Statement on behalf of Landlink Estates
Examination of Arun District Council Draft Charging Schedule
Submission in accordance with Regulation 19 of the CIL Regulations 2010 (as amended) submitted 31 July 2019
Arun District Council Draft Charging Schedule Submission in accordance with Regulation 19 of the CIL Regulations 2010 (as amended) as submitted 31 July 2019

Landlink Estates - Statement of Position

1.1. This response is made on behalf of Landlink Estates Ltd, who control large areas of land within the District and have a number of active allocated sites for both residential and commercial development within the District.

1.2. Landlink Estates support the funding of infrastructure through both section 106 and the Community Infrastructure Levy as long as it meets the requirements of the CIL Regulations. These representations follow earlier representations made to the Preliminary Draft Charging Schedule and the Draft Charging Schedule.

1.3. The position of Landlink Estates remains as previously submitted and support the principle of the strategic sites being nil rated for CIL. However, the main contention is that this approach needs to be balanced with the development of non-strategic sites. Whilst it is acknowledged that there are differences in the viability of small sites against strategic sites, which are accounted for in the viability assessment, the approach must be fair. The overall package of section 106 contributions and CIL contributions needs to be consistent across both strategic and non-strategic sites so as to avoid either development type bearing disproportionate cost burdens. In addition, there needs to be certainty regarding delivery of appropriate mitigation to support the strategy of the Adopted Local Plan.

Revisions to the Regulation 123 List

1.4. The recent changes made to the Regulation 123 list are not properly reflected in evidence regarding viability and therefore have not been subject to scrutiny as required. The viability evidence was updated in 2018 and has not been revisited since changes made by the Council in 2019 to the draft charging schedule.

1.5. The Examiner’s notes suggests that:

“If, exceptionally, fundamental changes are proposed, the Council must fully explain and justify the reasons for the changes, with supporting evidence. They should also indicate the implications in terms of the viability of the schedule and ensure that they have been subject to the same process of financial appraisal, publicity and opportunity to make representations as the submitted version.”

1.6. Whilst the changes have not been to the submitted version of the charging schedule, the problem is the lack of evidence from the Preliminary draft charging schedule to the changes then made to the draft charging schedule especially in relation to the funding of strategic infrastructure and the balance to be met by s106 contributions.
**Fairness and Consistency**

1.7. There remain major concerns regarding evidence provided on viability which have not considered the issue of fairness and consistency with the adopted Local Plan and IDP. At the PDCS Landlink noted that the large ticket infrastructure items within the District namely Education, Transport and Healthcare were all items that were anticipated to be paid for solely through s106. This position has now changed, and the Regulation 123 list now includes some education and some transport provision for non-strategic sites.

1.8. The NPPG (ID: 25-009-20140612) requires that charging authorities should be able to show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan and support development across their area.

1.9. The only substantive new ‘evidence’ provided in support of changes made since the PCDS is the Infrastructure Funding Gap Update Report (March 2019) (IFGU) and the CIL Evidence Base Amendment (April 2019). The Regulation 123 list also lists some of the priorities in relation to how infrastructure will be funded. However, no additional viability evidence is provided to justify the revised Regulation 123 list.

**Additional Secondary Education Provision**

1.10. New information by the Council was provided in March and again repeated in April 2019 (document ADC/CIL/SD7) the CIL draft charging schedule has for the first time introduced in an emerging policy document the need for an additional secondary school to support requirements from non-strategic sites and the Local Plan Review, which was not previously identified in the Local Plan. This new infrastructure requirement is not based on any formal evidence that has been properly examined as part of the development plan process. This is contrary to advice the NPPG:

> “The charging authority should have regard to the actual and expected cost of infrastructure, the viability of development, other actual or expected sources of funding for infrastructure”

Paragraph: 016 Reference ID: 25-016-20190901 Revision date: 01 09 2019

1.11. This change to infrastructure requirements is identified at paragraph 2.2 third bullet of the IFGU 2019 and in section 2.2, fourth bullet point and unnumbered second paragraph on page 3 of document ADC/CIL/SD7. This is not robust evidence required by the NPPG in relation to CIL rate setting. In addition, it re-opens the infrastructure planning issue that has already been adopted by the Council in July 2018. The NPPG on CIL rate setting firmly states:

> “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 (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London). 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 34 of the National Planning Policy Framework in England).”

And
The Community Infrastructure Levy examination should not re-open infrastructure planning issues that have already been considered in putting in place a sound relevant Plan. (my emphasis)”

Paragraph: 017 Reference ID: 25-017-20190901 Revision date: 01 09 2019

1.12. The corollary of this is that the CIL draft charging proposal should not reverse decisions that made the Local Plan acceptable. This is exactly what this proposed draft charging schedule does in relation to secondary education.

1.13. The NPPG is clear on this matter: “Where infrastructure planning work which was undertaken specifically for the levy setting process has not been tested as part of another examination, it will need to be tested at the levy examination. The examiner will need to test that the evidence is sufficient to confirm the aggregate infrastructure funding gap and the total target amount that the charging authority proposes to raise through the levy.”

Paragraph: 018 Reference ID: 25-018-20190901 Revision date: 01 09 2019

1.14. The increase of the secondary education infrastructure requirements from £47.7million to £78.3million has not been examined as part of the Local Plan Examination and must therefore be tested at the Levy examination as set out in the NPPG above. It is not clear if the cost estimate of £30.6 million for the additional secondary school includes the cost of the land. No site was identified in the Local Plan for either secondary school, and no land cost was factored into the £47million for the 10FE secondary school for which a privately owned site has been now identified. The figures look preliminary at best.

1.15. There are further complications with the funding of school places split either to CIL or in the case of the strategic sites through s106. There is the potential for double dipping (see paragraphs 1.22-1.23 below).

Viability in relation to anticipated s106 costs

1.16. As set out in the representations on the Preliminary Draft Charging Schedule the viability assessment is problematic as the assumption regarding the retained s106 costs for those dwellings charged with the CIL is not based on any evidence. Despite this previous objection no new evidence has been provided to justify the assumed s106 rate for dwellings liable for CIL at £2000 per unit that underpins the viability assumptions for the entire CIL regime in Arun.

1.17. The likely result is that CIL will not fully fund highway improvements, site-specific flood mitigation, and other infrastructure such as policing and utilities with a s106 charge assumed at around £2000. If, however, s106 is secured at a more realistic level this will impact on the ability for the schemes to pay CIL at the rates set out in the draft charging schedule. This needs further testing of viability by the Council to reflect a more realistic s106 level based on evidence. I say this because this is evidenced as follows:
1.18. Table 4.13 of the March 2019 viability report shows recent sales of development land. This table usefully shows that where section 106 payments were secured; they ranged from £1940 - £19,723 per dwelling. The average was **£6036 per dwelling** taken from that source.

1.19. This is also evidenced from the recently approved package of s106 costs for planning approval Y/92/17/OUT (300 dwellings) approved on 31.5.19. The overall s106 package is set out in table 1 below. This equates to £20,185.70 per dwelling. Removing those elements not covered by CIL as set out in the Regulation 123 list (shaded grey) leaves section 106 payments of **£3267.05 per dwelling**.

1.20. **Table 1 - Section 106 Costs secured for Y/92/17/OUT (Part of strategic site SD7)**

<table>
<thead>
<tr>
<th>Item</th>
<th>per dwelling cost</th>
<th>Total</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>early years</td>
<td>£ 1,319.15</td>
<td>£ 395,744</td>
<td></td>
</tr>
<tr>
<td>primary</td>
<td>£ 7,021.87</td>
<td>£ 2,106,562</td>
<td></td>
</tr>
<tr>
<td>secondary</td>
<td>£ 6,038.00</td>
<td>£ 1,811,400</td>
<td></td>
</tr>
<tr>
<td>sixth form</td>
<td>£ 545.18</td>
<td>£ 163,555</td>
<td>Calculator Estimate</td>
</tr>
<tr>
<td>libraries</td>
<td>£ -</td>
<td>£ -</td>
<td>Zero - Pooling exceeded</td>
</tr>
<tr>
<td>Comet Corner (transport)</td>
<td>£ 1,833.33</td>
<td>£ 550,000</td>
<td></td>
</tr>
<tr>
<td>Transport Other</td>
<td>£ 1,153.17</td>
<td>£ 345,952</td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td>£ 121.46</td>
<td>£ 36,439</td>
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<tr>
<td>NHS</td>
<td>£ 1,096.71</td>
<td>£ 329,013</td>
<td></td>
</tr>
<tr>
<td>Fire &amp; Rescue</td>
<td>£ 24.09</td>
<td>£ 7,227</td>
<td>Calculator Estimate</td>
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<tr>
<td>3G Pitch</td>
<td>£ 66.06</td>
<td>£ 19,818</td>
<td></td>
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<tr>
<td>Playing Contribution Pitch</td>
<td>£ 273.64</td>
<td>£ 82,093</td>
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<tr>
<td>Off -site NEAP</td>
<td>£ 109.09</td>
<td>£ 32,727</td>
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<tr>
<td>Sports Hall</td>
<td>£ 448.93</td>
<td>£ 134,679</td>
<td></td>
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<tr>
<td>Cycleway</td>
<td>£ 135.00</td>
<td>£ 40,500</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>£ 20,185.70</td>
<td>£ 6,055,710</td>
<td></td>
</tr>
</tbody>
</table>

1.21. The income from CIL is estimated at £30 million in paragraph 3.1 of the IFGU 2019. This leaves £58.1 million funding not covered by either CIL or s106 as shown above. This issue, highlighted at PCDS stage of this process, raises the potential failure to mitigate. This may mean that non-strategic sites will not fully mitigate their transport, education highways and flood mitigation and other issues as they cannot support the necessary s106 payments to do so as CIL does not fill the funding gap. Alternatively, the strategic sites will be burdened with these entire costs as it has not been identified in the evidence that the gap is made up by other funding. This is contrary to the CIL regulations and is contrary to policy INF SP1 of the adopted
Local Plan. This appears to already be the case when you consider the evidence from the planning permission Y/92/17/OUT (300 dwellings) approved on 31.5.19 set out above.

**Regulation 123 List and ‘Double Dipping’**

1.22. Table 1 of the IFGU 2019 and the Regulation 123 list are inconsistent. There is no funding gap identified under the specific items Primary Education, Early Years Education, Healthcare, Flood Risk Mitigation and Transport in Table 1 of the IFGU however all these items specifically listed in the CIL and part-CIL funded projects in the Regulation 123 list. There would be appear to be an element of ‘double dipping’ as there is no evidence in the IFGU that these items need funding by CIL. This issue raised at the PDCS has not been addressed.

1.23. This fundamental problem underpins the whole approach to CIL in Arun, there are significant inconsistencies with the approach, the Adopted Local Plan and more critically the approach is not evidenced based or fully tested in the viability evidence and it is not consistent with national guidance and the CIL regulations.

**Conclusion**

1.24. Landlink Ltd remains concerned that issues of fairness and the incorrect assumed level for s106 payments, based on available evidence, for CIL liable dwellings. Flaws on assumptions of s106 payments have implications for viability and need to reflect the real costs of s106 rather than the rate assumed. In addition, the draft CIL charging schedule and Regulation 123 list are inconsistent with the adopted Local Plan. This is particularly so with regard to secondary education provision which has no robust evidence base and is not part of the adopted Local Plan, and has not been examined. There needs to be better parity and fairness between the infrastructure burdens on strategic sites and other non-strategic development.

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1 The reason this figure was not higher as anticipated in the Arun Infrastructure Capacity Study and Delivery Plan (ICSDP) February 2017 is that the anticipated cost of an on-site primary school was avoided due to negotiations to secure an appropriate extension to the existing primary school; this avoided the anticipated additional s106 costs of £4 million and the land cost and lost development value associated with on-site primary provision.