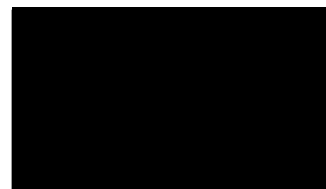


Representor No 4561  
Accession No 25  
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Strategic and Development Plans Team  
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Blackwood  
NP12 2YW

**By e-mail only**  
ldp@caerphilly.gov.uk  
Our ref: PPG/2185/45119238  
Your ref:

30 April 2013

Dear Sirs

**Draft Charging Schedule Consultation  
Response on behalf of Asda Stores Ltd**

We act for Asda Stores Limited ("Asda") and are writing on behalf of Asda to make representations in respect of Caerphilly County Borough Council's (the "Council") Draft Charging Schedule (March 2013) (the "Charging Schedule").

Under Regulation 14 of the Community Infrastructure Levy Regulations 2010 ("CIL Regulations") the Council's primary duty when setting the level of Community Infrastructure Levy ("CIL") charge is to strike an appropriate balance between the desirability of funding the cost of infrastructure required to support development from CIL and its potential effects on the economic viability of development.

In our view, the approach taken to assessing the Charging Schedule does not achieve an appropriate balance between these two objectives.

We wish fundamentally to object to the approach taken to assessing the Charging Schedule, and to the disproportionate loading of CIL upon large retail development, on the following grounds:

1. The impact on policies promoting economic growth and employment opportunities;
2. The proposal to split small and large retail development;
3. The financial assumptions and viability assessments contained in the Council's Viability profiling document; and
4. Concerns about the Council's approach to setting CIL charges generally.

**1. Impact on policies promoting economic growth and employment opportunities**

One of the aims of the Council's Local Development Plan (November 2010) is to 'increase the economic prosperity of the people and communities of the County Borough through the provision of land for employment opportunities'. We believe that the proposed CIL charges will not allow the Council to achieve this aim.

It is our view that if the charges set out in the Charging Schedule are adopted there will inevitably be several consequences across the County Borough that will put the Council's ability to realise the aims and objectives set out in its Local Development Plan. For example:

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- a) all other forms of development will receive a substantial subsidy at the expense of retail and, to a lesser extent, residential development; and
- b) there will be a corresponding disincentive (and market distortion accordingly) to investment in this sector of the economy.

The Government is keen to encourage the creation of additional employment across the economy and the retail sector is one of the largest employers and the largest creator of new jobs at the present time as well as being one of the most dynamic and innovative sectors within the UK economy.

#### Asda example 1

ASDA has a proven track record of investing in local communities and of creating jobs within these areas. For example, of the 123 colleagues recruited for the ASDA store in Tunbridge Wells, 76 colleagues live within 5 miles of the store and 87 colleagues were previously unemployed.

The supporting papers do not acknowledge this trend nor do they fully assess the role of retail within the national economy. They simply assert that large format retail continues to be one of the best performing sectors in the UK and this implies that operators within it have the capacity to pay potentially very large sums of CIL.

Any CIL Charging Schedule that imposes a CIL charge only on retail would effectively undermine the retail function of local centres by detracting from their viability and vitality as large retail developers would be discouraged by the imposition of CIL.

#### Asda example 2

Asda stores regularly rejuvenate and regenerate existing centres, and the surrounding areas, and draw new shoppers to them, which benefits the existing retailers, and those who open stores in Asda-anchored centres in their wake. For example in 2006, Asda opened a store in Romford, transforming a derelict brownfield site through an extension of an existing retail mall and creating 347 jobs. This helped to propel Romford into the top 50 UK retailing cities. Indeed, due to the success of the store in attracting more footfall to that part of the town's Primary Shopping Area, the local authority redrew the town centre boundary to include the edge of centre Asda store into the heart of the Romford town centre.

Furthermore, the higher CIL charges proposed for these rural areas will not encourage retail development and appears to be a contradiction to the statements in Policies DM22 and DM23.

## **2. The financial assumptions and viability assessments contained in the Council's viability reports**

The Council's Economic Viability Study contains retail development assumptions that in our view are inadequate as they do not make allowance for:

1. Section 106 and/or Section 278 contributions which will need to be paid by developers in addition to the CIL payments; or
2. The costs involved in obtaining planning permission for a development scheme.

Paragraph 5.23 notes that site-specific planning obligations should be accounted for by 'adopting CIL rates below the testing results'. There is no evidence as to how the rate set for retail development accounts for site-specific planning obligations and the effect that those obligations will have upon the economic viability of development.

By excluding the potentially large Section 106 costs and the costs of obtaining planning permission (examples of which are set out at Schedule 1 to this letter), the Council has underestimated the true cost of retail developments and artificially inflated the relevant benchmark land values used for the financial viability models. This will, in turn, have inflated the amount of CIL proposed for retail.

Furthermore, the DCLG now requires (from 14 December 2012) local authorities to produce evidence of the amount of revenue raised by Section 106 contributions in their area – including whether affordable housing and other targets have been met. The proposed CIL levies for any individual sector can then be assessed against the contributions previously received, minus any contributions that developers would still have to pay notwithstanding any CIL payments, to see if they are realistic.

The evidence put forward by the Council does not appear to contain this. It is difficult to see how the Council can be certain that the proposed CIL levy will not undermine the economic viability of retail development without having obtained this evidence.

### **3. Concerns about the Council's approach to setting CIL charges generally**

The stated purpose of CIL is to raise revenue for infrastructure necessary to serve development. CIL is intended to address the imbalance of raising funds for infrastructure under the Section 106 route where larger schemes have effectively subsidised minor developments. However, CIL does not replace the Section 106 revenue stream – it will simply provide additional revenue for infrastructure.

In light of this, we have some further concerns:

#### **Concerns relating to change of use and conversion projects**

Although the Council has taken the economics of regeneration projects into account to some extent when conducting its viability assessments it does not appear to have given much weight to this consideration.

As you will be aware Regulation 40 of the CIL Regulations only permits developers to deduct pre-existing floorspace from the CIL calculation if it is "in lawful use." Lawful use is defined in Regulation 40 (10) and essentially requires part of a building to have been in use for a six month continuous period in the twelve months before the date of the planning permission permitting the development.

However, many regeneration projects on brownfield land or town centres involve demolishing, converting or redeveloping buildings that have lain vacant for some time. This is particularly true of schemes which involve changes of use from employment land, where the fact that a unit has been vacant for a considerable time is often a key factor in the Council's decision to grant planning permission for the scheme.

The Viability Reports do not acknowledge that the economics of conversion schemes are very different to those of new build schemes. It is difficult to see how the Council can assess whether the imposition of CIL will put the majority of these schemes at risk without having considered its impact on their viability.

#### **Concerns on CIL payments and the infrastructure requirements**

The Charging Schedule, as drawn, does not make the connection between the CIL charges proposed and the infrastructure requirements of the particular developments upon which they are being levied.

By way of example, the proposed charge of £100 per square metre for retail development would add £400,000 to the cost of a generic 4,000 square metre supermarket development. There is no evidence that this is necessarily the appropriate figure in terms of the related

infrastructure costs that a retail development should be expected to carry but rather it appears to be a high level calculation based on the sector's assumed ability to pay.

As you are aware, Regulation 14(1) of the Community Infrastructure Regulations (as amended) states that:

*(1) ... a charging authority must aim to strike what appears to the charging authority to be an appropriate balance between—*

*(a) 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*

*(b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.*

We accept that some superstores may individually necessitate the provision of specific local infrastructure but it could be argued that given the proliferation of modern supermarkets infrastructure requirements have reduced. For example, it is frequently the case that journey times fall as new supermarkets are opened. The inevitable consequence of this is that most existing infrastructure is used less, not more, as a result of such developments. There is a concern that as local authorities will still seek site-specific commitments under the Section 106 regime as well as CIL that the two charges together represent an unreasonable double levy for infrastructure which is seemingly being placed onto a very limited category of development.

There is also a risk that some of the infrastructure projects identified by the Council to be funded by CIL will already have been funded by undelivered projects funded by existing Section 106 commitments. At present, Section 106 contributions paid to a council are repaid to the developer if the infrastructure has not been delivered within a certain period of time. These delivery periods are long, usually between five and ten years, and the onus is on the developer to check that the council has carried out the works and to request a refund if not. As you will be aware, there is no similar mechanism to allow developers to reclaim unspent CIL contributions.

## **Department of Communities and Local Government ('DCLG') CIL Consultation**

As you are aware, DCLG is currently consulting on a wide ranging set of amendments to the Community Infrastructure Levy Regulations, which include but are not limited to changes to the treatment of existing floorspace, the evidence needed to demonstrate appropriate charging rates, the ability to accept infrastructure as payment in kind and the scope of discretionary exemptions and reliefs.

The results of this consultation are likely to significantly impact on how the Council elects to implement CIL and its effectiveness as a tool for revenue generation. In the circumstances, it would be sensible to consider delaying putting the Charging Schedule forward for examination until this consultation is concluded and its outcome known.

## **ASDA's SUGGESTIONS**

### **1. Exceptional circumstances relief**

The Council has not indicated whether it intends to implement exceptional circumstances relief. We urge the Council do so.

The viability of any particular development scheme is finely balanced and will fluctuate depending on the costs involved in the development and the state of the economy when the

development comes forward. By adopting exceptional circumstances relief the Council will have the flexibility to allow strategic or desirable, but unprofitable, development schemes to come forward by exempting them from the CIL charge or reducing it in certain circumstances.

Simply exempting schemes from certain Section 106 obligations is unlikely to be sufficient to counteract the negative impact of the CIL charge, particularly as not all schemes (in particular retail developments) would attract an affordable housing requirement which could be waived. Further, the types of strategic development which are most likely to be of concern to the Council, such as large regeneration or housing schemes, are precisely the types of development which are likely to carry heavy site specific infrastructure costs, which will be funded under Section 106, and are most likely to qualify for exceptional circumstances relief. We therefore urge the Council to adopt it.

## **2. Instalment Policy**

We also note from the Charging Schedule that the Council has not made a definitive statement about adopting an instalment policy.

Many major development projects are implemented in phases and by adopting an instalment policy this should ensure that developers are not disadvantaged by submitting an application for full, rather than outline, planning permission. We therefore also urge the Council to adopt an instalment policy which ensures that developers are not disadvantaged by the decision to submit a full planning application for a phased development scheme.

## **3. Flat Rate Levy**

A much fairer solution, accepting for the purpose of this argument the premise that CIL is necessary for the purpose of funding infrastructure throughout the County Borough, would be to divide the Council's estimate of total infrastructure costs over the charging period (which should include only deliverable infrastructure) by the total expected development floorspace and apply a flat rate levy throughout the County Borough and across all forms of development. That will have the least possible adverse effect upon the market for land and for development, and yet the greatest possible opportunity for the economy to prosper and thrive and for jobs to be created.

The potential impact of a flat rate levy on the viability of those types of development which are not currently identified as viable could be balanced by the Council's implementation of exceptional circumstances relief, as mentioned above.

Consequently, reducing the levy proposed per square metre on this floor space would not result in a proportionate increase in the levy required on other forms of commercial or other development. However, applying the current proposed levy could run the risk of diminishing substantially the number of such stores built, with a consequential loss of employment opportunities and investment.

Alternatively, we would request that the Council reduces the CIL charges for large scale retail developments to that of small scale retail developments to ensure consistency.

## **CONCLUSION**

For these reasons, we would ask that the Council reconsiders its position and revises its Charging Schedule in so far as it relates to retail development. Accordingly, we would request that the Council:

- Revisits its viability evidence, to ensure it takes account of planning costs and residual Section 106 and Section 278 payments for commercial developments;

- Adopts the exceptional circumstances relief exemptions allowed for under the CIL Regulations;
- Produces a draft staged payments policy (for all types of development) that ensures that developers are not disadvantaged by submitting an application for full, rather than outline, planning permission;
- Adopts a single flat rate levy for all development within the County Borough; and/or
- In the alternative, reduces the CIL charge for large retail developments to that of small scale developments so that there is a flat charge for all retail throughout the County Borough.

Yours faithfully

A handwritten signature in black ink that reads "Thomas Eggar LLP". The signature is written in a cursive, flowing style.

**Thomas Eggar LLP**



## **Schedule 1**

### **Section 106 Agreements**

The types of contribution that could still feasibly be sought from a retail developer once the Charging Schedule has been adopted include:

- Cost of site-specific highways works: including junction improvements, road widening schemes, new access roads, diversion orders and other highways works;
- Cost of extending the Council's CCTV Network or Public Transport Network to include the scheme (including the costs of creating new bus stops, real time information and providing new bus services to serve the site);
- Monitoring costs of compliance with employment/apprenticeship schemes and travel plans;
- Environmental off-set contributions to mitigate the loss of habitat or greenery caused by the scheme;
- The cost of any remediation and decontamination works to be carried out by the Council on the developer's behalf;
- Payments for town centre improvements intended to mitigate the impact of the development on the town centre or neighbouring areas; and
- The costs incurred by the Council of maintaining any site specific infrastructure required by the development.

### **Planning Costs**

The cost of obtaining planning permission from the Council a development scheme can be significant. These are not just limited to the Council's own fees for submitting an application and obtaining pre-application advice, but also include:

- The professional costs involved in appointing consultants to prepare the application;
- Legal costs involved in negotiating the underlying legal agreements;
- Costs of negotiating appropriate planning conditions and obligations with the Council;
- Consultation costs, particularly for larger schemes which will need to show evidence of early community engagement; and
- If permission is refused, or challenged by an aggrieved third party, the costs of an appeal to the planning inspector or a judicial review challenge in the High Court.