

Merthyr Tydfil County Borough Council

Consultation Report – Draft Charging Schedule October 2013

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Introduction

Regulation 16 of the Community Infrastructure Levy Regulations 2010 (as amended) require that any charging authority preparing a CIL Charging Schedule must prepare a draft charging schedule for consultation. The Council, as the charging authority, prepared its Draft Charging Schedule (DCS) and formally placed it on consultation for six weeks between 25th July 2013 and 5th September 2013.

In conjunction with the DCS, the council also published its Draft Regulation 123 List of Infrastructure.

In accordance with Regulation 16, a copy of the consultation documents were sent to the consultation bodies and comments were invited on the documents. A copy of the consultation documents, along with details of the consultation period, were made available on the Council's website, at the Council offices and at the public libraries in the County Borough, and a Statutory Notice was placed in the Merthyr Express.

Responses

A total of 4 duly made submissions were received during the consultation. Whilst 4 submissions were received, each submission does not necessarily cover a single issue. In order to deal with all issues raised, each issue is recorded as a separate representation. As a consequence a total of 14 representations have been made.

The following individuals/organisations made submissions:

- Natural Resources Wales – 3 representations;
- Savills (on behalf of Housebuilder Consortium) – 8 representations;
- Dwr Cymru Welsh Water – 1 representation;
- Hendre – 2 representations.

Format of the Consultation Report

Section 2 of this report sets out the representations made by each representor, with each issue being given a representation number and then addressed in turn. The details of each representation is set out, along with the Council's response and a recommendation on what action, if any, needs to be taken.

Next Steps

This Consultation Report forms part of the report that is presented to Full Council. If that report is approved by Full Council, the Draft Charging Schedule will be submitted for examination in late 2013/early 2014. It is anticipated that a joint examination of both Merthyr Tydfil County Borough Council and Caerphilly County Borough Council's Charging Schedules will be held early in 2014.

Issues Raised

Representor 2: Natural Resources Wales

Representation Number: 2.1

Issue: There is an error at paragraph 4 of the Regulation 123 list, as it refers to the Caerphilly LDP rather than Merthyr Tydfil.

Councils Response: The error is noted and will be corrected.

Recommended Changes: Paragraph 4 of the Regulation 123 List of Infrastructure will be amended to refer to the Merthyr Tydfil LDP.

Representor 2: Natural Resources Wales

Representation Number: 2.2

Issue: Paragraph 5 of the Draft Regulation 123 List of Infrastructure (June 2013), states '*A regulation 123 list should also set out those known, site-specific, matters where section 106 contributions are likely to be the funding mechanism...*' However, the regulation 123 list, as currently drafted, does not do this. We therefore recommend this section is amended.

Councils Response: In Merthyr Tydfil it is intended that as much infrastructure as possible is provided through CIL receipts in order to give developers clarity and certainty with regard to the expected levels of planning obligations required. Affordable housing, as per the CIL regulations will still be secured through S106 agreements.

At present, the only known site specific matters which will require a S106 agreement are the on-site play facilities clearly identified on specific housing allocations under Policy AS17 of the LDP. Appendix 4 of the LDP currently outlines anticipated planning obligations on all housing allocated sites including financial contributions towards education and leisure provision and highways and utilities infrastructure improvements. Once CIL is adopted this appendix of the LDP will require a revision which will remove all obligations that will be covered by CIL (eg financial contributions towards education and leisure provision)

Recommended Changes: None

Representor 2: Natural Resources Wales

Representation Number: 2.3

Issue: We question why there is not further provision for green infrastructure in the regulation 123 list. The Anticipated Infrastructure Schedule (Appendix 1) of the Preliminary Draft Charging Schedule (February 2013), identified funding gaps for three green infrastructure projects for Bedlinog & Treharris (Parc Taf Bargoed improvements) and Cyfarthfa Leat & Tramway (Phase 2 continued restoration of the leat). We question why these infrastructure projects are not included in the regulation 123 list, as this would appear to be an appropriate mechanism for funding such works. Please could an explanation be provided or amendments made to the regulation 123 list to include these projects.

Councils Response: The Regulation 123 List has been streamlined from the larger list of infrastructure projects contained in the initial Infrastructure Report. If a project was identified as having a funding gap, it may not necessarily be funded through CIL as other funding sources may become available over time.

In the case of the three projects specifically mentioned in the representation, there is sufficient flexibility in the wording of the list so that these projects could use CIL receipts as they would be classed as existing leisure facilities.

Recommended Changes: None

Representor 4: Housebuilders Consortium

Representation Number: 4.1

Issue: 17.5% developers profit is lower than the returns required by developers in the current market and, as importantly, that their funding partners are able to accept. A more realistic developer profit, based upon the current risks in house building is a minimum of 20% of GDV, which has been accepted in other adopted charging schedules in England and by the planning inspector in respect of a recent case (January 2013) dealing with viability issues, *Land at the Manor, Shinfield, Reading, Appeal Ref:APP/X0360/A/12/2179141* (Shinfield case) where the inspector concludes *“that the national housebuilders’ figures are to be preferred and that a figure of 20% of GDV, which is at the lower end of the range, is reasonable”*.

Councils Response: The allowance for developer profit of 17.5% has been identified from District Valuer Services (DVS) experience and market intelligence, which indicates that an easing of developer profit levels has taken place in recent times, from 20% which developers sought immediately following the market crash (2007).

Paragraph 5.43 of the DVS Viability Report (October 2012) states that: “Historically, the profit benchmark for developers was around 15% (on Gross Development Value for residential developments and Cost for commercial developments) but as the market improved we saw returns regularly falling below. However, when the economy and property market fell (post 2007) we saw developer profit requirements shift up to 20% (and more where risk was greater i.e. flatted development). Latterly, as stability has returned to the market and developers have become more outwardly confident (if still more cautious in their decision making) a gradual easing of developer profit expectations has been observed. Therefore, a base allowance for developer return of 17.5% has been made, which is inclusive of developer internal overheads.”

As such it is the council’s opinion, backed up by District Valuer Services, that the developer profit allowance of 17.5% is appropriate.

Recommended Changes: None

Representor 4: Housebuilders Consortium

Representation Number: 4.2

Issue: The residual values set out for CIL in our representation are taken from Merthyr Tydfil County Borough Council's own viability evidence, and are based on the assumptions of District Valuer Services (DVS) as their appointed consultant. They relate to Merthyr Tydfil Council only and not those neighbouring authorities also included in the report. In our view, viability should be assessed on an authority by authority basis so as not to distort the outputs by the inclusion of other authorities.

The Housebuilders Consortium feel that Merthyr Tydfil CBC is using more favourable viability results in areas of Caerphilly and Rhondda Cynon Taf in order to justify the rates it is proposing in its own County Borough

Councils Response: As stated in the previous consultation report, the Viability Report considers the area comprising of the 3 Local Authorities as a whole. The Study was carried out this way with an intention of finding trends across the sub region, whilst still allowing each individual Local Authority to set appropriate CIL rates in the respective areas.

The Council firmly believe that the CIL rates proposed are not distorted by the inclusion of outputs from the other local authorities. Based on the outputs of the Viability Study a rate of £25 per sqm can be supported in the appropriate locations of the County Borough, and in terms of individual sites, some of the sites in Merthyr Tydfil generate higher CIL values than sites in equivalent areas of the other Local Authorities.

Recommended Changes: None

Representor 4: Housebuilders Consortium

Representation Number: 4.3

Issue: The Council state in the Preliminary Draft Charging Schedule Consultation Report (June 2013) that, *“The representor has not raised an issue with the sales values included for Merthyr Tydfil in the viability study, and these values are consistent with the values used in the corresponding areas of Rhondda Cynon Taff and Caerphilly where the representor does not believe low sales values are limiting housing delivery.”*

We have commented in respect of sales values for the adjoining authorities in the respective consultation responses for each of those authorities. Nowhere have we specifically commented within those representations on low sales values limiting housing delivery, and this assumption by the Council should be retracted. This consultation and representation relates to Merthyr Tydfil council and our comments are limited to that authority.

The Council also state that they will provide information about the amounts raised in recent years through S106 alongside the Draft Charging Schedule in order to provide background evidence and improve the overall robustness of the evidence, but we are not aware of this information being made available.

Councils Response: With regard to the comment on sales values, the Council accepts that the representor did not specifically comment on the sales values used in Merthyr Tydfil and retracts that assumption. The Council would like still like to point out that the sales values used in Merthyr Tydfil correspond with the values used in the equivalent areas of Caerphilly and RCT.

The Council has also now analysed recent S106 agreements and can compare what has been secured in recent years, and how this would compare to the amounts that would be expected through CIL.

Since 2010 there have been six S106 agreements signed on residential developments in the County Borough. One of these agreements is on a development that lies in the area of the County Borough where it is not intended to charge CIL.

Of the remaining five agreements, only one development secured on site affordable housing, with the other four developments securing a commuted sum towards affordable housing provision along with other contributions.

A calculation of what level of CIL would be required on these developments indicates that on 4 of the 5 sites where CIL would be required, the amount of CIL payable would be less than total value of the S106 agreement. However, these sites secured a financial contribution towards affordable housing (which will remain outside the CIL regime) which was lower than the policy target.

It is also worth noting that the 4 sites where this is the case were purchased prior to the economic crash at inflated land prices and the S106 agreements had to be negotiated accordingly in order to ensure the development could progress. Once CIL is adopted, and gives certainty and clarity as to what is expected from a developer, the Council believe that land values should reflect a development that is policy compliant in terms of both CIL and affordable housing contributions.

Recommended Changes: None

Representor 4: Housebuilders Consortium

Representation Number: 4.4

Issue: The Consortium have undertaken further analysis and now accept that 17.5% of build costs can be accepted (as an average) to account for external works and the sustainability requirements to comply with CfSH Level 3+1 credit ENE1. This is on the basis that external works only account for on-site roads, services and drainage and takes no account of additional development costs which are common on developments throughout South Wales and which should be accounted for in addition to the 17.5% provision.

In consulting on the Rhondda Cynon Taff Council CIL, the consortium undertook analysis on actual sites to establish true site development costs and the details of these are identified on the schedule at **Appendix 1**.

Our assessment provides a schedule of total 'site costs' for actual delivery of each site which range between 25% and 35% of base build cost which is significantly higher than the 17.5% allowance made by DVS within their assessment which we trust sufficiently demonstrates the extent of **typical** development costs associated with sites within the region, and that the allowances within the DVS viability report are insufficient to cover typical development costs.

These cost levels accord with the Homes and Communities Agency analysis completed by BCIS for the Housing Corporation in 2007, which indicated that the average cost of external works and infrastructure on residential schemes started since 2003 was equivalent to an additional 27% of building costs, including a wide range of site specific circumstances. In addition, the viability analysis undertaken by GVA for Torfaen Council in respect of the South Sebastopol development further supports this position.

We consider it appropriate therefore to make allowances of at least 27% of base build costs within the viability appraisal to cater for typical "external" development costs encountered within the Borough. This is not at the upper range of our evidence, but is the average.

Councils Response: Some future development sites will be affected by abnormal costs. In establishing the methodology for the assessments the authorities, along with the DVS, concluded that it was not possible to establish and implement differential CIL rates for sites without abnormal costs and sites with abnormal costs. This is primarily due to the fact that abnormal costs are just that, abnormal, and can vary greatly in nature, scale and cost. Given the potential variance of such costs it would be inappropriate to viability test sites using an assumed cost, because this would undoubtedly result in over-burdening sites with high levels of abnormal costs, whilst under charging sites with little or no abnormal costs, both situations being inequitable. Consequently it would be inappropriate to include abnormal costs in the Viability Report methodology and consequently such costs should be considered on a site-by-site basis.

However, the issue of abnormal costs is an important one, as the South Wales Valleys contain significant amounts of derelict land. It should be noted that, over the past 10 years

or more, there has been a brownfield focussed strategy for development across the South Wales Valleys, with a preference for development on brownfield land, with all of its associated costs. As a result over the past 10 years the information that the BCIS data has been based upon has reflected the costs of brownfield building, including the abnormal costs associated with such sites. As a result the current BCIS data will reflect these costs to some degree.

In addition to the above, the brownfield strategy for the South Wales Valleys will have been reflected in the price that developers have been paying for land, i.e. the more constrained the land the lower the price. Therefore, the transactional evidence underpinning the Viability Report also takes account of an element of abnormal costs associated with South Wales Valley development.

It is worth noting that the CIL Charges have been set at the bottom end of the CIL Ranges identified In the Viability Report. The CIL Ranges can be viewed as a scale, the higher the level the less viable development becomes with an increase in numbers of unviable schemes. By contrast the lower the level the more viable development becomes with an increasing number of viable developments. Setting the CIL Rate at the lower end of the ranges means that development is more viable and provides flexibility to accommodate any additional costs such as abnormal.

It should also be noted that, in setting the CIL Rate, the Council is required to strike an appropriate balance between the desire to deliver infrastructure and the impacts of the imposition of CIL on site viability. It has to be acknowledged that, in striking the appropriate balance, some sites will inevitably be made unviable and will not come forward. Consequently it cannot be the case that the CIL Rate should ensure viability of all sites, more that it should strike the appropriate balance.

All of the above factors contribute towards a position where the CIL Rates include a significant amount of flexibility in viability terms, that can address the issue of abnormal costs.

The Representor has submitted a commercially sensitive analysis relating to six developments in the Rhondda Cynon Taf County Borough area, supporting their assertion that the viability assessments should make an allowance for abnormal costs of 27% over base costs. The analysis sets out build costs and identifies abnormal costs and relates them back to the BCIS build cost level. From this analysis the Representor has deduced the proposed change to the Viability Report.

It should be noted, however, that there are a number of issues in respect of the analysis that raise concern when considered against the Viability Report Assessments, these are:

- It is unclear whether the information relates to actual or assumed costs;
- No detail is given regarding the nature of what the “abnormal costs” are, raising concerns over whether the costs are abnormal;
- The base cost assumptions appear lower than the assumptions built into the Viability Report assessments, which indicates that there is additional

contingency within the build cost assumptions that will also accommodate part of any abnormal costs;

- The information provided by the developer is not a complete valuation of the development costs, and as such does not encompass the potential for off-setting costs against in-built allowances in the assumptions.

Given this, the council remains of the view that the viability assessments undertaken as part of the Viability Report make sufficient allowances to account for abnormal costs.

Recommended Changes: None

Representor 4: Housebuilders Consortium

Representation Number: 4.5

Issue: Since our original submission to the Preliminary Draft Charging Schedule consultation, the Minister for Housing and Regeneration has announced the introduction, through amendments to Part L of Building Regulations, a requirement to reduce greenhouse gas emissions by 8% from 2010 levels. This is lower than the anticipated 40% originally consulted upon and is therefore unlikely to have any additional cost impact on development, and as such we accept that no allowance should be made in the viability report for these costs.

In the same announcement, the Minister also confirmed that fire sprinklers will need to be installed in all new and converted houses and flats from January 2016, and as a result, the viability review should include the average cost of £3,075 per dwelling as arrived at within the Welsh Government's own study into this matter. It is appreciated that the CIL levy is likely to come into force prior to January 2016. However, given the confirmation from the Housing Minister, developers will need to factor these costs into their land buying assumptions and will therefore impact on scheme viability, earlier than January 2016

Councils Response: As set out in the Preliminary Draft Charging Schedule Consultation Report, the council's position in respect of this issue is that sufficient allowances have been built into the assessments to take account of external and sustainability costs, and this remains the view.

The council also contended that there was no timetable for the implementation of the changes, as they had been consulted on, and so there were significant issues in respect of the nature of the changes and when, or if, they would be formally published. Further to this on 17 July 2013 Carl Sargeant, Minister for Housing and Regeneration issued a statement entitled "Stimulating Home Building in Wales". This statement set out the Welsh Government position in seeking to exceed delivery on affordable housing targets and increase private sector housing delivery. The statement also addressed the issues of the amendments to Part L of the Building Regulations and the issue of domestic fire safety.

In respect of the amendment to the Building Regulations, the Minister has amended the level of reduction of greenhouse gas emissions from 40% to just 8% as an interim measure toward meeting EU legal obligations by 2021, in order to continue improvement without stifling housing development.

In addition the minister also confirmed that, initially the requirement for sprinklers will only apply to high risk developments (such as care homes, new and converted student halls of residence, boarding houses and certain hostels), with a requirement for new dwellings to include sprinklers commencing January 2016. The Minister also states that "*This phasing will allow the housebuilding industry to gain experience and skills, and gives the sector the opportunity to innovate and reduce the costs of installing sprinklers*".

As can be seen the cost implications of the Building Regulations amendments and the introduction of sprinklers are much reduced from the Representors previous Representations and those supporting this representation.

With the much reduced cost implications of these announced policy changes, the allowances in the assessments in the Vability Report, more than adequately make provision for the costs as they are now going to be implemented.

Recommended Changes: None

Representor 4: Housebuilders Consortium

Representation Number: 4.6

Issue: The Council state in the Preliminary Draft Charging Schedule Consultation Report (June 2013) that *“Affordable housing is a planning obligation. As such, it would be inappropriate to provide the obligation as a profit”*. In the majority of cases where no grant is available, affordable housing is provided at a net loss. However, where we have seen split rates of profit applied in other CIL viability assessments, they have generally been on the basis of 20% Private and 6% Affordable, (not 17.5%/5%), and we would consider 20/6% to be reasoned and appropriate in the current market.

Councils Response: As the representor states, in the majority of cases where no grant is available, affordable housing is provided at a net loss. As stated in the previous consultation report, the profit allowance for affordable housing, at 4.76%, is equivalent to 5% on costs, which is a contractor return seen by some RSLs in the construction market and also recommended within the 3 Dragons South Wales Toolkit.

Recommended Changes: None

Representor 4: Housebuilders Consortium

Representation Number: 4.7

Issue: The inclusion of planning promotion costs within the allowance for professional fees is accepted.

Councils Response: The representation is noted and the support is welcomed.

Recommended Changes: None

Representor 4: Housebuilders Consortium

Representation Number: 4.8

Issue: The Housebuilders Consortium understands why the cost of complying with S106 obligations has not been allowed within the viability appraisal. However, on this basis, it is important that a sufficient viability buffer is allowed when setting the CIL rates, in order to cater for sites that may have an additional S106 costs, yet based on the Borough wide evidence, a viability buffer has not been allowed when setting the rate of CIL.

Councils Response: The Council believes that a reasonable 'viability buffer' has been included in the rates of CIL proposed. The recommendations of the Viability Report stated a range of CIL charge that could be levied in the different zones (between £10 and £60 per sqm in the relevant zones in Merthyr Tydfil County Borough). The Council has decided to charge towards the lower end of the range in order to create a buffer in terms of viability, and to attempt to ensure that the majority of development remains viable.

The CIL Ranges can be viewed as a scale. The higher the level of CIL, the less viable development becomes with an increase in numbers of unviable schemes. By contrast the lower the level of CIL, the more viable development becomes with an increasing number of viable developments. Setting the CIL Rate at the lower end of the ranges means that development is more viable and provides flexibility to accommodate any additional costs such as abnormal.

Recommended Changes: None

Representor 5: Dwr Cymru Welsh Water (DCWW)

Representation Number: 5.1

Issue: The Infrastructure List should be amended to read:

- Strategic **Water and** Drainage Network

DCWW would like to clarify that water supply and water drainage are two separate elements of infrastructure. This amendment would ensure that if a situation was to arise in the future where improvements to the water supply network were needed in advance of DCWWs investment plan, CIL could be used to assist in any funding gap.

Councils Response: It should be noted that the Draft Regulation 123 Infrastructure List is separate from the CIL Charging Schedule and has only been included for comment. The Council can amend the list at any time (subject to certain procedural requirements), therefore it is considered that the proposed amendment could be carried out when the issue becomes pertinent.

Recommended Changes: None

Representor 6: Hendre

Representation Number: 6.1

Issue: Hendre appreciate the balance needed in generating revenue whilst ensuring development remains viable and the CIL rates proposed within the Draft Charging Schedule appear realistic when read in accordance with the DVS Viability Report.

It will however be difficult to predict the amount of affordable housing coming forward outside the Social Housing Grant programme, as affordable housing obligations will remain open to negotiation.

Councils Response: Hendre's support of the proposed CIL rates is noted and welcomed. With regard to predicting future levels of affordable housing, the Council will continue to work closely with all partners to ensure affordable housing delivery is maximised.

Recommended Changes: None

Representor 6: Hendre

Representation Number: 6.2

Issue: We would also wish to raise the mechanism for recovery to be employed by the Authority on larger strategic sites if the parameters on which the original were based were to change significantly, between any agreement to decrease or forego any Affordable Housing, and the completion of the development. For example, where expected abnormal costs do not materialise or the market increases over a review period to such an extent that it would have enabled the provision of affordable housing to have been increased.

Councils Response: Whilst the CIL regulations include an indexation so that developments that take place over a longer period of time fully contribute towards infrastructure provision, there is no mechanism for renegotiating affordable housing unless a new planning application was made on that development.

To ensure that affordable housing is maximised the Council will continue to work with all its partners towards providing affordable housing.

Recommended Changes: None