

Brighton & Hove City Council
Community Infrastructure Levy
Draft Charging Schedule Representations
Response Form

**Wednesday 28 March 2018 until
Wednesday 13 June 2018 (midnight)**

Summary:

Representations are invited on this **Draft Charging Schedule** within a consultation period starting Wednesday 28 March 2018 (00.00 am) and ending Wednesday 13 June 2018 (midnight). The charging area covers the administrative area of Brighton and Hove City Council excluding the South Downs National Park area. The charging authority and the collecting authority is Brighton & Hove City Council.

The Draft Charging Schedule and relevant evidence is published in accordance with regulation 16 of the Community Infrastructure Levy Regulations 2010 (as amended).

Representations:

You can view the Draft Charging Schedule and relevant evidence and respond online using the Consultation Portal: www.brighton-hove.gov.uk/DCS-consultation

If you wish to submit a written representation by email or by post, please use this form.

The Draft Charging Schedule and relevant evidence can be inspected and downloaded from www.brighton-hove.gov.uk/content/planning/planning-policy/developer-contributions

If you are commenting on multiple sections of the Draft Charging Schedule and relevant evidence you will need to complete a separate copy of Part B of this form for each representation.

This form may be scanned in and returned via email to PlanningPolicy@brighton-hove.gov.uk or sent to: Policy, Projects and Heritage Team; First Floor, Hove Town Hall, Norton Road BN3 3BQ

Accessibility If you would like further support in accessing this consultation please see our guidance on our [Accessibility webpage](#). Paper copies of documents are available to inspect in our Customer Service Centres and all Brighton & Hove City Council Libraries during the consultation.

Guidance:

This form has four parts:

- Part A – Personal Details
- Part B – Your Representation(s)
- Part C –Request to be heard by the CIL Examiner
- Part D –Request to be notified in accordance with reg. 16 (e)

- Please use this response form as it will help the council to keep accurate and consistent records of all the comments on the Draft Charging Schedule; alternatively compete online at www.brighton-hove.gov.uk/DCS-consultation

- Please use a separate copy of Part B (and Part C if required) of this form for each representation you wish to make about the Draft Charging Schedule
- It is important that you include your name and address as anonymous forms cannot be accepted. If your address details change, please inform us in writing via email or letter.
- All representations should be received by midnight of the evening of Wednesday 13 June 2018
- You may withdraw your representation at any time; please inform us in writing via email or letter.

Part A: Personal Contact Details

Data Protection Notice: Personal Information given on this form will be used by Brighton & Hove City Council, the Examiner and the Programme Officer in connection with statutory functions of the CIL Regulations 2010 (as amended) to bring in a CIL Charging Schedule. It will not be used for any other purpose. Representations will not be treated as confidential and will be published on our website and in any subsequent statements; however, personal details such as address, phone number or email address will **not** be published on the website.

If you have any questions or concerns about how your personal data is to be used in this process, you can contact the Data Protection Team on data.protection@brighton-hove.gov.uk or 01273 295959

| | 1. Your Details | 2. Agent Details (if applicable) |
|-------------------------------------|-----------------|----------------------------------|
| Title | | |
| Forename | | |
| Surname | | |
| Job Title (if applicable) | | |
| Organisation (if applicable) | MODA LIVING | TURLEY |
| Address | | |
| Postcode | | |
| Email Address | | |
| Telephone No. | | |
| Mobile No. | | |

All comments must be received by Wednesday 13 June 2018 (midnight)
 Late representations will not be accepted.
 Please email forms to PlanningPolicy@brighton-hove.gov.uk or post to:
 Policy, Projects and Heritage Team; First Floor, Hove Town Hall, Norton Road BN3 3BQ
 Alternatively you may use the consultation portal to make representations

Part B: Your Representation

Please use the space below to provide detailed comments (please use a separate section of Part B for each representation you make and attach extra sheets as necessary)

A separate representation document is attached.

All comments must be received by Wednesday 13 June 2018 (midnight)
Late representations will not be accepted.
Please email forms to PlanningPolicy@brighton-hove.gov.uk or post to:
Policy, Projects and Heritage Team; First Floor, Hove Town Hall, Norton Road BN3 3BQ
Alternatively you may use the consultation portal to make representations

Part C: Request to be heard by the CIL Examiner

Regulation 16 identifies that persons making representations may request the right to be heard by the CIL Examiner.

Do you wish to request the right to be heard by the CIL Examiner? **YES**

If you wish to request this right, please outline why you consider this to be necessary:

YES. FOR THE REASONS SET OUT IN THIS REPRESENTATION.

Please note that it is for the Examiner to decide how the hearing is to be conducted.

| | |
|----------------|----------|
| Signed/typed*: | |
| Dated*: | 06-06-18 |

Please also see following page - **part D – requests to be notified in accordance with regulation 16** (below)

All comments must be received by Wednesday 13 June 2018 (midnight)
Late representations will not be accepted.
Please email forms to PlanningPolicy@brighton-hove.gov.uk or post to:
Policy, Projects and Heritage Team; First Floor, Hove Town Hall, Norton Road BN3 3BQ
Alternatively you may use the consultation portal to make representations

Part D –Requests to be notified

Regulation 16 allows that representations may be accompanied by a request to be notified, at a specified postal address, of any of the following:

- That the draft charging schedule has been submitted to the examiner in accordance with section 212 of the Planning Act 2008,

| | |
|--|--|
| I / <input checked="" type="radio"/> We request to be notified of the above at this address in accordance with regulation 16 | |
| Address | |
| Postcode | |
| Email Address | |

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| I / <input checked="" type="radio"/> We request to be notified of the above at this address in accordance with regulation 16 | |
| Address | |
| Postcode | |
| Email Address | |

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| I / <input checked="" type="radio"/> We request to be notified of the above at this address in accordance with regulation 16 | |
| Address | |
| Postcode | |
| Email Address | |

A person who has made representations about the Draft Charging Schedule may withdraw those representations at any time by giving notice in writing to the charging authority.

All comments must be received by Wednesday 13 June 2018 (midnight)
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 Policy, Projects and Heritage Team; First Floor, Hove Town Hall, Norton Road BN3 3BQ
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Brighton and Hove Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS) Consultation June 2018

Response by Moda Living Limited

Moda Living is a specialist investor, developer and operator of best-in-class, professional build to rent communities. Creating the UK's leading rental brand, with a growing pipeline of nearly 7,000 apartments located in high profile city centre locations, it is leading the way. Since inception it continues to push the boundaries using style, service and innovation to craft considered, inclusive residential communities. Focusing on unparalleled customer service and best-in-class institutional grade design, Moda Living promotes long-term healthy, social, connected living for its residents and is pioneering positive change to the UK rental landscape.

www.modaliving.com

Introduction

- 1.1 MODA Living ("MODA") has recently secured a major development interest within a prominent area of Hove, which has been a longstanding target for regeneration by Brighton and Hove City Council ("B&HCC"). We have a direct interest in planning and development policies which enable and support high-quality, sustainable development which adds to the success and attractiveness of Brighton and Hove as a place to do business and as a place to live.
- 1.2 As part of the due diligence process MODA has carefully reviewed the B&HCC CIL DCS, which has been published for statutory consultation until Wednesday 13th June 2018.
- 1.3 The purpose of this written representation is to highlight to B&HCC a number of significant technical concerns and compliance issues in relation to the proposed CIL charges set out in the CIL DCS and the technical viability evidence utilised to inform and underpin the CIL DCS.
- 1.4 Based on our experience of CIL Examinations elsewhere, it is essential that a number of major technical issues in the CIL DCS are addressed by B&HCC prior to its submission to the Planning Inspectorate (PINS) for Examination. If submitted in its present form by B&HCC, it is highly likely that the approach will be found unsound which benefits no parties. Furthermore, if submitted without further work and revisions, MODA would be forced to pursue a detailed challenge to the adoption of the CIL DCS via the Examination process which it would ideally like to avoid via collaborative working with B&HCC.
- 1.5 The primary point of challenge is the failure to demonstrate that the CIL DCS has met the essential requirements of CIL Regulation 14. Specifically, MODA contend that the rates within the CIL DCS will prevent or delay development of key sites within strategic locations and will pose a threat to the

delivery of the Brighton and Hove City Plan Part One adopted in March 2016 (“the Local Plan”). Resultantly, the CIL DCS will not “strike an appropriate balance” between funding infrastructure and economic viability across the charging area. As currently drafted, the CIL DCS will not support the viability of development and contribute positively towards the delivery of the Local Plan.

- 1.6 In addition, we are of the clear view that the CIL DCS in its current form faces significant risk of being found unsound at Examination on the basis that it will fail to reflect adopted national planning policy and published guidance at the point at which it is tested before the Examiner.
- 1.7 Our main concerns and objections to the CIL DCS are set out below, and are intended to help shape and inform further dialogue with B&HCC which Moda would ideally like to pursue with officers.

Matters of Representation

Role of MODA Living in Delivering the Local Plan

- 1.8 Policy CP1A of the Local Plan identifies a requirement for the Local Plan to deliver at least 13,200 new homes to be built over the plan period 2010 – 2030.
- 1.9 The Local Plan sets out that the majority of new housing, employment and retail development required will be located on brownfield (“previously developed”) sites within the city’s built up area and directed to eight specific development areas (DA1– 8).
- 1.10 The Local Plan identifies Development Area 6 (“DA6”) entitled the “Hove Station Area” as a mixed-use regeneration area with the capacity to deliver significant contributions to the residential and employment requirements of the city. The Local Plan specifically targets the delivery of a minimum of 525 homes and 1,000m² of new employment floorspace within the plan period. Regeneration of DA6 therefore represents a key component of the success (or failure) of the Local Plan.
- 1.11 MODA has recently secured an interest in a substantial brownfield site located off Sackville Road¹ (“the subject site”) within DA6. The potential mixed-use capacity of the subject site is significant; equating to approximately 5,000m² of mixed-use/employment floorspace and circa 800 dwellings. MODA is currently preparing a planning application and has already entered into pre-application discussions with B&HCC with respect to the subject site.
- 1.12 The subject site would clearly provide a major catalytic contribution to the delivery of the ambitions of the Local Plan for the DA6 Hove Station Area, as well as representing a significant scale of growth, regeneration and investment at the overall city-scale (in excess of 5% of the minimum identified housing requirement in the Local Plan). Its importance to the successful delivery of the Local Plan cannot, and should not, be understated or ignored.
- 1.13 The subject site is also seen as integral to the local, community driven vision for the regeneration of the area through the emerging Hove Station Neighbourhood Plan.

¹ The Sackville Road Trading Estate and coal-yard site

Strategic Site Viability Assessment & CIL Rates

- 1.14 The subject site has been identified within B&HCC's published CIL DCS as attracting a proposed CIL liability of £150/m² (GIA) on C3 residential development. This is the spatial 'Zone 2' rate. Retail uses (high street or convenience) will also be liable for a £50/m² (GIA) CIL rate (city wide). Supermarket or retail warehouse development will be liable for a CIL rate of £100/m² (GIA) where over 100m² (GIA).
- 1.15 The CIL Viability Study (2017) concludes that B1 office floorspace would not attract a CIL rate, and this employment use is therefore liable for a CIL rate of £0/m² (GIA) under the 'All other development uses' category. The CIL Viability Study (2017) is clear that B1 office development is of marginal viability, with its delivery placed further at risk by the imposition of a CIL liability.
- 1.16 On the basis that the subject site represents a mixed-use/employment/commercial and residential proposition, including approximately 5,000m² of mixed-use/employment floorspace, this highlights the prospective challenges posed to delivering a viable overall scheme. There will be a necessity for a degree of cross-subsidy between uses to facilitate delivery of a mixed-use proposition in accordance with the ambitions of the Local Plan. If the planning policy costs, including CIL, are imposed at a level that deters delivery of the residential component, this will undermine the opportunity to deliver employment uses.
- 1.17 As a result, MODA is highly concerned that the proposed CIL rates (in particular the 'Zone 2' residential CIL rate) will render the subject site unviable for development when taking into account Local Plan affordable housing policy² and the suite of costs relating to Section 106 planning obligations in addition to the costs of assembling, remediating and redeveloping a complex brownfield site for a high specification mixed use development scheme.
- 1.18 The Government's current Planning Practice Guidance (NPPG) for CIL confirms that the Charging Authority must take into account the cumulative impact of such costs when setting its levy rate or rates, particularly those likely to be incurred on strategic sites or brownfield land³.
- 1.19 MODA notes that the published CIL DCS includes a specific 'Strategic Sites' CIL rate of £0/m² (all uses) for two specified sites (Brighton Marina Inner Harbour and the King Alfred Leisure Centre/RNR site).
- 1.20 B&HCC has published a CIL DCS Strategic Sites Informative (May 2018) document alongside the CIL DCS. The document confirms that the CIL DCS is predicated on an "area wide approach" viability evidence base, which is not intended or able to reflect potential issues on individual sites of scale.
- 1.21 The document proceeds to confirm that representations made to the CIL Preliminary DCS ("PDCS") consultation, and subsequent viability evidence (source unstated) triggered a review of two development sites allocated in the Local Plan, "*which can be regarded as strategic in terms of CIL guidance*".

² Policy CP20 of the Local Plan requires 40% onsite affordable housing provision on sites of 15 or more (net) dwellings

³ NPPG CIL (2014) Paragraph: 020 Reference ID: 25-020-20140612

- 1.22 The level of detailed and evidenced justification for inclusion of the sites at a CIL rate of £0/m² is relatively limited however, the following is clear.
- (a) Brighton Marina Inner Harbour: the site is considered strategic due to the scale of residential development proposed. In this case circa 1,000 units. The infrastructure required (podium; sea defences; utilities upgrades) result in abnormal costs that are stated as demonstrating “*a significant viability deficit*”. In light of representations submitted to the PDCS consultation, and historic viability evidence (dated 2012 and 2014), it is stated that “*the Council considers that sufficient appropriate available evidence is already in place to support a nil-rating*” for CIL.
 - (b) King Alfred/RNR Site: the site is considered strategic due to its provision of sports facilities for the city. As with the above, the Council considers that sufficient appropriate evidence is in place to support a nil rating for CIL. This is stated as constituting a “*successful recent Housing Investment Fund marginal viability bid of £15.2m as well as previous experience of an unimplemented previous scheme due to viability concerns*”, which “*indicate significant viability issues with delivery of this development*”.
- 1.23 The “Strategic Allocation” within DA6 is the “Conway Street Industrial Area” is comparatively modest in its scale and ambition to both the above and the Sackville Road site (subject site). The “Conway Street Industrial Area” allocation constitutes the development of 200 residential units, 12,000 m² of retained/replaced employment floorspace, a shift to high quality flexible office/business (B1) floorspace and enhancements to the streetscape.
- 1.24 As a result, and in this context, MODA is firmly of the view that the subject site represents a proposition of such significant regenerative scale for the city, in alignment with the policies and objectives of the Local Plan, that it meets the criteria of the Government’s Planning Practice Guidance for CIL for consideration by B&HCC as “strategic”. It is clear that the subject site is far more closely representative of the “strategic” scale of development of the Brighton Marina Inner Harbour site.
- 1.25 Furthermore, informal indications from B&HCC officers are that the subject site is likely to be allocated with a site-specific policy in the emerging Part 2 Local Plan. This would add an additional layer of policy beyond that provided at present by Policy DA6 in the Local Plan referred to above. This suggestion of a proposed site specific policy is welcomed, and serves to underline the strategic importance of the site to B&HCC’s aspirations and objectives for delivering planned growth. This also underlines the importance of CIL facilitating, rather than frustrating, the delivery of this key, strategic site.
- 1.26 MODA invites, and respectively asks, B&HCC to consider the subject site at Sackville Road as strategic for the purposes of setting CIL rating within the CIL DCS. This is also consistent with the Government’s NPPG for CIL, which confirms that:

“If the evidence shows that the area includes a zone, which could be a strategic site, which has low, very low or zero viability, the charging authority should consider setting a low or zero levy rate in

that area. The same principle should apply where the evidence shows similarly low viability for particular types and/or scales of development.”⁴

- 1.27 MODA is in the process of undertaking a detailed site viability assessment which will form part of the planning application for the site. We are not presently in a position to submit supporting and appropriate technical viability evidence publicly via the current CIL DCS consultation, but MODA invites collaboration with B&HCC (and its appointed CIL viability consultants) in order to provide B&HCC with the necessary level of information to prepare appropriate evidence to inform the CIL DCS. We strongly believe this evidence base will help confirm the validity of applying a “strategic site” CIL rate of £0/m², or an alternative reduced rate, to enable the subject site to be regenerated as part of the delivery of the Local Plan.
- 1.28 It is MODA’s view that this evidence is presently absent from the CIL Viability Study (2017) and CIL Viability Addendum Report (February 2018), which means there is no available evidence on which an Examiner could determine whether the CIL DCS rates strike an appropriate balance or conversely risk the viability of large brownfield sites suitable for higher density mixed-use development (such as the subject site).
- 1.29 The CIL Viability Study (2017) contains only one large residential/residential led development scenario. This is predicated on a scheme of 700 units of which 200 units are 1-bed and 2-bed flats, with the remaining majority representing houses (2-bed to 4-bed). The land area proposed leads to a conclusion that this development scenario is more closely reflective of a lower density greenfield or former industrial brownfield site typically delivered by volume housebuilder(s), with the input assumptions reflecting this. However, as the CIL Viability Study (2017) provides no clear explanation of gross:net efficiency, density, and site coverage it is not possible to definitively confirm this.
- 1.30 There is very limited discussion of the results of viability testing for the 700 unit development scenario within Section 3.8 of the CIL Viability Study (2017). Moreover, Appendix IIa does not include the full range of residential appraisals for the 700 unit scheme and only presents two appraisal scenarios assuming £4,000/m² and £4,500/m² sales values at the minimum greenfield release benchmark land value (£500,000 per gross hectare). In any event, this site typology is not a useful or relevant example of a mixed-use brownfield site of the scale, complexity and nature planned for and allocated in Brighton and Hove.
- 1.31 No evidence is provided to assess the implications on propensity to provide CIL where larger developments are brought forward on previously developed sites, which necessitate assembling land out of former / redundant commercial use (e.g. business use), existing commercial use, the reuse of residential / mixed-use sites (including a level of incentive to release the land), or sites with extant planning permission for such uses (e.g. high alternative use values).
- 1.32 This is a substantial gap in the viability evidence base – particularly as the CIL Viability Study (2017) refers to such scenarios being considered “*most likely in the local context*”, with benchmark land values at £1.5m/Ha to £5m/Ha and an upper figure of £10m/Ha utilised, and confirms that, “*the influences of existing / alternative uses on site value need to be carefully considered*”.

⁴ PPG Viability (2014) Paragraph: 021 Reference ID: 25-021-20140612

1.33 In particular, paragraph 3.1.18 states:

“In B&H CC’s case there will continue to be a variety of sites coming forward – including a significant reliance PDL (previously developed land – i.e. brownfield) based opportunities where an established or potential alternative use means that the scope for land value uplift as well as significant planning gain may well be more limited.”

1.34 This is of particular concern to MODA, for analysis of the results tables within Appendix IIa for a relatively small-scale 100 Unit Scheme - Flats (6+ Storey) typology (for sale) demonstrates limited propensity to contribute to CIL at VL1 and VL2 (£4,500 - £5,000/m²) in Zone 2 at mid-range and higher benchmark land values – even before allowing for the 50% “buffer” back from the margins of viability.

1.35 It is anticipated that this issue would be even more acute on a larger scale, higher density urban mixed-use development on the subject site at Sackville Road – particularly given MODA is proposing to deliver a Build to Rent (“BTR”) residential product (rather than a traditional “for sale” flatted scheme).

Compliance with draft NPPF and draft PPG (Viability & Build to Rent)

1.36 The Government’s Planning Practice Guidance (NPPG) for CIL clearly states that CIL charging schedules with differential rates should not have a disproportionate impact on particular sectors or specialist forms of development⁵.

1.37 MODA is highly concerned that the CIL DCS will have a substantial punitive impact on the proposed development of institutional high quality BTR development within the city.

1.38 The CIL DCS presently fails to distinguish between BTR and traditional residential development, which reflects a major shortcoming in the underpinning of the financial viability evidence base. In fact, neither the CIL Viability Study (2017) or the CIL Viability Addendum Report (February 2018) makes any reference whatsoever to BTR as a category of development.

1.39 MODA would draw B&HCC’s attention to the Government’s parallel *draft revised NPPF and Planning Practice Guidance* and *Supporting Housing Development through Developer Contributions* consultations, which closed on 10th May 2018.

1.40 The draft revised NPPF contains a strong emphasis on housing delivery. Within this there is a clear recognition that a multi-tenure approach is required in order to meet challenging national (and local) housing targets, with BTR introduced into national policy. It is defined within the draft glossary as:

“Purpose built housing that is typically 100% rented out. It can form part of a wider multi-tenure development scheme comprising either flats or houses, but should be on the same site and/or contiguous with the main development. Schemes will usually offer longer tenancy agreements of three years or more, and will typically be professionally managed stock in single ownership and management control.”

⁵ PPG Viability (2014) Paragraph: 021 Reference ID: 25-021-20140612

- 1.41 The draft Planning Practice Guidance (“NPPG”) includes a specific section on BTR, which requires local authorities to assess the need for homes in the private rented sector as part of the Local Plan evidence base. If a need is identified draft NPPG requires that:

“...authorities should include a plan policy setting out their approach to promoting and accommodating build to rent. This should recognise the circumstances and locations where build to rent developments will be encouraged – for example as part of large sites and/or a town-centre regeneration area.”⁶

- 1.42 The differences between the BTR investment, delivery and operating model and more traditional forms of housing have been recognised by Government through its exemption from draft paragraph 65 of the draft NPPF.
- 1.43 Draft NPPG also confirms the Government’s expectation that a viability assessment of BTR development should be undertaken by utilising a model approach that differs to residential build to sell development, in recognition that the development economics of BTR development is fundamentally different (being based on a long-term income stream).
- 1.44 Plus, draft NPPG proposes to provide flexibility for developers to propose alternatives to Local Plan policies, with respect to the discount and proportions of Affordable Private Rent units across a development, as well as setting triggers for rental reviews (in order to re-base the Affordable Private Rent) over the lifetime of a development. Equally, subject to agreement between a local authority and a developer, the option remains to provide towards affordable housing in the form of a commuted payment secured via Section 106 Agreement or via other forms of affordable housing.
- 1.45 It is MHCLG’s position that the draft NPPF and draft NPPG will be adopted by the end of July 2018. It is highly unlikely that the drafted text regarding BTR will be significantly amended to dilute the enhanced status of BTR and expectations for its promotion and treatment within the planning system including in the viability assessments for Plan-making and CIL setting purposes.
- 1.46 Resultantly, unless B&HCC incorporate an assessment of BTR development within the CIL viability evidence base, and appropriately recognise BTR as a distinct asset class when setting rates within the CIL DCS, this will leave the CIL DCS (as presently published) as inconsistent with both national planning policy and guidance. As a result, this would make the current CIL DCS as highly challengeable. It could not possibly be found sound at Examination by PINS.

Other Technical Matters of Representation

- 1.47 On the basis of the present inapplicability of the published CIL viability evidence base to the proposed development of MODA’s large-scale brownfield land interests (for a high density BTR scheme) at the subject site at Sackville Road, MODA has opted to reserve its position with respect to raising further technical matters of representation on the CIL Viability Study (2017) and CIL Viability Addendum Report (February 2018). Further dialogue is required with B&HCC and its appointed consultants in advance, and MODA is keen to enter into a collaborative dialogue with B&HCC to address the current deficiencies and shortfalls with the CIL DCS.

⁶ MHCLG (March 2018) Draft PPG – Build to Rent

Conclusion

- 1.48 Moda has a direct interest in local policies which will support and enable high-quality, sustainable development in Brighton and Hove, and is preparing a planning application for the regeneration of the Sackville Road Trading Estate and coal-yard site.
- 1.49 There are a number of significant deficiencies in the CIL DCS, and underpinning viability evidence base, which B&HCC should address and rectify prior to submission for Examination. Specifically, our primary concern is that, as drafted, the approach fails to address the CIL Regulation 14 balance test, and as such will not found sound at Examination.
- 1.50 With a collaborative approach, MODA believes that B&HCC can address these matters without causing substantial delay to B&HCC's published timetable for the implementation of the CIL charging regime.
- 1.51 MODA, and our supporting CIL advisors (Matt Spilsbury at Turley), would welcome the opportunity to meet with B&HCC officers (and its appointed CIL consultants – DSP) to discuss these issues as soon as possible. To arrange a meeting, please contact James Blakey (Planning Director) at Moda Living – jrb@modaliving.com