIL') that we issued to the Council in January 2013. Since our advice was issued to you, the Government has issued revised Statutory Guidance (April 2013) and changes to the Regulations (February 2014).

CIL will replace Section 106 contributions as the main means of securing pooled financial contributions towards community infrastructure from April 2015, a year later than the originally planned date of April 2014. However, local planning authorities can continue to use Section 106 agreements providing they meet three tests set out at Regulation 122 of the CIL Regulations 2010 (as amended), as follows:

*"A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is -*

*(a) necessary to make the development acceptable in planning terms;*

*(b) directly related to the development; and*

*(c) fairly and reasonably related in scale and kind to the development."*

As you are aware, the government's current timescale requires that local planning authorities must cease to pool contributions from Section 106 agreements from April 2015. However, authorities may continue to secure Section 106 contributions from up to 5 planning obligations to fund a single piece of infrastructure (or type of infrastructure).

The question for the Council to consider is whether or not a decision to not adopt CIL in the short term would adversely affect its ability to deliver new infrastructure to support housing growth. In answering this question, it is necessary to consider the following factors:

1. The extent to which the Council can continue to deliver community infrastructure through Section 106 agreements;

2. The extent of any potential CIL income that could be raised from sites where it will not be possible to enter into a Section 106 agreement to secure financial contributions towards community infrastructure;

3. The ability to levy a CIL at a date subsequent to the April 2015 deadline.

I address each of these points below.

**1. Continued use of Section 106 agreements**

The Council will need to ensure that it has a strategy in place to deliver the infrastructure required to support growth. From April 2015, the Council will be able to continue to use Section 106 agreements to secure on-site infrastructure and site-specific mitigation. However, the Council will not be able to pool contributions to pay for a specific item of infrastructure (or type of infrastructure) from more than five Section 106 agreements.

The bulk of the Council's housing supply for the next five years is expected to come from a relatively small number of strategic sites, many of which will provide their own infrastructure on-site. The others are likely to be able to provide financial contributions for specific items of infrastructure using pooled contributions from up to five Section 106 agreements.

The Council also expects to receive between 30 to 50 housing units from windfall sites every year. It would be difficult to raise pooled contributions from these developments, as it would necessitate contributions from more than five agreements. Some of these schemes are very small in terms of numbers of units and we assume that the Council would not normally secure significant financial contributions (if anything at all) due to the cost and time involved in drafting Section 106 agreements. If this assumption correctly describes the situation in Uttlesford, then the Council is unlikely to lose significant income after April 2015.

There is clearly some scope for flexibility on how monies are collected and spent. For example, it might be possible to pool contributions from 15 Section 106 agreements around the District to pay for 3 schools, on the basis that parents in all those areas may chose to apply to send their children there. When also taking account of the larger sites that will provide schools without pooling contributions from other sites, it is possible that the Council might be able to meet its full requirements through this route.

If the Council continues to use Section 106 as its main means of securing funding for community infrastructure, the monies will need to be spent on specific items and returned to the landowner if projects are not delivered within agreed timescales. One of the advantages of CIL (from the Council's perspective at least) is that the link between the scheme that generates the funding and how it is spent is broken. CIL receipts are paid into a Council controlled fund, with the only limitation being that the monies must be spent on infrastructure that is included on the Council's 'Regulation 123 list'. The disadvantage of this approach from the Developer's perspective is that there is no longer any guarantee that the payments to the Authority will deliver infrastructure that would benefit their particular development.

Many of the strategic sites are grouped geographically and could – between them – fund infrastructure using pooled Section 106 contributions. For example, there are four sites at Great Dunmow providing 1,650 units between them; four sites at Saffron Walden providing 1,047 units between them (one of which has planning permission); and – see Appendix 1).

## 2. Potential income forgone from not adopting a CIL

Given that the bulk of the Council's housing supply is to be delivered on strategic sites which should be able to yield pooled Section 106 contributions, a key issue for the Council to consider is the amount of CIL income that would be lost from sites where pooling would not be permitted. Other than sites that already have planning permission (and would therefore not be CIL liable), it is likely that only windfall sites would be unable to make pooled contributions. Many of these sites will be too small to have a Section 106 agreement and would not be making contributions under the current system. So no income would be lost, but there is clearly an issue of potential income foregone by not adopting a CIL.

We have assessed the potential income by applying a hypothetical CIL rate of £100 per square metre to the housing trajectory. This rate has not been viability tested and has been adopted for illustrative purposes only. CIL is not levied on affordable housing, so we have assumed that it will not be levied on 40% of the housing pipeline. We have assumed that the private units have a floor area averaging 100 square metres. On the basis of these assumptions, CIL would generate additional income of £130,000 per annum. A CIL of £60 per square metre would reduce this amount to £108,000 per annum.

## 3. Ability to adopt a CIL subsequent to the April 2015 cut-off date

Although planning authorities are required to stop pooling Section 106 contributions from April 2015, there is no requirement for CIL to be in place by this time. Under the current regulations, the option of adopting CIL is available at anytime before and after April 2015. Not adopting by this date does not limit the Council's options. Given that it appears that there is little benefit from CIL (in terms of additional income) at the current time, the Council could adopt a 'wait and see' approach. In 2014, many other planning authorities will be adopting CIL, which may give rise to further changes to the regulations to iron out difficulties that continue to emerge. The Council would also be able to benefit from the good practice generated by these authorities and avoid the pitfalls.

After the extension to the originally planned April 2014 cut-off date for pooling Section 106 contributions, it is unlikely that any further extensions will be granted. Our advice would be that the Council should not rely upon any further extensions that would enable the collection of pooled contributions for a longer period than currently anticipated.

## 4. Administration costs

Setting up CIL involves a substantial amount of officer and member time to address the pre-adoption stage (establishing the evidence base; appointing and managing external consultants; two rounds of public consultation; examination in public; and setting up systems to collect CIL). Whilst charging authorities are permitted to recover their administration costs from CIL (up to 5% of the total amount collected), there will inevitably be a time lag between incurring expenditure and CIL income starting to flow. The Council will therefore need to fund these costs from other resources until the costs are eventually recovered from CIL. This may be seen as a disadvantage in comparison with retaining the current Section 106 arrangements.

## 5. Conclusions and recommendations

At the current time, there does not appear to be a compelling case for adopting a CIL in Uttlesford. The main factor that counts against CIL is the nature of the Council's housing trajectory, which lends itself to continuing to use the Section 106 arrangements. The main issue that affects other authorities with many smaller sites – the restriction on pooling of contributions from more than five S106 agreements – is not a significant factor in Uttlesford. Other important factors are that:

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- Income from CIL would in all probability be low in the short to medium term, as the Council would be able to pool Section 106 contributions on the strategic sites, which form the bulk of housing supply.

- The Council is not compelled to adopt CIL by April 2015. CIL can be adopted anytime after this cut-off date.

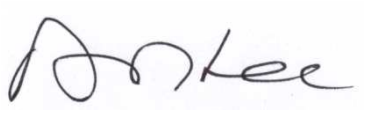
- The system is still relatively new and a growing number of authorities have adopted CIL, which is giving rise to issues with the original and amended regulations. Further changes may occur as more authorities start to charge CIL and issues emerge. Adopting later would leave a period of time in which these issues could be resolved before the Council adopts CIL.

- CIL requires a considerable input of Council resources (both time and money) and it is therefore vital that the potential income justifies this investment. Our high level assessment indicates that CIL income is likely to be modest, at least in the short term.

- Considering all these points, it is our view that the Council may not be best served by proceeding immediately to commence a programme for adopting CIL in the District. However, the Council should review its position on a regular basis, particularly after April 2015, when restrictions on the use of pooled Section 106 contributions come into effect.

I trust the points above are helpful. Should you wish to discuss the contents of this letter, please do not hesitate to contact me.

Yours sincerely



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