

1. Do you feel that the proposed rates are suitably informed by the viability evidence provided in the Local Plan and Community Infrastructure Levy Viability Study (August 2013) and Viability Study Post Consultation Update (November 2013) produced by HDH Planning & Development?

PDCS029  
YES  NO

2. Do you believe the evidence on viability is correct?  
If not, please set out alternative evidence to support your view.

YES  NO

3. Do you think the rates proposed strike an appropriate balance between helping to fund infrastructure through CIL and the potential effects of imposing CIL on the viability of development needed to deliver the aspirations of the Local Development Plan?

YES  NO

4. Do you think the Council should introduce an instalments policy?

5. Do you think the Council should include discretionary relief from CIL for charitable investment or 'exceptional circumstances' as outlined in section 2.5 of the CIL Preliminary Draft Charging Schedule consultation document?

YES  NO

5. Do you have any other comments on the preliminary draft schedule or supporting evidence?

YES  NO

## Community Infrastructure Levy

### Preliminary Draft Charging Schedule Consultation

## Representations on behalf of the RHS and the Tolhurst Family

### Introduction

We are responding on behalf of the RHS and the Tolhurst Family to the CIL Preliminary Draft Charging Schedule consultation document (January 2014), having also given consideration to the suite of supporting evidence base documents related to this, including proposed Policy I1 of the Pre-Submission Maldon Local Development Plan.

You will be aware that the RHS and Tolhurst Family are promoting land north of Burnham on Crouch (Strategic Sites S2 (j) and (k)) for residential development. It is in the context of this land interest that these comments are therefore put forward, in order to ensure that the CIL regime is fully compliant with the relevant regulations and guidance, and ultimately that the charges are set at a level which will facilitate delivery of much needed housing supported by necessary infrastructure, having regard to appropriate viability assessment.

Our concerns in this regard are set out below in relation to the following broad areas:

- CIL - S106 Relationship
- Viability Assessment

### CIL - S106 Relationship – avoidance of double counting

The relationship between CIL, at whatever level it is set, and the scope for additional site specific items to be dealt with by Section 106 Agreements will be a key matter in determining whether the eventual charging schedule is ultimately acceptable and has been reasonably framed.

Clarification of this relationship is particularly important, given the potential for overlap between certain items and the way in which Maldon intends to use CIL and planning obligations together to provide infrastructure.

It is noted that the Infrastructure Delivery Plan (IDP) provides a list of infrastructure considered to be required to deliver growth, potential funding sources and the funding gap at Table 20. This sets out that the specific needs of strategic sites could be dealt with via pooled section 106 agreements with CIL payments satisfying more district-wide needs. It is assumed that strategic sites would be required to pay the relevant identified pooled S106 payments to address local requirements necessary to make development of those sites acceptable in planning terms in addition to the CIL payments at the agreed rate, although it is considered that there are some contradictions between the Preliminary Draft Charging Schedule and the IDP (December 2013) which means that this is not entirely clear.

In particular it is noted that at para. 15.30 of the IDP costs associated with pooled Section 106 contributions at Burnham on Crouch are said to be very low and that ***“as such, it may be that operating a CIL charge in this location would create greater funding for infrastructure to serve these strategic sites.”***

It is therefore unclear from the CIL consultation document and associated IDP that is referred to, exactly what the intended approach to the Strategic allocation sites is, and indeed the rationale for variation in approach between such sites at different locations.

The IDP seems to suggest that certain sites at Heybridge are to be treated differently due to their relative isolation from other sites, whilst it is understood that the rationale for a £0 rated charge for other sites at Heybridge results from particularly high infrastructure costs.

Equally the approach to strategic sites at Burnham on Crouch is unclear in terms of whether contributions are to be sought through CIL or pooled Section 106 payments, and whether these are to be applied differently at this settlement compared to others. The justification for the assumed approach to deviating from the pooled Section 106 contributions also seems somewhat questionable, namely that the items assigned to the Burnham on Crouch sites would not generate sufficiently high receipts. Rather than accepting that these are the items considered to be necessary to satisfy the CIL tests to make development acceptable in planning terms, an alternative approach has seemingly been deemed necessary in order to ensure higher levels of contribution are achieved.

At the same time it is unclear whether the likely requirement for the setting out and long-term maintenance of substantial areas of public open space and landscaping at the Strategic Sites at Burnham on Crouch has been fully factored into the viability appraisal, particularly in concluding that pooled Section 106 costs are anticipated to be low.

In respect of the proposed CIL rates it is considered counterintuitive that those for sheltered housing and extra care have been set at more than twice the level for residential units, given that there is a clear need for such provision in view of the demographic circumstances of the district. It is further noted that certain sites, such as the Strategic Allocations at Burnham on Crouch, have a proposed requirement to deliver an element of accommodation to meet the housing needs of the older population under the terms of Policy S6, as currently drafted. Given the substantial variation between rates therefore applicable to various options available to developers under criteria S6 (12), it is evident that what could otherwise be seen as valued provision of these formats of accommodation may not come forward due to potential impacts on viability as a consequence. Furthermore it is not clear whether the higher rate of CIL for these types of accommodation has been fully taken into account within viability assessment modelling, where it appears that the standard residential rate has been applied to the total number of dwellings assigned to a site. This is less of a problem if the provision of sheltered housing and/or extra care accommodation is to be acceptable in addition to the delivery of standard housing in the quantum envisaged, but would represent a significant flaw if that were not the case.

A draft Reg. 123 List is also provided which sets out broad headings and some infrastructure which is to be excluded, but provides very little information on what would be covered. It is understood that this is currently to be read in conjunction with Table 20 in the IDP and that only at examination stage will the Draft Reg. 123 List be formally proposed. Only at that point will it be possible to evaluate definitively whether an appropriate balance has been struck.

The key point that we would raise at this preliminary consultation stage, aside from the importance of providing greater detail within the Reg. 123 List, is to ensure that there has been no double counting in respect of items that would potentially fall to be either delivered through specific sites or funded through Section 106 Agreements associated with these.

Delivery of housing is of fundamental importance to the District, it is therefore essential to ensure that nothing is done that will prejudice the timely delivery of housing that is anticipated to be allocated through the emerging Maldon Local Plan. In order to protect their viability, therefore, it is important to ensure that the introduction of CIL does not burden these schemes beyond the levels generally accepted as satisfying the tests of reasonableness and necessity under the current Section 106 regime.

Key components of this balancing act include ensuring that the CIL is set at an appropriate level and avoiding double counting. The CIL Guidance issued by DCLG in April 2013 states the following in this regard, at paragraph 88:

***“Where the Regulation 123 list includes a generic item (such as education or transport) section 106 contributions should not normally be sought on any specific projects in that category. Such site-specific contributions should only be sought where this can be justified with reference to underpinning evidence on infrastructure planning made publically available at examination.”***

Whilst it is not evident that such double counting is proposed, this is an issue of fundamental importance in light of the above, to which particular regard should be had as the process moves forward.

### **Viability Assessment**

The objective of these representations is not to dismiss CIL, but to ensure that the emerging regime in Maldon is founded on a robust and credible evidence base, and that it will deliver the infrastructure required to support the growth of the District in a manner that would not undermine the overall delivery of housing. As noted previously, the consultation document represents a relatively early stage in the process of arriving at an appropriately framed CIL. The following observations are made in order to put down a marker to ensure that as this process proceeds towards examination, and ultimately adoption, the CIL and associated evidence base do not place unrealistic financial burdens on developers and landowners that would potentially render developments unviable. In particular regard is had to Regulation 14 of the Community Infrastructure Regulations and the principal requirements outlined in the DCLG CIL Guidance (to which paragraph 7 refers).

Each potential area of potential methodological weakness is addressed in turn below.

### **Build costs**

We have concerns that the Viability Assessment has adopted unrealistic build costs. These include the following specific issues:

- It is seen that some allowance has been made for the consideration of the likelihood of Section 106 Agreements needing to be entered into alongside CIL (and in addition to affordable housing), with this set at £2,500 per unit. As noted elsewhere in this response it is difficult to fully appreciate the balance between items ultimately included in the CIL and those assigned to particular sites at this stage.
- The appraisal appears to assume that all dwellings will be built to Code Level 4 in the context of the Code for Sustainable Homes. It is considered likely that the majority of dwellings from allocations made within the emerging Local Plan will be delivered in the post-2016 period where different building regulation requirements could come into play. This will inevitably add to the build costs over and above those assumed within the Viability Assessment.

### **Fees**

It is welcomed that consideration has been given to the range of fees likely to be incurred in the process of promoting and securing planning permission on a site, and the allowances made for the elements are broadly correct.

### **CIL Rates**

It is noted within the Viability Assessment that the rate of £70/m<sup>2</sup> was put forward on the basis of a 30% affordable housing requirement and that with a 40% affordable housing requirement the rate was recommended at £40/m<sup>2</sup>. The majority of the sub-areas within the District are subject to an affordable housing requirement of 40% which therefore suggests a lower CIL rate should be set. This therefore requires justification to be set out as to why the higher figure has been chosen. Furthermore it is suggested that an assumed average rate of 30% delivery of affordable housing has been factored into the viability assessment. If this implies acceptance of a flexible approach to application of affordable housing policy requirements then this is not necessarily considered a problem, but otherwise may have skewed the overall conclusions.

Aside from the issue relating to affordable housing, the CIL rates proposed appear to be set broadly within the limits of viability for each area which reflects the current housing market and enables housing development within the Strategic Sites and the District as a whole to go ahead, while also providing monies for infrastructure to be provided. Importantly, this will also allow the developers and landowners to maintain control of the delivery of infrastructure for large sites therefore giving more certainty of delivery.

### **Conclusions**

Recognising that this initial consultation stage represents the beginning of an evolving process the RHS and Tolhurst Family hopes that these comments are of use as this is taken forward. It is asked that the issues raised above be registered as formal representations in the context of this Preliminary consultation and that they be taken into account as work is undertaken to refine the CIL documentation. It is understood that further information will be made available in due course that will enable the relationship between items included in the CIL and those relating to specific sites which will remain capable of being secured in addition to the levy under the continuing Section 106 regime to be more fully understood.

In the meantime, in summary, the following key points are made:

- It is of fundamental importance to avoid double counting, consistent with assertions in the DCLG CIL Guidance, and clarification is required in this regard;
- The need to support the timely provision of much needed housing in Maldon is also of considerable importance, and therefore particular care needs to be exercised in the setting of the CIL charging schedule at a level which will ensure that this crucial objective is not prejudiced;
- The relationship between CIL (as a non-negotiable charge) and other Section 106 contributions, and in particular affordable housing, is particularly significant and is one which needs to be considered carefully, in terms of the relative setting of both elements, and in turn the application of flexibility in relation to the latter such that overall delivery is not harmed;
- There are discrepancies between the IDP and the Consultation document which make it unclear what the intended approach to sites at certain settlement is;
- Care needs to be exercised in respect of assumptions made within the Viability Assessment in relation to build costs and fees, all of which will have a significant bearing on the outcomes in terms of viability conclusions.

Should you require clarification or would welcome more detailed discussion of any of the issues raised, please do not hesitate to contact me.