

Caerphilly County Borough Community Infrastructure Levy

Draft Charging Schedule & Draft Infrastructure List

Report of Consultation

July 2013

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Glossary of Terms

Charging Schedule	Community Infrastructure Levy Preliminary Draft Charging Schedule & Draft Infrastructure List
Viability Report.....	Study Into The Economic Viability of Charging Community Infrastructure Levy in Caerphilly, Merthyr & Rhondda Cynon Taf County Borough Councils
Infrastructure Report.....	Caerphilly County Borough LDP Infrastructure Assessment Report
Consultation Documents.....	Charging Schedule, Viability Report and Infrastructure Report
CIL Regs.....	Community Infrastructure Levy Regulations 2010 (as amended)
DCLG.....	Department of Communities and Local Government

Introduction

The Consultation

1. Regulation 16 of the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regs) require that any charging authority wishing to prepare a CIL Charging Schedule must prepare a Draft Charging Schedule for consultation. The council, as a charging authority, prepared its Draft Charging Schedule (Charging Schedule) and formally placed it on consultation for six weeks, between 20 March and 1 May 2013.
2. In addition to the Charging Schedule the council also re-published its evidence base, i.e. the Study Into The Economic Viability of Charging Community Infrastructure Levy in Caerphilly, Merthyr & Rhondda Cynon Taf County Borough Councils (Viability Report) and the Caerphilly County Borough LDP Infrastructure Assessment Report (Infrastructure Report), and also published Its Regulation 123 List of Infrastructure (Reg 123 List) and
 - Guidance Note 1: Example Calculations of CIL Viability (Guidance Note 1)
 - Guidance Note 2: Draft Instalment Policy (Guidance Note 2)
 - Guidance Note 3: Draft Affordable Housing Policy (Guidance Note 3)
 - Guidance Note 4: Draft Charitable Relief Policy

All of these documents comprise the consultation documents for the Draft Charging Schedule Consultation.

3. In accordance with Regulation 16 a copy of the consultation documents were sent to the Consultation Bodies and comments on the consultation documents were invited. Copies of the consultation documents, along with details of the consultation period, were made available on the Council's website and at the council offices. Statutory Notices were placed in the Western Mail and Campaign newspapers, and consultation letters were sent to everyone who had expressed an interest at Preliminary Draft Consultation stage.
4. The Council has complied with the consultation requirements set out in Regulation 16 of the CIL Regs.

The Responses

5. A total of 8 duly made submissions were received during the consultation. No late representations were received in respect of this consultation.
6. Whilst 8 submissions have been received a number of these submission address more than one issue. In order to ensure that all of the issues raised are addressed in this Report, each issue is specifically identified and recorded as a separate Representation. As a consequence the 8 submissions have realised a total of 36 representations.
7. It should be noted that the Representation Form that was used for the consultation set out a list of 9 "Yes/No" questions, some of which were multiple questions, on issues related to CIL. The reason for setting out these questions was for the council to gauge views on issues of uncertainty or where inadequate guidance was available. Whilst a text box for comments was provided after each question a

number of the submissions addressed the questions directly and then provided separate commentary through use of a separate document. Of the 36 representations received, 3 relate to the Response Form Questions, whilst 33 relate to the issues raised in the separate documentation.

Format of the Report of Consultation

8. In order to respect the intended purpose of the Response Form Questions, the responses to these have been set out in tabular form in Section 1 of the Report. The Representation Form sets out the question with two possible answers, namely “Yes”, and “No”. The responses are provided in numerical form relating to the number of submissions that responded in that way. Where responses did not provide an answer these have been highlighted in bracket in the response marked “No Response”. It should be noted that no analysis of this information has been provided, as the results are intended to provide a basis for further consideration of the issues.
9. Section 2 of this Report sets out the representations, which have raised issues in respect of the consultation documentation. Each representation is addressed in turn, sorted according to the nature of the issue that has been raised. The Report sets out the details of the representation along with the Representor’s suggested change. Then the representation is subject to an officer comment in the form of an analysis and then an officer recommendation on the course of action in respect of the representation.

Moving Forward

10. This Report of Consultation will be considered by a full meeting of the Council in October 2013. It is intended to present the report to the following:
 - Regeneration Scrutiny Committee (17 September 2013)
 - Cabinet (1 October 2013)
 - Council (8 October 2013)
11. If the Council endorses the recommendations in the report, the Delivery Agreement sets out that the Council will submit the Draft Charging Schedule for examination late 2013/early 2014. It is anticipated that a joint examination of the Evidence for the Caerphilly County Borough CIL and Merthyr Tydfil Borough Council CIL will be held early in 2014.

Section 1 - Representation Form Question Responses

1	Do you agree that the assumptions and/or methodology set out in the Viability Report are Robust?	Yes	1	
		No	2	Viability evidence does not make allowances for S106, Part L/Fire sprinkler or abnormal costs and the benchmark land values are too high The site viability does not take account of site specific issues or constraints
		No Response	0 (5)	
2	Do you agree that the Viability Study represents an appropriate basis for determining the level of CIL that would be viable in the Borough?	Yes	2	
		No	1	
		No Response	0 (5)	
3	Do you agree with the principal of identifying three distinct charging zones for Residential development?	Yes	3	
		No	0	
		No Response	0 (5)	
	Do you agree with the principal of identifying three distinct charging zones for Residential development?	Yes	3	
			0	
		No Response	0 (5)	
Do you agree with differential rates that have been set for each of the zones?	Yes	0		
	No	3	Viability evidence does not make allowances for S106, Part L/Fire sprinkler or abnormal costs and the benchmark land values are too high which renders the proposed levy charges inappropriate The site viability does not take account of site specific issues or constraints which undermine the proposed residential charges	
	No Response	0 (5)		

Draft Charging Schedule – Report of Consultation

4	Do you agree with the principle of setting flat rates across the county borough for Class A1 and A3 uses and for Primary Healthcare Development?	Yes	0	
		No	0	
		No Response	3 (8)	
	Do you agree with the rate set for Class A1 Uses?	Yes	0	
		No	0	
		No Response	3 (8)	
	Do you agree with the rate set for Class A3 Uses?	Yes	0	
		No	0	
		No Response	3 (8)	
	Do you agree with the rate set for Primary Healthcare development?	Yes	0	
		No	0	
		No Response	3 (8)	
5	Do you agree with the proposed £0 rate for Class B1, B2, B8 and D2 uses?	Yes	2	
		No	0	
		No Response	1 (6)	

Draft Charging Schedule – Report of Consultation

		Yes	No	No Response		
6	Do you agree that the proposed level of CIL strikes an appropriate balance between the desirability of funding necessary infrastructure and site viability?	Yes	0			
		No	3		Viability evidence does not make allowances for S106, Part L/Fire sprinkler or abnormal costs and the benchmark land values are too high which renders the proposed levy charges inappropriate The site viability does not take account of site specific issues or constraints which undermine the proposed residential charges	
		No Response	0 (5)			
7	Do you agree with the Regulation 123 List set out in the Draft Charging Schedule?	Yes	0			
		No	3		The List includes waste transfer/bulking infrastructure, which should not be eligible for CIL funding The List excludes Flood defence works which should be eligible for CIL funding	
		No Response	0 (5)			
8	Do you agree with the Council's Draft Instalments Policy?	Yes	0			
		No	3		Instalments should be linked to development cashflow or delivery on the ground, not by time duration.	
		No Response	0 (5)			
9	As a Representor, you have the right to request to be heard by the Examiner at the Examination of the CIL. Can you please indicate whether you would like to:				Appear at the Examination to give evidence	3
					Rely upon Written Submissions to the Examination	0

Section 2 – Issues Raised

Document: Viability Report
Issue: S106 and Additional Costs

Representor: Developer Consortium

Representation Number: 4555.C2 **Representation Type:** Objection

Summary of Comment:

The Viability Report has not made allowance for S106 costs in considering the viability of volume house building.

Representation:

We note the Council states that “in Caerphilly, only 1 in 5 planning applications are subject to S106 contributions. As a result, the vast majority of planning applications (80%) are unaffected by S106 costs”. However, this takes no account of the extent of applications which are considered domestic (household extensions etc) and/or are small scale in nature, and which by their nature will be largely unaffected by CIL. We expect a significant majority of planning applications fall within this category and, as such, this statistic is misleading.

We accept that on implementation of CIL, the Caerphilly Basin Strategic Highway Network Obligation will no longer be payable in addition to CIL but the Councils’ Draft Regulation 123 List of Infrastructure clearly states under Section 5 that “the Council will continue to secure planning obligations where they are necessary to remove obstacles to planned development and are therefore critical to the delivery of the site, for example to provide site access, flood protection and wildlife protection measures and for on-site leisure provision such as open space, local areas for play (LAPs) and local equipped areas for play (LEAPs). Further s106 contributions may still be sought for infrastructure where:

- 1) It can meet the above tests; and
- 2) The Council has indicated that this type of infrastructure item will not be funded through CIL”.

It is unrealistic therefore to assume that those schemes which are clearly more affected by CIL, such as volume residential development sites are unlikely to have any additional S106 mitigation works or obligations attached to them and as such, we remain of the view that an allowance for S106 costs should be applied within the viability assessment, before considering the viability buffer and we contend that £1,000 per dwelling remains a reasonable assumption.

Representor Change:

The Viability Report should be amended by making an allowance of £1000 per dwelling for S106 costs.

Officer Analysis:

In the Report of Preliminary Draft Consultation the council sets out the case that less than 20% of applications are the subject of S106 agreements. The Representor contends that this is a misinterpretation as it is not clear what type of development the applications cover, with the Representor suspecting that a large number of applications relate to householder developments.

In preparing the Report of Consultation the council has reviewed its evidence of S106 agreements and have updated the evidence to cover the period 1 January 2009 to 31 December 2012. This period was chosen as it provides the most recent information that is reflective of the current economic circumstances.

To summarise the information, a total of 545 residential related applications were received. Only applications relating to the provision of one or more residential units have been considered. Of these, 280 were not formally considered (due to being refused, not determined, relating to changes in conditions or amounted to redevelopment of existing residential units.) In total 265 applications for new residential development were received and approved during the period.

Of these, 17.7% were granted with S106 agreements or unilateral undertakings, 82.7% being permitted without them. The statements made in the Report of Preliminary Draft Consultation remains correct, in that less than 20% of the permitted residential applications are subject of S106 agreements and the majority of permitted applications do not have S106 agreements.

It is agreed that S106 obligations will continue to be sought for infrastructure that meets the statutory tests and are not included in the Regulation 123 List. However, in considering the S106 evidence, it is clear that the vast majority of the total cost of the S106 agreements in the survey would be CIL funded in the future, and would not require a S106 agreement. Only 34% (16) applications with S106 agreements contain provisions that would be contained in S106 agreements in the future, with a quarter (4) of these being non financial (relating to ceasing previous uses rather than providing infrastructure). Consequently only 25% of all S106 agreements, and less than 5% of total applications contain infrastructure provisions that would be set out in S106 agreements in the future.

Given the small number of applications that would realise S106 agreements in the future, in conjunction with the acceptance that a certain amount of development may be made unviable when striking the appropriate balance together with the allowances built into the assessments undertaken as part of the Viability Report preparation, it is considered that the Viability Report makes sufficient allowance to accommodate the small number of applications that will be subject to S106 costs.

In respect of the Representors suggested amendment for the Viability Report to make an allowance of £1000 per dwelling to cover S106 costs, it should be noted that, notwithstanding the information set out above, the Representor has provided no evidence to justify either the need for, or the level of, any allowance.

Council Recommendation:

No amendment is made to the Viability Report in respect of this Representation.

Document: Viability Report
Issue: S106 and Additional Costs

Representor: Developer Consortium

Representation Number: 4555.C4 **Representation Type:** Objection

Summary of Comment:

The Viability Report makes no allowance for changes to Part L of the Building Regulations or the requirements or new dwellings to incorporate sprinklers.

Representation:

The Council accept that their cost assumptions do not allow for the entire costs for providing the proposed improvements to Part L or provision of Fire Sprinklers and whilst we accept that these changes have not been confirmed to date, the Welsh Government have stated to the industry that in acquiring land for future development, they must include the agreed Part L and Fire Sprinkler costs in their viability assessments and as such, they should be accounted for in assessing viability for CIL.

The Welsh Government have agreed that the likely costs of compliance amount to £7,275 per plot (£3,075 for sprinklers and £4,200 for Part L) and have required these costs to be accounted for in recent affordable housing viability assessments. Therefore the position should be no different for CIL assessments.

Representor Change:

The Viability Report be amended to make an allowance of £7,275 per dwelling in respect of additional costs arising from changes to Part L of the Building Regulations and the requirement to install fire sprinklers in new development.

Officer Analysis:

As set out in the Report of Pre-Draft Consultation, the council's position in respect of this issue is that sufficient allowances have been built into the assessments to take account of external and sustainability costs, and this remains the view.

The council also contended that there was no timetable for the implementation of the changes, as they had been consulted on, and so there were significant issues in respect of the nature of the changes and when, or if, they would be formally published. Further to this on 17 July 2013 Carl Sargeant, Minister for Housing and Regeneration issued a statement entitled "Stimulating Home Building in Wales". This statement set out the Welsh Government position in seeking to exceed delivery on affordable housing targets and increase private sector housing delivery. The statement also addressed the issues of the amendments to Part L of the Building Regulations and the issue of domestic fire safety.

In respect of the amendment to the Building Regulations, the Minister has amended the level of reduction of greenhouse gas emissions from 40% to just 8% as an interim measure toward meeting EU legal obligations by 2021, in order to continue improvement without stifling housing development.

In addition the minister also confirmed that, initially the requirement for sprinklers will only apply to high risk developments (such as care homes, new and converted student halls of

residence, boarding houses and certain hostels), with a requirement for new dwellings to include sprinklers commencing January 2016. The Minister also states that “*This phasing will allow the housebuilding industry to gain experience and skills, and gives the sector the opportunity to innovate and reduce the costs of installing sprinklers*”.

As can be seen the cost implications of the Building Regulations amendments and the introduction of sprinklers are much reduced from the Representors previous Representations and those supporting this representation.

With the much reduced cost implications of these announced policy changes, the allowances in the assessments in the Viability Report, more than adequately make provision for the costs as they are now going to be implemented.

Council Recommendation:

No amendment is made to the Viability Report in respect of this Representation

Document: Viability Report
Issue: S106 and Additional Costs

Representor: Asda Stores Ltd

Representation Number: 4561.C2 **Representation Type:** Objection

Summary of Comment:

The Viability Evidence does not make allowance for S106 or S278 payments or the costs involved in obtaining planning permission.

Representation:

The Council's Economic Viability Study contains retail development assumptions that in our view are inadequate, as they do not make allowance for:

- 1) Section 106 and/or Section 278 contributions which will need to be paid by developers in addition to CIL payments; or
- 2) The costs involved in obtaining planning permission for a development scheme.

Paragraph 5.23 notes that site-specific planning obligations should be accounted for by 'adopting CIL rates below the testing results'. There is no evidence as to how the rate set for retail development accounts for site-specific planning obligations and the effect that those obligations will have upon the economic viability of development.

By excluding the potentially large S106 costs and the costs pertaining to obtaining planning permission (examples of which are set out at Schedule to this letter), the Council has underestimated the true cost of retail developments and artificially inflated the relevant benchmark land values used for the financial viability models. This will, in turn, have inflated the amount of CIL proposed for retail.

Furthermore the DCLG now requires (from 14 December 2012) local authorities to produce evidence.

Representor Change:

The Viability Report be amended to make appropriate allowances for S106 and S278 agreements and costs associated with obtaining planning permission.

Officer Analysis:

The Representor contends that the Viability Report is deficient as there are no allowances for S106 or S278 agreements or costs associated with obtaining planning permission.

The Representor is correct that the Viability Report makes no allowances for S106 or S278 agreements in the assessments and this was a conscious decision. This decision reflected the position that much of the current cost associated with S106 agreements would be subsumed by CIL when implemented. Further to this the number of applications subject of S106 agreements was also comparatively low.

The Council accepted that S106 costs could affect viability and the Viability Report assessment methodology includes a number of allowances that can take account of S106

costs. In addition to this the council has set the A1 Retail charge rate at the lower end of the viability range, seeking to maximise the viability level whilst maintaining a CIL charge.

Given the above, the assessment methodology and the setting of the level of the charge make sufficient provision to accommodate S106 agreement costs generally.

Planning applications for new retail development permitted since January 2006 have been reviewed. Since this time only 7 applications have been permitted (other retail developments have been Change Of Use of existing buildings and would not have attracted the CIL charge due to the scale of new floorspace). All 7 of the applications were subject of S106 agreements, but only 2 of them were the subject of financial contributions, the remaining 5 set out legal requirements (parking restrictions, general access provisions etc.)

The financial contributions relating to the two applications would have been CIL infrastructure under the CIL regime. Consequently, of the 7 applications subject of S106 agreements, none would have involved additional financial cost to the developer.

Given the above, and the very high viability levels relating to retail development, it is considered that the Viability Evidence is sufficiently robust and that the A1 Retail CIL rate of £100 per square metre is appropriate.

Council Recommendation:

No amendment is made to the Viability Report in respect of this Representation

Document: Viability Report
Issue: Abnormal Costs

Representor: Developer Consortium

Representation Number: 4555.C3 **Representation Type:** Objection

Summary of Comment:

The Viability Report does not make sufficient allowance for abnormal costs.

Representation:

The Councils viability analysis contends that BCIS build costs plus 17.5% is sufficient to cater for typical development costs. However, we contend that this is not a sufficient allowance for most residential development in the Borough, principally as a result of the Brownfield nature of most opportunities and that costs normally considered as “abnormal” are much more typical in the region and in most instances become normal development costs.

The Consortium have undertaken further analysis of 6 recent developments in the neighbouring authority of Rhondda Cynon Taf CBC which identifies “external and additional site costs” ranging between 25 and 35% of base build cost.

These levels accord with the Homes and Communities Agency analysis completed by BCIS for the Housing Corporation in 2007, which indicated that the average cost of external works and infrastructure on residential schemes started since 2003 was equivalent to an additional 27% of building costs, including a wide range of site specific circumstances. In addition, the viability analysis undertaken by GVA for Torfaen Council in respect of the South Sebastopol development further supports this position.

We consider it appropriate therefore to make allowances of at least 27% of base build costs within the viability appraisal to cater for typical development costs to comply with current regulatory requirements in the region.

Representor Change:

The Viability Report should be amended to make allowance for at least 27% of base build costs to cater for typical development costs

Officer Analysis:

Some future development sites will be affected by abnormal costs. In establishing the methodology for the assessments the authorities, along with the DVS, concluded that it was not possible to establish and implement differential CIL rates for sites without abnormal costs and sites with abnormal costs. This is primarily due to the fact that abnormal costs are just that, abnormal, and can vary greatly in nature, scale and cost. Given the potential variance of such costs it would be inappropriate to viability test sites using an assumed cost, because this would undoubtedly result in over-burdening sites with high levels of abnormal costs, whilst under charging sites with little or no abnormal costs, both situations being inequitable. Consequently it would be inappropriate to include abnormal costs in the Viability Report methodology and consequently such costs should be considered on a site-by-site basis.

However, the issue of abnormal costs is an important one, as the South Wales Valleys contain significant amounts of derelict land. It should be noted that, over the past 10 years or more, there has been a brownfield focussed strategy for development across the South Wales Valleys, with a preference for development on brownfield land, with all of its associated costs. As a result over the past 10 years the information that the BCIS data has been based upon has reflected the costs of brownfield building, including the abnormal costs associated with such sites. As a result the current BCIS data will reflect these costs to some degree.

In addition to the above, the brownfield strategy for the South Wales Valleys will have been reflected in the price that developers have been paying for land, i.e. the more constrained the land the lower the price. Therefore, the transactional evidence underpinning the Viability Report also takes account of an element of abnormal costs associated with South Wales Valley development.

The methodology adopted for undertaking the site assessments makes a number of assumptions and allowances for various matters. In setting the assumptions and allowances a degree of flexibility has been built in to ensure that they allow an element of flexibility in terms of overall viability. The cost allowances and assumptions used in the site appraisals provide a significant element of flexibility to the viability levels, providing a cushion for abnormal costs.

On top of the flexibility built into the site appraisal methodology, the CIL Charges have also been set at the bottom end of the CIL Ranges identified in the Viability Report. The CIL Ranges can be viewed as a scale, the higher the level the less viable development becomes with an increase in numbers of unviable schemes. By contrast the lower the level the more viable development becomes with an increasing number of viable developments. Setting the CIL Rate at the lower end of the ranges means that development is more viable and provides flexibility to accommodate any additional costs such as abnormal costs.

All of the above factors contribute towards a position where the CIL Rates include a significant amount of flexibility in viability terms, that can address the issue of abnormal costs.

It should also be noted that, in setting the CIL Rate, the Council is required to strike an appropriate balance between the desire to deliver infrastructure and the impacts of the imposition of CIL on site viability. It has to be acknowledged that, in striking the appropriate balance, some sites will inevitably be made unviable and will not come forward. Consequently it cannot be the case that the CIL Rate should ensure viability of all sites, more that it should strike the appropriate balance.

The Representor has submitted a commercially sensitive analysis relating to six developments in the Rhondda Cynon Taf County Borough area, supporting their assertion that the viability assessments should make an allowance for abnormal costs of 27% over base costs. The analysis sets out build costs and identifies abnormal costs and relates them back to the BCIS build cost level. From this analysis the Representor has deduced the proposed change to the Viability Report.

It should be noted, however, that there are a number of issues in respect of the analysis that raise concern when considered against the Viability Report Assessments, these are:

- It is unclear whether the information relates to actual or assumed costs;
- The purchase price of the land has not been included and, as outlined above, the purchase price of the land is one of the factors that would have already taken account of an element of the purported abnormal costs;
- No detail is given regarding the nature of what the “abnormal costs” are, raising concerns over whether the costs are abnormal;
- The base cost assumptions appear lower than the assumptions built into the Viability Report assessments, which indicates that there is additional contingency within the build cost assumptions that will also accommodate part of any abnormal costs;
- The information provided by the developer is not a complete valuation of the development costs, and as such does not encompass the potential for off-setting costs against in-built allowances in the assumptions.

Given this the council remains of the view that the viability assessments undertaken as part of the Viability Report make sufficient allowances to account for abnormal costs.

Council Recommendation:

No amendment is made to the Viability Report in respect of this Representation

Document: Viability Report
Issue: Benchmark Land Values

Representor: Developer Consortium

Representation Number: 4555.C5 **Representation Type:** Objection

Summary of Comment:

Our viability assessment realise residual land values well below those identified in the Viability Report when CIL is taken into account.

Representation:

In order to demonstrate the impact that the proposed CIL levy will have on development, we have set out two sample appraisals, one in the Northern Connection Corridor (25% affordable), attached at Appendix 2 and the other in Caerphilly Basin (40% affordable), attached at Appendix 3.

The assumptions adopted, are based upon the following:

- 1 Sales Values - £185psf (Caerphilly Basin) and £170psf (Northern Connection Corridor)
These values are considered the highest average achievable in these locations.
- 2 Affordable – No Grant available
- 3 Densities – 14 units per acre/14,500 sq ft per acre
- 4 Sales Rates – 2.5 units per month
- 5 Build Costs – BCIS (£70psf)
- 6 Contingency – 3% of cost
- 7 External Costs – 27% of base build costs (amounts to £275,000 per acre)
- 8 Part L & Fire Sprinklers - £7,275 per plot
- 9 Developers Profit – 20% of GDV (Market Housing) & 6% (Affordable)
- 10 Purchasers Costs – 5.5% (Stamp Duty, Agents & Legals)
- 11 Professional Costs – 8% of cost
- 12 Sales & Marketing Costs – 3.5% of GDV
- 13 Finance Debit Rate – 7%

The residual land value for each appraisal, prior to the deduction of the proposed CIL levy and additional S106 costs, amount to between £147,000 and £167,000 per net developable acre. These are below the benchmark land values identified in the Councils' viability report.

When the proposed CIL levy and £1,000 per plot additional S106 costs are deducted from the residual value, this reduces the residual value to between £106,000 and £115,000 per net developable acre which is approximately 50% lower than the benchmark land values identified in the Council's viability report and at the level unlikely to encourage landowners to bring forward land for development, particularly where they are in an existing use.

Representor Change:

The Viability Report be amended to apply realistic benchmark land values in assessing site viability.

Officer Analysis:

The Representor has provided two sample appraisals, one in the Caerphilly Basin and one in the Northern Connections Corridor, both based on notional sites accommodating 50 units to support the Representor's contention that the benchmark land values set out in the Viability Report are too low.

The first issue in respect of the Representors appraisals are that they are on notional sites, rather than actual sites, which form the basis of the Viability Report appraisals. The Viability Report appraisals have used actual sites as it enables actual sales information to be used to inform the appraisals, rather than basing sales information upon assumptions.

The Representor has set out the assumptions used in the two appraisals and contends that the resulting appraisals identify that the benchmark land values used in the Viability Report are too high.

However, in order to make that assertion the appraisals need to be based upon the same assumptions, as different assumptions are likely to lead to very different appraisal outcomes which are not comparable. In reviewing the Representor's appraisals there are a number of differences between the Representors assumptions and the Viability Report assumptions relating to:

- Build costs (no reference to locational adjustment) (*Pages 9, 15 and 85*)
- Contingency allowance (*Page 85*)
- External Costs (*Page 9*)
- Part L & Fire Sprinklers (*Page 15*)
- Developer Profit (*Page 32*)
- Purchasers costs
- Sales and Marketing Costs (*Page 26*)
- Finance Debit Rate. (*Page 27*)

Given the fact that the vast majority of assumptions used in the Representor's Appraisals are different from those used in the Viability Report assessments, the resulting difference in land values cannot be compared on a like-for-like basis, meaning that the Representor's assertion that the benchmark land values are too high in the Viability Report is unsubstantiated.

The differences in the land values are a result of the effects of the use of different assumptions. The Representor submitted Representations in respect of most of the different assumptions used in these appraisals as part of the Preliminary Draft Charging Schedule Consultation in October/November 2012 and the Council responded to those Representations in the Report of Preliminary Draft Consultation. It is not intended to rehearse the arguments in respect of the representations in this report, as the point of objection for this representation is the difference in land values. Consequently the page numbers for the respective representations and responses are identified next to each of the assumptions set out above.

Council Recommendation:

No amendment is made to the Viability Report in respect of this Representation

Document: Viability Report
Issue: Existing Floorspace

Representor: Asda Stores Ltd

Representation Number: 4561.C3 **Representation Type:** Objection

Summary of Comment:

The Viability Report does not take account of the different economic structure of regeneration projects, which will undermine their viability.

Representation:

Although the Council has taken the economics of regeneration projects into account to some extent when conducting its viability assessments it does not appear to have given much weight to the concerns relating to change of use and conversion projects.

As you will be aware Regulation 40 of the CIL Regulations only permits developers to deduct pre-existing floorspace from the CIL calculation if it is “in lawful use”. Lawful use is defined in Regulation 40 (10) and essentially requires part of the building to have been in use for a six-month continuous period in the twelve months before the date of planning permission permitting the development.

However, many regeneration projects on brownfield land or town centre sites involve demolishing, converting or redeveloping buildings that have lain vacant for some time. This is particularly true of schemes which involve changes of use from employment land, where the fact that a unit has been vacated for a considerable time is often a key factor in the council’s decision to grant planning permission for a scheme.

The Viability Reports do not acknowledge that the economics of conversion schemes are very different to those on new build schemes. It is difficult to see how the Council can assess whether the imposition of CIL will put the majority of schemes at risk without having considered its impact upon their viability.

Representor Change:

The Viability Report is amended to take account of the different economics of regeneration and conversion schemes in its assessment of economic viability.

Officer Analysis:

The CIL Regulations require that decisions in respect of the landuses that should be subject to CIL, and the level of the CIL charge, be based solely on the viability evidence. This means that where the viability evidence identifies a use as being generally viable, a charge must be levied. The evidence base clearly demonstrates that A1 retail development is viable across the study area and, as such, a charge must be levied against A1 retail developments. The Council accepts that regeneration projects have particular issues, but making allowance for regeneration projects specifically would be a policy decision and not a decision based on the viability evidence which therefore cannot be made.

In respect of the issue of vacant floorspace, the council has similar concerns as the Representor in respect of regeneration programmes that may require buildings to remain

vacant for a period of time. In such circumstances CIL would be required to be paid on all eligible uses, which may have implications for the projects themselves.

However, in April 2013 the Department for Communities and Local Government (DCLG) issued a consultation paper outlining proposed changes to the CIL Regulations. Question 15 of this paper sets out a change to Regulation 40 to remove the vacancy test. This would mean that redevelopment or refurbishment schemes would be able to offset the floorspace. The only restriction remaining would be in respect of whether the use has been abandoned, and it is unlikely that this would be the case for a regeneration project. The council supported this proposed change in its response to the consultation. If this change is confirmed at a later date it will remove this issue.

Council Recommendation:

No amendment is made to the Viability Report in respect of this Representation

Document: Viability Report
Issue: C3 Residential - Charge

Representor: Country Land and Business Association

Representation Number: 4559.C1 **Representation Type:** Objection

Summary of Comment:

There is no evidence to support a charge for agricultural worker dwellings

Representation:

I have gone through the Viability Appraisal Report, I note there is no mention or evidence offered to support your statement that Houses subjected to an Agricultural Occupancy condition should not be treated with a nil charge. I am informed that if there is no evidence produced in your Viability Appraisal to support such charging then no charge should be levied.

I also attach an email for your information, which I have received from my colleagues in the South West where they have successfully argued for a Nil charge to the Agricultural Occupancy Condition CIL charge, in the West Dorset Area.

“CLA WIN - Proposed CIL removed from essential rural workers dwellings in West Dorset

The CLA was one of 26 respondents to the ‘Preliminary draft charging schedule’ consultation.

<http://www.dorsetforyou.com/media.jsp?mediaid=173811&filetype=pdf>

Essential Rural Workers’ Dwellings	C3	£46 sq.m.	As per housing but discounted by 50%
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Our response stated that

*The CLA had noted that CIL charging schedule included a £46/sq.m charge for new housing where is it required to enable agricultural, forestry and certain other full-time workers to live at or in the immediate vicinity of their place of work. Our view is that the **CIL should not apply** to these dwellings, which will have been justified as a requirement for the specific business. Such properties are not sold for development gain and are usually restricted by some form of occupancy condition which has already had a negative impact on the value of the development.*

The Council have failed to provide evidence to support this charge

In such cases, a charge would simply be an additional cost of construction and is likely to render many such projects unviable, and could lead to new farming entrants being priced off the land they wish to farm and the curtailment of new business start ups in rural areas.

As these properties are crucial to the operation of, in general, land-based businesses and sustainable rural communities, we ask that they be considered separately, based on a suitable viability assessment, or classified with affordable housing for CIL purposes and thus zero-rated for CIL purposes.

Following the consultation the ‘Draft charging schedule’ has been amended and the Council have made the following Comments

Essential rural workers dwellings

Draft Charging Schedule – Report of Consultation

These are defined as housing for full-time rural workers in agriculture, horticulture or other rural businesses that require essential 24 hour supervision.

Officer response

Consideration should be given to zero rating this form of housing on viability grounds so that a CIL charge does not apply. Consent for this form of development is tied to a larger rural enterprise and this restricts their value and hence ability to absorb CIL.

(NB the charging schedule only relates to residential property, all other development is set at zero, therefore there is no need for an exemption for agricultural buildings)

(see page 10) <http://www.dorsetforyou.com/media.jsp?mediaid=178034&filetype=pdf>

Essential Rural Workers Dwellings	C3	NIL
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Next stages

As CIL cannot be adopted in advance of an adopted local plan, the timetable for its submission and examination is reliant on the progress of the new local plan for both councils. The next key stages and likely timescales are:

- *Submission to Government: February / March 2013*
- *Consultation on any proposed changes: March / April 2013*
- *Public Examination: July 2013*
- *Adoption: by January 2014"*

Representor Change:

The Charging Schedule be amended to exclude agricultural worker dwellings from the proposed CIL levy to be applied to housing development.

Officer Analysis:

The Representor contends that there is no evidence in the Viability Report that identifies that agricultural worker dwellings should not be treated with a nil charge.

However, the CIL Regulations require that decisions in respect of the landuses that should be subject to CIL and the level of the CIL charge be based solely on the viability evidence. This means that where the viability evidence identifies a use as being generally viable, a charge must be levied. The Regulations do not make provision for treating differing forms of the same landuse differently, with the exception of affordable housing, which is outside the remit of CIL. Agricultural worker dwellings do not meet the definition of affordable housing and as such are not exempt from CIL. As such agricultural worker dwellings are considered to be residential development.

The Viability Report has assessed residential development viability and has concluded that residential development is sufficiently viable to support a CIL charge and an appropriate levy has been set in respect of this form of development.

No evidence has been provided to support the contention that agricultural worker dwellings should not be subject to the CIL Charge due to viability reasons. As such agricultural worker dwellings should be subject of the CIL Charge, as all residential development is.

Council Recommendation:

No amendment is made to the Viability Report in respect of this Representation

Document: Viability Report
Issue: D1 Primary Health Care - Charge

Representor: Aneurin Bevan Health Board

Representation Number: 4553.C1 **Representation Type:** Objection

Summary of Comment:

The whole funding process has not been taken into account in setting the Charge

Representation:

The “Draft Charging Schedule “ proposals for the level of CIL for Primary Healthcare Developments result from recommendations from the District Valuer. These recommendations follow evaluation of new public-private healthcare developments defined as private investors constructing new primary care centres for the NHS (3PD) and that this market has remained resilient in the current economic downturn.

We feel that the District Valuer has not represented the whole financial funding process underpinning such healthcare projects. The sector may be comparatively resilient and new premises are built by the private sector, but they are publicly funded via Welsh Government’s/Health Board’s payment of rent. Without that support the sector would be as weak as all those others which have been left levy free.

We would reaffirm our comment that there has been a marked slowdown in the number of such schemes and a reduction in District Valuer recommended rental values from £180 per M², some 4 – 5 years ago, to £149.50 per M² for the most recently approved scheme in Rhymney. Given the fact that the District Valuer is directly involved in agreeing the development rents for these schemes, with the aim of setting a level of rent which yields only just sufficient profit for the developer to proceed, then how can there be any “super profit” on which to base the levy.

Notwithstanding the current Welsh Government funding crisis, the imposition of a CIL in Caerphilly, Rhondda Cynon Taf and Merthyr may result in what little money that may be available being channelled to the rest of Wales rather than in those council areas where the levy is applied, thus mitigating against health investment in areas of high deprivation and low economic status if the overall rental values are not supported by the District Valuer or Welsh Government.

If the purpose of a CIL is for the community to obtain some benefit from private sector profit which results from the grant of planning permission, then the provision of primary healthcare developments is a direct benefit to the community and as such health developments need to be the beneficiary of CIL as the whole population will access GP Facilities/services, unlike schools which are age specific, or restaurants that are leisure/economic specific. If Health should derive a benefit from CIL how much will be set aside from the council CIL to support health developments and what will be the mechanism to access such funding arrangements.

Representor Change:

The Representor seeks to amend the proposed levy charged against Class D1 primary healthcare development to zero

Officer Analysis:

For the purpose of the Viability Study and the implementation of the CIL within the county borough, the Primary Healthcare use (D1) is defined as new primary care centres for the NHS constructed by the private sector with funding support from the public sector. In these schemes, the developer and /or their investors become the landlord to the NHS on the completion of the scheme. There are variants to this model, but for the avoidance of doubt, it is important to clarify that such schemes do not include C2 uses (*care homes, hospitals, nursing homes*) and C2A (*secure hospitals*).

Typically within Wales the D1 Primary Healthcare use (D1) schemes would be the Resource Centre Schemes, which are presently being developed for example in Rhymney. These types of scheme combine a number of users in a single development. Occupying uses often include a lead GP surgery (or surgeries), pharmacy, health board space, local authority space and minor surgery/palliative care services within the same development. Such schemes would potentially therefore be mixed use development and would attract multiple CIL rates, e.g. Pharmacy A1 rate £100, office B1 rate £0, primary healthcare D1 rate £60 and medical ward C2 rate £0. In future scheme layout plans will need to allow for a delineation of uses to enable the CIL rates to be calculated, even so shared areas will require careful consideration.

The DVS has re confirmed that as independent surveyors acting in the field of Primary Healthcare use (D1), this development market includes easily identified commercial interests (*such as “Health-fund” investors*), third sector investors (*Housing Associations*), wholly public sector led developments (*referred to as NHS Capital Projects*) and Doctor led developments (*GP DIY*).

From the viability evidence base that the DVS reviews on a regular basis the first two Primary Healthcare market sectors, namely Health-funds and third sector investors are easily identified as being able to support the proposed CIL charge of £60 per square metre.

The remaining two market sectors, namely NHS Capital Projects and GP DIY are not easily identified within the viability evidence. This is because in the main the capital funding comes either from the public sector or from non-commercial private individuals, often in partnership. The occupation costs (service charges, running costs etc) are met out of the GPs clinical earnings. In the absence of viability evidence for these types of scheme, the logical question is whether they should be charged the same rate of CIL as private and third sector developments. The DVS evidence states that: *“A natural assumption, rightly or wrongly, might be that both NHS Capital Projects and GP DIY developments are non-commercial and less efficient and therefore unable to sustain the same CIL charge as demonstrated by the viability evidence in respect of the private and third sector developments. But there is no viability evidence to form any substantiated view here.”* The DVS goes on to state: *“My view is that there is a theoretical case for potentially reducing the CIL rate down from £60 per square metre proposed, but the complete lack of viability evidence in support of this makes me cautious and reticent in suggesting any rate alteration”*

It is important at this juncture to consider how Merthyr and Rhondda Cynon Taf are dealing with this matter, given that this work is being progressed jointly. All three authorities are presently proposing a £60 rate for this type of use based on the viability evidence of the DVS. RCT has received a similar representation to the RCT Preliminary CIL Charging

Schedule from Cwm Taf Health Authority, whilst Merthyr has not received a representation on this matter to date.

In order to ensure that there is a consistency of approach on this matter, it is suggested that officers be authorised to continue to negotiate with the two health boards and partner local planning authorities to work towards setting the rate at an acceptable level for all. Initial thoughts are that having regard for the DVS view that there is a theoretical case for potentially reducing the CIL rate down from £60 per square metre, that a reduction to £40 per square metre be considered to offset the lack of viability evidence for NHS Capital Projects and GP DIY schemes.

It is important however to note that any rate set, must be supported by elected members, and it is therefore suggested that Council authorise Officers to agree an amended rate (if this is appropriate) in due course with the Cabinet. This amended rate would then be tested at the Independent Examination and the outcome reported back to full Council.

Council Recommendation:

That officers be authorised to negotiate with the two health boards and partner local planning authorities to work towards setting the rate at an acceptable level for all with a view to reporting the outcome and recommendations of the negotiation back to Cabinet for agreement.

Document: Viability Report
Issue: D1 Primary Health Care - Charge

Representor: Aneurin Bevan Health Board

Representation Number: 4553.C2 **Representation Type:** Objection

Summary of Comment:

Question how the levy can be applied to NHS Capital funded projects and GP self-funded development schemes.

Representation:

Finally as your proposal is predicated on new public-private healthcare developments defined as private investors constructing new primary care centres for the NHS (3PD) schemes, I again request clarification on how this levy will be evaluated against formal NHS Capital funded projects and GP self funded development schemes which do not attract such profit benefits and external investment.

Representor Change:

The Representor seeks to amend the proposed levy charged against Class D1 primary healthcare development to zero

Officer Analysis:

NHS Capital Projects and GP DIY are not easily identified within the viability evidence. This is because in the main the capital funding comes either from the public sector or from non-commercial private individuals, often in partnership. The occupation costs (service charges, running costs etc) are met out of the GPs clinical earnings. In the absence of viability evidence for these types of scheme, the logical question is whether they should be charged the same rate of CIL as private and third sector developments. The DVS evidence states that: *“A natural assumption, rightly or wrongly, might be that both NHS Capital Projects and GP DIY developments are non-commercial and less efficient and therefore unable to sustain the same CIL charge as demonstrated by the viability evidence in respect of the private and third sector developments. But there is no viability evidence to form any substantiated view here.”* The DVS goes on to state: *“My view is that there is a theoretical case for potentially reducing the CIL rate down from £60 per square metre proposed, but the complete lack of viability evidence in support of this makes me cautious and reticent in suggesting any rate alteration”*

It is important at this juncture to consider how Merthyr and Rhondda Cynon Taf are dealing with this matter, given that this work is being progressed jointly. All three authorities are presently proposing a £60 rate for this type of use based on the viability evidence of the DVS. RCT has received a similar representation to the RCT Preliminary CIL Charging Schedule from Cwm Taf Health Authority, whilst Merthyr has not received a representation on this matter to date.

In order to ensure that there is a consistency of approach on this matter, it is suggested that officers be authorised to continue to negotiate with the two health boards and partner local planning authorities to work towards setting the rate at an acceptable level for all. Initial thoughts are that having regard for the DVS view that there is a theoretical case for

potentially reducing the CIL rate down from £60 per square metre, that a reduction to £40 per square metre be considered to offset the lack of viability evidence for NHS Capital Projects and GP DIY schemes.

It is important however to note that any rate set, must be supported by elected members, and it is therefore suggested that Council authorise Officers to agree an amended rate (if this is appropriate) in due course with the Cabinet. This amended rate would then be tested at the Independent Examination and the outcome reported back to full Council.

Council Recommendation:

That officers be authorised to negotiate with the two health boards and partner local planning authorities to work towards setting the rate at an acceptable level for all with a view to reporting the outcome and recommendations of the negotiation back to Cabinet for agreement.

Document: Draft Charging Schedule
Issue: Affordable Housing

Representor: The Bird Group

Representation Number: 4144.C5

Representation Type: Objection

Summary of Comment:

Clarification of the relationship between the CIL Charge, development viability and the requirement to provide affordable housing should be made in the Charging Schedule.

Representation:

A key objective of the Council is to deliver affordable housing. The introduction of CIL will impact upon development viability and hence the ability of development schemes to deliver affordable housing. The priority to be given to affordable housing should be clarified given that at present the CIL payment is non-negotiable which will inevitably reduce the ability of schemes to contribute towards affordable housing where abnormal development costs are such that they restrict the viability of the scheme. The Council should, therefore, clarify the priority for securing affordable housing and infrastructure contributions when negotiating planning applications.

Representor Change:

The Charging Schedule should set out the relationship between the CIL Charge, site viability and the provision of affordable housing.

Officer Analysis:

The relationship between the CIL Charge, development viability and the provision of Affordable Housing is acknowledged and accepted. The Representor seeks clarification of the relationship in the Charging Schedule.

Section 2 of the Draft Charging Schedule sets out the exemptions to the CIL Charge and the fourth paragraph of the section addresses affordable housing. In addition to this the council published a Guidance Note setting out its Draft Social Housing Relief Policy (Guidance Note 3). These documents set out the position of affordable housing in respect of CIL. Further to this the council also published the Draft Regulation 123 List of Infrastructure, which sets out the position in respect of S106 agreements and CIL. This document clearly sets out the position in respect of affordable housing, being a S106 matter.

The Adoted LDP and national planning guidance set out that affordable housing is negotiated on a development by development basis, taking into account site viability, whilst legislation sets out that CIL is a statutory requirement.

The position in respect of affordable housing is clear, and does not require further embellishment.

Council Recommendation:

No amendment is made to the Draft Charging Schedule in respect of this Representation

Document: Draft Charging Schedule
Issue: A1 Retail Development - Charge

Representor: Wm Morrison Supermarkets PLC

Representation Number: 4014.C1 **Representation Type:** Support

Summary of Comment:

Support the proposed CIL rate of £100 per sq.m. for A1 retail development.

Representation:

We write to support the proposed CIL rate of £100/sq.m. for A1 retail development, as set out in the Community Infrastructure Levy (CIL) Draft Charging Schedule on page 2 of the document.

We consider this level of contribution will not harm the viability or proposed retail developments of any scale.

Representor Change:

No change required.

Officer Analysis:

The support for the charge and its effect on retail development viability is welcomed

Council Recommendation:

The support for the charge and its effect on retail development viability is noted.

Document: Draft Charging Schedule

Issue: A1 Retail - Charge

Representor: Country Land and Business Association

Representation Number: 4559.C2

Representation Type: Objection

Summary of Comment:

There is no evidence to support a charge for rural retail development

Representation:

I would also contend this to be the case in relation to rural retail outlets where again no specific mention in your Viability Appraisal is made to them.

Representor Change:

The Charging Schedule be amended to exclude rural retailing from the proposed CIL levy to be applied to A1 retailing development.

Officer Analysis:

The CIL Regulations require that decisions in respect of the landuses that should be subject to CIL and the level of the CIL charge be based solely on the viability evidence. This means that where the viability evidence identifies a use as being generally viable, a charge must be levied. The evidence base clearly demonstrates that A1 retail development is viable across the study area and, as such, a charge must be levied against A1 retail developments. A decision not to charge the levy against certain types of retail, or in specific locations would be a policy decision, rather than a viability decision, which would be contrary to the CIL Regulations.

Furthermore it is likely that within the authority rural retail would be likely to be in the form of a change of use of an existing building, rather than the provision of a new building, and as such it is likely that the levy would only be charged against proposals with significant extensions of floorpace, which would be unlikely, given the location of the development.

Council Recommendation:

No amendment is made to the Viability Report in respect of this Representation

Document: Draft Charging Schedule

Issue: A1 Retail – Charge

Representor: Asda Stores Ltd

Representation Number: 4561.C1

Representation Type: Objection

Summary of Comment:

The imposition of CIL charges for retail development will prejudice the council from realising the economic aims set out in their LDP

Representation:

One of the aims of the Council's Local Development Plan (November 2010) is to 'increase the economic prosperity of the people and communities of the county borough through the provision of land for employment opportunities'. We believe that the proposed CIL charges will not allow the Council to achieve this aim.

It is our view that if the charges set out in the Charging Schedule are adopted there will inevitably be several consequences across the County Borough that will put the Council's ability to realise the aims and objectives set out in its Local Development Plan. For example:

- a) All other forms of development will receive a substantial subsidy at the expense of the retail and, to a lesser extent, residential development; and
- b) There will be a corresponding disincentive (and market distortion accordingly) to investment in the economy.

The Government is keen to encourage the creation of additional employment across the economy and the retail sector is one of the largest employers and the largest creator of new jobs at the present time as well as being one of the most dynamic and innovative sectors within the UK economy.

Asda example 1

ASDA has a proven track record of investing in local communities and of creating jobs within these areas. For example, of the 123 colleagues recruited for the ASDA store in Tunbridge Wells, 76 colleagues live within 5 miles of the store and 87 colleagues were previously unemployed.

The supporting papers do not acknowledge this trend nor do they fully assess the role of retail within the national economy. They simply assert that large format retail continues to be one of the best performing sectors in the UK and implies that operators within it have capacity to pay potentially very large sums of CIL.

Any CIL Charging Schedule that imposes a CIL charge only on retail would effectively undermine the retail function of local centres by detracting from their viability and vitality as large retail developers would be discouraged by the imposition of CIL.

Asda example 2

Asda stores regularly rejuvenate and regenerate existing centres, and the surrounding area, and draw new shoppers to them, which benefits the existing retailers, and those who open stores in Asda-anchored centres in their wake. For example in 2006, Asda opened a store in Romford, transforming a derelict brownfield site through an extension of an existing retail mall and creating 347 jobs. This helped to propel Romford into the top 50 UK retailing cities. Indeed, due to the success of the store in attracting more footfall to that part of the town's Primary Shopping Area, the local authority redrew the town centre boundary to include the edge of centre Asda store into the heart of Romford town centre.

Furthermore, the higher CIL Charges proposed for these rural areas will not encourage retail development and appears to be a contradiction to the statements in Policies DM22 and DM23.

Representor Change:

The Charging Schedule be amended to set a reduced or minimal level of charge for retail development.

Officer Analysis:

The CIL Regulations require that decisions in respect of the landuses that should be subject to CIL and the level of the CIL charge be based solely on the viability evidence. This means that where the viability evidence identifies a use as being generally viable, a charge must be levied. The evidence base clearly demonstrates that A1 retail development is viable across the study area and, as such, if CIL is implemented, a charge must be levied against A1 retail developments.

It is accepted that the imposition of CIL imposes a levy against retail and housing developments, but this is based upon viability evidence as these uses have been identified as being sufficiently viable to be able to withstand the levy. It should be noted, however, that a whole range of uses were assessed and uses such B1, B2, B8, D2 and care and nursing homes were identified as not being sufficiently viable to support a charge.

The role that retail development has in providing employment and stimulating economic growth is accepted. However, it is not agreed that the implementation of a CIL charge against retail development would prejudice such development, as the Viability Report identifies that the retail development is sufficiently viable to support the CIL charge, without comprising viability.

The references to Policies DM22 and DM23 are not recognised, as the LDP contains no policies prefixed with DM.

Council Recommendation:

No amendment is made to the Viability Report in respect of this Representation

Document: Draft Charging Schedule

Issue: A1 Retail - Charge

Representor: Asda Stores Ltd

Representation Number: 4561.C4

Representation Type: Objection

Summary of Comment:

The charges set out in the Draft Charging Schedule take no account of the infrastructure required by permitted developments and, when taken in conjunction with S106 requirements, represent an unreasonable double levy on retail development.

Representation:

The Charging Schedule, as drawn, does not make the connection between the CIL charges proposed and the infrastructure requirements of the particular developments upon which they are being levied.

By way of example, the proposed charge of £100 per square metre for retail development would add £400,000 to the cost of a generic 4000sq.m. supermarket development. There is no evidence that this is necessarily the appropriate figure in terms of the related infrastructure costs that a retail development should be expected to carry but rather it appears to be a high level calculation based on the sector's ability to pay.

As you are aware, Regulation 14 (1) of the Community Infrastructure Regulations (as amended) states that:

- (1) *In setting rates (including differential rates) in a charging schedule, a charging authority must aim to strike what appears to the charging authority to be an appropriate balance between—*
 - (a) *the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and*
 - (b) *the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.*

We accept that some superstores may individually necessitate the provision of specific local infrastructure but it could be argued that given the proliferation of modern supermarkets infrastructure requirements have reduced. For example, it is frequently the case that journey times fall as new supermarkets are opened. The inevitable consequence of this is that most existing infrastructure is used less, not more, as a result of such developments. There is concern that as local authorities will still seek site-specific commitments under the Section 106 regime as well as CIL that the two charges together represent an unreasonable double levy for infrastructure, which is seemingly being placed onto a very limited category of development.

There is also a risk that some of the infrastructure projects identified by the council to be funded by CIL will already have been funded by undelivered projects funded by existing Section 106 commitments. At present Section 106 contributions paid to a council are repaid to a developer if the infrastructure has not been delivered within a certain period of time. These delivery periods are long, usually between five and ten years, and the onus is

on the developer to check that the council has carried out the works and to request a refund if not. As you will be aware, there is no similar mechanism to allow developers to reclaim unspent CIL contributions.

Representor Change:

The charges set out in the Draft Charging Schedule should be amended so that the charge levied takes account of the infrastructure requirements of permitted developments.

Officer Analysis:

The purpose of implementing CIL is to raise revenue to provide infrastructure necessary to support development in accordance with the development plan. Whilst it may be the case in certain circumstances, it is not generally the case that CIL should provide infrastructure for specific development schemes.

Where specific infrastructure is required to enable a specific development to proceed this will continue to be set out in S106 agreements. However, other infrastructure, as set out in the Council's Regulation 123 List will be funded through CIL.

The Representor contends that the imposition of CIL would mean that retail developments would be subject to a double levy in respect of infrastructure. However, since 2006 the council has permitted 7 planning applications for new retail development (other retail developments have been Change Of Use of existing buildings and would not have attracted the CIL charge due to the scale of new floorspace) and all 7 of these applications were subject of S106 agreements, but only 2 set out financial contributions. The remaining 5 S106 Agreements related to general access provisions and restrictions on parking.

The two applications that made financial contributions through S106, would have made the contributions via CIL under the CIL regime, and the level of CIL charged to the developments was equal or less than the contributions that the developments had made.

Given this, on past evidence, retail development can withstand the CIL charge and maintain the S106 requirements that would normally be attributed to such development. As such the council are content that the CIL Charge for A1 retail development is justified and would not undermine viability of retail developments.

Council Recommendation:

No amendment is made to the Viability Report in respect of this Representation

Document: Draft Charging Schedule

Issue: Flat Rate Levy

Representor: Asda Stores Ltd

Representation Number: 4561.C8

Representation Type: Objection

Summary of Comment:

The council should adopt a flat rate levy relative to the cost of infrastructure, or reduce the retail charges to the level suitable for small-scale retail developments.

Representation:

A much fairer solution, accepting for the purpose of this argument the premise that CIL is necessary for the purpose of funding infrastructure throughout the county borough would be to divide the council's estimate of total infrastructure costs over the charging period (which should include only deliverable infrastructure) by the total expected development floorspace and apply a flat rate levy throughout the county borough and across all forms of development. That will have the least possible adverse effect upon the market for land and for development, and yet the greatest possible opportunity for the economy to prosper and thrive and for jobs to be created.

The potential impact of a flat rate levy on the viability of those types of development which are not currently identified as viable could be balanced by the council's implementation of exceptional circumstances relief, as mentioned above.

Consequently, reducing the levy proposed per square metre on this floorspace would not result in a proportionate increase in the levy required on other forms of commercial or other development. However, applying the current proposed levy could run the risk of diminishing substantially the number of such stores built, with consequential loss of employment opportunities and investment.

Alternatively, we would request that the council reduces the CIL charges for large scale retail developments to that of small scale retail developments to ensure consistency.

Representor Change:

The council should adopt a flat rate levy or reduce the retail charge to a level suitable for small-scale retail development.

Officer Analysis:

The Representor suggests a system where the CIL Charge is based upon a calculation of the total cost of necessary infrastructure attributed to the total anticipated floorspace developed during the period. This would give a flat levy for all forms of development, which the Representor contends would be a fairer approach.

However this approach is contrary to the CIL Regulations, as the CIL Regulations require that decisions in respect of the landuses that should be subject to CIL, and the level of the CIL charge, should be based solely on viability evidence. This means that where the viability evidence identifies a use as being generally viable, a charge must be levied. The introduction of a flat rate levy is not considered to be appropriate.

Council Recommendation:

No amendment is made to the Draft Charging Schedule in respect of this Representation

Document: Draft Charging Schedule
Issue: CIL / S106 Relationship

Representor: Asda Stores Ltd.

Representation Number: 4561.C9 **Representation Type:** Objection

Summary of Comment:

The imposition of CIL is another cost to development in addition to, not instead of, Section 106 agreements.

Representation:

The stated purpose of CIL is to raise revenue for infrastructure necessary to serve development. CIL is intended to address the imbalance of raising funds for infrastructure under Section 106 route where larger schemes have effectively subsidised minor developments. However, CIL does not replace the Section 106 revenue stream – it will simply provide additional revenue for infrastructure.

Representor Change:

The CIL rates should be reduced to take account of the double charging.

Officer Analysis:

The purpose of implementing CIL is to raise revenue to provide infrastructure necessary to support development in accordance with the development plan. Whilst it may be the case in certain circumstances, it is not generally the case that CIL should provide infrastructure for specific development schemes.

Where specific infrastructure is required to enable the development to proceed, this will continue to be set out in S106 agreements. However, other infrastructure, as set out in the Council's Regulation 123 List will be funded through CIL.

The Representor contends that the imposition of CIL would mean that retail developments would be subject to a double levy in respect of infrastructure. However, since 2006 the council has permitted 7 planning applications for new retail development (other retail developments have been Change Of Use of existing buildings and would not have attracted the CIL charge due to the scale of new floorspace) and all 7 of these applications were subject of S106 agreements, but only 2 set out financial contributions. The remaining 5 S106 Agreements related to general access provisions and restrictions on parking.

The two applications that made financial contributions through S106, would have made the contributions via CIL under the CIL regime, and the level of CIL charged to the developments was equal or less than the contributions that the developments had made.

Given this, on past evidence, retail development can withstand the CIL charge and maintain the S106 requirements that would normally be attributed to such development. The CIL Charge for A1 retail development is justified and would not undermine viability of retail developments.

Council Recommendation:

No amendment is made to the Draft Charging Schedule in respect of this Representation

Document: Draft Charging Schedule

Issue: Review Policy

Representor: The Bird Group

Representation Number: 4144.C4

Representation Type: Objection

Summary of Comment:

The Draft Charging Schedule does not set out a review policy for the CIL, so it is unclear how the CIL can be reviewed to take account of changes in site-specific issues and constraints.

Representation:

Development viability in Caerphilly is marginal and the introduction of additional development costs will have a negative impact upon the delivery of new development within the area. The proposed CIL rates do not take into account site specific issues and constraints which may render new development unviable. Whilst the indicators used within the Viability Report are reasonable, the indicators are subject to changing market conditions. The CIL Schedule does not make any provision for the charging schedule to be reviewed on a regular basis, despite the CIL Guidance (2012) identifying the importance of this approach.

Representor Change:

The Charging Schedule sets out the review mechanism for CIL and how and when it will be triggered.

Officer Analysis:

The CIL regulations require that the CIL be subject of annual monitoring. The council are intending to undertake this monitoring as part of the annual monitoring process that is undertaken on the LDP. The Monitoring Framework for the LDP already includes housing development viability indicators, which monitor Strategy Policy 15. These indicators provide background information in respect of house and land prices and will indicate if there has been a change in economic circumstances that may undermine viability.

Given that this process is already in place, with the respective data collection protocols in place, it would be inappropriate to implement a duplicating and additional monitoring process. As such the annual monitoring of the LDP provides the appropriate mechanism for monitoring and reviewing the CIL.

Further to this, tying the monitoring process to the LDP means that a review would be triggered with the review of the plan, which could have significant issues in respect of development viability due to possible changes in affordable housing policies and other land use issues.

Council Recommendation:

No amendment is made to the Draft Charging Schedule in respect of this Representation

Document: Draft Charging Schedule

Issue: Review Policy

Representor: Bryn Quarry Ltd

Representation Number: 4145.C4

Representation Type: Objection

Summary of Comment:

The Draft Charging Schedule does not set out a review policy for the CIL, so it is unclear how the CIL can be reviewed to take account of changes in site-specific issues and constraints.

Representation:

Development viability in Caerphilly is marginal and the introduction of additional development costs will have a negative impact upon the delivery of new development within the area. The proposed CIL rates do not take into account site specific issues and constraints which may render new development unviable. Whilst the indicators used within the Viability Report are reasonable, the indicators are subject to changing market conditions. The CIL Schedule does not make any provision for the charging schedule to be reviewed on a regular basis, despite the CIL Guidance (2012) identifying the importance of this approach.

Representor Change:

The Charging Schedule sets out the review mechanism for CIL and how and when it will be triggered.

Officer Analysis:

The CIL regulations require that the CIL be subject of annual monitoring. The council are intending to undertake this monitoring as part of the annual monitoring process that is undertaken on the LDP. The Monitoring Framework for the LDP already includes housing development viability indicators, which monitor Strategt Policy 15. These indicators provide background information in respect of house and land prices and will indicate if there has been a change in economic circumstances that may undermine viability.

Given that this process is already in place, with the respective data collection protocols in place, it would be inappropriate to implement a duplicating and additional monitoring process . As such the annual monitoring of the LDP provides the appropriate mechanism for monitoring and reviewing the CIL.

Further to this, tying the monitoring process to the LDP means that a review would be triggered with the review of the plan, which could have significant issues in respect of development viability due to possible changes in affordable housing policies and other land use issues.

Council Recommendation:

No amendment is made to the Draft Charging Schedule in respect of this Representation

Document: Draft Charging Schedule
Issue: Discretionary Relief

Representor: The Bird Group

Representation Number: 4144.C2

Representation Type: Objection

Summary of Comment:

The council should operate a policy of Discretionary Relief applicable to all developments made unviable by the imposition of the CIL charge.

Representation:

The Council should grant Discretionary Relief for all development schemes (including residential development), if the scheme is rendered unviable by imposing CIL. As advocated by the CIL Regulations (Regulations 55 - 58), discretionary relief from the CIL charge should be provided where it can be demonstrated that the imposition of the CIL would render the scheme unviable as a result of specific and exceptional cost burdens.

Representor Change:

The council introduce a policy of offering Discretionary Relief for unviable developments.

Officer Analysis:

Regulations 55 to 58 allow charging authorities to set discretionary relief for exceptional circumstances. Use of an exceptions policy enables the charging authority to avoid rendering sites with specific and exceptional cost burdens unviable should exceptional circumstances arise. Before granting relief, the Council will need to be satisfied that the costs relating to the section 106 agreement are greater than those related to the Community Infrastructure Levy, and that the relief would not constitute notifiable State aid.

However, a number of issues need to be resolved in order to define an appropriate Discretionary Relief Policy. The first is that Discretionary Relief can only be offered where there are exceptional circumstances, and the exceptional circumstances must be viability based. The CIL Levy and the level of charge itself are all based upon an assessment of development viability. Given this, issues likely to affect development viability have already been taken into account, and therefore, cannot be considered to be “exceptional”. As a result it has not been possible to identify “exceptional circumstances” upon which to base such a policy.

Secondly, if a more general approach is adopted, it is likely to lead to most developers seeking such relief on viability grounds, this could potentially undermine the whole CIL system and introduce uncertainty into the system which CIL is designed to remove. This could result in significant delays in determining planning applications and in the implementation of the CIL and involve high levels of time and costs associated with dealing with such requests. It is also possible that such a policy would be subject to inconsistency of approach and could be open to whim and judgement that could raise issues of consistency, with some development being treated differently to others.

Given these reservations, it is not considered appropriate at this time, to implement a policy of Discretionary Relief.

Council Recommendation:

No amendment is made to the Draft Charging Schedule in respect of this Representation

Document: Draft Charging Schedule
Issue: Discretionary Relief

Representor: Bryn Quarry Ltd

Representation Number: 4145.C2

Representation Type: Objection

Summary of Comment:

The council should operate a policy of Discretionary Relief applicable to all developments made unviable by the imposition of the CIL charge.

Representation:

The Council should grant Discretionary Relief for all development schemes (including residential development), if the scheme is rendered unviable by imposing CIL. As advocated by the CIL Regulations (Regulations 55 - 58), discretionary relief from the CIL charge should be provided where it can be demonstrated that the imposition of the CIL would render the scheme unviable as a result of specific and exceptional cost burdens.

Representor Change:

The council introduce a policy of offering Discretionary Relief for unviable developments.

Officer Analysis:

Regulations 55 to 58 allow charging authorities to set discretionary relief for exceptional circumstances. Use of an exceptions policy enables the charging authority to avoid rendering sites with specific and exceptional cost burdens unviable should exceptional circumstances arise. Before granting relief, the Council will need to be satisfied that the costs relating to the section 106 agreement are greater than those related to the Community Infrastructure Levy, and that the relief would not constitute notifiable State aid.

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Secondly, if a more general approach is adopted, it is likely to lead to most developers seeking such relief on viability grounds, this could potentially undermine the whole CIL system and introduce uncertainty into the system which CIL is designed to remove. This could result in significant delays in determining planning applications and in the implementation of the CIL and involve high levels of time and costs associated with dealing with such requests. It is also possible that such a policy would be subject to inconsistency of approach and could be open to whim and judgement that could raise issues of consistency, with some development being treated differently to others.

Given these reservations, it is not considered appropriate at this time, to implement a policy of Discretionary Relief, however the situation will be monitored and if as a consequence of implementing CIL there appears a need for relief to be introduced for truly

exceptional circumstances (for example Bedwas Colliery, Ness Tar Plant), this decision will be revised.

Council Recommendation:

No amendment is made to the Draft Charging Schedule in respect of this Representation

Document: Draft Charging Schedule
Issue: Exceptional Circumstances Relief

Representor: Asda Stores Ltd

Representation Number: 4561.C6 **Representation Type:** Objection

Summary of Comment:

The council has not indicated whether it intends to implement exceptional circumstances relief. We urge the council to do so.

Representation:

The council has not indicated whether it intends to implement exceptional circumstances relief. We urge the council to do so.

The viability of any particular development scheme is finely balanced and will fluctuate depending upon the costs involved in the development and the state of the economy when the development comes forward. By adopting exceptional circumstances relief the council will have the flexibility to allow strategic or desirable, but unprofitable, development schemes to come forward by exempting them from the CIL charge or reducing it in certain circumstances.

Simply exempting schemes from certain S106 obligations is unlikely to be sufficient to counteract the negative impact of the CIL charge, particularly as not all schemes (in particular retail developments) would attract an affordable housing requirement which could be waived. Further, the types of strategic development which are most likely to be of concern to the council, such as large regeneration or housing schemes, are precisely the types of development which are likely to carry a heavy site specific infrastructure costs, which will be funded under S106, and are most likely to qualify for exceptional circumstances relief. We urge the council to adopt it.

Representor Change:

The council should set out and implement a policy for exceptional circumstances relief.

Officer Analysis:

The Regulations make provisions for Charging Authorities to implement a policy of providing discretionary relief for developments where there are exceptional circumstances. In order to implement Discretionary Relief, the council would need to identify a policy that would ensure that such relief is offered and implemented in a consistent, fair and even-handed manner.

However, a number of issues need to be resolved in order to define an appropriate policy. The first is that Discretionary Relief can only be offered where there are exceptional circumstances, and the exceptional circumstances must be viability based. The CIL Levy and the level of charge itself are all based upon an assessment of development viability. Given this, issues likely to affect development viability have already been taken into account, and therefore, cannot be considered to be “exceptional”. As a result it has not been possible to identify “exceptional circumstances” upon which to base such a policy.

Secondly, if a more general approach is adopted, it is likely to lead to most developers seeking such relief on viability grounds, which would undermine the whole CIL system and introduce uncertainty into the system which CIL is designed to remove. This could result in significant delays in determining planning applications and in the implementation of the CIL and involving high levels of time and costs associated with dealing with such requests.

Finally, without defined exceptional circumstances, it is highly likely that such a policy would be subject to inconsistency of approach and could be open to whim and judgement that could raise issues of consistency, with some development being treated differently to others.

Given these reservations, it is not considered appropriate at this time, to implement a policy of Discretionary Relief, however the situation will be monitored and if as a consequence of implementing CIL there appears a need for relief to be introduced for truly exceptional circumstances, this decision will be revised.

Council Recommendation:

No amendment is made to the Draft Charging Schedule in respect of this Representation

Document: Draft Charging Schedule
Issue: Payment in Kind Contributions

Representor: The Bird Group

Representation Number: 4144.C3 **Representation Type:** Objection

Summary of Comment:

The council should operate a policy of accepting payment in kind of both infrastructure and land in lieu of CIL contributions.

Representation:

In addition, the Council should accept 'Payment in Kind' (Regulation 73 & DCLG CIL Consultation April 2013) for both infrastructure and land as an alternative to commuted sum financial payments. The cost of such infrastructure / land provision should however be independently scrutinised to ensure that it is appropriately deducted from the levy.

Representor Change:

The council should accept payment in kind of both infrastructure and land in lieu of CIL contributions.

Officer Analysis:

The current Regulations make provision for payment in kind contributions in lieu of CIL and the proposed changes in the DCLG Consultation paper, issued in April 2013, seeks to extend this provision further. The council supported the proposed amendment in its response to DCLG In respect of the consultation paper.

Given that provision is set out in the CIL Regulations, there is not a need to set out a further policy on this issue and will consider such developments in light of the provisions of the Regulations on a case by case basis. It would however be useful to publish a Guidance Note on this matter in due course.

Council Recommendation:

No amendment is made to the Draft Charging Schedule in respect of this Representation

Document: Draft Charging Schedule
Issue: Payment in Kind Contributions

Representor: Bryn Quarry Ltd

Representation Number: 4145.C3 **Representation Type:** Objection

Summary of Comment:

The council should operate a policy of accepting payment in kind of both infrastructure and land in lieu of CIL contributions.

Representation:

In addition, the Council should accept 'Payment in Kind' (Regulation 73 & DCLG CIL Consultation April 2013) for both infrastructure and land as an alternative to commuted sum financial payments. The cost of such infrastructure / land provision should however be independently scrutinised to ensure that it is appropriately deducted from the levy.

Representor Change:

The council should accept payment in kind of both infrastructure and land in lieu of CIL contributions.

Officer Analysis:

The current Regulations make provision for payment in kind contributions in lieu of CIL and the proposed changes in the DCLG Consultation paper, issued in April 2013, seeks to extend this provision further. The council supported the proposed amendment in its response to DCLG In respect of the consultation paper.

Given that provision is set out in the CIL Regulations, there is not a need to set out a further policy on this issue and will consider such developments in light of the provisions of the Regulations on a case by case basis. It would however be useful to publish a Guidance Note on this matter in due course.

Council Recommendation:

No amendment is made to the Draft Charging Schedule in respect of this Representation

Document: Draft Charging Schedule
Issue: Proposed Changes to CIL Regulations

Representor: Asda Stores Ltd

Representation Number: 4561.C5 **Representation Type:** Objection

Summary of Comment:

DCLG are currently consulting on a number of proposed changes to the CIL Regulations. The Draft Charging Schedule should be held from further progress to examination until the consultation results are known.

Representation:

As you are aware, DCLG is currently consulting on a wide ranging set of amendments to the Community Infrastructure Levy Regulations, which include but are not limited to changes to the treatment of existing floorspace, the evidence needed to demonstrate appropriate charging rates, the ability to accept infrastructure payment in kind and the scope of discretionary exemptions and relief.

The results of this consultation are likely to significantly impact on how the council elects to implement CIL and its effectiveness as a tool for revenue generation. In the circumstances, it would be sensible to consider delaying putting the Charging Schedule forward for Examination until this consultation is concluded and its outcome known.

Representor Change:

The Draft Charging Schedule be withheld from examination until the outcome of the CIL Regs Consultation are known and can be taken into account and reflected in the Charging Schedule itself.

Officer Analysis:

The Representor seeks to hold the preparation of CIL in abeyance until the outcome of the last DCLG Consultation paper on proposed changes to the CIL Regulations is known.

It should be noted that the CIL Regulations have been subject to a number of changes since they were first published in April 2010. The Charging Schedule has progressed, taking account of relevant changes throughout the process. It is accepted that the current proposed changes could represent a significant changes in certain aspect of the CIL preparation procedure, which could have implications for the CIL. However, one of the proposed changes to the CIL Regulations, Question 25, relates to transitional provisions and states

“Do you agree that changes related to the charge setting process and examination should not apply to authorities who have already published a draft charging schedule?”

This proposed changes would exempt the council’s CIL from having to comply with the procedural changes relating to charge setting and the examination process. As such, if the proposed changes to the Regulations are endorsed the council’s Draft Charging Schedule would not be bound by the proposed procedural changes, and if they are not endorsed, the council can continue under the existing published Regulations.

As a result there is no reason to hold the Draft Charging Schedule in abeyance until a decision has been made in respect of the DCLG proposed changes to the CIL Regulations.

Council Recommendation:

No amendment is made to the Draft Charging Schedule in respect of this Representation

Document: Draft Regulation 123 List of Infrastructure
Issue: Infrastructure Inclusion

Representor: Developer Consortium

Representation Number: 4555.C6 **Representation Type:** Support

Summary of Comment:

Support the inclusion of all education infrastructure in the Regulation 123 List

Representation:

The Consortium welcomes the inclusion of all Education (School) provision within the Draft Regulation 123 List of Infrastructure, as this creates greater certainty in the delivery of residential development.

Representor Change:

No change is sought in respect of this issue

Officer Analysis:

The support for the change is noted

Council Recommendation:

The support is noted.

Document: Draft Regulation 123 List of Infrastructure
Issue: Infrastructure Inclusion

Representor: Developer Consortium

Representation Number: 4555.C7 **Representation Type:** Support

Summary of Comment:

Support the clarification provided in respect of off-site formal leisure facilities.

Representation:

The Consortium welcome the additional clarity provided in respect of the definition of Off-Site Formal Leisure Facilities which includes playing pitches and associated changing facilities, Multi-use games areas and Neighbourhood Equipped Areas of Play.

Representor Change:

No change is sought in respect of this issue

Officer Analysis:

The support for the change is welcomed

Council Recommendation:

The support is noted.

Document: Draft Regulation 123 List of Infrastructure
Issue: Infrastructure Inclusion

Representor: Bryn Quarry Ltd

Representation Number: 4145.C5

Representation Type: Objection

Summary of Comment:

There is no justification for the inclusion of waste transfer/recycling bulking/civic amenity infrastructure in the list

Representation:

The inclusion of waste transfer / recycling bulking infrastructure and the upgrading of existing civic amenity sites is not justified either in terms of the principle of securing CIL funds to deliver such infrastructure or in terms of the funding gaps identified within the 'Infrastructure Assessment Report' (June 2012).

Representor Change:

Waster Transfer/ Recycling Bulking and Civic Amenity infrastructure be omitted from the Regulation 123 List.

Officer Analysis:

Regulation 123 sets out restrictions on the use of S106 agreements when CIL has been implemented, preventing their use for infrastructure that has been set out in a list published by the charging authority (Regulation 123 List).

There are no statutory requirements relating to the Regulation 123 List and as such there is no requirement for the charging authority to justify what infrastructure it includes on its list. The List is the tool by which the charging authority identifies what infrastructure is eligible for CIL funding, and it is the charging authority's decision what is included.

Paragraph 4.35 sets out the position that Waste transfer/recycling bulking/civic amenity infrastructure will be required in the future to support the Project Gwyrdd residual waste facility. As such the infrastructure is required to facilitate development in accordance with the development plan and, as such, is an appropriate infrastructure for the Reg 123 List.

Council Recommendation:

No amendment is made to the Regulation 123 List in respect of this Representation

Document: Draft Regulation 123 List of Infrastructure
Issue: Infrastructure Omission

Representor: Dwr Cymru / Welsh Water

Representation Number: 3962.C1 **Representation Type:** Objection

Summary of Comment:

“Strategic Drainage Network” in the Physical Infrastructure section of the Draft Regulation 123 List is amended to read “Strategic Water and Drainage Network”.

Representation:

Whilst we acknowledge that comments in respect of the Regulation 123 List will not form part of this current Charging Schedule Consultation and the list can be added to at any time in line with Regulation 123 of the CIL Regulations, we would like to reiterate our suggested amendment to the Physical Infrastructure section of the Draft Infrastructure List to read

- Strategic **Water and** Drainage

We believe that water and drainage network infrastructure is a key component in a development proceeding and if there are any problems with our infrastructure that we are not funded by our Regulator to resolve then CIL funding can assist.

Representor Change:

That the words “Water and” be inserted in the “Strategic Drainage” entry in the Physical Infrastructure section of the Draft Reg 123 List

Officer Analysis:

The Representor seeks the inclusion of strategic water and drainage infrastructure on the CIL Infrastructure List to ensure that, should circumstances change in the future, appropriate infrastructure can be provided to maintain water and drainage provision to new developments.

It should be noted that the Infrastructure List is separate from the CIL Charging Schedule and has only been included in the Preliminary Draft Charging Schedule for purposes of seeking comment. The Infrastructure List can be amended by the council at any time, although the council will need to ensure that certain procedural requirements are met to do so.

Given that the Representor seeks the inclusion of this infrastructure to address potential issues in the future, and that the council can amend the Infrastructure List at any time, it is considered inappropriate to include this infrastructure at the present time as the infrastructure list can be amended in the future should this issue become pertinent?

Council Recommendation:

No amendment is made to the Regulation 123 List in respect of this Representation

Document: Draft Regulation 123 List of Infrastructure
Issue: Infrastructure Omission

Representor: The Bird Group

Representation Number: 4144.C6

Representation Type: Objection

Summary of Comment:

The Regulation 123 List should include flood defence infrastructure, and paragraph 4.31 be amended to reflect this.

Representation:

The potential for flood defence works to be part funded via CIL should be considered contrary to the statement within paragraph 4.31 of the Infrastructure Assessment Report (June 2012).

Representor Change:

The Regulation 123 List should be amended to include flood defence infrastructure, and paragraph 4.31 be amended to reflect this.

Officer Analysis:

The Regulation 123 List should contain infrastructure that complements or facilitates development in accordance with the development plan. The Caerphilly LDP, in line with the guidance contained in TAN 15: Development & Flood Risk has adopted the precautionary principle when considering sites for inclusion. Sites have been allocated, therefore, away from the flood plain. Where sites that are located in the floodplain have been included in the plan, suitable mitigation measures have been agreed with the former Environment Agency now referred to as National Resource Wales (LDP Background Paper 13 Broad Level Flood Risk Assessment). Such mitigation measures will be required to be undertaken as an integral part of individual development schemes and any off site works will continue to be funded directly, or through s106.

Council Recommendation:

No amendment is made to the Regulation 123 List in respect of this Representation

Document: Draft Regulation 123 List of Infrastructure
Issue: S106 and Additional Costs

Representor: Developer Consortium

Representation Number: 4555.C8 **Representation Type:** Support

Summary of Comment:

The clarification in respect of the relationship between CIL and S106 agreements is welcomed.

Representation:

The Consortium also welcomes the additional clarity in respect of the relationship with S106 developer contributions.

Representor Change:

No change is sought in respect of this issue

Officer Analysis:

The support for the changes is welcomed

Council Recommendation:

The support is noted.

Document: Guidance Note 2 – Draft Instalment Policy
Issue: Instalment Policy

Representor: Asda Stores Ltd

Representation Number: 4561.C7 **Representation Type:** Objection

Summary of Comment:

The council has not made a definitive statement about adopting an instalment policy. We urge the council to adopt one.

Representation:

We also note from the Charging Schedule that the Council has not made a definitive statement about adopting an instalment policy.

Many major development projects are implemented in phases and by adopting an instalment policy this ensure that developers are not disadvantaged by submitting an application for full, rather than outline, planning permission. We therefore also urge the council to adopt an instalment policy which ensures that developers are not disadvantaged by the decision to submit a full application for a phased development scheme.

Representor Change:

The council should adopt and implement an instalment policy.

Officer Analysis:

This representation would seem to be a Representor misunderstanding. The Council has published a guidance note (Guidance Note 2) setting out its Draft Instalment Policy as part of the consultation material for the Draft Charging Schedule Consultation. As such the council has indicated its intention of implementing an instalment policy and has provided a draft version of the policy for comment.

Council Recommendation:

No amendment is made to Guidance Note 2 in respect of this Representation

Document: Guidance Note 2 – Draft Instalment Policy

Issue: Phasing Of Payments

Representor: The Bird Group

Representation Number: 4144.C7

Representation Type: Objection

Summary of Comment:

The phasing of payment should be structured around cash flow rather than set time periods and deferred until site preparation works are complete

Representation:

The instalments should be structured to complement the cash flow of new development such that payment should be deferred until the site preparation works is complete (DCLG CIL Consultation April 2013) with the levy payable upon commencement of the erection of buildings within a multi-phase scheme. Deferring CIL charges will reduce upfront development costs to help promote the delivery of new investment and development within the area. Phased payments should apply to all types of planning permissions including full and outline consents (DCLG CIL Consultation April 2013).

Representor Change:

The Policy be amended by changing the charging periods to relate to the cashflow of developments and the first payments be deferred until after site preparation works have been completed.

Officer Analysis:

The council has published its Draft Instalment Policy as Guidance Note 2 to the Draft Charging Schedule. This policy, however, sets out instalments by time period, rather than development delivery, in similar fashion to the indicative instalment system set out in the CIL Regulations.

The council has sympathy with the suggestion that the instalment policy relates to delivery and cashflow of developments. However, it is essential that such a policy is implemented fairly and equally to all developments and as such needs to set out criteria that are common to all contributing developments. Unfortunately the nature of commercial and residential developments is very different and issues of how you can set appropriate trigger points that apply to both types of development arise.

In addition to this, it is in the council's interests to seek to ensure that CIL payments are paid within an appropriate timeframe to enable infrastructure to be provided. Setting delivery trigger points could lead to situations where instalments are paid at very long intervals and this would be counter-productive to providing appropriate infrastructure.

As outlined above, the CIL Regulations sets out an standard instalment policy that is based upon time deadlines. Time deadlines have been chosen as the CIL is effectively a tax, and timebased enforcement is normally the appropriate form associated with tax systems. Further to this, time based trigger points also accord with the council's financial systems that would be utilised to monitor and collect CIL payments.

Consequently, given the above, despite sympathies with the Representors suggestions, the time-based approach to identifying triggers is the appropriate mechanism, and the Draft Instalment Policy represents a reasonable approach to setting out a fair and equal instalment policy.

Council Recommendation:

No amendment is made to Guidance Note 2 in respect of this Representation

Document: Guidance Note 2 – Draft Instalment Policy

Issue: Phasing Of Payments

Representor: The Bird group

Representation Number: 4144.C6

Representation Type: Objection

Summary of Comment:

The phasing of payment should be structured around cash flow rather than set time periods and deferred until site preparation works are complete

Representation:

The instalments should be structured to complement the cash flow of new development such that payment should be deferred until the site preparation works is complete (DCLG CIL Consultation April 2013) with the levy payable upon commencement of the erection of buildings within a multi-phase scheme. Deferring CIL charges will reduce upfront development costs to help promote the delivery of new investment and development within the area. Phased payments should apply to all types of planning permissions including full and outline consents (DCLG CIL Consultation April 2013).

Representor Change:

The Policy be amended by changing the charging periods to relate to the cashflow of developments and the first payments be deferred until after site preparation works have been completed.

Officer Analysis:

The council has published its Draft Instalment Policy as Guidance Note 2 to the Draft Charging Schedule. This policy, however, sets out instalments by time period, rather than development delivery, in similar fashion to the indicative instalment system set out in the CIL Regulations.

The council has sympathy with the suggestion that the instalment policy relates to delivery and cashflow of developments. However, it is essential that such a policy is implemented fairly and equally to all developments and as such needs to set out criteria that are common to all contributing developments. Unfortunately the nature of commercial and residential developments is very different and issues of how you can set appropriate trigger points that apply to both types of development arise.

In addition to this it is in the council's interests to seek to ensure that CIL payments are paid within an appropriate timeframe to enable infrastructure to be provided. Setting delivery trigger points could lead to situations where instalments are paid at very long intervals and this would be counter-productive to providing appropriate infrastructure.

As outlined above, the CIL Regulations sets out an standard instalment policy that is based upon time deadlines. Time deadlines have been chosen as the CIL is effectively a tax, and timebased enforcement is normally the appropriate form associated with tax systems. Further to this, time based trigger points also accord with the council's financial systems that would be utilised to monitor and collect CIL payments.

Consequently, given the above, despite sympathies with the Representors suggestions, the council consider that the time-based approach to identifying triggers is the appropriate mechanism, and the Draft Instalment Policy represents a reasonable approach to setting out a fair and equal instalment policy.

Council Recommendation:

No amendment is made to Guidance Note 2 in respect of this Representation

