

Pickhaver, David

From: Dyke, Corine (NE) [Corine.Dyke@naturalengland.org.uk]
Sent: 29 April 2016 13:01
To: Future Planning
Subject: Torbay CIL - revised draft charging schedule
Attachments: 184605 Torbay CIL revised draft charging schedule.pdf; NE Feedback Form June 2015.pdf

Please find attached Natural England's response to your consultation on the Torbay CIL revised draft charging schedule. If you have any queries or would like to discuss, please do not hesitate to contact me.

I have also attached our standard feedback form.

Kind regards

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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Pickhaver, David

From: Gary Parsons [Gary.Parsons@sportengland.org]
Sent: 26 April 2016 12:07
To: Pickhaver, David
Subject: Revised draft CIL Charging Schedule

Importance: High

Sport England is very disappointed that in the revised draft charging schedule there is no intended use to use CIL to help fund sport and recreation in the draft Reg 123 List.

Sport England supports use of planning obligations (s106)/community infrastructure levy (CIL) as a way of securing the provision of new or enhanced places for sport and a contribution towards their future maintenance, to meet the needs arising from new development. This does need to be based on a robust NPPF evidence base for sport and recreation. This includes indoor sports facilities (swimming pools, sports halls, etc) as well as playing fields and multi use games courts.

All new dwellings in Torbay in the plan period should provide for new or enhance existing sport and recreation facilities to help create opportunities for physical activity whilst having a major positive impact on health and mental wellbeing.

'Sporting and recreation facilities' are included within the definition of Community Infrastructure Levy (CIL) infrastructure in the 2008 Planning Act (section 216) which means money raised can be used to fund new or enhanced sports facilities.

It is not clear if sport and recreation will be funded by planning obligations instead?

Gary Parsons
Planning Manager

T: 020 7273 1861
M: 07711 086487
F: 01460 77263
E: Gary.Parsons@sportengland.org

Sport England's London office has moved to 1st Floor, 21 Bloomsbury Street, London, WC1B 3HF



Creating a sporting habit for life



Ashlands House, Ashlands, Crewkerne, Somerset, TA18 7LQ

Pickhaver, David

From: Morgan Barbara [Barbara.Morgan@networkrail.co.uk]
Sent: 27 April 2016 14:10
To: Future Planning
Subject: Torbay Community Infrastructure Levy (CIL) Revised Draft Charging Schedule

Dear Sir/Madam

Network Rail has been consulted by Torbay Council on the Community Infrastructure Levy (CIL) Revised Draft Charging schedule. Thank you for providing us with this opportunity to comment on this Planning Policy document.

Network Rail is a statutory undertaker responsible for maintaining and operating the country's railway infrastructure and associated estate. Network Rail owns, operates, maintains and develops the main rail network. This includes the railway tracks, stations, signalling systems, bridges, tunnels, level crossings and viaducts. The preparation of development plan policy is important in relation to the protection and enhancement of Network Rail's infrastructure. In this regard, please find our comments below.

Developer Contributions

The Community Infrastructure Levy (CIL) should set a strategic context requiring developer contributions towards rail infrastructure where growth areas or significant housing allocations are identified close to existing rail infrastructure.

Many stations and routes are already operating close to capacity and a significant increase in patronage may create the need for upgrades to the existing infrastructure including improved signalling, passing loops, car parking, improved access arrangements or platform extensions.

As 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.

Specifically, we request that a Policy is included within the document which requires developers to fund any qualitative improvements required in relation to existing facilities and infrastructure as a direct result of increased patronage resulting from new development.

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 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 and should include the following:

- Network Rail believes that developments on the railway infrastructure should be exempt from CIL or that its development should at least be classified as payments in-kind.
- We would encourage the railways to be included on the Regulation 123 list of the types of infrastructure projects that will be funded through CIL.
- Network Rail would like to seek a clear definition of buildings in the draft charging schedule. Railway stations are open-ended gateways to railway infrastructure and should not be treated as buildings. Likewise lineside infrastructure used to operate the railway (such as sheds, depot buildings etc) should be classed as railway infrastructure and not treated as buildings for the purposes of the charging schedule.
- Network Rail would like confirmation that its developments over 100sqm undertaken using our Permitted Development Rights will not be CIL chargeable.
- We consider that imposing a charge on one infrastructure project to pay for another in an inefficient way of securing funding
- 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.

We trust these comments will be considered in your preparation of the forthcoming Community Infrastructure Levy (CIL) Preliminary Draft Charging schedule document.

Regards,

Barbara Morgan
Town Planning Technician (Western and Wales)
1st Floor, Temple Point
Redcliffe Way, Bristol BS1 6NL

Tel: 0117 372 1125 – Int: 085 80125

Email: townplanningwestern@networkrail.co.uk

www.networkrail.co.uk/property

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Liability cannot be accepted for statements made which are clearly the sender's own and not made on behalf of Network Rail.

Network Rail Infrastructure Limited registered in England and Wales No. 2904587, registered office
Network Rail, 2nd Floor, One Eversholt Street, London, NW1 2DN

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

K10CS5



Torbay Coast & Countryside Trust

Dear David,

Thank you for providing us with an opportunity to comment on the draft CIL Charging Schedule.

It is noted that some areas of the Undeveloped Coast and AONB are located within the 'built up area' Charging Zone. Torbay Coast & Countryside Trust considers that these areas should be within the 'outside the built-up area' Charging Zone.

With regard to the Draft Regulation 123 List, it is noted that Impacts on the South Hams SAC are listed as follows:

- Recreational impacts on limestone grassland
- Offsite impacts on greater horseshoe bats

Where contributions towards mitigation of recreational impacts on the limestone grassland within the SAC are to be collected by CIL, TCCT would advise that they should be listed as a priority CIL funding item. This is because the mitigation measures are required to ensure the protection of the SAC in accordance with the legal requirements under the Habitats and Species Regulations 2010 (as amended). We have recently provided Torbay Council with estimated costs of the likely mitigation measures required.

TCCT would welcome a meeting with the Council to discuss whether funding for these items is best collected via CIL or s106. It would be useful if Natural England could also attend.

Best wishes,

Heather Carstens

Torbay Coast & Countryside Trust

RDCS 5

Pickhaver, David

From: Heather Carstens [heather@countyside-trust.org.uk]
Sent: 14 April 2016 13:23
To: Future Planning
Subject: Community Infrastructure Levy - Comments
Attachments: CIL consultation.docx

Hi,

Please find attached comments from Torbay Coast & Countryside Trust regarding the Community Infrastructure Levy.

Many thanks,

Heather Carstens
Education and Policy Officer
Based at: Ocombe Farm
Tel: 01803 696241

Torbay Coast & Countryside Trust | Ocombe Farm | Preston Down Rd | Paignton | TQ3 1RN | Tel: 01803 520022



**Torbay Coast &
Countryside Trust**

Making Torbay a better place

Stay in touch online:  [Like our Facebook Page](#)  [TorCoastCountry](#) | [BerryHeadRanger](#) | [Ocombe_Farm](#) | [Seashore_Centre](#)

Head Office: Ocombe Farm, Preston Down Road, Paignton TQ3 1RN
Registered Charity No. 1077561

Pickhaver, David

From: Leon Butler [chair@torquaynp.org]
Sent: 10 April 2016 16:47
To: Pickhaver, David
Subject: CIL representation

Having had clarification on the statutory provisions from Andrew Gunther I would like to change the Torquay Neighbourhood Plan's representation on CIL levies as follows:

The Government has laid down minimum percentages for CIL contributions that will be determined by communities, the Council has proposed that this minimum level is adopted. The Council has reduced the element of Community Infrastructure Levy expected by the communities by supporting the continuation of S106 contributions from developers for the larger developments. This has had the impact of reducing the CIL funds that will be allocated to community projects identified by the community.

Torquay has a well defined coherent and constituted Community Partnership system that was established by the Council to support engagement with and cohesion within communities. These Community Partnerships have formed the foundations to our Neighbourhood Plan which is in the process of final public consultation prior to submission and referendum in the autumn. As part of our emerging Plan these Community Partnerships have already identified numerous projects to support their communities and improve their quality of life. The communities are best placed to identify and quantify the priorities for their areas. Our Plan establishes the Neighbourhood Plan Forum (or Community Partnership system) as the management organisation for the prioritisation of the projects for Torquay. These projects and the means of management will be valid whether the Plan is adopted or not.

We therefore make a representation that 100% of the CIL money is made available for projects identified by our communities or projects that are agreed with our communities whether or not our Plan is adopted.

Leon Butler
Chair Torquay Neighbourhood Plan Forum

RDCS 7

Pickhaver, David

From: Lanscombe House
Sent: 23 March 2016 16:15
To: Future Planning
Subject: RE: CIL consultation

Hi David

The CIL percentage was on behalf of the TNP
The amount for countryside development on behalf of CCLCP
Happy to resend as 2 separate emails if required
Thanks Leon,

From: Future Planning [<mailto:Future.Planning@torbay.gov.uk>]
Sent: 23 March 2016 15:45
To: 'Lanscombe House'
Cc: Gunther, Andrew
Subject: RE: CIL consultation

Dear Mr Butler

Thank you for your representation on Torbay's Revised Draft Charging Schedule for CIL. Please can you confirm whether this was made on behalf of the Torquay Neighbourhood Forum and Cockington and Chelston Community Partnership? I will assume that it is, unless I hear otherwise.

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
Web site: www.torbay.gov.uk/newlocalplan

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From: Lanscombe House
Sent: 17 March 2016 16:49
To: Future Planning
Subject: RE: CIL consultation

Revised representation due to editing error

I would like to make a representation against the charges for net 1-3 homes in countryside areas. The charges would have a negative impact on change of use applications that would be counter to reusing unsustainable buildings for quality homes that are suitable for families. I would suggest a revised figure of £30 to £50 would be closer to current \$106 contributions for a typical development.

I would also like to object to the penalty of reducing the proportion for community projects within neighbourhood plan areas from 25% to 15% until after they are adopted. The need and the means to allocate are already there and this suggestion is an unnecessary penalty for communities.

Leon Butler
Chair CCLCP
Chair TNP

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PAIGNTON NEIGHBOURHOOD FORUM

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



c/o 34 Totnes Road
Paignton
TQ4 5JZ

25 April 2016

By email to 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)

PAIGNTON NEIGHBOURHOOD FORUM

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



DRAFT

c/o 34 Totnes Road
Paignton
TQ4 5JZ

22 April 2016

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

Dear David

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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 (Section 4, penultimate paragraph). However, 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*".(paragraph 4.6.5 Viability Study

2016). Additionally, the zero rate on large sites has been applied inconsistently as it has been applied only to those in the Future Growth Areas.

- The result of this Charging Schedule imbalance, will be to cause development of Future Growth Areas to have an unjustified and very significant viability advantage over encouraging development within the existing urban area for schemes of more than 3 units, and especially in Town Centre locations 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.
- By 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 (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, 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).

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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)

RDCS9

Pickhaver, David

From: Info Brixham Town Council [info@brixhamtowncouncil.gov.uk]
Sent: 29 April 2016 10:10
To: Future Planning; 'Ian Carr'
Subject: CIL comments from BTC

Hello,

At the recent Planning & Regeneration meeting councillors discussed the Torbay Community Infrastructure Levy (CIL) Revised Draft Charging Schedule. It was agreed to make the following comments.

1. Lacks clarity on the definition of size of levy on small and large development.
2. Improved transparency of the zoned areas.

While the councillors agreed the document is an improvement, it was felt that it is not easy to read and understand.

Kind regards

Linda

Linda McGuirk
Assistant to the Town Clerk, **Brixham Town Council**
01803 859678

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RDCS10



Unit 2 Eclipse Office Park High Street Staple Hill Bristol BS16 5EL

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E: all@tetlow-king.co.uk
W: www.tetlow-king.co.uk

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

Date: 26 April 2016

Our Ref: SL M6/0209-16

By Email Only:
future.planning@torbay.gov.uk

Dear Sirs

RE: TORBAY COUNCIL COMMUNITY INFRASTRUCTURE LEVY REVISED DRAFT CHARGING SCHEDULE CONSULTATION

We represent the **South West HARP Planning Consortium** which includes all the leading Housing Association Registered Providers (HARPs) across the South West. Our clients' principal concern is to optimise the provision of affordable housing through the preparation of consistent policies that help deliver the wider economic and social outcomes needed throughout the South West region.

Section 7 – Social Housing and Self-Build Exemptions

We support the changes in the Revised Draft Charging Schedule (DCS) which remove the reference to a CIL exemption applying to smaller sites only, in line with our comments from March 2015.

Section 17 – Exceptional Circumstances Relief Policy

We support the inclusion of a relief from paying CIL in exceptional circumstances. We note that paragraph 9 incorrectly references this policy under section 16.

The Government's introduction of Starter Homes (as set out in the Housing and Planning Bill, consultation on *Proposed Changes to National Policy*, and the *Technical Consultation on Starter Homes Regulations*, March 2016) is expected to reduce the overall provision of traditional affordable housing tenures.

As part of the current consultation on Starter Homes the Government proposes to set a "single national minimum requirement of 20% of all homes" delivered as Starter Homes, with a site size threshold of "10 units or more or 0.5 or more hectares". The proposed targets and thresholds set by the consultation will have a direct impact on the future delivery of affordable housing, and crucially the economic viability of new residential development.

The introduction of the exceptional relief policy is a welcome addition to the Draft Charging Schedule which may enable the provision of more much-needed affordable housing in Torbay, particularly in light of the introduction of Starter Homes. We therefore urge the Council to be flexible in negotiating planning applications that include Starter Homes, by seeking to maximise the delivery of traditional affordable housing tenures and applying exceptional relief where this will help bring forward these homes.

We would like to be consulted on further stages of the Community Infrastructure Levy and other publications by Torbay Council, by email only to consultation@tetlow-king.co.uk. Please ensure that the South West HARP Planning Consortium is retained on the planning policy database, with Tetlow King Planning listed as their agents.

Yours faithfully

SEAN LEWIS MPlan
ASSISTANT PLANNER
For and On Behalf Of
TETLOW KING PLANNING

sean.lewis@tetlow-king.co.uk

Cc: Aster Group
DCH Group
Guinness Partnership
Sovereign Housing Association
Spectrum Housing Group
Westward Housing Group

Susanne Lang – Housing Department

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

Date: 26 April 2016

Our Ref: SL M6/0209-16

By Email Only:
future.planning@torbay.gov.uk

Dear Sirs

RE: TORBAY COUNCIL COMMUNITY INFRASTRUCTURE LEVY REVISED DRAFT CHARGING SCHEDULE CONSULTATION

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Support
social housing
exemptions

Section 17 – Exceptional Circumstances Relief Policy

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Support discretionary
relief for exceptional
circumstances.
CIL should be operated flexibly
to support delivery of affordable
housing.

We would like to be consulted on further stages of the Community Infrastructure Levy and other publications by Torbay Council, by email only to consultation@tetlow-king.co.uk. Please ensure that the **South West HARP Planning Consortium** is retained on the planning policy database, with **Tetlow King Planning** listed as their agents.

Yours faithfully

SEAN LEWIS MPlan
ASSISTANT PLANNER
For and On Behalf Of
TETLOW KING PLANNING

sean.lewis@tetlow-king.co.uk

Cc: Aster Group
DCH Group
Guinness Partnership
Sovereign Housing Association
Spectrum Housing Group
Westward Housing Group

Susanne Lang – Housing Department

Pickhaver, David

From: Consultation [Consultation@tetlow-king.co.uk]
Sent: 27 April 2016 11:25
To: Future Planning
Cc: Lang, Susanne; Amanda Williams; Ben Cane; Dan Haines; David Luke; Gareth Jones (gareth.jones@dcha.co.uk); J Takhar (jitinder.takhar@spectrumhousing.co.uk); Jill Gregg (jill.gregg@westwardhousing.org.uk); Joanna Davoile (joanna.davoile@sovereign.co.uk); Kathryn Pennington (kathryn.pennington@dchgroup.com); Katie Slack (Katie.Slack@dchgroup.com); Kern Young (Kern.Young@spectrumhousing.co.uk); Lesley Metcalf (lesley.metcalf@sovereign.org.uk); Linda Bonnin (linda.bonnin@spectrumhousing.co.uk); Martyn Blackman (martyn.blackman@asterhomes.co.uk); Nathan Cronk (nathan.cronk@dchgroup.com); Neil Edwards (neil.edwards@westwardhousing.org.uk); Paul Read (paul.read@spectrumhousing.co.uk); Phil Stephens (phil.stephens@sovereign.org.uk); Richard Hill (richard.hill@spectrumhousing.co.uk); Ryan Hosken (ryan.hosken@guinness.org.uk); Stephen Lodge (stephen.lodge@guinness.org.uk); Yvonne Mills (yvonne.mills@spectrumhousing.co.uk)
Subject: TORBAY COUNCIL COMMUNITY INFRASTRUCTURE LEVY REVISED DRAFT CHARGING SCHEDULE CONSULTATION
Attachments: 0209-16.M6 Revised CIL DCS.pdf

Please find attached letter in respect of the above.

Regards.

Elaine Elstone
Secretary
TETLOW KING PLANNING
Unit 2, Eclipse Office Park, High Street, Staple Hill, Bristol BS16 5EL



Tel: 0117 9561916 Fax: 0117 9701293
Website: www.tetlow-king.co.uk

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RDCS 11



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W: www.tetlow-king.co.uk

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

Date: 29 April 2016
Our Ref: MR/SL M15/0715-47

By email only:
future.planning@torbay.gov.uk

Dear Sirs

RE: COMMUNITY INFRASTRUCTURE LEVY REVISED DRAFT CHARGING SCHEDULE

We represent Rentplus, a company providing an innovative affordable housing model aimed at delivering discounted rented homes to buy for people who are unable to acquire a property on the open market but also trapped by ineligibility for existing affordable housing tenures. Enclosed with this consultation response is an Affordable Housing Statement by Tetlow King Planning setting out the model's compliance with the NPPF definition of affordable housing and how this should be incorporated into local plans to boost supply and meet local needs. We ask that this be read alongside our representation so that the Council's strategic approach to housing delivery takes into account this innovative model which has full Government support, and will increase the capacity to meet unmet housing need locally.

As set out in the accompanying Affordable Housing Statement, the Government has pledged to deliver 400,000 affordable houses by 2020-21, with a focus on low cost home ownership, including supply of "10,000 homes that will allow a tenant to save for a deposit while they rent." As a rent to buy model Rentplus will enhance the affordable housing already being delivered in Torbay either as a standalone product or as part of the overall affordable housing offer on mixed development sites. This is crucial at a time when there is such high local need for affordable housing, and as Government funding for social rented housing is uncertain.

It is important to draw the Council's attention to the policy changes emerging at a national level which should be taken into account in making alterations to the Draft Charging Schedule and the Council's Development Plan Documents, considering the impacts on the deliverability of affordable housing. The Government's recent consultation *Proposed Changes to National Planning Policy* are explicit that the affordable housing definition is to be amended to incorporate 'innovative rent to buy' housing. Though this consultation does not yet form part of Government policy, its contents will need to be thoroughly considered as these raise critical questions about what constitutes affordable housing and how these can be delivered as part of the overall housing mix.

Rentplus can help meet the needs of households aspiring to home ownership but currently locked out of both affordable and market housing, extending the opportunity of home ownership to those otherwise trapped in expensive private rented accommodation or inappropriately housed in social rented housing. This model enables those not currently able to save to rent at an affordable level, whilst living in a Housing Association maintained home to save for the deposit to purchase the home. This helps move households out of private rented accommodation, those living with parents, and also to make the move from social rented housing where this no longer suits their needs. Rent to buy homes would help meet these households' needs, without any public funding. Schemes that include a proportion of Rentplus homes may benefit from an overall improvement in viability, enabling a greater overall provision of affordable homes.

In light of the changes proposed by the Government to the definition of affordable housing, and in particular the introduction of rent to buy affordable housing, it is important that the Council specifically assesses the contribution that Rentplus homes would make to delivering affordable housing locally, including through improvements to overall development viability. Due to the ready availability of

private funding for Rentplus there is significant scope for early site delivery, including on strategic sites where early delivery of rent to buy homes would both improve overall site viability and encourage quicker development. By planning for the inclusion of this new model the Council will ensure its Development Plan, including CIL, is in conformity with national planning policy, planning more effectively and positively for sustainable development to meet the full range of its residents' needs.

Section 7 – Social Housing and Self-Build Exemptions

We support the changes in the Revised Draft Charging Schedule (DCS) which remove the reference to a CIL exemption applying to smaller sites only.

We note that the PPG sets out the definition of those dwellings qualifying for social housing relief as:

“A dwelling which is to be let by a body which is neither a local housing authority nor a private registered provider of social housing (registered social landlord in Wales) qualifies for mandatory social housing relief (Regulation 49(7A)), if it is let to a tenant whose needs are not adequately served by the commercial housing market; if the rent (including any service charge) is no more than 80% of market rent; and a planning obligation ensuring the dwelling is let on this basis is entered into.”

The detail set out in the Regulations states that dwellings qualify for social housing relief if they meet one of four conditions; Rentplus would meet the following condition:

(5) Condition 3 is that, in England—

- (a) the dwelling is let by a private registered provider of social housing on one of the following—
 - (i) an assured tenancy (including an assured shorthold tenancy);
 - (ii) an assured agricultural occupancy;
 - (iii) an arrangement that would be an assured tenancy or an assured agricultural occupancy but for paragraph 12(1)(h) or 12ZA of Schedule 1 to the Housing Act 1988(3);
 - (iv) a demoted tenancy; and
- (b) one of the criteria described in paragraph (6) is met.

(6) The criteria are—

...

- (b) the rent is—
 - (i) not subject to the national rent regime;
 - (ii) not regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008; and
 - (iii) no more than 80 per cent of market rent;

As can be understood from the information contained in the Affordable Housing Statement, Rentplus homes would qualify for this relief. The clawback requirement would not apply where Torbay enters into an agreement (a Memorandum of Understanding, as set out in the Affordable Housing Statement), whereby Rentplus would on best endeavours basis seek to replace each home sold on a one-for-one basis.

Section 17 – Exceptional Circumstances Relief Policy

We support the inclusion of an exceptional circumstances relief policy, ensuring in exceptional circumstances valuable development schemes can still come forward without paying CIL. This may assist schemes bring forward more affordable housing.

We would like to be notified of future consultations on the Community Infrastructure Levy, by email only to consultation@tetlow-king.co.uk. Please ensure that **Rentplus** is retained on the consultation database, with **Tetlow King Planning** listed as their agents.

Yours faithfully

MEGHAN ROSSITER BSc (Hons.) MSc MRTPI
PRINCIPAL PLANNER
For and On Behalf Of
TETLOW KING PLANNING

Enc.: Affordable Housing Statement (Tetlow King Planning)
Rentplus Briefing Note
Rentplus Model – Compliance (Ashfords)
Rentplus Planning and Policy Review (Aecom)

Cc: Sue Coulson



PERSIMMON HOMES SOUTH WEST
 Mallard Road
 Sowton Trading Estate
 Exeter
 Devon
 EX2 7LD
 Tel. 01392 252541
 Fax. 01392 430195
 www.persimmonhomes.com

Our Ref: RT/cb

26 April, 2016

Dear Sirs,

**Re: Consultation on the revised Draft Charging Schedule 18th March 2016
 Community Infrastructure Schedule - Torbay Council**

We have read with interest the revised draft charging schedule for the above published on the council's web site on 18th March 2016. We would be grateful if the Council would take the following further representations into account. Please could you advise us of any further steps that are being taken for additional consultation?

Our comments below are referenced to the section numbering in the draft charging schedule.

6. Who pays CIL?

"CIL will be used to help fund major infrastructure projects set out in the key infrastructure projects list ("Regulation 123" List). Should other infrastructure needs arise that require CIL funding, the Council will publish a revised Regulation 123 List."

Comment

The Council should define the points and procedures for consultation at which the 123 list will be revised. Paragraph 1.1.15 of the Adopted Local Plan allows an annual review of the infrastructure required to deliver the Plan. What mechanisms does the council intend to put in place to ensure that revisions to that list are consulted upon and arbitrary increases to the S 123 list are not imposed with a further CIL required? We object to the fact that these are not defined.

7. Social Housing

Comment.

The Government has made clear its intention to introduce starter homes as a new form of affordable housing. Until the form of the tenure is made clear and its impact on viability is known then there should be flexibility in the policy to allow this to be considered. No review mechanism is included to allow this. We object to there not being a review mechanism for this purpose.

8. Torbay's Proposed Approach to CIL: Residential Development

Comment

It is unclear from the maps in Appendix 1 as to the precise boundaries of the charging areas. For example the map showing the residential charging zone area is diagrammatic and in some areas it's unclear if land falls within the 20% most deprived LSOA, the countryside area, Zone 3 or an area of strategic growth. To add clarity on this the maps should be at a larger scale to allow specific sites to be identified. We recommend that the Council amend the map format to show this.



PERSIMMON

The Council's approach to sites which fall within an area that spans these designations is unclear as to how apportionment would work. Sites don't necessarily fall within arbitrary lines drawn diagrammatically. A map based approach would we believe allow transparency in this regard and the better interpretation of policy.

16. Instalments Policy.

Comment

We object to the fact that the instalments policy still refers to a time based approach not completions. Larger sites will require a longer lead in to deliver essential infrastructure and the definition of commencement at the point of a start on site might involve essential infrastructure which is needed many months before homes are delivered. The Policy should be changed to allow instalments to be paid at thresholds of actually completed homes. We disagree with the councils view in their response of Feb 2015 that if it were based on occupations this would remove an incentive to complete developments. One of the house builder's prime drivers is the delivery of homes for people, as that is what the industry and shareholders judge us on. The Council's comment implies land banking and that is wholly contrary to what house building does. Given the investment in land, infrastructure and risk made by the industry at the inception of a scheme, it is illogical to suggest that schemes would be stopped to avoid thresholds.

Object to
instalments
based on
commencement
times

Yours sincerely

Robert Taylor BA (Hons) TP MRTPI
Strategic Planner
Persimmon Homes South West



PERSIMMON

PERSIMMON HOMES SOUTH WEST

Mallard Road
Sowton Trading Estate
Exeter
Devon
EX2 7LD

Tel: 01392 252541

Fax: 01392 430195

www.persimmonhomes.com

Our Ref: RT/cb

26 April, 2016

TORBAY COUNCIL PLANNING	
RECD	27 APRIL 2016
TO	

Dear Sirs,

**Re: Consultation on the revised Draft Charging Schedule 18th March 2016
Community Infrastructure Schedule - Torbay Council**

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Yours sincerely

Robert Taylor BA (Hons) TP MRTPI
Strategic Planner
Persimmon Homes South West



Boyer

24 Southwark Bridge Road
London
SE1 9HF

T 0203 268 2018

Date – 27th April 2016

Ref - 16.7007

BY EMAIL:

future_planning@torbay.gov.uk

Dear Council

Re: Torbay Revised Draft Charging Schedule consultation

Boyer appreciates the opportunity to express our views on the Revised Draft Charging Schedule. Our client (Bloor Homes) site interest is located in Collaton St Mary and is identified within the adopted Local Plan as a Future Growth Area. Boyer on behalf of Bloor Homes has made representations throughout the Local Plan process and supports the site's allocation in the Local Plan. In regard to phasing we also support the Local Plan's pragmatic approach to strategic sites such as our clients' which is subject to a detailed materplanning exercise. The Local Plan at paragraph 4.1.28 note this detailed work with respect to phasing–

'4.1.28 Whilst development in Future Growth Areas is anticipated to arise towards the latter part of the Plan period, it is noted that there is active developer interest in some sites such as Collaton St Mary, Yalberton and White Rock, Paignton. The Plan will support early delivery where infrastructure, environmental and other relevant planning matters are satisfactorily addressed.'

The dependence on key infrastructure provision to deliver strategic sites such as our clients is noted throughout the Local Plan. It is for this reason Bloor Homes is looking to optimise the site's deliverability for housing to ensure the scheme can viability deliver the necessary infrastructure alongside much needed affordable housing in accordance with the adopted Local Plan. At this stage 160-200 homes is seen as an appropriate level to ensure this happens to the benefit of new and existing communities.

Given the significant amount of investment required in enabling infrastructure we welcome the Council's pragmatic approach to nil CIL rating sites within the Future Growth Areas. Securing necessary infrastructure and affordable housing through s106 will help provide greater certainty of delivery as some of the infrastructure will need to be provided on or nearby to the development sites themselves.

While we agree with the Council's overall approach to the Future Growth Areas we have some comments on a number of the viability assumptions used in the 'Torbay CIL Viability Study' January 2016 (the Viability Study).

External Works

External works are currently set at 10% of build costs. We consider this to be a low assumption especially for larger strategic sites. From our experience 15% is the accepted standard both for viability testing specific schemes as well as for higher level viability testing for Local Plans and CIL Charging Schedule purposes.



This standard has been adopted by many other charging authorities in their CIL viability studies including LB of Hackney; LB of Tower Hamlets; South Oxfordshire; Cherwell; Herefordshire; and Royal Borough Windsor and Maidenhead.

In terms of testing 'external works' assumptions it is useful to compare with accepted benchmarks. For instance the Viability Testing of Local Plans (Local Housing Delivery Group 2012) suggests the costs associated with providing serviced housing parcels, i.e. strategic infrastructure costs are typically in the order of £17,000 - £23,000 per plot for larger scale schemes – 10% of build costs for external works is likely well below these figures even when site 'opening up' costs are factored in.

S106/S276 assumptions

The residential appraisals don't appear to include any residual s106/s278 costs. We feel this is a key omission. While we fully support the Council's approach to securing key enabling infrastructure in relation to Future Growth Area sites through s106, other non-infrastructure based s106 items will still likely have a role, albeit scaled back, to mitigate other specific impacts from development. Examples include employment and training; safer communities; sustainable transport measures etc in addition to affordable housing.

Many charging authorities have therefore still modelled s106 / s278 costs in addition to onsite infrastructure costs for strategic sites in recognition of the higher costs associated with bringing them forward. For instance South Oxfordshire increased its s106 / s278 cost assumption 10 fold from £1,000 per unit to £10,000 per unit for strategic sites. For the emerging Cherwell CIL a similar approach has been taken, again increasing the s106/s278 cost assumption 10 fold from 10 psqm to 100 psqm for strategic sites.

The NPPG also requires the charging authority to set out its proposed approach to s106 contributions. We note the Council is aiming to consult on its new Revised Planning Contributions and Affordable Housing Supplementary Planning Document (SPD) in Spring 2016. Once the SPD is published it will help establish what types of site mitigation will typically be sought through s106 and provide a useful cross check as to the assumptions being tested in the accompanying CIL Viability Study.

Benchmark land value

The benchmark land value for strategic sites at £220,000 per hectare appears low and therefore underestimates the likely cost of land in bringing forward development on agricultural / greenfield land. A useful starting point in valuing agricultural / greenfield land is RICS/RAU 'Rural Land Market Survey H2 2015¹.' For the south west arable land prices for 2015 are as follows –

- H1 2015 is estimated at £9,750 per acre (£24,000 per hectare)
- H2 2015 is estimated at £9,000 per acre (£22,000 per hectare)

This gives an average value of £23,000 per hectare. To sense check this regional figure in Devon we have reviewed RICS/RAU 'Farmland Market Directory of Land Prices H2 2015²' for the Devon County as a means of establishing a more accurate benchmark value. The transaction values from this publication give an approximate average of £37,000 per hectare for the Devon County which is significantly higher than the south west value for agricultural / farm land. Even after removing the highest value transactions at over £100,000 per hectare the average for the Devon County is £29,000 per hectare. We feel this is the most appropriate benchmark as it considers values in Devon rather than the wider south west and removes the highest value transactions many of which include existing farming and residential buildings.

Based on HCA guidance on 'Transparent Assumptions'³ an allowance of 10 to 20 times agricultural value (existing use) is acceptable to reflect an Alternative Use (namely un-serviced residential). Using these assumptions £29,000 per hectare equates to an Alternative Use Value for agricultural / greenfield land of

¹ <http://www.rics.org/Global/RICS%20RAU%20Rural%20Land%20Market%20Survey%20H2%202015.pdf>

² <http://www.rics.org/Global/H2-2015%20Directory%20of%20Land%20Prices.pdf>

³ http://www.broadland.gov.uk/images/B41_HCA_Viability_Assessment_Guidance.pdf

between £290,000 to £580,000 per hectare (gross). Given Future Growth Area sites are designated in the Local Plan we feel the upper reaches of this range of 15-20 times existing agricultural value is appropriate. This gives a benchmark land value of £435,000 to £580,000 per hectare which is significantly higher than the £220,000 per hectare figure used in the Viability Study.

Buffers and Sensitivity testing

The CIL regulations state that in setting a CIL charge, local authorities must *"aim to strike what appears to the charging authority to be an appropriate balance"* between revenue maximisation on the one hand and the potentially adverse impact of CIL upon the viability of development across the whole area on the other.

While the Council has taken a pragmatic approach in deciding to use s106 to secure enabling infrastructure for larger sites the use of buffers could usefully be applied as a means of accounting for unforeseen circumstances and site specific costs that may arise as part of the wider residential appraisal work.

What also appears to be missing from the Viability Study is any comprehensive sensitivity testing to take account for any potential movement in sales values and build costs. It is important any sensitivity testing doesn't just consider optimistic assumptions based around increases in sales values. Given current uncertainty around the UK's economic relationship with Europe and wider uncertainty in the market (which the recent credit crisis reminded us of) a moderation of house prices and a period of stagnation should also be tested alongside flat or increasing build costs to test their impact on development to absorb a CIL.

Conclusion

I hope the above comments are considered constructive. We welcome the Council's pragmatic approach to Future Growth Areas and the desire to fund necessary infrastructure via s106 rather than through CIL.

Yours sincerely

Mark Powney
Associate Director
Development Economics

Tel: 0203 268 2443

Email: MarkPowney@boyerplanning.co.uk

Pickhaver, David

From: Nick Matthews [NMatthews@savills.com]
Sent: 29 April 2016 13:36
To: Future Planning
Subject: RE: Torbay CIL - Revised Draft Charging Schedule Representations
Attachments: Torbay RDCS Reps (Submitted).pdf

Hi David,

Thank you for the email. It's the difficulty of having two consultation deadlines on the same day!

Attached are the representations for Torbay. Please disregard the Plymouth reps.

Many thanks,

Nick

From: Future Planning [<mailto:Future.Planning@torbay.gov.uk>]
Sent: 29 April 2016 13:32
To: Nick Matthews
Subject: RE: Torbay CIL - Revised Draft Charging Schedule Representations

Hi Nick

Thank you for your email about CIL. However the attached document refers to Plymouth's CIL. Did the wrong attachment get added?

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
Web site: www.torbay.gov.uk/newlocalplan

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From: Nick Matthews [<mailto:NMatthews@savills.com>]
Sent: 29 April 2016 13:24
To: Future Planning
Subject: Torbay CIL - Revised Draft Charging Schedule Representations

Dear Sir / Madam,

Please find attached representations on behalf of Taylor Wimpey and Linden Homes to the current consultation on the Torbay CIL Revised Draft Charging Schedule.

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

Kind regards,

Nick

Nick Matthews
Director
Planning

Savills, Embassy House, Queens Avenue, Bristol BS8 1SB

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Email :NMatthews@savills.com
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 savills

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Torbay CIL Revised Draft Charging Schedule

Representations by Savills

Torbay CIL Revised Draft Charging Schedule

Representations by Savills



Contents

Introduction	2
Policy and Procedural Matters	3
Viability Evidence Objections	5
Conclusions and Recommendations	17

Torbay CIL Revised Draft Charging Schedule

Representations by Savills



Introduction

These representations have been prepared by Savills on behalf of Taylor Wimpey and Linden Homes in response to the consultation on the Torbay Community Infrastructure Levy (CIL) Revised Draft Charging Schedule.

Our client's objective and the *raison d'être* for these representations is not to dismiss CIL but to ensure that the residential rates set in the Charging Schedule are fair and equitable, supported by robust viability appraisals, and will not put at harm the overall delivery of housing. To that end, the Charging Schedule must be founded upon sound and credible evidence and the methodology used to establish the proposed charges should be reasonable and fit for purpose.

We consider that there are serious flaws with a number of the key assumptions used in the Viability Study produced in support of the Revised Draft Charging Schedule. The effect of these is to distort the findings of the hypothetical viability appraisals within the study to such a degree that it is not possible to determine at this stage what impact the introduction of CIL would have on residential development viability across Torbay and the delivery of the strategic housing requirement.

The Viability Study also makes reference to a number of key assumptions but does not provide details of these in the Report. These assumptions can have a very significant impact on the outputs of the case study appraisals and it is imperative therefore that they are explicitly set out in the Report in order that they can be reviewed and tested by all interested parties.

It is essential that these matters are rectified before the Examination in order that the Council and the Examiner have the confidence that the Charging Schedule meets the requirements of Regulation 14 of the Community Infrastructure Levy Regulations 2010 (as amended).

If they are not rectified then it is our view that the current evidence on viability does not provide a sound basis on which to establish residential CIL rates.

We have also used these representations to raise a number of policy and procedural matters which need to be addressed. These matters do not necessarily have a bearing on the rates set out within the Charging Schedule but are nevertheless important to the operation of CIL post-implementation.

*1/20/16
of
viability
study
needs*



Policy and Procedural Matters

Within this section of the representations we deal with two specific policy and procedural matters relating to the Charging Schedule and its application. These are:

- Relationship between CIL and Section 106 Agreements; and
- Differential rates for large residential sites.

Relationship between CIL and Section 106 Agreements

The future relationship between CIL and Section 106 agreements is extremely important to maintain viability. Both serve legitimate purposes in supporting infrastructure delivery and both have a financial burden on residential developments. It is imperative that there is a clear and transparent relationship between the two infrastructure funding mechanisms and that both developers and the Charging Authority have a shared understanding of the role of each in supporting development.

We note that the Charging Authority has published a draft of the Regulation 123 List alongside the Revised Draft Charging Schedule. The only items contained on this list however are highways infrastructure and mitigation for the impacts on the South Hams SAC. Figures 1, 2, 3 and 4 in the Revised Draft Charging Schedule provide guidance on the future role of Section 106 and CIL in each of the three residential charging zones and on strategic sites. With the exception of the strategic sites, these figures imply that there will be zero Section 106 contributions except for direct site acceptability matters. A number of direct site acceptability matters are listed and there is also a broad 'catch all' of "other legal matters".

We are concerned that there are a number of infrastructure funding items which are typically sought through Section 106 agreements, such as recreation and education provision, which are missing from both Section 106 and CIL. It is not at all clear whether the Council intends to continue to seek Section 106 contributions towards these infrastructure items or whether it intends to fund these through other sources. What is clear is that they cannot be part of the CIL funding as they are not included on the draft Regulation 123 List.

As an aside from the CIL rates themselves (which is covered in the following section of these representations), we urge the Charging Authority to ensure that the Regulation 123 List is unambiguous in defining the types of infrastructure to be covered by CIL and that there is a clear position on the continued use of Section 106 agreements. The rationale for the introduction of CIL is that it provides charging authorities, developers and local communities with transparency and certainty over the funding of infrastructure. In order to secure this key objective it is essential that all parties can interpret the Regulation 123 List and understand simply and quickly which types of infrastructure are to be funded through CIL receipts.

Differential Rates for Large Residential Sites

We welcome the introduction of differential rates for the strategic sites, however we consider the £zero rate proposed for strategic sites should not be limited to those allocated in the Local Plan. By their nature, larger development sites are subject to specific viability considerations which should rightly have a bearing on the rate of

Clarify relationship between CIL & S106

Torbay CIL Revised Draft Charging Schedule

Representations by Savills



CIL. These considerations relate to their scale and the infrastructure requirements associated with delivering the development.

The same viability considerations apply to all large sites, whether or not they are allocated as 'strategic' in the Local Plan. Indeed, there is no particular reason why a strategic site on the edge of a town should be charged at a lower rate than a development of the same size on the edge of the same town.

Since the 2014 Amendment Regulations came into force this issue can be overcome through the setting of a site size differential CIL rate as opposed to differential rates based upon geographically defined locations (e.g. allocated areas) and we strongly recommend that the Charging Authority review the residential rates for larger sites and include a single category for all large / strategic sites, irrespective of whether they are allocated. This approach would ensure that the residential rates reflect the viability of development and not just whether a site is allocated within the adopted Local Plan.

*zero rate for
strategic sites is
supported. should not
be limited just to
sites identified
in the Local Plan*

Viability Evidence Objections

The process of testing viability across a plan area inevitably requires the adoption of a number of generic assumptions and we appreciate the difficulty that this presents. As the CIL guidance acknowledges, it is recognised that the introduction of CIL will render some sites unviable which would previously have been viable. What is important is to ensure that the overall viability of the planned housing delivery is not jeopardised through the introduction of CIL.

In establishing the assumptions to be used in the Viability Study, very careful attention is required to validate / sense check each component of the appraisals to ensure that they are reasonable and logical. It is important that the key assumptions are also set out and justified in the Viability Study in order that these can be reviewed and tested by all interested parties. We have reviewed a range of the assumptions adopted in the Viability Study and, for the various reasons set out below, we have concerns that these are not sound. As a consequence, the output from the appraisals in the viability study will be skewed and the residential CIL rates set at a level within or beyond the margins of viability.

The concerns with each of these assumptions is set out below. This covers the primary areas of concern only; we have not dealt with all of the assumptions.

Sales Values

We have a number of concerns regarding the approach to sales values outlined in section 4.4 of the Viability Study. Paragraph 4.4.1 states that current residential revenues are obtained from a range of sources, specifying the Land Registry and the property websites Zoopla and Rightmove.

The selection of sales values to use in the Viability Study is fundamental to producing a robust assessment and realistic residential CIL rates. Inaccurate sales values can have a very significant bearing upon the Viability Study and could suggest potential rates are achievable when they are not.

The Land Registry data provided in Table 4.3 of the study provides very broad and crude information on sales values within the Charging Authority area. For example, the average sales value provided for detached properties could range from a small two bed detached bungalow in a low value area through to a sizeable six bed detached mansion, finished to a high standard and in a very high value area. It is questionable therefore how beneficial the Land Registry data is in producing the viability assessment.

The value of the Land Registry data is reduced further the smaller the sample size of properties. Whilst it is of passing interest that the data draws a distinction between new build and secondhand properties, the sample size for the new build dwellings is such that it can produce major anomalies which further highlight the limitations on the value of the evidence.

For example, in Table 4.3 of the Study, according to the Land Registry data between 2012-2015, the average prices paid for semi detached and terraced housing in Brixham exceeded the average paid for detached dwellings. This is not only counter intuitive, but it is also not representative of the general trend. This anomaly may have been

Object to assumed sales values & build cost

Torbay CIL Revised Draft Charging Schedule

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caused by the sample size, location of new build developments during the assessment period or a number of other factors. For example, it may have been the case that a small development of very high value, high specification semi-detached dwellings were completed during the sample period and that the prices achieved have distorted the average. In order to achieve such high values however it is likely that either the land value paid was substantially in excess of the average and/or the build costs far exceeded the BCIS median figure. We highlight this example simply to demonstrate the issues with reliance upon the Land Registry data.

The second sources of evidence (Zoopla and Rightmove) provide a snapshot of sales values of properties on the market at November 2015. It must be recognised that the figures provided represents the asking price for properties rather than the sales price and there may be a degree of deviation between the two. Whilst this may lead to some inaccuracy, the main area of concern is the limited number and range of comparables produced in support of the viability assessment.

Details of the comparable evidence is provided in the schedule at Appendix B of the Viability Study. This schedule helpfully contains some details on the broad location of the property in question, the number of bedrooms, size and asking price per square metre. There are however only 15 properties contained in the schedule, including only three at Brixham and two at Torquay.

Furthermore, the schedule contains no comparables for flatted development at Brixham. Nor does it contain any comparables for houses at Torquay. Indeed, the only two comparables at Torquay are both two bed flats. It is very noticeable that the price per square metre for these flats varies from an extreme low of £1,621 per square metre to an extreme high of £3,913 per square metre¹. Given the range produced by the limited assessment, further assessment of sales values would be of great value in establishing an average.

Despite the clear differences in sales values (albeit based upon very limited comparable evidence) Table 4.4 of the Viability Study suggests that the figures used in the assessment are virtually identical for each of the differential sub locations within the Charging Authority area. There is no credible explanation as to how these anticipated sales values have been derived nor their relationship with the evidence produced to inform the assessment.

In light of the above, we have very little confidence in the assessment of and evidence supporting the sales value assumptions contained within the Viability Study. We strongly urge the Charging Authority and their viability consultant to revisit sales values and establish appropriate assumptions based upon a full and thorough evaluation of a wide range of comparable evidence.

Build Costs

In the circumstances relating to Torbay we support the use of adjusted BCIS build costs, however, this alone does not provide a full picture of build costs for new residential development across the Authority area. In this sub-section of the representations we explain the additional costs that are associated with the delivery of residential

¹ Property 14 on the Schedule at Appendix B stands out as a peculiar example. The figures suggest that it is a two bedroom property yet only 46 square metres in size. This is almost inconceivably small in size for an open market residential two bed property and, on face value, it would appear that the property is more likely to be either a studio apartment or a one bed flat.

Torbay CIL Revised Draft Charging Schedule

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development. These costs are an inherent and unavoidable part of the development process and must therefore be reflected in the development appraisals to ensure accurate results.

Allowance for External Works

Paragraph 4.5.6 of the Viability Study explains that an allowance of 10% on top of the BCIS build costs has been made to account for external works associated with the delivery of residential development. The figures contained within BCIS data relate solely to the construction of the dwellings themselves and hence it is necessary to include an allowance to cover costs associated with access roads, external garages, landscaping etc in appraising all residential typologies.

Whilst we agree with the principle, where we disagree with the Viability Study however is in the scale of the assumptions used.

The vast majority of viability appraisals include an allowance of 15% on build costs for external works. In our experience this is a largely standard assumption across the industry and has been accepted in the testing of viability in many locations. Indeed, the 15% figure has been used in a large number of plan wide viability assessments including for example:

- The Three Dragons and Roger Tym & Partners studies for Taunton Deane and Exeter Councils; and
- The Wiltshire Council CIL Viability Study by BNP Paribas.

There are also Viability Studies which include a higher figure for external works. One such example is the Study by the District Valuer Services for the Gloucester, Cheltenham and Tewkesbury authorities. Here the study adopted a 20% uplift on build costs to cover external works and preliminaries. The DVS provided in a note to the Core Strategy² an explanation of the works that are covered by this allowance. It is helpful to repeat this here to demonstrate the wide range of costs which need to be taken into account by a developer:

"As previously explained the allowance for external works includes the main infrastructure serving the site including roads, footpaths, street lighting, utility services infrastructure, paths and pavings to the dwellings, utility connection charges to the dwellings, foul and surface water drainage to both dwellings and roads, walls, fences to the dwellings and soft landscaping to the dwellings and any open spaces.

Preliminaries are added onto the allowances for both the build costs and external works. Preliminaries are all the site costs that are attributable to constructing the development, which includes site management, site accommodation, temporary services, security, safety and environmental protection, mechanical plant, temporary works, removing rubbish, insurances, bonds and guarantees."

There is no explanation in the Viability Study as to how the 10% figure has been derived, nor does it appear to have been based upon any evidence. In such circumstances we see no reason to deviate from the standard

² Joint Core Strategy Viability Assessment Studies - Clarification of Methodology Applied to Stage 1, 2 and 3 Reports (September 2015), District Valuer Services

Torbay CIL Revised Draft Charging Schedule

Representations by Savills



assumptions used by the industry and in numerous CIL viability studies and we recommend the alternative 15% assumption is incorporated into the reworked appraisals.

Abnormal Development Costs

The BCIS data provides a good indication of the cost that a developer would need to pay to construct new housing on a clean site with services available. It does not however take into consideration any non-standard development costs such as:

- Demolition;
- Abnormal Foundation Design;
- Flood Alleviation Works;
- Land Stabilisation; and
- Decontamination.

We acknowledge that not all sites will be burdened by such additional costs, however it is important in establishing a clear and robust understanding of viability across the authority area to build in an assumption relating to such costs for those typologies where these costs are likely.

The inclusion of an allowance for non-standard development costs is endorsed by the RICS Professional Guidance entitled 'Financial Viability in Planning' (2012). This states at paragraph E.3.2.4.1 that:

"A typical viability assessment includes provisions for exceptional costs. This might include an unusual sewerage connection facility, high levels of site contamination and the need for extensive remedial works, flooding, site boundary and stabilisation works, particularly if there are substructure obstacles to overcome.

These exceptional site costs, or 'abnormals', inflate costs as well as adding to the timeframe for the delivery of a scheme. Historic costs may also be reasonable and appropriate."

Historically previously developed land has been a very important component of the housing land supply across Torbay. The last Annual Monitoring Report to be published by the Council in 2013 demonstrates that on average circa 85% of new dwellings were completed on previously developed land over the ten years from 2003/04 – 2012/13.

Going forward it is clear from the adopted Local Plan that there is a clear policy objective to prioritise the reuse of previously developed land for residential development. Policy H1 clearly sets out this objective stating that:

"The objective to maximise the re-use of urban brownfield land and promote urban regeneration, whilst creating prosperous and liveable urban areas".

This and other extracts from the adopted Local Plan demonstrate that previously developed land has both historically played an extremely important role in housing land supply within Torbay and it is both envisaged and encouraged that it will do so in the future. The redevelopment of previously developed land is likely to be burdened

Torbay CIL Revised Draft Charging Schedule

Representations by Savills



by additional non-standard development costs, particularly in relation to demolition and decontamination and given the local context and policy objectives these costs should be reflected in the viability appraisals.

In order to provide sufficient and robust evidence of viability across the Authority area, we consider that circa 75% of the development typologies should fully reflect the economics of development on previously developed land, incorporating an allowance for non-standard development costs. This would reflect the objective in the Local Plan and provide an understanding of development viability across the broad range of sites in order to inform the residential CIL charging rate.

The allowance made in the Viability Study is set out in paragraph 4.6.3. This states that £200,000 per net hectare has been included to cover demolition and remediation on previously developed sites. No explanation has been provided as to how this figure has been derived nor whether it reflects the particular circumstances pertaining to the redevelopment of previously developed land in Torbay.

Whilst we welcome the inclusion of an allowance to cover demolition and remediation costs, the figure of £200,000 per net hectare appears to be arbitrary and, once the figure is broken down for the smaller sites, the total allowance is highly unlikely to cover the costs involved. For example, on a previously developed site of four dwellings, based upon a density of 35 dwellings per hectare, the allowance would come to £22,857. This is wholly inadequate to cover the potential demolition and remediation costs of such a site.

We strongly recommend that the Charging Authority engage with the local development industry and commercial agents in order to establish appropriate assumptions for each of the site typologies.

The potential abnormal development costs associated with previously developed sites are generally more visible and obvious, however, there are also likely to be costs involved in the delivery of Greenfield developments which are not covered by the BCIS build costs or the allowance for external works. These costs can cover a wide range of works such as flood defences, unusual sewerage connections, retaining walls etc.

We note that the Viability Study contains no allowance for abnormal costs such as these within the appraisals for the greenfield sites. For the reasons explained in the RICS Guidance, we consider this to be a major flaw in the methodology. Unless specific evidence is produced which can be incorporated into the appraisals, we would recommend an increase in the contingency allowance from 4% to 10% in order to reflect these costs.

Section 278 and Residual Section 106 costs

A major concern we have with the Viability Study which has potentially significant consequences for the assessment process is the assumption relating to the continued costs associated with section 106 and 278 agreement's post implementation of CIL.

Paragraph 4.6.4-4.6.5 of the Viability Study explain the approach adopted in the assessment to the continued operation of Section 106 agreements. The inference from these paragraphs is that all Section 106 costs associated with small developments (under 10 dwellings) will be covered by funding from established programmes and the CIL receipts. With regards the larger sites, paragraph 5.6.5 suggests that the requirements will vary, however it states that the Council is not planning on applying CIL to 'large sites' and therefore sufficient headroom needs to be available for Section 106 funding of infrastructure.

Torbay CIL Revised Draft Charging Schedule

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This section of the Viability Study raises a number of concerns regarding both large and small sites as the approach adopted in the Viability Study in both instances does not appear to be consistent with the approach in the Revised Draft Charging Schedule or the accompanying Draft Regulation 123 List.

*object to residual
S106/S278 costs*

Small sites

For sites under 10 dwellings, the Draft Regulation 123 List provided on page 19 of the Revised Draft Charging Schedule (March 2016) gives no comfort whatsoever that the infrastructure funding which would ordinarily be delivered through Section 106 agreements will, in the future, be covered by the CIL receipts.

In accordance with the Regulations, CIL receipts can only be used to fund those infrastructure types or projects specified on the Regulation 123 List. The draft List published alongside the Charging Schedule however contains only two items - South Devon highways and the mitigation of impacts on the South Hams Special Area of Conservation. There is no provision on the list for any infrastructure provision relating to the enhancement of education facilities, open-space, health facilities etc. Aside from any site specific infrastructure required to address the localised impacts of development, these items are typically the most prevalent in residential development Section 106 agreements and represents the greatest financial burden on developers. Unless these infrastructure types are covered by the Regulation 123 List, it can only be assumed that there is potential for the local planning authority is to seek financial contributions through Section 106 towards this infrastructure.

*Other
infrastructure
items to be
covered through
S106*

To address this inconsistency between the Viability Study and the draft Regulation 123 List, either the List should be expanded to incorporate all infrastructure types which could otherwise represent a financial burden to development or a full assumption needs to be incorporated into the development costs within the appraisal to reflect the potential need to enter into a section 106 agreement for all infrastructure typically related to residential developments. Even if the full range of infrastructure types is covered on the Regulation 123 List, we would still expect an assumption in the Viability Study relating to Section 106 in order to cover site specific mitigation measures which will be required to ensure the development proposed is acceptable in planning terms.

Large sites

For the reasons we have explained previously in these representations, we support in principle the zero rating of large residential sites and the use of Section 106 as oppose to CIL in order to fund infrastructure delivery. Paragraph 4.6.5 of the Viability Study implies that on all larger sites (which we assumed to be those not covered by the reference to 'small sites' in paragraph 4.6.4, i.e. over 10 dwellings) the Charging Authority are planning on applying no CIL. This position is however inconsistent with the content of the Revised Draft Charging Schedule which was published following the date of the CIL Viability Study.

It would appear therefore that the authority had suggested to the viability consultant that no CIL would be applied to such sites, yet the authority then disregarded this when it produced the Revised Draft Charging Schedule. Indeed, far from proposing to zero rate larger sites, the Revised Draft Charging Schedule seeks to apply a rate of up to £140 per square metre to all chargeable residential floorspace.

*object that
CIL charges for some
small sites - not justified
by evidence*

Torbay CIL Revised Draft Charging Schedule

Representations by Savills



This inconsistency between the Viability Study, Draft Charging Schedule and content of the Regulation 123 List represents a fundamental flaw and one which must be rectified in order to ensure a credible and robust approach to CIL rates within the Charging Schedule.

We have previously stated within these representations (yet it is worth repeating), it is imperative that there is a clear and transparent relationship between Section 106 and CIL post adoption of the Charging Schedule. Failure to do so would undermine the viability evidence and the rates proposed within the Charging Schedule.

Development Density and Site Coverage

It is extremely important that the development density used in the viability testing is reasonable, accurate and reflective of the specific circumstances within Torbay. Indeed, development density, alongside site coverage, defines the amount of land required for development and will impact therefore upon the price that a developer would need to pay for the land to deliver a specified number of dwellings.

In relation to these assumptions Section 4.3 of the Viability Study explains the broad approach adopted in the viability testing. After explaining the importance of these factors it states that:

“The gross area of the site allows for the provision of non-residential land uses normally associated with larger sites which generally support no direct revenue to the development. Also residential land values are normally traded and reported on a per net hectare basis, since it is only this area which delivers a saleable return and is therefore valued. Consequently, the viability assessments identify the likely net developable area to identify its value and to compare this with net developable land values benchmark.”

For context in relation to site allocations and policies for open space, SuDS, etc, the typologies include the gross site area. So the next step is to convert the gross areas into net developable areas since this is the area which provides the land value. For the residential typologies, the net developable areas have been derived using a formula [Footnote: uses a non-linear formula to estimate the net area from the gross area, so that the greater the number of units that there are the greater the amount of gross to net land area] based on discussions with the Council and the wider development industry, and examples from elsewhere.”

Whilst it is only the net developable area which generates sales receipts, contractual agreements between landowners and developers are not exclusively limited to net developable area. In many agreements the option price relates to the gross site area. Regardless of whether agreements are based on net or gross areas, it is important to understand the overall gross site area required to deliver a development in order to ensure the use of a robust benchmark land value assumption. If a developer needed to purchase a large area of land to deliver a development, it is logical that the vendor would want to receive suitable recompense for the transfer of their ownership.

Despite this there is no explanation in the Viability Study of the site coverage or density assumptions, only an oblique reference to a ‘formula’. We would strongly urge the authority to publish details of this assumptions used in assessing the viability of the rates in the Revised Draft Charging Schedule. Only with this information available will it be possible for us and other parties to test this extremely important assumptions in the Viability Study and ensure

Torbay CIL Revised Draft Charging Schedule

Representations by Savills



that it is reasonable and reflective of the particular circumstances within Torbay. The importance of this assumption is acknowledged in the guidance in Appendix B of 'Viability Testing Local Plans' (2012) which states on the issue of site coverage that:

"in all but the smallest redevelopment schemes, the net developable area is significantly smaller than the gross area that is required to support the development, given the need to provide open space, play areas, community facility sites, public realm, land for sustainable urban drainage schemes etc.

The net area can account for less than 50%, and sometimes as little as 30% on larger sites, of the site to be acquired (ie. the size of the site with planning permission). Failure to take account of this difference can result in flawed assumptions and inaccurate viability studies" [our emphasis]

There has been no Government guidance on site coverage since the publication 'Tapping the Potential', a daughter document to PPG3. This contained the following table to assist those responsible for producing housing land availability assessments:

Table 1: Tapping the Potential: An illustration of gross to net ratios for different site sizes

Site Size	Site Coverage
Up to 0.4 hectares	100% gross to net ratio
0.4 – 2 hectares	75% - 90% gross to net ratio
Over 2 hectares	50% - 75% gross to net ratio

In the first instance we would recommend that the viability assessment for Torbay reflects local evidence of density and site coverage. This should be based on research of relevant local developments which can be applied to each of the typologies tested. In the absence of locally derived evidence supporting alternative assumptions, the approach in Tapping the Potential should be used as a starting point.

Benchmark Land Values

Three alternative Benchmark Land Values have been used in the Viability Study against which the hypothetical residual valuation for each of the residential development scenarios have been compared. These range from £880,000 to £200,000 per net developable hectare.

These appear to be arbitrary assumptions and there is no explanation provided in the Viability Study as to how these land values have been derived. We are particularly concerned with the benchmark values for large and strategic sites. These figures are, in our experience, significantly below current market levels.

In the absence of any justification for the threshold land values, we have benchmarked the figures used against those produced by Turner Morum on behalf of DCLG in the research paper entitled 'Cumulative impacts of regulations on house builders and landowners'. This research advocates a Threshold Land Value of "at least" £200,000 per gross acre (£494,000 per gross hectare). To assume lower than this, especially in the absence of any evidence, is unrealistic. In order to compare this with the assumptions used in the Viability Study it is

Torbay CIL Revised Draft Charging Schedule

Representations by Savills



necessary to adjust the figures in Table 4.8 of the Viability Study to base these on the same terms as the Turner Morum figures. The £550,000 per net developable hectare benchmark for large site is the equivalent of £330,000 or £440,000 per gross hectare based on site coverage ratios of 60% and 80% respectively.

For the strategic sites the land value is far lower than still, however we have not considered this further as the Charging Schedule proposes £0 per sq.m. CIL which we support.

We acknowledge the comments of the Examiner following the London CIL Examination regarding the impact of CIL on market value and do not propose that the Threshold Land Value is based solely on current market values. However, the difference in land values between the Viability Study and published evidence on land values is significant.

In addition, many large strategic sites are brought forward through the planning process by land promoters or the strategic land divisions of the major house builders. The promotion agreements which they sign with landowners typically allow for 80%-90% of the land value to be retained by the land owner should planning permission be granted. The remainder is the value taken by the promoter and reflects the cost of the capital expenditure at risk in promoting the site through the planning process. Typically, the costs of planning promotion and the subsequent planning application will be deducted from the land value.

In establishing a Threshold Land Value for strategic greenfield land, it is necessary to take this into account in the viability testing process. This approach is advocated in the Harman Guidance (see quote below under the sub-heading 'Developer Profit') and an unavoidable cost of bringing forward larger strategic sites through the planning process. It should therefore be reflected in the appraisals for the relevant typologies.

Relationship of Threshold Land Values to Site Size

The threshold land values approach used in the Viability Study is applicable to larger developments but does not translate well to smaller site appraisals. For larger sites, land values are typically lower than the values achieved for smaller sites because of the interrelationship between land value, planning risk, profit and servicing costs. Indeed, such sites, particularly the larger strategic urban extensions, require significant physical and social infrastructure. These costs are again deducted from the land value and hence the land value is lower than the other benchmarks. This 'non-linear' relationship is recognised in footnote 38 of the Viability Study.

For the above reason, we do not consider it appropriate to apply the land value based benchmark (of £880,000 per hectare) to the smaller site typologies. Site typology 2 for example comprises four dwellings and, based on 35 dwelling per hectare³, only therefore requires 0.11ha of land. Based on the land value of £880,000 per hectare this equates to £96,800 (0.11 x £880,000), or a plot value of £24,200. It should not be forgotten that since there is no planning risk built into the appraisal nor any abnormal costs, the value of £24,200 per plot would be for a cleared, unencumbered site with planning permission. Land for four dwellings would simply not be available at this price anywhere in Torbay.

³ This is an estimate as no details of the density and site coverage assumptions used for each of the site typologies has been provided.

Torbay CIL Revised Draft Charging Schedule

Representations by Savills



In order to demonstrate this point, we have analysed all of the small building plots (under five dwellings) with planning permission for sale as advertised on the Rightmove website in Torbay (as at 21 April 2016). The results are provided in table 3 below.

Table 3: Asking Prices for Small Site in Torbay

Location	Number of Units	Asking Price	Average Plot Price
Maidencombe	1	£375,000	£375,000
Rock House Lane, Torquay	1	£500,000	£500,000
Rock House Lane	1	£375,000	£375,000
Teignmouth Road, Torquay	1	£175,000	£175,000
Badger Close, Paignton	1	£135,000	£135,000
Roselands Drive, Paignton	1	£90,000	£90,000
Teignmouth Road, Torquay	1	£50,000	£50,000
Average			£242,857

There were seven sites on the market, all single development plots. These have a wide range of asking prices, with per plot values ranging from £50,000 to £500,000. The higher value plots are in more expensive locations and typically have sea views. At the other end of the spectrum, the lowest priced plot is for a constrained site capable of accommodating a two bedroom property of only 611 sq ft. The average asking price per plot is £242,857.

The evidence demonstrates that there is no land available that is even close to the assumed land value in the Viability Study of £24,200 per plot. Indeed, the closest comparable suggests that the land value should be circa £90,000 per plot. Whilst we acknowledge that these figures are based on asking rather than sales prices the difference is nevertheless substantial.

It is essential therefore that the outputs from the residual valuations in the Viability Evidence are compared only with relevant and carefully derived Threshold Land Values. Given how the methodology derives the maximum chargeable rate of CIL, failure to apply an appropriate Threshold Land Value will significantly skew the outputs and impact on the proposed rates of CIL.

Instead of using a Threshold Land Value based on site area, for the smaller site typologies we strongly recommend the use of a per plot value based upon comparable evidence of values within Torbay. This will more accurately reflect the viability of delivering such sites and overcome the anomaly caused by the scaling down of generic land value assumptions.

Dwelling Mix

The selection of hypothetical development typologies used in assessing viability within the study range from 1-200 dwellings. It is reasonable to assume that a single dwelling site is likely to be a detached house and that because CIL is charged on a per square metre basis, the costs are proportionately related to the size of dwelling involved.

Torbay CIL Revised Draft Charging Schedule

Representations by Savills



For the larger site typologies however it is necessary to make assumptions regarding the mix of dwelling types and sizes in order to inform both the development costs and associated revenues. As with many assumptions within the Viability Study, no details have been provided of the mix that has been used for each of the typologies nor any explanation given which justifies the assumptions adopted.

In the absence of a development mix, it is not possible for us or other interested parties to review or critique this important component of the viability appraisals. We strongly urge the Charging Authority to publish the details of the mixes used for each of the sites typologies alongside the other missing assumptions in advance of the submission of the Charging Schedule. This will ensure all parties have an opportunity to comment and, if necessary, changes made to the viability evidence and proposed CIL rates in advance of the examination.

Professional Fees

The Viability Study as assumed a blanket 8% figure for professional fees across all typologies. As with many of the assumptions, no explanation is provided to justify the assumption.

The issue of professional fees is addressed in Appendix B of the Harman Guidance. This contains a very clear explanation of the anticipated range of professional fees for different site typologies. It also explains the importance of reflecting in the development appraisal (whether in the professional fees, profit margin or threshold land values) the professional costs associated with the promotion of sites through the planning process. For convenience, the relevant section of the guidance have been copied below:

“Many viability studies incorporate an assessment of fees based solely upon a percentage of house-building costs. While this may be appropriate in relation to smaller scale sites, such an approach may underestimate the costs associated with the promotion and implementation of larger, more complex schemes.

Such costs may include:

- *Outline application costs*
- *Local Plan promotion*
- *CIL Examination in Public representation*
- *Environmental statements*
- *Design and access statements*
- *Masterplan and design codes*
- *Public consultation costs*
- *The discharge of planning conditions and approval of reserved matters*
- *Planning application fees*
- *Project managements costs*
- *Building regulation fees*
- *Statutory undertakers' fees, including bonding costs.*

Figures for fees relating to design, planning and other professional fees can range from 8 -10% for straightforward sites to 20% for the most complex, multi-phase sites. In circumstances where the

Conclusions and Recommendations

These representations have been produced to assist the Council in setting a CIL charge for residential development which strikes the appropriate balance required by the CIL Regulations and will not put the overall delivery of development at serious risk.

For the reasons set out in these representations we have a number of major concerns regarding the robustness and credibility of the viability evidence underpinning the residential CIL rates within the Revised Draft Charging Schedule.

The absence of many assumptions renders it impossible to fully assess the robustness of the viability evidence produced to inform the residential rates contained in the Revised Draft Charging Schedule.

Where assumptions are provided we have serious concerns over their accuracy and suitability. Indeed, the evidence provided in these representations clearly demonstrates the shortcomings with a number of components of the Viability Study which we consider will impact upon the proposed theoretical maximum chargeable level of CIL.

It is essential that these shortcomings are addressed prior to the submission of the Draft Charging Schedule for examination and we strongly urge the Charging Authority to review the viability evidence and CIL Charging Schedule in light of the concerns raised. In so doing we advocate a thorough review of a number of assumptions adopted. Once the revised viability work has been reappraised we believe there are likely to be strong grounds to make changes to the proposed rates that are set out within the Draft Charging Schedule. It would be premature at this stage to propose alternative rates, however, we would like to work with the Charging Authority to assist in developing the evidence base.

Next Steps

We recognise that the findings of our research and the evidence presented in our representations have significant consequences for the rate of CIL proposed in the Revised Draft Charging Schedule. In order to properly and accurately reflect local circumstances and viability within Torbay these findings need to be incorporated into the viability modelling of the proposed wider range of development typologies.

We would welcome the opportunity to meet with the Charging Authority prior to the submission of the Draft Charging Schedule in order to review the evidence and how this should be interpreted. This would provide an opportunity to review our concerns regarding the assumptions used in the Viability Study and ensure that the shortcomings are addressed prior to the Examination.

In addition to addressing the proposed residential CIL rates it is essential that the Council ensure that there is a consistent and transparent relationship between CIL and Section 106 agreements once CIL is in place in Torbay. At present there is a great deal of uncertainty, which undermines the value of adopting a CIL Charging Schedule.

Torbay CIL Revised Draft Charging Schedule

Representations by Savills



Local Plan is reliant upon large scale sites in order to accommodate its assessed housing requirement, consideration should also be given to the additional planning promotion and land assembly costs necessarily incurred in the manner described in Step 2 (Threshold and Benchmark Land Value)."

Unless there is clear and convincing locally derived evidence to support alternative professional fee assumptions we strongly urge the authority to revisit this component of the Viability Study and to adapt the development appraisals for each of the site typologies to reflect the range of professional fees advocated in the Harman Guidance.

Pickhaver, David

From: Nicole Stacey [n.stacey@pclplanning.co.uk]
Sent: 29 April 2016 12:01
To: Future Planning
Cc: Sarah Smith; David Seaton
Subject: Torbay Community Infrastructure Levy (CIL) Revised Draft Charging Schedule
Attachments: 04-29 Torbay CIL Revised Draft CIL Reps.pdf

Importance: High

Dear Sir/Madam,

Torbay Community Infrastructure Levy (CIL) Revised Draft Charging Schedule

Please find attached representations in relation to the above consultation on behalf of our client Waddeton Park Ltd.

I would be grateful if you could confirm receipt of this letter of representation.

Kind regards,

Nicole

***Nicole Stacey BSc (Hons) MSc MRTPI
Planning Consultant***

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Our Ref NS/PCL
Date 29th April 2016



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Dear Sir/ Madam,

TORBAY COMMUNITY INFRASTRUCTURE LEVY (CIL) - REVISED DRAFT CHARGING SCHEDULE

We write on behalf of our client Waddeton Park Ltd (WPL) in relation to the above consultation. We comment as follows:

PBA Viability Study (January 2016)

With particular regard to residential viability, the Viability Study is opaque and does not provide robust evidence to justify the CIL rates proposed by the Council.

No data has been published to support the various summary information tables embedded in the report. Only one example residential appraisal has been included in the Study at Appendix A, even though it is plain that a number have been undertaken. This makes it extremely difficult to understand what inputs have been used by PBA and limits the ability to comment on their assumptions. Such 'opaqueness' obscures effective examination. We note that PBA have used a different approach in other districts (e.g. Mid Devon) where fuller disclosure has enabled more effective debate at examination.

For example, table 4.3 sets out sales values by different property types (detached, semi-detached etc.). It is unclear how these relate to the typologies (no. of bedrooms) set out in Table 4.2 and how these are then used to arrive at the sales values for the different locations (Brixham/Torquay/Paignton and within/ outside built up area) identified in Table 4.4 and how these values are then used in the appraisals. It appears likely to us that the averaging of sales values could have significantly distorted the likely achievable sales values for new development.

Differential Rates

The Planning Practice Guidance (ref. 25-021-20140612) is clear that differential CIL rates should not be used as a means to deliver policy objectives. Indeed, this is recognised in paragraph 2.6.14 of the Viability Study which states that:

"variations must reflect differences in viability; they cannot be based on policy boundaries. Nor should differential rates be set by reference to the costs of infrastructure" (our emphasis).

However, the differential CIL rates proposed by the Council are seeking to reinforce the Council's policy objectives, rather than being based on viability information.

Table 4.4 of the Viability Study shows no variation in sales values between different geographical areas. The value per sqm is consistent across all locations (Brixham and Paignton/Torquay) both inside and outside the built up area. Table 5.1 of the Study considers a number of site typologies, both outside and inside the development boundaries of the three towns. The table suggests that there is sufficient headroom to charge CIL for schemes both inside and outside development boundaries of the urban areas in Torbay.

Thus, no justification has been provided for the Council's proposed higher rate outside the built up areas. Paragraph 5.3.6 suggests that a CIL rate of £110 per sqm would provide a sufficient financial cushion within the headroom. The suggested rate of £140 per sqm for 15+ dwellings outside the built up area (zone 3), against the Council's own viability information, would not provide sufficient financial headroom and would therefore put such developments at risk.

There is no mention in the Viability Study of the 20% Lower Super Output Areas (LSOAs) which the Council propose to use as the basis for setting a lower CIL rate. The only reference is made at section 4 of the Charging Schedule.

The PBA report does not therefore provide any evidence to support the Council's proposed variation in rates for different geographical areas (charging zones 1-4). If a non-homogenous approach is to be adopted, there must be clear evidence that there is substantive variation, and there is no such evidence.

Paragraphs 5.3.8 and 5.3.9 of the Viability Study state that the Council has indicated that it will seek s106 contributions from sites of 15 or more dwellings. However, this does not accord with what is set out in the Charging Schedule which states that s106 contributions will only be sought on developments within 'Future Growth Areas', with CIL proposed to be charged on all other developments of 15+ net new dwellings.

developable areas have been derived using a formula based on discussions with the Council and the wider development industry, and examples from elsewhere". There is no evidence that these values represent a 'competitive return'. We do not agree that they do and the assumed acceptable values are too low to facilitate a reliable supply of land. As suggested previously, this lack of transparency in the information presented limits the ability of representatives to comment appropriately on the assumptions which have been made.

S106 and other Local Plan policy costs

Section 1 of the Charging Schedule states that "*whilst sites within Future Growth Areas are likely to be viable with CIL, it is considered that s106/s278 agreements are a more effective mechanism for providing infrastructure required by development in these areas*". No further justification has been provided by the Council for taking this approach.

Figure 4 of the Charging Schedule which relates to Future Growth Areas (Zone 4), states that s106 contributions will cover '*direct site acceptability matters*' and '*sustainable development contributions necessary to make the development acceptable in planning terms*'. It is not clear how these items differ. Figure 4 should provide greater clarity on the matters likely to be payable by way of s106 obligations at the Future Growth Areas and how these meet the tests set out in CIL regulations 122 and 123.

Reference is made at paragraph 4.6.4 of the Study to the 'County Council's school's programme'. However, Torbay Council is a unitary authority and is responsible for education provision in the area not Devon County, therefore this is incorrect.

Charging Zones Maps

The proposed Charging Zones are not clearly defined on the plans provided within the Charging Schedule (Appendix 1) and are not considered to accord with the requirements of CIL Regulations Part 3, Regulation 12(2c). It has been established in planning law (Great Portland Estates vs. Westminster City Council, 1984) that a plan which sets proposals of the use and development of the land needs to be clear. This same principle is applicable to the CIL charging plans. The quality of the current plan provided in the Charging Schedule circumvents the opportunity for representatives to be able to make appropriate comments on these areas.

Similarly, paragraph 5.3.10 of the Viability Study states that the Council will only be seeking CIL contributions from sites of 4-14 dwellings. However, the Charging Schedule proposes a rate of £30 per sq m for 1-3 dwellings in Zone 2 and £70 per sq m in Zone 3. No explanation has been provided as to why the Council has not accepted the recommendation of the Viability Study (paragraph 5.3.7) that a zero CIL charge should be applied to sites of 1-3 dwellings. We are therefore concerned that the proposed rates are not reasonable and the Council has failed to clearly explain its approach in accordance with planning practice guidance (ref. 25-019-20140612).

Part 3, Regulation 13 of the CIL Regulations (2010, as amended) allows charging authorities to set differential rates:

- (a) for different zones in which development would be situated and
- (b) by reference to different intended uses of development.

There is no mention in the Regulations of differentiation by scale for the same use of development (e.g. residential). Whilst the planning practice guidance (paragraph ref.25-021-20140612) suggests that a differential rate may be set in relation to scale, it is considered that goes beyond the scope of CIL Regulations.

In the recent Hopkins judgment ([2016] EWCA Civ 168, paragraph 32) it was made clear that policies set out in the Framework should be interpreted in a literal manner. The words of statute must also be given their natural or ordinary meaning. The Oxford Dictionary of English defines 'use' as 'the action of using something or the state of being used for a purpose', whereas 'scale' is 'a graduated range of values forming a standard system for measuring or grading something'. The words clearly have distinct meanings. A different *scale* of development could not therefore reasonably be interpreted as being a 'different intended *use*' of development in accordance with (b) of the Regulations.

In any case, as set out above, the CIL rates proposed by the Council are not justified by the Viability Study.

Benchmark/ threshold land values

We support the recognition at paragraph 4.6.16 of the Viability Study that the benchmark value should reflect a 'competitive return for the landowner'. Table 4.8 sets out benchmark/ threshold land values at 2015 per net developable hectare. No information has been provided in the report regarding the net to gross hectare ratio assumptions which have been used to calculate the values set out in this table. Paragraph 4.3.3 of the Study merely states that "*the net*

Exceptional Circumstances Relief

Section 17 of the Council's Charging Schedule states that the Council will consider granting exceptional relief for specific types of development (retail elements of large mixed use schemes and where development would assist in the delivery of town centre masterplans or early delivery of (Class B) employment). However, exceptional circumstances relief is a general provision in the CIL Regulations (Part 3, Regulations 55 - 58) applicable to all chargeable development. If exceptional circumstances relief is available in an area, a claim should be able to be made in respect of any chargeable development in that area, in accordance with CIL Regulation 57.

If the use of 'exceptional circumstances' is not to undermine the CIL charging regime, it is important that the CIL rates are appropriately set so as not to inhibit development coming forward. The proposed exceptional circumstances relief by the Council surely justifies the question that the CIL rates proposed are too high.

Conclusions

In summary, we have concerns that the proposed CIL has not been appropriately evidenced and the CIL rates proposed do not reflect the viability study upon which the Council seek to rely. On the basis of the information provided, the CIL rates proposed will have a detrimental impact upon the overall delivery of development in Torbay. The proposed CIL charging regime should be substantially revised to take account of the comments in this letter and it is critical that Torbay Council enters into proper consultation with the development industry in order to address the issues raised.

We trust that the Council will full consider the comments set out in this letter.

Kind regards,

Nicole Stacey BSc (Hons) MSc MRTPI
For PCL Planning Ltd
e: n.stacey@pclplanning.co.uk

RDCS16

Pickhaver, David

From: Ziyad Thomas [Ziyad.Thomas@theplanningbureau.ltd.uk]
Sent: 28 April 2016 17:12
To: Future Planning
Subject: Representation to the Torbay Council - Draft Charging Schedule
Attachments: Torbay CIL DCS 28.04.16.pdf

As the market leader in the provision of sheltered housing for sale to the elderly, McCarthy and Stone Retirement Lifestyles Ltd considers that with its extensive experience in providing development of this nature, it is well placed to provide informed comments on the aforementioned document insofar as it affects or relates to housing for the elderly.

For your convenience, please find attached our comments with regards to the recent round of consultation on the Torbay Council Draft Charging Schedule .

Thank you for the opportunity for comment.

Yours faithfully

Ziyad

Ziyad Thomas
Senior Planning Associate
The Planning Bureau Ltd

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28th April 2016

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

Dear Sir/Madam,

McCARTHY & STONE RETIREMENT LIFESTYLES LTD.

ADDENDUM TO REPRESENTATION TO THE TORBAY COUNCIL COMMUNITY INFRASTRUCTURE LEVY – REVISED
DRAFT CHARGING SCHEDULE

This is a representation on behalf of McCarthy & Stone Retirement Lifestyles Ltd. As the market leaders in the provision of retirement housing for sale to the elderly, McCarthy & Stone Retirement Lifestyles Ltd considers that with its extensive experience and expertise in providing development of this nature it is well placed to provide informed comments on the emerging Torbay Council Community Infrastructure Levy insofar as it affects or relates to housing for the elderly.

The CIL Guidance published in February 2014 by the Department for Communities and Local Government (DCLG) states consistently that Charging Schedules are required to take into consideration the impact of CIL on the delivery of housing with the CIL Guidance stating that *'As set out in the National Planning Policy Framework in England (paragraphs 173 – 177), the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened...'* (Section 2:2 How are Community Infrastructure Levy Rates Set).

The CIL Guidance also stresses the importance of this principle to individual market sectors that play an important role in meeting housing need, housing supply and the delivery of the Development Plan, such as specialist accommodation for the elderly. This is detailed in *'Section 2:2:2:6 Can Differential rates be set?'* which states:

'...Charging schedules with differential rates should not have a disproportionate impact on particular sectors or specialist forms of development. Charging authorities should consider the views of developers at an early stage.'

Where the provision of specialist accommodation for the elderly plays a clear role in meeting housing needs in the emerging or extant Development Plan, as it does in the context of the Torbay LDF, by not properly considering the effect of CIL on this form of development the Council would be putting the objective of the Development Plan at risk and thereby contravening Government Guidance.

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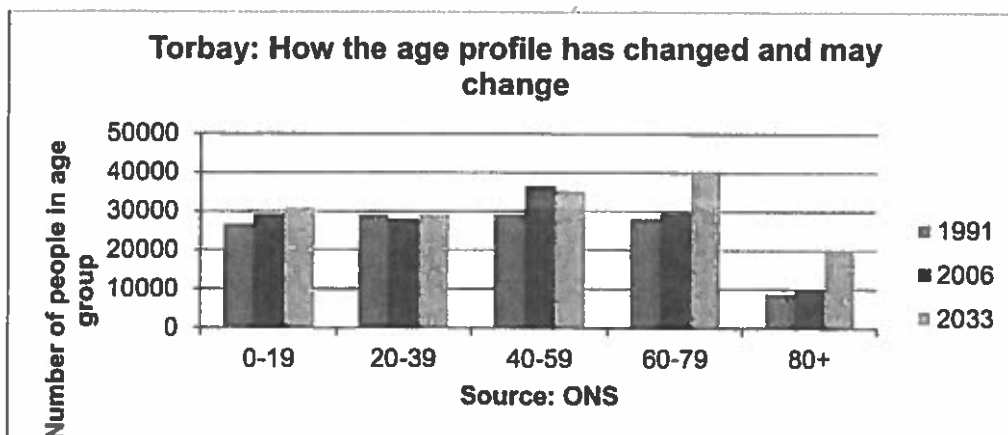
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Growing Elderly Population

The National Planning Policy Framework stipulates that the planning system should be 'supporting strong, vibrant and healthy communities' and highlights the need to 'deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities. Local planning authorities should plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community...such as...older people' [emphasis added].

The recently published National Planning Practice Guidance reaffirms this in the guidance for assessing housing need in the plan making process entitled 'How should the needs for all types of housing be addressed?' (Paragraph: 021 Reference ID: 2a-021-20140306) and a separate subsection is provided for 'Housing for older people'. This stipulates that "*the need to provide housing for older people is critical given the projected increase in the number of households aged 65 and over accounts for over half of the new households (Department for Communities and Local Government Household Projections 2013). Plan makers will need to consider the size, location and quantity of dwellings needed in the future for older people in order to allow them to move. This could free up houses that are under occupied. The age profile of the population can be drawn from the Census data. Projections of population and households by age group should also be used. The future needs of older persons housing broken down by tenure and type (e.g. Sheltered, enhanced sheltered, extra care, registered care) should be assessed and can be obtained from a number of online tool kits provided by the sector. The assessment should set out the level of need for residential institutions (use class C2). But identifying the need for particular types of general housing, such as bungalows, is equally important.*" (My emphasis)

The "What Homes Where Toolkit" developed by the Home Builders Federation uses statistical data and projections from the Office of National Statistics (ONS) and the Department for Communities and Local Government (DCLG) to provide useful data on current and future housing needs. The table below has been replicated from the toolkit and shows the projected change to the demographic profile of the Torbay Council between 2006 and 2033





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In line with the rest of the country, this toolkit demonstrates that the demographic profile of the Authority is projected to age. The proportion of the population aged 60 and over is projected to increase from 29.5% to 38.9% between 2008 and 2026. The largest proportional increases in the older population are expected to be of the 'frail' elderly, those aged 75 and over, who are more likely to require specialist care and accommodation provided by Extra Care accommodation.

In light of the above, we consider that it is of vital importance that the emerging CIL does not prohibit the development of specialist accommodation for the elderly at a time when there is an existing and urgent need for this form of development and that by not properly assessing this form of development the proposed CIL rate would threaten the delivery of the relevant Local Development Plan.

We therefore commend the Council on their decision to provide a Viability Assessment of Sheltered / Retirement housing and Extra Care accommodation in the revised CIL evidence.

The Torbay Whole Plan Viability Update by Peter Brett Associates in January 2016 clearly demonstrates that both Sheltered / Retirement Housing and Extra Care accommodation cannot support policy compliant levels of Affordable Housing and CIL.

Table 5.1 Residential Sites with no Policy Burdens Financial Headroom Summary in the document shows that there is insufficient headroom for these forms of development to meet the proposed CIL liability detailed in the revised Charging Schedule.

Despite this however there is no reference made to Sheltered / Retirement housing or Extra Care accommodation in the Charging Schedule and accordingly it can only be assumed that this form of development would be amalgamated in the residential rates. This would effectively render this form of development unviable across the Authority.

We therefore respectfully request that the forthcoming Draft Charging Schedule be amended so that it incorporates a nil rate for Sheltered / Retirement housing and Extra Care accommodation as per the findings of the supporting viability assessment.

Thank you for the opportunity for comment.

Yours faithfully

Ziyad Thomas

Senior Planning Associate

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Email: ziyad.thomas@theplanningbureau.ltd.uk

Pickhaver, David

From: Felicity Tozer [Felicity.Tozer@pegasuspg.co.uk]
Sent: 29 April 2016 16:47
To: Future Planning
Subject: Torbay CIL DCS Consultation
Attachments: BRS.6531 TBC CIL FT 25.04.2016.pdf

Hello,

Please find attached representation in respect to the Council's revised Draft Charging Schedule.

Thanks
Felicity

Felicity Tozer

Principal Planner

Pegasus Group

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FT/BRS.6531

29 April 2016

Spatial Planning
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By Email Only: future.planning@torbay.gov.uk

Dear Sir or Madam,

Torbay Community Infrastructure Levy: Revised Draft Charging Schedule

Pegasus Group submit this representation on behalf of Gallagher Estates Ltd and English Care Village Partnerships Ltd in respect to the consultation on the revised Draft Charging Schedule (DCS).

We support the Council's decision to update the evidence base underpinning the proposed CIL rates, and welcome the opportunity to comment on the revised DCS.

Gallagher Estates Ltd and English Care Village Partnerships Ltd have a particular interest in the Council's approach to specialist older persons' accommodation within the DCS. At this current time, our specific interest relates to land at Sladnor Park, Maidencombe; which is being promoted through the neighbourhood plan process.

Retirement Housing and Extra Care

We support the Council's decision to recognise the distinction between retirement housing and extra care.

However, we feel that it would be appropriate to provide some further clarification in relation to this distinction.

Reading Note 1 (p.12) and Note 4 (p.14) together, it would seem that the distinction is whether or not on site care is provided. We agree with this distinction, particularly as 'sheltered' or 'extra care' apartments could both be self-contained. We would ask the Council to clarify whether the provision of care on site is the determiner, or whether additional controls, for example minimum care packages per occupant dwelling, may be required.

Residential Typologies

It has clearly been demonstrated, see below, that development for extra care with CIL would not be viable. However, as discussed the Council have chosen to implement a CIL rate for retirement housing despite this only been marginally viable; with a buffer considerably less than the rate being proposed. On this basis, it is concerning that the Council have not chosen to consider alternate hypothetical scenarios for retirement housing bar a 45-unit brownfield site.

Assumptions

➤ S106 Planning Obligations

It is not immediately clear from #4.6.4-4.6.6 whether any additional allowances have been added to the viability assessment to address additional s106 contributions. Reading this alongside the example appraisal at Appendix A, we assume aside from the costs for affordable housing, that no such allowance has been made.

This is a significant concern giving the Council's Regulation 123 list is limited (being the South Devon Highway and South Hams Special Area of Conservation). The Council's own evidence within the DCS (p16) identifies that there may be a number of s106 requirements. This is confirmed within the adopted Local Plan at Policy H6 sets out that for specialist older persons accommodation the Council may request planning obligations for local health and social care costs.

Given the Council are seeking to impose a CIL rate on the marginally viable retirement housing, it is vital that the assumptions in respect to likely s106 contributions are reflective of the scenarios likely to occur.

➤ Development Scenarios

We have some concerns in respect to the assumptions used within the assessment; notably for density and unit size. Any variations in these would have significant implications on a scheme's viability; which is particularly important given the Council's intentions to implement a charge for retirement housing despite it only being marginally viable when delivery a Local Plan policy compliant scheme.

In our experience, the assumptions used within the report reflect a singular retirement housing model, which is only relevant in a limited number of circumstances. On the basis of ensuring that a CIL charge does not undermine the delivery of a range of retirement housing options, we would request that the Council undertake sensitivity testing to ensure that the imposition of a CIL charge on retirement housing does not compromise the viability of potential schemes coming forward.

At the outset, concern is raised in respect to the unit size used. From experience, it is felt that a range between 80-100m² would be more appropriate. This is substantially different from the 60m² assumed by the Council. Evidently, this would impact development density, and the quantum of units that could be delivered on any site. Retirement units are generally larger than 'standard' flats; allowing appropriate alterations for mobility aids etc.

It is also an integral part of the retirement housing model that units are larger than 'standard' housing. This ensures service charges can be raised at the level required to support the significant onsite services and facilities. The Council should amend the viability scenarios to increase unit size to one more reflective of the market.

Concern is also raised in respect to the development densities assumed. 100-122 dwellings per hectare is excessive. Evidently, these will decrease when the assumptions in respect to unit size are amended. However, there is a general concern that the assumptions in respect to density reflect developments of flats within large blocks (3

We would like to be kept informed of the progress of the Council's CIL Charging Schedule, and request that we are notified of its progress to Examination. We would request that we are added to the list of those parties who may wish to participate in the future examination of the charging schedule.

Yours sincerely

Jonathan Rainey

Director

e-mail: jonathan.rainey@pegasuspq.co.uk

storeys+). Clearly, this will not be appropriate throughout the district, and as such densities will be substantially lower on such developments coming forward. There are evident financial implications as a result of these density assumptions. The associated build costs between a two and three storey flat block are relatively similar, given both need to undertake site preparation and foundation work. However, the loss of an entire storey of development would have a significant reduction in sale returns.

On the basis, that it is unlikely that developments will come forward at the density envisaged in the hypothetical scenario, and given the cost implications for a scheme which would be unable to achieve such densities, we would request that the Council assess the viability of a retirement housing scenario at a lower density.

Exceptional Circumstances

We support the Council's decision to offer exceptional circumstances relief. 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.

CIL Instalments

We support the Council's proposed CIL Instalment policy.

CIL Rates

We support the decision to charge a nil rate for extra care developments.

However, we have significant concerns that the Council have not applied this to the retirement housing developments as well.

Table 5.1 clearly indicates that the retirement housing scenario tested was not viable at a policy compliant affordable housing level with other local plan policy requirements. The scenario identified that the development was only marginally viable with a surplus of just £9/m². However, according to the DCS, retirement housing developments could be charged £140/m². This is clearly inappropriate.

The need for specialist retirement housing in Torbay is undisputed, with a rapidly ageing population and the desire to ensure housing which enables people to be living independently for as long as possible. The imposition of a significant CIL rate on development which has been shown to be unable to support such a charge would fail to strike the appropriate balance required by the regulations, and would compromise the delivery of this much needed accommodation.

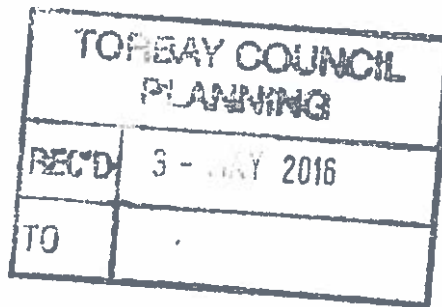
We request that the Council reconsider this charge, or provide appropriate evidence to justify its imposition.

WYG



Ref: V001504/BS/bs
Date: 29 April 2016

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



BY POST AND EMAIL

Dear Sirs

**SAINSBURY'S SUPERMARKETS LTD
TORBAY COUNCIL
COMMUNITY INFRASTRUCTURE LEVY (CIL) REVISED DRAFT CHARGING SCHEDULE (DCS)**

We wish to make the following representations on behalf of our client, Sainsbury's Supermarkets Ltd, in connection with the above. As you will be aware, Sainsbury's is currently represented in the area at The Willows District Centre, Torquay and Yalberton Road, Paignton. Representations were submitted at the previous DCS consultation stage in connection with the proposed retail charge for The Willows District Centre and what type of retail proposals may be considered to be granted 'exceptional relief'.

Figure 5 CIL Revised Draft Charging Schedule: Commercial and Non Residential Development

We note that The Willows District Centre continues to be in the 'everywhere else' charging zone in the revised draft charging schedule and not within the Town Centres, St Marychurch and Preston District Centres charging zone. Hence a CIL charge for Class A1 retail over 300 sq m of £120 per sq m is proposed, as opposed to a nil charge for retail proposals within the Town Centres and remaining District Centres.

The revised CIL viability assessment provides no evidence to justify including The Willows District Centre within the 'everywhere else' charging zone. As such, The Willows District Centre should be treated the same as other District Centres in Torbay, as no viability testing have been undertaken to demonstrate that The Willows can withstand a CIL charge. Therefore, a nil CIL charge should be applied to retail proposals within The Willows District Centre.

We trust you will find these representations are of assistance and we request that we be kept fully informed of any further changes to the CIL. If you have any queries at all then please do not hesitate to contact us.

Yours faithfully

**Beatrice Scott
Senior Planner**

creative minds safe hands

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Pickhaver, David

From: Rainbow-Leaf Lovejoy
Sent: 29 April 2016 11:23
To: Pickhaver, David
Subject: Attempts to comment on Torbay's Revised Draft CIL charging schedule

Dear David,

Thank you very much for your time and interest yesterday in clarifying issues with funding critical infrastructure by s106 and CIL obligations, given various changes in policy directions and regulations.

After our discussion of infrastructure funding transparency and potential inconsistencies or conflicts among guidance and/or policies, the whole day was spent identifying, indicating and evidencing by copying and pasting excerpts from various documents showing what seemed to be to be inconsistencies or even conflicts as to what can be funded how. Some of these excerpts are below (without citing refs).

Given that more searching produces more apparent anomalies, rather than clarity and transparency, which is an express objective of and requirement for CIL, it seems to me that several issues can be sensibly and validly raised, even from a non-expert position.

For me in preparing this representation the key issue is the lack of required clarity and transparency.

2.9.4 The infrastructure needed to support the plan over time will need to be planned and managed. Plans should be backed by a thought-through set of priorities and delivery sequencing that allows a clear narrative to be set out around how the plan will be delivered (including meeting the infrastructure requirements to enable delivery to take place).

G The increased scrutiny and testing of S106 obligations should move the negotiation from behind closed doors to a more open and transparent approach, including community involvement

Charging authorities should be clear and transparent about the use of different approaches to developers funding infrastructure.

2.9.4 The infrastructure needed to support the plan over time will need to be planned and managed. Plans should be backed by a thought-through set of priorities and delivery sequencing that allows a clear narrative to be set out around how the plan will be delivered (including meeting the infrastructure requirements to enable delivery to take place).

My main three focuses in attempting to respond to the CIL charging strategy/schedule consultation are

a) funding provision for critical infrastructure to remediate, manage and mitigate on- and off-site impacts of development(s) on existing "physical, social or green infrastructure" infrastructure conditions and capacities

b) viability assessment of Local Plan policies and objectives regarding sustainable staging and phasing of development and required improvements to existing "physical, social or green infrastructure" infrastructure conditions and capacities

c) unintended consequences potentially amounting to perverse incentives towards achieving policy objectives (including larger sites and future growth area development) in not charging CIL for developments of 15 and above dwellings.

This email gives as promised a synopsis of some issues identified (main representation text is a work-in-progress!).

There is some repetition (!!). Work in progress !

With best wishes,

Leaf

PS If anything here is either obviously accurate and valid or obviously erroneous and invalid, would appreciate a heads-up (only if you have any time to spare, which I appreciate you may not have today).

a) funding provision for critical infrastructure to remediate, manage and mitigate on- and off-site impacts of development(s) on existing "physical, social or green infrastructure" infrastructure conditions and capacities

It is unclear whether s106 can be used for anything other than the sometimes three, sometimes two items listed below:

S106 Contributions to cover infrastructure needed to make development sustainable.

Likely to include:

- Direct site acceptability matters.
- Affordable Housing.

Sustainable development contributions necessary to make the development acceptable in planning terms

Community Infrastructure Levy

1.4 In a time of public spending austerity and limited development viability, funding of infrastructure will be a major challenge. Community Infrastructure Levy (CIL) allows local authorities to levy a tax on new development floor space, to help fund physical, social or green infrastructure that is needed to support a Core Strategy. CIL will partially replace S106 Contributions, the use of which is restricted to direct site impacts and affordable housing.

Clarify
Scope of
S106

5.3.10 Therefore the Council will only be seeking a CIL contribution from sites of 4 -14 dwellings only. **Table 5.2** sets out the maximum average achievable headroom for sites of 4 -14 dwellings across Torbay at £119 per sqm of net floorspace. By allowing a buffer the recommended CIL rate would be £78 per sqm. This is marginally higher than set out in the preliminary draft charging schedule for a similar category of development (£70 per sqm on brownfield sites of 15 or more and greenfield sites of 11 or more). The difference is largely down to smaller sites no longer included within this broad category. It should also be noted that the preliminary draft charging schedule made reference to brownfield and greenfield development, however legal advice which has informed studies elsewhere suggests that this type of distinction, i.e. brownfield/greenfield is not allowable within the current CIL regulations. It should be noted that in this scenario there is no provision for S106, other than affordable housing at the prevailing policy rate.

Viability Study

b) viability assessment of Local Plan policies and objectives regarding sustainable staging and phasing of development and required improvements to existing "physical, social or green infrastructure" infrastructure conditions and capacities

'No assessment could realistically provide this level of detail...rather, [the role of the typologies testing] is to provide high level assurance that the policies within the plan are set in a way that is compatible with the likely economic viability of development needed to deliver the plan.'

4.5.4 The BCIS build costs are exclusive of External works, Contingencies, Fees, VAT and Finance charges, plus other revenue costs.

External works

4.5.5 This input incorporates additional costs associated with the site curtilage of the built area. These include circulation space in flatted areas and garden space with housing units; incidental landscaping costs including trees and hedges, soft and hard landscaping; estate roads and connections to the strategic infrastructure such as sewers and utilities.

4.5.6 The external works variable had been set at a rate of 10% of build cost.

c) unintended consequences potentially amounting to perverse incentives towards achieving policy objectives (including larger sites and future growth area development) in not charging CIL for developments of 15 and above dwellings.

There seems to be a requirement to cut back on s106:

*perverse incentive
to develop greenfield
sites*

2.6.23 The guidance states that *'it is good practice for charging authorities to also publish their draft (regulation 123) infrastructure lists and proposed policy for the scaling back of S106 agreements.'*

This would seem to indicate that existing infrastructural shortcomings and infrastructural funding shortfalls might be funded by CIL:

Community Infrastructure Levy

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allows local authorities to levy a tax on new development floor space, to help fund physical, social or green infrastructure that is needed to support a Core Strategy. CIL will partially replace S106 Contributions, the use of which is restricted to direct site impacts and affordable housing.

The Council needs to establish the shortfall between the cost of necessary infrastructure and the mainstream money available to pay for that infrastructure. The cost of infrastructure is particularly important for strategic development sites that could have specific on-site infrastructure costs, and this will need to be reflected in any viability testing.

18 Once an authority has a charging schedule in place the default position is that all chargeable developments will pay CIL. However there may be certain sites where the on-site requirement for the provision of infrastructure (which for very large sites could include for example education, health and flood prevention works,) may be such that it would be more beneficial to use S106 obligations rather than CIL

19 To clarify the position LPAs will need to:-
• get a Charging Schedule in place

It is not clear whether 'direct site acceptability matters' and 'sustainable development contributions to make the development acceptable in planning terms' will include site-related but both on-site and off-site impacts on fi ageing sewers, given implications both of Barratt Homes v Welsh Water SP 2009, and the Infrastructure delivery plan :

*off site
sewers a*

"1.2 There are major "home grown" infrastructure issues to be addressed in terms of, poor accessibility, vulnerability to climate change, ageing sewers and need for green infrastructure such as allotments and habitat management. The purpose of the infrastructure delivery study is to assess the physical, social and green infrastructure needed to support Torbay's growth in a sustainable manner. It should address infrastructure needs and costs, phasing, funding sources and gaps and responsibilities for delivery. Whilst it deals primarily with infrastructure needed to support new development, it also considers the capacity and short comings of existing infrastructure.

[...]

1.5 CIL charging authorities (such as Torbay Council) must set out proposed CIL charges in a CIL Charging Schedule and must also identify key infrastructure projects on which they wish to spend CIL. The CIL Charging schedule must be tested to ensure that it does not have an adverse effect on development viability, and be the subject of an independent examination. The Infrastructure Delivery Study will assess development viability and will be a key stage in preparing a CIL.

1.6 CIL is not the only (or even main) way in which infrastructure is funded. Other mechanisms include New Homes Bonus, central government funding, Regional Growth Fund and tax increment financing (i.e. borrowing against future revenues). However, it is an important way in which development is expected to contribute to infrastructure.

3.3.4 To support the delivery of the Local Plan the IP needs to robustly identify the infrastructure requirements needed to support growth, and also contribute towards illustrating the delivery of the strategy by setting out known funding sources, delivery partners and phasing issues.

3.3.5 The Council have published an Infrastructure Plan ³² which sets out the requirements for the Bay over the Plan period, including costs and timing of infrastructure. Overall the plan identified a total cost of infrastructure of approximately £262 million. £102 million of funding was estimated to have been secured or identified e.g. through funding bids. The remaining shortfall of £160 million could be reduced through future public funding streams and future developer contributions which will need the introduction of appropriate mechanisms including the CIL. In addition the prioritisation of infrastructure and close working with developers at a project level can ensure that critical infrastructure is delivered in a timely manner.

4.2.3 The Harman Report states that the role of the typologies testing is not required to provide a precise answer as to the viability of every development likely to take place during the plan period:

- understand that for the majority of developments infrastructure requirements will be funded through CIL and other funding streams and can no longer be the subject of S106 obligations.
- identify whether there are any sites which have particular on-site infrastructure requirements which are either going to be difficult to fund through CIL within required timescales (eg not enough funds available or too expensive) or better provided through S106 (eg provided on site by the developer) or where the CIL generated is likely to be less than the value of the S106 obligations.
- include such sites in the R123 List as exceptions and therefore not liable for CIL.

20 This is much more likely to be the case for large-scale developments. There is no prescribed process for compiling or amending the List, so changes can be made at short notice where circumstances dictate. This allows considerable flexibility for authorities to deal with changing or unforeseen circumstances. Careful planning of how the R123 List is compiled will save problems of omission or possible challenge. If a CIL authority does not publish a R123 List all infrastructure is deemed to be covered from CIL funding. ***This would restrict the scope of all S106 obligations to non-infrastructure items.***

○ Sometimes s106 is presented as potentially a better means of funding site-related impact mitigations for various reasons, and sometimes it is restricted in scope..

(From POS) The Statutory Tests for the Use of S106

11 R122(2) of the CIL regulations 2010 introduced into law three tests for planning obligations in respect of development that is capable of being charged CIL. This includes most buildings. Obligations should be:-

- necessary to make the development acceptable in planning terms
- directly related to the development
- fairly and reasonably related in scale and kind to the development.

18 Once an authority has a charging schedule in place the default position is that all chargeable developments will pay CIL. However there may be certain sites where the on-site requirement for the provision of infrastructure (which for very large sites could include for example education, health and flood prevention works,) may be such that it would be more beneficial to use S106 obligations rather than CIL.

○ 9 To clarify the position LPAs will need to:-

- get a Charging Schedule in place
- understand that for the majority of developments infrastructure requirements will be funded through CIL and other funding streams and can no longer be the subject of S106 obligations.
- identify whether there are any sites which have particular on-site infrastructure requirements which are either going to be difficult to fund through CIL within required timescales (eg not enough funds available or too expensive) or better provided through S106 (eg provided on site by the developer) or where the CIL generated is likely to be less than the value of the S106 obligations.
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✘ Nonetheless sewer system improvement is not on the Reg 123 project list.

It is not clear how arguably the most critical physical infrastructure, sewerage and wastewater drainage, having multiple implications for physical, social and green infrastructure and whole-plan viability will be able to be improved, given lack of transparency about funding sources and delivery plans, including s106 and CIL elements, delayed infrastructure delivery and incremental instalment development funds.

2.6.14 CIL Regulations (Regulation 13) allows the charging authority to introduce charge variations by geographical zone in its area, by use of buildings, by scale of development (GIA of buildings or number of units) or a combination of these three factors. (It is worth noting that the phrase 'use of buildings' indicates something distinct from 'land use').²⁴ As part of this, some rates may be set at zero. *But variations must reflect differences in viability; they cannot be based on policy boundaries. Nor should differential rates be set by reference to the costs of infrastructure.*

CIL, S106, S278 and the regulation 123 infrastructure list

2.6.21 The purpose of CIL is to enable the charging authority to carry out a wide range of infrastructure projects. CIL is not expected to pay for all infrastructure requirements but could make a significant contribution. However, development specific planning obligations (commonly known as S106) to make development acceptable will continue to be used.

2.9.4 The infrastructure needed to support the plan over time will need to be planned and managed. Plans should be backed by a thought-through set of priorities and delivery sequencing that allows a clear narrative to be set out around how the plan will be delivered (including meeting the infrastructure requirements to enable delivery to take place).