

## East Devon District Council Response to Community Infrastructure Levy question - June 2015

This Paper provides a response to the Inspector's question regarding the Community Infrastructure Levy (CIL). Tabled below is the full set of new evidence and supporting documents submitted to the Inspector and available on the Council web site. Key documents are referred to in response to the questions.

Ref No	Title	Lead Author	Date	Web Link
CIL 01	Revised Draft Charging Schedule	East Devon District Council	March 2015	<a href="http://eastdevon.gov.uk/media/989953/cil-revised-draft-charging-schedule-13-march-2015-reduced-pdf.pdf">http://eastdevon.gov.uk/media/989953/cil-revised-draft-charging-schedule-13-march-2015-reduced-pdf.pdf</a>
	Additional Report in response to Inspector's concerns	East Devon District Council	March 2015	<a href="http://eastdevon.gov.uk/media/989956/cil-additional-report-and-appendices-13-march-2015-reduced-pdf.pdf">http://eastdevon.gov.uk/media/989956/cil-additional-report-and-appendices-13-march-2015-reduced-pdf.pdf</a>
CIL 03	Revised Infrastructure and Funding Gap Assessment	East Devon District Council	March 2015	<a href="http://eastdevon.gov.uk/media/989959/cil03-infrastructure-and-funding-gap-assessment-ver03.pdf">http://eastdevon.gov.uk/media/989959/cil03-infrastructure-and-funding-gap-assessment-ver03.pdf</a>
CIL 16	Revised Infrastructure Delivery Plan (IDP)	East Devon District Council	March 2015	<a href="http://eastdevon.gov.uk/media/990138/idp-draft-report-2015.pdf">http://eastdevon.gov.uk/media/990138/idp-draft-report-2015.pdf</a>
CIL 02	Revised Draft Regulation 123 List	East Devon District Council	March 2015	<a href="http://eastdevon.gov.uk/media/990141/idp-regulation-123-list-2015.pdf">http://eastdevon.gov.uk/media/990141/idp-regulation-123-list-2015.pdf</a>
	Cranbrook Existing and Future Infrastructure (Cranbrook specific IDP)	East Devon District Council	March 2015	<a href="http://eastdevon.gov.uk/media/990144/cranbrook-existing-and-future-infrastructure.pdf">http://eastdevon.gov.uk/media/990144/cranbrook-existing-and-future-infrastructure.pdf</a>
	Sports, leisure and recreation at Cranbrook	East Devon District Council	March 2015	<a href="http://eastdevon.gov.uk/media/989962/cranbrook-sports-leisure-and-recreation.pdf">http://eastdevon.gov.uk/media/989962/cranbrook-sports-leisure-and-recreation.pdf</a>

**1. *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?***

1.1 The Council considers that it has submitted all of the evidence necessary to evidence why £68/sqm is an appropriate charge for residential development in the allocated Cranbrook expansion areas.

**Need for a CIL rate**

1.2 There is an inherent need to adopt a CIL charging rate at Cranbrook, not least because of the risk posed by the S106 pooling limitations imposed by the CIL Regulations. The Council considers that delivery of infrastructure at Cranbrook through S106 would be the preferable route in an ideal world, however there is a major risk associated with taking this route.

1.3 Where five or more planning obligations have been signed towards an infrastructure project or type of infrastructure since 6 April 2010, the CIL Regulations do not allow for further planning obligations to be signed towards it. That being the case, if a piece of infrastructure cannot be secured through S106 because pooling limits have been reached then either that development cannot be approved (if the infrastructure is essential) or it gets approved without the infrastructure in which case it is not mitigating its impact.

1.4 There are a number of infrastructure projects of types that have already exceeded the five obligations limit at Cranbrook, however it is possible to draw a line now and ensure that any future obligations are signed towards more specific or different projects.

1.5 The Council has obtained legal Counsel opinion on how precise it is reasonable to define specific projects in order to limit the likelihood of exceeding pooling limits. Opinion suggests that for example, a new classroom for a particular school could be a project, however specific circumstances would have to exist meaning that only that new classroom were required and it could be completed without the need for other projects. So, if a new school were required as a result of seven housing sites, you couldn't require each site to provide a new classroom and avoid hitting pooling limits because each

classroom could not come forward independently. Conversely, a single housing site at an existing settlement with an existing school might produce the need for a new classroom extension to that school which could come forward independently.

- 1.6 There are currently four planning applications at Cranbrook pending consideration (East and West expansion areas, a Southern expansion area and the Farlands land within the East expansion). Certain pieces of infrastructure e.g. passing loop, leisure centre provision, tri-service facility building etc will require contributions from all of these sites. This could mean that pooling limits are within touching distance immediately and when future windfall sites or sites identified through the Cranbrook Plan come forward they will be reached and subsequently exceeded and therefore not be able to mitigate their impact. In addition to the four current applications, a site between Cranbrook and Rockbeare has recently been refused (referred to as the Rockbeare site on the map below). If this decision were to be successfully appealed this would further add to pooling concerns.

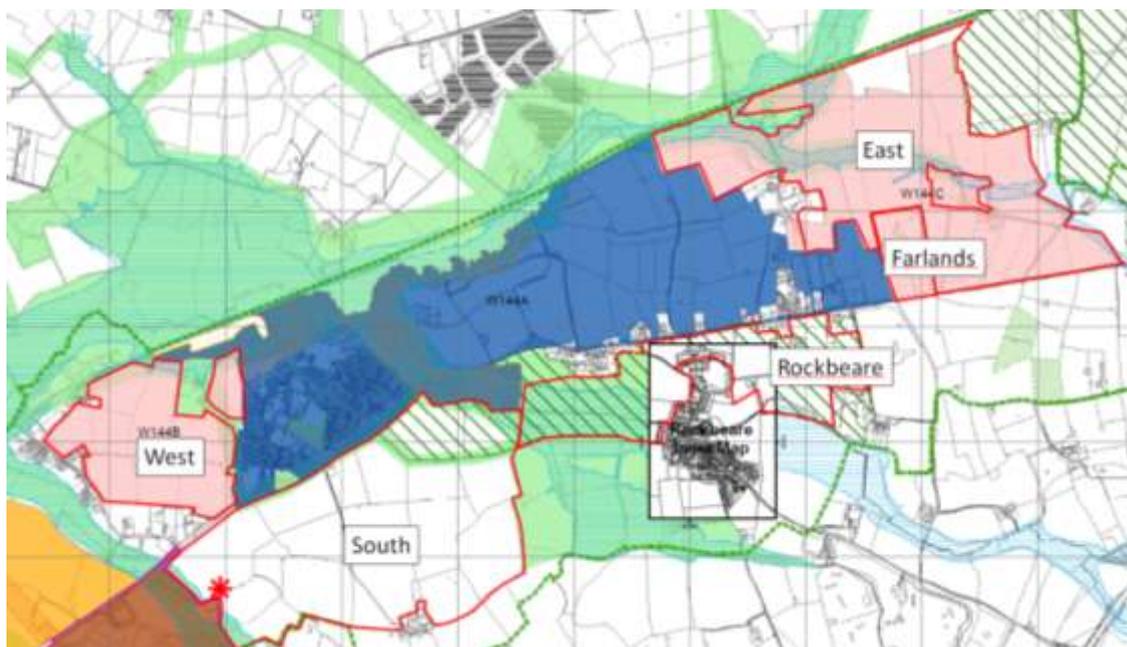


Figure 1: Locations of current and recent planning applications at Cranbrook

- 1.7 The above assessment of course assumes that all of these planning applications sign individual S106 Agreements. In fact, it may be reasonable (best case scenario) to assume that sites promoted by the East Devon New Community Partners (EDNCPs) sign up to a single collective S106 so that then there are just two separate S106 obligations to pool from sites subject to current applications. On the surface this appears to resolve the issue at least

in the short term, however the Council has obtained opinion from legal Counsel as to exactly what constitutes an obligation for the purposes of reaching the pooling limits.

1.8 Counsel opinion suggests that variations and supplemental agreements also count as separate obligations, as do obligations signed up to on planning applications that are never implemented. Using the extant Cranbrook permissions as an example, the original S106 has been varied and will likely be varied again in the future. If this practice continues into the expansion areas (which it is likely to do as circumstances change and such large sites are likely to come forward in phases each with potential for variations etc) then pooling limits could be seriously at risk of being reached even if the three expansion applications signed up to a single S106 in the first instance. If all of the planning applications sign up to individual S106 Agreements and then there is a need to vary in the future then pooling limits would be exceeded and variations could not be made or development could not go ahead.

1.9 An example of the need for contributions towards the passing loop in different scenarios is given below. It shows that there is serious potential for pooling limits to be reached or exceeded. Exceeding the limit is not actually possible and this means that applications where signing up to an obligation would result in exceeding the pooling limits would have to be refused as they could not mitigate their impact. Note, Mosshayne already has a resolution to grant planning permission subject to S106 and the passing loop is contained within the Heads of Terms. The below assessments assume minimal windfall/other sites. If other West End sites come forward in the same way that Mosshayne has then they also should potentially be contributing to the passing loop and other infrastructure in this manner. Additionally, through the Cranbrook Plan, it may be that multiple smaller sites in multiple ownerships come forward each of which may require separate S106 Agreements. The risk of pooling is potentially far greater than shown below.

Scenario	1	2	3	4
	EDNCP sites have individual S106s	As scenario 1 with potential variations	EDNCP sites have collective S106	As scenario 3 with potential variations
East	1	2	1	2+?
West	1	2		
South	1	2		
Farlands	1	2	1	2
Mosshayne	1	2	1	2
Windfalls/others	1+?	2+?	1+?	2+?
<b>Cumulative total</b>	<b>6+?</b>	<b>11+?</b>	<b>4+?</b>	<b>7+?</b>

**Table 1: Example of pooling contributions towards delivery of the passing loop**

- 1.10 The EDNCPs and others have expressed concern at the risk posed by delivering infrastructure through CIL as they cannot guarantee the Council will spend the money on that infrastructure or that it will do so in a timely manner. Cranbrook is the keystone to the delivery of the Local Plan. If it were to not prioritise investment in the infrastructure at Cranbrook then the plan would fail so it is imperative that the Council prioritise Cranbrook related infrastructure (after Habitat Regulations requirements across the district). The Council has a track record in backing Cranbrook and seeking to ensure its successful delivery, therefore there is not considered to be as much risk to the delivery of Cranbrook through CIL as through S106 in the future.
- 1.11 Neither S106 nor CIL in their current guises are risk free routes to delivering infrastructure for Cranbrook, however CIL is the least risky from the Council's perspective.
- 1.12 However, in all likelihood, the planning applications currently being considered will be determined prior to the adoption of CIL and as such will be subject to S106. As explained above, this means that the pooling limits may be reached or at least within touching distance. This being the case, having a CIL rate in place means that if in the future there are additional sites or circumstances change on sites already permitted, these can mitigate their impacts through CIL and avoid exceeding the pooling limits without double counting. Without the backup of a CIL rate at Cranbrook pooling limits will be reached / exceeded and development will be put at far greater risk.
- 1.13 As an example, in scenario 1 (from table 1 above) all of the current planning applications plus one windfall are granted permission ahead of CIL being adopted and are therefore dealt with by S106, each signing separate obligations towards the passing loop. CIL is then adopted. If one of these sites then needed to vary it's permission and vary the obligation (to add more dwellings to the site for instance) then it would not be possible to vary the obligation as pooling limits would be exceeded meaning that the site would have to be refused. If a CIL charge existed, however, then a new full application could be made and dealt with under CIL, subsequently the infrastructure could be provided to mitigate the development and so the application could then be permitted.

### **Future expansion of Cranbrook**

- 1.14 The Council proposes that the £68 per square metre charging rate should apply to development within the East and West expansion areas as shown on

the West End charging map. The revised draft new Local Plan sets out in Strategy 12 for an additional 1,550 homes to be accommodated within the Cranbrook Plan area with precise details of location and development type to be determined through the Cranbrook Plan masterplanning work. This being the case, whilst the principle of applying the £68/sqm charge to any future development at Cranbrook would make sense, it is not possible to identify it for the purpose of drawing a charging zone boundary on a map at present.

- 1.15 The EDNCPs continue to promote a specific site to the South of the former A30 which is now subject to a planning application. However, the Cranbrook Plan is the vehicle to determine the location(s) that Cranbrook will grow in the future and it is not considered appropriate to simply allocate this land at this time and as such it is not appropriate to include it in the £68/sqm charging zone. However, should the inspector choose to recommend allocation of this site then the £68/sqm charge would be appropriate and the zone should then be extended to include it.
  
- 1.16 It would be the intention, however, to commit to an early review of the CIL charging schedule alongside consultation on the Cranbrook Plan DPD to take account of any changes and generally update the work. This process may or may not determine different CIL charging rates.