



REGENERATION AND ENVIRONMENT SCRUTINY COMMITTEE – 19TH FEBRUARY 2012

SUBJECT: COMMUNITY INFRASTRUCTURE LEVY (CIL) - PRELIMINARY DRAFT CHARGING SCHEDULE - REPORT OF CONSULTATION

REPORT BY: CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 To provide Members with a summary of the comments received as part of the consultation on the Council's Preliminary Draft Charging Schedule Community Infrastructure Levy.
- 1.2 To seek the Scrutiny Committee's recommendation to Council to approve:
 - A) The amendments proposed to the Charging Schedule as a result of the comments made during the consultation period;
 - B) The amendments proposed to the Infrastructure Assessment Report as a result of the comments made during the consultation period; and
 - C) The ***D1 Primary Healthcare CIL Rate***

GLOSSARY OF ACRONYMS, ABBREVIATIONS AND TERMS

CIL	Community Infrastructure Levy
CIL Regulations	The Community Infrastructure (Amendment) Regulations 2011
LDP	Caerphilly County Borough Local Development Plan
S106	Section 106 of the Town and Country Planning Act 1990
CIL Documents	CIL Charging Schedule, CIL Viability Report, Infrastructure Assessment Report
DIL	Draft Infrastructure List
IAR	Draft Infrastructure Assessment Report
DVS	District Valuer Services
Viability Report	Study Into the Economic Viability of Charging Community Infrastructure Levy in Caerphilly, Merthyr & Rhondda Cynon Taf County Borough Councils
Schedule	Caerphilly Preliminary Draft Charging Schedule
Representation	A written comment on the CIL documentation which has been submitted within the consultation period
Report of Consultation	Preliminary Draft Charging Schedule – Report of Consultation

2. SUMMARY

- 2.1 On the 9 October 2011, the Council resolved to formally consult on the Preliminary Draft Charging Schedule and its associated CIL documents (Infrastructure Assessment Report and Viability Report). The documentation was placed on consultation from 17 October 2012 and the deadline for submission of comments was 28 November 2012. During the consultation period 13 submissions were duly received that realised a total of 59 representations.

2.2 Of these representations, 7 relate directly to responses to the questions set out in the Representations Form, 27 representations related to the Preliminary Draft Charging Schedule (22 Objections and 5 in support), 1 Representation in support of the Infrastructure Assessment Report and 24 representations in respect of the Viability Report (21 Objections and 3 in support).

2.3 The principal issues raised through the representations are:

Viability Report

- i) An allowance for additional development costs should be included in the Viability Report Site Appraisals.
- ii) An allowance for increased development costs arising from changes to Part L of the Building Regulations in Wales should be included in the Viability Report Site Appraisals.
- iii) The Assessed Sites are inappropriate to base viability assessment on

Preliminary Draft Charging Schedule

- i) The Level of the A1 Retail Development CIL Rate
- ii) The principle of Levying a charge and the level of CIL Charge levied against D1 Primary Healthcare Development
- iii) English and Welsh medium education provision should be included in the Draft CIL Infrastructure List.

2.4 Each of the representations has been considered and has been addressed in the Preliminary Draft Charging Schedule – Report of Consultation (Report of Consultation), which has been made available for Members' inspection prior to the meeting. The Report of Consultation outlines the comments, the officer's response to the comments and recommendations on actions to be taken in respect of the comments.

2.5 Only 1 significant change is proposed to be made to the CIL documentation in consideration of the submitted representations, namely:

The Draft Infrastructure List is amended to include all education infrastructure, i.e. all education infrastructure becomes fundable through CIL.

2.6 The Draft Charging Schedule, as amended following this consultation, is required to be the subject of a further statutory consultation period, before being submitted for examination by an independent examiner. It is recommended that the Draft Charging Schedule, along with the amended Viability and Infrastructure Assessment Reports, be subject of a 6-week consultation period, commencing Wednesday 20 March 2013 and closing on Wednesday 1 May 2013.

3. LINKS TO STRATEGY

3.1 The CIL will directly assist in the delivery of the council's land use objectives as set out in the Caerphilly County Borough Local Development Plan (LDP). CIL will expand upon LDP policy SP7 Planning Obligations, which sets out the strategic policy basis for securing Planning Obligations (S106 Agreements) where they are necessary to remove obstacles to planned development.

3.2 CIL will be one of the mechanisms for making direct contributions toward the provision of many of the allocations set out in LDP policies. Overall CIL will be a significant tool for the delivery of the Council's aspirations in terms of infrastructure that cannot be funded through other means and for which no alternative funding mechanisms are available.

4. THE REPORT

- 4.1 On the 5 July 2011 the council resolved to prepare its Community Infrastructure Levy (CIL) for the county borough. As part of the preparation of CIL the council must undertake viability work to establish what uses are viable enough to sustain a CIL charge, and what level of charge is appropriate for each viable use. District Valuer Services (DVS), a branch of the District Valuers Office, was commissioned to undertake the viability work on behalf of Caerphilly, Merthyr Tydfil and Rhondda Cynon Taff County Borough Councils. The Viability Report prepared by DVS, along with a schedule of proposed CIL charges for identified landuses, was reported to Council on 9 October 2011, where it was resolved to agree the proposed CIL charges for inclusion in the Preliminary Draft Charging Schedule as the basis for consultation.
- 4.2 The preliminary Draft Charging Schedule, the Viability Report and the Infrastructure Assessment Report, which sets out the need for the CIL, were subject of consultation that commenced on 17 October 2012 and closed on 28 November 2012. During this period comments on the documentation was invited and a total of 12 submissions have been duly received and 1 late representation has also been accepted. These submissions realised a total of 59 representations, which can be broken down as follows:
- 7 Representations relating directly to the questions set out in the Representation Form;
 - 27 representations related to the Preliminary Draft Charging Schedule (22 Objections and 5 in support);
 - 1 representation in support of the Infrastructure Assessment Report; and
 - 24 in respect of the Viability Report (21 Objections and 3 in support).
- 4.3 It is a requirement that the Council takes account of the representations that have been submitted during the CIL consultation. As a result a Report of Consultation has been prepared that addresses all of the representations. The report outlines each objection, then provides an officer analysis and response and makes recommendations on whether changes to the CIL documentation should be made. Copies of the Report of Consultation have been placed in the Members' Library for consideration. The principle issues raised through the Representations are summarised below:

Viability Report

i) Additional Development Costs

The representors contend that, in undertaking the site viability appraisals, the DVS has made no allowance for additional development costs, which would have adverse impacts upon site viability. The Viability Report does make allowances for various costs elements and it is considered that these are sufficient to take account of these costs.

ii) Costs arising From Changes to Part L of The Building Regulations

In 2012 the Welsh Government published a consultation document outlining potential changes to the Building Regulations in Wales, which made changes seeking to conserve fuel and power. The consultation on the changes is closed and the Welsh Government are considering comments at the present time. It is likely that the Welsh Government will issue the changes at some point in the future, although the date for publication has not been identified. Representors have contended that the site appraisals undertaken as part of the Viability Report have not made allowances for the increase in developments costs that the changes will result in. There is no certainty of when the changes will be introduced or what the exact content of the changes will be and, as such the as they are not currently being incurred and there is no certainty when they will be incurred in the future, or what level of cost will be incurred. The Viability Report appropriately decided not to include an allowance on these costs as a result. It is acknowledged, however, that the changes, when introduced, are likely to result in increased development costs and, therefore, the situation will be monitored to identify any changes in circumstances.

- iii) *The Assessed Sites are inappropriate to base viability assessment on***
Representors have contended that the sites selected are not representative of development that is likely to come forward and/or insufficient sites have been assessed. As a result the site assessments are inappropriate to base judgements on viability. Guidance on the viability evidence for CIL identifies that the viability assessment is a strategic exercise. Consequently it is not necessary to assess a large number of sites, and this is endorsed by CIL guidance. The sites selected for assessment are real sites, the majority of which are allocated in the respective adopted development plans of Caerphilly, Merthyr Tydfil and Rhondda Cynon Taff County Borough Councils. Therefore it is considered that the number and types of sites chosen for assessment are appropriate for considering general viability across the study area.

Preliminary Draft Charging Schedule

- i) *A1 Retail CIL Rate***
Some representors have contended that the rate for A1 retail developments is too high generally and specifically for small-scale developments. The CIL Regulations require that the setting of the CIL Charge must be based upon viability evidence. The evidence in the Viability Report indicates A1 retail development to be quite highly viable. 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 the viability evidence. This means that where the viability evidence identifies a use as being generally viable, a charge must be levied. There are no provisions to arbitrarily choose which uses should be subject to the CIL charge, or to make decisions on whether to levy CIL to realise policy objectives. The viability evidence prepared by the DVS for the study area identified ranges of viability for each landuse within the Viability Report. A draft rate at the lower end of the viability range for A1 retail developments was proposed for Caerphilly to reflect the current economic climate and provide some allowance in viability. Consequently the charge identified for A1 retail development is considered appropriate at £100 per sq.m. It is worth noting that whilst Sainsbury made a submission that the draft rate for A1 is considered too high, Morrisons submitted a representation of support for the draft rate.

- ii) *D1 Primary Healthcare CIL Rate***
Representors have contended that D1 primary healthcare development should not be subject of a CIL charge because it would make such developments unviable. The CIL Regulations require that decisions in respect of the landuses that should be subject to CIL and the level of the CIL charge must 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. There are no provisions for the council to arbitrarily choose which uses should be subject to the CIL charge, or to make decisions on whether to levy CIL to realise policy objectives. Consequently, as the evidence base identifies D1 Primary Health Care as a viable use, it must be subject to a reasonable CIL charge.

Representors have also contended that the D1 primary healthcare charge should not be levied against NHS capital funded projects and GP self funded schemes. As outlined above the CIL Regulations make no provision for the council to arbitrarily choose not to charge a development based upon their source of funding. It must be noted that D1 primary healthcare development, irrespective of its funding, will have the same impacts and just because a development is publicly funded it does not mean it should be exempt from paying for the mitigation of its development. The recent development of the hospital in Ystrad Mynach proves the case as it contributed £8 million toward strategic highway improvements in the area as a result of the development.

Overall the inclusion of a CIL charge for D1 primary healthcare development is appropriate.

iii) *English and Welsh Medium Education Should be Included on the Regulation 123 List*

Regulation 123 of the CIL Regulations sets out that the council can only spend CIL revenue on infrastructure set out in a list that it has published for that purpose (the Reg. 123 List). Infrastructure not on the list could only then be funded through S106 agreements, subject to the statutory tests.

It should be noted that the Reg. 123 List is separate from, and not subject to the procedural requirements of, the CIL preparation procedure. However, whilst not a statutory part of the CIL preparation procedure, a draft version of a Reg. 123 List was set out in the Preliminary Draft Charging Schedule for comment. The Reg. 123 List only proposed the inclusion of Welsh medium secondary education. It was therefore intended that English medium and Welsh primary education infrastructure would continue to be funded through S106 obligations.

The representor objects to the omission of English medium and Welsh medium primary education from CIL as it leads to uncertainty over what developments will be expected to contribute towards education provision. In addition, the representor considers that the proposed arrangement raises the very real potential for double counting in terms of education provision.

In considering the appropriate response the advantages and disadvantages of the alternative mechanisms for funding education provision as a consequence of new development are outlined below.

Welsh Medium Secondary Education Provision

Welsh Medium Secondary Provision will, most likely, be in the form of new schools rather than incremental growth at existing schools. As a result CIL provides a better mechanism for providing the significant capital required to provide new schools. The development industry agrees with this view so no change is proposed.

Maintaining All English Medium and Welsh Medium Primary Education in S106 - Advantages

- S106 contributions are ring fenced for the reason they are sought, i.e. the S106 revenue will be dedicated to providing the education infrastructure.
- English Medium and Welsh Medium Primary education infrastructure is likely to be in the form of incremental extensions to existing schools (due to development increasing school place requirements over existing school capacities) rather than new school provision. As such S106 agreements lend themselves toward addressing smaller scale development specific infrastructure such as this.

Maintaining All English Medium and Welsh Medium Primary Education in S106 - Disadvantages

- Current education obligation contributions sought through S106 make no allowances for the generation of places for Welsh Medium Secondary Education. The imposition of CIL would make Welsh Medium Secondary Education a CIL funded infrastructure and, without due allowance for Welsh Secondary places in the S106 calculations, there will be double counting of places in S106 agreements.
- Currently S106 contributions for education are collected directly related to need, i.e. contributions are based upon the additional number of places required over and above the schools capacity. For example, a residential development generates a requirement for 12 new primary school places. This takes the local school 9 places over its capacity. A new classroom (accommodating 30 places) will be required. The development contributes an amount related to its impact, i.e. the development contributes 9/30ths of the

cost of providing the classroom. As a result the S106 contributions from one development are unlikely to realise the total cost of funding the new classroom. Consequently such provision is either provided through grouped contributions or the council provides match funding. When CIL is introduced no more than 5 pooled contributions can be made to any specific piece of infrastructure.

- S106 contributions are generally time restricted with clawback clauses seeking return of contributions where they are not used. Given this, and the current economic climate, it is highly likely that there would be insufficient S106 contributions to provide the necessary infrastructure without the need for match funding.
- S106 contributions are based upon the level of development and the existing school capacities, both of which are unknown at the start of the development process. This introduces uncertainty for the developer in terms of the level of contributions that would be sought from development and could, potentially, make some sites unviable.
- Education contributions can only be sought from new residential development as this form of development will increase household numbers, and thereby population, which would generate the requirement for new school places.

Including All English Medium and Welsh Medium Primary Education in CIL - Advantages

- Provides certainty for the development industry, as the CIL is a set rate per square metre of new floorspace.
- The inclusion of all education within CIL avoids the issue of double counting and removes the need for timely and costly S106 negotiations in respect of every new residential development.
- Infrastructure on the Reg. 123 List can use CIL funding irrespective of what type of development made the contributions, e.g. education provision can be made through CIL contributions from retail development.
- Due to its scale the CIL pot can be used to provide the complete infrastructure requirement without requiring top-up or match funding.
- Given the pooled nature of the CIL contributions it is a better mechanism to realise sufficient funds to provide the necessary infrastructure as it is required.
- Inclusion in CIL will increase fairness by broadening the range of developments asked to contribute, allowing the cumulative impact of small developments, which can be significant in terms of local school provision, to be accounted for.

Including All English Medium and Welsh Medium Primary Education in CIL - Disadvantages

- Education infrastructure requirements will have to vie for funding against other infrastructure in the Reg. 123 List, i.e. the finance is not ring fenced for specific uses. It is entirely possible therefore, due to the level of CIL likely to be generated, that some infrastructure will not be funded at all. The Council will need to prioritise CIL funding in order to ensure that education infrastructure is provided when it is required.
- Assuming that the CIL rates remain the same as currently proposed, Including education infrastructure on the Reg 123 List will increase the value of infrastructure to be funded through CIL without increasing the CIL revenue.

On balance it is considered that, in maintaining all English Medium and Welsh Medium Primary Education infrastructure provision outside CIL, the Council could be in a position whereby it would be required to contribute significantly to realise the provision of additional classrooms, as the statutory tests governing S106 agreements will mean that only 5 contributions can be pooled. Whilst retaining such provision under S106 agreements ring fences the contributions to the provision of education infrastructure, regard should be had to the fact that such contributions are time limited. If provision is not made within the specified timescale the contributions are required to be returned to

the developer. With all education infrastructure provision within CIL such issues would not arise as CIL contributions are not subject to clawback.

There is also merit in including education provision within CIL as its inclusion would indeed improve the predictability and certainty for developers as to what they will be asked to contribute in terms of planning obligations. It is also accepted that its inclusion in CIL will increase fairness by broadening the range of developments asked to contribute, allowing the cumulative impact of small developments, which can be significant in terms of local school provision, to be accounted for.

It is however important to note, that including education provision within CIL means that new provision will need to be prioritised by the Council in order to ensure that the demands placed on schools by new development schemes can be met in a timely manner. It is anticipated that a formal process for prioritising spend from CIL on an annual basis will need to be introduced to enable this to happen in an efficient way through a transparent process.

Overall it is considered that the best option is to include all education provision on the CIL eligible Infrastructure List.

- 4.4 Having fully considered the representations, only one significant change is being proposed to the documentation, namely:

The Draft Infrastructure List is amended to include all education infrastructure, i.e. all education infrastructure becomes fundable through CIL.

A small number of other amendments are also proposed, but these are only of a minor nature and do not materially affect the nature and content of the CIL documents.

- 4.5 The amendments proposed in the Report of Consultation, if agreed by council, will be incorporated into the next stage of documents that comprise the Draft Charging Schedule and its relevant evidence.

Next Stage

- 4.6 Regulation of the CIL Regulations, which have been prepared by the Welsh Government, requires that the council must place the CIL Charging Schedule on consultation for a second time, prior to it being submitted for examination. It is proposed to place the Draft CIL Charging Schedule on consultation commencing Wednesday 20 March 2013 and closing on Wednesday 1 May 2013. During this period copies of the documentation will be made available at the council offices and through the council website and representations in writing will be welcomed.
- 4.7 Representations received during this consultation period will be reported to Council in October 2013, along with any proposed amendments to the CIL documentation. Following this the next procedure in progressing CIL is its submission for independent examination, which is scheduled to take place in December 2013.

5. EQUALITIES IMPLICATIONS

- 5.1 An Eqla is not needed because the issues covered in the report do not address changes to council service provision or its policies and strategies.

6. FINANCIAL IMPLICATIONS

- 6.1 The preparation of a CIL charging schedule is an invest to save scheme which Council has previously resolved to fund from balances

7. PERSONNEL IMPLICATIONS

- 7.1 The preparation of the CIL to date has had implications in terms of officer time and commitment across the council to produce the necessary evidence base to underpin CIL. This work will require ongoing corporate commitment to resource the preparation of CIL.
- 7.2 Additional personnel will not be required as a result of the process, although District Valuer Services will need to continue to provide expert advice on viability for addressing and rebutting representations and also provide expert witness evidence at the CIL examination.

8. CONSULTATIONS

- 8.1 The education service has raised comments in respect of the recommendation to amend the Draft Infrastructure List to include all education provision (making all education infrastructure fundable through CIL). This change seeks to amend the current position of including only Welsh Medium Secondary education in the Draft Infrastructure List (CIL Funded) whilst maintaining all English Medium and Welsh Medium Primary Education provision under S106 agreements (please refer to Pages 60 – 63 of the Report of Consultation for the full discussion of the issues).

- 8.2 The Education Service comments are:

“Education has to meet specific legal criteria to obtain a successful s106. These tend to be localised in nature and specific to individual developments. The reference to major infrastructure is why it is suggested to only include Secondary Welsh Medium in this category but retain rest in s106. On many developments a S106 is not relevant and not sought but when relevant the whole amount is necessary. Competition within CIL can dilute chances of obtaining monies rather than strengthen it, particularly if we all have to compromise on the amount received as this would leave a funding shortfall for Council to pick up.

It is also advised that the proposal will not result in double counting if English Medium and Welsh Medium (Primary) in s106 and Welsh Medium (Secondary) in CIL, as suggested as part of the consultation process. Similarly the limit of 5 developments in s106, plus time periods to spend monies within typically 5 years, have not historically presented any problems.

If Education is moved to CIL then unless the CIL amount is sufficient to meet the council’s statutory duties, should the planning application be refused, or will the council be required to meet the shortfall? This is not a practical basis for delivery of education infrastructure.

In conclusion, the education service would support there being no change to the original proposals re S106/CIL, and would wish these comments to be reflected in the council report.

- 8.3 All other comments have been taken into account in the Committee Report.

9. RECOMMENDATIONS

- 9.1 That the Scrutiny Committee notes the representations submitted in respect of the Preliminary Draft Charging Schedule and the analysis and response set out in the Report of Consultation.
- 9.2 That the Scrutiny Committee recommends that the Council agree the proposed changes to the CIL documentation that are outlined in the Report of Consultation.
- 9.3 That the Scrutiny Committee recommends that the Council agree the amended CIL Documents as a basis for statutory public consultation.

9.4 That the Scrutiny Committee recommends that the Council agree that the amended CIL documentation be subject of consultation commencing Wednesday 20 March 2013 and closing on Wednesday 1 May 2013.

9.5 That the Report be referred to Cabinet and Council for consideration and approval.

10. REASONS FOR THE RECOMMENDATIONS

10.1 To meet the requirements of the CIL Delivery Agreement.

10.2 In order to progress the preparation of the CIL for Caerphilly County Borough.

10.3 In order to progress the preparation of the CIL for Caerphilly County Borough.

10.4 In order to progress the preparation of the CIL for Caerphilly County Borough.

10.5 In order to comply with the CIL Delivery Agreement and statutory procedures.

11. STATUTORY POWER

11.1 The council, as local planning authority, is empowered under the provisions of Part 11 of the Planning Act 2008 to undertake preparation of CIL.

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Background Papers:

Preliminary Draft CIL Charging Schedule – Report of Consultation

Draft CIL Charging Schedule

Study Into the Economic Viability of Charging Community Infrastructure Levy in Caerphilly, Merthyr and Rhondda Cynon Taf County Borough Councils (Amended)