



REGENERATION AND ENVIRONMENT SCRUTINY COMMITTEE – 17TH SEPTEMBER 2013

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

REPORT BY: ACTING DEPUTY 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 Draft Charging Schedule Community Infrastructure Levy.
- 1.2 To seek the views of the Scrutiny Committee upon:
 - A) The recommendations set out in the Draft Charging Schedule Report of Consultation; and
 - B) The Draft Charging Schedule being submitted to the Planning Inspectorate for a joint examination with Merthyr Tydfil County Borough Council

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, Draft Regulation 123 List Of Infrastructure
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 Draft Charging Schedule
Delivery Agreement	The statutory document that sets out the procedure and consultation for the preparation of the CIL Charging Schedule
Submission	The complete response received by the council from a single Representor, containing one or more Representations

Representation	A written comment on the CIL documentation which has been submitted within the consultation period
Consultation Period	20 March 2013 to 1 May 2013
Report of Consultation	Draft Charging Schedule – Report of Consultation
Merthyr	Merthyr Tydfil County Borough Council
PINS	Planning Inspectorate
RCT	Rhondda Cynon Taf County Borough Council
DCLG	Department for Communities and Local Government

2. SUMMARY

- 2.1 On 12 March 2013 the Council resolved to formally consult on the Draft Charging Schedule and the associated CIL Documents. The documentation was placed on consultation on 20 March 2013 with a deadline for submission of representation of 1 May 2013. During this period 8 submissions were duly received, which realised a total of 36 Representations.
- 2.2 Of these Representations, 3 relate directly to responses to the questions set out in the Representations Form, 15 Representations related to the Draft Charging Schedule (14 Objections and 1 in support), 6 Representations in respect of the Draft Regulations 123 List (3 Objections and 3 in support) and 9 Representations in respect of the Viability Report (9 Objections). In addition to this 3 Representations were received in respect of one of the Guidance Notes issued as part of the consultation process, namely Guidance Note 2: Draft Instalment Policy, all of which were objections.
- 2.3 The issues raised through the Representations are summarised as follows:

Viability Report

- i) No allowance made for S106, additional or abnormal costs
- ii) Benchmark land values are too high
- iii) Occupancy requirements for deduction of existing floorspace
- iv) C3 Agricultural workers dwelling charge
- v) D1 Primary Health Care Charge

Draft Charging Schedule

- i) Clarification of the relationship between affordable housing and the CIL charge
- ii) The level of the A1 retail development CIL Rate
- iii) Promotion of a flat rate levy
- iv) CIL review policy
- v) Provision of discretionary relief
- vi) Acceptance of payment in kind contributions
- vii) Progression of the Charging Schedule and proposed changes to the CIL Regulations

Draft Regulation 123 List

- i) Waster transfer/ recycling bulking and civic amenity infrastructure be omitted
- ii) The inclusion of water infrastructure
- iii) The inclusion of flood defence infrastructure

Guidance Note 2: Draft Instalment Policy

- i) Instalments should be based on development delivery and cashflow rather than specifically defined time periods.

- 2.4 Each of the Representations has been considered and has been addressed in the 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 It is currently proposed that no changes are made to any of the documents as a result of the Representations. However, the DVS has advised that there is a theoretical case for potentially reducing the CIL rate for Primary Healthcare down from the £60 per square metre set out in the Charging Schedule. As a result officers are seeking authorisation to continue negotiations with the Health Board and partner local planning authorities in respect of this matter with a view to reporting the outcome of the negotiations back to Cabinet for approval. It is important however to note that any rate set, must be supported by elected members, and it should be noted that the amended rate(if agreed) would then be tested at the Independent Examination and the outcome reported back to full Council.
- 2.6 The consultation on the Draft Charging Schedule is the last formal stage prior to submitting the Schedule for independent examination. As the viability evidence encompasses three authorities (Merthyr, RCT and Caerphilly County Borough Councils) it would be prudent if the examination were a joint examination with the other two authorities. Discussions with the other authorities are currently ongoing in respect of this issue and, it is proposed that a joint examination with Merthyr Tydfil County Borough Council be held. RCT County Borough Council is not included in the proposals for a joint examination due to the fact that it is unlikely that they would be able to meet the timescales that are set out in the respective Caerphilly and Merthyr County Borough Council Delivery Agreements. Dependent upon the date of submission the Examination is likely to be held early in 2014. This accords with the Delivery Agreement
- 2.7 Unlike the LDP, any competent person can undertake the examination of a CIL Charging Schedule. However, it is recommended that, given the independence of the Planning Inspectorate (PINS) and their proven track record, the Charging Schedule should be submitted to PINS for Examination.

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 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 the LDP. 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 12 March 2013 the Council resolved to make changes to the Preliminary Draft Charging Schedule and to publish the amended Schedule, along with its associated CIL documents, for comment to comply with Regulation 16 of the CIL Regulations.

- 4.2 On 20 March 2013 the Schedule was published for comment, with a deadline for comments being 1 May 2013. In all 7 documents were published for comment, 3 CIL documents and 4 Guidance Notes providing guidance on specific issues relating to CIL. The published documents were:
- Draft Charging Schedule
 - Draft Regulation 123 List of Infrastructure (sets out what infrastructure is eligible for CIL funding)
 - Viability Report
 - Guidance Note 1: Example Calculations of CIL Liability
 - Guidance Note 2: Draft Instalment Policy
 - Guidance Note 3: Draft Social Housing Relief Policy
 - Guidance Note 4: Draft Charitable Relief Policy
- 4.3 During this consultation period, comments were invited on the CIL documentation. A total of 8 submissions have been duly received which realised a total of 36 Representations, that can be broken down as follows:
- 3 Representations relating directly to the questions set out in the Representation Form;
 - 15 Representations related to the Preliminary Draft Charging Schedule (14 Objections and 1 in support);
 - 6 Representations in respect of the Draft Regulation 123 List of Infrastructure (3 Objections and 3 support)
 - 9 Representations in respect of the Viability Report (9 Objections)
 - 3 Representations in Respect of Guidance Note 2: Draft Instalment Policy (3 Objections)
- 4.4 It is a requirement that the Council takes account of the Representations that have been submitted during the CIL consultation exercise. As a result a Report of Consultation has been prepared that addresses all of the Representations. This outlines each objection, then provides an officer analysis and response and makes recommendations to Council on whether changes to the CIL documentation should be made. A copy of the Report of Consultation have been placed in the Members' Library for consideration and is attached as an Appendix to this Report.
- 4.5 The main issues that have been raised in respect of the Viability Report and the Draft Charging Schedule are summarised below with the officer analysis and response:

Viability Report

i) S106/Additional/Abnormal Development Costs

The representors contend that, in undertaking the site viability appraisals, the DVS has made no allowance for additional, S106 or abnormal development costs, which would have adverse impacts upon site viability.

Response: The Viability Report does not make specific allowance for such costs, but the assumptions underlying the viability appraisals contain significant allowances that are considered to be sufficient to take account of these costs.

ii) Benchmark land values are too high

The Representors contend that the benchmark land values set out in the viability appraisals are too high and evidence this assertion with two appraisals of their own.

Response: The Representor appraisals use different assumptions to those used in the Viability Report and as such the land values cannot be considered on a like for like basis. The land values are a result of the differing assumptions, not the land value itself, so the Representor's assertion that the land values are too high is unsubstantiated.

iii) Occupancy requirements for deduction of existing floorspace

The Representors contend that the current requirement that a building has to be in use for at least 6 continuous months within the last 12-month period to allow existing floorspace to be deducted from the CIL calculation impacts adversely on regeneration schemes.

Response: This concern is shared. However the DCLG published proposed changes to the CIL Regulations in April 2013 that propose to remove this requirement, and use the abandonment of use test (the established planning test) to determine if the floorspace can be deducted. This change, if implemented, would overcome this issue. However, until the proposed changes are implemented, existing floorspace would be calculated in accordance with the requirements set out in the Regulations.

iv) C3 Agricultural workers dwelling charge

The Representors contend that restricted worker dwellings (agricultural workers) should not be subject to CIL due to the fact they have limited market value due to the occupancy restriction.

Response: CIL Regulations require that decisions on whether to levy a CIL Charge against a land use should be based on viability evidence. Viability evidence shows residential development to be sufficiently viable to withstand the charge and, as such, it is appropriate to levy the charge against all residential development (with the exception of affordable housing).

v) D1 Primary Health Care Charge

The Representor contends that the DVS has not taken the whole funding process into account in determining the viability of Primary Healthcare Development (D1) and that the rate should be set at zero.

Response: After further consideration, the DVS has advised that there is a theoretical case for potentially reducing the CIL rate down from £60 per square metre proposed. Officers are therefore seeking authorisation to continue negotiations in respect of this matter with the Health Board with a view to reporting the outcome back to Cabinet in due course.

Draft Charging Schedule

i) Clarification of the relationship between affordable housing and the CIL charge

The Representors seek clarification of the relationship between CIL, as a statutory levy, and affordable housing, as a negotiated requirement, to be set out in the Charging Schedule.

Response: This relationship, i.e. S106 Agreements will be used to secure infrastructure necessary to make developments acceptable whilst CIL will be used to deliver other infrastructure, is addressed in a number of places in the CIL documentation and is adequately covered.

ii) A1 Retail CIL Rate

Some representors have contended that the rate for A1 retail developments is too high generally (and specifically for small-scale and rural developments), and would undermine the objectives of the LDP and prejudice regeneration. It should also be noted that one Representor has submitted a representation that supports the principle of setting a charge for A1 retail use, supporting the level at which the charge has been set (£100 per square metre) stating that it will not harm viability of A1 development.

Response: The viability evidence set out in the Viability Report shows A1 retailing as having very high levels of viability, although there is a wide range of viability within the assessments. The Representors have not provided any information that contradicts the viability evidence and, as such, the principle and level of the charge is considered appropriate.

iii) Promotion of a Flat Rate Levy

The Representors contend that a fairer way of calculating and apportioning the CIL charges would be to calculate the total cost of the infrastructure to be provided and set

a charge per square metre proportionate to the total floorspace development that is anticipated to take place.

Response: The CIL Regulations require that the landuses subject of the CIL Charge and the level of the CIL Charges are set based upon viability evidence. Consequently, the Representors proposed method does not take account of the viability of development and is therefore contrary to the Regulations and Guidance.

iv) *CIL Review Policy*

The Representors have requested that the Council set out a Review Policy explaining how and when the CIL will be reviewed.

Response: The Council already undertakes an annual monitoring review of its LDP, which includes consideration of land value and development viability. The Monitoring Framework for the LDP sets out indicators related to house prices, land values and other factors that underpin the affordable housing viability work and this information is equally applicable to CIL. As a result it is proposed that monitoring of CIL is undertaken as part of the LDP annual monitoring process and as such a specific review policy is not required.

v) *Provision of Discretionary Relief*

The Representors have requested that the council offer discretionary relief for developments in exceptional circumstances in accordance with the provisions of the CIL Regulations.

Response: The CIL regulations make provision for charging authorities to offer discretionary relief where sites are rendered unviable through exceptional circumstances. 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”. Given these difficulties it is not proposed to offer discretionary relief.

vi) *Acceptance of payment in kind contributions*

The Representors have requested that the Council set out its policy for accepting payment in kind contributions in lieu of CIL payments.

Response: The CIL Regulations make provision for charging authorities to accept payment in kind contributions, although this is at the discretion of the authority. It is currently the view that payment in kind contributions would be accepted and, as the provisions are set out in the CIL Regulations, a formal policy not required. This is the case with other CIL issues, such as affordable housing and charity relief. In these cases a guidance note has been issued to outline how the policy will be implemented and it is recommended that a new guidance note be issued outlining how the council will implement the payment in kind provision.

vii) *Progression of the Charging Schedule and proposed changes to the CIL Regulations*

The Representors have requested that progress on the Schedule be suspended until the outcome of the last DCLG consultation document on changes to the CIL Regulations.

Response: In April 2013 the DCLG issued the consultation document outlining proposals for significant changes to the CIL Regulations. There is no reason for the Charging Schedule not to be progressed because as a consequence of this consultation, as one of the changes proposed by the DCLG makes transitional arrangements that Charging Schedules, which have reached “Draft Consultation” stage (like the Caerphilly Charging Schedule), would not be subject to the new procedural requirements, in order to ensure progression of advanced Charging Schedules.

- 4.6 Having fully considered the Representations, there are no recommended changes to the CIL documentation at the present time. However officers are seeking authorisation to continue negotiations with the health board and partner local planning authorities to work towards setting the Primary Healthcare Use Rate at an acceptable level to all, with a view to reporting the outcome and recommendations of the negotiation back to Cabinet for approval.

Next Stage

- 4.7 The Draft Consultation stage is the last statutory stage prior to submission of the Charging Schedule for Examination. It should be noted that, unlike the LDP Examination process, it is not a requirement that the Planning Inspectorate (PINS) be appointed to undertake the Examination. The CIL Regulations only require that a "competent professional" be appointed to hold the examination. However, due their independence and their proven track record, it is recommended that the Charging Schedule be submitted to PINS for examination.
- 4.8 As the viability evidence encompasses three authorities (Merthyr, RCT and Caerphilly County Borough Councils) it would be prudent if the examination were a joint examination with the other two authorities. A joint examination not only offers the opportunity for reduced costs, but also reflects the fact that the viability evidence is based on assessments across the three authority areas as a whole, as opposed to individual authority areas. Discussions with the other authorities are currently ongoing in respect of this issue and, it is proposed that a joint examination with Merthyr Tydfil County Borough Council be held. RCT County Borough Council is not included in the proposals for a joint examination due to the fact that it is unlikely that they would be able to meet the timescales that are set out in the respective Caerphilly and Merthyr County Borough Council Delivery Agreements. Dependent upon the date of submission the Examination is likely to be held early in 2014. This accords with the Delivery Agreement

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.
- 6.2 It is estimated that the Examination could take approximately three to four weeks. Based on existing PINS rates this could result in an approximate cost of £20k, which would be shared equally with Merthyr, resulting in a cost to the authority of £10k.

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 District Valuer Services will need to continue to provide expert witness evidence at the CIL examination.
- 7.3 PINS has indicated that there will be a need for a Programme Officer to assist the Inspector appointed to undertake the Examination of the Evidence. It is anticipated that an existing officer of either Caerphilly or Merthyr Tydfil could fulfil this role.

8. CONSULTATIONS

8.1 All comments have been taken into account in the Report.

9. RECOMMENDATIONS

9.1 That the Scrutiny Committee notes the Representations submitted in respect of the Draft Charging Schedule and the analysis and response set out in the Report of Consultation.

9.2 That the Scrutiny Committee recommends that Cabinet (2 October 2013) and Council (8 October 2013) agree the following recommendations:

9.2.1 To approve the recommendations set out in the Draft Charging Schedule Report of Consultation

9.2.2 That officers be authorised to continue negotiations with the health board and partner local planning authorities to work towards setting the Primary Healthcare Use Rate at an acceptable level to all, with a view to reporting the outcome and recommendations of the negotiation back to Cabinet for agreement

9.2.3 To agree that the Draft Charging Schedule be submitted to the Planning Inspectorate for Examination

10. REASONS FOR THE RECOMMENDATIONS

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

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

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

10.2.3 In order to meet the requirements of the CIL Delivery Agreement and accord with the provisions of the CIL Regulations.

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.

Author: Dave Lucas, Principal Planner, Strategic and Development Plan Team
Consultees: Cllr K James, Cabinet Member for Regeneration, Planning & Sustainable Development
Cllr T Davies, Chairman, Regeneration and Environment Scrutiny Committee
Sandra Aspinall, Acting Deputy Chief Executive
Pauline Elliott, Head of Regeneration & Planning
Dan Perkins, Head of Legal Services
Tim Stephens, Development Control Manager
Rhian Kyte, Team Leader, Strategic & Development Plans

Appendices

Appendix 1 - Draft CIL Charging Schedule – Report of Consultation

Background Papers:

Draft CIL Charging Schedule

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