Rother District Council's Response to Marchfield (Strategic Land) Ltd Representation

Responses are given below in the order that they appear in the Response paper by Pioneer that accompanied the letter of representation submitted by JB Planning Associates on 27th March 2015.

1. Timing of the CIL in relation to the Local Plan

1.1 Pioneer argue[1] that because the Local Plan document containing site allocations is not in place, and is "in its infancy", it is impossible to have an accurate understanding of the total infrastructure requirements/costs at this time and, hence, '*It is therefore not possible for the draft CILCS to comply with the requirements set out within CIL Regulation 14 and/or paragraph 25-016-2014612 of the NPPG.'*

1.2 Regulation 14 relates to the setting of rates and states:

> **14.** (1) In setting rates (including differential rates) in a charging schedule, a charging authority must aim to strike what appears to the charging authority to be an appropriate balance between—
> (a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
> (b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.
> (2) In setting rates in a charging schedule, a charging authority may also have regard to actual and expected administrative expenses in connection with CIL to the extent that those expenses can be funded from CIL in accordance with regulation 61.
> (3) In having regard to the potential effects of the imposition of CIL on the economic viability of development (in accordance with paragraph (1)(b)), a London borough council or MDC must take into account the rates set by the Mayor.
> (4) For the purposes of paragraph (3), the rates set by the Mayor are the rates in the most recent charging schedule approved by the Mayor before the London borough council or MDC begins consultation on its preliminary draft charging schedule in accordance with regulation 15.
> (5) For the purposes of section 211(7A) of PA 200825, a charging authority's draft infrastructure list is appropriate evidence to inform the preparation of their charging schedule.

1.3 Regulation 14(1)(a) relates to the issue raised by Pioneer insofar as the charging authority must strike what appears to it to be 'an appropriate balance' between the desirability of funding the total cost of infrastructure and the potential effects of such an imposition on the economic viability of development across the area.

[1] Pioneer Response, paragraph 2.1.7, 2.1.33, 2.139

1.4 The section of the PPG referred to essentially echoes the regulatory requirements. The relevant references here are seen as being:

- ‘Charging authorities must identify the total cost of infrastructure they wish to fund wholly or partly through the levy.’
- ‘Information on the charging authority area’s infrastructure needs should be drawn from the infrastructure assessment that was undertaken as part of preparing the relevant Plan. (…) This is because the plan identifies the scale and type of infrastructure needed to deliver the area’s local development and growth needs (see paragraph 162 and 177 of the NPPF.)’
- ‘In determining the size of its infrastructure funding gap, the charging authority should consider known and expected infrastructure costs and the other possible sources of funding to meet those costs.’
- ‘Charging authorities should focus on providing evidence of the aggregate funding gap that demonstrates the need for the levy.’

1.5 It is the Council’s belief that introduction of a CIL is not contingent upon making site allocations. What is critical is that there is a clear understanding of the scale and distribution of development required over the plan period and that there is sufficiently clear evidence of the extent of a funding gap and the contribution that CIL receipts from the proposed rates are likely to make to help bridge that gap.

1.6 It is the recently adopted Local Plan Core Strategy that provides the necessary ‘Local Plan’ framework for identifying the development that infrastructure will be required to support. It is noted that the Core Strategy identifies scales of housing growth at the individual settlement level. It also includes the affordable housing requirements.

1.7 An Infrastructure Delivery Plan (IDP) was prepared and submitted to support the examination of the Core Strategy. This ensured that there was an understanding of the availability of infrastructure to support planned growth in accordance with paragraph 177 of the NPPF. The IDP is not limited to infrastructure to be funded through CIL, but identifies all infrastructure, as required by the Regulations.

1.8 For the Local Plan Core Strategy Examination, the IDP was up-dated, based on consultations with the relevant authorities and service/infrastructure providers, to assess the quality and capacity of infrastructure, based on the modified Core Strategy and the supporting Strategic Housing Land Availability Assessment (SHLAA). It also took account of the need for strategic infrastructure. Moreover, it has been kept up-to-date. Hence, it fulfils the functions required by paragraph 162 of the NPPF.

1.9 While it will inevitably be the case that some individual sites may give rise to particular infrastructure demands that will need to be incorporated into the IDP in due course, this will only serve to increase the existing funding gap and, hence, reinforce the desirability of the proposed CIL. As noted above, the PPG expects councils to '*consider known and expected infrastructure costs'* and to '*focus on providing evidence of an aggregate funding gap that demonstrates the need to put in place the levy.*' The Council has done this.

2. Uncertainty over Local Growth Funding

2.1 Pioneer draw attention to the current situation regarding the contribution to certain items of infrastructure that may receive funding through the 'Local Growth Fund'. They highlight that 'the position remains unknown.'[2]

2.2 The unlocking of Local Growth Fund monies are contingent on a robust business case being agreed by the SELEP, however, the South East Growth Fund has identified a funding pot for junction improvements for Hastings and Bexhill and while a definitive figure cannot be put at stage towards junctions solely in Bexhill from the Local Growth Fund. There is, though, a reasonable prospect that the estimated costs for the road junctions and the Town Centre traffic management improvements can be met from the funding sources outlined in the IDP.

3. Explanation of the changes leading to the most recent Funding Gap

3.1 Pioneer further argue that the above quoted regulation and PPG section are not complied with as amendments made over time are not explained.[3]

3.2 The amendment of Funding Gap Analysis between August 2014 and Feb 2015 was primarily attributed to the funding arrangements of the High Speed Rail project. As the project has progressed the identification of alternative funding sources has consolidated and it was appropriate to amend the IDP and consequently the funding gap analysis to reflect greater certainty.

4. Costs of critical items and clarity of s106 obligations

4.1 Pioneer comment that the ability of CIL revenue to meet the solely critical infrastructure is not clear, with the stated implication that 'the impact upon the potential cost to developers through s106 obligations is unclear.'[4]

[2] Ibid, paragraph 2.1.10
[3] Ibid, paragraphs 2.1.12 - 2.1.14
[4] Ibid 2.1.15

4.2 The purpose of the Infrastructure Delivery Plan (IDP) is to identify the infrastructure required to meet the spatial objectives and growth anticipated in the Council's local plan and thus demonstrate that the plan is both realistic and deliverable, and can therefore be successfully implemented. It includes not only infrastructure schemes that will be provided by the council but also those for which other bodies (public and private) are responsible. As such, it is closely linked to objectives set out in Core Strategy.

4.3 The IDP is as comprehensive a document as possible and has taken account of a range of programmes from infrastructure providers. There will inevitably be more changes to the IDP as it is an evolving document and will be reviewed and monitored regularly to ensure that it includes the most up to date information especially as the Council's Development and Site Allocation Plan progresses.

4.4 The infrastructure plan helps to identify the "funding gap" and an authority can only charge CIL if there is a "funding gap". However, the setting of a CIL rate must be based on the evidence of viability and there is no direct connection between the funding gap and the setting of the Council's CIL rate for the district.

4.5 S106 obligations will remain alongside CIL and will be settled through negotiation but will be restricted to that infrastructure required to directly mitigate the impact of a proposal. The regulations restrict the use of planning obligations to ensure that individual developments are not charged for the same items of infrastructure through both planning obligations under S106 and CIL.

4.6 Pioneer make the general point regarding infrastructure relating to Utility companies. All utility companies were consulted at significant milestones as the Core Strategy progressed and were informed of Core Strategy's growth requirements. Some of the projects identified in the Utilities section of the IDP are part of the ongoing capital investment programme identified by the individual private firms and are funded privately with costs commercially sensitive. However site specific requirements to make development acceptable in planning terms will be identified via the Development and Site Allocation Plan with the IDP updated accordingly. This work is ongoing.

4.7 Pioneer makes a general point in relation to s106 payments that '*At the moment the Council's evidence base provides no way of knowing what the extent of these costs are.*'[5]

[5] Ibid, paragraph 2.1.18

4.8 Several points can be made in response:

a) paragraph 4.2.52 of the PBA Viability Assessment (VA) clearly sets out that an estimate of £1,000 per unit has been made for residual s106 contributions;

b) The Regulation 123 List (R123 List) sets out what CIL will cover and, by exception, what it will not. Specific exclusions are listed for clarity.

c) For clarity, the Council is proposing a modification to the wording of the first sentence in the 'Exclusion' column of the table in the Regulation 123 List to be clearer that it relates to on-site infrastructure or works to open up a site to provide safe access that are part and parcel of the actual development:

'~~Site specific~~ <u>On-site infrastructure and</u> improvements<u>, including for safe access to the site, </u>needed to make the development acceptable in planning terms.' (New text is shown underlined)

d) Separate allowance is made in the PBA Viability Assessment (at paragraph 4.2.51) for opening up works such as utilities, land preparation and spine roads as well as meeting wider strategic planning requirements. It states that '*There will be different levels of development costs according to the type and characteristics of each site. As these are generic appraisals we have taken an average figure based on size of site. Opening up costs vary between £100K and £250K/Ha increasing as schemes get bigger. We therefore assume an opening cost of £100K/Ha for sites with 100 to 499 units and £250k/ha for UEs of 500 to 1,000 units.'*

4.9 Therefore, while not discounting s106 payments, if required for off-site transport mitigation works not within the broad scope of the R123 List, it is expected that these will normally be relatively limited and fall within the £1,000/unit allowance.

4.10 There is no requirement for this Examination to test how the authority intends to set out governance arrangements for the spending of CIL and S106 contributions and nor does the authority have a section 106 'target' as described in para 2.1.22 of Pioneers response - as S106 should be responding to mitigating impact of development and not a wish list of infrastructure needs. However to assist the Examination it is considered useful to set out what the Council in intending as it moves towards introducing CIL While steps have already been taken at the Council for the introduction of CIL, many of the actions listed below (a-f) have been considered. Once CIL is in place the Council will continue review this approach as part of the Implementation and Governance protocols it plans to introduce.

a) Review existing planning permissions, S106/S278 agreements to see if the Council has exceeded the pooling limits;
b) Have discussions with development management colleagues explore how S106 currently operates and how it could be used in the future (post CIL adoption);
c) Have discussions with developers to explore how S106 could be used in the future, particularly for strategic sites that may have significant on-site infrastructure requirements;
d) Have discussions with ESCC to discuss how S106 could be used in the future. This will be vital for education and infrastructure provision where the practice has been to pool S106;
e) Review the R123 list if appropriate and in compliance with the CIL Regulations; and
f) Consider how the implementation of an Instalment policy will assist phased payment provisions particularly for large strategic sites.

5. Costs associated with different charging zones

5.1 In the context of comments about CIL vis-à-vis s106 payments, Pioneer state that '*Given that the draft CILCS proposes to zone CIL charges geographically the IDP and supporting evidence should also identify the total infrastructure requirements/costs and potential funding sources pertinent to that area so that these can be tested in the viability evidence.*'[6]

5.2 The Council does not see a need for this. It makes a clear distinction between the infrastructure needed to support the growth set out in the Local Plan Core Strategy and the ability of different forms of development in different locations to contribute to that infrastructure having regard to respective viability impacts.

6. CIL and affordable housing provision

6.1 Pioneer casts doubt on the ability to fund CIL and affordable housing by making reference to CLG tables that show that over the 3-year period 2011/12 – 2013/14 all affordable housing received grant funding, especially given that future funding toward s106 sites will not be available.[7]

[6] Ibid, paragraph 2.1.17
[7] Ibid, paragraphs 2.1.23, 2.1.24, 2.1.40

6.2 In response, it is pointed out that the viability appraisals have assumed nil grant funding for affordable housing.

7. Duty to Co-operate

7.1 The proposition is made by Pioneer that, notwithstanding the IDP specifically refers to infrastructure projects beyond Rother, the viability evidence does not consider the viability impacts of these or of the duty-to –cooperate generally.[8]

7.2 It is not entirely clear how Pioneer are interpreting the Harman guidance but the Council understand that the reference to duty to cooperate within the quoted paragraph from Harman is in respect of plan making rather than CIL. It is also clear from the IDP and the Local Plan Core Strategy itself that the significance of wider infrastructure projects is appreciated. The one notable cross-boundary infrastructure project is the proposed extension of HS1 from Ashford to Bexhill. While this would likely increase land values locally, it is presently uncertain and not relied on in the economic viability assessments. It is notable that Pioneer does not suggest any cross boundary infrastructure projects that they consider should be referred to in any viability work nor do they suggest how this would impact on viability and whether this would be negative or positive.

8. Site typologies

8.1 Pioneer make a number of criticisms in relation to the site typologies tested:

- There is no assessment of sites sized over 250 and less than 1,000 dwellings[9]
- The Council's SHLAA does not identify a sufficient level of housing land to meet planned levels of provision (and precedes site allocations)[10]
- The Council's evidence does not demonstrate that they have the finer grained understanding of strategic sites[11]

8.2 The Council must contradict Pioneer's statement regarding the SHLAA, as it does identify sufficient sites and, for the longer term, broad locations sufficient to meet the scale of housing growth identified in the Local Plan Core Strategy. Indeed, it was the key evidence document in support of the planned housing growth.

[8] Ibid, paragraph 2.2.5
[9] Ibid, paragraph 2.2.6
[10] Ibid, paragraph 2.2.7
[11] Ibid, paragraph 2.2.11

8.3 It is also the case that the 26 site typologies identified by PBA in Table 4.1 of its Viability Assessment, together with the further assessments set out at Tables 2.1 and 2.2 of its Addendum Report were based on the SHLAA.

8.4 The above mentioned tables of PBA's Addendum Report were specifically related to strategic sites and were in response to representations at the PDCS stage. More generally, as noted in relation to s106 payments in section 4 above, the viability work has had specific regard to the opening up costs involved for larger sites.

9. Section 106 cost assumptions and opening up costs

9.1 Pioneer have sought to compare the Harman report indication of potential strategic infrastructure and utility costs, with the opening and infrastructure costs set out PBA VA (CD/004). They draw attention to the Harman Report figures that suggest £17,000 - £23,000 per plot for strategic infrastructure.

9.2 It should be noted that our understanding of the figures from the Harman Report (PBA were involved in the preparation of the report) is that they apply to large sites in the context of the whole country i.e. in excess of 1,000 units. Large sites in Rother are not considered large from a regional or national perspective. Therefore the suggested Harman figures for 'strategic infrastructure and utilities', whilst a guide should be considered within that context and not necessarily applied across the board.

10. Land value benchmarks

1.1 Pioneer has suggested that it is unclear as to how benchmark land values have been determined. It is noted that they do not specifically disagree with the proposed benchmark, nor do they offer an alternative figure.

1.2 Section 4.2.8 – 4.2.16 of the PBA VA (CD/004) sets out the approach to threshold/ benchmark land values. It was confirmed at the development industry workshop that in the absence of available transactions data that, as a proxy, it would be appropriate to use Wealdon's figures, adjusted to take into account the lower property prices.

11. Sales value

11.1 Sales values are questioned by Pioneer as to whether the figures used are correct. Other than stating that the figures should be lower, no evidence is supplied to indicate an alternative sales value. As Pioneer point out, the sales values are based on a combination of Land Registry data of actual sold property and sense checked with property that was on the market at the time of the report.

12. Sales rates and timing

12.1 Sales rates and timing are questioned by Pioneer but again no evidence is provided as to what they would recommend. However it is accepted that a better explanation may be helpful for the Examination. Therefore more explanation is provided as follows:

12.2 The viability testing uses a cash-flow model which, based on feedback from the development industries, has an inbuilt formula that assume residential building timescales achieve the following build rate patterns:

Nr units	Nr build years	Units p.a.
1	1.0	1
10	1.3	8
50	2.6	39
200	5.7	88
500	8.4	119
1,500	12.6	159

Sales lapse build timescales by 6 months

13. Build costs

13.1 Pioneer suggests that 10% for externals is not sufficient on large sites and that build costs should be reviewed.

13.2 In terms of externals, Pioneer fail to recognise that in addition to externals there is also a significant allowance for costs associated with larger sites, to which they refer to earlier in their representation in para 2.2.23. This is considered a reasonable allowance in relation to larger sites. It should also be noted that the external figure is based on build costs so the larger the development the higher the sum for external works.

13.3 It is agreed that there has been an increase in build costs in this period as noted by Savills in their representation (Table 4 - Movement in BCIS Costs). However it should be noted that values have also risen over the time. It is not a robust argument to suggest that you change one assumption as a result of time without consideration of the other assumptions.

13.4 To assist the Examination in considering this matter, the table below shows the average price paid of all the properties sold in each year since the start of January 2011 from the Land Registry. The table also denotes the year-on-year percentage change across the period, showing very little difference between 2011 and 2012, followed by 2 years of significant growth (5% in 2012 to 2013 and 4% in 2013 to 2014). From the table it can be seen that the average price paid has risen by 5% from 2013 compared to the average for 2015 so far. This growth in values is similar to the increase in build costs, and in viability terms, would have a much greater positive impact on the bottom line viability figure.

	2011	**2012**	**2013**	**2014**	**2015**
ROTHER	£244,702	£244,140	£256,036	£265,865	£269,380
Year on Year % growth	-	0%	5%	4%	1%

13.5 In recognition that reports are a point in time and the authority cannot be expected to continually update evidence, sensitivity testing was undertaken (see Appendix D, PBA VA (CD/004)) to show the effect of an increase of 10% in values and costs. As can be seen the headroom in Appendix D, the viability is improved if both costs and rates go up by 10%.

14. <u>Abnormal costs</u>

14.1 Pioneer suggest that ‘abnormal costs’ should be included within the greenfield sites. Firstly abnormal, by its name, suggests costs which are not common to all sites and are specific to a particular site. Since these are abnormal, then it should be assumed that such costs would normally come out of purchased land values, which should be below the average benchmark rates.

15. <u>Fees</u>

15.1 Fees are suggested by Pioneer to have been underestimated, but no evidenced alternative figure has been provided. The 12% used is considered sufficient for sites within Rother since none are significantly large or complex to suggest the higher rates set out in Harman apply, noting also that Harman states 8-10 % as reasonable for straight forward sites.

16. <u>Contingency</u>

16.1 Contingency at 5% is considered too low by Pioneer and not a sophisticated enough allowance, but no support evidence is provided as to why this might be the case. 5% is considered a reasonable figure to use for strategic viability assessments and as it is a % on cost, the larger the scheme the higher the value of the contingency.

17. Sales, promotions, marketing and legal fees

17.1 Sales and marketing fees are also questioned by Pioneer. Pioneer do not recommend an alternative level, merely stating that the assumption is too low. It is not considered necessary to alter this assumption.

18. Developer profit

18.1 Pioneers set out that as the Core Strategy runs for 17 years and that economic cycles will rise over that period that the profit level should be 20%-25% and that site specific issues may mean a higher profit is sought.

18.2 On the latter point this demonstrates Pioneers failure to grasp that this is a strategic viability assessment. Yes, it is agreed that a site specific issue may result in a greater profit sought but equally a site specific circumstance may also mean that less profit is needed. The whole point of the work is that it looks at averages to demonstrate that in broad terms the plan is not put at risk.

18.3 Pioneers are correct that over the life time of the plan there may be different economic cycles, however the evidence base has to be imbedded in the here and now and at the moment it would seem that it is an improving market and if anything, risk is decreasing and perhaps profit levels should be reduced. In any event the CIL is not tied to any particular timeframe and if there are significant changes in the economic cycle then the council can review the CIL and make any relevant changes. Some of the early CIL adopters, e.g. Poole and Plymouth are currently reviewing their CILs as a result of improving market conditions, so it shows that council’s will respond to changes.

18.4 Finally the figures presented have been widely accepted at numerous CIL examinations.

19. Site holding costs and receipts

19.1 Pioneer is suggesting that additional costs should be added (although they don’t state what these should be) in relation to holding costs of land. They quote partial statements from the NPPG but fail to set out that these relate to ‘known’ historical costs and that evidence should be proportionate. The inclusion of profit, contingency and not setting CIL at the margin all take into account the risk and reward of development. Loading further unknown or unsubstantiated costs does not help with the assessment process.