

Community Infrastructure Levy (CIL) consultation - Summary of Representations

Mid Devon District Council undertook a consultation on the Community Infrastructure Levy Preliminary Draft Charging Schedule from Friday 13th June – Friday 11th July 2014. Twenty two responses were received, of which two offered no comment. This document summarises the responses. Officer comments on the responses are in italics.

Residential CIL charge

- There was both support and opposition to the proposed reduction in affordable housing and the removal of the renewable energy policy. The reduction in affordable housing was questioned on the basis that it would not accord with the NPPF's requirement to objectively assess housing need. Removal of the renewable energy policy was supported on the basis that such requirements were being incorporated into building regulations. *The Council has to balance the various needs arising from development and the need for development. The level of affordable housing sought within the Local Plan is reasonable in relation to the level of need, and permits the introduction of CIL at a rate which meets a good proportion of the infrastructure needs in the area. The renewable energy policy is to be removed.*
- The proposal to set CIL at such a low level will be damaging to the level of infrastructure that can be delivered. The logic of setting CIL so low is difficult to understand given that the Council state the use of Section 106 agreements can provide a higher level of income. *The council will be severely restricted in the use of Section 106 by the imposition of the "pooling" restrictions and the new guidance which restricts contributions from developments of below 10 dwellings. The rate of CIL is set to balance the needs for infrastructure and the need to ensure the overall viability of development in Mid Devon. However, for the urban extensions, the provision of infrastructure through a bespoke approach, mainly relying in section 106, will be more appropriate and therefore a zero CIL rate is applied to these sites.*
- A charge of £80-£100 per square metre will make smaller developments less viable, as it is double the rate previously adopted. *The government has stated that smaller developments will not be required to provide affordable housing or some other infrastructure funding through section 106 and therefore the viability of such developments is significantly improved. The Council's consultants therefore advise that a charge of £100 per square metre is viable for smaller developments. It should be noted that self-build projects are exempt from CIL.*
- The inclusion of Extra Care schemes within the C3 use class was queried stating the comparative differences between general market housing and this specialist type in terms of their structure and funding are substantial. The significant floorspace given to care and communal facilities reduces the saleable area, thereby differentiating them from general market housing. Further testing of the viability of such schemes

within the C3 class was requested in order to ensure they were not rendered unviable. *This was considered by the Council's consultants, who confirmed that, in their view, the housing – led elderly care schemes were able to afford a CIL rate similar to general housing. Where care costs were higher, and the scheme could be considered not housing – led, this was likely to be reflected in a different planning Use Class.*

- Single dwellings constructed by a private individual on a 'self-build' basis (not by a building/developer for sale on the open market) should be exempt given the substantial mortgage required to construct the property. Current lending rules make the securing of self-build finance difficult, and CIL would be seen as an additional cost, reducing the available finance for the build. Single dwellings with existing detailed planning permission, or those with a 'deemed start' should also be exempt. *These schemes are exempt by regulation.*
- It should be made clear that the exemptions for extensions, conversions and self-builds should extend to rebuilding. *This is already clear.*

Retail CIL charge

- If the retail charges proposed are adopted, then all other forms of development will receive a significant subsidy at the expense of retail schemes. There will be a corresponding disincentive (and market distortion) to investment in this sector of the local economy. This could undermine the retail function of local and town centres, detracting from their viability and vitality as large scale retail developers would be discouraged by the imposition of CIL. *This is not accepted, the proposed rates are based on viability assessments and do not produce any cross-subsidy.*
- The proposals to differentiate between comparison and convenience retail fall outside of the scope of the rate differentials permitted in the CIL regulations. The Use Classes Order should form the starting point for the definition of 'use'. *It is entirely feasible to define "use" for the purposes of CIL in a different way to the Use Classes Order, as is confirmed by national planning guidance.*
- There are practical difficulties in assessing the difference between comparison and convenience retailing, as most supermarkets and superstores contain a mix of both. The proposed charging rates will potentially result in two different CIL rates being charged for floorspaces within the same building or development. *It is not proposed to take forward different CIL rates for different types of goods.*
- The differential rates for retail breaches EU state aid rules, giving economic advantage to certain retailers dependent on the size of their shop or type of business. If a flat rate is not adopted, an explanation of why should be provided to the Inspector at the Inquiry. *It is not proposed to take forward different CIL rates for different types of goods.*

Strategic Sites CIL Exemption

- Several respondents offered support for the zero CIL rate proposed for strategic sites. It was noted that this will require close monitoring of s106 agreements to prevent pooling limitations becoming an issue. *Noted.*
- Objections were raised to the proposed CIL exemptions as it would not result in parish/town councils receiving 15%/25%. This approach deprives communities the opportunity to set priorities in terms of local infrastructure. Some form of payment should still be supplied to towns/parishes if the Section 106 approach is retained. Town/parish councils should be involved in any Section 106 negotiations if this approach is pursued. The zero rate was also considered to be over-generous, instead a small charge should be levied to raise much-needed funds. *The consultation on the Local Plan and the proposed Masterplans provides the opportunity for town/parish councils and others to concentrate on the infrastructure requirements associated with urban extensions. The "local proportion" will still apply to other developments within parishes.*
- With significant development planned off the M5 junction 27 and 28, and CIL being unlikely to adequately fund the necessary transport improvements, the Highways Agency support the approach to continue to negotiate infrastructure requirements through Section 106 agreements. *Noted.*
- The boundary of the NW Cullompton site, proposed for CIL exemption as a strategic allocation, should be expanded to include the Growen Farm site if it is allocated. *Agreed, the CIL zone boundaries should reflect the Local Plan proposals when both are adopted.*
- Strategic scale windfall sites should also be CIL exempt, with an appropriate threshold to be identified by the Viability Assessment. *Not agreed, such sites, in the unlikely event they come forward, would need to factor in the CIL costs as part of their viability assessments, for example requiring a reduced land price.*

Other CIL charge comments

- Support expressed for nil charge for 'all other development' which would include theatres, as they often do not generate sufficient income streams to cover their costs. *Noted.*
- Smaller scale use types which are not proposed to be charged CIL, will place a burden on local infrastructure. However, the Local Authority has a duty to ensure that development is not taking place without the necessary infrastructure. Consideration should be given to charging CIL on these schemes subject to viability assessment. *Viability assessment has been carried out indicating that these uses are unlikely to be viable.*
- The use of negative or 'Grampian' planning conditions to deliver improvements to the Strategic Road Network is compatible with CIL. However, there must be a reasonable chance of the condition being met within the timescale of the planning

consent, placing further emphasis on the need to ensure the sufficiency of any CIL contribution. *Noted.*

- Differential rates must not be set in a way that constitutes notifiable state aid under EU regulations. The Council must proceed with caution to ensure they do not fall foul of the strict rules regarding differential rates. Differential rates should only be based on economic viability considerations alone, rather than planning or public policy related choices. Such proposals should not impact disproportionately on a particular sector or small group of developers. Up to date housing market intelligence should form part of the evidence base when proposing differential rates. *Noted.*
- The Council should consider introducing relief from CIL, which is permitted by regulation 55, to avoid rendering sites with specific and exceptional costs burdens unviable. Such an approach would ensure that there was the flexibility to allow strategic or desirable, but unprofitable, development to come forward. *Noted, the Council will consider the introduction of relief when it considers the adoption of CIL after the examination.*
- A flat levy rate should be adopted across all development. This should be achieved by dividing the total cost of deliverable infrastructure by the total expected development floorspace. Development not currently identified as viable could make use of Exceptional Circumstances Relief. *This would not meet the regulatory requirement that the Council balance the need for infrastructure with the overall economic viability of the development of the area, and would ignore the existing viability evidence which has been used to frame CIL. It would also be extremely impracticable in implementation.*
- Consideration should be given to the provision of infrastructure as payment in kind in lieu of CIL. *Noted, the Council will consider the preparation of a policy on payments and infrastructure in kind in advance of the adoption of CIL.*
- Concern that with the ending of Public Open Space and Air Quality contributions, Cullompton will receive a significant reduction in infrastructure investment. *Noted, however the investment proposed from the two urban extensions will be considerable, and in any case continuing these types of general infrastructure “pools” will become impractical once the April 2015 limitations on the use of S106 apply.*

Viability Evidence

- CIL should be based on robust evidence that demonstrates that the CIL rates will not put at risk overall development of the area. The assumptions used to underlie the standard residual valuation model should be realistic and accurate. *This is why the Council employed external consultants to prepare the evidence.*
- Clarification and justification of some viability assumptions used in the Council’s Viability Assessment in relation to sheltered / retirement housing schemes.

Specifically raised queries in relation to unit sizes, size of development, non-saleable floorspace and sales rate. ???????

- The retail assumptions in the Viability Assessment make inadequate allowance for the true cost of residual planning for a commercial development. A wide variety of site specific infrastructure costs would need to be funded in addition to CIL. The evidence only gives an allowance of £126k for site preparation and S106 costs combined, which is a low for a 2,500m² retail supermarket. Examples were cited of £870k and £1.3m as a comparison with the £126k. *The Council's consultants have allowed for a significant viability margin in their retail work, and the proposed rate of provision is considered robust.*
- Further viability evidence was requested to support the differential retail rates proposed and the 280 metre size threshold. *The Council's evidence is considered sufficient and robust on this point.*
- More explanation required regarding the data and assumptions used to calculate the residential s106, setting out what planning obligations this is likely to fund. *This is the subject of a separate item of work, attached to this report.*
- The assessment should make an allowance for greater economic recovery in terms of development value, being appropriate over time. *This would be a risky approach, with the potential to undermine development in the short term. CIL rates can be revised if necessary to reflect any significant value changes.*
- The study does not acknowledge that the economics of conversion schemes are very different to those of new build scheme. It is difficult to see how the Council can assess whether the imposition of CIL will put conversion schemes (particularly those buildings which have been vacant for a long period) at risk without having considered their viability. *It is the overall provision of development which must be protected over the plan period, not the individual viability of all developments of all scales in all locations.*
- A number of comments were also made on the format/colouring used throughout the viability evidence. *Noted.*

Instalments Policy

- Support was expressed by a number of respondents on the inclusion of an instalments policy to aid the cash flow of a development. *Noted, and will be prepared in advance of the implementation of CIL.*
- Some stated that the instalments policy as proposed will have a negative impact on cash flow. In particular, the payment timetable for schemes of more than 200 dwellings was considered harsh. A number of suggestions were put forward spreading the instalments repayments over a period up to approximately 2 years. *Noted, this will be considered and prepared in advance of the implementation of CIL.*
- The instalments policy should take account of major developments being delivered in phases, and should ensure that developers are not disadvantaged by submitting

an application in full, rather than in outline. *Noted, this will be considered in advance of the implementation of CIL.*

Infrastructure Plan/Reg 123 list

- Support expressed for the inclusion of the draft Infrastructure Plan and draft Regulation 123 list. *Noted.*
- The Council should demonstrate the infrastructure need, setting out how much CIL is likely to be received dependent on the various charging scenarios, and identifying the funding gap. Request that all site specific physical and social infrastructure associated with the £0 CIL rate be listed as being funded by Section 106 contributions and not CIL. *The Infrastructure Plan (IP) has been updated to reflect this request.*
- More clarity requested regarding the pooling of Section 106 payments, given the restriction on pooling being introduced in 2015. Queried whether five or more Section 106 contributions have been made towards critical infrastructure items not listed on the Regulation 123 list since 6th April 2010. *Noted, pooling restrictions will apply from April 2015, and the IP and Regulation 123 List reflect this.*
- In calculating infrastructure requirements a distinction should be made between new and existing demands, as less infrastructure provision is required for existing compared with new residents in the district. *This would be a largely artificial distinction, with no benefits arising from such a piece of work.*
- Cumulative planning consents on various sites can have a large impact on the Strategic Road Network. Contributions should be pooled to enable the funding of future infrastructure improvements, such as junction improvements, to mitigate impact. *This is one of the functions of CIL.*
- The improvements to M5 junctions 27 and 28 should also state that funding will be secured by developer contributions, in addition funding already secured. **????**
- Infrastructure for 100% affordable housing rural exception sites may need to be excluded from the Regulation 123 list given that such schemes will be CIL exempt and therefore not contribute to the delivery of local infrastructure. *The number of such schemes is likely to be limited, and with limited scope for section 106 contributions in any case.*
- Strategic infrastructure may require the financial support of local parishes – this should be stated in the Infrastructure Plan. *This is uncertain, particularly as the major urban extensions will be zero rated for CIL.*
- Education in the Reg 123 list should be amended to include ‘early years’ (2-4 provision). *This is already included in the overall description “education and youth facilities”.*
- School transport should be added to the Reg 123 list. ‘Transport improvements’ should be amended to exclude site specific transport improvements. *School*

transport would come under the general heading “transport improvements”. Site specific improvements have been excluded from the R123 list.

- Community care provision should be amended to exclude those provided as affordable housing. *This is unnecessary since affordable housing is not within the definition of Infrastructure.*
- Aspiration to reopen Cullompton Railway Station noted by Network Rail and guidance document provided to aid local parties develop proposals. *Noted and welcomed.*
- Devon & Cornwall Police provided cost details of a new Criminal Justice Centre, an infrastructure item which should be added to the Infrastructure Plan in order to continue to meet local policing demands as a result in the growth associated with new development. *This has been added.*
- The upgrade to the Waste Water Treatment works should be brought forward from 2020-25 to 2014 or 2015 as Collipriest Lane in Tiverton is already overloaded with traffic. The upgrades to the main sewer should be carried out sooner and before any further development is proposed in the town.