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**Subject:** Main Modifications to the Charnwood Local Plan 2021-2037 Consultation Representations obo Hallam Land  
**Attachments:** Hallam Land Queniborough Charnwood Main Modifications Representation inc App.pdf

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Good morning,

I am emailing to submit Written Representations to the Consultation on the Main Modifications to the Charnwood Local Plan 2021-2037.

The attached Representations have been prepared by Marrons on behalf of Hallam Land in respect of the Land at Threeways Farm, Queniborough (Site reference HA64).

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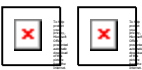
Thank you,  
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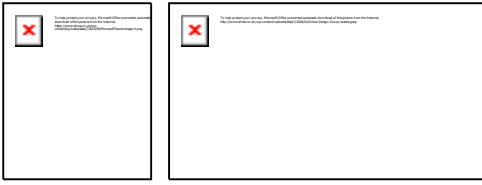
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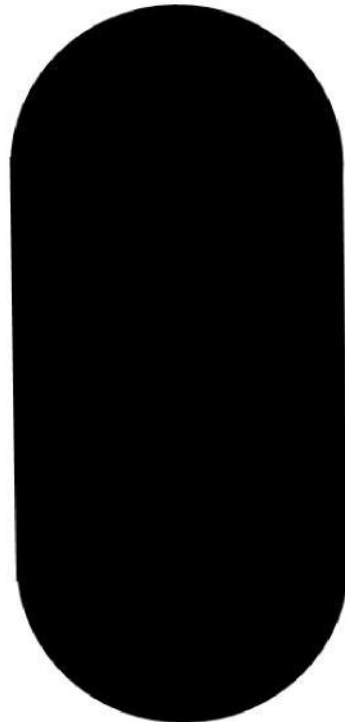
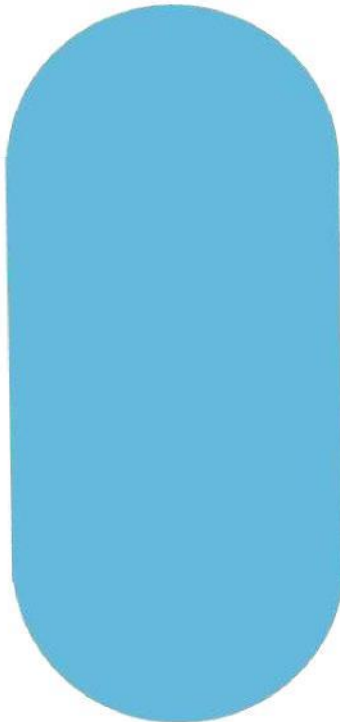
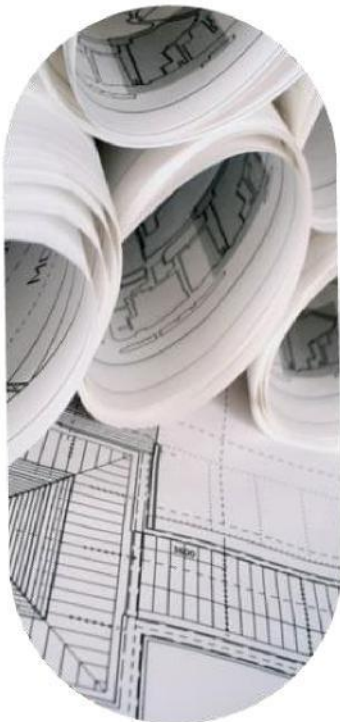


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## Representation to Consultation on Main Modifications to the Charnwood Local Plan 2021- 2037

### Hallam Land – Land at Threeways Farm, Queniborough (HA64)

**August 2024**



## 1. Introduction

- 1.1. This representation is in response to the ongoing consultation of the proposed Main Modifications to the Charnwood Local Plan 2021-2037. The consultation period runs from 17<sup>th</sup> July to 4<sup>th</sup> September 2024 and seeks to ensure the material changes to the submitted plan make the local plan sound and legally compliant.
- 1.2. This representation has been prepared by Marrons on behalf of our client, Hallam Land, in respect of the Land at Threeways Farm, Queniborough (Site reference HA64).

## 2. Response to Main Modifications Consultation

### Policy DS3: Housing Allocations

#### Main Modification - MM27

- 2.1. MM27 adds a significant set of explanatory text prior to Policy DS3: Housing Allocations. The Main Modification sets out that:

*“The design and layout of development can contribute to managing its impact on, and accessibility to, infrastructure. We expect the design and layout of development on our allocated sites to be considered comprehensively with development at nearby sites, especially with regards to the following clusters of adjacent or adjoining sites:*

- *Syston – sites HA1, HA2, HA3 and HA8*
- *Loughborough – sites HA15, HA16 and HA17.*
- *Loughborough – HA18 and LUC3 (Loughborough Science and Enterprise Park)*
- *Shepshed (West) – HA32 and HA34*
- *Shepshed (South) – HA39, HA40 and HA41*
- *Barrow upon Soar – HA45 and HA46*
- *Queniborough – HA64 and HA65*

*Proposals should respond positively to opportunities for integrating infrastructure provision between sites, including in respect of site access arrangements, other highways and transport requirements and landscaping and other green infrastructure.”*

- 2.2. The Framework requires policies to be clearly written and unambiguous, so it is evident how a decision maker should react to development proposals (paragraph 16d).
- 2.3. The wording introduced by MM27 does not form a specific policy but seeks comprehensive design and layout with adjoining allocations. This is not a requirement of the site specific policies (for instance Policy DS3 which is specifically identified within MM27) which require an agreed masterplan for the whole allocation and not a consistent development brief with the adjacent HA65. A requirement to do so would be entirely inappropriate. As currently drafted MM27 is entirely unclear and as a result unsound.
- 2.4. If MM27 were continued in its drafted form through to the adopted plan it would cause serious potential for inconsistent interpretation by applicants and application by officers. Regardless, there is no associated planning policy to rely on. Additionally, the 'clusters' of adjacent sites are not necessarily directly linked and in some cases are clearly separated by significant existing built form.
- 2.5. The requirement for integration of infrastructure between sites must have been considered in the preparation of the Local Plan 2021-37. Certainly, the specific policies reference the need for contributions to be made to fund infrastructure on other allocated sites. Highways and transport matters can be dealt with on a site by site basis under INF1 and INF2. MM27 provides no additional function other than to seed confusion when reading the drafted policies.

#### **Main Modification - MM28, MM29, MM33 DM1 and DM14**

- 2.6. Hallam Land are supportive of the main modifications that increase the yield of HA64. Hallam Land also recognise that the local plan diagram proposed under DM1 and DM14 is illustrative but note that the 'housing within allocation' areas are not representative of the constrained led approach taken through the pending application (P23/1235/2) and as a result is not reflective of the deliverable site.
- 2.7. We note the clarity provided within MM28 in respect of the illustrative diagrams but the wording in respect of housing within the 'orange' areas on the illustrative diagrams has strength which implies the illustrative diagrams are more than the title suggests. This wording needs to be amended to clarify that the illustrative diagrams are advisory and not part of the policies plan. This then begs the question of how future Countryside, Areas of Local Separation and Green Wedge designations within the proposed allocation boundaries can extend up to the edge of built areas within the allocations in

those instances where there are future phases to come forward that have not been signalled. To amend the batch of landscape designations post initial permissions in the absence of any understanding or clear interrogation of the basis for those designations in the context of land supply and outside of a DPD process would be wholly improper.

- 2.8. We would therefore suggest that the text below which is struck out is deleted to ensure the plan is effective and consistent with national policy:

*~~“Some of the site policies are accompanied by illustrative diagrams to assist with interpreting the policies. In some cases these diagrams show, in darker orange, where housing should could be located within the allocation boundary. When development is complete, designations of Countryside, Areas of Local Separation and Green Wedge will extend into the allocation up to the edge of the built form of the development.”~~*

### **EXAM 58J: Housing Trajectory Update 2024 and EXAM 58L: An Update to Five Year Supply on Adoption May 2024**

- 2.9. EXAM58J anticipates 40 homes being delivered each year between 2027/28 and 2030/31. In April we wrote to the Council to advise that lengthy delays to a grant of permission for HA64 meant that a June 24 committee resolution and swift progress of a S106 would be necessary if 40 homes were to be delivered in 2027/28. A resolution to grant P/23/1235/2 was made by Plans Committee on the 20 June 2024. However, continued delays associated with the County Councils pursuit of highways contributions and need for viability testing in the S106 arena mean that progress continues to be slow and it is now impossible for 40 homes to be delivered on site in 2027/28 given the need to not only complete that process satisfactorily but also to discharge conditions and seek approval of reserved matters. We would suggest that delivery for HA64 is now pushed back a full monitoring year to account for the delays. This will remove 40 homes from the available supply within the first five years upon adoption.

- 2.10. NPPF paragraph 69 requires that planning policies identify a supply of specific, deliverable sites for five years following the intended date of adoption. Paragraph 76 sets out that:

*Local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if the following criteria are met:*

- *their adopted plan is less than five years old; and*
- *that adopted plan identified at least a five year supply of specific, deliverable sites at the time that its examination concluded.*

2.11. We would raise serious concern were the Council's position at 5.01 years to be determined sufficient to meet the requirement of NPPF paragraph 76.b. in the context of even a marginal delay in delivery resulting in the Council falling below 5 years. We consider that a detailed supply assessment would conclude that the council would be unable to demonstrate a 5 year supply at adoption and thereby prevent the protection from supply assessments under paragraph 76 and the tilted balance being engaged of paragraph 11d of the NPPF. Furthermore, we note the deletion of this paragraph within the recently published NPPF Draft Text for Consultation.

## **Policy INF1: Infrastructure and Developer Contributions**

### **Main Modification – MM156**

2.12. The proposed modifications to Policy INF1 under MM156 seek to “*improve soundness and clarity with cross referencing to the full range of infrastructure in the Infrastructure Schedule, arrangement for transport improvements and collaborative working on transport.*”

2.13. In this regard, we would raise the need to provide further clarity in respect of the provision of the reasonable costs of the on and off-site infrastructure needed to mitigate the impacts of each individual development. As currently drafted, and subject to the acceptance of MM156, Policy INF1 fails to relate the highways infrastructure impacts of a particular development to contributions that may be sought via various Transport Strategies. These Strategies are then referred to in the modifications to Appendix 3. The Local Plan is not accompanied by a CIL Charging Schedule, and it is therefore all the more important that the Local Plan approaches infrastructure provision in a way that is compliant with CIL Regulation 122. It should not endorse schemes such as the Charnwood Transport Contributions Strategy which is not being examined as a DPD, or even advanced as an SPD and approaches the question of contributions to infrastructure in a way which does not establish a relationship between the effects of a development and the contribution it seeks, as highlighted in the attached representations to that document. We consider that it central to have an understanding of a sites direct impact on the road/transport network and this should be utilised to determine whether off-site transport infrastructure improvements/contributions are required.

2.14. We would therefore propose a further modification to INF1 as follows, inter alia:

*contributes to the reasonable costs of any infrastructure required to mitigate the impacts of the development in question strategy, including through the pooling of developer contributions where it is demonstrated through appropriate and robust evidence, including Transport Assessments, that the impacts of that development can only be addressed in a fair, reasonable and proportionate way, and are necessary to make that development acceptable if made in a comprehensive way, including cumulative and cross boundary impacts; and*

## **Policy INF2: Local and Strategic Road Network**

### **Main Modification – MM158**

- 2.15. Significant redrafting and modifications have been undertaken in respect of Policy INF2. The policy sets out how specific and cumulative transport impacts of the Local Plan's development strategy will be mitigated through the preparation of three Transport Strategies. The points made above in relation to INF 1 apply with equal force.
- 2.16. Modification MM158 refers to "*Specific requests for developer contributions to fund the delivery of the Transport Strategies will be informed by appropriate evidence and by the policy framework in the Local Plan*".
- 2.17. Whilst in principle this approach may be appropriate, our clients are concerned that the mechanism by which the Transport Strategies (a term that seems designed to refer to documents that are not part of the Local Plan process and are not to be otherwise examined or tested against the requirements of the CIL Regulations) are in reality being advanced. For example we are aware of the Charnwood Transport Contributions Strategy (a document wholly separate from the Local Plan being advanced by Leicestershire County Council in its role as Local Highway Authority) is being brought forward to support Leicestershire County Council's (LCC) financial contribution requests and which is far from CIL Regulation compliant as set out above.. The approach of advancing such documents in this way does not allow for the proper testing and scrutiny that would come through a development plan or CIL process. It is all the more important therefore that the Local Plan isn't seen to somehow unwittingly endorse such documents.
- 2.18. Separate representations have been submitted to the CTCS consultation, and the Inspectors will be well aware of their own view expressed in EXAM80 that documents of that nature should be examined as Development Plan Documents (DPDs) rather than any other document type. In fact in the case of the CTCS this is not even being advanced as a Supplementary planning document (SPD).



2.19. Furthermore, MM158 provides no clarity on how the Local Plan policy should function alongside such documents as the CTCS.

2.20. We note that MM158 proposes to modify INF2 (inter alia) as below (our emphasis):

*Specific requests for developer contributions to fund the delivery of the Transport Strategies will be informed by appropriate evidence and by the policy framework in the Local Plan.*

*Where improvements are being delivered to the MRN or SRN, we will look for these to include measures that deliver, as appropriate, improved facilities for walking, cycling and passenger transport.*

*We will support development that is supported by a robust travel plan and robust transport assessment of the impact of the development on the road network, including its relationships to any identified significant cumulative and/or cross-boundary traffic impacts, and that demonstrates such impacts can be proportionately and appropriately mitigated.*

*Where a transport assessment indicates that a proposed development will have an impact on significant cumulative traffic conditions across the Borough and/or indicates cross-boundary impacts, a proportionate contribution will be required to the reasonable costs of measures required to mitigate such impacts in accordance with Policy INF1 either through a financial contribution or scheme delivery.*

2.21. We specifically note the reference to Transport Strategies, which suggests such documents as the draft CTCS. This creates significant confusion as the rest of the policy tries at least to make clear (as it should to be CIL Regulation compliant) that any contribution must relate to the actual impact of each specific development. This lack of clarity is not consistent with NPPF policy on plan making.

# In Marrons

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Think before you print

# Representations to the Draft Charnwood Transport Contributions Strategy

On behalf of Hallam Land Management



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<b>Project Name:</b>	CTCS Representations
<b>Client Name:</b>	Hallam Land Management
<b>Prepared By:</b>	BW
<b>Signed:</b>	BW
<b>Date:</b>	August 2024
<b>Reviewer</b>	DP
<b>Signed</b>	DP
<b>Date:</b>	August 2024

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## 1. INTRODUCTION

### 1.1 BACKGROUND

**1.1.1** Marrons has been instructed by Hallam Land Management (hereafter “HLM”) to prepare and submit representations concerning the Draft Charnwood Transport Contributions Strategy (“CTCS”). The CTCS outlines Leicestershire County Council’s emerging approach, in its capacity as the Local Highway Authority, to securing developer contributions for transport improvements within the Borough of Charnwood

**1.1.2** The CTCS is intended to support the delivery of the emerging Charnwood Local Plan 2021–2037 (“CLP”). At the time of writing, the CLP is undergoing consultation on Main Modifications until 4th September 2024. Representations are also being made to the CLP. The CTCS is subject to a separate consultation by Leicestershire County Council, running in parallel until 23rd August 2024. These representations pertain to the latter.

### 1.2 PLANNING APPLICATION

**1.2.1** For reference, HLM is promoting land at Melton Road, Queniborough, for residential development. An outline planning application was submitted for the development of up to 160 dwellings and associated infrastructure on this site (LPA reference P/23/1235/2). The application was presented to Charnwood Borough Council’s Planning Committee on 20th June 2024 and received a resolution to grant planning permission, subject to no objections from specified consultees, including the LHA, which has not objected, and the completion of a Section 106 agreement.

### 1.3 SCOPE OF REPRESENTATIONS

**1.3.1** In our representations, the following structure has been followed:

- Chapter 1 – Introduction
- Chapter 2 – Legal and Policy Framework
- Chapter 3 – The draft CTCS

- Chapter 4 – Analysis of the CTCS
- Chapter 5 – Conclusion



## 2.0 LEGAL AND POLICY CONTEXT

### 2.1 THE NATIONAL PLANNING POLICY FRAMEWORK (DECEMBER 2023)

**2.1.1** Chapter 3 of the National Planning Policy Framework (NPPF) outlines the approach to plan-making. The penultimate sub-heading on page 11, titled “Development Contributions,” includes a single paragraph, paragraph 34, which clearly states that “Plans should set out the contributions expected from development...” [emphasis added]. This includes infrastructure for areas such as “education, health, transport, flood and water management, green and digital infrastructure.” It is further stated that such policies should not undermine the deliverability of the plan. The CTCS is not a Plan in the sense meant by this policy.

**2.1.2** Paragraph 57 states that planning obligations should only be sought when they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. These are the same as the legal tests outlined in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

### 2.2 THE PLANNING PRACTICE GUIDANCE (PPG)

**2.2.1** The PPG elaborates upon the advice of the NPPF. Under the sub-heading, ‘Where should policy on seeking planning obligations be set out?’ it says that:

*“Policies for planning obligations should be set out in plans and examined in public.”<sup>1</sup>*

**2.2.2** As indicated above, and explained further below, the CTCS is not a plan in the sense meant by this guidance. It is understood that there is no intention on the part of the County Council that the CTCS would be examined in public.

**2.2.3** Subsequently, the PPG states that ‘it is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these will not be subject to

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<sup>1</sup> Paragraph: 004 Reference ID: 23b-004-20190901

examination.<sup>2</sup> As explained further below the CTCS is not suggested by the County Council to be a supplementary planning document, it is a document of even lesser status. The PPG sets out guidance in relation to the role and function of Supplementary Planning Documents (SPDs). It says that SPDs build upon and provide more detailed guidance or advice on policies adopted in a local plan. They do not form part of the development plan and they cannot introduce new policies into the development plan. They should not add unnecessarily to the financial burdens on development.<sup>3</sup> The CTCS is not claiming to be an SPD and is not providing the detail to supplement land use policies of an adopted local plan.

## **2.3 PLANNING AND COMPULSORY PURCHASE ACT 2004 (“PCPA 2004”)**

**2.3.1** The PCPA 2004 defines a Development Plan Document (“DPD”) as “a local development document which is specified as a development plan document in the local development scheme.” Local Development Documents are defined under regulations 5 and 6 of the Town and Country Planning (Local Development) (England) Regulations 2012 (“The 2012 Regulations”). A Local Development Document is any which contains statements regarding one or more of the following:

- (i) the development and use of land which the local planning authority wish to encourage during any specified period;*
- (ii) the allocation of sites for a particular type of development or use;*
- (iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and*
- (iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;*

*(b) ...*

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<sup>2</sup> Ibid.

<sup>3</sup> Paragraph: 008 Reference ID: 61-008-20190315

*(2) For the purposes of section 17(7)(za) of the Act the documents which, if prepared,*

*are to be prepared as local development documents are—*

*(a) any document which—*

*(i) relates only to part of the area of the local planning authority;*

*(ii) identifies that area as an area of significant change or special conservation; and*

*(iii) contains the local planning authority's policies in relation to the*

*area; and*

*(b) any other document which includes a site allocation policy.*

**2.3.2** The CTCS is not a Local Development Document and consequently not a Development Plan Document.

**2.3.3** Any document of the description referred to in regulation 5(1)(a) (i), (ii) or (iv) or 5(2)(a) or (b) is a local plan. Section 20 of the PCPA 2004 requires that a DPD be submitted to the Secretary of State for examination, to be assessed for soundness. The CTCS is not a Local Plan.

**2.3.4** SPDs are defined as those documents which fall within regulation 5(1)(a)(iii) or (1)(b) of the 2012 Regulations but do not form part of the local plan and so are not DPDs.

**2.3.5** In summary the CTCS has no particular status as a planning document, attempts to do things that even an SPD cannot do (and whatever it is, it is of a lower status than an SPD), is not proposed to be examined and tested in any sort of public forum and yet seeks to create land use planning policy of the sort that should as a matter of law and policy be in a DPD.

## **2.4 THE CHARNWOOD LOCAL PLAN (“CLP”)**

**2.4.1** The draft CTCS concedes that it is a standalone document, but that it claims it is “generally in accordance with” the approach set out through the CLP, in particular

Policies INF1 and INF2, as modified. Policy INF2 as amended by the MMs refers to request for developer contribution needing to be informed by “appropriate evidence.”

**2.4.2** Policy INF2 also states that development will be supported where it is underpinned by a robust travel plan and transport assessment where it demonstrates that such impacts can be appropriately and adequately mitigated. This represents a conventional approach to seeking transport-related contributions.

**2.4.3** The Borough of Charnwood has no Community Infrastructure Levy (CIL) either adopted or proposed. Charnwood Council has chosen not to advance CIL alongside the CLP or otherwise use CIL as a means of securing payments for infrastructure, the overall needs for which are brought about by development that the CLP seeks to encourage.

## 2. THE DRAFT CTCS

### 3.1 INTRODUCTION

**3.1.1** The draft CTCS comprises of six sections. The first provides an introduction; the second a summary evidence base material; the third a summary of key conclusions in respect of that evidence; the fourth details of further work that that will need to be undertaken; the fifth interventions and mitigations considered necessary; and the sixth the approach towards funding these mitigation measures.

### 3.2 PURPOSE AND CONTEXT

**3.2.1** Paragraph 1.3 of the CTCS states that the document is intended as a response to cumulative and cross-boundary impacts upon the transport network. These are accentuated, it is claimed, through development pressure caused by the recent shortfall in five year housing land supply as a result of a dated local plan in Charnwood.

**3.2.2** It is observed within the draft text of the CTCS, that the CLP's proposed spatial strategy distributes growth across a wide geographical area comprising smaller-scale sites and that the CTCS therefore claims the only solution in respect of mitigating transport impact, is pooling financial contributions towards the delivery of mitigation schemes. This solution is claimed to be independent, and in advance of the adoption of the CLP.

**3.2.3** Paragraph 1.5 articulates that the CTCS will be kept under review and updated to reflect more detailed evidence to ensure that contributions remain justified and proportionate over time.

**3.2.4** Paragraph 1.6 sets out that the CTCS does not seek to cover site-specific and localised issues or potential requirements for site-specific mitigation and that these matters will be addressed separately.

### **3.3 KEY CONCLUSIONS**

**3.3.1** The mitigation measures set out within the draft CTCS are identified following an assessment of the transport impacts of all the emerging CLP's proposed allocations. It is acknowledged within the CTCS that a number of sites have already achieved planning permission.

**3.3.2** The CTCS asserts that without the mitigation measures it has identified, severe cumulative impacts will arise (see paragraph 3.4).

### **3.4 FURTHER WORK**

**3.4.1** Paragraph 4.1 of the CTCS sets out that further work will be required to develop and refine the transport mitigation proposals. There is no evidence to indicate that this work has been undertaken. As per paragraph 4.7, the three area-based transport strategies within Charnwood are constructed around:

- Improvements to sustainable travel;
- Targeted improvements to the main road network; and
- Targeted improvements to the strategic road network

**3.4.2** As set out in further detail below, the CTCS imposes very substantial financial burdens upon Loughborough / Shepshed and the North of Leicester for improvements towards sustainable transport infrastructure.

**3.4.3** It is conceded at paragraph 4.21 of the CTCS that in spite of the work to date, there is still a need for further evidence-based links between proposed mitigation measures and specific sites.

**3.4.4** The draft document identifies broad schemes to enhance cycling and walking, passenger transport and some 10 improvement schemes to the road network.

**3.4.5** In relation to the walking and cycling aspects, in paragraph 5.3 it is accepted that there are not designs and cost estimates for all of the improvements sought to

be funded. It then explains that the Local Cycling and Walking Infrastructure Plans (LCWIP) documents are the source of information about schemes and costs, but for example in the North of Leicester area, the CTCS accepts that the LCWIP is in development, and is not due to be presented to the Council's Cabinet for approval until early 2025 (see 4.10), yet is relied upon for some £106.9m (83%) of the total £129.3m sought for that sub area (see Table 2 and its assumptions, comments and references). The work to underpin the schemes, and their costs is incomplete. This is particularly acute in the case of topics such as walking and cycling schemes that are particularly difficult to justify as objectively needed for any given development, would if constructed serve substantial parts of the existing population rather than being targeted on meeting the needs of new development sites and some of which will be relatively distant and unrelated to those new developments.

### 3.5 MITIGATION SCHEMES AND COSTS

3.5.1 The estimated costs for walking and cycling, passenger transport and highways improvements are detailed within the CTCS as follows in Table 4 below:

Transport Strategy Area	Mitigation Scheme Type	Cost
Loughborough / Shepshed	Cycling and Walking	£36.4m
	Passenger Transport	£2.5m
	Highways Interventions	£21.2m
		<b>Total: £60.1m</b>
Soar Valley	Cycling and Walking	£2.0m
	Passenger Transport	£7.5m
	Highways Interventions	£3.0m
		<b>Total: £12.8m</b>

North of Leicester	Cycling and Walking	£106.9m
	Passenger Transport	£22.4m
		<b>Total: £129.3m</b>

**3.5.2** As illustrated above, the cost of all mitigation measures, across all three areas is estimated to be £202.2m. These are not fixed or final, however. The draft CTCs anticipates that they will be subject to review (paragraph 5.13). Indeed 5.12 says that as more detailed work progresses the full package of costs will become more clearly defined. The costs of the work is therefore uncertain.

### **3.6 FUNDING AND DELIVERY**

**3.6.1** The overarching purpose of the CTCs is to secure and pool financial contributions from new development within the Borough of Charnwood. That is asserted to be the only practical means of delivering transport mitigation.

**3.6.2** It is noted that in addition to these contributions, the LHA will bid for public funding where suitable opportunities to arise. This signals that any apportionment of costs cannot be done on a fair basis. Regardless of the evidence to justify the scheme and its cost in the first place, and regardless of the evidence to apportion the need for any given scheme and its association with any particular development, if that cost could be reduced by public funding at any time, the ability to justify the payment of the starting figure in the first place is lost.

**3.6.3** Furthermore, the CTCs accepts A5 of Appendix A) that it will not be possible to bring forward all the identified mitigation. This is variously because of some sites already having planning permission, having secured no contribution and that viability will massively reduce the amount that sites could afford to pay.

**3.6.4** The consequence of this admission in the CTCs is to further remove the effect that any given site's development might be said to have on the need for any of the



infrastructure in the first place. If some unknown, unidentified aspect of the infrastructure will never be provided because there are insufficient funds, yet the cost of it has fed into the calculation in the first place, and the location and impact on the need for that unprovided infrastructure, relative to the development that is supposed to pay for it can never be determined<sup>4</sup>, how can it ever be said that the payment is directly related to that development or fairly and reasonably related to it in scale and kind?

**3.6.5** The CTCS proposes to seek contributions from developments on a per dwelling basis. In the North of Leicester Transport Strategy Area, this is reduced, due to viability findings, from £35,800 per dwelling to £11,500 per dwelling. Whilst the scale of the reduction is welcomed, this underscores that a vast but unidentified number of the projects will not proceed, so the relationship of any development to them can also never be determined as the ones that are to proceed and those that are not is unknown.

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<sup>4</sup> And by corollary so is the need caused by any given development on the unknown items of infrastructure that is intended to be proceeded with.

### 3. ANALYSIS OF THE CTCS

#### 4.1 STATUS OF THE CTCS

**4.1.1** There is no clear indication by the authors of the CTCS as to their view of where it will fit within the hierarchy of planning policy. Paragraph 6.2 of the document refers to it as a "policy." However, the CTCS will not have the status of a DPD (i.e. the development plan consists of DPDs, which are adopted as such and which are a subset of LDDs)<sup>5</sup>, as explained above and it will not be subject to any process of scrutiny that DPDs must undergo. National policy clearly indicates that when a formulaic approach to planning obligations is proposed, as in this case, it must be done through a DPD.

**4.1.2** By seeking to impose a "per dwelling contribution" for which new residential development must contribute, the draft CTCS is attempting to do something which only a DPD could lawfully do, yet it is not a DPD and is not being progressed as though it were.

**4.1.3** In addition, the CTCS does not claim to be an SPD (see for example 6.2). However, if it did, to advance its content as an SPD would be both unlawful and contrary to national policy unless it was merely supplementing and explaining an adopted Local Plan policy<sup>6</sup>. It is not.

**4.1.4** There is clearly no adopted policy basis for the CTCS. The CTCS reference to the CLP is a reference to an emerging policy, which is not adopted.. The content of the CLP is therefore relevant. The claim advanced that the CTCS draws support from draft Policies INF1 and INF2 of the CLP is not supportable. Separate representations will be made in relation to these policies. Neither of these draft policies get over the problems identified above. Policy INF2, as modified is clear that specific requests to fund the area-based Transport Strategies will need to be supported by appropriate evidence, as well as in respect of Transport Assessments for sites. The draft policy goes on to say that where such assessments indicate that a proposal will have an

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<sup>5</sup> See Paragraph 15 of *Skipton Properties Ltd v Craven DC* 2017 EWHC 534

<sup>6</sup> See *R (on the application of Skipton Properties Ltd) v Craven District Council* 2017 EHC 534 and *William Davies Ltd v Charnwood Borough Council* 2017 EWHC 3006

impact on significant cumulative traffic conditions a proportionate contribution to the reasonable costs of addressing this will be sought. This approach requires evidence as to the effect of each and every individual scheme and the need to assess those effects to determine a proportionate and reasonable contribution to address its impact. It does not endorse a blanket tariff based approach such as the TCS, which is inconsistent with that draft CLP policy. There is a very significant difference between assessing the impact that a proposed development will have and determining an proportionate and reasonable means of addressing that impact (the approach of the CLP) and the standard tariff based approach of the CTCS, which is akin to a CIL charging schedule by the back door.

**4.1.5** The approach within the draft CTCS is a flat per-dwelling approach which pays no regard to any specific assessment of individual sites, their impacts, the need for mitigation of those impacts, the schemes that would mitigate those impacts and a proportionate and reasonable approach to aligning impacts with the contributions. The CTCS approach is in addition to site-specific mitigation determined through a proportionate assessment of where traffic will go, and the need for road or other improvements relevant to the development in question.. In contrast the additional tariff-based approach of the CTCS would not comply with the Regulation 122(2) tests. The CTCS draws no support for its approach from the CLP and introduces an approach which is a considerable step beyond that envisaged by the CLP.

**4.1.6** In summation, the CTCS is unlawful, as it contains land use policies that should be in a DPD and is not proposed for examination and adoption by way of a DPD. It is not even proposed in due course to be an SPD, but if it was it would also be unlawful as it is not consistent with the emerging CLP, or supplementary to it.

## **4.2 JUSTIFICATION FOR THE CTCS**

**4.2.1** Irrespective of the legality of the document as described above, there are also significant shortcomings in the approach of the CTCS and its consistency with the CIL Regulation 122. The effect of the CTCS is to seek to apply a standard tariff to developments in each of the three sub areas with no evidence that this figure is necessary to make that development acceptable in planning terms, directly related to

that development or fairly and reasonably related in scale and kind to that development.

**4.2.2** Paragraph 1.5 of the draft document sets out that it will be reviewed and updated to reflect any new and/or more detailed evidence and specific proposals to address cumulative highways impact. There is no clear mechanism set out for when or how such a review will take place. There is no clear description of what more detailed evidence or proposals it refers to. It similarly indicates that the level of contribution sought per dwelling could increase at any time. There is a manifest lack of certainty or stability in such an approach.

**4.2.3** Section 4 of the CTCS states that significant further work is needed to complete the document and to develop the mitigation packages, but it puts forward significant contribution requirements for new development based on evidence which is, by its own admission, incomplete.

**4.2.4** In respect of sustainable transport and walking and cycling in particular, the document is unequivocally clear that evidence base is still emerging and is unlikely to be approved by Cabinet until early 2025. This is particularly the case in respect of the North of Leicester area when sustainable transport costs are over 80% of the total costs for that area. That is despite the fact that site allocations are proposed in this area precisely because of its high level of relative sustainability in transportation terms.

**4.2.5** Likewise in respect of road improvements, paragraphs 4.17 and 4.18 of the CTCS confirm that these are still at the investigatory stage.

**4.2.6** Following its statements about the significant level of incomplete work, Section 5 of the draft CTS considers the package towards which new development should contribute. In respect of walking and cycling, it is reconfirmed that these are at concept design stage only and there are no costed schemes.

**4.2.7** In respect of North of Leicester and the expected sum of some £107m towards walking and cycling infrastructure, this sum is based upon a document that is not

finished or approved by Leicestershire County Council and upon high-level designs, which have not been costed.

**4.2.8** There is also the question of double-counting. Any scheme that comes forward in order to comply with local and national planning policy will need to clearly demonstrate how it intends to mitigate its specific impact upon the highway network through its own TA and ensure that future residents have a genuine choice in sustainable travel modes. It is clear that the evidence base associated with any application will assess the required mitigation, which may identify a wide variety of different interventions.

**4.2.9** As it is unclear what will actually be paid for under the CTCS contributions and what will be covered for site-specific mitigation, it is equally unclear how double-counting will be avoided. For example, if a sufficient link between any proposed development and any intervention for which the CTCS secures contributions can be made out (which is currently not made out), then how will the LHA spend the contributions in a manner that mitigates the impacts of that scheme?

**4.2.10** Separately but relatedly, the CTCS approach fails to distinguish between issues that currently impact the performance of the highway network and if addressed will be for the benefit of existing users and impacts that will be caused by the proposed allocations and a proportionate and reasonable approach to mitigation that could be pursued on a development specific basis. That the CTCS's underpinning work does not appear to factor in sites that have already benefit from planning permission, also means that the sums secured will be used to mitigate the impacts of other sites on the highway network, in addition to rectifying pre-existing issues. It is that lack of a link between the impacts of the development and the mitigation measures for which the contributions will be used that means contributions towards the CTCS will fail to meet the CIL Regulations and the tests for planning obligations within the NPPF.

**4.2.11** The evidential shortcomings and the practical problems inherent in the operation of the CTCS render it contrary to national legislation and policy. Thus, even if it was to be examined as a DPD, it is unlikely in our view that it would be found

sound. As stated above, the way to address this topic that the CTCS seeks to deal with is through a CIL Charging Schedule.

### **4.3 DELIVERABILITY & EFFECTIVENESS**

**4.3.1** Appendix A to the CTCS accepts that its approach will not provide adequate funding for all projects. Whilst potential bids for Government funding are referred to, there is no further detail available and thus no clarity as to which schemes will come forward and which will not. That fact further erodes the link between the contributions sought by the CTCS and the mitigation necessary for individual sites. If improvement schemes are unfunded and are not brought forward, there can be no clarity as to what works will be done with the funds collected, and even less certainty that the schemes that do come forward are in any way related to the impacts caused by any given development.

**4.3.2** Apart from anything else, extracting value from development sites for projects that have unclear costs and delivery timescales, erodes the funds available for other, more deliverable forms of planning gain or mitigation and places an extra and unnecessary burden upon the delivery of much-needed market and affordable housing. As proposed developments are already required to identify and mitigate the impacts upon the highway network, the CTCS contributions do little more than elevate the already significant highway mitigation related costs for the purposes of funding projects that may never come to fruition.

**4.3.3** The CTCS seeks to address its lack of clear costings and delivery timescales for projects through stating that the costs stated will change over time as evidence is developed. There is a manifest lack of certainty and clarity with such an approach. This is antithetical to the plan-led system and contrary to the expectations of national policy. Clearly, the sums sought should be static, clearly justified, directly related to each development in a proportionate way and viability tested.

## 4. SUMMARY AND CONCLUSIONS

### 5.1 SUMMARY

#### 5.1.1 The draft CTCS is unlawful and unsound for the following reasons:

- It is not a DPD or an SPD, and it seeks to do something that could only lawfully and consistent with policy be done as a DPD or via a CIL Charging Schedule.
- It seeks to sidestep independent examination and scrutiny.
- It proceeds without evidence as to the effects caused by individual developments and the need for any mitigation that is necessary to make that development acceptable, is directly related to that development and is reasonably related in scale and kind to that development;
- It uses a tariff based and formulaic approach to the collection of monies secured by Section 106, contrary to national policy;
- It fails to distinguish between issues which currently impact upon the performance of the highway network rather than necessarily dealing with the impacts that would likely arise as part of the proposed allocations;
- It fails to link proposed mitigation measures to specific sites;
- It does not provide full and costed details of the mitigation measures nor does it provide a mechanism for delivery;
- It expressly acknowledges that significant further work is required in order to refine the evidence base;
- It expressly acknowledges that the costs will change over time, presumably to retrofit the CTCS in respect of the significant further work; and

- It secures funding towards projects which may never be carried out, further undermining any possible link between the amount sought and what it will be spent on.

## 5.2 CONCLUSIONS

**5.2.1** The CTCS addresses matters which are properly a matter for either a CIL charging schedule or DPD. It is, however, not being progressed in a procedurally compliant manner in line with either of those regimes. It represents a tariff based regime on new residential development, with nothing in the way of justification or evidential basis to connect impacts caused by developments and the mitigation claimed to be needed as a consequence. It is plainly contrary to national planning policy and is arguably unlawful.