

Bath and North East Somerset Council

Community Infrastructure Levy

Regulation 15(7) Statement

**Report of Preliminary Draft Charging Schedule
Consultation (2012)**

July 2014

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1.0 Background

- 1.1 This report sets out the methods for consultation that took place in the lead up to and during public consultation of the Bath and North East Somerset Council (B&NES) Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule (between 18th April 2012 and 8th June 2012) and reviews the consultation responses received.
- 1.2 Regulation 15(7) of the CIL Regulations (2010, as amended) requires that the charging authority in this case B&NES must take into account any representations made to the Preliminary Draft Charging Schedule before it publishes a draft of the charging schedule for examination.
- 1.3 This document complies with the Council's Neighbourhood Planning Protocol which indicates that three key documents will be produced alongside each consultation, which will be made publicly available:
- A schedule of comments made during the consultation will be available for public inspection. (A full schedule of comments made during the consultation period was made available online after receipt of comments.)
 - A consultation report, for each key stage in the preparation local policy document which sets out who was consulted, how they were consulted, a summary of the main comments received and how these have been addressed (this current document)
 - A statement of compliance to the Neighbourhood Planning Protocol (see section 4).
- 1.4 Since the Preliminary Draft Charging Schedule was published for consultation in 2012, the Government has made a number of amendments and clarifications to the CIL Regulations, which originally came into force in April 2010. In addition the examination of the B&NES Draft Core Strategy was suspended between September 2012 and June 2013 for further work to be undertaken and consultation on proposed changes. The proposed changes to the Core Strategy have as a consequence delayed the preparation of the Draft CIL Charging Schedule because of the strong interrelationship and need for conformity between the two documents.

2. Consultation Approach

- 2.1 During the preparation of the CIL Preliminary Draft Charging Schedule and for the consultation of the document, a range of approaches, as set out in the Neighbourhood Planning Protocol were used to inform and consult. The information set out in this consultation report demonstrates compliance with the Neighbourhood Planning Protocol methods of community involvement and outlines the consultation activities undertaken, who was consulted, and how they were consulted.

Early Stage Consultation

- 2.2 Early stage consultation on the CIL Preliminary Draft Charging Schedule was undertaken via a series of one to one meetings with key stakeholders, and also workshops.
- 2.3 The Council ran a Viability Stakeholder workshop on 17th October 2011 which was attended by representatives from the development industry including house builders and consultants, the Chamber of Commerce, the National Landlords Association, and Local Authority officers. BNP Paribas (BNP), who were commissioned by the Council to prepare a Viability Study to inform the CIL Preliminary Draft Charging Schedule took a key part. Participants were invited to address questions in a structured discussion. Details of the participants and notes of the workshop can be found at Appendix 4 to **the BNP Viability Study 2012**, which can be viewed on the B&NES website on the Community Infrastructure Levy page.
- 2.4 A CIL rate setting workshop was held on 8th February 2012 for Councillors, Council Directors and Council Officers. The purpose of the workshop was to gain a fuller understanding of the technical work undertaken and findings to inform rate setting, and to reach a consensus on the proposed CIL rates and the areas and development types to which each proposed CIL rate would apply.

Public Consultation

- 2.5 The Council's Cabinet approved the document for public consultation on 11th April 2012 and Public Consultation on the B&NES CIL Preliminary Draft Charging Schedule was held between 18th April 2012 and 8th June 2012.

2.6 The key target group focused on in this consultation were all stakeholders with an interest in developing land. However, the consultation was publicised widely by a number of methods:

Notification mailout - Information about the consultation and events was issued by email /letter on 18th April 2012 to all stakeholders as set out in the Council's Neighbourhood Planning Protocol and those on the Local Development Framework database (for CIL) including statutory consultees and a range of other stakeholders.

Press releases – A press release was issued which was picked up by local newspapers and radio stations

Printed Information - Hard copies of the Preliminary Draft Charging Schedule together with background information including details of the consultation and comments forms were made available in all libraries including mobile libraries in the district and also in the One Stop Shop, Guildhall, Riverside and the Hollies Council offices.

Comment Form - A comment form was made available. Comments were requested in writing to 'Community Infrastructure Levy, Planning Policy, Bath and North East Somerset Council, PO Box 5006 Bath BA1 1JG' or by email to planning_policy@bathnes.gov.uk.

Council Website - The CIL Preliminary Draft Charging Schedule and links to the supporting evidence were made publicly available on the Bath & North East Somerset Council website. www.bathnes.gov.uk/CIL.

Direct Contact Information - An email address and contact telephone number was provided on all the consultation material, and the website, for those who wanted to ask direct questions and seek further information. The Council's first point of contact, Council Connect, was briefed so that they could respond to general enquiries about the consultation thus allowing more detailed queries to be dealt with by members of the Planning Policy team.

3. Summary of Responses to the Consultation

3.1 The Council received a total of 37 responses to the consultation from the following stakeholders.

Individuals	3
Town/Parish Councils	9
Development Industry	12
Housing Providers	2
Public organisations/Groups	11

3.2 In line with the Council's Protocol, a full schedule of the respondents and consultation responses can be found on the B&NES website www.bathnes.gov.uk/cil. Having reviewed the responses, the points can be summarised under the following key headings

- Concerns that the CIL charge will adversely affect the viability and delivery of residential development
- Concern over funding priorities for CIL and relationship with s106 site related contributions
- Clarification regarding who and how the neighbourhood portion of CIL will be spent.
- Issues relating to Implementation of CIL
- Issues relating to specific types of development and CIL

1) Concerns that the CIL charge will adversely affect the viability and delivery of residential development

- Concerns that the charge will adversely affect the viability of development, and threaten delivery of market housing and affordable housing development and lead to increased house prices.
- Lower percentages of affordable housing should be tested particularly as affordable housing is required without subsidy. Confusion as to whether 75% social rent or "affordable rent" has been tested in the assessment.
- Concerns over viability assumptions applied within the assessment including benchmark land values, residential sales values, construction costs including inflation, and gross to net floorspace ratios for apartment blocks.
- Concern that the density assumptions used as a basis for the study are unrealistically high.
- Concern that the 30% buffer below the maximum viable rates does not take into account affordable housing and abnormal costs.

Considers the application of 50% buffer, as Bristol City Council has applied, is more appropriate.

- Concern viability does not take into account abnormal costs in developing brownfield sites and exceptional development costs that exist in and around the City of Bath, World Heritage Site.
- Concern about prevailing economic conditions affecting the development industry.
- States that build costs should be increased to take into account higher build costs for Code for Sustainable Homes level 5/6, and queries whether there will be a requirement for lifetime homes.
- More detailed analysis of the strategic sites is needed.
- Concern residential CIL charge is higher than surrounding authorities.
- Clarification regarding exceptional circumstances relief required.

Response

- 3.3.1 Developers are already delivering market and affordable housing within the district and making financial contributions towards strategic infrastructure including schools, transport schemes and open space under s106 agreements. The CIL system which will in part replace the s106 approach (for contributions towards strategic infrastructure) provides a fairer, more transparent and simpler system for funding strategic infrastructure. Developers will know exactly what they must pay under this system and this will create certainty for all parties.
- 3.3.2 The Preliminary Draft Charging Schedule was informed by an area wide economic viability study undertaken by BNP Paribas (BNP) dated March 2012. The Study advises that "In the main, the imposition of CIL is not a critical factor in determining whether a scheme is viable or not (with the relationship between scheme value, costs and benchmark land value being far more important)."
- 3.3.3 Councils are required to set CIL rates which balance the need to fund infrastructure and the ability of development to afford the CIL charge. No detailed evidence has been provided by respondents to show that residential schemes would be unable to afford CIL at the proposed rates. No detailed evidence was submitted to contradict the assumptions used in the BNP viability study.

3.3.4 The differential rates for residential development set out are based on viability evidence and considered a flexible way to help ensure that the viability of development is not put at risk. The assessment has for example taken into account the higher design and construction costs in Bath associated with heritage and conservation issues, including the use of Bath stone.

3.3.5 CIL must be predicated purely on economic viability and if the viability of surrounding authorities means that lower rates are appropriate then it is correct that lower rates are set in these areas.

3.3.6 Notwithstanding the above, since the BNP Study 2012 was prepared, there have been a number of significant changes: - amendments and clarifications to the CIL 2010 regulations; changes to assumptions applied within the assessment based on the changing market and cost data, and proposed changes to the draft Core Strategy policy requirements, including affordable housing. The Council has also proposed a number of strategic sites for inclusion in the Core Strategy and published an updated Infrastructure Delivery Programme. Having regard to these changes and the time that has elapsed since the study was prepared; the Council has commissioned BNP to undertake an updated viability assessment.

3.3.8 **Action Required**

- BNP to update viability study to take into account changes to CIL regulations, proposed policy requirements, and latest data on development values and cost indicators.
- BNP to update viability study to assess the viability of the development of the strategic sites.
- Council to review potential use of exceptional circumstances relief

3.4 **Concern over funding priorities for CIL and relationship with s106 site related contributions**

- Clarification required on infrastructure priorities, and the “funding gap” - between the total cost of new infrastructure required to support development and the amount of funding available from other sources.
- Clarification over residual use of s106 for affordable housing and site related infrastructure requirements.
- Need for contributions towards Green Infrastructure including Sport and Recreation, parks, allotment facilities, and waterways.

- Need for contributions towards GP surgeries.

Response

3.4.1 A list of infrastructure projects could be funded by CIL known as a 'Regulation 123 list' (CIL Regulations 2010 section 123) will be prepared based on an updated Infrastructure Delivery Programme. This will be published alongside the Draft Charging Schedule.

3.4.2 A draft Revised Planning Obligations Supplementary Planning Document (SPD) will be published for consultation alongside the consultation of the CIL Draft Charging Schedule. This will explain the relationship between s.106 /planning obligations and CIL, and how they will operate concurrently.

3.4.3 The Viability Study assumes a notional allowance in the assessment for residual s.106 site related contributions to £1,000 per unit, applied to both private and affordable housing units. Detailed analysis of s106 /planning obligations agreed in past years demonstrates that this is a robust allowance.

3.4.4 The CIL regulations require that the proposed CIL rates should contribute towards the implementation of the relevant plan (in this case Core Strategy) however it is acknowledged that CIL funding is only one funding stream to support development across the Plan area. The Infrastructure Delivery Programme indicates key infrastructure and desirable infrastructure to be provided.

3.4.5 Clarification on how specific infrastructure requirements including green infrastructure and primary healthcare facilities will be funded will be considered as part of the Planning Obligations SPD and Regulation 123 list.

3.4.6 Action Required

- Finalise revised Draft Revised Planning Obligations SPD for consultation
- Update Infrastructure Delivery Programme and Funding Gap data.
- Finalise Regulation 123 list based on updated Infrastructure Delivery Programme

3.5 Clarification regarding who and how the neighbourhood portion of CIL will be spent.

- 3.5.1 Since the Preliminary Draft Charging Schedule was issued for consultation, the Government has issued amendments to regulations relating to the distribution of a proportion of CIL receipts to neighbourhoods.
- 3.5.2 Fifteen per cent of CIL charging authority (in this case B&NES) receipts will be passed directly to those Parish and Town Councils, or neighbourhoods, where development has taken place in that area. Where chargeable development takes place within the local council area, up to £100 per existing council tax dwelling per annum can be passed to the Parish or Town Council.
- 3.5.3 Where all or part of the chargeable development is within an area that has a neighbourhood development plan in place the charging authority must pass 25 per cent of the relevant CIL receipts to the Town or Parish Council for that area, and the portion is uncapped.
- 3.5.4 Where there is no Parish Council, as in the case of Bath urban area, the charging authority (B&NES) will retain the funds to spend on behalf of the community. The portion will be either 15% or 25% as above for the Town and Parish Councils.
- 3.5.5 The procedures for the transfer of CIL funds neighbourhood portion to the Town and Parish Councils can be agreed, or are as set out by default in the Regulations.

3.6 Issues relating to Implementation of CIL

- Clarification regarding timescale for the introduction of the CIL Charging Schedule and implementation date.
- Concerns over transitional arrangements.
- Support for the instalment policy although requests that last payment is linked to occupation as opposed to being a fixed date.
- Clarification of the dates when the charging schedule of the CIL will be reviewed.
- The specific charging zones should be shown clearly on OS based map within the Charging Schedule.

Response

3.6.1 The Council will aim to provide clarity regarding the implementation of the CIL Charging Schedule, as soon as possible following approval of the Draft CIL Charging Schedule by the independent examiner. The Council will take steps to inform developers about the introduction of CIL in order that developers considering development options are fully appraised of the changes. Details of transitional arrangements for outline applications and other situations will reflect the CIL regulations and be set out within the CIL Charging Schedule Guidance Note to accompany the CIL Charging Schedule.

3.6.2 Support is noted for the principle of the instalment policy as set out in the Preliminary Draft Charging Schedule. The CIL Regulations only allow phasing of payments based on time elapsed from commencement of development. No further flexibility is allowed.

3.6.3 The date of review of the CIL Charging Schedule and Regulation 123 list of infrastructure requirements will be kept under review.

3.6.4 The base mapping within the Charging Schedule will be upgraded to enable the relevant boundaries relating to the CIL charges to be shown clearly.

3.6.5 Action

- Detailed mapping required to show zone boundaries clearly.
- Prepare CIL Guidance notes to explain transitional arrangements, review dates

3.7 Issues relating to specific types of development

- Office development - The office development charge is not justifiable by the evidence. Concern that on mixed use development schemes it will be the residential floorspace that subsidises the unviable office development charge which will limit ability to fund affordable housing.
- Retail Development - Concern over different rates of CIL for different scales of retail development (Class A1 use) floorspace.
- Concern over impact of CIL on sheltered housing and Extra Care housing. Extra Care housing schemes often contain facilities such as hairdressers, restaurants and day centres.

- Clarification on self-build development.
- Clarification on garages and out buildings.
- Clarification that agricultural development is exempt
- Exemption of industrial development which generates road traffic is considered unfair.
- Student accommodation - Concern over student accommodation CIL rates, and charging by differential locations. Development costs for student residential schemes can vary significantly depending on their nature and context. This is not reflected in the BNP viability report (density, heights, development costs).
- A general concern that the CIL rates for both on campus and off campus student residence developments which the Council are seeking to impose will potentially discourage investment in this sector and lead to pressure on housing stock.
- Clarification whether student accommodation developed and managed by the University, a charitable institution would be exempted from CIL.

Response

- 3.7.1 The Council will consider the updated viability evidence in respect of the proposed CIL charge for office development.
- 3.7.2 Retail development - Community Infrastructure Levy (Amendment) Regulations 2014 allow charging authorities to set differential rates by the size of development (i.e. floorspace, units). The BNP viability study considered that variable CIL rates for small scale retail and shops, and larger retail were appropriate having regard to the conclusions of the viability assessment.
- 3.7.3 Sheltered Housing and Extra Care Housing. The proposed CIL levy for residential development includes sheltered housing and the residential element of Extra Care housing. The Preliminary Draft Charging Schedule proposes a £nil CIL charge for restaurants, hairdressers (Retail - A1 use class) outside Bath City Centre, and day centres associated with extra care housing developments.
- 3.7.4 Self-build development – houses, flats, residential annexes (within the curtilage of the main residence) and residential extensions which are built by 'self-builders' (subject to approval of an application to claim exemption for self-build) are exempt from the CIL charge.

- 3.7.5 Under the CIL Regulations 2010 as amended, residential floorspace includes new dwellings, extensions, conversions, garages or any other buildings ancillary to residential use. For apartment developments, residential floorspace includes communal entrances, landings, etc and any related internal parking.
- 3.7.6 Agricultural development was not assessed within the BNP viability assessment. It would therefore be classed as “Any other development” with a £nil CIL rate based on the Preliminary Draft Charging Schedule.
- 3.7.7 Industrial development - Councils are required to set CIL rates which balance the need to fund infrastructure and the ability of development to afford the CIL charge. The BNP Viability Study supporting the Preliminary Draft Charging Schedule concluded that industrial developments were unlikely to generate positive residual land values. The study therefore recommended a £nil rate for industrial floorspace.
- 3.7.8 University and ancillary development including offices which form part of the University - would be classed as “Any other Development” and is proposed at £nil rate
- 3.7.9 Student Accommodation – The updated viability study will reassess the viability of student accommodation based on more up to date market indicators. Notwithstanding this, CIL charges are based on a broad brush assessment of viability and are not related to different formats of development. No evidence was submitted to demonstrate that student accommodation developments would be unable to afford CIL at the proposed CIL rates.
- 3.7.10 Student accommodation –Charitable Relief, Regulation 43 of the CIL Regulations 2010 sets out the conditions that must be met for a charitable development to be entitled to mandatory relief from CIL. Applications to determine whether a proposal is eligible for mandatory charitable relief are to be submitted for each planning application.

4.0 Statement of Compliance with the Neighbourhood Planning Protocol

- 4.1 This consultation report forms the Statement of Compliance to the Neighbourhood Planning Protocol. Details of consultation undertaken, a summary of key issues raised and the Council’s response are included in the Report in line with the Neighbourhood Planning Protocol.