

# East Devon Community Infrastructure Levy (CIL) - Consultation on Proposed Changes

16 April 2015 until 12 Noon 12 June 2015

## COMMUNITY INFRASTRUCTURE LEVY (CIL) DRAFT CHARGING SCHEDULE

**This consultation relates only to the Council's proposed changes and questions raised by the Inspector.**

This form is for responding to the Inspector's consultation regarding **CIL**. Separate forms have been prepared for the Inspector's questions relating to housing, gypsies, travellers and travelling showpeople, site allocations and for general comments on the Local Plan. All of the forms and guidance notes can be found on the Council's website at <http://eastdevon.gov.uk/planning/planning-policy/new-local-plan-and-current-consultations/>. **Before completing this form please refer to our guidance notes on making comments.**

**Your details** - please complete relevant sections about yourself below

Representor Number (if known)

3209

Title

First Name

Last name

Job title

Organisation

East Devon New Community partners (EDNCp)

Address

C/o agent

Email address

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## Questions

- Q1** The Council's response to the Inspector's concerns regarding the assumptions in the Viability Study relating to the net developable area and infrastructure/Section 106 costs for the Cranbrook expansion areas is set out in the 'East Devon Community Infrastructure Levy (CIL) additional report in response to Inspector's concerns'. Does this additional evidence justify the retention of the £68 per square metre rate proposed in the Draft Charging Schedule?

Please see attached sheets (pages 1-6) and Plans WCN053-059 and 061

**Q2** Do you have any general comments relating to the Council's proposed changes to the CIL Draft Charging Schedule not covered by the above question?

Please see attached sheets pages 7-8.

Thank you for completing the East Devon CIL - Consultation on Proposed Changes response form.

## East Devon CIL Draft Charging Regime

### CIL Representations by East Devon New Community partners (3209) in respect of Cranbrook

**Q1 The Council's response to the Inspector's concerns regarding the assumptions in the Viability Study relating to the net developable area and infrastructure/Section 106 costs for the Cranbrook expansion areas is set out in the 'East Devon Community Infrastructure Levy (CIL) additional report in response to Inspector's concerns'. Does this additional evidence justify the retention of the £68 per square metre rate proposed in the Draft Charging Schedule**

#### *Introduction*

At the outset it is worth noting that East Devon New Community partners are keen to establish a balanced and workable arrangement for the onward delivery of Cranbrook. EDNCp are keen to work in close partnership with EDDC and Devon County Council. A number of discussions have taken place in a spirit of mutually seeking an appropriate outcome. It is accepted that the issues are not straightforward and greatly complicated by the construction of the CIL/section 106 regime at national level. Nevertheless, for the reasons set out below, EDNCp have concluded that the costs of infrastructure delivery – in particular all site related costs should be addressed through section 106 payments rather than through CIL. The consequence of that is that the appropriate CIL rate for residential development at Cranbrook is likely to be a nil rate or a small rate. The rate of £68 psm is not justified by the evidence and the same rate should apply across the Cranbrook Plan Area (the £125 rate outside the east and west expansions is not supported by the evidence).

By proposing that all site related infrastructure costs be addressed through section 106, EDNCp propose a continuation of the highly successful delivery model that has seen the consortium deliver a primary school and multipurpose community building, country park, open spaces and education campus including secondary school. Undoubtedly this model has delivered infrastructure consistently, economically, and on time or ahead of time. It is a major part of the reason why new homes have been delivered at high completion rates. There would be a huge risk in departing from this successful delivery model by passing responsibility for infrastructure delivery to the CIL regime.

This was the argument made by EDNCp in the CIL examination sessions to date.

Also by way of context, it is agreed by EDNCp and each of the Councils that, following the DCLG guidance in relation to strategic sites, a separate charging zone is justified for the Cranbrook expansion area(s). In his letter to the Council on 24 April 2014 the Inspector also agrees that this is justified and appropriate. What appears to have been lost in the incremental progression of the CIL proposals over the last 2 or more years is the expression of this in practical terms.

The Preliminary Draft Charging Schedule in March 2013 adopted the principle of separate zones and proposed £56 for Cranbrook expansion areas compared with the £80 for the committed and permitted Cranbrook development. EDNCp provided viability advice indicating that this was too high, yet the rate in the Draft Charging Schedule rose to £68. It remains that today - albeit I note that para 5.7 of EDDC's Additional Report of 11 March 2015 (EDDC AR 2015) half suggests that the Council might have considered increasing it again (up to £77psm)!

The simplicity of the point is first that despite all round agreement as to the need to moderate in the expansion areas, the rate that the committed Cranbrook development can sustain (a maximum of £80psm), EDDC proposes that the rate is moderated only to £68 on viability evidence. Therefore, and second, it is scarcely credible as a matter of common sense that the costs associated with delivering an expansion of some 4000 new homes is perceived to

carry so few costs and infrastructure that barely any level of moderation in the CIL rate can be agreed relative to a hypothetical development in the built out area of the existing Cranbrook town (where all infrastructure and section 106 costs have already been provided for).

### **Section 106 costs**

At the heart of the issue (but far from the only one) is the level of section 106 costs being assumed in the viability work for Cranbrook. That is because the potential to levy CIL depends, in significant part, on the anticipated level of section 106 contributions. The linear relationship between the two is reproduced on page 17 of EDDC's Additional Report (March 2015) (EDDC AR 2015).

Based on the Council's initial estimate of section 106 costs associated with Cranbrook (£4,661.72 per dwelling) (EDDC AR 2015 para 5.1) the Council derived a CIL rate of £68 from the linear relationship on page 17 and then the application of a 20% buffer.

EDNCp presented evidence as to the real section 106 costs associated with Cranbrook to date (along with other inputs into the viability equation). The three Response Papers were appended to the EDNCp statement to the Examination on the Draft Charging Schedule that took place on 13<sup>th</sup> March 2014, and remain important evidence in the resumed examination.

In short Response Paper 3 identified section 106 costs of the order of £30 million for the first 2900 dwellings - in excess of £10,000 per dwelling (EDDC AR 2015, para 5.2).

Immediately prior to the March 2014 session of the CIL examination, the Council updated its assessment of section 106 costs in the report "Proposed infrastructure requirements for the Cranbrook expansion areas" which forms Appendix A to EDDC AR 2015.

Page 13 of Appendix A reveals that the Council had fundamentally rethought the potential section 106 costs associated with Cranbrook expansion: "*Council officers have now undertaken a much more comprehensive analysis of the infrastructure requirements of Cranbrook specifically in response to the NCP written statement for the CIL hearing...*". The consequence was that while officers still thought that the likely section 106 costs of Cranbrook expansion would be some £4,572 (virtually the same as the £4,661 previously identified), the new much more comprehensive analysis undertaken had found additional infrastructure costs of £6,526 per dwelling. In total therefore the Council now considered that the total infrastructure bill would be some £11,098 per dwelling – very similar to the estimated section 106 costs that EDNCp had provided.

The fundamental issue, and now problem, with the approach that EDDC took, was that £6,526 (of the total estimated costs of £11,098) was stripped out as costs to be paid for by CIL and not section 106. They did not and do not appear as part of the estimated section 106 cost which is the residual figure of £4,572 noted in the para above.

Table 4 (page 11) of the Paper presented as Appendix A to EDDC AR 2015 sets out all of the costs that have shifted across to CIL and away from section 106. They include all education costs (including the construction of new primaries on site), new accesses and the extension of the main link road, community and youth facilities. These were to be addressed through CIL despite being on site infrastructure. The Regulation 123 list was amended to allow for CIL to pay for such items (which has the effect of course of preventing such provision being made through section 106 payments).

Typically, normally, most of the elements then (and now) proposed by EDDC to be funded by CIL are treated as section 106 costs and are not intended to be addressed in the CIL regime. Not least there is a real issue surrounding the delivery of such, palpably, on-site infrastructure.

The mechanism that EDDC suggested (in March 2014) to overcome the problem created, was in kind infrastructure payments. EDDC advocated the provision of infrastructure to be made by EDNCp in lieu of CIL payment – i.e. although there was a higher CIL payment this

would be offset by EDNCp building for instance the additional primary schools and main link road through the expansion areas. A most convoluted arrangement was therefore proposed which appeared to have few advantages to anyone save avoiding making amendments to the proposed £68 rate in the week before the last examination to allow for EDDCs revised assessment of the section 106/infrastructure costs amounting to some £11,000.

As was debated at the examination session held to date, the approach was deeply flawed. Section 73 (b) (ii) of the CIL Regulations 2004 precludes in kind payments if the infrastructure is necessary for the development (i.e. was and remains intended to be paid through the normal section 106 regime). It is difficult to see how primary schools, junctions, road infrastructure etc for the expansion areas can be regarded as anything other than necessary for the development and hence unable to be offered as in kind payments. This only really came to light at, and following, the examination session held to date.

The consequence then is that under the proposed approach, there would be CIL contribution of some £68 psm and the development would await the delivery of the school and even road infrastructure on site to be paid for by CIL and presumably delivered or arranged to be delivered through EDDC or DCC – OR the developer would have to absorb the cost and pay the CIL even though the cost hadn't been taken into account in calculating the CIL.

In section 5 of the most recent evidence base (EDDC AR 2015), EDDC again revisits the section 106 costs. EDNCp have significant issues with some of the costs assumptions (e.g. the lack of a cost for play areas, for community buildings, for strategic footway etc and a general underestimation of costs).

More significantly though, and despite the discussion at the examination to date, the approach of expecting significant on-site costs to be funded through CIL is maintained. The Regulation 123 list updated in March 2015 makes no material change to the position last year and therefore maintains the approach of CIL funding significant elements of on site infrastructure. This despite knowing that in kind contributions appears unlikely to be able to be offset against CIL.

In reality the combined infrastructure costs – accepted by EDDC to be some £11,000 per dwelling in the expansion area (a figure not dissimilar to the section 106 contributions paid by EDNCp in the committed development) - would result in a nil CIL rate or close to according to the linear relationship on page 17 of EDDC AR 2015.

EDNCp have concluded that this should now be the approach – with Cranbrook expansion infrastructure met in very substantial part through section 106 contributions. The consequence is that the Regulation 123 list should be amended to exclude Cranbrook related infrastructure.

### **Net to Gross Ratios**

In EDDC AR 2015, the Council has updated its evidence in respect the net to gross ratio to be applied in its viability assessment of Cranbrook. The Council continues to consider that a net to gross ratio of 75% is realistic – contrary to the preliminary conclusions of the Inspector.

Subsequent to the initial CIL examination session applications have been submitted to EDDC by EDNCp for some additional 4,000 dwellings. The extent of the red lines for the applications is shown on the attached plan (WCN053-059).

Collectively the land use budget is shown in the Table 1.

**Table 1: Collective Land Use Budget for the submitted applications**

Residential	104 has	
Local Centres	1.5 has	
Employment	9.5 has	
<b>Net Developable Area</b>	<b>115 has</b>	<b>48%</b>
Education	6 has	

Sports pitches	6 has	
Cemetery and allotments	4 has	
Drainage basins	6 has	
Green Infrastructure including country park, children's play, strategic planting, flood compensation	92 has	
Strategic infrastructure (including a small proportion comprising the former A30)	14 has	
<b>Non Dev Area</b>	<b>128 has</b>	<b>52%</b>
<b>Total Site areas</b>	<b>243 has</b>	
NB the figures are subject to rounding and exclude the access to the eastern expansion that overlaps with the permitted development.		

Therefore across the applications, the outcome of the master plan process to date is that the net to gross ratio is some 48%. It is important to note that this is not distorted by any one of the three applications – for example because of the more extensive flood plain areas to the east. The ratios vary from approx 45% in the east to 50% in the west. There is little variation.

The applications, in accordance with best practice and good master planning principles, include extensive areas of green infrastructure including country park, children's play, strategic planting and landscape, flood compensation, SUDS, pitches, ecological mitigation. This is not unusual in large scale strategic developments. The land has to be acquired as part of the development.

Whilst it is accepted that the master plans may be subject to revision, the applications are the result of real master planning exercises not hypothetical exercises.

Again the findings are entirely consistent with those of the Harman Report in relation to net:gross ratios.

By way of contrast the Council's Net to Gross calculations assessment 1 (EDDC AR 2015 page 4ff) is hypothetical. The overall extent of the potential site area is very consistent with my Table 1 above as is the categorisation of individual land use elements as developable or non-developable land. The calculation however relies simply on the open space standards to estimate the extent of green infrastructure – standards which apply to all development sites, the majority of which will be relatively small. The calculation substantially underestimates the likely and in some cases necessary provision of green infrastructure within the strategic scale expansion of Cranbrook (and notwithstanding the land under the power lines that is identified to the east of Cranbrook).

Nor should the net developable area be treated as a residual area, as is done in the Council's Net to Gross calculations assessment 1. Rather it should be built up from the developable elements that are necessary and required to fulfil the policy expectations. This, of course, is what the master plan exercise that has preceded the expansion applications has done. The required developable area is some 115 hectares (not the residual figure of circa 182 ha as the Council calculates on a residual basis).

The Council's Net to Gross calculations assessment 2 is a variation of the Council's Net to Gross calculations assessment 1 and suffers from the same flaws.

The final part of the Council's evidence base is an exercise of comparison with the part of Phase 1 off the committed Cranbrook development. The area assessed is included as Appendix F to EDDC AR 2015. It is an extremely misleading comparison as it is only part of the approved Cranbrook scheme (the net to gross ratio of the committed scheme was set out in our earlier statement and was only just over 50%). It is the overall committed scheme for which land has to be acquired and laid out in accordance with the approved plans.

That part of the scheme which the Council assesses is arbitrarily defined – particularly on its northern boundary. It is shown in relation to the overall committed scheme as an overlay on the plan appended to these representations (WCN053 – 061). The assessed area excludes all the green infrastructure between it and the railway to the north that has been acquired as part of the overall scheme and being laid out in accordance with the planning approval. The additional GI is dismissed as not being necessary in future phases (please note comments above).

### **Start Up costs**

The Council has also updated its position in relation start up costs.

First it has cast a critical eye over the costs set out in EDNCp's earlier Response Papers 2 and 3 appended to the earlier EDNCp statement to the CIL examination. EDNCp are happy to discuss the appropriateness of the Council's comments in paras 4.1 to 4.12 of EDDC 2015 AR at the resumed examination as necessary. By way of example:

- the Clyst Honiton bypass costs (4.4 of EDDC AR 2015) had been excluded from the EDNCp estimate of £590,000 per hectare opening up costs (EDNCp Response Paper 2);
- the highway infrastructure costs (4.5) are real on-site costs to be delivered;
- there seems no clear justification for a reduction in the landscaping costs in the expansion areas relative to the committed development.

Second, the Council says that the allowance made its viability calculations for external works (15% of build costs) covers much off the gap in the Harman/EDNCp and the EDDC estimates of site opening up costs. It is EDNCp's view that the two are not the same.

The Harman Report (in Appendix B) described the £17,000-£23,000 per plot for larger schemes as being for "strategic infrastructure costs". This is what EDNCp has assessed – reaching a conclusion similar to Harman.

External works, 15% of build costs, do not generally relate to strategic infrastructure costs. BCIS externals include external fittings, planting, ancillary buildings, fencing and walls and in many ways is therefore focussed on plots rather than at a strategic scale. External works can include roads and paths and site preparation works albeit roads and paths EDNCp would consider to be from the strategic route to the plot not the strategic route itself which is costed separately as opening up costs. It seems unlikely that the BCIS external works allowance should be seen as covering strategic infrastructure.

### **Conclusion**

Setting CIL rates for Cranbrook is undoubtedly a difficult issue because of the way CIL Regulations have been prescribed.

We do need an effective CIL rate and relationship between CIL and section 106 and we appreciate that the Council too wishes a workable solution that is appropriate to Cranbrook's circumstances.

For the reasons set out above, including the difficulties over in kind payments and the classification of a number of on site costs as CIL funded, EDNCp have concluded that the costs of infrastructure delivery – in particular all site related costs should be addressed through section 106 payments rather than through CIL. The consequence of that is that the appropriate CIL rate for residential development at Cranbrook is likely to be a nil rate. That is based on the linear scale employed by the Council and the likely scale of section 106 costs. The Regulation 123 list would also need to be adjusted to remove reference to Cranbrook site infrastructure.

In the alternative a very small rate might be justified (substantially less than the £68 psm at present) if CIL is found to be the appropriate vehicle for funding a small number of the elements anticipated as Cranbrook related infrastructure.



The effect of adopting a more appropriate net to gross ratio or site opening up costs assumption is that the linear relationship between section 106 costs and affordable CIL contributions “shifts” downwards. For a given level of section 106 costs, the affordable CIL contribution reduces. The conclusion further points towards a nil (or very small rate).

EDNCp do understand EDDCs concerns regarding pooling restrictions but consider that, working in partnership, those risks aren’t great and can be resolved.

**Q2 Do you have any general comments relating to the Council's proposed changes to the CIL Draft Charging Schedule not covered by the above question?**

**a) Nil Retail Rate for Cranbrook**

EDNCp support the changes to the Draft Charging Schedule that now introduce a nil rate for retail floorspace within the town centre and east and west. For the reasons set out in our previous statements to the examination into the CIL schedule, the previous rate had no justification in terms of the viability evidence – in particular in terms of the comparability with other town centres – and would have had the effect of undermining one of the key objectives of the Local Plan to deliver Cranbrook as a sustainable town with thriving town centre.

Whilst a lesser concern, EDNCp see no reason why the zero retail rate should not apply within the remainder of the areas to accommodate expansion at Cranbrook – specifically to the south of the former A30. The same point is made in more detail in relation to the residential rate beyond the east and west expansion of the area under the comments made in respect of Q2b below.

**b) Charging Zones beyond East and West Expansion Area**

The CIL schedule only really deals with Cranbrook and its east and west expansions. There are proposed changes to the Local Plan which now make provision for 1,550 dwellings beyond east and west Cranbrook, within the plan period.

Hitherto the provision made in the Local Plan for such further expansion was planned beyond the plan period.

Notwithstanding the change in the Local Plan policy nor indeed the representations made in the CIL examination to date on this key subject, no change in the CIL schedule is made.

For the 1,550 additional dwellings, no modified rate is proposed. Instead a punitive £125 psm is to apply. This is clearly wrong as differential rates can only be justified on viability grounds. Expansion beyond the western and eastern expansion areas will largely be indistinguishable in viability terms to the expansion areas to the east and west. Therefore, the CIL rate must be the same.

The delivery of the additional 1,550 dwellings is integral to the overall plan strategy. In the absence of the same moderated rate that is to apply to the west and east then there is a risk to delivery.

The problem, for the Council, had been that the additional dwellings (then 1500) were beyond the plan period - but now it isn't.

The problem is substantial and needs to be resolved. It is understood that the Council is sympathetic to the need for parity across the expansion of Cranbrook.

The simplest remedy would appear to be to apply the same rate that is eventually adopted for the east and west area to the area defined in the Local Plan as the Cranbrook Plan Area (probably also excluding the areas covered by existing Neighbourhood Plan designations which the Plan indicates should not be the subject of residential development forming part of Cranbrook).

The preference of the Local Planning Authority would appear to be a review of the CIL Charging Schedule to put in place the moderated rate once the Council has completed a master planning exercise and DPD that it expects to define more specifically the expansion of Cranbrook in plan from beyond the east and the west.

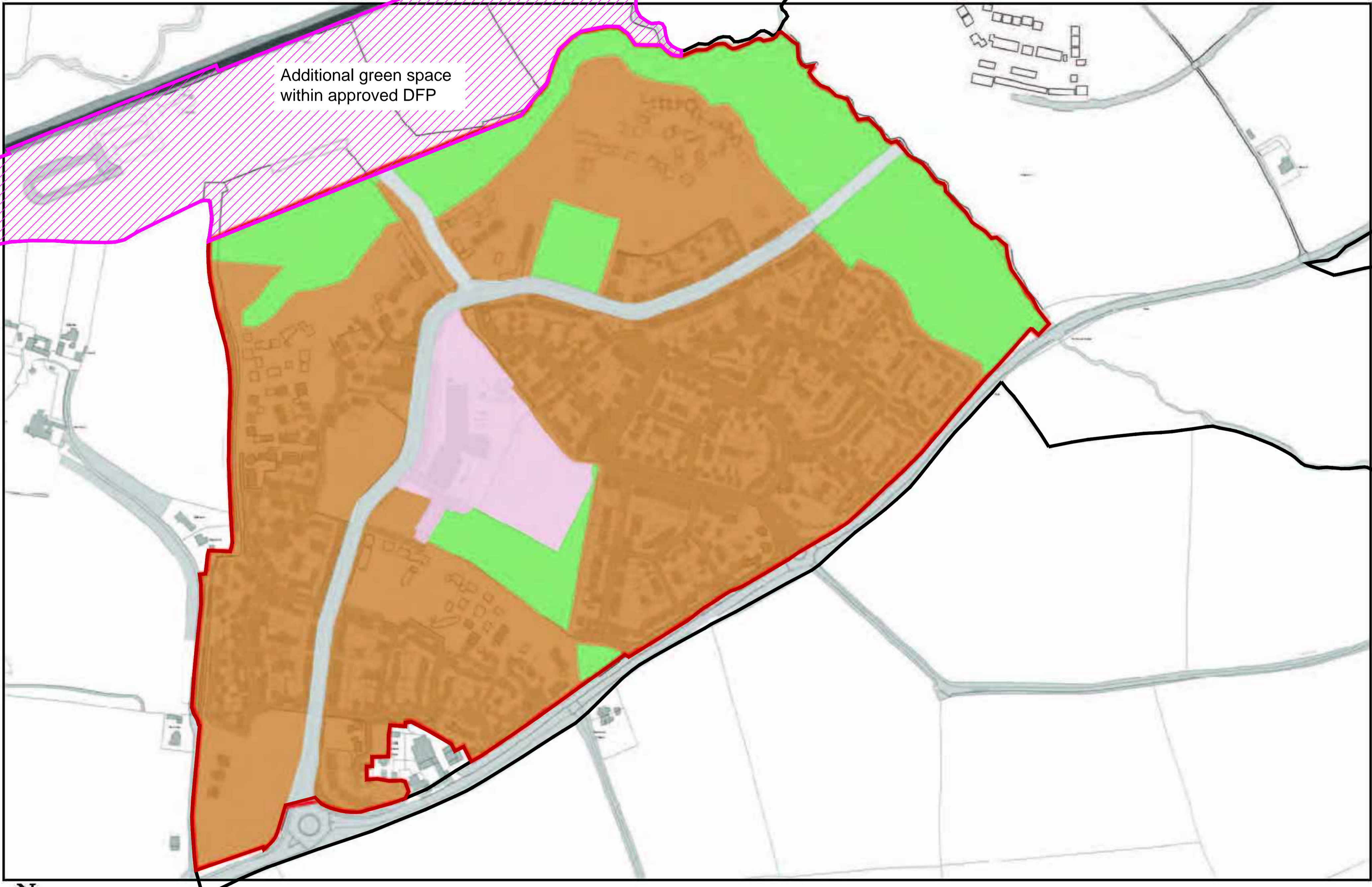
The argument, crudely therefore, appears to be which comes first. EDNCp are concerned that an expectation to review the CIL schedule is not a commitment but more importantly that any review of the schedule is not a simple task. The likelihood is of delay as not only the

various stages of the CIL process are effected but as additional evidence is produced and potentially examined further. All could run the significant risk of delaying the realisation of the objectives of the Local Plan regarding the delivery of Cranbrook.

Far fewer risks arise from the immediate extension of the moderated rates across the Cranbrook Plan Area with the CIL Schedule to be modified in due course to remove areas from within the Plan Area that the master plan process has identified as being unsuitable for development.

**c) Charging Zones in East Expansion Area**

EDNCp have made representations suggesting that the eastern expansion area (see site allocations representations) should be extended to include the two additional fields to the north between it and the railway. The consequence is that this area should also be included within the moderated charging rate (irrespective of the wider conclusion in relation to the remainder of the 1550 dwellings to be accommodated in the Plan Area).

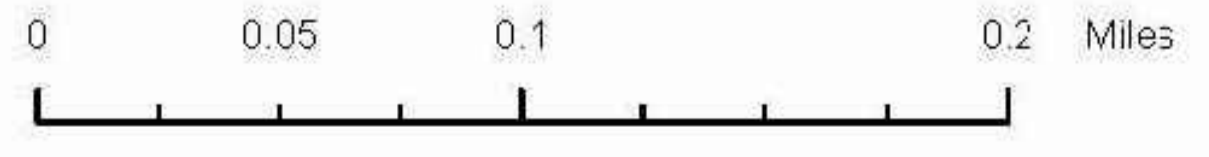


Additional green space within approved DFP

N

- Type**
- Boundary
  - Net to Gross
  - Open Space
  - School
  - MLR

## Cranbrook Phase 1 Net to Gross areas



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**Cranbrook: Phase 1  
Residential Net to Gross Overlay**

Date	11-06-15	Scale	1:2,500 @ A1
Drawn	DG	Designed	SH/DG
Approved	---	Approved	---
Drawing Number	WCN053 - 061		

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