

Three Rivers District Council

COMMUNITY INFRASTRUCTURE LEVY (CIL)

STATEMENT OF REPRESENTATION

October 2014

Introduction

On the 21 December 2012 Three Rivers District Council published its Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule (PDCS) and supporting evidence base. We invited responses from the public including residents, organisations, developers and agents as well as other public authorities. The purpose of the consultation was to invite comments and additional evidence that will help the Council strike an appropriate balance when setting CIL rates. This information helped form the Draft Charging Schedule which was consulted for a four week consultation between 4 July and 4 August 2014. In accordance with Regulation 15 (7) and 17 of the Community Infrastructure Levy (Amended) Regulations 2014, the Council has taken into account these representations.

Who Responded and Number of Representations Received

We received 17 consultation responses to the Draft Charging Schedule. Representations were received from the development industry, statutory consultees, neighbouring districts, Hertfordshire County Council, local residents and other organisations. These are listed below:

Reference	Respondent
DCS1	John Beyer & Associates
DCS2	Resident
DCS3	Sport England
DCS4	Highways Agency
DCS5	South Bucks District Council
DCS6	BAA Safeguarding Heathrow
DCS7	English Heritage
DCS8	Thrive Homes
DCS9	Chiltern District Council
DCS10	Environment Agency
DCS11	The Planning Bureau (on behalf of McCarthy and Stone)
DCS12	Nathaniel Lichfield & Partners (on behalf of the Ralph Trustees Limited)
DCS13	Planning Potential (on behalf of St James Group)
DCS14	Peter Loader (on behalf of Spokes and CTC Rickmansworth)
DCS15	Hertfordshire County Council
DCS16	Hertfordshire Highways
DCS17	Watford Borough Council

The Main Issues – Consultation Feedback

Of the representations received, the majority had no comment to make, were in general support or were commenting on the Infrastructure Delivery Plan. The representations and officer's comments are set out in Appendix 1. The main issues raised were:

- clarification wording sought to clarify the difference between commercially run Residential Care Homes (Use Class 3) and not for profit Care Homes (Use Class2)
- modification to the Regulation 123 List to ensure that the land to be provided for a primary school in Woodside Road, Abbots Langley can be secured by a S106 agreement
- request for CIL relief on schemes designed to ensure the re-use of Heritage Assets identified as being 'at-risk'
- request to set out details of 'in-kind' payments within the DCS
- request that hotel development should be zero rated

In response to the first two issues the Council has made modifications to the Draft Charging Schedule which are set out in the Statement of Modifications.

APPENDIX 1

Ref.	Name	Summary of Comments	Officer Comments
DCS1	John Beyer & Associates	<p>The CIL rates refer to “Residential Developments”. Paragraph 11 of the draft charging schedule defines “New build” to include enlargements to existing buildings.</p> <p>I think it should be stated clearly whether the CIL applies to extensions to existing dwellings or not.</p>	<p>This representation refers to the wording of paragraph 40 (11) of the Community Infrastructure Regulations which is in Annex 2 of the charging schedule for information purposes. Information about what types of development will be liable for CIL is available on the Planning Portal Web Site and will be available on the Council’s web site prior to implementation.</p>
DCS2		<p>I oppose the introduction of a levy on new development because it is another tax on development which will be passed on to the consumer be it residential housing or commercial enterprise. Much better to raise tax through the rating system and then allocate funds as required.</p>	<p>Comment noted.</p>
DCS3	Sport England	<p><u>Infrastructure Delivery Plan</u></p> <p>While acknowledging that the IDP is not part of the CIL charging schedule, as the IDP provides an important part of the evidence base for the Council’s CIL I would wish to make comments on it so that appropriate consideration can be given before the charging schedule is submitted for examination. I have examined the current IDP (March 2012) and while there is a section on Green Infrastructure this does not include sports facilities such as playing fields and other outdoor sports facilities that make a significant contribution to green infrastructure. This is surprising since the Council has a Playing Pitch Assessment (2010) which is considered to be a vital piece of evidence to consider when developing the charging schedule and when allocated collected monies to projects when the levy is implemented in the future. Furthermore, the draft Regulation 123 list (July 2014) includes publically accessible leisure facilities and open space provision (including outdoor/indoor sports and leisure facilities) although the current IDP does not include any indoor and outdoor sports facility infrastructure. As infrastructure on the Regulation 123 list may benefit from CIL funding it is important that such infrastructure can be justified through the IDP which provides the evidence base for the list. It is possible that this issue may be explained by the IDP being out-of-date and not accounting for comments made on the preliminary draft CIL charging schedule when Sport England made similar representations.</p> <p>To address this it is requested that the IDP include a new section on sports/leisure facilities which identified the gaps in provision identified in the evidence base and the priority infrastructure projects to address such gaps. Such projects should be costed so that the estimated funding gap is clear and the potential that CIL can offer to meet such gaps is identified.</p>	<p>Comments relate to the Infrastructure Delivery Plan and not the Charging Schedule.</p> <p>The Playing Pitch Assessment and the Open Space Sport & Recreation Study has informed the IDP and required infrastructure is included in the schedule.</p> <p>At present there is no identified shortfall in provision of indoor/outdoor sports facilities but these are included in the Regulation 123 list so that if there is a future need for such facilities as a result of planned development then the CIL monies can be spent on them.</p>

		<p>This would help support the continued inclusion of such facilities in the Regulation 123 list which Sport England welcomes but without inclusion in the IDP is confusing and difficult to justify.</p> <p>The sporting evidence base should also be used to expand the Infrastructure Delivery Plan and to ensure that sporting infrastructure requirements are clearly set out alongside other infrastructure types. Without this there is the concern that the additional needs generated by new development for outdoor sports facilities will not be addressed through CIL which will be the main mechanism for securing developer contributions for such infrastructure in the future. Consequently, there is a concern that new development will place pressure on existing community sports facilities which the playing pitch strategy has identified are already deficient in relation to meeting current needs (e.g. pitch and changing facility quality).</p> <p><u>Relationship to Infrastructure Provision Secured through Section 106 Agreements</u></p> <p>As many infrastructure types including sport offer potential to be provided directly by developers through planning obligations as well as through CIL, the charging schedule should provide guidance for developers and the community on the relationship between CIL and site specific infrastructure requirements associated with major developments. At present it is unclear whether a major development which provided on-site (land and infrastructure) community facility provision (such as sport) would need to make CIL payments which could potentially be spent on the same infrastructure off-site. As developers cannot be charged for the same infrastructure through planning obligations and CIL, the charging schedule or its supporting documents should provide clarity and transparency on this issue e.g. through clarifying what infrastructure planned major developments will be expected to provide through planning obligations.</p> <p><u>In Kind Infrastructure Delivery</u></p> <p>In addition, following the 2014 CIL Regulation Amendments (and revised Guidance), provision has been made for enabling 'in kind' CIL payments for direct infrastructure delivery as well as by land. From consideration of the draft charging schedule, there would not appear to be any reference to 'in kind' CIL payments. As this would provide the flexibility for developers to pay directly for community infrastructure such as sports facilities, the charging schedule should in accordance with the regulations offer sufficient flexibility for such payments and provide guidance on how this will be applied in practice.</p>	<p>The Regulation 123 List clearly states that CIL will fund the provision of 'Publicly Accessible Leisure Facilities, open space provision (including children play areas and outdoor/indoor sports and leisure facilities, allotments). The only major development planned for the District is that of the South Oxhey Regeneration Area where S106 agreements will secure the necessary infrastructure for that site.</p> <p>Comment noted. This is set out in the regulations and does not need to be included in the charging schedule itself. 'in kind' payments have to be considered on a case by case basis as there specific requirements to be met.</p>
DCS4	Highways Agency	No Comments	
DCS5	South Bucks	No Comments	

	District Council		
DCS6	BAA safeguarding Heathrow	Standard comments regarding development in the safeguarding zones around the airport. – no comment directly relating to the Draft Charging Schedule.	
DCS7	English Heritage	<p>No Objections to the draft charging schedule. The use of S106 agreements for heritage assets should be noted in the document.</p> <p>CIL relief should be offered to schemes which could result in harm to a heritage asset. “For example, there may be instances where the requirement to pay CIL would threaten the viability of schemes designed to ensure the reuse of heritage assets identified as being 'at-risk' through enabling development.”</p>	<p>No objection noted.</p> <p>The Council's proposed charging rates have been developed solely on viability grounds in accordance with the regulations and strike a balance between the desirability of funding infrastructure from CIL and the potential effects of the levy upon the economic viability of development across the District.</p> <p>There are only two buildings in the District on the Buildings At Risk register – Langleybury House which is being restored by the owners and The Great Barn at Croxley Hall Farm which is also being restored.</p>
DCS8	Thrive Homes	<p>The proposed CIL levels appear to be calculated in accordance with a sound evidence base, particularly the Infrastructure Delivery Plan and the Lambert Smith Hampton's Economic Viability Assessment (updated May 2014); Generally, the CIL levels applicable to residential buildings appear viable; We support the three tier approach, with varying CIL rates depending on an assessment of property values, land value and build costs in each identified area;</p> <p>The Council should consider a flexible approach for exemption of registered provider led, non-affordable mixed tenure development.</p>	<p>Support noted</p> <p>The Council's proposed charging rates have been developed solely on viability grounds in accordance with the regulations and strike a balance between the desirability of funding infrastructure from CIL and the potential effects of the levy upon the economic viability of development across the District.</p> <p>Comment noted. Affordable tenures are already exempt from CIL.</p>
DCS9	Chiltern District Council	No Comments	
DCS10	Environment Agency	<p>No comments on the charging Schedule.</p> <p>Advise that they are looking at measures to help the watercourses within the District achieve 'good' status (as defined by the Water Framework Directive). Once completed they will ask the Council to add to the Infrastructure Delivery Plan to ensure funds can be secured.</p>	Noted.
DCS11	The Planning Bureau (on behalf of McCarthy and Stone)	<p>Commend the Council for amending the Draft Charging Schedule following the representation submitted on the Preliminary Draft Charging Schedule consultation and support the fee for retirement housing as set out in the Draft Charging Schedule.</p> <p>The Council should confirm whether the charge will be applicable in area "C" (South Oxhey).</p>	<p>Support noted</p> <p>The charge for retirement housing is applicable at a rate of £120 across the whole of the District as set out in the charging schedule.</p>

		<p>Considers that the distinction between retirement housing and care homes / extra care accommodation could be made clearer by using the following wording: "...These premises often have emergency alarm systems and/or wardens. These developments do not however have the enhanced facilities required to provide the level of on-site care expected in care homes or extra care premises (C2)".</p>	<p>The document contains a definition of C3 and C2 retirement housing however, additional suggested wording from Hertfordshire County Council will provide further clarification</p> <p>Additional wording added to the definition of Retirement Housing in the Draft Charging Schedule:</p> <p><u>For the avoidance of doubt this excludes registered not for profit care homes.</u></p>
DCS12	Nathaniel Lichfield & Partners (on behalf of the Ralph Trustees Limited)	<p>Object to the flat rate fee of £120.00 per sqm being applied to hotel (C1) uses. Based on viability appraisal's submitted by Turner Morum and Savills hotel development should be zero rated.</p>	<p>The Council's viability assessments are considered sound and the methodology is consistent with that of other assessments found sound at CIL Examinations.</p> <p>Noted.</p>
DCS13	Planning Potential (on behalf of St James Group)	<p>Generally supportive of the approach taken by the Council.</p> <p>Concerns over the rate of CIL payable for housing development (£180.00 in Area A and £120.00 in Area B). The Council should charge a rate at the lower end of the potential charging spectrum based on the viability evidence.</p> <p>The inclusion of an Instalment policy is welcomed. The Policy should cover:</p> <ul style="list-style-type: none"> • The commencement of the instalment policy on adoption of the CIL • The number of instalments that can be made by development size • The timings of payments post commencement – based on timeframes which have regard to availability of capital and average build rates; and • The minimum development threshold which instalments would not apply (this should be set as low as possible). <p>The draft Charging Schedule should be amended to include provisions that allow for applications for discretionary relief to be made.</p> <p>CIL should be implemented 2-3 months after the adoption of the charging schedule to allow time for S106 agreements that have already been negotiated to be resolved prior to the implementation of CIL.</p>	<p>Support noted</p> <p>The Council's proposed charging rates have been developed solely on viability grounds in accordance with the regulations and strike a balance between the desirability of funding infrastructure from CIL and the potential effects of the levy upon the economic viability of development across the District.</p> <p>Comments noted.</p> <p>No discretionary relief is being provided.</p> <p>Comments noted. Not subject of examination.</p>
DCS14	Peter Loader (on behalf of Spokes and CTC Rickmanswo	<p>Concerns raised over the lack of 'funding gap' information available during the consultation period. Suggests a methodology for estimating the cycling infrastructure gap (see response).</p>	<p>The IDP provides some information on the funding gap, particularly in relation to the provision of education facilities. It is not necessary to demonstrate a funding gap in a particular type of infrastructure for it to be funded by CIL. An additional paper demonstrating the funding gap will be submitted as part of the examination process. The viability assessments show that development in the South Oxhey area cannot</p>

	rth)	<p>Objects to South Oxhey being zero rated on the grounds that it distorts the housing market.</p> <p>The CIL has not been developed in the best interests of Cyclists.</p>	<p>support a CIL.</p> <p>CIL is the method for raising funds from development to fund infrastructure that is needed. The IDP does include cycle schemes.</p>
DCS15	Hertfordshire County Council	<p><u>Draft Charging Schedule</u></p> <p>In relation to the types of development which will be liable for CIL, it would be really helpful if there could be clarification regarding the definition of "Retirement Housing" within the table of CIL rates. As you know the County Council purchases spaces within care homes for elderly and vulnerable adults. I understand this will only relate to Use Class C3 private retirement housing and would be grateful if this note could be expanded to include the following words "...For the avoidance of doubt this excludes registered not for profit care homes." This is a clarification we have also sought in relation to the Dacorum Borough DCS.</p> <p><u>Draft Regulation 123 list</u></p> <p>We previously stated that when considering the use of S106 and CIL (in as much as it relates to the provision of strategic infrastructure provided by the County Council), it is considered that for larger, more strategic sites the most effective approach is likely to be the continued use of S106 agreements to fund infrastructure items which are directly related to those developments. In response the Regulation 123 list places clear thresholds for the application of CIL and S106. Where developments give rise to new primary education facilities both the land for the school and the funding to build it will be sought via S106.</p> <p>We know that with the exception of the South Oxhey project, there are no significant strategic projects in your district. Thus, your strategy seeks to ensure CIL monies will be used to fund infrastructure requirements generated from smaller developments, and may be necessary to address the cumulative impact of development occurring across the borough as a whole.</p> <p>I can think of an exception to this in that the County Council is reliant on the Woodside Road Housing Site (Abbots Langley) providing a suitable primary school site and as explored through the Site Allocations DP process we expect this to be transferred at nil cost via a S106 agreement. If this development comes forward post implementation of CIL or post April 2015, whichever is the later, there may be an issue around transfer of this land in</p>	<p>The document contains a definition of C3 and C2 retirement housing however, additional suggested wording will provide further clarification</p> <p>Additional wording added to the definition of Retirement Housing in the Draft Charging Schedule:</p> <p><u>For the avoidance of doubt this excludes registered not for profit care homes.</u></p> <p>Agreed. Additional wording added to Regulation 123 List in the exception column in relation to education facilities</p> <p><u>Except for the provision of land serviced for the construction of a primary school at Woodside Road, Abbots Langley</u></p>

		<p>terms of equity compared with other similar sized developments as this might comprise what is effectively a payment in kind. In addition you may seek CIL on that site. At present the R123 list does not identify this matter specifically and I am concerned that as written the provisions will not cover this arrangement. Might I therefore suggest that the R123 list is amended to reflect this particular case.</p> <p>We note that your strategy does not include Exceptional Circumstances Relief, or Payment in Kind Policies. Inclusion of a Payment in Kind Policy might be an alternative approach to potentially being able to receive land provided by a developer for a primary school.</p> <p><u>Next Steps</u></p> <p>The County Council as a strategic infrastructure provider is committed to working with the District Council to meet the requirements of the revised CIL guidance. As previously noted, the new requirements set out within the CIL guidance bring with them a number of challenges which is likely to require parallel political processes to determine how CIL monies should be prioritised.</p> <p>As previously discussed, there will be a need to agree appropriate governance arrangements between the two authorities and the level of CIL monies that will be made available to the County Council for the provision of strategic infrastructure. HCC welcomes the invitation to comment on the suggested arrangements already circulated and looks forward to discussing these further.</p> <p>We hope that you find the above comments useful and would be happy to attend the examination if necessary. We look forward to continuing to work with you in taking forward the implementation of CIL within Three Rivers.</p>	
DCS16	HCC Highways	Information and comments received to inform an update of the IDP in relation to highways.	Comments not related to the charging schedule. Information will be used to update the IDP.
DCS17	Watford Borough Council	The Council considers that the Draft Charging Schedule has been prepared in accordance with the regulations and guidance. We agree with the levy rate – the levy proposed at Watford is the same as Area B at Three Rivers, which adjoins Watford	Support noted.