

## Pickhaver, David

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**From:** Pickhaver, David  
**Sent:** 19 October 2016 17:30  
**To:** 'Lee.armitage@intelligentplans.co.uk'; Steve Carnaby  
**Cc:** CIL Examination; Luscombe, Adam  
**Subject:** FW: Torbay Community Infrastructure Levy  
**Attachments:** CIL Reps on Mod Consultation\_18October 2016.docx

**Categories:** Egress Switch: Unprotected

Dear Lee, Steve and all:

Thank you for your advice on notification periods etc. As you're aware, the consultation period on the Proposed Modification to CIL expired on Monday 17<sup>th</sup> October. I note that Paignton and Brixham Neighbourhood Forums, Collaton St Mary Residents Association, Stride Treglown and Pegasus Group have asked to give evidence at a Hearing. Helen has sent a notification email about the Hearing.

Please see attached draft Consultation Statement, which sets out the Council's draft response to the issues raised. This is an officer level response, which has been agreed by the Executive Lead for Housing, Planning, Transport and Waste.

The Council considers that all of the material facts are before the Examiner, although it will provide further evidence if requested by the Examiner.

Having considered the representations, the Council do not consider that further Modifications to CIL are necessary, although it is happy for the Examiner to recommend modifications that he considers appropriate. The following sets out the Council's response to the main issues raised by the representations on the Proposed Modifications, and where there is likely to be room for compromise. There are fuller explanations in the attached Statement.

**Use of s106 for strategic sites rather than CIL.** This appears to be the main objection from Neighbourhood Forums (etc) who are seeking a CIL of around £70 per sq m from sites within Future Growth Areas. As set out in more detail in the attached, and in the September 2016 Consultation Statement, the Council considers that s106 is a better way of addressing the infrastructure requirements arising from large sites within Future Growth Areas. Such sites are likely to have higher infrastructure costs in terms of unlocking the site, providing affordable housing and providing community infrastructure. These can be more flexibly addressed through s106.

The Council is committed to town centre regeneration and promotion of brownfield sites. This is prominent in the Adopted Local Plan and there are adopted masterplans for Torquay and Paignton town centres. CIL is not being used to influence the location of development, but based on the likely infrastructure costs and the most effective way of delivering sustainable development.

It is noted that some development industry representatives have argued that s106 should be used for other strategic sites as well as those identified in Future Growth Areas. CIL is not used to determine the acceptability or otherwise of such sites. If they do come forward, then the infrastructure requirements are likely to be similar to sites within Future Growth Areas. On this basis, the Council is unlikely to present a strong objection to this suggestion.

**Seeking CIL from small sites in the built up area.** The Council's reasons for taking a different approach to that recommended by the Viability Update is set out in the September 2016 Consultation Statement.

**Objection to the use of CIL for sheltered housing.** The Council asked Burrows Hutchinson Ltd to assess this and will be relying on the evidence set out in the Viability Update. It notes that, should the Examiner consider that a further modification to use s106 rather than CIL on all strategic sites, this is likely to overcome Pegasus' site specific concern, although not the wider objections relating to sheltered housing in general.

**Exceptional Circumstance relief.** The Council is happy to confirm that in considering whether to grant exceptional circumstances relief, it will have regard to the deliverability of Neighbourhood Plans (when made) as well as the Adopted Local Plan. This would appear to be a minor amendment that would not necessitate re-advertisement.

**Repayment Periods for Instalments.** This is something that the Council is able to amend outside of the Examination: but would welcome the Examiner's advice on. The Council offered 30 months repayment at the Revised Draft Charging Schedule stage, which has been reduced to 180 days in the Revised Proposed Modifications. Cavanna Homes have put forward cogent arguments for a longer period, which the Council will consider carefully in setting instalments. It may be that an intermediate period, for example, up to 24 months for the largest CIL paying schemes, would be reasonable (this would bring Torbay into line with most of our neighbours).

**Reg 123 Special Area of Conservation matters.** There have been useful discussions with Natural England on which items should be CIL and which ones s106 to avoid problems such as double dipping. Both the Council and Natural England agree for measures to protect the limestone grassland at Berry Head from recreational pressure to be funded through CIL; and using s106 Obligations to mitigate the impact of development on greater horseshoe bats and other biodiversity. The Council is able to amend its Reg 123 List outside of the Examination process, but welcomes the Examiner's comments on it.

I hope that this is of assistance. As indicated above, this is likely to be the Council's stance at the Examination Hearing.

We look forward to receiving the Examiner's list of topics, which we will endeavour to provide answers to as required.

Kind regards  
David

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Community Infrastructure Levy Regulations 2010 (As Amended)

# **Representations made on the Proposed Modifications to the Community Infrastructure Levy Revised Draft Charging Schedule**

**Torbay Council October 2016**

## **Introduction**

The following summarises representations received on, and issues arising from, the consultation to Proposed Modifications to Torbay's Community Infrastructure Levy Revised Draft Charging Schedule.

This document was the subject of consultation between Monday 5<sup>th</sup> September 2016 and Monday 17<sup>th</sup> October 2017. This replaced an earlier consultation on Proposed Representations that commenced in August 2016. Only one representation (from Torquay Neighbourhood Forum) was received on this earlier consultation and the Council does not consider that any interests have been prejudiced by incorporating this representation into the Revised Proposed Modifications. For simplicity, these are referred to as the Proposed Modifications in this document.

This document supplements the Consultation Statement dated September 2015 which sets out representations and the Council's responses to previous stages of the CIL, and the rationale for the proposed Modifications.

The representations have been considered carefully and the Council does not consider that further Modifications need to be made to the Submission Draft Charging Schedule as amended by the revised Proposed Modifications. However, it is noted that a number of objections have been made which invite further Modification. The Council welcomes the Independent Examiner's recommendations to these and confirms that it will accept amendments to the Schedule if deemed necessary by the Examiner.

The Council has set out areas where it particularly considers further Modifications could strengthen the CIL should these be recommended by the Examiner. This is intended to assist him and not to limit his scope to make comments.

## **Main areas of representations**

There were 12 responses to CIL. The following sets out what the Council considers to be the main issues arising from the Consultation. A fuller breakdown of representations and responses is set out in the table of comments. Several issues have been raised previously and the Council's September 2016 Consultation Statement remains relevant. The Council considers the main issues to be:

- 1) Clarify the extent of CIL and s106 for the Berry Head to Sharkham Point Special Area of Consultation to ensure that impacts on the SAC are addressed and to eliminate double dipping.
- 2) Object to seeking CIL on sites of 1-3 dwellings in Charging Zone 2 i.e. elsewhere in the built up area.
- 3) Objections from Neighbourhood Forums to the use of s106 rather than CIL for large sites within Future growth Areas, in terms of (1) perverse incentive to develop greenfield sites and (2) Impact upon Neighbourhood Plan projects.

- 4) Exceptional Circumstances relief could undermine neighbourhood Plan Projects.
- 5) Objection that the Infrastructure Funding Gap has not been clearly justified.
- 6) Representation from developers that s106 Obligations should apply to all strategic sites that are developed (including south of White Rock) and not just Future Growth Areas in the Local Plan.
- 7) Objection to seeking CIL from sheltered housing developments.
- 8) Objection that the Instalments policy has been made less generous and will harm viability.

#### **Summary of Council's response to these issues**

The Council's summary response to these is set out below. A more detailed assessment is contained in the table of comments.

- 1) **Clarify the extent of CIL and S106 for the Berry Head to Sharkham Point Special Area of Consultation to ensure that impacts on the SAC are addressed and to eliminate double dipping.**  
Noted. The Council has been in discussion with Natural England and proposes to amend the Regulation 123 List to make recreational impact on the limestone grassland a CIL item; and address development impacts upon greater horseshoe bat and other habitats a s106 matter.
- 2) **Object to seeking CIL on sites of 1-3 dwellings in Charging Zone 2 i.e. elsewhere in the built up area.**  
The recommendations in the Viability Update are noted. The Council's reasons for taking a different approach are set out in the September 2016 Consultation Statement on page 7-8.
- 3) **Objections from Neighbourhood Forums to the use of S106 rather than CIL for large sites within Future growth Areas, in terms of (1) perverse incentive to develop greenfield sites and (2) Impact upon Neighbourhood Plan projects.**  
As set out in the September Consultation Statement and in the table below, the Council considers that seeking S106 from large sites within Future Growth Areas is the most effective way to secure sustainable development on such sites. They are likely to have higher infrastructure costs in terms of unlocking and serving the sites as well as strategic landscape and biodiversity mitigation. They are also subject to higher affordable housing requirements (which require a s106 Obligation irrespective of CIL). There is greater flexibility to negotiate the phasing of infrastructure provided through s106, and require elements such as the highways, flooding, landscape/biodiversity matters to be provided upfront, and directly by the developer where necessary. Therefore the Council considers that S106 Obligations are more effective than CIL.

CIL is not being used as a tool to influence the location of development, and it is likely that s106 requirements would be higher than the equivalent CIL according to the current Draft Planning Contributions and Affordable Housing Supplementary Planning Document.

It is noted that other Authorities, including South Somerset and Mid Devon are also using this approach in recognition of the limitations of CIL in dealing with large sites.

CIL is not intended to undermine the delivery of Neighbourhood Plans, and it is recommended that the Neighbourhood Plans identify key projects that the Forums are seeking to target the neighbourhood portion upon. Should specific projects be identified that are key to delivering the Neighbourhood Plan, it is suggested that they are likely to be eligible for S106 Obligations.

**4) Exceptional Circumstances relief could undermine Neighbourhood Plan Projects.**

Matters that are key to delivery of the Neighbourhood Development Plan may be more effectively addressed through s106 obligations, where they meet the tests of lawfulness. However, the delivery of the Local and Neighbourhood Plan is likely to be an important consideration in deciding whether exceptional circumstances relief from CIL should be granted. The Council would have no objection to recommending a minor further Modification to Mod 19 to indicate that: *“The Council will have regard to the effect of granting Exceptional Circumstance relief upon the delivery of sustainable development, including projects and policies identified in the Local and neighbourhood Plans (when Made)”*.

However, the Council considers that as the Charging Authority, the final decision whether to grant exceptional circumstances relief rests with the Council.

**5) Objection that the Infrastructure Funding Gap has not been clearly justified.**

This does not appear to be a principal objection, but an issue arising out of 3 above. The Infrastructure Delivery Study was part of the evidence base for the Torbay Local Plan 2012-30 and identified a total funding gap of around £160m of which £52m is considered to be critical (note that the figure is millions rather than thousands). There is no suggestion that this can be funded through developer contributions in its entirety. The Council has borrowed £20 million towards the cost of the recently completed South Devon Highway. This is a pivotal piece of infrastructure for which there is a significant funding gap, which will need to be funded through the public purse (with concomitant cuts in other services) if not through CIL.

**6) Representation from developers that S106 Obligations should apply to all strategic sites that are developed (including south of White Rock) and not just Future Growth Areas in the Local Plan**  
This application relates to land South of White Rock, which narrowly missed allocation in the Adopted Torbay Local Plan but is being actively promoted. As such it may come forward during the Plan period. The comment is also of relevance to Sladnor Park, Maidencombe (see Pegasus' comments on sheltered housing).

CIL is not used to determine the acceptability of development nor to influence development location. With this in mind, proposals will need to be determined on their planning merits. Should a strategic development come forward outside of the Future Growth Area, it is likely that they would have infrastructure requirements comparable to those within Future Growth Areas and that the Council would negotiate exceptional circumstances relief. Accordingly, the council would not object if the Examiner recommended a further modification to make all strategic sites CIL exempt. A definition of "strategic" will need to be provided. The Local Plan (Glossary p262) indicates that the Local Plan is likely to consider the definition to be development of 30 dwellings or more, or development of importance to meeting overall Local Plan or NPPF objectives".

**7) Objection to seeking CIL from sheltered housing developments**

The Burrows Hutchinson Viability Update considers that sheltered housing is unlikely to be jeopardized by CIL. The Council agree that a clear distinction between extra care and "sheltered" or "supported" housing needs to be provided, and the Use Classes Order C2 and C3 may be the best way to make this distinction. Notwithstanding this, the Objection from Pegasus relates to a proposed retirement village. The suggestion in (6) above that all strategic sites could be CIL exempt would overcome the specific concern for most retirement villages.

**8) Objection that the Instalments policy has been made less generous and will harm viability.**

The Council is able to amend its instalments policy outside of the CIL examination process. However, it notes that Cavanna Homes have indicated practical difficulties with the time scale for instalments in Mod 17 should the examiner consider this to be justified, with the caveat that it does not consider instalment of longer than 24 months to be appropriate, because it removes certainty of receiving CIL moneys.

**Conclusions**

Having considered the representations submitted, the Council considers that the major issue of substance is the Council's proposed approach of seeking CIL smaller sites (where viable) and seeking to negotiate sites of 15+ dwellings within Future Growth Areas

through S106 Obligations. Note that this is a longstanding approach from the Draft Charging Schedule (from February 2015) and is being used elsewhere.

There are a number of issues relating to viability of sites; particularly sites within of 1-3 dwellings within Zone 2 and sheltered housing. With regard to the former, the Council's reasons for deviating from the Burrows Hutchinson Viability Update findings are set out in the September 2016 Consultation Statement. With regard to sheltered housing, the Council considers that the Viability Update indicates that CIL would be viable.

On the basis of the representations made on the Proposed Modifications, the Council does not wish to make further Modifications. It does however intend to publish a revised Reg123 List to clarify the use of CIL to mitigate the effects of development in the Brixham Peninsula on limestone grassland in the SAC.

However, the Council are happy for the Examiner to recommend further Modifications should he deem these necessary to make CIL acceptable.

In particular the Council considers that may be a case for using s106 rather than CIL for any strategic sites that arise. Whilst the Council is able to amend the instalments policy and Reg123 list outside of the Examination process, the Council would welcome the Examiner's views in the light of comments made by Cavanna Homes and Natural England.



**Representations on the Proposed Modifications to Torbay's CIL Submission Draft Charging Schedule and the Council's Response.**

<b>National Consultees/Neighbouring Districts</b>	
Natural England	<p>Clarify the extent of CIL and S106 for the Berry Head Special Area of Consultation to ensure that impacts on the SAC are addressed and to eliminate double dipping.</p>
Environment Agency	<p>No concerns or comments.</p>
Network Rail	<p>No specific comment, but would ask that strategic projects identified in Network Rail's Western Route Study-Long Term Planning Process are considered for future CIL/S106 funding.</p>
Teignbridge District Council	<p>General observation that Torbay has a lower rate of CIL than Teignbridge due to s106 requirements and the focus on CIL upon smaller urban sites.</p>
<b>Partner Organisations/Forums</b>	
Torquay Neighbourhood Forum	<p>Reiterate previous objection that the neighbourhood portion should be increased, in recognition that S106 and not CIL is being used for major developments in Future Growth Areas.</p> <p>Conservation Areas should be subject to a charge of £70 per sq m.</p> <p>Revert to a mid level charge of £30 per sq m for Charging Zone 2 (built up areas not within deprived areas)</p>

Agreed. The Council propose to amend the Reg123 List so that CIL is used to cover impacts from all development in the Brixham Peninsula on the limestone grassland between Berry Head and Sharkham Point.

Impact of development on Greater Horseshoe Bats and other biodiversity would continue to be a CIL item.

No objection noted

Noted. The major rail investment in Torbay is likely to be Edginswell Station, which is closely related to the Torquay Gateway Future Growth Area, and growth in the surrounding area. S106 Obligations are being sought for this (subject to the 5 Obligation pooling limit).

General observations noted. The Council considers that it has set CIL at a relatively low level in to order to protect development viability. As noted elsewhere, Torbay intends to seek infrastructure contributions for S106 Obligations from strategic sites: whereas Teignbridge seeks CIL from all sites. Therefore the viability picture is likely to be slightly different with each areas' approach.

The neighbourhood portion is set out in the CIL regulations (59A). Increasing the neighbourhood portion would jeopardize funding of key Baywide infrastructure.

**Conservation Areas:** The Council has reviewed the charging zone maps to take into account likely viability. Many conservation areas are also in areas of serious deprivation with correspondingly low property values (and within Charging Zone 1). There are more spacious Conservation Areas such as the Lincombes and Warberries. However, house prices in these areas are not significantly higher than other "good" areas of

Paignton Neighbourhood Forum	PM6	<p>Exclude self build properties from CIL.</p>	<p>Torquay.</p> <p>The Council considers that a blanket charging Zone based upon Conservation Areas would risk being a policy making designation rather than one based on viability.</p> <p>Conservation areas already enjoy protection under the Planning (Listed Buildings and Conservation Areas) Act 1990, Chapter 12 of the NPPF and Policy SS10 of the NPPF.</p> <p><b>Mid Range Charge for the built up area.</b> The Revised Proposed Modifications, and Revised Draft Charging Schedule propose this rate of CIL, and support from Torquay Neighbourhood Forum for this is noted.</p> <p><b>Self Build Housing.</b> Self Build Housing is exempt from CIL. The Draft Charging Schedule (with Proposed Modifications) sets out clearly that Mandatory exemptions from CIL must be claimed before development commences.</p>
		<p>Maintain objection to exclusion of sites within Future Growth Areas from CIL. Seeking CIL on sites of 1-14 dwellings in these areas does not overcome the objection.</p> <p>Charging CIL of £30 per sq m for sites of 1-3 dwellings in Zone 2 (Built up area outside Deprived Areas) does not conform to the CIL Viability Addendum Report. Not heeding advice on these sites increases the likelihood of a perverse situation where greenfield development is encouraged. Suggest a charge of £70 per sq m for Zone 4 (Future growth Areas)</p> <p>Support reference to safeguard the vitality and viability of town centres in relation to Commercial CIL.</p>	<p><b>Strategic Sites</b> The Council's overall approach is to seek infrastructure contributions for strategic sites through S106/S278 Agreements. This is in recognition that the strategic infrastructure requirements from such sites are more likely to be significant than from small sites. Policy H2 sets a higher affordable housing target for large greenfield sites, which also impacts upon viability.</p> <p>In addition s106/s278 Obligations allow for provision of some infrastructure before development commences and is easier to phase, as opposed to CIL which can only be collected after development has commenced.</p> <p>Seeking infrastructure contributions from strategic sites through S106 rather than CIL is not intended to advantage such sites, but is intended to aid the negotiation of infrastructure provision on strategic sites.</p> <p>The Council has proposed a Modification to seek CIL from sites of less than 15 dwellings in Future Growth Areas, as such smaller sites are unlikely to incur the same level of strategic infrastructure costs as larger sites.</p>

Brixham Neighbourhood Forum	PM7	<p>Object to charging CIL on sites of 1-3 dwellings within the built up area, contrary to the Viability Update.</p> <p>Object that CIL is not sought on Future Growth Areas- no evidence has been provided that CIL would render development unviable if charged at £70 per sq m.</p> <p>Object that CIL is not justified by infrastructure requirements.</p> <p>Object that the Council's discretionary circumstances relief policy could undermine Neighbourhood Plan objectives.</p> <p>Clarify in the CIL Charging Schedule that where site enabling works render development unviable, then CIL will be reduced.</p>	<p><b>Sites of 1-3 dwellings in the built up area.</b> The Council's reasons for seeking CIL on such sites are set out in the main Consultation Statement.</p> <p><b>Sites of 1-3 dwellings</b> The Council's reasons for seeking CIL on such sites are set out in the main Consultation Statement.</p> <p><b>Use of S106 Obligations within Future Growth Areas.</b> The viability evidence indicates that larger sites are likely to be able to afford CIL. However, under this approach the gamut of strategic infrastructure is likely to be required through CIL. Larger sites within Future Growth Areas are likely to have higher costs of unlocking in terms of strategic infrastructure. The Council also seeks education and other Contributions that do not apply to smaller sites, as set out in the Written Ministerial Statement and Planning Practice Guidance on the use of "tariff style" contributions.</p> <p>S106 Obligations can also be phased more effectively than CIL to ensure upfront delivery of necessary infrastructure.</p> <p>Therefore the Council considers that it is more effective to use s106 Obligations for large sites within Future Growth Areas.</p> <p><b>Balancing CIL with infrastructure requirements.</b> It is noted that this does not relate to Modifications. The Forum has correctly identified Reg 14 of the CIL Regulations, as well as the Torbay Infrastructure Delivery Study (2011). The Infrastructure Delivery Study was part of the evidence base for the Torbay Local Plan 2012-30 and identified a total funding gap of around £160m of which £52m is considered to be critical (note that the figure is millions rather than thousands).</p> <p>There is no suggestion that this can be funded through developer contributions. The Council has borrowed £20 million towards the cost of the recently completed South Devon Highway. This is a pivotal piece of infrastructure for which there is a significant funding gap, which will need to be funded through the public purse (with concomitant cuts in other services) if not through CIL.</p>
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		<p>The Council considers that the use of S106 Obligations for strategic sites will ensure that there is a clearer guarantee that contributions raised for an area will be spent in the area where development arises. This is likely to exceed the "neighbourhood portion" of CIL.</p> <p><b>Exceptional Circumstances Exemption.</b> The Council's Submission Draft Charging Schedule proposed to offer Exceptional Circumstances relief, although a modification has been proposed to make it slightly more restrictive.</p> <p>The Council will consider the views of Neighbourhood Forums, Brixham Town Council and other in order to ensure that Neighbourhood Plan priorities are not undermined in offering Exceptional Circumstances Relief. However, it considers that the discretion whether to offer relief is with the Council as Charging Authority.</p> <p>Where site deliverability matters would render development unviable, then development would need to be refused since it could not be made acceptable in planning terms. The issue of Churston Broadway is a specific application where the Council is seeking a dedicated right turn into the site as in as a site acceptability matter, as a s278 Agreement. In such a case, if development was unviable because of (a relatively modest) access requirement, CIL exceptional circumstances relief would need to be sought.</p>
<p>Collaton St Mary Residents Association</p>	<p>PM8</p> <p>Object to charging CIL on 1-3 dwellings in Zone 2 (elsewhere in the built up area) as it will deter brownfield development.</p> <p>Object to approach of using s106 rather than CIL for large sites in Future Growth Areas as this will encourage greenfield development.</p>	<p>See more detailed response to Paignton Neighbourhood Forum above and the Council's main Consultation Statement.</p> <p>The issue of sites of 1-3 dwellings in Zone 2 is noted.</p> <p>The Council considers that s106 is a more effective tool for achieving sustainable development in Future Growth Areas. Such areas are likely to have higher infrastructure costs, and a higher infrastructure requirement than sites within the built up area. Policy H2 of the Local Plan imposes a higher affordable housing requirement upon large greenfield sites (30% as opposed to 20% for brownfield sites) which will have a greater</p>

			<p>impact on viability.</p> <p>S106 Obligations can require strategic infrastructure to be provided up front, which cannot be so easily achieved through CIL.</p> <p>The Council is not seeking to use CIL to incentivise or discourage the location of development, but has based its proposals upon likely viability.</p>
<b>Developers</b>			
Stride Treglown for Deeley Freed.	PM9	<p>Approach within Zone 4 i.e. zero CIL and use of s106 to fund major infrastructure should apply to all sites of strategic significance.</p> <p>Background information provided on land south of White Rock which was promoted through the Local Plan and continues to be promoted.</p>	<p>The Council agrees that CIL is not used to determine or influence the planning merits of proposals. The approach for determining major sites that may come forward is set out in the Adopted Local Plan (particularly Policy SS2).</p> <p>On this basis, were a strategic greenfield site to be promoted, it is likely that it would have similar infrastructure requirements and viability characteristics to the Future Growth Areas designated in the Local Plan. In such circumstances it is likely that the Council would negotiate Exceptional Circumstances relief from CIL on the basis that s106/S278 Agreements would be more effective in delivering the needed infrastructure.</p> <p>Whilst the Council does not wish to recommend a further Modification to codify this approach in its CIL Charging Schedule; it would not object to such a modification if the Independent Examiner considered it to be appropriate.</p> <p>However, such a Modification should only apply to sites of a genuinely strategic nature. The Local Plan defines this as sites of 30+ dwellings or of importance to meeting overall Local Plan or NPPF targets (Glossary, p262). It is noted that Policy H2's highest band for affordable housing starts at 30+ dwellings from greenfield sites.</p>
Pegasus Group for JJ Gallagher Ltd	PM10	<p>Support zero rate of CIL for extra care homes.</p> <p>Concern that it is proposed to seek CIL on other forms of sheltered persons' accommodation.</p> <p>Need to clarify the precise definition of extra care verse supported housing etc.</p>	<p>Support for exclusion of extra care units and the provision of exceptional circumstances relief is noted.</p> <p>The Torbay Viability Update (Burrows Hutchinson Ltd) specifically advised that sheltered accommodation is likely to be viable with CIL. It found that retirement units in Paignton and Torquay achieved equal or higher value per sq m than general</p>

		<p>needs housing (see Table 1) and that retirement living/villages had a buffer of £187 per sq m available for CIL. On this basis there is a significant margin for error (taking into account the figures argued by Pegasus, which would still allow CIL to be levied on sheltered housing and it to remain viable.</p> <p>It is noted that Exceptional Circumstances relief is offered if specific developments are not viable.</p> <p>The Council has no objection to specifying the definition of extra care housing. Whilst the Use Classes order is imprecise, it may be more practical to define Extra Care units as falling into Use Class C2. (Whereas sheltered and supported units are likely to fall within Class C3).</p> <p>Note that Pegasus' objection relates to a proposed site at Sladnor Park, Maidencombe, which is likely to fall within the lower end of what the Council would consider strategic (Q.V. comments by Stride Treglown).</p>
	<p>Considers that the sales values in the Burrows Hutchinson report are too high.</p> <p>Should refer to retirement schemes rather than retirement housing.</p> <p>Support exceptional circumstances policy.</p>	
Cavanna Homes	PM11	<p>Object to the reduction in time for instalments. The viability impact of this has not been tested. Will have a negative impact on development cash flow as 180 days is not sufficient to complete significant schemes.</p>
WYG on behalf of Sainsbury's Supermarkets Ltd.	PM12	<p>No fresh comments, but rely on previous objection made at Revised Draft Charging Schedule stage (i.e. object to treating Willows as an out of centre location.</p>
<b>Individuals</b>		
None		

Community Infrastructure Levy Regulations 2010 (As Amended)

# **Representations made on the Proposed Modifications to the Community Infrastructure Levy Revised Draft Charging Schedule**

**Torbay Council October 2016**

## **Introduction**

The following summarises representations received on, and issues arising from, the consultation to Proposed Modifications to Torbay's Community Infrastructure Levy Revised Draft Charging Schedule.

This document was the subject of consultation between Monday 5<sup>th</sup> September 2016 and Monday 17<sup>th</sup> October 2017. This replaced an earlier consultation on Proposed Representations that commenced in August 2016. Only one representation (from Torquay Neighbourhood Forum) was received on this earlier consultation and the Council do not consider that any interests have been prejudiced by incorporating this representation into the Revised Proposed Modifications. For simplicity, these are referred to as the Proposed Modifications in this document.

This document supplements the Consultation Statement dated September 2015 which sets out representations and the council's responses to previous stages of the CIL, and the rationale for the proposed Modifications.

The representations have been considered carefully and the Council do not consider that further Modifications need to be made to the Submission Draft Charging Schedule as amended by the Revised proposed Modifications. However, it is noted that a number of objections have been made which invite further Modification. The Council welcome the Independent Examiner's recommendations to these and confirms that it will accept amendments to the Schedule if deemed necessary by the Examiner.

The Council has set out areas where it particularly considers further Modifications could strengthen the CIL should these be recommended by the Examiner. This is intended to assist him and not to limit his scope to make comments.

### **Main areas of representations**

There were 12 responses to CIL. The following sets out what the Council considers to be the main issues arising from the Consultation. A fuller breakdown of representations and responses is set out in the table of comments. Several issues have been raised previously and the Council's September 2016 Consultation Statement remains relevant.

- 1) Clarify the extent of CIL and S106 for the Berry Head to Sharkham Point Special Area of Consultation to ensure that impacts on the SAC are addressed and to eliminate double dipping.
- 2) Object to seeking CIL on sites of 1-3 dwellings in Charging Zone 2 i.e. elsewhere in the built up area.
- 3) Objections from Neighbourhood Forums to the use of S106 rather than CIL for large sites within Future growth Areas, in terms of (1) perverse incentive to develop greenfield sites and (2) Impact upon Neighbourhood Plan projects.
- 4) Exceptional Circumstances relief could undermine neighbourhood Plan Projects.



- 5) Objection that the Infrastructure Funding Gap has not been clearly justified.
- 6) Representation from developers that S106 Obligations should apply to all strategic sites that are developed (including south of White Rock) and not just Future Growth Areas in the Local Plan
- 7) Objection to seeking CIL from sheltered housing developments
- 8) Objection that the Instalments policy has been made less generous and will harm viability.

**Summary of Council's response to these issues**

The Council's summary response to these is set out below. A more detailed assessment is contained in the table of comments.

- 1) **Clarify the extent of CIL and S106 for the Berry Head to Sharkham Point Special Area of Consultation to ensure that impacts on the SAC are addressed and to eliminate double dipping.**  
 Noted. The Council has been in discussion with Natural England and proposes to amend the Regulation 123 List to make recreational Impact on the limestone grassland a CIL item; and address development impacts upon greater horseshoe bat and other habitats a s1106 matter.

- 2) **Object to seeking CIL on sites of 1-3 dwellings in Charging Zone 2 i.e. elsewhere in the built up area.**  
 The recommendations in the Viability Update are noted. The Council's reasons for taking a different approach are set out in the September 2016 Consultation Statement on page 7-8.

- 3) **Objections from Neighbourhood Forums to the use of S106 rather than CIL for large sites within Future growth Areas, in terms of (1) perverse incentive to develop greenfield sites and (2) Impact upon Neighbourhood Plan projects.**

As set out in the September Consultation Statement and in the table below, the Council considers that seeking S106 from large sites within Future Growth Areas is the most effective way to secure sustainable development on such sites. They are likely to have higher infrastructure costs in terms of unlocking and serving the sites as well as strategic landscape and biodiversity mitigation. They are also subject to higher affordable housing requirements (which require a S106 Obligation irrespective of CIL). There is greater flexibility to negotiate the phasing of infrastructure provided through S106, and require elements such as the highways, flooding, landscape/biodiversity matters to be provided upfront, and directly by the developer where necessary. Therefore the Council considers that S106 Obligations are more effective than CIL.

CIL is not being used as a tool to influence the location of development, and it is likely that s106 requirements would be higher than the equivalent CIL according to the current Draft Planning Contributions and Affordable Housing Supplementary Planning Document.

It is noted that other Authorities, including South Somerset and Mid Devon are also using this approach in recognition of the limitations of CIL in dealing with large sites.

CIL is not intended to undermine the delivery of Neighbourhood Plans, and it is recommended that the Neighbourhood Plans identify key projects that the Forums are seeking to target the neighbourhood portion upon. Should specific projects be identified that are key to delivering the Neighbourhood Plan, it is suggested that they are likely to be eligible for S106 Obligations.

**4) Exceptional Circumstances relief could undermine Neighbourhood Plan Projects.** Matter that is key to delivery of the Neighbourhood Development Plan may be more effectively addressed through s106 obligations, where they meet the tests of lawfulness. However, the delivery of the Local and Neighbourhood Plan is likely to be an important consideration in deciding whether exceptional circumstances relief from CIL should be granted. The Council would have no objection to recommending a minor further Modification to Mod xx to indicate that: *"The Council will have regard to the effect of granting Exceptional Circumstance relief upon the delivery of sustainable development, including projects and policies identified in the Local and neighbourhood Plans (when Made)".*

However the Council considers that as the Charging Authority, the final decision whether to grant exceptional circumstances relief rests with the Council.

**5) Objection that the Infrastructure Funding Gap has not been clearly justified.** This does not appear to be a principal objection, but an issue arising out of 3 above. The Infrastructure Delivery Study was part of the evidence base for the Torbay Local Plan2012-30 and identified a total funding gap of around £160m of which £52m is considered to be critical (note that the figure is millions rather than thousands). There is no suggestion that this can be funded through developer contributions in its entirety. The Council has borrowed £20 million towards the cost of the recently completed South Devon Highway. This is a pivotal piece of infrastructure for which there is a significant funding gap, which will need to be funded through the public purse (with concomitant cuts in other services) if not through CIL.

**6) Representation from developers that S106 Obligations should apply to all strategic sites that are developed (including south of White Rock) and not just Future Growth Areas in the Local Plan**

This application relates to land South of White Rock, which narrowly missed allocation in the Adopted Torbay Local Plan but is being actively promoted. As such it may come forward during the Plan period. The comment is also of relevance to Sladnor Park, Maidencombe (see Pegasus' comments on sheltered housing).

CIL is not used to determine the acceptability of development nor to influence development location. With this in mind, proposals will need to be determined on their planning merits. Should a strategic development come forward outside of the Future Growth Area, it is likely that they would have infrastructure requirements comparable to those within Future Growth Areas and that the Council would negotiate exceptional circumstances relief. Accordingly, the council would not object if the Examiner recommended a further modification to make all strategic sites CIL exempt. A definition of strategic will need to be provided. The Council suggest that it should be 100 or more dwellings.

**7) Objection to seeking CIL from sheltered housing developments**

The Burrows Hutchinson Viability Update considers that sheltered housing is unlikely to be jeopardized by CIL. The Council agree that a clear distinction between extra care and "sheltered" or "supported" housing needs to be provided, and the use Classes Order Classes C2 and C3 may be the best way to make this distinction. Notwithstanding this, the Objection from Pegasus relates to a proposed retirement village, and suggestion in (6) above that all strategic sites could be CIL exempt would overcome the specific concern.

**8) Objection that the Instalments policy has been made less generous and will harm viability. The Council is able to amend its instalments policy outside of the CIL examination process. However, it notes that Cavanna Homes have indicate practical difficulties with the time scale for instalments in Mod 17 should the examiner consider this to be justified, with the caveat that it does not consider instalment of longer than 24 months to be appropriate, because it removes certainty of receiving CIL moneys.**

**Conclusions**

Having considered the representations submitted, the Council consider that the major issue of substance is the Council's proposed approach of seeking CIL smaller sites (where viable) and seeking to negotiate sites of 15+ dwellings within Future Growth Areas through S106 Obligations. Note that this is a longstanding approach from the Draft Charging Schedule (from February 2015) and is being used elsewhere.

There are a number of issues relating to viability of sites; particularly sites within of 1-3 dwellings within Zone 2 and sheltered housing. With regard to the former, the Council's reasons for deviating from the Burrows Hutchinson viability update's findings are set out in the Consultation Statement. The Council does not wish to add to the argument set out therein. With regard to sheltered housing, the Council considers that the Viability Update indicates that CIL would be viable.

On the basis of the representations made on the Proposed Modifications, the Council does not wish to make further Modifications. It does however intend to publish a revised Reg123 List to clarify the use of CIL to mitigate the effects of development in the Brixham peninsula on limestone grassland in the SAC.

However, the Council are happy for the Examiner to recommend further Modifications should he deem these necessary to make CIL acceptable.

In particular the Council considers that may be a case for using s106 rather than CIL for any strategic sites (e.g. of over 100 dwellings) that arise. Whilst the Council is able to amend the instalments policy and Reg123 list outside of the Examination process, the Council would welcome the examiner's views in the light of comments made by Cavanna Homes and natural England.

**Representations on the Proposed Modifications to Torbay's CIL Submission Draft Charging Schedule and the Council's Response.**

**National Consultees/ Neighbouring Districts**

Natural England	AM1	Clarify the extent of CIL and S106 for the Berry Head Special Area of Consultation to ensure that impacts on the SAC are addressed and to eliminate double dipping.	Agreed. The Council propose to amend the Reg123 List so that CIL is used to cover impacts from all development in the Brixham Peninsula on the limestone grassland between Berry head and Sharkham Point. Impact of development on Greater Horseshoe Bats and other biodiversity would continue to be a CIL item.
Environment Agency	AM2	No concerns or comments.	No objection noted
Network Rail	AM3	No specific comment, but would ask that strategic projects identified in Network Rail's Western Route Study-Long term Planning Process are considered for future CIL/S106 funding.	Noted. The major rail investment in Torbay is likely to be Edginswell Station, which is closely related to the Torquay Gateway Future Growth Area, and growth in the surrounding area. S106 Obligations are being sought for this (subject to the 5 Obligation pooling limit).
Teignbridge District Council	AM4	General observation that Torbay has a lower rate of CIL than Teignbridge due to s106 requirements and the focus on CIL upon smaller urban sites.	General observations noted. The Council considers that it has set CIL at a relatively low level in to order to protect development viability. As noted elsewhere, Torbay intends to seek infrastructure contributions for S106 Obligations from strategic sites: whereas Teignbridge seeks CIL from all sites. Therefore the viability picture is likely to be slightly different with each areas' approach.
<b>Partner Organisations /Forums</b>			
Torquay Neighbourhood Forum	AM5	Reiterate previous objection that the neighbourhood portion should be increased, in recognition that S106 and not CIL is being used for major developments in Future Growth Areas. Conservation Areas should be subject to a charge of £70 per sq m Revert to a mid level charge of £30 per sq m for Charging Zone 2 (built up areas not within deprived areas)	The neighbourhood portion is set out in the CIL regulations (59A). Increasing the neighbourhood portion would jeopardize funding of key Baywide infrastructure. <b>Conservation Areas:</b> The Council has reviewed the charging zone maps to take into account likely viability. Many conservation areas are also in areas of serious deprivation with correspondingly low property values (and within Charging Zone 1). There are more spacious Conservation Areas such as the Lincombs and Warberries. However house prices in these area are not significantly higher than other "good" areas of Torquay.

		<p>Exclude Self build properties from CIL.</p> <p>The Council considers that a blanket charging Zone based upon Conservation Areas would risk being a policy –making designation rather than one based on viability.</p> <p>Conservation areas already enjoy protection under the Planning (Listed Buildings and Conservation Areas) Act 1990, Chapter 12 of the NPPF and Policy SS10 of the NPPF.</p> <p><b>Mid Range Charge for the built up area.</b> The Revised Proposed Modifications, and Revised Draft Charging Schedule propose this rate of CIL, and support from Torquay Neighbourhood Forum for this is noted.</p> <p><b>Self Build Housing.</b> Self Build Housing is exempt from CIL.. The Draft Charging Schedule (with Proposed Modifications) sets out clearly that Mandatory exemptions from CIL must be claimed before development commences.</p> <p><b>Strategic Sites</b> The Council's overall approach is to seek infrastructure contributions for strategic sites through S106/S278 Agreements. This is in recognition that the strategic infrastructure requirements from such sites are more likely to be significant than from small sites. Policy H2 sets a higher affordable housing target for large greenfield sites, which also impacts upon viability.</p> <p>In addition s106/s278 Obligations allow for provision of some infrastructure before development commences and is easier to phase, as opposed to CIL which can only be collected after development has commenced.</p> <p>Seeking infrastructure contributions from strategic sites through S106 rather than CIL is not intended to advantage such sites, but is intended to aid the negotiation of infrastructure provision on strategic sites.</p> <p>The Council has proposed a Modification to seek CIL from sites of less than 15 dwellings in Future Growth Areas, as such smaller sites are unlikely to incur the same level of strategic</p>
<p>Paignton Neighbourhood Forum</p>	<p><del>AM6</del></p>	<p>Maintain objection to exclusion of sites within Future Growth Areas from CIL. Seeking CIL on sites of 1-14 dwellings in these areas does not overcome the objection.</p> <p>Charging CIL of £30 per sq m for sites of 1-3 dwellings in Zone 2 (Built up area outside Deprived Areas) does not conform to the CIL Viability Addendum Report. Not heading advice on these sites increases the likelihood of a perverse situation where greenfield development is encouraged. Suggest a charge of £70 per sq m for Zone 4. (Future growth Areas)</p> <p>Support reference to safeguard the vitality and viability of town centres in relation to Commercial CIL.</p>

			<p>infrastructure costs as larger sites.</p> <p><b>Sites of 1-3 dwellings in the built up area</b> The Council's reasons for seeking CIL on such sites are set out in the main Consultation Statement.</p>
Brixham Neighbourhood Forum	PM7	<p>Object to charging CIL on sites of 1-3 dwellings within the built up area, contrary to the Viability Update.</p> <p>Object that CIL is not sought on Future Growth Areas- no evidence has been provided that CIL would render development unviable if charged at £70 per sq m.</p> <p>Object that CIL is not justified by infrastructure requirements.</p> <p>Object that the Council's discretionary circumstances relief policy could undermine Neighbourhood Plan objectives.</p> <p>Clarity in the CIL Charging Schedule that where site enabling works render development unviable, then CIL will be reduced.</p>	<p><b>Sites of 1-3 dwellings</b> The Council's reasons for seeking CIL on such sites are set out in the main Consultation Statement.</p> <p><b>Use of S106 Obligations within Future Growth Areas.</b> The viability evidence indicates that larger sites are likely to be able to afford CIL. However, under this approach the gamut of strategic infrastructure is likely to be required through CIL. Larger sites within Future Growth Areas are likely to have higher costs of unlocking in terms of strategic infrastructure. The Council also seeks education and other Contributions that do not apply to smaller sites, as set out in the Written Ministerial Statement and Planning Practice Guidance on the use of "tariff style" contributions.</p> <p>S106 Obligations can also be phased more effectively than CIL to ensure upfront delivery of necessary infrastructure.</p> <p>Therefore the Council consider that it is more effective to use s106 Obligations for large sites within Future Growth Areas.</p> <p><b>Balancing CIL with infrastructure requirements.</b> It is noted that this does not relate to Modifications. The Forum has correctly identified Reg 14 of the CIL Regulations, as well as the Torbay Infrastructure Delivery Study (2011). The Infrastructure Delivery Study was part of the evidence base for the Torbay Local Plan 2012-30 and identified a total funding gap of around £160m of which £52m is considered to be critical (note that the figure is millions rather than thousands).</p> <p>There is no suggestion that this can be funded through developer contributions. The Council has borrowed £20 million towards the cost of the recently completed South Devon Highway. This is a pivotal piece of infrastructure for which there is a significant funding gap, which will need to be funded through the public purse (with concomitant cuts in other services) if not</p>

			<p>through CIL.</p> <p><b>Exceptional Circumstances Exemption.</b> The Council's Submission Draft Charging Schedule proposed to offer Exceptional Circumstances relief, although a modification hasd been proposed to make it slightly more restrictive.</p> <p>The Council will consider the views of Neighbourhood Forums, Brixham Town Council and other in order to ensure that Neighbourhood Plan priorities are not undermined in offering Exceptional Circumstances Relief. However, it considers that the discretion whether to offer relief is with the Council as Charging Authority.</p> <p>Where site deliverability matters would render development unviable, then development would need to be refused since it could not be made acceptable in planning terms. The issue of Churston Broadway is a specific application where the Council is seeking a dedicated right turn into the site as in as a site acceptability matter, as a s278 Agreement. In such a case, if development was un viable because of (a relatively modest) access requirement, CIL exceptional circumstances relief would need to be sought.</p> <p>See more detailed response to Paington Neighbourhood Forum above and the Council's main Consultation Statement.</p> <p>The issue of sites of 1-3 dwellings in Zone 2 is noted.</p> <p>The Council consider that s106 is a more effective tool for achieving sustainable development in Future Growth Areas. Such areas are likely to have higher infrastructure costs, and a higher infrastructure requirement than sites within the built up area. Policy H2 of the Local Plan imposes a higher affordable housing requirement upon large greenfield sites (30% as opposed to 20% for brownfield sites) which will have a greater impact on viability.</p> <p>S106 Obligations can require strategic infrastructure to be provided up front, which cannot be so easily achieved through CIL.</p> <p>The Council is not seeking to use CIL to incentivise or discourage the location of development, but has based its</p>
Collaton St Mary Residents Association	/RM8	<p>Object to charging CIL on 1-3 dwellings in Zone 2 (elsewhere in the built up area) as it will deter brownfield development.</p> <p>Object to approach of using s106 rather than CIL for large sites in Future Growth Areas as this will encourage greenfield development.</p>	



		proposals upon likely viability.	
<b>Developers</b>			
Strde Treglown for Deeley Freed.	PM9	Approach within Zone 4 i.e. zero CIL and use of s106 to fund major infrastructure should apply to all sites of strategic significance. Background information provided on land south of White Rock which was promoted through the Local Plan and continues to be promoted.	The Council agree that CIL is not used to determine or influence the planning merits of proposals. The approach for determining major sites that may come forward is set out in the Adopted Local Plan (particularly Policy SS2).  On this basis, were a strategic greenfield site to be promoted, it is likely that it would have similar infrastructure requirements and viability characteristics to the Future Growth Areas designated in the Local Plan. In such circumstances it is likely that the Council would negotiate Exceptional Circumstances relief from CIL on the basis that s106/SS278 Agreements would be more effective in delivering the needed infrastructure.  Whilst the Council do not wish to recommend a further Modification to codify this approach in its CIL Charging Schedule; it would not object to such a modification if the Independent examiner considered it to be appropriate.  However, such a Modification should only apply to sites of a genuinely strategic nature: say 100+ dwellings and not to any site of 15+ dwellings.
Pegasus Group for JJ Gallagher Ltd	PM10	Support zero rate for extra care homes. Concern that it is proposed to seek CIL on other forms of sheltered persons accommodation.  Need to clarify the precise definition of extra care verse supported housing etc.  Considers that the sales values in the Burrows Hutchinson report are too high.  Should refer to retirement schemes rather than retirement housing.  Support exceptional circumstances policy.	Support for exclusion of extra care units and the provision of exceptional circumstances relief is noted.  The Torbay Viability Update specifically advised that sheltered accommodation is likely to be viable with CIL. It found that retirement units in Pailinton and Torquay achieved equal or higher value per sq m than general needs housing (see Table 1) and that retirement living/villages had a buffer of £187 per sqm available for CIL. On this basis there is a significant margin for error (taking into account the figures argued by Pegasus, which would still allow CIL to be levied on sheltered housing and it to remain viable.  It is noted that Exceptional Circumstances relief is offered if specific developments are not viable.  The Council has no objection to specifying the definition of extra

			care housing. Whilst the Use Classes order is imprecise, it may be more practical to define Extra Care units as falling into Use Class C2. (Whereas sheltered and supported units are likely to fall within Class C3).  Note that Pegasus' objection relates to a proposed site at Sladnor Park Maidencombe, which is likely to fall within the lower end of what the Council would consider strategic (Q.V. comments by Stride Treglown).
Cavanna Homes	AM11	Object to the reduction in time for instalments. The viability impact of this has not been tested. Will have a negative impact on development cash flow as 180 days is not sufficient to complete significant schemes.	Issues noted The Council is able to amend its instalments period outside of the examination process under s69B of the CIL regulations.  The Council would not object to allowing longer instalments, subject to a maximum repayment time of 24 months should the Examiner consider this justified.  Whilst the Council do not wish to amend the instalments policy at this stage, it is willing to accept the Examiner's recommendation should he consider it to be appropriate.
WYG on behalf of Sainsbury's Supermarkets Ltd.	AM12	No fresh comments, but rely on previous objection made at Revised Draft Charging Schedule stage (i.e. object to treating Willows as an out of centre location).	The Willows was found by the Torbay Retail Update (2011/3) to operate as an out of town shopping centre with regard to viability, and it is therefore considered appropriate to treat it as out of centre for purposes of CIL viability.
<b>Individuals</b>			
None			

PM1

## Pickhaver, David

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**From:** Dyke, Corine (NE) [Corine.Dyke@naturalengland.org.uk]  
**Sent:** 17 October 2016 14:35  
**To:** Pickhaver, David; Future Planning  
**Subject:** FW: Torbay Community Infrastructure Levy Draft Charging Schedule  
**Attachments:** 193323 Submission of Torbay CIL Draft Charging Schedule.docx

Dear David

Following our various discussions on this consultation document, please find attached Natural England's response to your consultation.

If further refinements are required then I am happy to discuss this further and provide further written responses if needed. I did however want to send this response to you in time.

Please note that I am now on leave until 24 October

Kind regards  
Corine

Corine Dyke  
Lead Advisor – Planning Policy  
Devon, Cornwall and Isles of Scilly Team  
Natural England  
Polwhele  
Truro  
TR4 9AD  
02080268177  
Mob 07717 888537

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**From:** Pickhaver, David [<mailto:David.Pickhaver@torbay.gov.uk>]  
**Sent:** 12 August 2016 11:28  
**Cc:** Pickhaver, David; 'cilexamination@torbay.gov.uk'  
**Subject:** Submission of Torbay Community Infrastructure Levy Draft Charging Schedule for Examination

Dear Colleague

### **Re: Submission of Torbay Community Infrastructure Levy (CIL) Draft Charging Schedule for Examination**

I am writing to inform you that Torbay Council has submitted its CIL Draft Charging Schedule for examination, following consultations in March 2015 and March 2016, and Council resolution in May 2016. The Independent Examiner appointed by the Council is Independent Plans and Examinations Ltd.

Following consideration of representations, the Council is proposing a number of Modifications to the Examiner, which are set out in the attached track-charged DCS and Schedule of Proposed Modifications. Full details of submission documents may be viewed online at <http://www.torbay.gov.uk/council/policies/planning-policies/local-plan/cil/>. Alternatively they can be viewed at libraries in Torbay, the Connections Office in Paignton Library or (by appointment) at Spatial Planning, Electric House, Castle Circus, Torquay, TQ1-3DR.

I attach a copy of the Proposed Modifications and a track-changed copy of the CIL Revised Draft Charging Schedule, as well as the Council's consultation statement setting out its approach to CIL so far. The Council has also reviewed its residential Charging Zones. I'm afraid that there are too large to email, but can be viewed online or at the locations noted above.

The Council considers that the proposals set out in the Draft Charging Schedule represent an appropriate balance between the need to fund infrastructure and the likely impact of CIL upon development viability.

However, in recognition that a key issue raised by representers related to viability matters, the Council has commissioned an update/independent third party assessment of the PBA viability study by Burrows Hutchinson Limited. The findings of this will be published shortly.

The Council is inviting comments on the Proposed Modifications, which should be received by 9.00am on Monday 26<sup>th</sup> September 2016. We would prefer that these be emailed to [Future.Planning@torbay.gov.uk](mailto:Future.Planning@torbay.gov.uk). Alternatively they can be posted to Spatial Planning, Electric House, Castle Circus, Torquay, TQ1-3DR. There is no need to repeat comments already made in the Draft or Revised Charging Schedule consultations, as these will be forwarded to the Examiner.

**In addition, please can you notify the Council in writing (preferably by e-mailing [Future.Planning@torbay.gov.uk](mailto:Future.Planning@torbay.gov.uk)) by 26<sup>th</sup> September 2016 if you wish to be heard by the Examiner.**

The Council has appointed Ms. Helen Wills as CIL Programme Officer. Helen can be contacted on 01803 207799 or at [CILExamination@torbay.gov.uk](mailto:CILExamination@torbay.gov.uk). Helen will provide independent liaison between the Council, Independent Examiner, representers and other interested parties.

However, if you have any queries about, please contact me or email [future.planning@torbay.gov.uk](mailto:future.planning@torbay.gov.uk)

I hope that the above is self-explanatory. However, if you have any queries about the Council's CIL proposals please contact me.

Kind regards

David

David Pickhaver  
Senior Strategy and Project Officer  
Strategic Planning  
Spatial Planning  
Torbay Council  
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Web site: [www.torbay.gov.uk/newlocalplan](http://www.torbay.gov.uk/newlocalplan)

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RWT

Date: 17 October 2016  
Our ref: 193323  
Your ref:



Customer Services  
Hornbeam House  
Crewe Business Park  
Electra Way  
Crewe  
Cheshire  
CW1 6GJ

T 0300 060 3900

**BY EMAIL ONLY**

Dear David

**Planning consultation: Submission of Torbay Community Infrastructure Levy Draft Charging Schedule**

Thank you for your consultation on the above dated 12 August 2016.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

We would like to make the following comments:

Regulation 123 list:

- We welcome the inclusion of the mitigation and monitoring of impacts from new development on the nearby European as a critical item in the Regulation 123 list. As this mitigation and monitoring is required in law, development cannot go ahead without the mitigation being in place. It is thus critical that there is certainty about the mitigation and monitoring being delivered timely and appropriately.
- Following discussions between Torbay Council and Natural England about the best way to fund mitigation of impacts on the SAC, it was agreed that the off-site impacts on greater horseshoe bats should be funded through S106 and that recreational impacts from new development would best be funded through CIL. It was therefore agree that the Regulation 123 list should be amended to:

CIL Critical Infrastructure Item	Total Cost	Funding shortfall
Impacts on the South Hams Special Area of Conservation (Berry Head to Sharkham Point) arising from recreational impacts on limestone grassland arising from developments in the Brixham Peninsula (within the 5km zone of influence).	£384,000 <sup>1</sup>	£384,000

With a footnote stating: <sup>1</sup> The yearly estimated cost is £29,500, equating to 1.75% of the

anticipated yearly CIL income

- We have agreed that the estimated cost of mitigation and monitoring of recreational impacts from new development within the agreed 5 km zone of influence (drive zone) is £384,000. This is likely to be £29,500 a year, and estimated to be 1.75% of yearly CIL income, to deliver timely mitigation and monitoring. Monitoring is a regular and predictable cost, but mitigation costs are not necessarily regular or evenly spread over time and therefore only an *estimate* of yearly cost is appropriate.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries relating to the specific advice in this letter only please contact Corine Dyke on 02080 268177 / 07717 888537 or [corine.dyke@naturalengland.org.uk](mailto:corine.dyke@naturalengland.org.uk). For any new consultations, or to provide further information on this consultation please send your correspondences to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

We really value your feedback to help us improve the service we offer. We have attached a feedback form to this letter and welcome any comments you might have about our service.

Amount to

Yours sincerely

Corine Dyke  
Lead Adviser  
Sustainable Development Team – Devon, Cornwall & Isles of Scilly

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PM2

**Pickhaver, David**

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**From:** marcus.salmon@environment-agency.gov.uk  
**Sent:** 29 April 2016 17:59  
**To:** Pickhaver, David  
**Subject:** Environment Agency Response to: DC/2012/112403/OR-02/PO1-L01  
**Attachments:** PlanningProposal.rtf

The Local Development Document has been reviewed and I enclose the Environment Agency's comments on:

Other

Torbay Council

Other

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Mr David Pickhaver  
Torbay Council  
Planning & Development Services  
Town Hall Castle Circus  
TORQUAY  
TQ1 3DR

**Our ref:** DC/2012/112403/OR-  
02/PO1-L01  
**Your ref:**  
**Date:** 29 April 2016

Dear Mr Pickhaver

**Torbay Community Infrastructure Levy (CIL) Revised Draft Charging Schedule**

Thank you for your consultation of 17 March 2016 providing us with an opportunity to comment on the above document.

We have no objections or concerns with regard to the revised CIL. We note that it is intended that development contributions towards flood infrastructure and providing a new system for surface water drainage (to remove flows from the combined sewer system which threatens the waters around Torbay) will be sought through Section 106 obligations. We will be happy to work with your authority in developing S106 funding strategies for these types of works.

Yours sincerely

**MARCUS SALMON**  
**Sustainable Places Planning Specialist**

Direct dial 02084746289

Direct e-mail [marcus.salmon@environment-agency.gov.uk](mailto:marcus.salmon@environment-agency.gov.uk)



PM3

**Pickhaver, David**

---

**From:** Gibson Guy [Guy.Gibson@networkrail.co.uk]  
**Sent:** 26 September 2016 13:00  
**To:** Future Planning  
**Subject:** Torbay Community Infrastructure Levy: Draft Charging Schedule

Dear Sir/Madam,

Thank you for providing Network Rail with the opportunity to comment on the council's latest version of the CIL Draft Charging schedule.

Whilst Network Rail have no specific comment to make on this documents, the following link provides access to Network Rail's Western Route Study, published August 2015 which sets out the strategic vision for the future of the railway in this vital part of the railway network. It is hoped that this will be of use to the Council to keep you up to date with future aspirations for railway development in the Torbay area.

[Western route study - Long Term Planning Process - Network Rail](#)

We would also ask that the council take account of the following note on the funding of rail improvements which may be relevant to this and future CIL/section 106 policies:

*Funding of Rail Improvements*

*Network Rail is a publicly funded organisation with a regulated remit it would not be reasonable to require Network Rail to fund rail improvements necessitated by commercial development. It is therefore appropriate to require developer contributions to fund such improvements.*

*The likely impact and level of improvements required will be specific to each station and each development meaning standard charges and formulae may not be appropriate. Therefore in order to fully assess the potential impacts, and the level of developer contribution required, it is essential that where a Transport Assessment is submitted in support of a site allocation or planning application that this quantifies in detail the likely impact on the rail network.*

*To ensure that developer contributions can deliver appropriate improvements to the rail network we would recommend that Developer Contributions should include provisions for rail.*

*We therefore ask that the council should consider the following:*

- *A requirement for development contributions to deliver improvements to the rail network where appropriate.*
- *A requirement for Transport Assessments to take cognisance of impacts to existing rail infrastructure to allow any necessary developer contributions towards rail to be calculated.*
- *A commitment to consult Network Rail where development may impact on the rail network and may require rail infrastructure improvements. In order to be reasonable these improvements would be restricted to a local level and would be necessary to make the development acceptable. We would not seek contributions towards major enhancement projects which are already programmed as part of Network Rail's remit.*

**Guy Gibson**  
Town Planner - Property  
Network Rail  
1st Floor, Temple Point, Redcliffe Way, Bristol, BS1 6NL

M 07710 961616  
E [guy.gibson@networkrail.co.uk](mailto:guy.gibson@networkrail.co.uk)

[www.networkrail.co.uk/property](http://www.networkrail.co.uk/property)

**Pickhaver, David**

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**From:** Alex Lessware [Alex.Lessware@Teignbridge.gov.uk]  
**Sent:** 30 September 2016 10:14  
**To:** Future Planning  
**Subject:** Torbay CIL, Consultation on Revised Proposed Modifications and Submission of Draft Charging Schedule for Examination

Dear David,

Please find comments from Teignbridge District Council regarding your CIL consultation;

The Council notes that the proposed CIL rates within Torbay in areas adjoining Teignbridge are £70 and £140 per sq m for developments of 4 or more dwellings. We note that this CIL is being charged at a lower rate than might be expected in south Devon, including due to the following reasons;

- Many of the sites have included a 'viability buffer' in excess of 10%. The evidence points to many larger sites around Torquay/Paignton as supporting a potential CIL rate of c£190 to c£270 per sq m.
- The Local Plan requires both minimum residential space standards and 5% of homes as disabled access, which has added a significant development cost.
- The affordable housing targets vary, with many sites on the edge of Torbay requiring 25 – 30% affordable, of which 33% is lower value social rented accommodation.
- The CIL charging zones lies within the largely built up area of Torbay, including within the Paignton ring road.

In conclusion, we acknowledge the proposed CIL rates within the draft charging schedule, recognising that the CIL rates may have been set considerably higher were it not for the factors outlined above.

Alex Lessware  
Senior Planner  
Teignbridge District Council

Telephone: 01626 215702

For the Teignbridge email disclaimer click the link below, or copy and paste it into your address bar.

<http://www.teignbridge.gov.uk/index.aspx?ArticleID=16818>

**Pickhaver, David**

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**From:** Leon Butler [chair@torquaynp.org]  
**Sent:** 16 August 2016 16:13  
**To:** Future Planning  
**Subject:** CIL representation

Torquay Neighbourhood Plan  
Representation on revised CIL charging schedule, August 2016

On behalf of the Torquay Neighbourhood Plan Forum I wish to make representation against some key aspects of the CIL proposals that will adversely affect funding for our communities.

Torquay has a number of very deprived areas featuring in the UK's top 20 most deprived. The Communities involved in the Torquay Neighbourhood Planning process have identified numerous positive improvements to their communities that will be supported by the Community Infrastructure Levy. We have already made representations that the scale of the problems facing many communities warrants a proportion in excess of the minimum 25% suggested by Government. This representation was rejected by Torbay Council despite them receiving a disproportionate proportion of the CIL levy to spend on their own projects that may not correlate with community priorities within Torquay. We still feel this has been poorly thought through and is contrary to encouraging community engagement.

Torbay Council is now removing a substantial part of the total CIL funding by eliminating the charge for small developments in Torbay. Torquay windfall sites represent a substantial element of the total number of homes planned and are of the order 25%. Substantial numbers of the windfall sites will be from former tourism sites and will be of the smaller end of developments - this will have a disproportionate effect on potential CIL revenues.

It is further noted that there are Conservation Areas within built up and deprived areas that are highly attractive and valuable potential redevelopment sites including highly prized sea views. Currently these sites would be zero rated for CIL. This is unacceptable.

An important aspect of the Local Plan is the encouragement of self builds. By including single homes in the CIL charging rates this will unfairly and negatively affect self-build conversions and changes of use.

**Representation 1**

Add all Conservation Areas in Torquay to the 'modified Countryside and coastal' higher rate of £70/m2.

**Representation 2**

Revert to a mid-level charge of c.£30/m2 for 1-4 homes in built up areas (outside Countryside/coast etc. and deprived areas)

**Representation 3**

Exclude self-build single homes from any charge in all areas.

Leon Butler  
Chair Torquay Neighbourhood Plan Forum

This email is confidential to the named recipients. I would appreciate it if you would ask me if you want to send/disclose the contents to a third party not on the distribution list unless it is to member of a Torquay Community Partnership.

# PAIGNTON NEIGHBOURHOOD FORUM

- Blatchcombe
- Clifton with Maidenway
- Goodrington, Roselands & Hookhills
- Paignton Town
- Preston



c/o 34 Totnes Road  
Paignton  
TQ4 5JZ

19 September 2016

By email to [future\\_planning@torbay.gov.uk](mailto:future_planning@torbay.gov.uk)  
Torbay Council  
Spatial Planning (FAO David Pickhaver)  
Floor 2, Electric House  
Castle Circus  
Torquay  
TQ1 3DR

Dear David

## **Torbay Community Infrastructure Levy – Proposed Modifications to the Revised Draft Charging Schedule**

Thank you for inviting the Forum to comment on the latest Modifications to the above CIL proposals by no later than 17 October 2016.

The Forum considered the proposed changes on 15 September 2016 and decided to make the following response to the latest charging schedule proposed:

### Residential Zone 4 (Future Growth Areas) and Zone 2

It is noted the change now proposes a CIL contribution for housing schemes of up to 14 dwellings in Future Growth Areas.

This does not meet the objection previously submitted for the following reasons:

- It is not at all likely that schemes within these defined areas would be for less than 14 dwellings, as acknowledged to be the case in paragraph 8 (penultimate sentence) of the revised Schedule, and above which number the latest change still leaves as having a 'zero' CIL liability.
- In reality there has been no change that meets the objection previously submitted by the Forum on 25 April 2016, a copy of which is attached for ease of reference.
- The latest revision to Zone 2 for sites of 1-3 dwellings does not accord with the independent advice given in the Addendum Viability report commissioned by the Council of August 2016 which also impacts on the Forum's objection to the proposals for Zone 4 for the following reason.
- At paragraph 5.2 the Addendum report makes it abundantly clear that the Council's decision to retain a CIL charge on residential schemes of 1-3 dwellings in Zone 2 will risk those schemes not coming forward.

- By not heeding this advice the decision made in the revised Modifications to retain the charge of £30 per.sq.m. in Zone 2 for schemes of 1-3 dwellings has the added consequence of making it even more certain that the perverse situation will arise of encouraging greenfield sites over brownfield.

Resolving this situation requires two changes to be made. The charge of £70 per.sq.m.to be applied to all scheme sizes in Zone 4 (i.e. including those of 15 or more dwellings) together with reducing the CIL rate in Zone 2 from £30 per.sq.m. to zero for schemes of 1-3 dwellings to accord with the conclusions reached by the Council's own viability evidence presented through the Addendum report.

#### Commercial & Non-Residential Development Zone C1 (Retail)

The Forum notes and accepts the latest proposal to include the additional words in paragraph 9 in response to the previous objection (see attached letter):

*"Local Plan and NPPF Policies to safeguard the vitality and viability of town centres will be taken into account".*

#### Hearing

As requested, I confirm that the Forum wishes to be heard by the Examiner in the event of a Hearing being convened.

Yours sincerely

David Watts

Forum Chairman

Enclosed: Forum Objection dated 25 April 2016.

c.c. Mike Parkes (Forum Secretary). David Pickhaver (Torbay Council)

# PAIGNTON NEIGHBOURHOOD FORUM

- Blatchcombe
- Clifton with Maidenway
- Goodrington, Roselands & Hookhills
- Paignton Town
- Preston



c/o 34 Totnes Road  
Paignton  
TQ4 5JZ

25 April 2016

By email to [future.planning@torbay.gov.uk](mailto:future.planning@torbay.gov.uk)  
Torbay Council  
Spatial Planning (FAO David Pickhaver)  
Floor 2, Electric House  
Castle Circus  
Torquay  
TQ1 3DR

Dear David

## **Consultation on Torbay Community Infrastructure Levy Revised Draft Charging Schedule**

Thank you for inviting the Forum to comment on the above CIL proposals by 29 April 2016.

At the meeting on 21 April 2016 the Forum decided to make the following response to the revised charging schedule proposed:

### Residential Zone 4 (Future Growth Areas)

The Forum objects to the proposed exclusion of Future Growth Areas from payment of CIL.

The proposal is not justified, conflicts with the adopted Local Plan, and fails to accord with the reason for introducing the CIL, for the following reasons.

- The Charging Schedule shows that residential development of any size in any of the 4 charging Zones will be subject to S106 contributions to ensure "*direct site acceptability*". The Forum supports this as justified.
- However, the Schedule also shows that small schemes of 3 units or less in the 20% most deprived areas (Zone 2) would be the only size of development to have the same zero CIL liability as would apply to residential development of any size in a Future Growth Area;
- The defined Future Growth Areas with zero CIL liability account for nearly 25% of all residential development proposed in the Torbay Local Plan, and mainly involve greenfield land on the periphery of the built up area.
- The Charging Schedule notes the viability update confirms that residential developments of more than 4 units have sufficient headroom to pay CIL at £78 per

sq m and £142 per sq m on sites of 15 plus dwellings (see Charging Schedule Section 4, penultimate paragraph, and Viability Study 2016, Table 5.2).

- However, the viability report indicates that the Council has decided not to include CIL on larger sites for the stated reason that “*sufficient headroom needs to be available to fund likely S106 requirements*” (see Viability Study 2016, paragraphs 4.6.5 and 5.3.10), but has not followed this in the Charging Schedule which shows CIL payable on larger sites. Additionally, the CIL zero rate on larger sites has been applied inconsistently as it has been applied only to those sites in the Future Growth Areas
- The result of this Charging Schedule imbalance will be to cause a perverse situation where development of peripheral land in the Future Growth Areas would have an unjustified and very significant further viability advantage over encouraging proposed development within the existing urban area for schemes of more than 3 units, and especially in Town Centre locations (e.g. Crossways) where such development is critically important to secure the accepted and approved policy need to encourage the vitality and viability of such areas.
- This imbalance would therefore threaten delivery of the approved development plan for Torbay and achievement of sustainable development required by the National Planning Policy Framework because peripheral land would be preferred over urban sites identified for development in the approved Local Plan, and would not encourage effective reuse of urban land in accord with NPPF17 and ensure the vitality of town centres in accord with NPPF23.
- Excluding Future Growth Areas from making a CIL contribution to infrastructure provision also means that only sites in the existing urban area, including those in the Town Centre, would be contributing to the stated need for £20m to fund the South Devon Highway that opened on 15 December 2016 (see Charging Schedule Section 20 table). This fails to recognise that the defined Future Growth Areas also benefit from this major infrastructure spend.

To resolve this significant deficiency, not less than the same £70 charging rate needs to be applied to Future Growth Areas of Zone 4 as has been applied in Zone 2 (i.e. outside the 20% most deprived LSOAs and within the built up area).

#### Commercial & Non-Residential Development Zone C1 (Retail)

The Forum supports the proposed CIL of £120 per sq m for retail developments of more than 300 sq m on sites outside of Zone C1. This is in accord with the adopted development plan policy of encouraging the revitalisation of Torbay's Town Centres especially.

However, the Charging Schedule states that “*where retail proposals are submitted as part of major mixed use developments, the Council may offer exceptional relief (as set out in Section 16 below) if this would secure a more sustainable and viable development, particularly where it would secure the early delivery of serviced employment land*” (Section 9, second paragraph).

The Forum objects to this proposed exemption unless it is expanded to state that such exemption would not be applied where it adversely affected the viability and vitality of retail provision in Town Centres especially.

There appears to be a typographical error in the Draft Charging Schedule. The Exceptional Relief provisions are set out in Section 17 of the Schedule, not Section 16 as stated in Section 9 second paragraph. This is a minor matter but needs to be rectified.

Yours sincerely

David Watts

Forum Chairman

c.c. Mike Parkes (Forum Secretary). David Pickhaver (Torbay Council)



## Pickhaver, David

---

**From:** D Watts [dwdw@paigntonneighbourhoodplan.org.uk]  
**Sent:** 19 September 2016 09:39  
**To:** Future Planning  
**Cc:** Wills, Helen; Pickhaver, David  
**Subject:** Fw: Torbay CIL, Objection to Revised Proposed Modifications and Submission of Draft Charging Schedule for Examination  
**Attachments:** 2016-09-19 CIL Letter-2 to Council (Sent).pdf

Dear Ms Wills

I appear to be getting bounce back from the [cilexamination@torbay.gov.uk](mailto:cilexamination@torbay.gov.uk) so have forwarded the attached objection directly to your own email address.

An email confirmation of safe receipt would be much appreciated.

My apology otherwise for doing so.

With best wishes

David Watts  
Chairman, Paignton Neighbourhood Plan Forum  
<http://www.paigntonneighbourhoodplan.org.uk/>  
Tel: 01803-523434

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----- Original Message -----

**From:** D Watts  
**To:** Future Planning ; [cilexamination@torbay.gov.uk](mailto:cilexamination@torbay.gov.uk)  
**Cc:** [David.Pickhaver@torbay.gov.uk](mailto:David.Pickhaver@torbay.gov.uk)  
**Sent:** Monday, September 19, 2016 9:05 AM  
**Subject:** Torbay CIL, Objection to Revised Proposed Modifications and Submission of Draft Charging Schedule for Examination

**To Future Planning - Torbay Council** (FAO David Pickhaver)

Dear David

Please see attached the formal objection from the Paignton Neighbourhood Plan Forum also sent to Ms Helen Wills as Programme Officer as requested.

With best wishes

David Watts  
Chairman, Paignton Neighbourhood Plan Forum  
<http://www.paigntonneighbourhoodplan.org.uk/>  
Tel: 01803-523434

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----- Original Message -----  
**From:** [Pickhaver, David](mailto:Pickhaver, David)

**To:** [Future Planning](#)

**Cc:** [cilexamination@torbay.gov.uk](mailto:cilexamination@torbay.gov.uk)

**Sent:** Friday, September 02, 2016 1:56 PM

**Subject:** RE: Torbay CIL, Consultation on Revised Proposed Modifications and Submission of Draft Charging Schedule for Examination

Dear Colleagues

Further to my emails of 12<sup>th</sup> and 26<sup>th</sup> August 2016, please see attached details of **Torbay Council's Revised Proposed Modifications to its CIL Draft Charging Schedule**. Comments are invited on these up to 9.00am on Monday 17<sup>th</sup> October 2016.

The attached documents are:

- Submission Draft Charging Schedule showing Revised Proposed Modifications as track changes (for information).
- Schedule of Revised Proposed Modifications.
- Updated Consultation statement.

These documents will also be published online at <http://www.torbay.gov.uk/council/policies/planning-policies/local-plan/cil/>, along with updated Residential CIL Charging Zone Maps (see below) and an Addendum Report to the Torbay CIL Viability Study, prepared by Burrows-Hutchinson Ltd. The webpage will go live next week.

Please note that the residential CIL Charging Zone Maps are largely unchanged from the initial Proposed Modifications consultation (August 2016). The only change is on Map 31 which incorporates a small area around Bascombe Road, Churston into the Charging Zone 3.

The other principal changes from the initial Proposed Modifications are the reinstatement of a CIL Charge of £30 per sq m on residential developments of 1-3 dwellings in Charging Zone 2 ('Elsewhere in the built up area'). This reverts to the position in the March 2016 Revised Draft Charging Schedule. In addition the instalments policy has been reviewed.

We are inviting comments on the Revised Proposed Modifications, which should be received by **9.00am on Monday 17<sup>th</sup> October 2016**. We would prefer that they are emailed to [Future.Planning@torbay.gov.uk](mailto:Future.Planning@torbay.gov.uk). Alternatively, they can be posted to Spatial Planning, Electric House, Castle Circus, Torquay, TQ1 3DR.

There is no need to repeat comments already made earlier in the process, as these will be forwarded to the Independent Examiner.

**In addition, please can you notify the Council in writing (preferably by e-mailing [Future.Planning@torbay.gov.uk](mailto:Future.Planning@torbay.gov.uk)) by 17<sup>th</sup> October 2016 if you wish to be heard by the Examiner.** It would be helpful if you could also notify the Programme Officer, Ms Helen Wills at [cilexamination@torbay.gov.uk](mailto:cilexamination@torbay.gov.uk)

I hope that the above sets out the process clearly. Please contact me if you have any queries on CIL and I will do my best to help.

Kind regards

David

David Pickhaver  
Senior Strategy and Project Officer  
Strategic Planning  
Spatial Planning  
Torbay Council  
Postal address: Electric House, Castle Circus, Torquay, TQ1 3DR  
Tel: 01803 208814  
Fax: 01803 208882  
E mail: [David.Pickhaver@torbay.gov.uk](mailto:David.Pickhaver@torbay.gov.uk)  
Web site: [www.torbay.gov.uk/newlocalplan](http://www.torbay.gov.uk/newlocalplan)

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**From:** Pickhaver, David  
**Sent:** 26 August 2016 15:33  
**To:** Pickhaver, David  
**Cc:** 'cilexamination@torbay.gov.uk'  
**Subject:** RE: Submission of Torbay Community Infrastructure Levy Draft Charging Schedule for Examination

Dear all

Further to my email below, I am writing to inform you that the Council is withdrawing the Proposed Modifications to its CIL Revised Draft Charging Schedule (which were the subject to of consultation between 15<sup>th</sup> August-26<sup>th</sup> September 2016). An amended schedule of Modifications will be published for Consultation within the next couple of weeks.

To date, no representations have been received on the Proposed Modifications. However if any comments are received, they will be considered as relating to the forthcoming Amended Modifications. Similarly, any requests to appear at the Examination will be passed to the Programme Officer

The Council's proposed CIL remains submitted with Intelligent Plans and Examinations Ltd (The Independent Examiner) for examination. This currently comprises the Revised Draft Charging Schedule, which will shortly be augmented by proposed Revised Modifications.

I apologies for having to withdraw the Modifications, but I hope that this avoids abortive work. Please contact me if you'd like to discuss the Council's proposed CIL.

Kind regards  
David

David Pickhaver  
Senior Strategy and Project Officer  
Strategic Planning  
Spatial Planning  
Torbay Council  
Postal address: Electric House, Castle Circus ,Torquay,TQ1 3DR  
Tel: 01803 208814  
Fax: 01803 208882  
E mail: [David.Pickhaver@torbay.gov.uk](mailto:David.Pickhaver@torbay.gov.uk)  
Web site: [www.torbay.gov.uk/newlocalplan](http://www.torbay.gov.uk/newlocalplan)

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**From:** Pickhaver, David  
**Sent:** 12 August 2016 11:28  
**Cc:** Pickhaver, David; 'cilexamination@torbay.gov.uk'  
**Subject:** Submission of Torbay Community Infrastructure Levy Draft Charging Schedule for Examination

Dear Colleague

**Re: Submission of Torbay Community Infrastructure Levy (CIL) Draft Charging Schedule for Examination**

I am writing to inform you that Torbay Council has submitted its CIL Draft Charging Schedule for examination, following consultations in March 2015 and March 2016, and Council resolution in May 2016. The Independent Examiner appointed by the Council is Independent Plans and Examinations Ltd.

Following consideration of representations, the Council is proposing a number of Modifications to the Examiner, which are set out in the attached track-charged DCS and Schedule of Proposed Modifications. Full details of submission documents may be viewed online at <http://www.torbay.gov.uk/council/policies/planning-policies/local-plan/cil/>. Alternatively they can be viewed at libraries in Torbay, the Connections Office in Paignton Library or (by appointment) at Spatial Planning, Electric House, Castle Circus, Torquay, TQ1-3DR.

I attach a copy of the Proposed Modifications and a track-changed copy of the CIL Revised Draft Charging Schedule, as well as the Council's consultation statement setting out its approach to CIL so far. The Council has also reviewed its residential Charging Zones. I'm afraid that there are too large to email, but can be viewed online or at the locations noted above.

The Council considers that the proposals set out in the Draft Charging Schedule represent an appropriate balance between the need to fund infrastructure and the likely impact of CIL upon development viability.

However, in recognition that a key issue raised by representers related to viability matters, the Council has commissioned an update/independent third party assessment of the PBA viability study by Burrows Hutchinson Limited. The findings of this will be published shortly.

The Council is inviting comments on the Proposed Modifications, which should be received by 9.00am on Monday 26<sup>th</sup> September 2016. We would prefer that these be emailed to [Future.Planning@torbay.gov.uk](mailto:Future.Planning@torbay.gov.uk). Alternatively they can be posted to Spatial Planning, Electric House, Castle Circus, Torquay, TQ1-3DR. There is no need to repeat comments already made in the Draft or Revised Charging Schedule consultations, as these will be forwarded to the Examiner.

**In addition, please can you notify the Council in writing (preferably by e-mailing [Future.Planning@torbay.gov.uk](mailto:Future.Planning@torbay.gov.uk)) by 26<sup>th</sup> September 2016 if you wish to be heard by the Examiner.**

The Council has appointed Ms. Helen Wills as CIL Programme Officer. Helen can be contacted on 01803 207799 or at [CILExamination@torbay.gov.uk](mailto:CILExamination@torbay.gov.uk). Helen will provide independent liaison between the Council, Independent Examiner, representers and other interested parties.

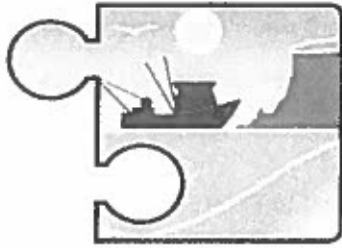
However, if you have any queries about, please contact me or email [future.planning@torbay.gov.uk](mailto:future.planning@torbay.gov.uk)

I hope that the above is self-explanatory. However, if you have any queries about the Council's CIL proposals please contact me.

Kind regards

David

David Pickhaver  
Senior Strategy and Project Officer  
Strategic Planning  
Spatial Planning  
Torbay Council  
Postal address: Electric House, Castle Circus, Torquay, TQ1 3DR  
Tel: 01803 208814  
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E mail: [David.Pickhaver@torbay.gov.uk](mailto:David.Pickhaver@torbay.gov.uk)  
Web site: [www.torbay.gov.uk/newlocalplan](http://www.torbay.gov.uk/newlocalplan)



# Brixham neighbourhood plan

By email to [strategic.planning@torbay.gov.uk](mailto:strategic.planning@torbay.gov.uk)  
 Torbay Council  
 Electric House (2nd Floor)  
 Castle Circus  
 Torquay  
 TQ1 3DR

c/o  
 Brixham Town Hall,  
 New Road,  
 Brixham TQ5 8TA

adam.billings@rocketmail.com  
 07764 467 611

15 October 2016

Dear David and Helen,

1. **The Brixham Peninsula Neighbourhood Forum formally objects to the *Revised CIL Charging Schedule*.**
2. This consultation response was duly considered at the Brixham Peninsula Neighbourhood Forum Working Group meeting on 12 October 2016. It was unanimously approved by all members of the Forum in attendance, including the Forum Chairman and Vice Chairman who were both present. As is always the case, representatives of the Strategic Planning Department were invited to the meeting through a standing invite, but chose not to attend.
3. In preparing this response the Forum has noted that the lack of proper paragraph numbering in the Council's *Revised CIL Charging Schedule* has made it very difficult to respond in an easy manner and the Forum suggests this could be considered in future.
4. The Forum is concerned that:
  - The Council has made a u-turn and rejected the advice of its professional advisors without explanation or justification;
  - No evidence has been provided to demonstrate that CIL can be viably applied to small developments of 1-3 dwellings;
  - No evidence has been provided to demonstrate that CIL cannot be viably applied to large developments of 15 plus dwellings in future growth areas;
  - No evidence has been provided to show the CIL charging rate is justified by infrastructure delivery requirements; and
  - The ability of the Council to exercise sole discretion with regard to the application of the "exceptional circumstances" exemption means the Neighbourhood Development Plan can be negated.

5. The Forum also has suggestions as to how to technically improve the collection of CIL as regards increased:
  - Clarity over the mechanism by which CIL takes account of site enabling works
  - Clarity over the mechanism to ensure CIL is fairly charges to all sites
6. Going forward the Forum respectfully asks that the *Revised CIL Charging Schedule* be examined by way of a hearing. This is due to the complexity of the issues at hand, particularly following the publication of the *Revised Planning Contributions and Affordable Housing Supplementary Planning Document (September 2016)* which is inextricably linked to issues of CIL and viability. For the avoidance of doubt the Forum specifically highlights that it would like capacity to be represented at and give evidence to this hearing.

#### Council u-turn and rejection of its own professional advice

7. At section 4 on page 7 it says:

*In response to representations to the Revised Draft Charging Schedule in March 2016, it was considered necessary to review the viability evidence. The subsequent CIL Viability Addendum report by Burrows Hutchinson Ltd has, together with Members' views, informed the modifications set out in this document. Note that the Council considers that small sites in all but the least viable areas (Charging Zone 1) would be viable with CIL.*
8. It is hence understood that having been unsure of the viability position; the Council sought advice; accepted this advice and consulted on a *CIL Charging Schedule* on 12 August; then chose to reject the advice; withdrew the *CIL Charging Schedule*; and launched this *Revised CIL Charging Schedule* on 2 September.
9. The two schedules contain a key difference in respect of the CIL charge levied on small sites. However, the entire explanation for this u-turn and sudden rejection of previously accepted professional advice is contained, somewhat obliquely, in a single sentence in the *Revised CIL Charging Schedule*.
10. This is despite the fact that the specific piece of professional advice was written in bold print, presumably because the professional advisors considered their advice on this point to be important and they were certain of their conclusions.
11. It is noted that the *Revised Consultation Statement* does attempt at page 8 to expand on the single sentence justification with 4 bullet points which appear to have a political base. However, the Forum is not persuaded by these. Specifically:
  - a. the 1st and 2nd bullet points appear to have already been taken account of in the professional viability studies and so to further take account of them to discount the professional advice would be to double count them and so would be technically incorrect;
  - b. the 3rd bullet point relates to the viability of S106 contributions not CIL charges. No information has been provided to show how comparable the two are in

quantum. Indeed, assuming the 'average' dwelling is a 3 bed dwelling of the minimum size set out at page 196 of the Adopted Local Plan of 102m<sup>2</sup>, a CIL charge of £7,140 would appear to be over double the average historical S106 charge of £3,485. This would suggest that historical S106 contributions and proposed CIL charges simply not comparable at all. Hence, reliance on S106 to evidence viability appears a rather weak point. Indeed when further examined it can be seen that no evidence is provided to show how many of these consented sites which attract S106 contributions have actually in the event proved to be viable by actually being built out; and

- c. the 4th bullet point attempts to justify the Council's decision by way of reference to other Devon conurbations. However this would again appear a rather weak point as certain of those conurbations charge CIL at less than half the rate now being proposed by the Council. This is without even exploring the fact that those conurbations are arguably demonstrably different in terms of economic and housing market dynamics.

12. As a result, the Forum does not believe the Council's explanation meets the test established by case law in *R v East Hertfordshire DC ex p Beckman (1997) EGCS 104*, namely that:

*Where a decision of the council is made to reverse a position [previously taken]... fairness and good administration require that the reasoning advanced by the council should be clear and unambiguous; it should not be contradictory, unsatisfactory or pregnant with possibilities or error.*

#### Application of CIL to small sites

13. Further to the above, the Council proposes to charge CIL on small developments. However, the Forum can find no evidence to demonstrate that such CIL charges are viable.
14. The evidence presented by the Council in respect of viability is firstly by way of a *Torbay CIL Viability Study* written by Peter Brett Associates and dated January 2016.
15. At table 5.1 on page 38 it is clear that small sites in the Brixham Peninsula are not viable after the introduction of a CIL charge. This informed the recommendation of the consultants who advised at para 5.4.3 that:

*In order to bring in a simple and easily administered CIL regime it is recommended that the Council adopts a single charge of £78 per sqm for all residential development of 4 to 14 units. All other sizes of development and housing for older people will be a zero rate*

16. The evidence presented by the Council is secondly by way of a *Torbay CIL Viability Study Addendum Report* written by Burrows Hutchinson and dated August 2016.

17. At the table in Appendix C it is clear that small sites in the Brixham Peninsula are not viable after the introduction of a CIL charge. This informed the recommendation of the consultants who advised at para 5.2 that:

*Comparing these proposed charging rates with the results of re-testing the various development typologies in Appendix C, I find that the Council's proposals are unlikely to put development at risk, except in the case of the smallest development category (1-3 dwellings) in Charging Zone 2. In my opinion, a zero rate of CIL should be applied to developments of 1-3 dwellings in both Zone 1 and Zone 2.*

18. Accordingly, the only evidence presented by the Council in respect of the proposed CIL charge on small sites shows that the charge makes small sites non viable.
19. The Forum is highly concerned at the consequences of the imposition of this non viable charge in terms of the delivery of housing. In preparing the Neighbourhood Development Plan, the Forum has relied on the Council's assessment of the delivery of future windfall housing sites. In aggregate these are planned to contribute approximately one third of the housing delivery requirement over the next 20 years.
20. However to arrive at its assessment of the number of windfall sites the only predictive technique employed by the Council was to extrapolate on a straight line basis a historical windfall trend. There is very good reason to believe that this trend will not continue at the same rate following the imposition of a CIL charge which renders small sites non viable. If this happens the Forum will have underprovided for the total amount of housing required and development on sites rejected at the Plan stage may result.
21. This point has already been recognised by a the *Torbay CIL Viability Study* which said at para 5.3.7 that:

*However if the authority was to set this CIL rate [of £70 per sqm] it would mean that developments of 3 or less would be at risk of not coming forward as they would not be able to meet that charge and still be viable. Evidence submitted to the Examination for the Local Plan indicated that the Council is reliant on small sites coming forward to help meet the 5 year residential land supply (around 25%). As this is a significant proportion it is advised that the authority do not seek a positive CIL charge from this type of small scale development and therefore sites of 1 to 3 dwellings have a zero CIL charge.*

#### Application of CIL to large sites

22. The Forum cannot find any evidence to demonstrate that CIL payments are non viable for large developments.
23. The Forum notes the Council has asserted at section 1 on page 5 that:

*Whilst strategic sites within Future Growth Areas are likely to be viable with CIL; the Council considers that the higher infrastructure costs associated with larger sites in Future Growth Areas means that they would not be viable with CIL and the s106 Obligations required to render these developments sustainable.*



24. The Forum can find no evidence in the viability studies which refers to, let alone supports, this assertion. The only evidence the Forum can find in respect of the viability of future growth areas in terms of CIL charges is contained in the aforementioned reports of the *Torbay CIL Viability Study* and the *Torbay CIL Viability Study Addendum Report* and both of these show that future growth areas would be viable after CIL charges.
25. More generally, in its simplest form, the Forum is at a complete loss to understand why (i.) a developer developing a large brown field site in the Town in circumstances where there is arguably a large social gain in terms of regeneration etc should be expected to pay towards the South Devon Link Road; when (ii.) a developer developing a large greenfield site in a future growth area where there is arguably a large social detriment in terms of loss of green space etc should get away without having to make any payment at all towards the South Devon Link Road.

#### **Balancing the CIL charge with Infrastructure delivery requirements**

26. The Forum notes the Council has asserted at section 5 on page 7 that:

*Overall, the Torbay Infrastructure Delivery Study identified an infrastructure funding shortfall of £160,000 between 2010-31 of which £52,000 is considered to be critical infrastructure.*

27. The Forum also notes the Council has identified at section 4 on page 6 that:

*Regulation 14 (1) of the CIL Regulations (as amended) indicates that:  
"In setting rates (including differential rates) in a charging schedule a charging authority must strike 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"*

28. However the Forum has not been able to identify any work which evidences that such a balancing approach has been taken.

#### **"Exceptional circumstances" exemption**

29. The Forum is concerned that the discretionary power of the Council to apply (or discount) CIL as described at section 17 on page 18 onwards has the potential to negate the Neighbourhood Development Plan.
30. In the Neighbourhood Development Plan the Forum will have set out detailed development proposals for certain sites, for example Brixham Town Centre. However by exercising a later discretionary economic influence over such developments the Forum is concerned that the *Revised CIL Charging Schedule* could cause financial matters to unduly dominate the much wider portfolio of issues considered in the Neighbourhood Development Plan.

31. Accordingly the Forum suggests that the *Revised CIL Charging Schedule* should be modified so as to make it explicitly clear that decisions regarding CIL charges (and exemptions to same) will have regard to the Neighbourhood Development Plan.

**Clarity over the mechanism by which CIL takes account of site enabling works**

32. The Forum suggests that it is made much clearer in the *Revised CIL Charging Schedule* – and not in some inextricably linked but apparently separately consulted on SPD – that where site enabling works (highways, drainage, ecology) cause a development cost there will be an equal reduction in the CIL sought so as to avoid development being rendered non viable. The Forum understands this is the Council’s intention but this is not as clear as it could be from the text.

**Clarity over the mechanism to ensure CIL is fairly charges to all sites**

33. On page 8 of the *Revised Consultation Statement* a table is presented showing S106 collection per site. Attention is drawn to row 10. The narrative “*This is a single site (Broadway, Churston) P/2014/0687. Junction improvements were required through s278 Agreement.*” is provided to explain a S106 charge of £50 per dwelling.
34. These junction improvements were provided for by way of planning condition. Planning application P/2016/0772 is – at time of writing– a live planning application to remove that condition and dispense with the junction improvements. It is understood this application is supported by some prominent Councillors including one of the ward Councillors. The Forum makes no comment on the merit or otherwise of that application. However, if approved there appears no mechanism to retrospectively increase the S106 charge.
35. The same procedural omission would appear to apply to the CIL – namely there is no mechanism to collect CIL charges that would have been applied but for enabling works which are mandated by way of planning condition where the planning condition is then later removed. The Forum is concerned that, if as set out by the Council at para 23 there is a pressing need for the revenue raised by CIL, the Council has failed to put in place robust procedures to ensure CIL is fairly collected across all sites.

Yours sincerely,

Brixham Peninsula Neighbourhood Forum

**Pickhaver, David**

---

**From:** Collaton St Mary Residents Association [CStM-RA@hotmail.co.uk]  
**Sent:** 12 October 2016 20:26  
**To:** Future Planning  
**Cc:** Roger Bristow  
**Subject:** Torbay Community Infrastructure Levy  
**Attachments:** 161012 CStM RA response to CIL.docx

The Chairman  
Collaton St Mary  
Paignton

[CStM-RA@hotmail.co.uk](mailto:CStM-RA@hotmail.co.uk)

12 October 2016

**By email** [future.planning@torbay.gov.uk](mailto:future.planning@torbay.gov.uk)

**Ref:** Torbay Community Infrastructure Levy.  
Proposed Modifications to the Revised Draft Charging Schedule.

Dear Sirs,

The above topic was discussed at the Collaton St. Mary Residents Committee meeting and we have the following comments to offer.

Zone 2. We feel that the CIL levy on 1-3 dwellings is excessive as it deters Brownfield development and regeneration of urban areas. Small developments can add a considerable amount of extra housing over a year and reduce the Greenfield development necessary to fulfil housing allocations.

Zone 4. The zero rated (14+ dwellings) will encourage development in Future Growth Areas because of the lack of CIL. Future Growth Areas are just as described, and are best saved until absolutely necessary. Torbay relies heavily on Tourism, and spoiling the green and pleasant areas by smothering them in large housing estates should be discouraged. In Future Growth Areas the necessary infrastructure development required is likely to be greater, therefore CIL should reflect this, as the New Local Plan states: 'all necessary infrastructure must be in place before building takes place.'

Further to the above, the Governments' latest moves to increase housing figures are based on grants/bonuses for building brownfield developments, not Greenfield.

Regarding the Examination process we would recommend and request that this takes place at a meeting so that our views and those of all other participants can be heard and discussed openly and a better result for all would be found.

Yours faithfully,

Roger E Bristow, Chairman  
Collaton St Mary Residents Association

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 MASTERPLANNING & URBAN DESIGN  
 LANDSCAPE ARCHITECTURE  
 TOWN PLANNING  
 BUILDING SURVEYING  
 HISTORIC BUILDING CONSERVATION  
 PROJECT MANAGEMENT  
 SUSTAINABILITY  
 HEALTH & SAFETY/CDM  
 GRAPHIC DESIGN

Torbay Council  
 Strategic Planning Team

By email only to [future.planning@torbay.gov.uk](mailto:future.planning@torbay.gov.uk); [Planning@torbay.gov.uk](mailto:Planning@torbay.gov.uk)

14th October 2016

Ref: 15230\_C01\_161013\_CIL Modifications Rep

Dear Sirs

### CIL Charging Schedule: Proposed Modifications

On behalf of client, Abacus Projects / Deeley Freed Estates, we object to the proposed modifications relating to the Community Infrastructure Levy: Charging Schedule.

### Objection Summary

The Proposed CIL Charging Schedule has the effect of including unallocated sites within Zone 3 of the Schedule. This applies a £140 per sq m of chargeable floor space for residential development. It is accepted that there is no charge to be applied for employment floor space.

We consider that the CIL charging schedule should clarify that unallocated sites within Strategic Delivery Areas identified on the Local Plan Proposals Map (See Annex 1) should be subject to a zero CIL rate; these sites have similar characteristics in relation to infrastructure delivery as those sites located within Future Growth Areas, and yet have the potential to make significant contributions toward strategic housing targets.

We consider that the level of investment by our client to bring forward strategic infrastructure networks (or enhancements of existing) as part of a phased development strategy is significant and that the imposition of a CIL charge would detrimentally effect the ability to bring forward land south of White Rock which we consider is required as part of a package of measures to meet strategic housing and employment targets in a sustainable and phased manner.

The Council accepts (pp5 of the Sept 2016 Proposed Modifications) that *"the higher infrastructure costs associated with larger sites in Future Growth Areas means they would not be viable with CIL and the s106 obligations required to render these developments sustainable"*. We contend that larger greenfield unallocated sites, such as our client's land south of White Rock face the same strategic delivery issues as those which the Council acknowledge as falling within the Future Growth Areas. We consider that the need to bring forward currently unallocated sites to meet strategic housing requirements would be hindered by the application of CIL as set out in the Proposed Modifications on pp9 and the corresponding Summary Table.

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The principle of applying a zero Community Infrastructure Levy to Strategic (Future) Growth Areas and Strategic Delivery Areas does not diminish the important responsibility of developers to assist in the funding of infrastructure delivery, but provides a framework where this can be achieved through appropriate and proportionate obligations imposed upon each site by way of a s106 obligation and without a financial regime via CIL that would make the scheme unviable.

The reasoning and context for our objection is set out below.

## White Rock: Background

Our client secured outline planning permission in April 2013 for the development of the area known as "White Rock" on the western edge of Paignton and adjacent to the established Goodrington community. This permission facilitated the transfer of the land to Linden Homes to bring forward up to 350 homes as part of a mixed use development proposal. A s106 obligation linked the occupation of homes to the provision of employment floor space and tangible community benefits relating to play space provision and associated facilities.

Our client has prepared and issued to Torbay Council land promotion material in support of an extension of the White Rock scheme extending to land to the south along the Brixham Road corridor. Brixham Road represents the "Western Corridor" (of Paignton), where the Council has acknowledged there to be development potential.

Stride Treglown represented our client at the Local Plan examination hearings. We do not repeat our case in support of development at this point: this is a matter of public record and can be viewed on the Council's website.

## Local Plan Update and Context against which CIL is being progressed

The Torbay Local Plan, A Landscape for Success 2012 to 2030<sup>1</sup> was adopted in December 2015. It provides high level policy setting the strategic direction for planning and development over the plan period.

Neighbourhood Plan Forum areas have been designated for the entire Torbay area. The Local Plan provides a strategic framework for the Neighbourhood Plans, providing a schedule (or 'pool') of sites from which the neighbourhood plans should draw in order to meet their development targets.

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<sup>1</sup> Link to Local Plan [http://www.torbay.gov.uk/ld\\_2012to2030.pdf](http://www.torbay.gov.uk/ld_2012to2030.pdf)

# STRIDE TREGLOWN

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We have noted in previous Council correspondence and our Local Plan examination submissions that the extent of White Rock 2 also falls within the same SDP3.5 hatched area on the Proposals Map, despite that fact that the site is situated within the adjacent Brixham Neighbourhood Plan area. Despite this, the land is not included within the "pool" of sites available to the Brixham Neighbourhood Forum to include within their Neighbourhood Plan.

## The basis of a Local Plan Review

Section 7 of the Local Plan considers monitoring and review, recognising at paragraph 7.5.13 notes that the Government's Planning Practice Guidance indications that plans need to be reviewed, in whole or part, at least every 5 years.

In respect of a local response to this National expectation, paragraph 7.5.14 of the Torbay Local Plan notes that *Policy SS12 Housing* plan allows for additional housing to be brought forward if there is evidence of need. The mechanism for achieving this is as follows:

*"Where there is evidence that there is a need to bring forward additional housing beyond the figure above, appropriate locations will be identified through cross-boundary review of strategic housing land availability."*

Paragraph 7.5.15 continues, confirming that a major review will be carried out on a 5 yearly basis. Related to this, Policy SS13 Five Year Housing Land Supply identifies that the 5 yearly review process will be from adoption i.e. December 2015.

In the event that Torbay Council were to become unable to demonstrate a 5 year housing supply, the importance of sites with the Strategic Delivery Areas could increase as a means by which strategic housing targets could be achieved. Strategic Delivery Areas represent a potential source of future housing sites in sustainable locations to meet an objectively assessed need across the Bay. By definition, the identification of such areas by the Council acknowledges the future development potential and the importance of such areas in a strategic development context.

The context in which this representation is being made is based upon the premise that whilst Policy SS12 expects that additional housing numbers (and the potential location) will be achieved through a SHLAA review, Policy SS13 acknowledges the circumstances where supply might be exceeded.

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Policy SS13 states:

*"New housing leading to the 5 year supply figure being exceeded will be permitted where:*

- i. The proposal would bring social, regeneration or employment benefits, including through the provision or funding of infrastructure;*
- ii. The proposal would not lead to serious infrastructure shortfalls; and*
- iii. The proposal is consistent with other Policies in the Local Plan."*

Finally, paragraph 4.5.53 notes that:

*"Where proposals are likely to result in the 5 year supply figure being exceeded, they will be supported where they would be sustainable in terms of assisting the provision of infrastructure, or providing mixed use developments that aid economic prosperity, and do not conflict with other Policies in this Plan."*

If sites justified by Policy SS13, within identified Strategic Delivery Areas, are identified and are required to fund strategic infrastructure, it will be critical that these are brought forward and unhindered by the application of an "additional" (non-negotiable) CIL charge.

## **Mixed use development**

Our client wishes to pursue a development strategy that will deliver a mixed use proposal within the area south of White Rock to help meet strategic housing and employment targets.

Floor space within Use Class B1 (offices, light manufacturing and/or research and development) has been cited in land promotion submissions. This remains the case, with the possibility of such floor space being provided as part of a package of measures to meet local economic, social and environmental objectives.

## **Infrastructure delivery**

Preparatory investigations and land promotion concepts commissioned by our client have proposed highway improvements along Brixham Road, the specification of which would be designed to serve the proposed development. This is consistent with strategic Transportation Plans of Torbay Council which have highlighted the potential to improve and enhance Brixham Road from Windy Corner in the south towards Tweenaway Cross to the north.

In summary, our client controls the land which may be required to deliver highway improvements to Brixham Road and therefore the Western Corridor in accordance with long-standing political objectives of Torbay Council.

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Development proposals would undoubtedly support the delivery of strategic infrastructure improvements, but only if found viable “in the round” and reflecting other physical and environmental investments required to bring forward this site. This could include funds to secure sewer capacity upgrades (via SWW), on-site Landscape and Ecological Management Plan interventions and ongoing maintenance, and countryside access through the site.

It is accepted that the extension of White Rock to the south and along Brixham Road is a major development undertaking, but one which is controlled by our client and where there is a willingness to bring forward the development opportunity to meet strategic housing, employment and countryside access objectives.

## Conclusion

The Community Infrastructure Levy Proposed Modifications indicates that large scale development within Future Growth Areas should be CIL exempt. The reason for this is that the Council acknowledges the scale of developer funded investment required to serve the needs of larger development sites. In order to accelerate housing delivery, the planning policy and CIL charging levy need to work together to enable a sustainable, affordable and acceptable “package” of sites to include those within Strategic Delivery Areas to come forward in a phased manner.

As an unallocated site outside the Future Growth Area, White Rock 2 has the potential to be brought forward under the provisions of Policy SS12 or Policy SS13 and would be subject to a £140 per sq. m levy for residential development. This proposed levy would detrimentally prejudice the ability to bring forward development along the Brixham Road corridor in a manner previously endorsed by the Council in the period leading to the Local Plan examination.

Applying a CIL levy in Strategic Delivery Area SDP3.5 would hinder the ability to bring forward strategic infrastructure network enhancements, including, but not limited to, road based interventions along the Western Corridor of Paignton supported by the Council.

We therefore wish to take up the opportunity to present further evidence at the Community Infrastructure Levy examination in support of the principle of extending the definition of Zone 3 Schedule to include “Strategic Delivery Areas”, or sites which are accepted by the Council as suitable for residential development under Policies SS12 and SS13.

It is also possible that major housing sites may be brought forward by application or a Local Development Order(s) which do not exceed housing targets (as provided for under Policy SS12), but which are nonetheless located within a Strategic Delivery Area and are acceptable to Torbay Council. It would not be acceptable that these sites be the subject of CIL due to their infrastructure and servicing needs, and we reserve the right to present additional representations on this point at any CIL examination.



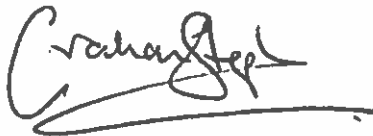
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Clarifications and/or further CIL exemptions outlined above are considered an appropriate response to accelerating housing delivery in accordance with strategic targets, without prejudicing the ability of such sites to meet identified strategic infrastructure investments.

We look forward to receiving a response in relation to the above and the opportunity to further engage with the Council over the delivery of an acceptable CIL charging levy aligned with the policy direction and housing delivery requirements as set out in the Torbay Local Plan.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Graham Stephens', with a long horizontal flourish underneath.

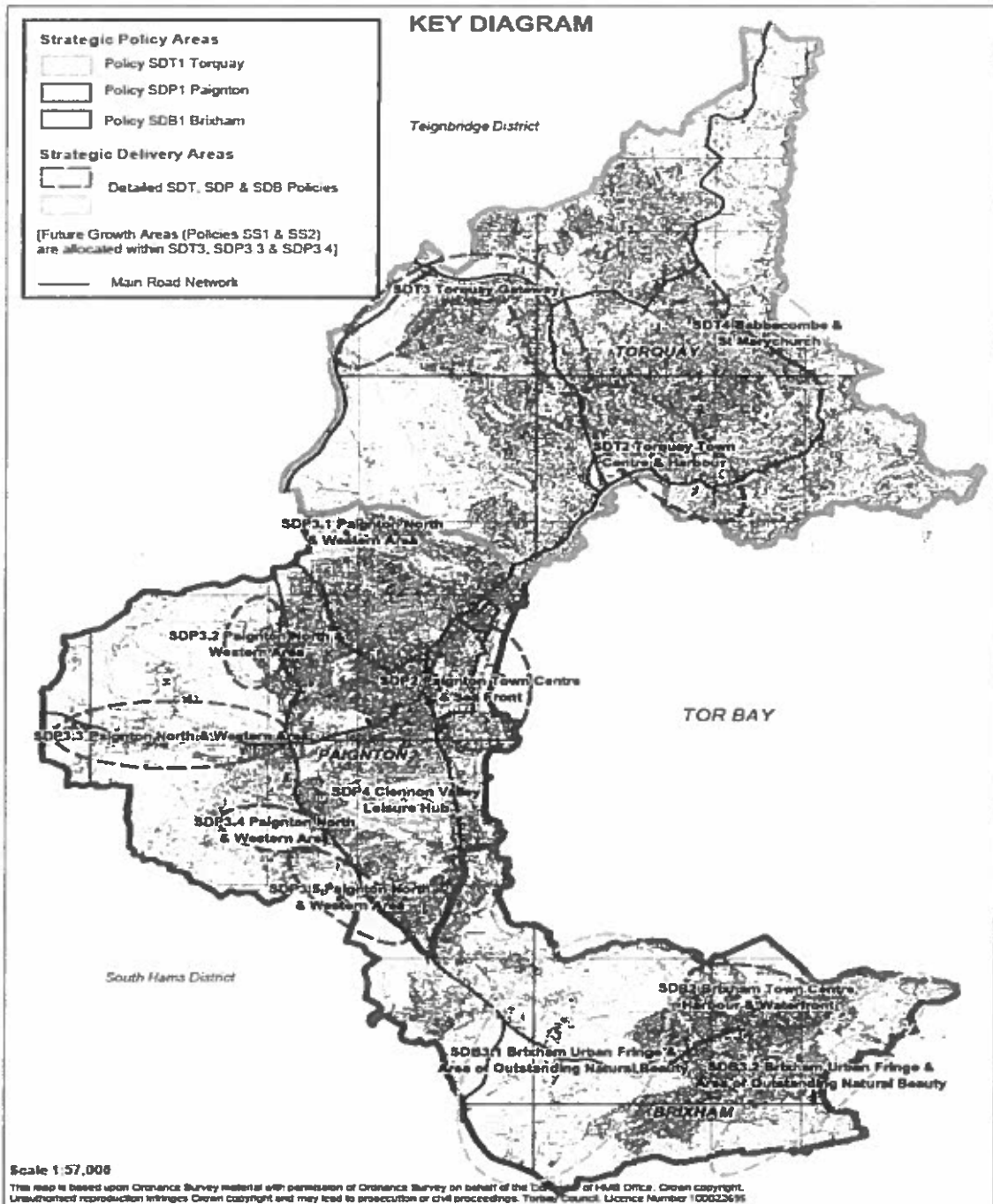
Graham Stephens MRTPI  
Director  
For Stride Treglown Limited

Mr A Maltby – Deeley Freed Estates  
Mr D Freed – Deeley Freed Estates  
Mike Harris – Stride Treglown

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Annex 1: Local Plan - Key Diagram (Strategic Delivery Areas)



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LANDSCAPE ARCHITECTURE  
TOWN PLANNING  
BUILDING SURVEYING  
HISTORIC BUILDING CONSERVATION  
PROJECT MANAGEMENT  
SUSTAINABILITY  
HEALTH & SAFETY/CDM  
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14th October 2016

Ref: 15230\_C01\_161013\_CIL Modifications Rep

Dear Sirs

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We consider that the level of investment by our client to bring forward strategic infrastructure networks (or enhancements of existing) as part of a phased development strategy is significant and that the imposition of a CIL charge would detrimentally effect the ability to bring forward land south of White Rock which we consider is required as part of a package of measures to meet strategic housing and employment targets in a sustainable and phased manner.

The Council accepts (pp5 of the Sept 2016 Proposed Modifications) that *"the higher infrastructure costs associated with larger sites in Future Growth Areas means they would not be viable with CIL and the s106 obligations required to render these developments sustainable"*. We contend that larger greenfield unallocated sites, such as our client's land south of White Rock face the same strategic delivery issues as those which the Council acknowledge as falling within the Future Growth Areas. We consider that the need to bring forward currently unallocated sites to meet strategic housing requirements would be hindered by the application of CIL as set out in the Proposed Modifications on pp9 and the corresponding Summary Table.

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The principle of applying a zero Community Infrastructure Levy to Strategic (Future) Growth Areas and Strategic Delivery Areas does not diminish the important responsibility of developers to assist in the funding of infrastructure delivery, but provides a framework where this can be achieved through appropriate and proportionate obligations imposed upon each site by way of a s106 obligation and without a financial regime via CIL that would make the scheme unviable.

The reasoning and context for our objection is set out below.

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<sup>1</sup> Link to Local Plan <http://www.torbay.gov.uk/lp-2012to2030.pdf>

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Page 3 of 7

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Page 4 of 7

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*"Where proposals are likely to result in the 5 year supply figure being exceeded, they will be supported where they would be sustainable in terms of assisting the provision of infrastructure, or providing mixed use developments that aid economic prosperity, and do not conflict with other Policies in this Plan."*

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Floor space within Use Class B1 (offices, light manufacturing and/or research and development) has been cited in land promotion submissions. This remains the case, with the possibility of such floor space being provided as part of a package of measures to meet local economic, social and environmental objectives.

## Infrastructure delivery

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In summary, our client controls the land which may be required to deliver highway improvements to Brixham Road and therefore the Western Corridor in accordance with long-standing political objectives of Torbay Council.

Development proposals would undoubtedly support the delivery of strategic infrastructure improvements, but only if found viable “in the round” and reflecting other physical and environmental investments required to bring forward this site. This could include funds to secure sewer capacity upgrades (via SWW), on-site Landscape and Ecological Management Plan interventions and ongoing maintenance, and countryside access through the site.

It is accepted that the extension of White Rock to the south and along Brixham Road is a major development undertaking, but one which is controlled by our client and where there is a willingness to bring forward the development opportunity to meet strategic housing, employment and countryside access objectives.

## Conclusion

The Community Infrastructure Levy Proposed Modifications indicates that large scale development within Future Growth Areas should be CIL exempt. The reason for this is that the Council acknowledges the scale of developer funded investment required to serve the needs of larger development sites. In order to accelerate housing delivery, the planning policy and CIL charging levy need to work together to enable a sustainable, affordable and acceptable “package” of sites to include those within Strategic Delivery Areas to come forward in a phased manner.

As an unallocated site outside the Future Growth Area, White Rock 2 has the potential to be brought forward under the provisions of Policy SS12 or Policy SS13 and would be subject to a £140 per sq. m levy for residential development. This proposed levy would detrimentally prejudice the ability to bring forward development along the Brixham Road corridor in a manner previously endorsed by the Council in the period leading to the Local Plan examination.

Applying a CIL levy in Strategic Delivery Area SDP3.5 would hinder the ability to bring forward strategic infrastructure network enhancements, including, but not limited to, road based interventions along the Western Corridor of Paignton supported by the Council.

We therefore wish to take up the opportunity to present further evidence at the Community Infrastructure Levy examination in support of the principle of extending the definition of Zone 3 Schedule to include “Strategic Delivery Areas”, or sites which are accepted by the Council as suitable for residential development under Policies SS12 and SS13.

It is also possible that major housing sites may be brought forward by application or a Local Development Order(s) which do not exceed housing targets (as provided for under Policy SS12), but which are nonetheless located within a Strategic Delivery Area and are acceptable to Torbay Council. It would not be acceptable that these sites be the subject of CIL due to their infrastructure and servicing needs, and we reserve the right to present additional representations on this point at any CIL examination.

# **STRIDE TREGLOWN**

Page 6 of 7

Clarifications and/or further CIL exemptions outlined above are considered an appropriate response to accelerating housing delivery in accordance with strategic targets, without prejudicing the ability of such sites to meet identified strategic infrastructure investments.

We look forward to receiving a response in relation to the above and the opportunity to further engage with the Council over the delivery of an acceptable CIL charging levy aligned with the policy direction and housing delivery requirements as set out in the Torbay Local Plan.

Yours sincerely

**Graham Stephens MRTPI**  
Director  
For Stride Treglown Limited

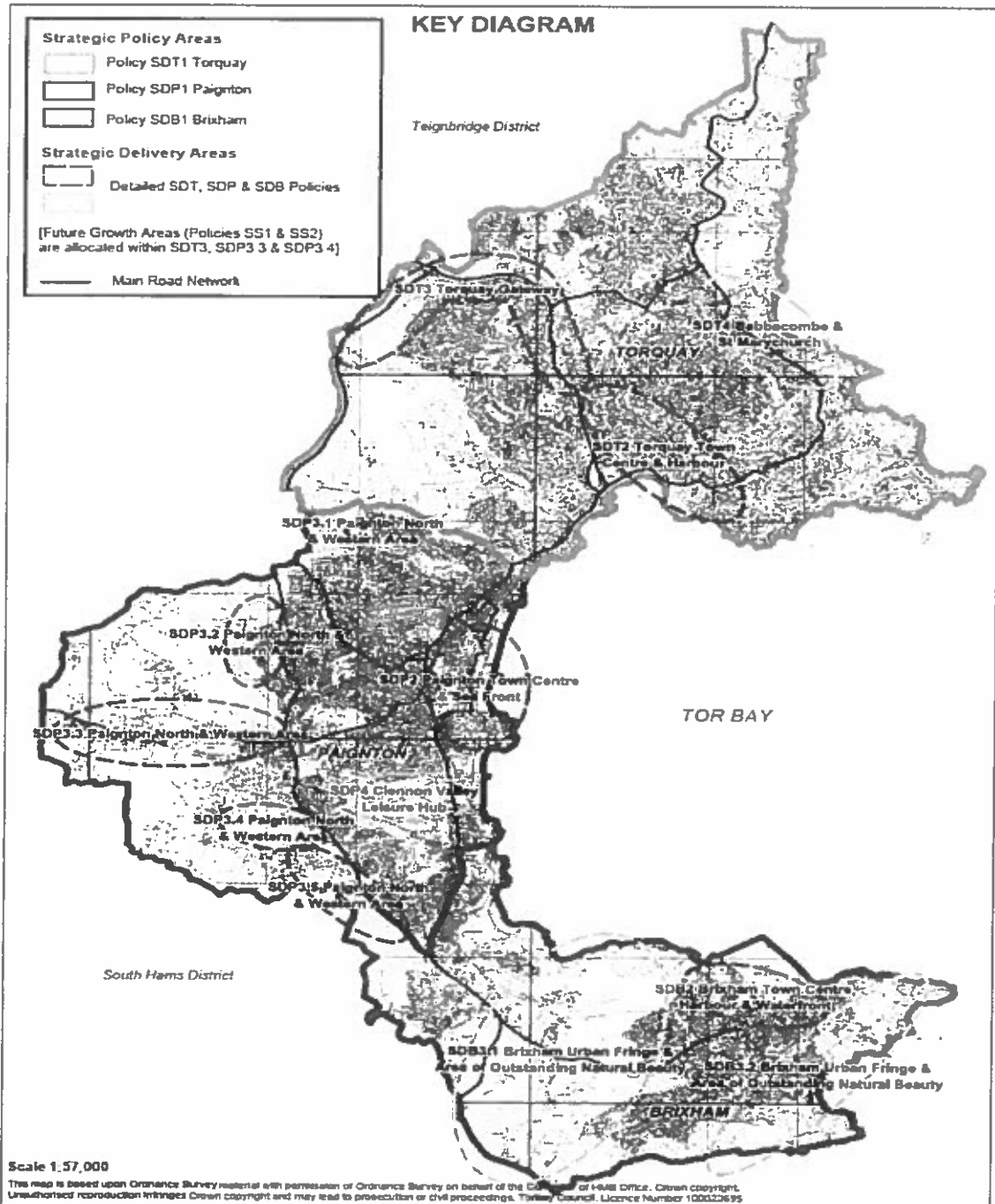
**Mr A Maltby – Deeley Freed Estates**  
**Mr D Freed – Deeley Freed Estates**  
**Mike Harris – Stride Treglown**



# STRIDE TREGLOWN

Page 7 of 7

Annex 1: Local Plan - Key Diagram (Strategic Delivery Areas)



**Pickhaver, David**

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**From:** Louise Fenner [Louise.Fenner@pegasuspg.co.uk]  
**Sent:** 14 October 2016 18:27  
**To:** Future Planning  
**Cc:** Jonathan Rainey; Chris Cox  
**Subject:** CIL Revised Modifications to the Draft Charging Schedule Representations  
**Attachments:** BRS. 6531 TBC CIL reps 14.10.16.pdf

Dear Sir/Madam,

Please find attached the representations submitted to the Community Infrastructure Levy (CIL) Revised Modifications to the Draft Charging Schedule Consultation by Pegasus Group on behalf of JJ Gallagher Ltd and English Care Village Partnerships Ltd.

I would be grateful if you could acknowledge receipt of these representations.

Kind regards,

**Louise Fenner**

Planner

**Pegasus Group**

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 Cert no. FS 577092

JR/CCO/BRS.6531

14 October 2016

Spatial Planning  
Floor 2 Electric House  
Castle Circus  
Torquay  
TQ1 3DR

By Email Only: [future.planning@torbay.gov.uk](mailto:future.planning@torbay.gov.uk)

Dear Sir/Madam

**Community Infrastructure Levy (CIL) Revised Modifications to the Draft Charging Schedule, October 2016 Consultation**  
**Sladnor Park, Sladnor Park Road**

Thank you for opportunity to comment on the Community Infrastructure Levy (CIL) Revised Modifications to the Draft Charging Schedule for Torbay. Pegasus submitted representations to the earlier Revised Draft Charging Schedule (DCS) in April 2016 (ref: RDCS17).

Our clients JJ Gallagher Ltd and English Care Village Partnerships Ltd (ECVP Ltd) have an interest in land at Sladnor Park, Sladnor Park Road. ECVP Ltd is a provider of residential accommodation with care, aimed at providing suitable accommodation for older persons who have varying care needs. They propose to bring forward the Sladnor Park site to deliver a Continuing Care Retirement Community. These representations therefore made specifically in relation to housing for older people.

In representations submitted in April 2016 we offered support to the Council's approach to test 'Retirement Housing' and 'Extra Care' schemes separately to general needs Class C3 housing. Testing under separate development typologies recognises and makes allowance for the unique viability characteristics of these types of development, including greater non-saleable floorspace; higher build costs and higher disposal costs. We are pleased to see that the Council has carried this methodology through to the viability update work completed by Burrows-Hutchinson Ltd in (August 2016).

**Retirement Housing**

As set out in our April representations, we welcome the Council's decision to levy 'Extra Care' developments at nil-rate across the local authority area. However, we wish to reiterate our concern regarding the inclusion of housing for older people which may not typically be classified as 'Extra Care' as specified in Note 1 of the DCS in the C3 Residential charging bands. We previously noted that a CIL rate was being levied for retirement housing despite this only been marginally viable; with a headroom considerably less than

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the rate being proposed; and a headroom considerably less than the majority of general needs market housing development typologies also covered by the C3 Residential rate bands.

We are concerned that there is the potential for misunderstanding regarding the different types of accommodation for older people. Note 1 of the DCS states that "*Extra care housing...will be zero rated for CIL*". Nonetheless, the Council provide no guidance as to what accommodation it considers to be 'Extra Care'. For the avoidance of doubt, we recommend the Council makes explicit in Note 1 and Note 4 (of the non-residential schedule) that 'Extra Care' dwellings can be and commonly are self-contained dwellings within a scheme which offers additional care facilities and packages and that an 'Extra Care' unit need not be non-self-contained like a Care Home. 'Extra Care' dwellings enable older people to live independently in their own home through the provision of flexible care packages. It is important that the distinction is made between accommodation such as 'Retirement' and 'Extra Care', so as not to undermine the viability of 'Extra Care' development as the Council currently wishes to levy a full C3 market residential CIL on 'Retirement Housing'.

Further to this, we are also disappointed that the Residential development rates are still proposed to be levied at Retirement or Sheltered Housing schemes not considered "*extra care*" following modifications to the schedule. We concur with representations made to the April 2016 consultation by McCarthy and Stone (ref: RDCS16) which recommend both 'Sheltered/Retirement Housing' and 'Extra Care Housing' be nil-rated in the interest of viability.

In reviewing the viability evidence update, we note that the author of the Burrows-Hutchinson Update Addendum found that

*"sheltered housing/retirement living developments are unlikely to be put at risk by the proposed CIL rates, but that it is right to exclude Extra Care schemes from the charge."*

### **Sales Values**

We note that the per square meter sales value for 'Retirement' dwellings shows an increase of £300 from the January 2016 report which considered an average value of £3,200 appropriate, to the August 2016 figure of £3,500 per square meter. This represents a considerable increase in sales values in Torbay in the region of 9.38% over the seven-month period. This has resulted in the headroom for policy compliant schemes increasing from £9 per square meter to £187 per square meter. It is stated in the update was tested using the same modelling as the January 2016, with only updated sales values for each testing typology were amended to account for fluctuation in price. We therefore infer that this substantial difference in headroom shown for 'Retirement Housing' can be attributed to the sales value increase.

The 'Retirement' testing typology represents such development across the local authority area. When considering general needs market development values for the authority area, Table 1 of the August report indicates that both general needs flatted development only

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### ***Residential Typologies***

Further to this, we are disappointed that the Council's modifications to the DCS did not extend to widening the testing of 'Retirement' schemes to more than a singular 'Retirement Housing' model, as per our recommendation in April. As has been noted by Burrows-Hutchinson, for general needs housing there was considerable variation across the range of testing typologies in relation to sales value increase and decrease and therefore headroom. It is reasonable to suggest that the same would be true of 'Retirement Housing'.

### ***CIL Rates***

Appendix C of the Viability Update Addendum indicates a considerable discrepancy in headroom calculated for 'Retirement Housing' and many of the general need market housing typologies, with Retirement units showing a lesser headroom than the majority of general residential typologies levied at same rate. We argue that this places a disproportionate burden on 'Retirement' providers which undermines their ability to operate in the competitive residential market. This in turn threatens the delivery of specialist 'Retirement Housing' which constitute a key part of a broad offer of housing for older people and represents an important element of the Council's Local Development Plan.

### ***Exceptional Circumstances***

We wish to reiterate our support to the Council in relation to the exceptional circumstances relief set out in the DCS. This will allow the Council to ensure developments which by site specific factors or wider development aspirations, are rendered unviable through the imposition CIL, can be treated flexibly to ensure their delivery.

### ***Summary and Recommendations***

We support the Council's decision to levy 'Extra Care' developments at nil-rate across the local authority area. However, we recommend that the Council clarify within the DCS that 'Retirement Housing' and 'Extra Care' accommodation represent two different offers in the older persons' accommodation market, and that 'Extra Care' accommodation may constitute a self-contained dwelling within a scheme which offers flexible care provision.

We reiterate our concern that the Council wishes to include 'Retirement Housing' in the C3 residential charging bands and suggest this be reconsidered and such development be levied at nil-rate.

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We look forward to being kept up to date with the progress of the Draft CIL charging schedule and would be grateful for the opportunity to give verbal evidence at the Examination in public.

Yours faithfully

**Jonathan Rainey**  
**Director**  
**Jonathan.rainey@pegasuspq.co.uk**

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14 October 2016

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By Email Only: [future.planning@torbay.gov.uk](mailto:future.planning@torbay.gov.uk)

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**Director**  
**Jonathan.rainey@pegasuspg.co.uk**

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REC'D	17 OCT 2016
TO	DP

14<sup>th</sup> October 2016

Spatial Planning,  
Torbay Council,  
Electric House,  
Castle Circus,  
Torquay  
TQ1 3DR

Dear Sir/Madam,

**Re: Revised Proposed Modifications to the Revised Draft Charging Schedules.**

We write in response to Torbay Council's recent consultation request in relation to the Revised Proposed Modifications to the Revised Draft CIL Charging Schedules. These representations are made on behalf of Cavanna Homes, a local House builder based in Torquay with a strong history of residential development within the district.

We object to proposed Modification 17 that amends the timescales for payment instalments. We do not however object to the change to the payment threshold within this modification.

Reducing the timeframe for payment of CIL contributions to six months from commencement of development will have significant viability and delivery implications for development as it would be normal for developers to cash flow the majority of the CIL payments from revenue received from plot sales.

Front loading development costs will act as a disincentive and obstacle for developers to fund, invest in, and deliver much need housing which is in contrast to the Government's clear intension of increasing house building.

Taking a typical development of 50 units for example it is highly unlikely that there will be any completions within 6 months of commencement, when as proposed the full CIL liability of the development will be due. No revenue from sales will therefore have been secured to offset any of the CIL liability. In order to cover this upfront CIL liability payment, additional finance would need to be sought that is typically paid back a 6% interest per month. Assuming a 2 year build period for the 50 units scheme, this will require 1 ½ years of interest payments on the CIL liability

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until the full sales revenue from the scheme is realised. This cost represents a considerable burden to the development.

National Planning Policy Framework paragraph 173 requires that development

*"...should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened..."*

We are concerned that, as far as we are aware, the proposed shortened timescales have not been subject to further viability testing and therefore the impact of the modifications has not been tested to ensure schemes will remain deliverable.

It is noted that Modification 18 does allow Torbay to grant a discretionary extension to the repayment period, but this is subject to the applicant undertaking and paying for an independent assessment of scheme viability.

It is considered important that there are as few uncertainties as possible with respect to CIL payments as such uncertainties will only cause small and regional house builders to become further marginalised from the planning process due to the complexity and overall cost of bringing sites forward for development. This uncertainty combined with difficulty sourcing additional finance will affect house builder's ability to deliver much needed residential units.

It is worth noting nearby local authorities that have adopted CIL have policies that allow instalments over a timescale that reflects a realistic construction timeframe. East Devon District Council for example apply the below instalments:

- 10% payable within 60 days of the commencement date
- 10% within 180 days
- 10% within 365 days
- 30% within 540 days
- 40% within 720 days

Compared to the proposed deadline of 6 months for full payment, the above instalments provide for the development to generate sales revenue before the majority of the CIL liability is due. Taking the typical 50 unit scheme described above, approximately half of the development would be occupied after the 365 day trigger when 30% of the CIL liability will be due. The percentage requirements rise towards the end of the development as it nears completion. This spreads the CIL liability proportionally so that it matches sales revenue as the scheme progresses that reduces the need to raise additional finance to fund the payments.

Further we believe consideration should be given to NPPG Paragraph: 056  
Reference ID: 25-056-20140612, which states:

*"...Large scale developments which are delivered over a number of years face particular issues in relation to cashflow and the delivery of on-site infrastructure. The regulations allow for both detailed and outline permissions (and therefore 'hybrid' permissions as well) to be treated as phased developments for the purposes of the levy. This means that each phase would be a separate chargeable development and therefore liable for payment in line with any instalment policy that may be in force.*

*The principle of phased delivery must be apparent from the planning permission. Local authorities should work positively with developers to allow such developments to be delivered in phases."*

For larger scale development, for example schemes over 75 units, which may take a number of years to complete, a phased approach to CIL payment based on the commencement of the relevant phase should be allowed.

In conclusion, we believe that the timescales for payment of CIL instalments should revert to no shorter than those initially proposed prior to this modification. In addition for larger developments a phase by phase trigger for instalments should be allowed. To reduce the instalment timescale and specifically a reduction to the short timescales proposed, would mean that there is a further unreasonable policy burden increasing development costs and reducing viability and deliverability of schemes.

We trust that these representations will be considered as part of the Council's on-going process to develop the CIL document.

Yours faithfully,

**Michael Smith.** Ba Arch. Pg Dip ArcCon.  
Development Manager

Rm12

**Pickhaver, David**

---

**From:** beatrice.scott [beatrice.scott@wyg.com]  
**Sent:** 12 October 2016 16:06  
**To:** Future Planning  
**Cc:** sarah.hawkins  
**Subject:** Torbay CIL

Dear Sir/Madam,

Further to your email dated 2 September 2016 regarding the current consultation on the revised proposed modifications to the CIL DCS, we write to confirm that we be relying on our existing representations submitted at the previous stages of consultation which we understand will be forwarded to the Independent Examiner.

If you have any queries at all then please do not hesitate to contact us.

Kind regards

**Beatrice Scott** MRTPI  
Senior Planner

Please note that we have recently moved. Our new address is 90 Victoria Street, Bristol BS1 6DP. All phone numbers and other contact details remain the same and we look forward to welcoming you to our new office.

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