

Agenda Item No. 4(g)

DERBYSHIRE COUNTY COUNCIL

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND
INFRASTRUCTURE**

19 September 2018

Report of the Strategic Director – Economy, Transport and Environment

**CONSULTATION ON DERBYSHIRE DALES DISTRICT COUNCIL
COMMUNITY INFRASTRUCTURE LEVY DRAFT CHARGING SCHEDULE**

(1) **Purpose of Report** To seek Cabinet Member authority to provide the County Council's formal response to the consultation by the Derbyshire Dales District Council (DDDC) on its Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS).

(2) **Information and Analysis** At its meeting of Council on 25 January 2018, DDDC resolved to take forward the preparation of a CIL as one means of delivering the future infrastructure needs of the District.

CIL is a charge on viable types of new development, calculated on a pound per square metre (m²) basis of new floorspace. CIL is intended to be used to help fund infrastructure to support the development of an area rather than to secure site specific obligations for making acceptable otherwise unacceptable individual planning applications, which is the usual purpose of Agreements under Section 106 of the Town and Country Planning Act 1990. CIL therefore does not fully replace Section 106.

Income from CIL can be spent on anything that constitutes "infrastructure", geographically anywhere across the district, or indeed for strategic projects outside the area. Section 216 of the Planning Act 2008 provides that infrastructure includes roads and transport facilities, flood defence, schools and other educational facilities, medical facilities, sporting and recreational facilities, and open spaces. Regulation 123 of the CIL Regulations 2010 (as amended) prevents Section 106 contributions being required for any project or type of infrastructure which is set out on the charging authority's Regulation 123 list and which it intends to fund through the CIL. This is to avoid "double funding".

There are two stages of consultation required by the CIL Regulations. The District Council undertook the first of these (on its Preliminary Draft Charging Schedule (PDCS)) in February/March 2018 and included Derbyshire County

Council officers and members in its engagement. Extensive comments were returned to DDDC, which expressed concern over both the potential level of CIL to be collected, and the ability of CIL funding to deliver school places/new schools to support the children arising from the development allocated in the Adopted Derbyshire Dales Local Plan (2017). The County Council, in that response, therefore requested that education be removed from the Regulation 123 list. Concern was also expressed that the proposed CIL rates, especially those for large strategic sites where new primary schools were required, were too high, as education contributions had not been factored into the viability assessment and there was no headroom available to pay for school places/new schools after CIL and identified site specific Section 106 contributions had been deducted. It was considered that the proposed Ashbourne Bypass should remain on the Regulation 123 list as this is a strategic infrastructure project and may not trigger Section 106 funding.

DDDC has now consulted Derbyshire County Council as part of the second stage of the public consultation process on the draft charging schedule, having reviewed the representations made on the preliminary draft charging schedule. This is the last stage of consultation before a charging schedule can be submitted by DDDC to the Secretary of State for an Examination in Public.

Full details of the CIL DCS consultation can be viewed on DDDC's website at the link below:

<http://www.derbyshiredales.gov.uk/planning-a-building-control/planning-policy/community-infrastructure-levy/consultation-on-draft-charging-schedule>

In order to meet DDDC's time limit for submission of comments, provisional Officer comments were submitted on 7 September 2018. Overall, these comments consider that although DDDC has removed education from the Regulation 123 list (which is not unwelcome in itself), the levels of CIL that are proposed to be charged on sites will be too high to allow enough headroom for payment of Section 106 contributions that would be required to mitigate the impact of development, especially for education contributions. A summary of the comments is set out below. A copy of the full response can be made available on request.

Officer Comments

Seven questions were posed as part of the DDDC CIL DCS consultation. A summary of the Officer responses to each question is provided below:

Do the proposed rates strike an appropriate balance between funding infrastructure and any potential effects on the viability of development? If not please provide alternative appropriate evidence to support your view

CIL is only chargeable on planning permissions granted on or after the date on which DDDC commences charging CIL. A number of the strategic

allocations and other sites allocated within the Local Plan already benefit from having a planning permission in place, and there could be more such sites with permission by the time CIL charging commences. Assuming that all such applications for such development currently under consideration, but no further applications in respect of the remaining allocations, were to be approved prior to the commencement of CIL, it is estimated that up to 2033, income from CIL for use by DDDC at the proposed rates would be in the order of between £5.8 million and £6.5 million (after the meaningful neighbourhood proportion is deducted). This estimate, however, does not take into account exemptions and reliefs which may reduce CIL income further. Therefore, whilst DDDC points out certain types of benefit generally associated with introducing a CIL, it is not clear that it will allow better delivery of new infrastructure in conjunction with new development in the Derbyshire Dales.

There are other reservations, about the robustness of the calculation methodology used by DDDC in proposing the CIL rates. The viability study by DDDC's consultants Cushman and Wakefield study commissioned to inform the preparation of the CIL DCS, has not taken into account any of the education and highways contributions made by Section 106 obligation and under the Highways Act since 2010, and makes an allowance of only £1,000 per dwelling unit. The study states that *'should the site specific Section 106 requirements exceed this allowance, it would be expected that this would be reflected in the reduction of the site value and therefore be reflected in a lower land price'*. However, a lower land value could prejudice the release of a site.

Amongst other education needs, Derbyshire County Council has identified two new one form entry primary schools to support the developments at Middle Peak Quarry, Wirksworth and Ashbourne Airfield Phase 2 and costing around £5 million each. Given that the CIL income in total that DDDC would anticipate collecting, is significantly lower than the cost of these two primary schools alone, it is clear that education and schools infrastructure should stay off the Regulation 123 listing, so that they may be provided for as infrastructure through Section 106 funding.

However, the limited available headroom for Section 106 funding from the current proposed rates of CIL, for these strategic sites, is itself a cause for concern. A profit level for developers of 15-20% of gross development value has become officially recognised as a benchmark by planning practice guidance released by Government in July 2018 to support the revised National Planning Policy Framework. The viability assessment on the strategic sites in Derbyshire Dales shows a blended profit (i.e. profit for market and affordable housing combined) at 17.36%. It therefore seems unlikely that enough headroom would be available over and above the CIL liability to fund education provision (whether on-site or by Section 106 contribution) and any other Section 106 contributions required to make the developments acceptable in sustainable planning terms.

DDDC is therefore asked to re-assess and revise the proposed level of CIL on market housing, especially for these two large strategic sites, with education and highways requirements fully factored into the viability assessment. This would be in line with CIL charging in other local authority areas across the country which have zero or minimal m² rates on their large strategic sites in order to accommodate the infrastructure requirements.

A zero rate CIL for high street and village shops is supported, in order to encourage the vitality and viability of town centres and local services. To avoid any confusion as to which type of retail development is liable for CIL, it is suggested that a definition section is added to distinguish between 'superstore' 'supermarket' and 'convenience store', as only superstores (whether town centre or out of town) and convenience stores where they are not in a local centre would attract a CIL charge.

Do you have any comments on the District Council's Instalment Policy?

Consideration needs to be given to the timely delivery of infrastructure to support a development, as well as the cash flow of developers.

Notwithstanding start-up costs, 360 days is considered to be an excessive allowance for the timing of a second instalment payment at 50%. For example, £15,000 is 300m² (in the £50/m² charging zone) which would be no more than five single bed dwellings. These could be easily delivered within the 360 days required for the second instalment.

Do you have any comments on the District Council's Exceptional Circumstances Relief Policy?

Consideration needs to be given to the extent to which use of discretionary exemptions as in combination with mandatory exemptions may significantly reduce the Authority's CIL income.

Do you have any comments on the District Council's Payment in Kind and Infrastructure Payment Policy?

A Payment in Kind Policy is welcomed.

Do you have any views on the content of the Council's Initial Draft Regulation 123 list and the proposed balance between CIL and Section 106. If so please give reasoning with your answer.

It is suspected the funding gap shown as £22 million is optimistic considering the number of 'priority projects' to be funded through the CIL according to the draft list, including highway capacity and traffic management improvements in Ashbourne, Matlock and Wirksworth, works to assist with the implementation of key development sites and the Ashbourne Bypass.

The County Council considers it is necessary to ensure that the current Regulation 123 list does not impede local Section 106 contributions/

conditions (and subsequent Section 278 Agreements) to carry out or fund local improvements to directly mitigate the impacts of individual developments, whether or not as a result of cumulative harm with other committed development. As such, it has been requested that an asterisk (*) is added to the highways section of the Regulation 123 list (bullet point 1) and which states: *'This section of the Regulation 123 list explicitly excludes the provision of infrastructure that is required to make a development acceptable in planning terms and which meets the legal tests of Regulation 122 of the CIL Regulations. The Council therefore retains its discretion to negotiate necessary planning conditions and Section 106 planning obligations to secure such infrastructure.'*

Do you have any other comments on the Draft Charging Schedule

Elements of this DDDC CIL DCS consultation document had not been updated in line with the removal of education contributions from the draft Regulation 123 list. As such, sections 3.3 and 9.6 were highlighted as no longer being in line with the Regulation 123 list.

The final question for the consultation asked for 'any other comments on the evidence base which supports the Draft Charging Schedule'.

Local Member Comments

Local County Councillors with electoral divisions in Derbyshire Dales District were consulted on the CIL DCS. No comments have been received at the time of writing this report. However, any comments subsequently received will be reported to this meeting and forwarded to DDDC.

(3) **Financial Considerations** The allocation of funding received from CIL is at the behest of the charging and collection authority, which in this case would be DDDC. Currently, there are no governance arrangements in place for the prioritisation or allocation of the DDDC CIL.

It is recognised that CIL would not be able to fully fund items on the Regulation 123 list. As such, items such as education have been removed, with the intention they will be funded through Section 106 contributions, however due to viability issues, this does not guarantee funding. Derbyshire County Council remains concerned that the contributions achieved through CIL for relevant and necessary projects will not be sufficient to offset the real costs to the Authority.

(4) **Legal Considerations** The recommendation in this report is made in the context of the County Council's responsibilities and services under the provisions of the Localism Act 2011 and the Planning and Compulsory Purchase Act 2004, Planning Act 2008 and CIL Regulations 2010 (as amended).

(5) **Social Value Considerations** The relevance of social value in terms of social, economic and environmental wellbeing has been considered in the preparation of this report. Meeting the current and future needs of communities and the management of scarce resources (i.e. sustainable development) is central to the role of local and county planning authorities in preparing a CIL in order to support the provision of infrastructure to support the delivery of their local plans.

Other Consultations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(6) **Key Decision** No.

(7) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(8) **Background Papers** Held on file within the Economy, Transport and Environment Department. Officer contact details – Alison Richards, extension 39667.

(9) **OFFICER'S RECOMMENDATION** That the Cabinet Member authorises the Strategic Director – Economy, Transport and Environment to send a formal response to Derbyshire Dales District Council on its Derbyshire Dales Community Infrastructure Levy Draft Charging Schedule, in line with the informal responses to questions as summarised in this report, and any other relevant points as may be referred to at the meeting on 19 September 2018.

Mike Ashworth
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