
East Devon Community Infrastructure Levy Draft Charging Schedule

Consultation response on behalf of Taylor Wimpey



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1. Introduction

Overview

- 1.1 This representation has been prepared by Savills on behalf of Taylor Wimpey. It is made in respect of East Devon Draft Charging Schedules (DCS) for the Community Infrastructure Levy (CIL).
- 1.2 It is recognised that this represents a proposed revision to the Charging Schedule (CS) implemented in April 2016. However, the process of bringing forward a revised CS remains the same as if it was being implemented for the first time, and as such, the policy requirements, guidance and process remains the same.
- 1.3 The DCS Consultation Document (August 2019), at paragraph 2.4, confirms that the Council are utilising the transitional arrangements set out in the 2019 Regulations under Regulation 13(1), and as such, the CS is to be Examined in accordance with the Regulations as drafted prior to the 1st September 2019. Whilst we have no objection to this approach, it is clear that when considering whether the proposed rates strike an appropriate balance, as per Regulation 14, consideration must be given to the implications of the 2019 CIL Regulations on the economic viability of development across the charging area.
- 1.4 Whilst the CS is being reviewed under the extant Local Plan 2013-2031 (adopted January 2016), and associated Villages Plan (adopted July 2018); it is critical to recognise that these are being reviewed through the emerging Greater Exeter Strategic Plan (GESP) and subsequent new Local Plan.
- 1.5 As an overview, we are concerned with the CIL testing assumptions included within the Viability Study (VS), and the effective operation of CIL in practice. These concerns primarily relate to benchmark land values, net developable areas, construction costs and the practical application of the amended Instalments Policy. Each of these matters has the potential to impact upon the deliverability of medium-sized and larger sites.

Taylor Wimpey in East Devon

- 1.6 Taylor Wimpey are active across East Devon, and have a number of schemes currently under construction, including at Exmouth and Cranbrook, and also have a number of further land interests in the charging area for a variety of sites at different scales and locations and land typologies.
- 1.7 Taylor Wimpey may choose to submit extra representations in relation to Cranbrook concerning implementation of the revised CIL.

Structure of this Representation

- 1.8 This representation is structured as follows:

- **Section 2** - planning and legal background.
- **Section 3** - outlines the development plan and identifies specific points about applying the guidance
- **Section 4** - provides scrutiny of the viability assessment study
- **Section 5** - outlines the position of Taylor Wimpey in respect of the effective operation of CIL and the instalments policy
- **Section 6** - conclusions.

1.8 Where relevant this representation provides comment on the supporting evidence/existing guidance and also makes reference to policy documents.

2. Summary of National Policy and Legal Context

Introduction

2.1 In respect of the preparation of Charging Schedules and supporting documentation, it is important to have regard to the Government policy, guidance and law. This includes:

- Part 11 of the Planning Act 2008; Community Infrastructure Levy Regulations 2010 (as amended)
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG) CIL Guidance (as amended)
- Non-statutory Guidance

Planning Act 2008 (as amended)

2.2 Section 205 (2) of Part 11 of the 2008 Act (as amended by the Localism Act 2011) states that:

“In making the regulations the Secretary of State shall aim to ensure that the overall purpose of CIL is to ensure that costs incurred in supporting the development of an area can be funded wholly or partly by owners or developers of land in a way that does not make development of the area economically unviable.”

2.3 Section 212 of the Planning Act requires the examiner to consider whether the "*drafting requirements*" have been complied with and, if not, whether the non-compliance can be remedied by the making of modifications to the DCS. The "*drafting requirements*" mean the legal requirements in Part 11 of the Planning Act and the CIL Regulations so far as relevant to the drafting of the charging schedule. In considering the "*drafting requirements*", examiners are required in particular to have regard to the matters listed in Section 211(2) and 211(4). This requires examiners to consider whether the relevant charging authority has had regard to the following matters:

- Actual and expected costs of infrastructure;
- Matters specific by the CIL Regulations relating to the economic viability of development;
- Other actual and expected sources of funding for infrastructure; and
- Actual or expected administrative expenses in connection with CIL.

2.4 Regulation 14 of the CIL Regulations (as amended) expands on these requirements, explaining that charging authorities must, when striking an appropriate balance, have regard to:

- The desirability of funding from CIL (in whole or in part), the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
- The potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

2.5 The Examiner will need to determine whether appropriate evidence on infrastructure needs and development viability has been presented by the Council.

National Planning Policy Framework

2.6 It is important that the preparation of CIL is in the spirit of the NPPF, notably that it is delivery-focused and *“positively prepared in a way that is aspirational but deliverable”*¹.

2.7 The NPPF calls for local authorities to boost significantly the supply of housing². It requires local authorities to:

- Meet the full, objectively assessed needs for housing, including identifying key sites;
- Identify deliverable sites to provide five years worth of supply and developable sites further ahead;
- Provide a housing trajectory for the plan period describing how the five year supply is to be maintained.

2.8 To be deliverable, sites should be *“available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on site within five years”* and in particular that development of the site is viable (‘Deliverable’, NPPF Glossary).

2.9 The NPPF indicates that viability at the plan-making level should be based upon national guidance, and should use standardised inputs as appropriate³.

Planning Practice Guidance (PPG)

2.10 The PPG was substantively updated in 2019, first in respect to the new NPPF, and secondly, in response to the 2019 (No. 2) CIL Regulations. Of particular relevance to CIL, the PPG states:

- Charging schedules should be consistent with, and support the implementation of, up-to-date relevant Plans⁴.

¹ Paragraph 16, National Planning Policy Framework, 2019

² Ibid, Paragraph 67 and 74

³ Ibid, Paragraph 57

⁴ Paragraph 11, Reference ID: 25-011-20190901

- The need for balance (as per Regulation 14⁵).
- The need for “*appropriate available evidence to inform the Draft Charging Schedule*” (as per Schedule 211(7) (a) of the 2008 Act).

2.11 The policy direction from central government is very much towards facilitating development. This policy imperative should have a major material bearing on the CIL rates. This applies to the evidence to support the balance reached between the desirability of funding infrastructure through CIL and the potential effects on economic viability of development across that area.

2.12 The Guidance states that it is up to charging authorities to decide how much potential development they are willing to put at risk through CIL (the “appropriate balance”). Clearly this judgement needs to consider the wider planning priorities including the development plan targets and NPPF objective of ‘boosting’ housing supply. Furthermore, the CIL Guidance outlines that CIL receipts are not expected to pay for all infrastructure but a “significant contribution”⁶. The overall approach and rate of CIL will have to pay attention to the development plan and intended delivery.

2.13 The Guidance also states that charging authorities may adopt differential rates in relation to:

- Geographical zones within the charging authority’s boundary
- Types of development; and/or
- Scales of development⁷

2.14 It explains that where a particular type or scale of development has low, very low or zero viability, the charging authority should consider setting low or zero rates for that type of development. The opportunity to define a CIL rate by development scale is important in this instance.

Non-Statutory Guidance

2.15 In addition to the regulations and statutory guidance, three specific non-statutory guidance documents have been published which are directly relevant to the CIL rate setting process. These three guidance documents have been recognised by Inspectors elsewhere as valuable sources of advice regarding the approach to, and assumptions to be used in, the setting of CIL levy rates for residential development. The two documents are:

- Financial Viability in Planning: Conduct and Reporting (May 2019);
- Financial Viability in Planning, RICS (August 2012) and
- Viability Testing Local Plans, Local Housing Delivery Group (June 2012) (‘Harman Report’)

⁵ CIL Regulations 2010 (as amended)

⁶ Paragraph 169, Reference ID 25-169-20190901

⁷ Paragraph 22, Reference ID 25-022-20190901



2.16 Reference is made to these guidance documents where relevant throughout this representation.

3. Planning Overview & Housing Delivery

The Development Plan

- 3.1 The Development Plan for East Devon is the adopted Local Plan 2013-2031, and associated Villages Plan.
- 3.2 The Authority have commenced the local plan review process, with the GESP and Local Plan Review anticipated to progress over the coming couple of years.

Housing Delivery

- 3.3 Analysis of viability results should always be considered in the context of the relevant Development Plan and the identified housing supply. The Council's latest Housing Monitoring Update (HMU, published November 2018) confirms that in the first three years of the HLS there is slow delivery progress across Cranbrook and the allocations. If the delivery deficits across the larger, strategic sites continues there will be a need for additional residential sites to come forward to assist in maintaining an up-to-date five year housing land supply.
- 3.4 However, it is also material to consider whether the consented schemes are meeting the development objectives of the adopted Local Plan. In particular, we note that the Viability Study, at paragraph 7.1.2, recognises that there have been a number of instances whereby the sites have failed to achieve the policy-compliant level of affordable housing as a result of viability. Whilst it may not be possible to identify a single 'cause' of this failure, the combination of the factors referenced in the Viability Study emphasise the importance of ensuring the assumptions within the evidence base are robust, that an appropriate 'contingency' allowance is made, and that the CIL 'headroom' is suitable to respond to the market variations which will naturally be exhibited across a plan area.
- 3.5 The review of CIL is therefore still required to assess holistically the cumulative impact of CIL and potential planning obligations, to ensure that the delivery of development would not be threatened by the proposed rates.

Regulation 123 List and s106 Obligations

- 3.6 The amended CIL Regulations 2019 (No 2) remove the requirement to publish a Regulation 123 List, and remove the pooling restrictions associated with s106 obligations. The implications of this change are significant, and will have a material impact on the viability of development across the charging area.
- 3.7 This is recognised within the Viability Study which explicitly states that the implication of the removal of the Regulation 123 List, and the movement back to s106 obligations will result in a rebalance of the mechanisms

to secure developer contributions, and will result in a decrease in the headroom available for CIL (see paragraph 4.1.17). It is therefore with concern that these changes have been disregarded as part of the rate setting exercise within East Devon. The implications of these changes are clearly expressed in the sensitivity testing within the evidence base and must be considered to ensure that the CIL rates strike the appropriate balance.

- 3.8 Further, the evidence base underpinning the CIL rates in regard to likely s106 contributions will require review, with the legislative change resulting in the assumption that historical s106 rates will continue no longer being supported.

4. Viability Study

Introduction

- 4.1 Section 211 (7a) of the Planning Act (as amended), requires Councils to use “*appropriate available evidence*” to inform their Charging Schedules.
- 4.2 Three Dragons with WWA have produced a ‘CIL Review and Cranbrook Plan DPD Viability Study’ (January 2019) to consider the review of the Charging Schedule, and also to support the Cranbrook DPD.
- 4.3 This representation will critically examine the assumptions made to determine if the Council has sufficiently met the requirements of Section 211 (7a) in preparing their rates.
- 4.4 We summarise the rates proposed in the DCS below:
- 4.5 The Viability Study (VS) is based on a series of residual valuation scenarios that model the gross development value achievable from different uses to which scheme costs are discounted.
- 4.6 The VS has tested nine hypothetical residential typologies ranging from 2 to 900 dwellings; with these assessed across five value areas. We are concerned however, that consideration has not been given as to the likely developments that will come forward within the plan area, outside of allocated strategic sites.
- 4.7 The absence of any testing between 50 and 150 dwellings is a significant shortcoming. Key factors effecting the viability of residential development can occur between these two typologies; a conclusion which is demonstrated by the differing assumptions which underpin the VS. As noted above, Taylor Wimpey has several land interests for a variety of sites at different scales across the district, including between 50-150 dwellings.
- 4.8 We therefore believe that further consideration is required to inform the development typologies tested in the VS before it can be concluded that the proposed CIL rates are supported by appropriate evidence.
- 4.9 We have split our response into three parts:

Part 1 - Summary of Appraisal Inputs

Part 2 - Assessment of Appraisal Inputs

Part 3 – Appraisal Outputs: Scale of Development

Part 1 – Summary of Appraisal Inputs

- 4.10 We summarise below the viability assumptions used, and highlight the initial areas of concern. Further detail on the specific areas of disagreement or where clarification is required is set out in Part 2.

Table 4.1: Summary Table Assumptions and Response

Viability Appraisal Assumptions	Viability Study Assumption	Response
Values		
Benchmark Land Values (BLVs)	Table 4.11	Disagree - see Part 2
Gross to Net Land Take	Underestimation of gross to net land take	Disagree - see Part 2
Densities		
Dwellings Per Hectare	Table 3.1	Agree
Dwelling Sizes		
Open Market Housing and Affordable Housing	Table 4.4	Agree
Affordable Housing Tenure	VS only considers affordable rented values	Disagree - see Part 2
Development Costs		
Baseline	Table 4.9	Disagree - see Part 2
Design Costs	Further clarification on design standards and failure to consider biodiversity net gain	Disagree - see Part 2
Site Infrastructure Costs	Greenfield: <ul style="list-style-type: none"> o 150: 10% Build Costs o 500-900: 15% Build Costs 	Disagree - see Part 2
Plot Externals	Allowance to be 15%, without inclusion of contingency allowance	Disagree – see Part 2
Abnormals	No allowances	Disagree - see Part 2
Professional Fees	6-8% of build and externals / site works	Agree
Section 106		
s106 Financial Contribution	£1,500/unit	Disagree - see Part 2
Section 278	See above	
Developers Profit		
Developers Profit	15-20% profit on GDV	Disagree - see Part 2

Part 2 – Assessment of Appraisal Inputs

4.11 As outlined in Table 4.1 above, there are a number of assumptions made within the VS that cause concern. In the following section we have explored these concerns further and made reference to evidence where appropriate.

4.12 The key areas of concern include:

- Benchmark Land Values;
- Dwelling Densities
- Development Costs;
- Net Developable Areas;
- S106; and
- Developer Profit

Benchmark Land Values

4.13 The VS has adopted the following Benchmark Land Values (BLV's):

Table 4.2 BLV adopted in Viability Study

Site Size	Exmouth, Ottery, Honiton, Axminster and Seaton £ per Gross Developable Hectare	Sidmouth and Budleigh Salterton £ per Gross Developable Hectare
50 unit	£0.6m	£1m
150 unit	£0.3m	£0.6m

4.14 Annex 1 of the VS sets out the 'evidence' pertaining to land values – however there are limited relevant transactions included within the evidence base, with this significantly undermining the robustness of the assessment.

4.15 The PPG states that BLV should be based upon existing use value, allowing for a premium to the land owners (known as EUV+), and reflecting the implications of abnormal costs, site specific infrastructure costs and professional site fees. The PPG adds that the premium for the landowner should include a level of return which it is considered a reasonable landowner is willing to sell their land⁸.

4.16 The updated guidance states that existing use value should be informed by market evidence of current uses, costs and values. It adds that *“market evidence can also be used as a cross-check of benchmark land value but should not be used in place of benchmark land value.”*⁹

4.17 Based on the significant gap between the 50-150 unit site sizes, it is not appropriate to half the BLV threshold at 150 units.

4.18 If the BLVs used within the VS are too low, this unduly inflates the CIL rates and could jeopardise the future delivery of development.

⁸ Paragraph 013, reference ID: 10-013-20190509

⁹ Paragraph 014, reference ID: 10-014-20190509



4.19 We can benchmark 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’ £494,000 per gross hectare; on the basis that this will be the minimum value acceptable. It is noted that this will not be a useful comparison to high value areas, as these would require values significantly above the at least figure set out in the research. However, when considering those sites of around 150 units in Exmouth, Ottery, Honiton, Axminster and Seaton, the BLV falls short of this ‘at least’ figure.

Gross to Net Land Take Assumptions

4.20 An appropriate gross to net land take assumption is required to ensure that account is taken of the requirement to deliver public open space provision, SUDS, strategic landscaping and other infrastructure requirements.

4.21 Development sites are rarely developed at 100% net to gross ratios largely due to public open space provision, SUDS, strategic landscaping and other infrastructure requirements. The recent introduction of ‘net biodiversity gain’ is also likely to impact upon the quantum of the net developable area on development sites. This is particularly relevant to larger sites, however discounts for net to gross start at relatively small development sites. Despite the importance of this to the viability appraisals, it is not at all clear within the VS how the hypothetical appraisals have taken account of the gross site areas.

4.22 The Harman Report, referenced within the VS, provides further account for the variations in net to gross land take:

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

4.23 Savills refers to the assumptions contained in the historic guidance document ‘Tapping the Potential’. The table below reproduces the document’s illustration of gross to net ratios for different site sizes.

Figure 2: Net to Gross Land Take

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

Source: *Tapping the Potential – Best practice in assessing urban housing capacity, URBED, July 1999*

4.24 These additional land uses are a necessary part of any planning permission and contribute towards the acceptability of the scheme from the Council’s perspective. It is therefore appropriate that viability appraisals (particularly for large Greenfield sites over 1ha) factor in the gross land areas required for each scheme and adopt a reasonable minimum land value across the gross site area. If the BLV adopted is on a £ / gross ha

basis and the RLV is a figure calculated on the net developable area, then for comparison purposes, the BLV is being grossly underestimated.

- 4.25 An underestimation of the gross and net areas will result in an inaccurately low BLV and consequently an over inflated surplus afforded to CIL.

Affordable Housing Tenure

- 4.26 The requirement to take into account development plan costs when assessing CIL is well documented. In respect to affordable housing this relates both to conformance with the gross delivery requirement, but also the detailed mix and tenure specifications.
- 4.27 The VS confirms that the policy allows for both social or affordable rent (paragraph 4.1.9), with this confirmed in the draft Affordable Housing SPD (dated March 2019), however the viability appraisals only consider the values associated with affordable rent, which are higher than those associated with social rent.
- 4.28 We would encourage East Devon to consider if this is the approach that they wish to take across all development sites, on the basis that by setting a CIL rate which is based upon higher affordable housing revenues, that it could be challenging to deliver alternative tenures.

Development Costs

Baseline Construction Costs

- 4.29 Table 4.9 sets out altered build costs across the range of different scenarios. There is no basis or evidence presented to justify these reductions, which for the most part, result in lower development scheme costs.

Plot External

- 4.30 In line with standard industry practice, we would expect the plot externals allowance to be 15% of basic build costs, without the inclusion of the contingency allowance within this figure.

Design Costs

- 4.31 Further clarification is required within the VS in relation to any additional development costs as a result of design standards; for example enhanced sustainability standards, Lifetime Homes and Wheelchair Standards.
- 4.32 Strategy 36 of the Local Plan requires that on residential development schemes for 10 dwellings or more, developers should demonstrate that all of the affordable housing and around 20% of market units will meet part M4(2) of the Building Regulations, Category 2: accessible and adaptable dwellings (or any comparable updated nationally set standards). Table 4.10 of the VS shows that no consideration has been made of these additional design costs.

- 4.33 The VS fails to take any consideration of 'biodiversity net gain' within the design and development costs listed in Table 4.10. The NPPF establishes this principle within national guidance, stating that in order to achieve sustainable development securing a net gain in biodiversity is a key aspect of meeting the environmental objective of protecting and enhancing our natural, built and historic environment (paragraph 8)

Site Infrastructure Costs

- 4.34 We agree with the inclusion of an additional site infrastructure cost - £20,000/unit for the sites of 150, 500 and 900 dwellings (paragraph 4.1.17). This is broadly consistent with the assumptions recommended in the Harman Report. We assume that the percentage identified within Table 4.9 is an error.

Abnormal Costs

- 4.35 In establishing how costs should be defined within viability assessment, the PPG establishes that abnormal costs include "those associated with treatment for contaminated sites or listed buildings, or costs associated with brownfield, phased or complex sites"¹⁰. The VS makes no explicit allowance towards such costs within the benchmark land values.

- 4.36 Whilst more prominent on brownfield sites, abnormal costs can also occur within greenfield typologies. 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."

- 4.37 Whilst the theoretical proposition may be that the additional abnormal costs will be deducted from the land value, the actual proposition is that there will be a balancing act between affordable housing provision and land value. In practice, where this results in the development sites subject to abnormal costs the likelihood is that the affordable housing percentage will reduce as a consequence. It is important therefore that abnormal costs are appropriately and explicitly referenced in the derivation of the benchmark land values.

S106 Planning Obligations and s278 Highways Costs

- 4.38 For schemes over 10 dwellings, the VS factors in £1,500 of residual s106 costs per dwelling, however we are concerned that this figure has not been fully justified within the VS, and is a low amount per dwelling and does not adequately reflect the likely s106 costs associated with the hypothetical development scenarios tested.

- 4.39 In practice, a range of residual s106/278 allowances are made in CIL viability assessments, typically between £1,000 - £10,000 per unit. However in light of the inability of the strategic sites to deliver an

¹⁰ Paragraph 012, Reference ID: 10-012-20180724

adequate level of affordable housing and other S106 planning obligations (see below), attributing £1,500 is considered to be a low amount to be allocating per single unit. There is no adequate justification as to why this figure has been attributed as part of residual S106 costs at the identified 'medium' sized sites of 30 dwellings through to the larger sites of 900 dwellings, which will inevitably require a higher level of S106/278 costs in order to deliver a successful and policy compliant scheme.

4.40 Furthermore, the removal of Regulation 123 Lists and pooling restrictions through the recently updated Regulations means that Section 106 costs for residential development are likely to rise substantially.

Developer Profit

4.41 As acknowledged within the VS, the PPG requires that a suitable return to developers is used in the viability testing (between 15-20% of gross development value¹¹) in order to establish plan viability.

4.42 Given the uncertainty in the housing market and the general economy, the vast majority, if not all major developers, will be required to demonstrate a margin of at least 20% and in many cases higher. Small and Medium Size developers who rely upon debt funding to support delivery typically require a higher margin in order to satisfy the lending requirements of the banks. If this cannot be achieved then the land simply will not come forward for development.

Part 3 - Appraisal Outputs: Scale of Development

4.43 We summarise above the viability assumptions used, and highlight the initial areas of concern.

4.44 Unlike the time the first CIL Charging Schedule for East Devon was being prepared, we now benefit from an analysis of the implications of the rates in practice. This analysis, provided in the VS reveals that a number of schemes across the district have provided a less than policy compliant level of affordable housing and other S106 obligations due to viability constraints (paragraph 7.1.2). The VS points to varying reasons between the sites including the need to provide education facilities, listed building costs and flood mitigation, lower than expected local values, and higher existing use values in combination with lower development values.

4.45 The VS then recommends that the Council limits residential CIL charging at the larger and strategic sites as a result of the major development schemes not delivering a sufficient level of affordable housing and additional S106 planning obligations. We strongly agree with this conclusion. It is the larger sites which typically have infrastructure requirements that need to be funded outside of CIL and therefore represent an additional cost to development. For the reasons set out in Section 3 above, we do not consider that this is covered by the £1,500 per dwelling assumption for Section 106 contributions.

4.46 In response to this, the charging authority has proposed a reduced rate of £100 per square metre for residential development on strategic allocations. These site vary in size but start from as small as 100 dwellings.

¹¹ Paragraph 018, Reference ID: 10-018-20190509

- 4.47 The appraisal methodology used in the VS does not take into account planning risk and the viability of development would not therefore change whether or not a site is allocated for development. Indeed, the same development economics are applicable to a site of 100 dwellings that is allocated at a settlement as it is to 100 dwellings which is not. Yet, at many settlements within East Devon the CIL charging rate for an unallocated site would be double that of the equivalent allocated site.
- 4.48 It is not appropriate or consistent with the CIL Regulations to differentiate allocated and unallocated sites in this manner. Paragraph 22 of the CIL section of the Planning Practice Guidance¹² explains that:
- “The regulations allow charging authorities to apply differential rates in a flexible way, to help ensure the viability of development is not put at risk. Charging authorities should consider how they could use differential rates to optimise the funding they can receive through the levy. Differences in rates need to be justified by reference to the viability of development. Differential rates should not be used as a means to deliver policy objectives”.*
- 4.49 The guidance is clear that differential rates can be set either by geography, type or scale of development, however, in so doing these must be justified on the basis of viability and viability alone. Consistent with the final paragraph of the quote from the PPG above, it is not a legitimate use of CIL for the authority to set differential rates as a means of supporting the delivery of policy objectives.
- 4.50 Rather than set geographical charging zones for the allocated strategic sites of over 100 dwellings, the geographical boundaries should be removed and the reduced ‘strategic sites’ rate applied to all sites above the 100 dwelling threshold (with the exception of development at Cranbrook which is subject to its own nil rate). Such an approach would be transparent, consistent with the clear guidance set out in the PPG and not result in any unnecessarily complexity in the application of CIL. It would also have the added benefit of longevity. Future large scale allocations made by the local authority would not require the production of a replacement Charging Schedule as the proposed approach would differentiate based on the viability implications of different scales of development and not be constrained to tightly drawn geographical areas. Furthermore, should any of the strategic allocations not be delivered at the pace required by the authority to ensure that a five year housing land supply is maintained (a matter we alluded to in the introduction), it would not preclude other sites coming forward to fill the void due to viability.

¹² Paragraph 022, Reference ID 22-022-20190901

5. Effective Operation of CIL

CIL Operation

- 5.1 In addition to the assumptions above, the implementation of CIL is frequently cited as a barrier to the successful and expedient delivery of housing.
- 5.2 As such, we seek to raise a number of concerns in respect to the operation of CIL. Whilst this supporting information is not explicitly tested at examination, save for where it has a direct impact upon development viability. It is critical to allow for the successful implementation of CIL and to demonstrate that the CIL has been prepared positively and supports sustainable development.

Discretionary and Exceptional Circumstances Relief

- 5.3 With regard to Discretionary Relief and Exceptional Circumstances Relief we note that the Council has not identified if these reliefs will be made available. Our client would seek that the reliefs are enacted, thus ensuring flexibility for site specific conditions.
- 5.4 Savills does not consider there to be any detriment arising from the Councils making available such reliefs within policies as part of its Charging Schedule, as the Councils will still retain control over the application of the policies. There are strict tests surrounding the availability and applicability of Exceptional Circumstances Relief. It would therefore only be applicable to those schemes that can justify the need for it and meet those strict tests.
- 5.5 We would therefore ask that relief is included in the Charging Schedule and that the intended approach to doing so is outlined.

Instalments Policy

- 5.6 Our client welcomes the proposed retention of an Instalments Policy. However from reviewing the proposed policy, it appears that the proposed payment of CIL liability is disproportionately skewed against the larger schemes which require greater levels of infrastructure in order to make the overall scheme work.
- 5.7 For those schemes where CIL liability is over £75,001, developers will be required to pay all of the fees within one year of the commencement date. This is more onerous than the existing Instalments Policy which, after one year, requires just 30% of the total CIL liability to be paid. For those schemes subject to a CIL liability of over £300,000, all (100%) of the liability will need to be paid within one and a half years, whereas under the existing policy, some 60% of the liability would have been paid by this date.

- 5.8 The above examples all point towards an imbalance in the payment of CIL liability for larger developers like our client. Ultimately, developer cash flow is an important consideration, notably in respect of upfront infrastructure costs typically associated with strategic development. The Instalment Policy should aim to reflect, as closely as possible, the timing of delivery of the development, to ensure that the CIL does not put unnecessary pressure on cash flow and viability.
- 5.9 Therefore, it is recommended that the existing instalments policy be retained and the proposed policy be removed from the Council's CIL.
- 5.10 We believe that there should be an overriding mechanism which, in certain situations should the CIL payments threaten the viability, and thus the deliverability of the scheme proposed, can be negotiated and agreed on a one-to-one basis. This is in line with the PPG which states:

*"An instalment policy can assist the viability and delivery of development by taking account of financial restrictions, for example in areas such as development of homes within the buy to let sector. Few if any developments generate value until they are complete either in whole or in phases."*¹³

In Kind Payments

- 5.11 We note the absence of an In Kind Payment mechanism. This allows the Councils to use flexibility when delivering infrastructure across the plan area, and to respond positively to opportunities for on-site delivery of infrastructure to meet wider needs than site specific mitigation.
- 5.12 We would encourage the Council to publish details in respect to the process which In Kind Payments would be required to go through; most notably, in relation to the process by which agreement would be reached between parties to proceed through this route, and the valuation exercise which would then be undertaken. This would ensure clarity at the outset.

¹³ Paragraph 128, Reference ID: 25-128-20190901

6. Conclusion

- 6.1 This representation has been prepared by Savills on behalf of Taylor Wimpey, who are actively involved within the growth and development of East Devon District and have a number of schemes currently under construction, including at Exmouth and Cranbrook, alongside a number of further land interests in the charging area for a variety of sites in different locations and at different scales.
- 6.2 The representation has raised significant concerns in respect to the robustness of the evidence base underpinning the proposed CIL rates, and the sufficiency of the information available upon which to consider the appropriateness of the proposed rates.
- 6.3 It is the client's position that the DCS should not proceed to Examination in its current form, and that further clarification and additional testing are required in light of the concerns raised above, to ensure that interested parties have sufficient opportunities to comment on the Viability Study. In its current form, the DCS and evidence base will fail the requirement to provide appropriate evidence to justify the proposed rates; thus failing to demonstrate that the proposed rates will not threaten the ability to viably deliver the development plan.
- 6.4 The key areas of concern cover the following topics:
- Benchmark Land Values;
 - Dwelling Densities
 - Development Costs;
 - Net Developable Areas;
 - S106; and
 - Developer Profit
- 6.5 In its current form, there is insufficient information available upon which the Consortium can robustly respond to the draft charging rates.
- 6.6 In addition to the assumptions highlighted above, there are significant reservations over the effective operation of CIL, namely over the Council's Instalments Policy, which will place unnecessary pressure on cash flow and viability of our client's schemes across the District.
- 6.7 This representation clearly demonstrates that at the present time, with the evidence set out in the Viability Study, that there is insufficient justification to conclude that the proposed CIL rates strike the appropriate balance, and that their imposition would not undermine the delivery of the development plan.



6.8 Notwithstanding the CIL rates themselves, of greater concern is the approach to differential rates. We contend that the differential rate of £100 for 'strategic' residential should not be applied on a geographical basis but that a threshold of 100 dwellings (with the exception of development at Cranbrook which is subject to its own nil rate) should be applied to all sites that come forward through the planning system.