

Hearing Statement

Kirklees Community Infrastructure Levy

On behalf of Miller Homes

August 2019



I. Introduction

- I.1. This is a Hearing Statement prepared by Spawforths on behalf of Miller Homes in respect of the Kirklees Community Infrastructure Levy.
- I.2. Miller Homes has significant land interests in the area and has made representations to earlier stages of the Community Infrastructure Levy process.
- I.3. The Inspector's Issues and Questions are included in **bold** for ease of reference. The following responses should be read in conjunction with Miller Homes' comments to earlier consultation stages of the Community Infrastructure Levy.
- I.4. Miller Homes has also expressed a desire to attend and participate in the Community Infrastructure Levy Examination.

2. Community Infrastructure Levy

Issue 1 – Legal and Procedural Matters

b) Is the Draft Charging Schedule (as proposed to be modified) in line with the CIL Regulations that are due to be enacted on 1st September 2019? Are any further modifications necessary?

2.1. **The 2019 CIL regulations introduce sweeping changes to how CIL will operate and the changes must be reflected in the Draft Charging Schedule for Kirklees. Miller Homes maintain and consider that as drafted the Charging Schedule does not respond to the new 2019 CIL regulations appropriately. As such Miller Homes objects to the Draft Charging Schedule as drafted.**

2.2. Miller Homes highlighted in their representations to the Statement of Modifications in June 2019 that a number of Modifications did not reflect the 2019 Regulations that come into force on 1st September 2019. **Miller Homes considers that further modifications are necessary.**

Issue 2 – Is the Charging Schedule supported by appropriate available evidence on infrastructure requirements?

a) Does the Council's updated infrastructure evidence in Appendix A of the Draft Charging Schedule Background Report (May 2019) provide a robust basis for demonstrating an aggregate funding gap? Are all strategic projects with funding gaps identified, and have all other possible sources of funding been taken into account? What are the main changes between the list in Appendix A and the Infrastructure Delivery Plan Addendum (2016)?

- 2.3. Miller Homes has no specific comment in relation to this issue, however it is worth noting that TS5 does not reflect the adopted policy in relation to a potential road scheme to the south of Dewsbury. Policy TS5 states:

There will be improvements to the A644 and its environs. This may include the provision of a new highway to the south of Dewsbury through the housing allocation site and a new highway link to the existing network.

- 2.4. However, this improvement is not highlighted in Appendix A. The Infrastructure Delivery Plan Addendum therefore is inconsistent with the Adopted Local Plan.

b) Does the Council's infrastructure evidence demonstrate a clear funding gap that justifies the implementation of CIL?

- 2.5. Miller Homes has no specific comment in relation to this issue.

c) Does the Regulation 123 list accurately and clearly list future infrastructure to be funded by CIL which reflects the identified gaps in funding?

- 2.6. Miller Homes has no specific comment in relation to this issue, however it is worth noting that on 1st September 2019 that the Regulation 123 List is to be replaced with an Infrastructure Funding Statement. The Kirklees CIL therefore needs to take into account the changes to the Regulations.

d) What contribution is CIL income likely to make to the identified gap? How much is estimated to be i) retained by the Council; and ii) distributed to neighbourhood areas?

- 2.7. Miller Homes has no specific comment in relation to this issue.

Issue 3 – Is the Charging Schedule supported by appropriate available evidence on viability?

a) Are the average house price bands and Value Areas, as set out in section 2 in the Council's CIL Viability Update (2019), justified and supported by a suitable level of evidence and analysis? Why are postcode areas used as the basis for the assessment?

2.8. Miller Homes maintain their position that as noted within the previously submitted CIL representations, **we do not agree with the assumption that there are 2 value areas across Dewsbury Riverside, due to the lack of concrete sales evidence to confirm these areas.**

2.9. The site specific viability analysis shows a £25/sqft differential between first 2 phases and phase 3 onward, there is no justification for this and it appears very unlikely that the same outlets may deliver at different revenue rates. **Miller Homes believe the evidence on revenues is not robust and therefore results in a CIL rate which cannot be relied upon.**

2.10. **The Charging Zones should be adjusted to reflect more appropriate areas and boundaries.**

b) Are the updated residential sales values in the CIL Viability Update (2019) justified? Are the figures based on new build evidence within each Value Area, or the overall average uplift figure of 8.42%??

2.11. Similar in response to Question A above, Miller Homes maintain their position that as noted within the previously submitted CIL representations, **we do not agree with the assumption that there are 2 value areas across Dewsbury Riverside, due to the lack of concrete sales evidence to confirm these areas.**

c) Is the application of BCIS lower quartile values (for general estate housing) to residential developments of 50 or more units appropriate and justified? Is there evidence of such discounts being achieved by housebuilders in Kirklees or elsewhere?

2.12. Miller Homes maintain their position and consider that build costs are too low at £1038 psm (£96/sqft). Miller Homes consider that due regard should be had to the BCIS median cost for House Building generally plus 10% for external costs. Miller Homes' experience demonstrates that standard build costs including externals are generally over £105/sq. ft.

d) Do the adjusted affordable housing tenure and transfer values in the CIL Viability Update (2019) reflect the updated definition of affordable housing in the National Planning Policy Framework 2019?

2.13. Miller Homes maintain their concern with the approach towards affordable housing. C&W refers to tenure mix and transfer values as outlined in Kirklees Council's Supplementary Planning Document. Following the Government's cited proposals for 'starter homes', Miller Homes would strongly advocate that these transfer values and tenure mix be reviewed to reflect changes in affordable housing policy going forward. Moreover, if the Council wants to maintain close to policy levels of affordable housing then the need for greater levels of flexibility in the definitions, tenure mix and restrictions on use is paramount.

e) Have reasonable assumptions been made in relation to other factors affecting viability of residential development and up to date evidence used in the Council's viability work? Including: professional fees; contingency rate; marketing, sales agent and legal fees; finance rate; residual s106 contributions (general rate and strategic site rate); developer profit

- 2.14. Miller Homes maintain their position from their earlier representations, as follows:
- 2.15. In relation to **professional fees** C&W has assumed 8% of build costs and external works. Based on evidence nationally from housebuilders and developers, for larger sites with a capacity of more than 500 dwellings, these professional fees can vary between 6 to 12% of build costs. Miller Homes would suggest a professional fee of 10% to reflect the complex nature of this site and uncertainties regarding abnormal costs.
- 2.16. A **contingency allowance** of 3% has also been assumed by C&W. Again, this will vary dependent on the individual characteristics of each site and the amount of abnormal costs that may be attributable and is thus a conservative assumption. **Miller Homes would suggest a contingency allowance of 5% given the uncertainty regarding abnormal costs.**
- 2.17. A **finance rate** of 6.75% on the 'negative balance' has been assumed. The industry norm is a debit rate of between 6 to 7.5% (including entry and exit fees). Miller Homes consider that in their experience 7.5% is the actual norm.
- 2.18. A **profit** on GDV of 20% has been assumed for Market units. This is in line with the industry norm. However for the affordable units a profit of GDV of 6% has been utilised, this should be higher to reflect the risk which is taken on by the developer of not being able to dispose of the affordable units. For example in the recent Wakefield Plan Wide Viability Study CW have assumed 8% for this reason.

f) Are the revised land value benchmarks in the CIL Viability Update (2019) based on robust and appropriate evidence relating to land values and landowner premiums?

- 2.19. Miller Homes maintains their concerns and considers that the approach towards land values is leading to a distorted appraisal and an approach towards Charging Zones which is putting the viability of sites at risk.

g) Is the approach to abnormal costs soundly based, as outlined on page 15 of the CIL Viability Update (2019)? What is the implication of the £0 abnormal tolerance value for greenfield strategic allocations in Table 2.6?

2.20. Miller Homes continue to maintain their concern with the approach towards abnormal costs. C&W is of the opinion that within the value ranges, the sites can accept at least £150,000 per acre for abnormal costs. C&W states that this is at the higher end of the scale, providing a worst case scenario for more constrained sites in the district. Further to our comments made in the 2016 representations (Kirklees CIL Representations on behalf of Miller Homes December 2016) robust evidence has still not been presented which demonstrates this to be the case. Miller Homes has undertaken significant survey work across Dewsbury Riverside and the approach towards abnormal costs does not represent the scale of the constraints on the site.

h) Why do the sales rates per m² and the gross sales values in the Dewsbury Riverside strategic allocation appraisal summary vary between phases?

2.21. In relation to the strategic site at Dewsbury Riverside, Miller Homes object to some of the assumptions and conclusions made. Miller Homes is concerned with the approach towards Dewsbury Riverside and that the conclusion of the Cushman and Wakefield report has not been taken forward, which infers that the site should be a single charging zone of £0psm.

i) Have reasonable assumptions on development costs and values been applied in the viability work on commercial schemes?

2.22. Miller Homes has no specific comment in relation to this issue.

Issue 4 – Are the proposed residential charging rates informed by and consistent with the evidence on viability? Would the proposed rates undermine the deliverability of the Plan?

a) Are differential charging rates by the defined areas supported by the available evidence and sufficiently fine-grained sampling?

- 2.23. Miller Homes is concerned that the evidence does not represent national guidance. A “fine grained analysis” (para 19 25-019-20190315)) needs to be undertaken to justify the differential between charging zones. It is not evident that sufficient evidence has been provided to justify where the boundaries fall on the Draft Charging Schedule Charging Rates Map.
- 2.24. A new £0 psm rate area should be introduced for residential development, it is imperative that the balance is struck between providing infrastructure which will enable the district to grow and potentially making development sites unviable, risking a shortfall in the delivery of much needed affordable and market housing. Such an approach would reflect national guidance (para 25-009-20190315).
- 2.25. The 2019 Draft Charging Schedule Charging Rates and Map needs to be modified. **Miller Homes object to the current Boundaries and Zones.** As drafted the approach may render development unviable in direct contradiction to the purpose of the policy and Guidance (para 25-016-20140612) which is to support new development across the district.
- 2.26. A reconsideration needs to take place where in several circumstances a £80 levy/£20 levy and or £5 levy are in place where this cuts across a single settlement. Cognisance of the location of proposed residential allocation sites need to be taken into account when drawing boundaries, it is illogical to propose that one residential outlet on an allocation site can have several rates of CIL imposed, in all likelihood the sales revenues will not differ greatly across a site and thus boundaries should be drawn around allocation sites rather than utilising a blunt instrument such as ward boundaries. A new £0 psm rate area should be introduced for residential development to ensure that development in the district is not stymied by this

policy instrument. The Dewsbury Riverside site should be included in this new £0 psm rate area.

b) Does the evidence show that residential development in zones 1 and 2 could viably support rates of £80 and £20 per square metre (psm) respectively?

2.27. Miller Homes is concerned the impact of CIL at the levels proposed will threaten the ability to develop sites and the scale of development identified in the Council's Local Plan.

2.28. **Miller Homes is concerned that the evidence base has not been presented and the assumptions utilised do not justify the proposed residential charging rates, particularly the £20 per sq. m. which covers the majority of the Dewsbury Riverside site. Miller Homes considers that at these rates the majority of schemes would be unviable, which is supported in the conclusion to the Viability Appraisal which suggests that for Dewsbury Riverside the scheme should be nil rated, or be considered through Exceptional Circumstances Relief or accommodate less than policy for affordable housing (para 4.4 of CW Viability Update 2019).**

c) Is the nominal charge of £5 psm in zone 3 consistent with the viability evidence and national guidance?

2.29. As stated earlier, Miller Homes is concerned the impact of CIL at the levels proposed will threaten the ability to develop sites and the scale of development identified in the Council's Local Plan.

2.30. **Miller Homes is concerned that the evidence base has not been presented and the assumptions utilised do not justify the proposed residential charging rates, particularly the £5 per sq. m. which covers a portion of the Dewsbury Riverside site. Miller Homes considers that at these rates the majority of schemes would be unviable, which is supported in the conclusion to the Viability Appraisal which suggests that for Dewsbury Riverside the scheme should be nil rated, or be**

considered through **Exceptional Circumstances Relief** or **accommodate less than policy for affordable housing (para 4.4 of CW Viability Update 2019)**.

d) Does the viability evidence relating to the three strategic allocations support the application of a £20 psm charging rate? In the case of Dewsbury Riverside are the charging zone boundaries clearly defined, logical and supported by the viability evidence? [in its response the Council is requested to provide a clear map showing the zone boundaries in the vicinity of the site]

2.31. Miller Homes maintains the position and continues to have serious doubts about the reliability of the evidence base upon which the CIL is founded. It is important to read this statement in conjunction with earlier representations. The Cushman and Wakefield May 2019 Viability Update continues to utilise assumptions which are not robust leading to policy outcomes which are invalid. Miller Homes believe that due to the uncertainty in the underlying evidence and the potential impact upon the delivery of development within the district a new £0 psm Zone should be introduced. The Dewsbury Riverside scheme should fall within this new £0 psm Zone, which is supported and inferred in the Viability Assessment conclusion that states “in the very real possibility” that site infrastructure and abnormal costs rise above the assumptions and therefore “the ability of these sites to support a CIL charge. In the event that this is the case, the Council could consider reviewing the CIL charging schedule to place a zero rate on these sites, seek to exempt them under Exceptional Circumstances Relief or accept that adjustments in affordable housing contributions would be necessary to mitigate the impact on viability”.

2.32. **The above conclusions do not appear to transcend the CIL Charging Schedule which does not include a £0psm Charging Zone and there is no Exceptional Circumstances Relief policy.**

2.33. Notwithstanding the above position, Miller Homes continue to object to the Charging Zone boundary within the Dewsbury Riverside scheme, which is shown as £5psm and £20psm. Miller Homes consider that the location of proposed housing allocations needs to be recognised when drawing boundaries, it is absurd to propose that one residential outlet on an allocation site can have several rates of CIL imposed, in all likelihood the sales revenues

will not differ greatly across a site and thus boundaries should be drawn around allocation sites rather than utilising a blunt instrument such as ward boundaries. A new £0 psm rate area should be introduced for residential development to ensure that development in the district is not stymied by this policy instrument. The Dewsbury Riverside site should be included in this new £0 psm rate area.

e) Would the proposed CIL rates put the delivery of development at risk or undermine the deliverability of the Plan?

2.34. Miller Homes consider that the proposed CIL rates could put at risk proposed development. As stated earlier in respect of the strategic sites the Cushman and Wakefield report states “in the very real possibility” that site infrastructure and abnormal costs rise above the assumptions and therefore “the ability of these sites to support a CIL charge. In the event that this is the case, the Council could consider reviewing the CIL charging schedule to place a zero rate on these sites, seek to exempt them under Exceptional Circumstances Relief or accept that adjustments in affordable housing contributions would be necessary to mitigate the impact on viability”.

2.35. **The above conclusions do not appear to transcend the CIL Charging Schedule which does not include a £0psm Charging Zone and there is no Exceptional Circumstances Relief policy.**

2.36. **A new £0 psm rate area should be introduced for residential development to ensure that development in the district is not stymied by this policy instrument. The Dewsbury Riverside site should be included in this new £0 psm rate area.**

f) Is the exclusion of 'Retirement Living Accommodation' from CIL charges supported by the available viability evidence? Is 'Retirement Living Accommodation' appropriately and clearly defined in the Charging Schedule? [in its response the Council is requested to provide additional viability testing which captures a range of suitable typologies, such as extra care and retirement flats]

2.37. Miller Homes has no specific comment in relation to this issue.

g) Do the rates incorporate sufficient buffers to allow for changes in economic circumstances or unforeseen variations in development costs? [in its response the Council is requested to provide a table showing the % buffer for each typology 1-9 within each Value Area]

2.38. Miller Homes is concerned that there is insufficient buffer within the CIL to accommodate changing circumstances. This is reflected in the Cushman and Wakefield conclusion in the strategic sites, which shows that the only alternative is to apply for Exceptional Circumstances Relief or review CIL. **Miller Homes considers that the conclusion of the report should be taken forward and a £0psm rate applied to Dewsbury Riverside.**

2.39. Furthermore, as stated in earlier representations Miller Homes is concerned that details of a discretionary and exceptional circumstances relief policy have not been published, or an approach towards Payments in Kind. This is amplified with the conclusion of the Viability Appraisal Update which states that the strategic schemes, such as Dewsbury Riverside, could be unviable with CIL. Miller Homes therefore considers it important that the Council **make available the offer of relief from the date of adoption of CIL and that the approach is clearly outlined in accordance with the Regulations and Guidance.**

h) Taking account of the Council's appraisal methodology, is there evidence to suggest that the proposed draft instalment policy would assist or threaten scheme viability?

2.40. Miller Homes maintain their position that the draft Instalments Policy could threaten the viability of large strategic sites.

2.41. The installments policy as currently drafted may cause serious complications in terms of Return on Capital Employed (ROCE) which may delay or frustrate investment in allocation sites throughout the district. It is recommended, as suggested in Miller Homes' earlier

representations that the installments policy is re-written to take into account the realistic lead in times and difficulties faced in financial terms in the early stages of development. As drafted the rates do in fact threaten the viability of development across the district.

- 2.42. Furthermore, the policy will need to reflect the forthcoming 2019 regs which come into force 1st September 2019. The Instalments Policy needs to be reconsidered to provide greater scope for lead in times which are typically experienced. On large or complicated sites or those with a number of significant infrastructure requirements it is not untypical that lead in times from start on site until first sale can be 12 months or more. As currently drafted the Instalments Policy would mean that half of the CIL bill would be due before the first sale, this will have a significant negative impact upon ROCE which will put at risk development being delivered across the district and reduce the attractiveness of the district as a place to invest. It would be advisable to amend the Instalments Policy now rather than later to allow for greater lead in times this will provide greater certainty to the development industry. **Miller Homes object to the Instalments Policy as currently drafted due to the undue harm it may have upon delivery of development.**

Proposed Change

- 2.43. To overcome the objection and address soundness matters, the following changes are proposed:
- Review CIL to ensure reflects 2019 Regulations.
 - Review the Viability Appraisal and provide evidence.
 - Review the IDP to ensure reflects the adopted policies of the Plan.
 - Include a £0 psm rate for Dewsbury Riverside.
 - Amend Instalments Policy.
 - Include Payments in Kind, Discretionary Relief and Exceptional Circumstances Relief Policy.