

**From:** Lynette Swinburne <lynette.swinburne@savills.com>  
**Sent:** 04 September 2024 12:55  
**To:** localplans@charnwood.gov.uk  
**Cc:** Lydia Voyias  
**Subject:** PRE-SUBMISSION DRAFT CHARNWOOD LOCAL PLAN 2021-2037 - PROPOSED MAIN MODIFICATIONS  
**Attachments:** Response to MM FINAL with appendices.pdf; DM1 and DM19 Comment Form Policies Map.docx; MM27 Representation Form Local Plan Modifications.docx; MM29 Representation Form Local Plan Modifications.docx; MM49 Representation Form Local Plan Modifications.docx; MM50 Representation Form Local Plan Modifications.docx; MM152 Representation Form Local Plan Modifications.docx; MM157 Representation Form Local Plan Modifications.docx; MM158 Representation Form Local Plan Modifications.docx; MM189 Representation Form Local Plan Modifications.docx

Good afternoon

Please find attached our response to the Main Modifications consultation on behalf of the Trustees of The Grace Dieu & Longcliffe Estates and Roythornes Trustees Limited. The responses are set out in the covering letter but I also enclose a completed form for each modification we are referring to.

I would be grateful for confirmation of receipt at your earliest opportunity.

Kind regards

Lynette

**Lynette Swinburne BSc (Hons) Dip TP MRTPI**  
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4 September 2024  
Response to MM FINAL



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Dear Sir or Madam,

**PRE-SUBMISSION DRAFT CHARNWOOD LOCAL PLAN 2021-2037 - PROPOSED MAIN MODIFICATIONS**  
**Reference: Policy DS3 (HA34) Land off Tickow Lane (north), Shepshed**

Savills UK Ltd is instructed by our client, the Trustees of The Grace Dieu & Longcliffe Estates and Roythornes Trustees Limited to make representations to the Main Modifications Consultation on the Draft Charnwood Local Plan.

The representation is made in respect of the approach to development within Shepshed, specifically site HA34 Land off Tickow Lane (north). It addresses the following proposed modifications:

Schedule Of Proposed Main Modifications

- MM27
- MM29
- MM49
- MM50
- MM152
- MM157
- MM158
- MM189

Schedule of Proposed Main Modifications to Local Plan Diagrams

- DM1
- DM19

Our response to these modifications is set out below, grouped by theme:

**Site specific comments: HA34 Land off Tickow Lane (north)**

Policy DS3: Housing Allocations

MM27 (after 2.64, page 33)<sup>1</sup>

It is proposed to include additional text after paragraph 2.64 which includes reference to sites HA32 and HA34:

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<sup>1</sup> References quoted are those used in EXAM 81



*“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:*

- *Shepshed (West) – HA32 and HA34*

*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.*

*For highways and transport, this particularly relates to:*

- i. avoiding a proliferation of new site access points and potential deliverability risks (e.g. due to highway safety or capacity issues);*
- ii. avoiding duplication and/or conflict between sites in respect of other localised off-site transport requirements (e.g. the installation of new footways, cycleways, crossing facilities, bus stops or passenger transport service provision); and*
- iii. facilitating opportunities to provide joint/linked on-site transport infrastructure in those cases where sites directly adjoin for instance the provision of spine road(s), walking and cycling facilities and/or passenger transport services that connect through/between the sites, which may reduce or negate some of the likely off-site transport infrastructure requirements described through (i) and (ii) above”*

Response: The proposed additional text is supported and reflects the collaboration that is already taking place between the parties bringing forward development on sites HA32 and HA34.

MM29 (page 33, Policy DS3 Table)

No changes are proposed in the Main Modifications in relation to HA34. However, it is important to note that a planning application was submitted in 2023 (reference: P/23/1065/2). The application is for up to 400 dwellings.

Response: It is advised that the Revised Table in DS3 is updated in relation to HA34, Land off Tickow Lane (north) to refer to 400 dwellings.

MM49 (page 54, para 2.99)

It is proposed to amend the supporting text to HA34 Land off Tickow Lane (north), Shepshed to include the following further justification and explanation of the policy approach:

*“The relationship between this site and HA32 provides the opportunity for access to the sites and transport links between them to be coordinated to optimise the provision of infrastructure. The diagram shown with Policy DS3(HA32) provides a visual guide to assist with interpretation of the policy below”.*

Response: The proposed additional text and inclusion of a diagram is supported.

MM50 (page 54, Policy DS3 - HA34)

This modification proposes the addition of two bullet points to Policy DS3 HA34 Land off Tickow Lane (north), Shepshed, which confirms that development proposals will be supported that [also]:

- *make use of opportunities for co-ordinating the provision of transport infrastructure with site HA34 and*
- *does not prejudice the delivery of adjacent/adjoining site HA32 with regards to site-specific highways and transport requirements, and reasonably and appropriately provides for or facilitates such requirements to be delivered in the future, as necessary.*

Response: The proposed additional text is supported.

DM1 (Generic changes to all Diagrams)/DM19 (Policy DS3 - HA34 Land off Tickow Lane (north), Shepshed)

The diagram below is proposed for Housing Allocations HA31, HA32, HA33, HA34 & HA35 to illustrate the relationship between the Shepshed housing allocations.

**Updated version (based on proposed modifications)**



Response: The inclusion of a diagram spatially indicating the location of the housing allocations in Shepshed is supported. It is helpful to understand the relationship between the sites. In particular, the clarification of the relationship between HA32 and HA34 and potential for pedestrian and cycle connections is welcomed and reflects the aspiration for the sites as set out in the current planning applications (references P/23/1075/2 and P/23/1065/2).

It is advised that the 'Potential shared access point' shown on the key as a black dot, is in the incorrect place (an existing PROW) which is to be retained as a pedestrian and cycle route but is not suitable as a primary vehicular access. It is recommended that this black dot be removed from the key.

The green arrow which is annotated as "Potential pedestrian and cycle connections" should be amended to "Potential vehicular, pedestrian and cycle connections".

It is important to ensure that the annotation is sufficiently flexible to allow for an approach to access that is supported by evidence and in accordance with highways guidelines.

### Transport and Infrastructure

Significant changes are proposed in relation to Chapter 9, including policies IN1 and INF2 and the associated supporting text. Whilst the modifications proposed are understood, they would result in significant changes to the policies of the Draft Local Plan and indeed, the Submission Version that was subject to Local Plan Examination.

The Trustees of Grace Dieu and Longcliffe Estate and Roythornes Trustees Limited have made representations to the Charnwood Transport Contributions Strategy consultation which took place between 10 July 2024 and 23 August 2024. The Trustees, as part of a wider group of interested parties, sought a

Legal Opinion in relation to the provisions and status of the Strategy to support these representations. I enclose this submission at Appendix 1, which supports the comments raised in the responses below:

MM152 (paragraph 9.5)

This modification states that *“In view of the availability of funding compared with total cost of infrastructure, it is likely that in most cases it will be necessary to prioritise the allocation of development contributions to different kinds of infrastructure and this exercise will be achieved by the preparation of a Planning Obligations Supplementary Planning Document. In the interim, the council will continue to require contributions on a site by site basis according to a scheme’s overall viability.”*

Response: The amendments set out are supported. A well evidenced Planning Obligations SPD will be an important document to secure appropriate contributions from development. In addition, the interim approach of seeking site by site contributions is considered to be in accordance with the requirements of The Community Infrastructure Levy Regulations 2010, Part 11, Regulation 122 (1) and (2).

Policy INF2: Local and Strategic Road Network

MM157(page 204)/MM158 (page 205)

INF2 sets out how specific and cumulative transport impacts of the Local Plan’s development strategy will be mitigated, through the preparation of Transport Strategies.

Whilst in principle this approach may be appropriate, the Trustees are concerned that the mechanism by which the Transport Strategies are being developed and adopted (as wholly separate Local Highway Authority policy) does not allow for the proper testing and scrutiny that would come through a development plan process.

The present approach adopted by LCC and CBC is insecure, flawed and likely to be challenged. Furthermore, it has not been subjected to whole plan viability through the examination of this Local Plan. It is noted that the Charnwood Local Plan Inspectors stated that such Transport Strategies should be a separate Development Plan Document (DPD) and could follow the adoption of the Local Plan (EXAM80).

Response: At present INF2 is not justified, appropriate, effective or consistent with national policy.

INF2 should be amended to ensure the production of the Transport Strategies is through a DPD.

The first paragraph should be amended as follows.

*“We will continue to work with Leicestershire County Council, National Highways, Leicester City Council, wider HMA authorities and other stakeholders as required to mitigate the transport impacts of our development strategy through the delivery of Transport Strategies for Loughborough Urban Centre and Shepshed Urban Settlement; Leicester Urban Area; and the Soar Valley. We will prepare the Transport Strategies as a Development Plan Document.”*

Other consequential changes to the preceding explanation may be necessary.

The modification is necessary to ensure that the Transport Strategies are adopted as part of a new Development Plan Document.

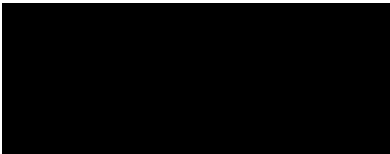
MM189 (Page 238, Appendix 3 – IS Shepshed Urban Settlement)

It is proposed to replace the existing text with the following: *“Proportionate contributions towards the Loughborough and Shepshed Transport Strategy as described previously”*.

Response: In principle it is agreed that proportionate transport contributions will be required to mitigate the impact of proposed developments and this is considered to be in accordance with the requirements of The Community Infrastructure Levy Regulations 2010, Part 11, Regulation 122 (1) and (2).

Please do not hesitate to contact me should you require any further information.

Yours sincerely,



Lynette Swinburne MRTPI  
Associate Director, Savills UK Ltd



**Appendix 1: Representations to Charnwood Transport Contributions Strategy on behalf of The Trustees of the Grace Dieu and Longcliffe Estate and Roythornes Trustees Limited**



23 August 2024  
Response to CTCS FINAL



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Dear Sir or Madam,

**LEICESTERSHIRE COUNTY COUNCIL DRAFT TRANSPORT CONTRIBUTIONS STRATEGY FOR DEVELOPMENTS IN CHARNWOOD DISTRICT**

Savills UK Ltd is instructed by our client, the Trustees of The Grace Dieu & Longcliffe Estates and Roythornes Trustees Limited to submit comments and feedback in relation to the Charnwood Transport Contributions Strategy (CTCS).

The Trustees, as part of a wider group of interested parties, have sought a Legal Opinion on the CTCS due to concerns about its timing, implications and relationship with the emerging Charnwood Local Plan which is at an advanced stage. I enclose this Opinion at **Appendix A**.

I draw the Authority's attention to the Executive Summary of the Opinion, which notes:

*"We consider that the CTCS is unlawful in that it tries to introduce what ought to be development plan policy outside of a development plan document ('DPD'). We also consider that in any event the CTCS is poorly conceived in its content and approach and does not adequately justify the sums sought."*

The Opinion should be considered in full, however I wish to draw the Authority's attention in particular to the following matters:

- If contributions towards development are to be sought towards the cumulative impact of infrastructure in an area, these should be set out in a Development Plan Document (DPD).
- DPDs are the appropriate route to securing contributions and "should be informed by evidence of infrastructure and affordable housing need, and a proportionate assessment of viability". It is then necessary for this evidence to be tested through examination to ensure that they would not "undermine the deliverability of the plan".
- National Planning Policy Guidance is explicit about that policy relating to planning obligations should be set out in plans and examined in public. It also notes 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 would not be subject to examination."
- The draft CTCS proposes to use monies raise to address existing problems with the transport network.
- Seeking developer contributions on a per dwelling basis through the CTCS is likely to be considered unlawful.



- The CTCS is seeking to replicate CIL without adhering to the necessary legal framework.
- The implications of adopting an approach in CBC which is not replicated elsewhere in Leicestershire.
- Developer contributions on a site by site basis, which would be sought through the CTCS would not meet the tests of materiality. No opportunity has been provided for developers of allocated sites to scrutinise the justification of the blanket contributions sought, nor the impact on potential viability.

It is therefore our client's view that consultation on the CTCS at the present time is not a robust way to seek contributions from development in the District. If contributions are to be using this approach, they must be advanced via a DPD in accordance with the appropriate legislation to ensure they are lawful.

In addition to the Legal Opinion, specialist advice has been sought on the CTCS from ADC Transport Consultants who have undertaken a review of the document (**Appendix B**). The Review summarises the CTCS, and considers matters such as the applicability of a Plan-level strategy to individual developments, its deliverability, and weaknesses.

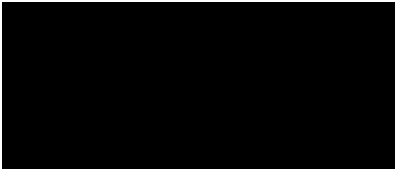
The Review confirms that in the opinion of ADC, the methods employed to derive the CTCS are "problematic and will cause it to be challenged". The Review should be considered in full, however, some key points are highlighted below:

- The CTCS does not provide robust evidence of appropriate and justified mitigation. Amongst other things, there are policy conflicts caused by treating development collectively rather than individually, disproportionate costs associated with LCWIPs, a disregard to scale of development, and funding shortfalls.
- Despite the considerable growth of Shepshed proposed in the emerging Local Plan, it does not feature at all in the highway interventions required to mitigate the Local Plan growth.
- Treating the proposed development collectively, and saying that cumulatively it would have a severe impact, and therefore each individual development would have a severe impact, is not a sustainable argument. A number of the aspects of the mitigation package would not be directly related to the developments to which they are attributed. They would not be necessary to make the development acceptable.
- There is no mechanism in the CTCS for a reduction in contribution in cases where a developer proposes an intervention. LCC could say in response that a developer must provide what is necessary and directly related to manage the travel demand created by their development. However, that being the case, if they were not required to provide such intervention elsewhere, because it was being provided by the contribution, that would suggest it was not directly related to the development, or necessary to make the development acceptable.
- Certain measures would also be disproportionate and not fairly related in scale to the impact of the development. The LCWIPs in particular make up a significant amount of the package cost, yet mainly address a deficit in infrastructure provision unrelated to the allocations. In certain places where measures would be expected, such as highway interventions along the A512 Ashby Road in Shepshed, they are missing.

In conclusion, the ADC Review confirms our client's view that in transport terms CTCS does not set out robust evidence for appropriate and justified mitigation.

Overall, the Trustees of The Grace Dieu & Longcliffe Estates and Roythornes Trustees Limited are concerned about the approach and methodology behind the CTCS. Progressing a document that seeks to raise cumulative funds for development in conflict with both planning law and national guidance raises concerns about the lawfulness of financial requests made. This is neither in the interests of the Highway Authority, the Planning Authority nor those other parties central to delivering growth in the District.

Yours sincerely,



Lynette Swinburne MRTPI  
Associate Director, Savills UK Ltd

Cc: Planning Policy Team, Charnwood Borough Council (via email: [localplans@charnwood.gov.uk](mailto:localplans@charnwood.gov.uk))



**Appendix A: Legal Opinion**

**RE: IN THE MATTER OF LEICESTERSHIRE COUNTY COUNCIL'S DRAFT  
CHARNWOOD TRANSPORT CONTRIBUTIONS STRATEGY**

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**OPINION**

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**Introductory Matters**

1. We are instructed on behalf of a number of parties ('the Clients') who are presently involved in the promotion of land for residential development within Leicestershire in general and Charnwood Borough in particular
2. A document known as the Charnwood Transport Contributions Strategy ('CTCS') was released for consultation by Leicestershire County Council ('LCC') on 10<sup>th</sup> July 2024, the consultation will close on 23<sup>rd</sup> August 2024.

**Executive Summary**

3. We consider that the CTCS is unlawful in that it tries to introduce what ought to be development plan policy outside of a development plan document ('DPD'). In addition, we also consider that in any event the CTCS is poorly conceived in its content and approach and does not adequately justify the sums sought.

**Background**

4. The detailed factual background is set out in our instructions, and we advise on that basis. The following is therefore only a summary of the most salient facts.
5. The Charnwood Development Plan comprises a Core Strategy (adopted in November 2015), the Saved Policies of the Borough of Charnwood Local Plan (2004), and a number of individual Neighbourhood Plans. A new Local Plan ('the Emerging Plan' or 'EP') was submitted for examination in December 2021.

6. There have so far been four hearing sessions regarding the EP (June and October 2022, February 2023 and February 2024). Consultation regarding main modifications ('MMs') began on 24<sup>th</sup> July 2024 and will run until 4 September 2024. Various participants at the February 2024 Hearing Sessions noted to the Local Plan Inspectors that the appropriate way of securing the sort of contributions being sought through the CTCS would be through the use of the Community Infrastructure Levy ('CIL') charging regime. For reasons which are not clear, this has not been pursued to date.
7. The evidence base behind the plan is extensive and technical documents include viability work by Aspinall Verdi.
8. LCC's evidence and representations and SoCGs with Charnwood Borough Council ('CBC') have referred to a requirement for developers to help fund transport interventions which are needed in order to mitigate the cumulative effects of the proposed allocations and the combined impact of development planned in neighbouring authorities.
9. LCC has modelled how the highway network is likely to function with background growth as well as the development traffic generated from all of the proposed allocations along with relevant developments proposed in neighbouring authorities. LCC have then identified and costed major interventions likely to be needed in that scenario and attributed that cost to the various developers. It has concluded that the Borough should be split into the following three areas: North of Leicester; The Soar Valley; and Loughborough and Shepshed ('the three areas') and that developers within each area contributing to the cost of the identified interventions on an equal basis (i.e. a £ per dwelling basis), irrespective of the level of impact that their proposals would individually have upon the highway network.
10. We are instructed that LCC has concluded that it considered it "too difficult" to assess the likely effects of each individual allocation, to then determine the infrastructure improvements that each allocation is likely to require, and to then work with CBC to specify that in the policies that each allocated site has in the Plan.
11. The per dwelling basis for financial contributions relies on figures that are considerably lower than the figures which have been advanced in recent planning application consultation responses. We are instructed that on LCC's proposed contributions and, in the absence of public sector funding to plug the gaps, there will be a significant level of uncertainty about which of the identified mitigation measures can be funded, when and in what order. LCC notes that there may be circumstances in which site viability rules out the making of contributions. If such

circumstances were to arise, LCC would obviously secure even less in the way of contributions and the gap would further increase.

12. The EP promises Transport Strategies for the three areas, and it is assumed that they will provide fuller details of the interventions that are required. At present EXAM75 which LCC submitted to the Local Plan EIP in late summer 2023 “sets out the broad contents of, and the framework for” the Transport Strategies, “explains the rationale behind the Strategies, the context in which they are being developed, the work that has been done to date and the work that is ongoing to inform the strategy documents that will eventually be approved by the County Council’s Cabinet”. There is no proposal to subject the Transport Strategies to any form of independent testing or examination. It is LCCs expectation that the implementation of the Transport Strategies and, we assume, the CTCS, will be given effect in CBC by Local Plan Policies INF1 and 2.
13. The MMs retain the references (in INF2) to local Transport Strategies, albeit there is also a reference in the amended text to requests for developer contributions needing to be informed by “appropriate evidence” and by a policy framework. In addition, Policy INF2 states that development will be supported where it is underpinned by a robust travel plan and transport assessment and where it demonstrates that such impacts can be appropriately and adequately mitigated.
14. These MMs follow hearing sessions on infrastructure and plan viability and submissions by several of the Clients in response to questions posed by Inspectors in February 2024<sup>1</sup>. Several of the Clients made submission in response to these questions.
15. On 10 February 2023, LCCs Cabinet met to consider a Report of the Council’s Chief Executive which recommended an ‘*interim approach*’ to securing developer contributions for, and managing development in respect of, highway needs, pending the adoption of Policies INF1 and INF2 of the Charnwood Local Plan. That Report was accompanied by a document entitled “*Interim Transport Contributions Strategy for Developments in Charnwood District*” (‘the Interim Strategy’). That Interim Strategy identified 10 highway improvement schemes which were said to be aimed at managing the cumulative effects of the housing growth planned by the Borough Council and cross boundary issues arising in particular areas. Each scheme had a concept scheme drawing and a cost estimate. The total combined cost of the 10 schemes was

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<sup>1</sup> The questions concerned the lawfulness and robustness of the approach to contributions and the appropriateness of apportioning costs.

estimated at £46.9m. The Strategy noted LCCs proposal to produce the 3 area-based Transport Strategies for Charnwood and to attribute scheme costs on an area-by-area basis but was silent regarding how much developers would be expected to contribute. The Interim Strategy was said to be an Interim one because it was aiming to address sites which might come forward in advance of the EP being adopted and without contributing towards highway schemes which were (presumably) only justifiable based upon cumulative contributions.

16. In May 2023, both authors of this opinion were instructed in respect of a legal challenge brought by Barratt David Wilson (BDW) directed at LCC seeking developer contributions pursuant to its Interim Strategy in respect of a then pending appeal in respect of a proposed residential development at Queniborough. Proceedings were issued but were rapidly compromised by a Settlement Agreement dated 8 June 2023 in which LCC agreed that the Interim Strategy was not to be treated as an adopted policy of LCC<sup>2</sup> and that it would not seek additional highways and education contributions over and above those already recorded in a Draft S106 Agreement which had by that stage been agreed, but which did not make provision for any monies covered by the Interim Strategy.
17. In May 2024 CBC informed all relevant applicants for planning permission that LCC would henceforth seek contributions in line with a new document, the Draft Charnwood Transport Contributions Strategy ('draft CTCS'). Various requests have now been made of the Clients seeking contributions relying on the draft CTCS. As noted above, the draft CTCS was released for consultation by Leicestershire County Council ('LCC') on 10<sup>th</sup> July 2024, the consultation will close on 23<sup>rd</sup> August 2024. The CTCS is supported by a Viability Report and set of FAQs.
18. The Clients have commissioned detailed technical work to consider the transport and viability evidence underpinning the draft CTCS.
19. The draft CTCS contains 6 Sections. We note that the fifth describes the interventions, or mitigation schemes, that LCC considers need to be delivered together with cost estimates for each. The sixth describes LCCs proposed approach to funding the mitigation measures and presents a Draft Policy on developer contributions, together with details of the sums that it proposes to seek from applicants going forward.

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<sup>2</sup> CBC intimated that it was not proposing to adopt the Interim Strategy as policy.



20. We note that para. 1.5 of the draft CTCS advises that the document will be kept under review to reflect more detailed evidence when it becomes available. No review dates or periods are provided, nor is it clear what might trigger a review. Para. 1.6 explains that no site-specific highways issues are addressed, accordingly such matters are presumably intended to be addressed in addition to the draft CTCS approach.
21. The Draft Policy within the CTCS is said to be freestanding of Local Plan Policies INF1 and 2 but 'generally in accordance' with them (CTCS paragraph 6.4).
22. LCC asserts that, without the mitigation identified, severe cumulative impacts would arise (which would presumably be argued to be contrary to NPPF paragraphs 114 and 115). This conclusion has been reached after all proposed growth is added to the network. However, there is no identification of what baseline position has been adopted for this assessment (ie without permitted development). No assessment of the contribution of any individual allocation to the impact and no consideration of whether the impact of development without the mitigation package would be 'severe'.

### **Scope of this Opinion**

23. Against this background we are asked to address the following matters:
  - a) whether the approach that LCC is proposing to take to securing developer contributions towards highways / transport mitigation measures through the draft CTCS is lawful;
  - b) whether adopting a blanket per dwelling approach to securing developer contributions as articulated in the Draft CTCS falls into conflict with Policy INF2 as proposed to be modified;
  - c) if the answer (a) is yes how should the Interested Parties set about challenging LCC on its approach;

### **Legal Background**

#### **(i) What Comprises a DPD?**

24. By the PCPA 2004 s.38(1) and (3) a development plan is defined as consisting of: the regional strategy (if any); and the development plan documents (taken as a whole) which have been adopted or approved.

25. A development plan document (“DPD”) is defined in the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) at s.37 as: *“a local development document which is specified as a development plan document in the local development scheme.”*
26. By virtue of s17(3) PCPA 2004 Local Development Documents must, taken as a whole, set out the authority's policies (however expressed) relating to the development and use of land in their area.
27. “Local Development Documents” are further defined under regulations 5 and 6 of The Town and Country Planning (Local Development) (England) Regulations 2012 (“The 2012 Regulations”) in the following terms:

***“5. Local Development Documents***

*(a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, 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) ...*

*(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.*

## **6. Local plans**

*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."*

28. Section 20 of the 2004 Act requires a DPD to be submitted to the Secretary of State for independent examination, to be assessed for 'soundness'. Subsequent sections make detailed provision in respect of that examination and its consequences. The 2012 Regulations provide for the descriptions of various documents and how they are to be characterised.
29. Section 19 of the 2004 Act concerns the preparation of local development documents.
30. Section 19(3) of the 2004 Act provides that, in preparing local development documents, the local authority must comply with their statement of community involvement (SCI).
31. The Council is legally required to prepare and adopt a statement of community involvement and once adopted it has to comply with it (See Section 18 of The Act 2004 as amended by the Planning Act 2008).
32. SPDs are defined negatively, they are 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.
33. Regulations 12 and 13 of the 2012 Regulations provide for public participation in making SPDs and the right to make representations about SPDs. Whilst an SPD must be made the subject of public participation, the adoption of a local plan is a much more procedurally onerous affair, requiring the carrying out of the obligations in the 2004 Act at s.20. The obligations include notification of the proposed preparation of a local plan.
34. On the issue of what amounts to appropriate consultation, the general principle identified by Lord Woolf M.R. (as he then was) in the seminal case of *R. v North and East Devon Health Authority ex p Coughlan* [2001] Q.B. 213 at [108] is as follows:

*"It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage. It must include sufficient reasons for particular proposals to allow*

*those consulted to give intelligent consideration and an intelligent response. Adequate time must be given for this purpose and the produce of consultation must be conscientiously taken into account when the ultimate decision is taken.”*

35. By regulation 8(1) of the 2012 Regulations, a local plan or a supplementary planning document must indicate whether the document is a local plan or a supplementary planning document.
36. Policies in an SPD must not conflict with the adopted development plan (reg.8(3)) whereas those in a local plan must be consistent with it (reg.8(4)), but while a local plan may contain a policy which supersedes one in the adopted development plan, if it does so, the local plan must state that fact and identify the superseded policy (reg.8(4) and (5)).
37. In *William Davis Ltd v Charnwood BC* [2017] EWHC 3006 (Admin), a local planning authority's "housing mix" policy was quashed by the High Court on the basis that it had been published in a supplementary planning document rather than a development plan document. The High Court held that the policy regulated the development of land and, by virtue of the *Town and Country Planning (Local Planning) (England) Regulations 2012* reg. 5(1)(a)(i) and reg.5(1)(a)(iv), should therefore have been produced as a local development document.
38. In *R (oao Wakil (t/a Orya Textiles) v Hammersmith and Fulham LBC* [2012] EWHC 1411 (QB), the adoption by a local planning authority of a planning document was quashed as procedurally flawed and unlawful where it had been wrongly characterised as a supplementary planning document rather than a development plan document, in respect of which the procedural requirements had not been met, and where the local authority had failed to consider whether it should be subjected to a sustainability appraisal and/or environmental impact assessment.
39. In *R. (on the application of Skipton Properties Ltd) v Craven DC* [2017] EWHC 534 (Admin) the High Court quashed a local authority document concerning the negotiation of affordable housing contributions on the basis that its content meant that it should have been prepared as a development plan document and should therefore have been subject to public consultation, a strategic environmental assessment, and an independent examination. The affordable housing contributions interim policy contained statements in the nature of policies which pertained to the development and use of land which the local authority wished to encourage, pending its adoption of a new local plan which would include an affordable housing policy. The development and use of land was either "residential development including affordable housing"

or "affordable housing". It was thus an interim policy in the nature of a DPD. The local authority's failure to comply with the statutory conditions for DPD adoption rendered its adoption unlawful.

40. In terms of where policies seeking contributions should be found, tolerably clear guidance is to be found in NPPF:

*“34. Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan”.*

41. The National Planning Practice Guidance makes the point even more explicitly:

***“Where should policy on seeking planning obligations be set out?”***

*Policies for planning obligations should be set out in plans and examined in public. Policy requirements should be clear so that they can be accurately accounted for in the price paid for land. Such policies should be informed by evidence of infrastructure and affordable housing need, and a proportionate assessment of viability.*

...

***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 would not be subject to examination.*** *Whilst standardised or formulaic evidence may have informed the identification of needs and costs and the setting of plan policies, the decision maker must still ensure that each planning obligation sought meets the statutory tests set out in regulation 122. This means that if a formulaic approach to developer contributions is adopted, the levy can be used to address the cumulative impact of infrastructure in an area, while planning obligations will be appropriate for funding a project that is directly related to that specific development.*

...

*Paragraph: 004 Reference ID: 23b-004-20190901” (emphasis added)*

**(ii) What Contributions may be Lawfully Required**

42. Regulation 122 of the Community Infrastructure Regulations 2010 (“the CIL Regs”) provides that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

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

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

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

43. That constitutes the statutory test and also forms the policy test as set out in the NPPF (paragraph 57) and PPG (Paragraph: 002 Reference ID: 23b-002-20190901).

44. The practical operation of the test has been repeatedly considered by the courts including in R. (Midcounties Co-operative Ltd v Forest of Dean DC [2013] EWHC 1908; [2014] EWHC 3348 (Admin); [2015] EWHC 1251 (Admin) (“Midcounties Co-Operative”). The cases all concerned the same development and the offer through a planning obligation to provide town centre improvements in mitigation for an out-of-centre foodstore. In the latest of the cases, Singh J. held (at [116]) that although the planning officer had stated in his report that proposed S106 benefits were “necessary” nowhere in the report had he explained why they were necessary. The case emphasises the level of detail to which the decision maker must descend in order to allow the proper application of the CIL Regs.

45. A helpful summary was provided by the Court of Appeal in R. (on the application of Peter Wright) v Forest of Dean District Council [2017] EWCA Civ 2102 (“Forest of Dean”) (a decision which was subsequently upheld in the Supreme Court: [2019] UKSC 53):

*“25. The only issue that arises in these appeals is whether the proposed community benefit fund donation of a proportion of the turnover derived from the development was properly taken into account as a material consideration by the Council when it considered and approved the planning application for the proposed development.*

*26. Section 70(2) of the Town and Country Planning Act 1990 (“the 1990 Act”) provides that, in dealing with an application for planning permission, a planning authority must have regard to all “material considerations”, including “any local finance consideration” defined in section 70(4) (added from 15 January 2012, by section 143(4) of the Localism Act 2011) as “(a) a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown, or (b) sums that a relevant authority has received, or will receive, in payment of Community Infrastructure Levy”.*

27. *What amounts to a material consideration has been considered in a series of cases to which we were referred, including... Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Company Limited [2017] UKSC 66 (“Aberdeen)... I can be relatively brief. The relevant law is uncontroversial. Indeed, all parties rely upon the same well-established propositions.*

28. *So far as relevant to these appeals, the following propositions can be drawn from the cases.*

- (i) *A planning decision-maker has a statutory duty to have regard to all material considerations; and to have no regard to considerations which are not material. Whilst the weight to be given to a material consideration is a matter for the decision-maker, what amounts to a material consideration is a question of law for the court to determine.*
- (ii) *The fact that a matter may be regarded as desirable (for example, as being of benefit to the local community or wider public) does not in itself make that matter a material consideration for planning purposes. For a consideration to be material, it must have a planning purpose (i.e. it must relate to the character or the use of land, and not be solely for some other purpose no matter how well-intentioned and desirable that purpose may be); and it must fairly and reasonably relate to the permitted development (i.e. there must be a real – as opposed to a fanciful, remote, trivial or de minimis – connection with the development). These criteria of materiality, oft-cited since, are derived from the speech of Viscount Dilhorne in *Newbury* at page 599H, and known as “the *Newbury* criteria”. They were very recently confirmed by the Supreme Court in *Aberdeen* (at [29] per Lord Hodge JSC, giving the judgment of the court).*
- (iii) *For a benefit to be material, it does not have to be necessary to make the development acceptable in planning terms; although, by section 106 of the Town and Country Planning Act 1990 and regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No 948), a planning obligation may only be taken into account in the determination of any planning application if it is so necessary. Although paragraph 206 of the NPPF provides that “planning conditions should only be imposed where they are necessary...”, the statutory requirement for necessity does not apply to the attachment of a condition to the grant of planning permission.*
- (iv) *Financial considerations may be relevant to a planning decision. For example, financial dependency of one part of a composite development on another part may be material, as may financial viability if it relates to the development. However, something which is funded from the development or otherwise offered by the developer will not,*

*by virtue of that fact alone, be sufficiently related to, or connected with, the development to be a material consideration.*

- (v) *Off-site benefits are not necessarily immaterial. An off-site benefit may be material if it satisfies the Newbury criteria.”*

46. In Good Energy Generation Ltd v Secretary of State for Communities and Local Government [2018] EWHC 1270 (“Good Energy Generation”), Lang J held that the Secretary of State was entitled not to give weight to either a community investment scheme or a reduced electricity tariff which were both open to residents as proposed by the applicant because they were not material considerations. It was held (at [86] and [92]) that the local tariff “*was essentially an inducement to make the proposal more attractive to local residents and the local planning authority*” whilst the community investment scheme “*plainly was not necessary to make the development acceptable in planning terms, applying regulation 122 of the CIL Regulations. It was merely a potential investment opportunity.*”

47. More recently in HJ Banks & Co Ltd v Secretary of State for Housing, Communities and Local Government [2018] EWHC 3141 (Admin) (“HJ Banks”), Ouseley J assessed the wider distinction between compliance with the CIL Regs and the ability of planning obligations to be material considerations (with emphasis added):

*“60. If the language of regulation 122 is to be interpreted as if it said that an obligation which did not comply with the tests was not a material consideration where it was not necessary for acceptability, a condition to the same effect could still be used lawfully, if it were otherwise a suitable alternative. This seems an odd result. The expressed aim of the regulation is to prevent the weight or significance of a specific reason for the grant of planning permission being given to an agreement which fails the tests. The tests are rather more restrictive than would be necessary merely to prevent agreements which embody immaterial considerations being taken into account. But of course, that, in its turn, creates the problem of how an agreement which was a material consideration but failed the tests should be dealt with. There is an obvious difficulty in drawing a distinction between what is material, and what, in any given decision, constitutes a reason for the grant of permission: does it mean that it could be taken into account in favour of the grant of permission just so long as it did not constitute of itself a reason for the grant of permission? **My initial reaction was that the language of regulation 122 should be interpreted as if it forbade a non-compliant CIL from being a material consideration. But I now consider that cannot be right in the light of the very specific language and tests in regulation 122, and the different tests for materiality and the lawfulness of conditions. Problematic though it may be, drawing a distinction between "reasons for the grant of***



permission" and "a material consideration" would fit with the tests in the CIL Regulations being more stringent than those necessary for a lawful condition or a material consideration. It may not be easy to operate in practice, but then neither would the straight substitution of "material consideration". So, the differing treatments which agreements, which did not comply with regulation 122, have received at times in the IR and DL does not of itself show that an error of law was made.

61. The crucial argument, however, is not about compliance with CIL regulations, but is much more fundamental: were the obligations material considerations at all? This issue is not resolved simply by showing an agreement not to be CIL compliant. The agreement in *Forest of Dean* was held to be immaterial, by reference to ordinary planning principles of materiality, and not by reference to CIL Regulations. The problem there with the community contribution from the wind turbine operator was that the fund could be spent on any community benefit without any restriction, even to a planning purpose, let alone one related to the particular planning proposal. It was a source of funds for unspecified community benefits, desirable no doubt but immaterial in planning terms. The purpose of the fund was too broad for the fund to be a material consideration in a planning decision; [58].

62. The vice of the *Forest of Dean* fund, submitted Mr Brown, was the vice of *Discover Druridge*, as described by the Inspector in C93, a description with which the Secretary of State agreed. There was no limit on what the fund could be spent on; it was not confined to a planning purpose or one related to the development proposed. It was again too broad. I cannot see any material distinction between the *Discover Druridge* fund and the community fund in *Forest of Dean*. No party, including the Secretary of State, suggested one. Mr Elvin recognised the difficulties. The Inspector and Secretary of State both concluded correctly that *Discover Druridge* was not CIL compliant. But compliance with CIL is not the be all and end all of the issue. The issue which the Inspector and Secretary of State also had to address was whether *Discover Druridge* was itself a material consideration. They ought to have concluded that it was not. This meant that it could not be taken into account at any stage of the planning balance either in relation to the specific topic of tourism, or in what the Secretary of State calls "the overall planning balance" preceding his consideration of paragraph 149, or in his consideration of the balance in paragraph 149. I accept therefore the premise of Mr Brown's argument that the Secretary of State has unlawfully taken an immaterial consideration into account as a moderate benefit to which he accorded moderate weight.

...

*The skills fund, prayed in aid in support of Mr Brown's argument, was not shown to be an immaterial consideration. The fact it was not CIL compliant does not make it immaterial. It did not suffer from the vice of Discover Druridge. Its purpose was clear and defined. There may be scope for debating materiality, but FoE's contention is too debateable for me to hold it immaterial in a side-wind to this challenge, and then also to subtract its moderate weight from what ought to have weighed in favour of the proposal. That would be to make a decision which it is for the Secretary of State to make."*

48. It is also important to note that the mere inclusion of a policy in the development plan is not sufficient to make what is otherwise irrelevant relevant. In *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 2 All E.R. 636 ("Tesco Stores"), later affirmed by *Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Company Ltd* [2017] P.T.S.R. 1413 ("Aberdeen"), Lord Hodge stated (at [51]) (with emphasis added):

*"The inclusion of a policy in the development plan, that the planning authority will seek such a planning obligation from developers, would not make relevant what otherwise would be irrelevant. Section 37(2) (para 25 above) requires the planning authority to have regard to the provisions of the development plan "so far as material to the application" and treats its provisions as a relevant consideration only to that extent. Thus, a green belt policy will be relevant to an application if the site of the application falls within the specified green belt and a requirement that a certain amount of open space is provided in a proposal for residential development will be relevant to an application for residential development. Similarly, a requirement in the plan that an applicant should agree to contribute to the cost of offsite infrastructure, which is related to its development, will be relevant to the application. But the words, which I have emphasised, mean that if a planning obligation, which is otherwise irrelevant to the planning application, is sought as a policy in the development plan, the policy seeking to impose such an obligation is an irrelevant consideration when the planning authority considers the application for planning permission."*

49. Holgate J in *Norfolk Homes Ltd v North Norfolk DC* [2020] EWHC 2265 (QB), rightly concluded that a planning obligation is a freestanding legal instrument and does not form part of a planning permission, whether in the context of ss.70 or 73. It is separately enforceable.

## **Discussion**

50. Our Clients have identified several issues of concern arising from the draft CTCS, all of which appear to us to be well founded:

- a) it fails to adequately distinguish between issues that currently impact the performance of the highway, walking and cycling networks (issues that developers of the proposed allocations should not ordinarily be required to address), and impacts that would be likely to arise as a result of proposed allocations;
- b) it fails to identify the precise impacts that each of the allocations will have and the infrastructure that each may require in order for it to be acceptable in planning terms;
- c) it fails to differentiate between the impacts that developments of different scales will have;
- d) it fails to link proposed mitigation measures to proposed allocations;
- e) it proposes to impose a charge upon developments irrespective of the credentials of each such site. Thus, the developers of sustainable developments may find themselves funding infrastructure which relates to improving the sustainability credentials of less well-connected rural sites;
- f) it does not provide a means by which the full cost of the identified mitigation measures will be secured and thus does not provide a mechanism for the delivery of the package of measures that would otherwise be considered necessary, and which would presumably need to be funded in addition to such a charge by means of a planning obligation;
- g) it expressly admits that further work is required in order to refine LCC's evidence base and the proposed schemes;
- h) it notes that the costs quoted in the document would be likely change over time (presumably beyond simply indexation);
- i) it is proposing to introduce a per dwelling contribution sums that are materially different to those that have been applied in recent consultations on planning applications, and therefore by CBC when taking applications to its Planning Committee; Indeed, remarkably, at the Launch Event for the draft CTCS, LCC was unclear about whether, it would be seeking the figures within the draft CTCS or its previous approach until the CTCS is adopted.

51. We note that the mitigation measures that LCC has considered to be necessary have been identified from an assessment that has considered the likely highways impacts if all of the EP's allocations are delivered. It also seems to have considered developments that are proposed close to Charnwood but located within neighbouring authorities. LCC notes that a minority of the allocated sites already have planning permission and that (obviously) these would not contribute towards the cost of the mitigation measures that have been identified (draft CTCS paragraph 3.4). However, any contributions sought under the draft CTCS may be deployed to address existing (or soon to be existing) impacts arising from developments which have already permitted. Similarly, the eighteen Loughborough Area Local Cycling and Walking Infrastructure Plan (LCWIP) schemes which are to be funded by the draft CTCS (fig. 6.4, p.52,

Table 7.9, p.97) do not appear to be directly linked to any of the allocations which are proposed in the Local Plan.

52. The application of the draft CTCS would place a very significant financial burden on developments within Loughborough, Shepshed and North of Leicester for improvements to walking, cycling and passenger transport infrastructure, yet these are located in the most sustainable parts of the Borough. The draft CTCS proposes to use monies raised to address the existing problems with the attractiveness of passenger transport services across the County (draft CTCS 4.13). Notably, LCC has attempted and failed to secure Government funding for its Bus Service Improvement Plans (“BSIPs”) and aim to now fund BSIPs through developer funding secured through the draft CTCS.
53. Policy INF2 as modified states that specific requests to fund the Transport Strategies will need to be supported by appropriate evidence, as well as transport assessments for individual sites. The draft CTCS does not however address what happens when site-specific work does not justify the level of contribution sought. INF2 expressly appears to allow for that outcome. The draft CTCS identifies 10 highway improvement schemes that LCC considers need to be delivered in order to mitigate the cumulative impacts of all of the proposed allocations and developments planned in neighbouring authorities. Four lie within the Loughborough / Shepshed strategy area; one straddles this and the Soar Valley; one straddles the Soar Valley and North of Leicester and four lie in the North of Leicester strategy area.
54. It is clear that there is a myriad of technical and evidential issues with the CTCS as proposed/drafted. For the sake of clarity, we intend to address each of the issues raised in our instructions in turn.
55. We consider that seeking developer contributions on a per dwelling basis through the CTCS is likely to be considered to be unlawful were the matter to be litigated. There are a number of reasons for this:
  - (a) It seeks to impermissibly replicate the CIL charging regime without including any of the safeguards of that regime endorsed by Parliament; which is especially egregious since CIL was introduced because of what were considered to be shortcomings in the power of s.106 to achieve a tariff-based approach;
  - (b) It seeks to introduce policy which ought to be contained within a development plan into a non-DPD;

- (c) It seeks to impermissibly include a formulaic approach to the collection of monies secured by s.106, contrary to policy (NPPF §34) and guidance (NPPG – supra), and appears not to have regard to either as a material consideration in doing so; and
- (d) It seeks to require by policy the provision of monies which do not meet the test of materiality and is starkly comparable to the unlawful tariff-based approach in the City of Aberdeen, struck down in the Supreme Court case of *Elsick* (supra).

56. Dealing firstly with the CIL issue. Section 205 of the Planning Act 2008, provides that the Secretary of State “*may with the consent of the Treasury make regulations providing for the imposition of a charge to be known as [CIL]*” ( subsection (1) ), and that “*[in] making the regulations the Secretary of State shall aim to ensure that the overall purpose of CIL is to ensure that costs incurred in supporting the development of an area can be funded (wholly or partly) by owners or developers of land in a way that does not make development of the area economically unviable*” ( subsection (2) ). The CIL Regulations were made under that power and came into force in 2010.

57. CIL was consciously introduced as a means to impose a generalised levy upon particular forms of development in order to obtain a formula-based contribution to pay for infrastructure which would be to the general public benefit, but would not necessarily meet the tests of regulation 122(2) were it to be sought in whole or part for the development under consideration. Indeed, CIL was specifically introduced because it was considered that a tariff-based approach would not be lawfully within the power of s.106<sup>3</sup>. It addressed what was perceived as a shortcoming of the power in s.106 to address wider infrastructure requirements, and whilst s.106 can be used to secure ‘pooled’ contributions<sup>4</sup>, that is subject to the express requirement that **any** singular contribution secured by a s.106 in policy terms must still meet the tests of policy (and regulation 122(2)).

58. Thus, the means by which generalised infrastructure contributions can be sought is the CIL regime. It is a significant shortcoming of the current CIL system, especially since amendments to regulation 123, that there is no requirement to actually spend any of the monies raised through CIL on any particular projects even if CIL was expressly promoted on the intention to do so.

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<sup>3</sup> See, for example [“Valuing Planning Obligations in England, Department for Communities and Local Government”](#), DCLG, May 2006, and the discussion of what was then called Planning Gain Supplement and was expressly referenced as a ‘tax’. Followed by the subsequent Green Paper “Homes for the future: more affordable, more sustainable” DCLG, 2007, Cmnd. 7191.

<sup>4</sup> NPPG 006 Reference ID: 23b-006-20190901

59. In this instance it is tolerably obvious that the draft CTCS is seeking to replicate CIL through the medium of policy, without express Parliamentary power, and without proceeding through any of the safeguards imposed by Parliament upon the collection of CIL. Indeed, if it had been lawfully possible to achieve the same objective as CIL simply through the adoption of policy such as the draft CTCS, then it would have made a nonsense of the lengthy Government angst about Planning Gain Supplement which led to the introduction of CIL in 2010.
60. That angst is explained by the fact that such an approach was considered on occasion to comprise no more than a development tax<sup>5</sup>, and such a tax would be required to be approved as such by Parliament under the constitutionally important provisions relating to the introduction of a Finance Bill promoted to Parliament in that way. That CIL is not considered to be a tax is solely because of the specific safeguards in the 2008 Act that monies collected can only be directed towards infrastructure relevant to land use planning.
61. The term ‘roof tax’ is sometimes used to describe generalised requests for contributions which have been promoted elsewhere on a per dwelling basis. However, the very fact that a proposal is promoted as a ‘tax,’ however colloquially, ought itself to be a warning of its likely illegality. There is a fine, but important line between pooled contributions which are justified and those which are legally dubious. Thus, generalised comparison with other approaches to ‘pooled contribution policies’ should not give comfort to LCC. Pooled s.106 contributions for a specific item of infrastructure (eg a relief road needed by multiple developments to make them acceptable) are not in principle unlawful, provided that appropriate safeguards are in place – crucially that the requirement for any such contribution meets the threefold test of materiality in the *Newbury* case; – most importantly that the contribution fairly and reasonably relates to the particular development in scale and kind. That test is palpably failed in the case of the CTCS.
62. Purporting to introduce a parallel regime to CIL through this draft policy – is in our view not lawful.
63. Dealing with the remaining concerns (set out at paragraph 55 above) on legality together. If it were permissible to introduce a formulaic approach and if the (fundamental) problems set out above could be overcome<sup>6</sup> then there is still a major problem in promoting such an approach through the promulgation of policy through the medium of an SPD or other non-DPD policy, rather than through a DPD. The most obvious point is that Government specifically advises

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<sup>5</sup> See for example para 1.7 of the 2006 DCLG publication (supra).

<sup>6</sup> Eg linking a development to a specific piece of infrastructure that was fairly and reasonably related to it in scale and kind for example, and met the other tests of policy and materiality.

(NPPF §34 and PPG (supra)) that this should **only** be done through a DPD where the implications of such an approach can be scrutinised and tested. However the point goes further, and one must ask whether or not the policy is of the nature of a development plan policy. In our view it plainly is, despite the purported ‘hook’ of linking the draft CTCS in CBC to INF2 of the emerging plan.

64. The implications of the draft CTCS have plainly not been tested or scrutinised in any forum, and it is difficult to see how the viability and transportation testing of individual allocations within the EP could act as a substitute for this process (even if that had been done). Additionally, and obviously INF2 is an emerging policy, and will only apply to CBC’s area and not the remainder of Leicestershire, despite LCC being the LHA for most of the County. Indeed, it is difficult to understand on what statutory basis LCC is acting in any event other than as local highway authority, and its powers might extend to the promotion of guidance, but not planning policy and certainly not planning policy that might comprise an LDD<sup>7</sup> let alone one which only applies to part of its area.
65. In terms of the draft CTCS itself, is in substance, a local development document whose policy requirements patently should have been brought forward as policy within a development plan pursuant to the statutory process prescribed under the 2004 Act (even had they been otherwise justified). Indeed, the same legal error committed in relation to the interim policy has in our view been repeated with respect to the approach within the draft CTCS.
66. The draft CTCS explicitly sets out LCC’s proposed approach to securing developer funding for the proposed mitigation measures and presents a Draft Policy on developer contributions which is expressly intended to inform how planning applications are determined. Indeed, it condescends to the details of the sums that it proposes to seek from applicants going forward, without those sums ever being the subject of scrutiny in terms of their objective justification, nor the impact upon viability of proposed development, still less their fairness – ie a blanket request which doesn’t differentiate between sustainable sites which do not generate any impact relating to the mitigation for which the contributions are being sought.
67. The draft CTCS is patently a document containing statements about: the development and use of land which the local planning authority wish to encourage during any specified period (reg. 5(a)(i)); an economic objective which is relevant to the attainment and development of land (developer contributions) (reg. 5(a)(i)ii); and development management policies intended to guide the determination of planning applications (reg. 5(a)(iv)). It is explicitly intended to be

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<sup>7</sup> Local development document.

taken into account as comprising policy when assessing development proposals and is not, on its face, merely a background document.

68. The draft CTCS would appear falls within the description set out in reg. 5(a)(i) and reg. 5(a)(iv), it is a local plan policy, and should not be promulgated through any other medium. To do so would, on the face it, circumvent the will of Parliament.
69. Were LCC to decide to adopt the CTCS in this form, then it would mean that the Clients would have been improperly denied the opportunity to engage with the viability implications contribution calculations through the EP EIP, let alone the relevance of the supposed mitigation schemes to individual development schemes and the amounts of any such contributions. The soundness of the policy has not been tested in the forum of an EIP. Such an approach would, in our view be unlawful.
70. We would reiterate that this tariff-based approach is very different from an instance where an allocation has been promoted, subject to the expectation that it will contribute towards the delivery of key infrastructure (such as a bypass) and that a high-level viability assessment is undertaken at local plan examination, with the detailed costing of the scheme and the precise sums being assessed & sought within an SPD.
71. National policy and guidance require that the approach to calculating developer contributions is set out in the Development Plan, at least in the first instance. LCC's approach is in our view likely to be concluded to be contrary to both law and national policy and guidance.
72. By virtue of regulation 8(3) of the 2012 Regulations, policies in an SPD must not conflict with the adopted development plan. The Council's adopted development plan is not the emerging local plan and the introduction of the draft CTCS therefore creates conflict with the adopted Development Plan, so even as an SPD it would be legally problematic.
73. Even pre-supposing the above issues were capable of being overcome, we are also asked to consider whether the per dwelling approach in the draft CTCS is consistent with Policy INF2.
74. We strongly consider that it is not. Policy INF2 as amended by MMS refers to requests for developer contributions needing to be informed by "appropriate evidence" and by the policy framework. INF2 also states that development will be supported where it is underpinned by a robust travel plan and transport assessment and where it demonstrates that such impacts can be appropriately and adequately mitigated. That is a conventional approach to the seeking of



contributions which would meet the conventional policy tests, and which could then be sought and taken into account where they meet the test of materiality.

75. The approach in the draft CTCS is a flat per-dwelling tariff-based approach which requires no development specific assessment, no appropriate evidence and seeks to disregard the policy tests as well as regulation 122(2). We would reiterate that it would appear to fall into precisely the same legal error as did Aberdeen City Council in the *Elsick* case (supra).
76. Furthermore, it is unclear what will actually be paid for under the CTCS contribution and what will be covered by the INF2 contribution. It is unclear how ‘double counting’ will be avoided. It is also unclear how it might be enforced. Thus, if there was a sufficient link between a given proposal and a contribution secured under the draft SPD which might meet the policy tests – then it is hard to see how LCC might be compelled to spend money which has been collected preferentially in respect of one scheme rather than another. To the contrary it would appear to be little more than an attempt to introduce a local tax without the express authority of Parliament, which, in the words of Lord Templeman in the seminal case of *M v Home Office* [1993] UKHL 5, would be to reverse the result in the English Civil War.
77. By virtue of regulation 8(3) of the 2012 Regulations, policies in an SPD must not conflict with the adopted development plan. The EP and draft CTCS are in our opinion in conflict in terms of the approach to contributions.
78. The decision to adopt the draft CTCS as policy would undoubtedly be a decision amenable to judicial review. The challenge would have to be brought promptly and no later than 6 weeks from the date of its adoption.
79. If a period of 6 weeks from adoption passes, without a challenge being brought, then LCC would no doubt seek to rely upon the presumption of regularity – namely that administrative acts are presumed to be lawful unless and until they are successfully challenged in the High Court<sup>8</sup>. However, even if that were to occur then we would re-stress the words of Lord Hodge in the *Elsick* case quoted above:

*“The inclusion of a policy in the development plan, that the planning authority will seek such a planning obligation from developers, would not make relevant what otherwise would be irrelevant.”*

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<sup>8</sup> The maxim is known by the Latin phrase “omnia praesumuntur rite esse acta”.

80. The same would obviously apply to policy which is promulgated further down the policy ladder in a non-DPD. Thus, even if no challenge to the draft CTCS were made, it would not mean that merely because such an approach were to be set out in a policy document which had not been challenged that it would comprise a lawful approach. To the contrary, it could properly be argued at each application stage, and worse, it could be argued that a planning permission which made such a contribution, and which was taken into account by the decision maker would be vulnerable to challenge (see the *Good Energy* case – supra). That said any permissions which have been granted on the basis that account has been taken of a contribution being made under the draft CTCS or its predecessor would benefit from the Presumption of Regularity if they are not challenged within the requisite 6-week period.

### **Conclusions**

81. We advise accordingly. Should anything else arise please do not hesitate to contact us further.

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*Paul G Tucker KC*  
*Constanze Bell*

**17<sup>th</sup> August 2024**



**Appendix B: ADC Review of CTCS**



# TRANSPORT REVIEW

CHARNWOOD LOCAL PLAN  
TRANSPORT CONTRIBUTIONS STRATEGY

## DOCUMENT CONTROL

project number: ADC3593			report reference: ADC3593-RP-A	
version	date	author	reviewer	comments
1		David Cummins		internal draft
2	20/08/2024	David Cummins	Jamie Cassie	first issue to the client team
3	21/08/2024		David Cummins	minor amends
4	22/08/2024		David Cummins	% typo corrected

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## 1.0 INTRODUCTION

- 1.1 In July 2024, Leicestershire County Council (LCC) published their *Draft Transport Contributions Strategy for Developments in Charnwood District*. It is the subject of consultation that ends on 23 August 2024.
- 1.2 The report is the latest in a series of reports published over the last six years as part of the evidence base for the Charnwood Local Plan, which is currently at examination. The report summarises the work that has been undertaken, and seeks to explain and justify LCC’s approach to requesting developer contributions. Those contributions are intended to deliver the transport improvements required to mitigate the cumulative and cross-boundary impacts of sites allocated in the draft Local Plan. In other words, the Plan-level mitigation. For ease of reference, the July 2024 report is referred to as the Charnwood Transport Contribution Strategy (“CTCS”).
- 1.3 This report has been prepared by ADC Infrastructure on behalf of a consortium of developers and land promoters. It summarises the CTCS, and in transport terms provides advice to the consortium on matter such as the applicability of a Plan-level strategy to individual developments, its deliverability, and weaknesses. It is anticipated that this review will be used to support representations to the CTCS consultation by LCC, and/or to the Local Plan Main Modifications consultation by Charnwood Borough Council.

## 2.0 POLICY

- 2.1 Section 106(1)(d) of the Town and Country Planning Act 1990 permits a Section 106 obligation to require, “... a sum or sums to be paid to the authority ... on a specified date or dates periodically.” Planning obligations can assist in mitigating the impact of unacceptable development to make it acceptable in planning terms.
- 2.2 Para 57 of the NPPF states that, as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, planning obligations must only be sought where they meet all of the following tests:
- 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.
- 2.3 Under Planning Obligations, the Planning Practice Guidance states<sup>1</sup>, “*Whilst standardised or formulaic evidence may have informed the identification of needs and costs and the setting of plan policies, the decision maker must still ensure that each planning obligation sought meets the statutory tests set out in regulation 122. This means that if a formulaic approach to developer contributions is adopted, the levy can be used to address the cumulative impact of infrastructure in an area, while planning obligations will be appropriate for funding a project that is directly related to that specific development.*”
- 2.4 Paragraphs 114 and 115 of the NPPF state:
- “In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:*
- appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
  - safe and suitable access to the site can be achieved for all users;*
  - the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code<sup>46</sup>; and*
  - any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.*

*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*

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



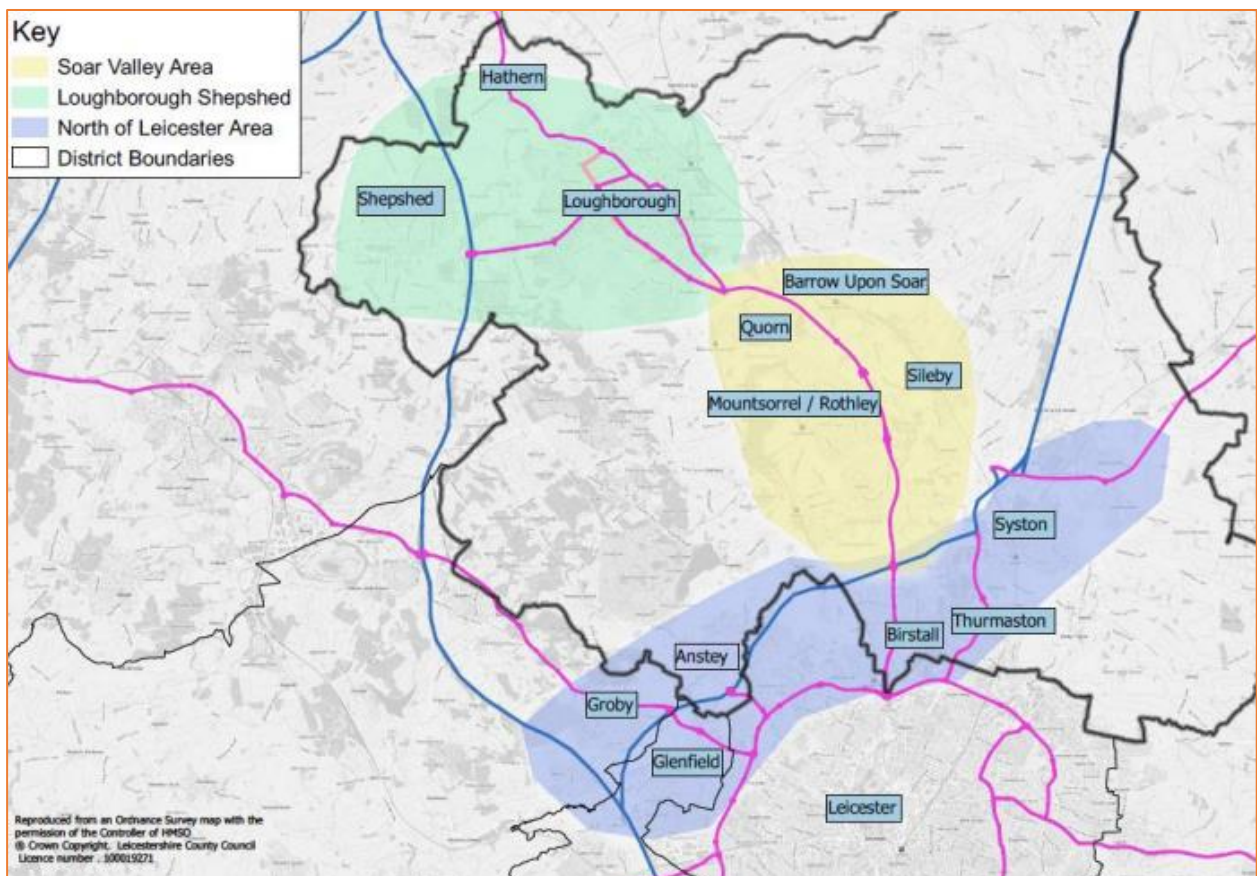
### 3.0 SUMMARY OF THE CTCS

#### Methodology

- 3.1 The Charnwood Transport Contributions Strategy (CTCS) has emerged following a series of assessments undertaken by LCC on behalf of Charnwood Borough Council. The first report was dated November 2018. The assessments were increasingly detailed, within the limitations of the strategic transport model that was employed to assist, initially LLITM and more recently PRTM (Pan-Regional Transport Model). Initial assessments considered growth options, and later assessments considered the draft allocations. Initially mitigation was explored crudely, assuming a simple 10% uplift in capacity at key junctions. More recently preliminary designs of mitigation works have been prepared.
- 3.2 One of the key conclusions of the initial work was that enabling sustainable travel and increasing walking, cycling, and bus journeys, could only ever mitigate a small amount of the travel demand created by the planned growth. Such measures were nevertheless important, and part of the overall mitigation package. Highway improvements were essential to mitigate the significant impacts arising from the planned growth.

#### Three strategy areas

- 3.3 A further key conclusion of LCC's assessments was that three strategies are required, focused on the three distinctive geographies in the following areas:
- Loughborough Shepshed
  - Soar Valley Area
  - North of Leicester Area



- 3.4 Within each of the strategy areas, there are three components to the Plan-level mitigation strategy:
- cycling and walking
  - passenger transport
  - targeted highway interventions (on the Major Road Network and Strategic Road Network)

### Cycling and walking

- 3.5 The cycling and walking elements are based on the Local Cycling and Walking Infrastructure Plan (LCWIP) for the various areas, as summarised in the table below. The large cost associated with the North of Leicester Area LCWIP should be noted, making up 53% of the whole mitigation package (£106.9m/£202.2m).

strategy area	proposals	estimated cost
Loughborough Shepshed	Loughborough Area LCWIP	£36.4m
North of Leicester	North of Leicester Area LCWIP	£106.9m
Soar Valley	initial work has been undertaken on the required improvements, but not to the level that would allow it to be titled an LCWIP	£2.0m
total		£145.3m

### Passenger transport

- 3.6 The passenger transport strategy comes from the Leicestershire Bus Service Improvement Plan (BSIP). It assumes that future enhancement of passenger transport provision within Charnwood will be based on a digital Demand Responsive Transport (DRT) model comparable to LCC's 'FoxConnect' Rural Mobility Fund (RMF) pilot project for South Leicestershire. It is further assumed that such a service would operate with three internal combustion engine vehicles, at an estimated net cost of £10,000,000 over a 15 year period. Around 75% of this cost would be attributable to the digital DRT service in the more rural Soar Valley area, with the remaining 25% being attributable to the 'fixed route' element between Shepshed and eastern Loughborough. The northern extents of Leicester are better provided for by existing bus services and therefore attract no cost.

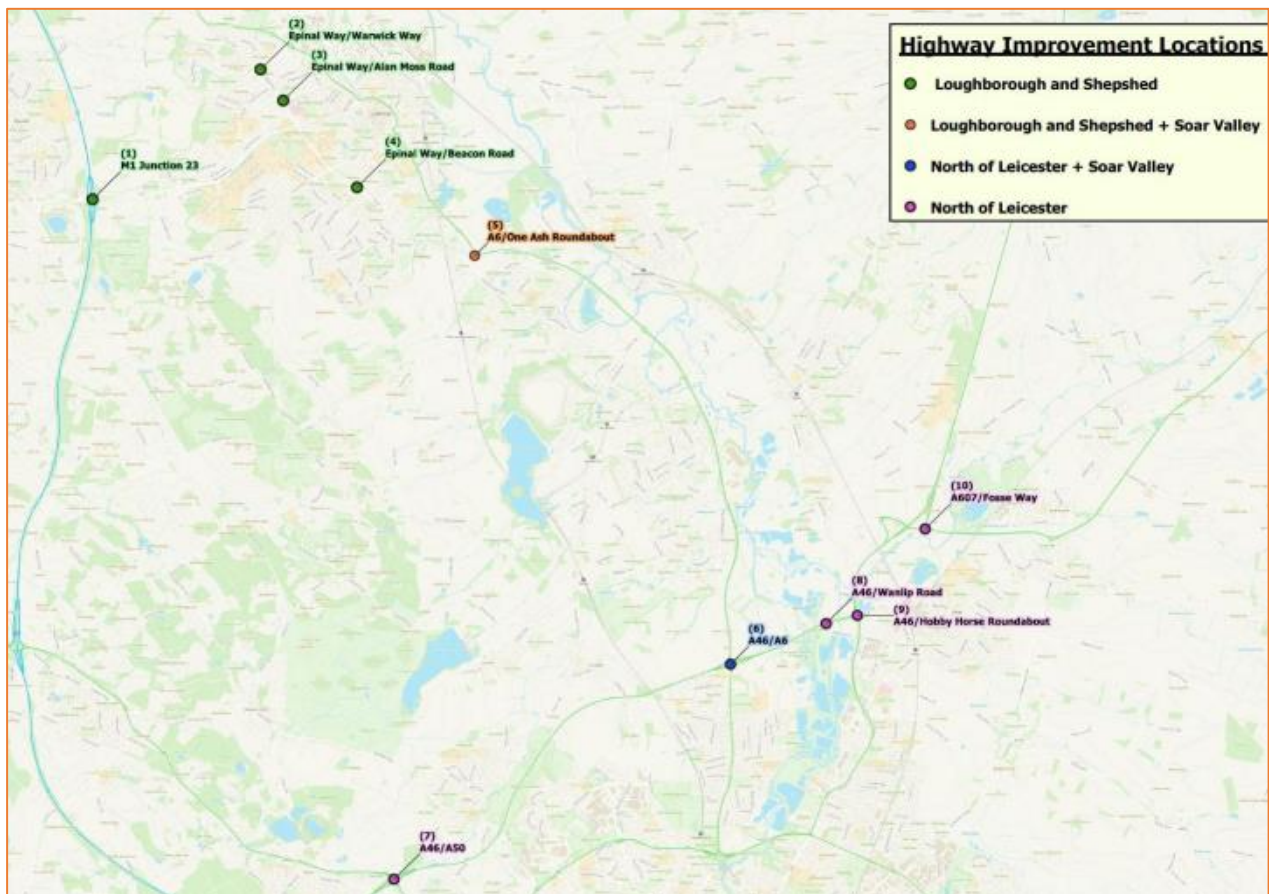
strategy area	proposals	estimated cost
Loughborough Shepshed	based on DRT model explained in the BSIP	£2.5m
North of Leicester		£0m
Soar Valley	based on DRT model explained in the BSIP	£7.5m
total		£10m

### Targeted highway interventions to the Major Road Network and Strategic Road Network

- 3.7 Reviewing measures of congestion such as journey times and ratio of flow to capacity, the traffic modelling work has identified a set of junctions that would perform poorly in the future with the Local Plan growth. Mitigation schemes have been identified at 10 junctions (listed below), on the: Major Road Network (maintained by LCC) and Strategic Road Network (maintained by National Highways).

ref	location	strategy area	cost
1	M1 Junction 23	(SRN) Loughborough and Shepshed	£15.1m
2	Epinal Way/ Warwick Way	(MRN) Loughborough and Shepshed	£1.0m

3	A6004 Epinal Way/Alan Moss Rd	(MRN) Loughborough and Shepshed	£0.7m
4	A6004 Epinal Way/Beacon Rd	(MRN) Loughborough and Shepshed	£1.6m
5	A6/A6004 One Ash Rbt.	(MRN) Loughborough and Shepshed (+ Soar Valley)	£2.8m
5	A6/A6004 One Ash Rbt.	(MRN) (Loughborough and Shepshed +) Soar Valley	£0.8m
6	A46/A6	(MRN) (North of Leicester +) Soar Valley	£2.5m
6	A46/A6	(MRN) North of Leicester (+ Soar Valley)	£6.8m
7	A46/A50	(SRN) North of Leicester	£6.4m
8	A46/Wanlip Rd	(SRN) North of Leicester	£4.8m
9	A46/A607 Hobby Horse Rbt.	(SRN) North of Leicester	£2.9m
10	A607/Fosse Way	(MRN) North of Leicester	£1.6m
total			£47.0m



### Total cost

3.8 From the above, LCC estimated costs for each of the three strategy areas, as summarised in the table below.

strategy area	cycling and walking	passenger transport	highway interventions	total
Loughborough Shepshed	£36.4m	£2.5m	£21.2m	£60.1m
North of Leicester	£106.9m	£0m	£22.4m	£129.3m
Soar Valley	£2.0m	£7.5m	£3.3m	£12.8m
total	£145.3m	£10m	£46.9m	£202.2m

## Contribution calculation

3.9 Policy DS3 of the draft Local Plan<sup>2</sup> sets out the proposed housing allocations. The number of dwellings has been modified as a result of examination. The current number of allocated dwellings in each of the strategy areas has therefore been determined, as shown in the table below. Each allocation is attributed to one of the transport strategy areas, also as shown in the table below. Hence, a cost per dwelling has been derived to cover the costs of the transport strategy in each area. This is method (i), the amount required to fully-fund the transport strategy. This was the method LCC were employing until their July 2024 report was released. The method (i) figures were those requested in consultation responses issued by LCC.

3.10 In their July 2024 report, LCC introduced method (ii). It was the affordable per dwelling contribution, calculated using Charnwood Borough Council's viability evidence. LCC state that the per dwelling contribution they will request will be the lower of the two figures calculated in each area.

transport strategy area (and LP site ref.)	dwellings	£m	£/dwelling	
			method (i)	method (ii)
Loughborough/Shepshed HA15 to 42, HA61 to 63	4,336	£60.1	<del>£13,900</del>	£5,300
North of Leicester HA1 to 14, HA43 to 44, HA60, HA64 to 69	3,617	£129.3	<del>£35,800</del>	£11,500
Soar Valley HA45 to 59	1,322	£12.8	£9,700	<del>£22,100</del>
total	9,275	£202.2		

## Shortfall

3.11 While it does not form part of LCC's report, they nevertheless make clear that the contributions they will gather in each area will be insufficient to fully fund the strategy, because:

- multiple allocated sites have already gained consent, losing the opportunity to secure a contribution
- site specific viability assessments may evidence that they can only afford to pay less
- selecting only the affordable contribution results in a shortfall.

3.12 Setting aside points a) and b), point c) can be tested, because the numbers can be used to derive the maximum amount LCC could expect to collect, as shown in the table below. There would be a £124.8m (62%) shortfall against the fully-fund requirement of £202.2m.

transport strategy area	dwellings	£/dwelling	amount raised	amount to fully fund	shortfall
Loughborough/Shepshed	4,336	£5,300	£23.0m	£60.1m	£37.1m
North of Leicester	3,617	£11,500	£41.6m	£129.3m	£87.1m
Soar Valley	1,322	£9,700	£12.8m	£12.8m	£0.0m
total	9,275		£77.4m	£202.2m	£124.8m

<sup>2</sup> Policy DS3: Housing Allocations, Charnwood Local Plan 2021-37 Pre-Submission Draft July 2021

### Commercial development contributions

- 3.13 LCC note that there are two new commercial sites allocated in the draft Local Plan, which total 7.3 hectares of floorspace (although it should say site area). Development of these sites will be expected to contribute. However, the relatively small amount of commercial use will create only a small dent in the shortfall in funding.
- 3.14 The contribution requested will be derived by equating daily employment trips to daily residential trips and the per dwelling contribution for the relevant area. As with housing sites, commercial sites carried over from the 2015 adopted Core Strategy are not expected to contribute.

### Justification for a contribution request

- 3.15 Aside from the derivation of the contribution request, the CTCS sets out the justification for a request. It states LCC's opinion that the CTCS is an approach for sharing the costs of the package on a reasonable and proportionate basis between development sites across the Borough, which reflects the broad geographic extent of the three area transport strategies.
- 3.16 It notes that proposed site allocations are already coming forward as planning applications (or are anticipated in the near future), whilst a minority of sites have already secured planning permission. Sites approved prior to the development of the CTCS have not been required to contribute to the Plan-level cumulative mitigation, leaving an increasing funding shortfall.
- 3.17 LCC note that there is currently no alternative or better evidence and package of interventions on which to base a coordinated, borough-wide, approach to mitigating the cumulative and cross-boundary impacts of growth.
- 3.18 For these reasons, LCC considers the Local Plan's transport evidence base and mitigation package to be the most appropriate foundation on which to base the draft approach to securing contributions to transport infrastructure across Charnwood, with the proviso that the approach can be reviewed and updated as and when any significant additional evidence emerges.
- 3.19 Conversely, LCC note, continued failure to secure such contributions would result in residual severe cumulative transport impacts, contrary to paragraphs 114 (a) and (d) and 115 of the NPPF.
- 3.20 It is this last reason that is at the crux of LCC's justification for the CTCS. It treats development collectively, rather than on its own merits. LCC say, that the development coming forward on allocated sites will cumulatively have a severe impact on the road network. Further, that in accordance with para 115 of the NPPF, individual developments should consider their cumulative impact. On that basis, each and every development will have a severe impact, which should be mitigated. The mitigation will be the transport interventions paid for by the CTCS.

## 4.0 DISCUSSION

- 4.1 It is acknowledged that deriving a package of Plan-level measures for a whole borough is not a simple task. Nevertheless, in this case, in our opinion the methods employed to derive the CTCS are problematic and will cause it to be challenged, as explained below. The CTCS is not based on robust evidence of appropriate and justified mitigation.

### Collective treatment

- 4.2 At the highest level, there is a conflict with policy that says a development must be treated on its own merits. It cannot be said that every development in Charnwood would have a severe impact on the road network. Section 2 describes the requirement that, even where a formulaic approach is adopted, Planning Obligations must fund a project that is directly related to the individual development.
- 4.3 While it may be the case that cumulatively all the proposed development in Charnwood would cause certain junctions to become severely congested, it is not reasonable to say that therefore every development would have a severe impact that should be mitigated. Equally, it is not reasonable to take the blanket approach and say that therefore every development must contribute in order to become acceptable.

### Scale of development

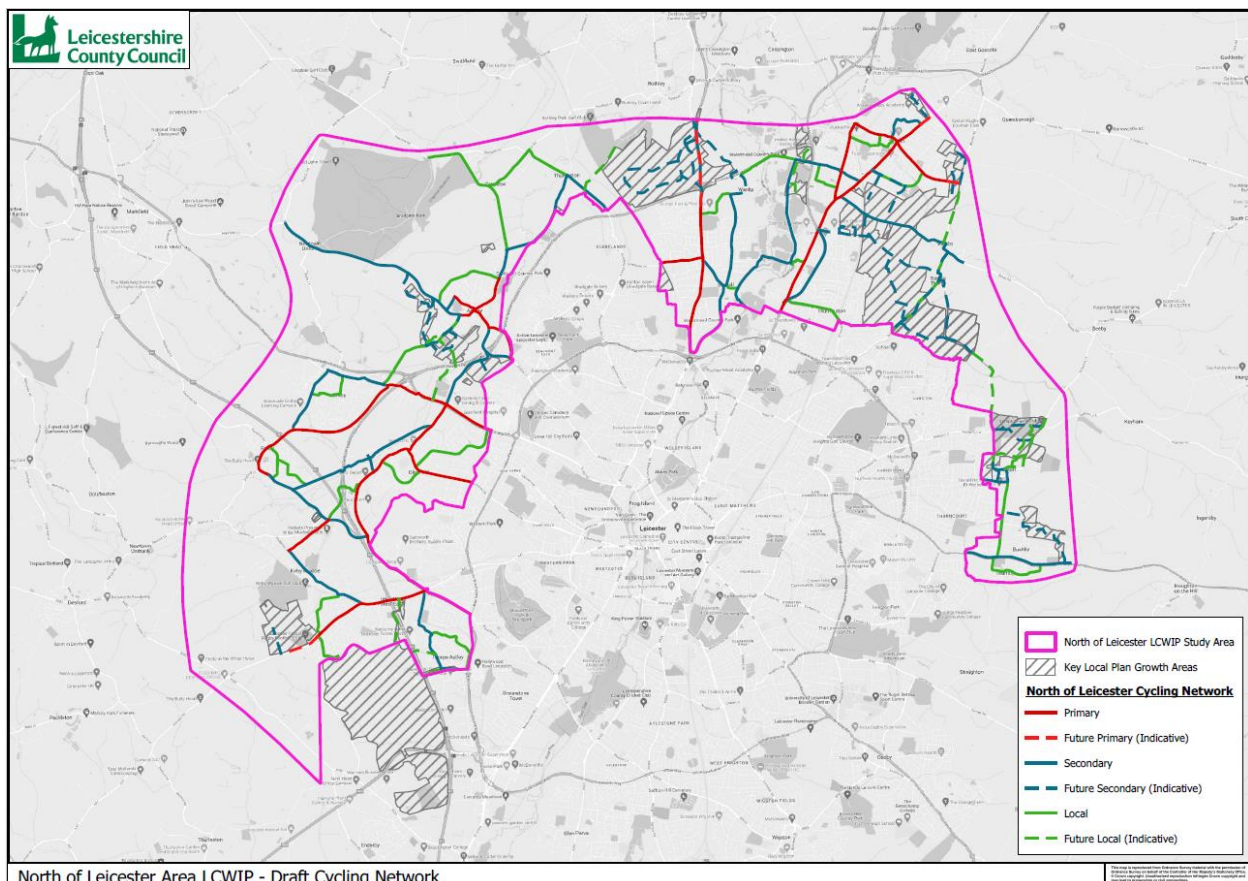
- 4.4 Linked to the point above, the CTCS takes insufficient account of scale. This is best illustrated through an example. Draft allocation HA69 (The former Rectory and Land at Thurstaston) is in the North of Leicester Area. It is allocated for development of 19 dwellings. There is an undetermined planning application for that site (reference P/22/1252/2) for which LCC have provided a consultation response, raising no objections subject to conditions. They conclude that the impacts of the development on highway safety would not be unacceptable, and when considered cumulatively with other developments, the impacts on the road network would not be severe. Despite that, LCC request a contribution, based on method (i) above, of £679,800 (= £35,778.93 per dwelling x 19 dwellings).
- 4.5 The Highways Report that accompanied the planning application determined that the 19 proposed dwellings would generate 15 and 13 traffic movements in the morning and evening peak hours respectively. That traffic was assumed to split evenly at the site access, so there would be increases of around 7 vehicles on the roads either side of the access. That increase is considerably below the 30 vehicles threshold used by LCC as a starting point to consider whether a development will have an adverse impact on the road network, let alone a severe impact.
- 4.6 The developer also proposed off-site footway enhancements, to ensure connectivity with the village centre. No off-site provisions were made for cyclists. Bus stops are within 300m of the centre of the site.
- 4.7 Therefore, despite a well located development of modest scale, it is caught in the formulaic approach that considers it would be part of the Local Plan growth that cumulatively has a severe impact on the road network.

### Disproportionate cost of LCWIP

- 4.8 Local Cycling and Walking Infrastructure Plans (LCWIP) are gradually being adopted for areas across Leicestershire. Although pedestrian infrastructure has had due attention for many years,

cycle infrastructure has had less attention. Plus, the publication of LTN1/20 in July 2020 changed the design requirements for cycling infrastructure. For many years shared footway/cycleways have been incorporated within developments in Leicestershire. Segregated facilities are now the preferred option with share facilities only as a last resort. Segregated facilities require much greater land and come at considerably greater cost.

- 4.9 The wide spread provision of measures also seeks to catch up with the lack of facilities provided for decades. As such, the greatest part of the cost in an LCWIP is the cycle provisions, rather than pedestrian provisions. It also means the proposed measures are extensive. That is well illustrated by the North of Leicester area LCWIP, that has a cost attributed to it of £106.9m, which is 53% of the overall CTCS mitigation package.
- 4.10 Further the North of Leicester LCWIP is making up for past deficiencies, resolving an existing problem, and would be infrastructure that would benefit all residents in the North of Leicester not just the residents of the new developments. Therefore, it cannot be reasonable to attribute the whole cost of implementing that LCWIP to the allocated sites.
- 4.11 The Loughborough Area LCWIP was approved by LCC's Cabinet in November 2023. However, the North of Leicester Area LCWIP is a work in progress and not in the public domain. LCC's website says that public engagement on the final draft will be in Autumn/Winter 2025. It is therefore far from complete. An interim cost is therefore derived on the basis it will be similar to the South of Leicester Area LCWIP, which has been adopted. That is not a robust assumption.
- 4.12 The Draft Cycling Network element of the North of Leicester LCWIP is shown below. It clearly covers not just Charnwood, but also parts of Blaby District and Harborough District. The costing is unclear, but it would clearly be unreasonable for Charnwood residents to bear the costs of works in other districts.



### The sustainability of a strategy area

- 4.13 Linked to the point above, there is a contradiction in the sustainability of the strategy areas and the amount they are expected to contribute. The North of Leicester area is the most sustainable, closest to the primary destination for the majority of journeys to work (central Leicester). For that reason, there is greatest potential to enable residents of the area to cycle. Hence the extensive proposals for the area, and the disproportionately large cost associated with the LCWIP. That might be acceptable if there was a correspondingly small contribution required for highway interventions attributable to that area. Instead, the North of Leicester area also attracts the highest cost for highway interventions.
- 4.14 This is in contrast to the Soar Valley strategy area, which is the least sustainable, having greatest reliance on the car, where the total costs of £12.8m are a tenth of those in the North of Leicester strategy area (£129.3m).

### Paying twice

- 4.15 The issue of paying twice is not addressed by the CTCS. In other words, if a developer is paying a contribution, a large part of which is to introduce a cycle lane in an area, why should they introduce a cycle lane as part of their development proposal. They would be paying twice. The strategy is therefore likely to make developers reluctant to introduce works.
- 4.16 There is no mechanism in the CTCS for a reduction in contribution in cases where a developer proposes an intervention. LCC could say in response that a developer must provide what is necessary and directly related to manage the travel demand created by their development. However, that being the case, if they were not required to provide a cycle lane elsewhere, because it was being provided by the contribution, that would suggest it was not directly related to the development, or necessary to make the development acceptable.

### Strategic modelling

- 4.17 The assessment of highway impacts has been undertaken using a strategic transport model. That is necessary given the scale of the area being assessed (Charnwood Borough). However, it means detail is lost and conclusions about impact are likely to differ when individual sites are subject to the much greater detail that is part of a Transport Assessment.
- 4.18 Again, that is best illustrated by way of an example. Draft allocation HA48 (Land off Willow Road, Barrow Upon Soar) is the subject of an undetermined planning application. Again, LCC have provided a consultation response raising no objection subject to conditions, and requesting a contribution in line with the CTCS.
- 4.19 However, the Transport Assessment produced for that development undertook a cumulative assessment considering all the allocated development in Barrow Upon Soar. Although the strategic transport model was used (PRTM), it was subject to more detailed scrutiny, applicable to the development management process. The result was a conclusion that there would not be adverse traffic impacts beyond Barrow Upon Soar, and hence not at the junctions where interventions are proposed to be paid for by development in the Soar Valley area (A6/A6004 One Ash Roundabout and A46/A6 Birstall Interchange).
- 4.20 In fact, the more detailed Transport Assessment found that there would be an impact requiring mitigation at another junction that does not form part of the CTCS, and was not identified as



problematic by the Borough wide cumulative development. This clearly calls into question the thoroughness of the findings of the CTCS.

### A thorough assessment?

- 4.21 Related to the point above, about the thoroughness of the strategic modelling, there are several locations of known traffic congestion that have not been identified as requiring highway interventions. Those areas are already congested because of a lack of traffic capacity, and will become severely congested as a result of the Local Plan growth. They include, for example, Nanpantan crossroads on the western side of Loughborough, which early stages in the modelling work identified as problematic. Despite that, a mitigation scheme has not been identified for the crossroads.
- 4.22 They also include the A512 Ashby Road through Shepshed. The considerable growth in Shepshed resulting from the previous tranche of development resulted in an LCC commissioned Shepshed Transport Study. It identified capacity enhancements paid for by developer contributions along the A512 Ashby Road corridor that have since been implemented. However, the works merely mitigated that earlier tranche of development and Ashby Road remains congested. The considerable growth of Shepshed set out in the draft Local Plan will again worsen the already very congested Ashby Road. Despite that, it does not feature at all in the highway interventions required to mitigate the Local Plan growth.

### Preliminary design status of schemes and cost estimating

- 4.23 The highway interventions in the CTCS are high level and have not been subject to the assessment and design rigour that would be required in a Transport Assessment process. It is very likely that the high level preliminary schemes currently identified will be subject to considerable change. For example, the known congestion at the A46/A607 Hobby Horse Roundabout is mitigated by a single improvement to only one approach, widening the current one lane wide slip road that turns left and northwards from the A46. The cost estimate of that scheme is £2.9m, which has a healthy contingency, and yet will still have many unknowns such as the cost of utility diversions.
- 4.24 Equally, LCC note themselves the costs for the LCWIP schemes are approximate. They say, “*The scale and complexity of the proposed LCWIP networks means that it would be disproportionate and prohibitively costly to prepare designs and cost estimates for every single corridor of the networks at this stage. Therefore, the LCWIP cost estimates have been derived from preliminary conceptual design work and cost estimates for selected priority corridors within the relevant LCWIP area and Active Travel England cost bench marking data, which represents the most robust and proportionate approach at this time.*”
- 4.25 That is reasonable, but gives considerable scope for cost variation, particularly as much of the proposed cycle network is in urban areas where there is a lack of spare land, footways and carriageways will be altered, and there could be significant costs associated with utility diversions.

### Cross border impacts

- 4.26 The strategic traffic modelling that was undertaken tried to isolate the impacts caused by the traffic generated by the Charnwood allocations. However, at a strategic level that is relatively inaccurate. The performance of any junction is caused by two interacting factors. The amount of traffic already passing through the junction, and hence the residual capacity, and then the

additional traffic that is added on top by the development, and hence the deterioration in performance.

- 4.27 Traffic does not confine itself to borough council borders. For example, new residents in North West Leicestershire travelling through Charnwood to Leicester will increase background traffic and reduce the residual capacity. Traffic will also travel between and through the different strategy areas. For example, traffic from the Soar Valley area will route through the North of Leicester area to reach Leicester city centre. Thus, congestion at junctions in the North of Leicester area is not necessarily directly related to new residents of houses built in the North of Leicester area.

### **Improving buses**

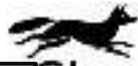
- 4.28 Although it is only a small part of the total cost, the contributions towards buses are to reverse decisions made by LCC as a result of funding cuts. Bus services throughout Leicestershire have declined, and it is unreasonable for new developments in Charnwood to overcome that existing deficiency.
- 4.29 The proposed Demand Responsive Transport services would cater for all residents in the area they are introduced, and not just those of the new developments. Such services are rarely viable, and are largely to ensure accessibility to facilities for those who cannot drive, rather than being a measure that mitigates severe peak hour traffic congestion.

### **Shortfall in funding**

- 4.30 As noted above, even if LCC were to gain the maximum possible funding they request from all allocated sites, there would be a 62% shortfall of £124.8m from the amount required to fully-fund the mitigation package. The shortfall will be considerably greater, because various allocations already have consent, and viability appraisals on other sites are likely to demonstrate that the full contribution is not viable.
- 4.31 In a situation where less than half of the mitigation package can be implemented, prioritisation will be required. It is highly likely that measures directly related to some sites will not be delivered. The CTCS is silent on phasing, and therefore less than robust.
- 4.32 LCWIPs were partly derived as a means by which local highway authorities could apply for Government funding. Should LCC gain Government funding, the balance to be found from developer contributions would reduce. That could lead to the inequitable situation where LCC is paid twice for implementing a piece of cycling infrastructure.

## 5.0 CONCLUSIONS

- 5.1 This paper summarises the Charnwood Transport Contribution Strategy. It recognises that attempting to mitigate the dispersed borough wide transport impacts is not simple. Nevertheless, the methodology chosen by Leicestershire County Council is problematic and subject to challenge.
- 5.2 Treating the proposed development collectively, and saying that cumulatively it would have a severe impact, and therefore each individual development would have a severe impact, is not a reasonable argument. A number of the aspects of the mitigation package would not be directly related to the developments to which they are attributed. They would not be necessary to make the development acceptable.
- 5.3 Certain of the measures would also be disproportionate and not fairly related in scale to the impact of the development. The LCWIPs in particular make up a significant amount of the package cost, yet mainly address a deficit in infrastructure provision unrelated to the allocations. In certain places where measures would be expected, such as highway interventions along the A512 Ashby Road in Shepshed, they are missing.
- 5.4 Overall, therefore, in transport terms it cannot be concluded that the CTCS sets out robust evidence of appropriate and justified mitigation.



Charnwood

**Charnwood Local Plan 2021-2037**

Policies Map Consultation Form

For responding to:

- **Policies Maps Changes**  
(EXAM 84)

Ref:

(For official use only)

**Please return to Charnwood Borough Council by 5PM on 4th September 2024 by:**

- **Email:** [localplans@charnwood.gov.uk](mailto:localplans@charnwood.gov.uk)
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First Name	<input type="text"/>	<input type="text" value="Lynette"/>
Last Name	<input type="text"/>	<input type="text" value="Swinburne"/>
Job Title (where relevant)	<input type="text"/>	<input type="text" value="Associate Director"/>
Organisation (where relevant)	<input type="text" value="Trustees of The Grace Dieu &amp; Longcliffe Estates and Roythornes Trustees Limited"/>	<input type="text" value="Savills UK Ltd"/>
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Telephone Number	<input type="text" value="C/O Agent"/>	<input type="text" value="01733209943"/>

E-mail Address  
(where relevant)

Lynette.swinburne@savills.com

---

## Part B – Please use a separate sheet for each comment

---

Name or Organisation: Savills on behalf of Trustees of The Grace Dieu & Longcliffe Estates and Roythornes Trustees Limited

3. Please set out any comments that you have on EXAM 84: Schedule of Proposed Changes to Policies Maps 1 and 2.

Please refer to covering letter attached.

(Continue on a separate sheet /expand box if necessary)

**Please note** *In your comments you should provide succinctly all the evidence and supporting information necessary to support your comments and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.*

4. Signature:  Date:

For responding to:

- **Main Modifications**  
(EXAM 81-83)
- **Housing Land Supply**  
(EXAM 58J – 58M)

Ref:

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(where relevant)

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## **Part B – Please use a separate sheet for each representation**

---

Name or Organisation: Savills on behalf of Trustees of The Grace Dieu & Longcliffe Estates and Roythornes Trustees Limited

3. To which modification to the Local Plan or to the Local Plan diagrams does this representation relate?

Modification Reference

MM27

4. Do you consider the modification is (please tick as appropriate):

4.(1) Legally compliant

Yes

No

4.(2) Sound

Yes

No

5. Please give details of why you consider the modification is not legally compliant or is unsound. Please be as precise as possible.  
If you wish to support the legal compliance or soundness of the modification, please also use this box to set out your comments.

Please refer to covering letter attached.

(Continue on a separate sheet /expand box if necessary)

6. Please set out the change(s) to the modification you consider necessary to make it legally compliant and sound, in respect of any legal compliance or soundness matters you have identified at 5 above. You will need to say why each change will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

Please refer to covering letter attached.

(Continue on a separate sheet /expand box if necessary)

7. Please set out any comments that you have on the updated housing land supply documents:

EXAM 58J: Housing Trajectory Update 2024

EXAM 58K: Housing Trajectory Update Notes July 2024

EXAM 58L: Update to Five Year Supply on Adoption May 2024

EXAM 58M: Updated Housing Land Supply Site List April 2024

N/A

(Continue on a separate sheet /expand box if necessary)

**Please note** In your representation you should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.

8.  
Signature:

L. Swinburne (Savills UK Ltd) on  
behalf of landowners

Date:

04/09/24



For responding to:

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(EXAM 81-83)
- **Housing Land Supply**  
(EXAM 58J – 58M)

Ref:

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E-mail Address	<input type="text"/>	<input type="text" value="Lynette.swinburne@savills.com"/>

(where relevant)

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## **Part B – Please use a separate sheet for each representation**

---

Name or Organisation: Savills on behalf of Trustees of The Grace Dieu & Longcliffe Estates and Roythornes Trustees Limited

3. To which modification to the Local Plan or to the Local Plan diagrams does this representation relate?

Modification Reference

MM29

4. Do you consider the modification is (please tick as appropriate):

4.(1) Legally compliant	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
4.(2) Sound	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

5. Please give details of why you consider the modification is not legally compliant or is unsound. Please be as precise as possible. If you wish to support the legal compliance or soundness of the modification, please also use this box to set out your comments.

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EXAM 58M: Updated Housing Land Supply Site List April 2024

N/A

(Continue on a separate sheet /expand box if necessary)

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Signature:

L. Swinburne (Savills UK Ltd) on  
behalf of landowners

Date:

04/09/24

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(EXAM 81-83)
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(EXAM 58J – 58M)

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E-mail Address	<input type="text"/>	<input type="text" value="Lynette.swinburne@savills.com"/>

(where relevant)

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## **Part B – Please use a separate sheet for each representation**

---

Name or Organisation: Savills on behalf of Trustees of The Grace Dieu & Longcliffe Estates and Roythornes Trustees Limited

3. To which modification to the Local Plan or to the Local Plan diagrams does this representation relate?

Modification Reference

MM49

4. Do you consider the modification is (please tick as appropriate):

4.(1) Legally compliant	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
4.(2) Sound	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

5. Please give details of why you consider the modification is not legally compliant or is unsound. Please be as precise as possible. If you wish to support the legal compliance or soundness of the modification, please also use this box to set out your comments.

Please refer to covering letter attached.

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EXAM 58K: Housing Trajectory Update Notes July 2024

EXAM 58L: Update to Five Year Supply on Adoption May 2024

EXAM 58M: Updated Housing Land Supply Site List April 2024

N/A

(Continue on a separate sheet /expand box if necessary)

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Signature:

L. Swinburne (Savills UK Ltd) on  
behalf of landowners

Date:

04/09/24

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(EXAM 81-83)
- **Housing Land Supply**  
(EXAM 58J – 58M)

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E-mail Address	<input type="text"/>	<input type="text" value="Lynette.swinburne@savills.com"/>

(where relevant)

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## **Part B – Please use a separate sheet for each representation**

---

Name or Organisation: Savills on behalf of Trustees of The Grace Dieu & Longcliffe Estates and Roythornes Trustees Limited

3. To which modification to the Local Plan or to the Local Plan diagrams does this representation relate?

Modification Reference

MM50

4. Do you consider the modification is (please tick as appropriate):

4.(1) Legally compliant	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
4.(2) Sound	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

5. Please give details of why you consider the modification is not legally compliant or is unsound. Please be as precise as possible. If you wish to support the legal compliance or soundness of the modification, please also use this box to set out your comments.

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EXAM 58M: Updated Housing Land Supply Site List April 2024

N/A

(Continue on a separate sheet /expand box if necessary)

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Signature:

L. Swinburne (Savills UK Ltd) on  
behalf of landowners

Date:

04/09/24



Charnwood

## Charnwood Local Plan

### 2021-2037

Main Modifications  
Representation Form

For responding to:

- **Main Modifications**  
(EXAM 81-83)
- **Housing Land Supply**  
(EXAM 58J – 58M)

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E-mail Address	<input type="text"/>	<input type="text" value="Lynette.swinburne@savills.com"/>

(where relevant)

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## **Part B – Please use a separate sheet for each representation**

---

Name or Organisation: Savills on behalf of Trustees of The Grace Dieu & Longcliffe Estates and Roythornes Trustees Limited

3. To which modification to the Local Plan or to the Local Plan diagrams does this representation relate?

Modification Reference

MM152

4. Do you consider the modification is (please tick as appropriate):

4.(1) Legally compliant	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
4.(2) Sound	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

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N/A

(Continue on a separate sheet /expand box if necessary)

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L. Swinburne (Savills UK Ltd) on  
behalf of landowners

Date:

04/09/24



Charnwood

# Charnwood Local Plan

## 2021-2037

Main Modifications  
Representation Form

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E-mail Address	<input type="text"/>	<input type="text" value="Lynette.swinburne@savills.com"/>

(where relevant)

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## **Part B – Please use a separate sheet for each representation**

---

Name or Organisation: Savills on behalf of Trustees of The Grace Dieu & Longcliffe Estates and Roythornes Trustees Limited

3. To which modification to the Local Plan or to the Local Plan diagrams does this representation relate?

Modification Reference

MM157

4. Do you consider the modification is (please tick as appropriate):

4.(1) Legally compliant	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
4.(2) Sound	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>

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EXAM 58J: Housing Trajectory Update 2024

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EXAM 58L: Update to Five Year Supply on Adoption May 2024

EXAM 58M: Updated Housing Land Supply Site List April 2024

N/A

(Continue on a separate sheet /expand box if necessary)

**Please note** In your representation you should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.

8.  
Signature:

L. Swinburne (Savills UK Ltd) on  
behalf of landowners

Date:

04/09/24



Charnwood

## Charnwood Local Plan

### 2021-2037

Main Modifications  
Representation Form

For responding to:

- **Main Modifications**  
(EXAM 81-83)
- **Housing Land Supply**  
(EXAM 58J – 58M)

Ref:

(For official  
use only)

Please return to Charnwood Borough Council by 5PM on 4th September 2024 by:

- **Email:** [localplans@charnwood.gov.uk](mailto:localplans@charnwood.gov.uk)
- **Post:** Local Plans, Charnwood Borough Council Southfield Road, Loughborough, LE11 2TX

The Privacy Statement can be found at: [www.charnwood.gov.uk/privacy](http://www.charnwood.gov.uk/privacy)

This form has two parts –

Part A – Personal Details: need only be completed once.

Part B – Your representation(s). Please fill in a separate sheet for each representation you wish to make.

## Part A

### 1. Personal Details\*

### 2. Agent's Details (if applicable)

*\*If an agent is appointed, please complete only the Title, Name and Organisation (if applicable) boxes below but complete the full contact details of the agent in 2.*

Title	<input type="text"/>	<input type="text" value="Ms"/>
First Name	<input type="text"/>	<input type="text" value="Lynette"/>
Last Name	<input type="text"/>	<input type="text" value="Swinburne"/>
Job Title (where relevant)	<input type="text"/>	<input type="text" value="Associate Director"/>
Organisation (where relevant)	<input type="text" value="Trustees of The Grace Dieu &amp; Longcliffe Estates and Roythornes Trustees Limited"/>	<input type="text" value="Savills UK Ltd"/>
Address Line 1	<input type="text" value="C/O Agent"/>	<input type="text" value="Stuart House"/>
Line 2	<input type="text"/>	<input type="text" value="St John's Street"/>
Line 3	<input type="text"/>	<input type="text" value="Peterborough"/>
Line 4	<input type="text"/>	<input type="text"/>
Post Code	<input type="text"/>	<input type="text" value="PE1 5DD"/>
Telephone Number	<input type="text" value="C/O Agent"/>	<input type="text" value="01733209943"/>
E-mail Address	<input type="text"/>	<input type="text" value="Lynette.swinburne@savills.com"/>



(where relevant)

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## **Part B – Please use a separate sheet for each representation**

---

Name or Organisation: Savills on behalf of Trustees of The Grace Dieu & Longcliffe Estates and Roythornes Trustees Limited

3. To which modification to the Local Plan or to the Local Plan diagrams does this representation relate?

Modification Reference

MM158

4. Do you consider the modification is (please tick as appropriate):

4.(1) Legally compliant	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
4.(2) Sound	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>

5. Please give details of why you consider the modification is not legally compliant or is unsound. Please be as precise as possible.  
If you wish to support the legal compliance or soundness of the modification, please also use this box to set out your comments.

Please refer to covering letter attached.

(Continue on a separate sheet /expand box if necessary)

6. Please set out the change(s) to the modification you consider necessary to make it legally compliant and sound, in respect of any legal compliance or soundness matters you have identified at 5 above. You will need to say why each change will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

Please refer to covering letter attached.

(Continue on a separate sheet /expand box if necessary)

7. Please set out any comments that you have on the updated housing land supply documents:

EXAM 58J: Housing Trajectory Update 2024

EXAM 58K: Housing Trajectory Update Notes July 2024

EXAM 58L: Update to Five Year Supply on Adoption May 2024

EXAM 58M: Updated Housing Land Supply Site List April 2024

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Signature:

L. Swinburne (Savills UK Ltd) on  
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Date:

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Charnwood

# Charnwood Local Plan

## 2021-2037

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Last Name	<input type="text"/>	<input type="text" value="Swinburne"/>
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Telephone Number	<input type="text" value="C/O Agent"/>	<input type="text" value="01733209943"/>
E-mail Address	<input type="text"/>	<input type="text" value="Lynette.swinburne@savills.com"/>

(where relevant)

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## **Part B – Please use a separate sheet for each representation**

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Name or Organisation: Savills on behalf of Trustees of The Grace Dieu & Longcliffe Estates and Roythornes Trustees Limited

3. To which modification to the Local Plan or to the Local Plan diagrams does this representation relate?

Modification Reference

MM189

4. Do you consider the modification is (please tick as appropriate):

4.(1) Legally compliant	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
4.(2) Sound	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

5. Please give details of why you consider the modification is not legally compliant or is unsound. Please be as precise as possible.  
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