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Dear Simon

**Sainsbury's Supermarkets Ltd - Lightship Way, Colchester**

We write further to your e-mail of 27 June 2016 on this matter. You have requested we expand on why we consider the cycle bridge contribution does not comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010. This is not quite right, our concern is that, to date, the Council has not properly justified requiring the contribution having regard to Regulation 122. It may help to set out the relevant policy and legal requirements to examine this issue further.

**Relevant Requirements**

The NPPG confirms that planning obligations assist in mitigating the impact of "*unacceptable development to make it acceptable in planning terms*" and confirms they must meet the requirements of Regulation 122, namely:

*"A planning obligations 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."*

The NPPG goes on to confirm that:

- policies for seeking planning obligations should be set out in the Local Plan and that SPD's are not appropriate to add additional financial burdens on development;
- planning obligations should not be sought where they are clearly "not necessary" to make the development acceptable in planning terms; and
- planning obligations "must be fully justified and evidenced".



***The Cycle Bridge Contribution***

Currently, we have received no evidence from the Council to justify the need for the contribution having regard to each limb of the Regulation 122 test. Our client's planning consultants have been seeking this justification since February 2016 and more generally confirmation of the obligations sought since the planning application was submitted in April 2014. Your more recent e-mail of 9 June 2016 does not specifically address the Regulation 122 requirements; so far there has been a failure to explain:

- (a) why the cycle bridge contribution is required to make the development acceptable in planning terms, there is nothing in the committee report which identifies what unacceptable impact will be created by the development absent the improvements to the cycle bridge. The Council's own justification note provided to Indigo by e-mail on 11 February 2016 states:

*"Currently this bridge only allows for walking creating a barrier in the cycle network..... CBC is not recommending refusal but seeking improvements that provide real choice."*

Thereby confirming that the improvement to the cycle bridge is to improve a deficiency in the existing cycle network; and not because our client's development would be unacceptable and refused planning permission if the contribution is not made;

- (b) how the improvements to the cycle bridge are specifically related to the development? Your e-mail of the 9 June 2016 suggests that there is a need for sustainable travel via improvements for cycling. However this does not recognise that Sainsbury's is already making significant contributions to the public transport network, will be implementing a green travel plan, and extending the existing cycle link along the A134 to the end of Lightship Way; all of which improve the sustainability credentials of the scheme and, importantly, are directly related to the development;
- (c) the relevant policy support in the Local Plan for the obligation, as identified in the NPPG, reliance on an SPD alone is not sufficient; and
- (d) how the sum was calculated and how this is proportionate to the development. Where other contributions are being secured in the S106 Agreement, there has been a clear rationale and/or calculation for the sum sought. That is currently lacking in relation to the cycle bridge. This is evidenced again in the Council's note of 11 February 2016 which confirms it originally sought a contribution of £350,000 but was now requiring £100,000, with no evidence provided as to how this reduction had been assessed or why the £100,000 was now appropriate.

The overall deliverability of the cycle bridge improvements is contingent on funding from other sources and third party land being secured. That the cycle bridge scheme may not be realised, raises the question of why the contribution is necessary to make the development acceptable.

We trust this provides the additional clarification you were seeking. Please do call if there is anything arising from this letter if it would be easier to discuss. In the meantime, if the Regulation 122 justification is not forthcoming, it would be helpful if you can confirm that the cycle bridge contribution requirement will be returned to committee on 14 July 2016 to confirm it is no longer required.

Yours sincerely

