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Introduction

This document provides a summary of the Council's responses to the representations received to the CIL Draft Charging Schedule consultation. The document follows the order and addresses the questions posed in the Consultation paper, and includes:

- i) The respondent reference number of the representations received on each issue
- ii) The key issues raised by the respondents
- iii) The Council's response to the key issues and other issues raised

A total of 28 responses were received, although many had no comment to make on the majority of questions at this stage. Responses were received from a range of stakeholders including planning consultants, Government Departments / Agencies, parish councils, local groups / societies, as well as business interests.

A summary of the all the consultation responses is provided in a separate document – 'CIL Draft Charging Schedule Consultation: Summary of Representations'.

Every effort has been made to ensure that all responses received have been incorporated in this document and addressed with a Council response.

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Q1. Do you believe that the Council has complied with the requirements set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Regulations (2010) as amended? If not, why not?

All representations received:

1, 5, 12, 13, 20, 27, 28, 29, 30, 37, 42

Key Issues raised by the above representations:

- Viability analysis does not make sufficient allowances for site-specific S.106s or S.278s contributions. As such, the Council has failed to comply with its obligation under Regulation 14 (2).
- Viability evidence shows that sheltered/retirement homes would not be able to be policy-compliant with regards to affordable housing and paying CIL. The DCS is therefore contrary to the CIL Regulations and CIL Guidance of December 2012 (Para. 29).
- The charge on Older People's housing would be contrary to Para. 37 of the CIL guidance, as it would impact disproportionately on a particular sector/specialist form of development.
- Unequal balance between the rates in the Charging Schedule and the needs of the Infrastructure Delivery Plan, contrary to Regulation 14.

Council's response to the representations listed above:

Non-CIL developer contributions for retail development

- The Council have undertaken and tried and tested approach at examination of residual land valuation, taking into account local circumstances.
- ASDA's commentary refers to the example of Site 42 potentially incurring a £2.926m CIL requirement. As this example is not a greenfield site, it is reasonable to assume that there will be some offset of existing floor area against which is being built to reduce the CIL liability.
- Furthermore Site 42 is not at the "margins of viability" at the proposed CIL rate and is not in "amber" until close to £950 per sq m CIL rate (para 7.7 of the CIL Viability Study). We therefore do not consider the proposed CIL rate to be a threat to large supermarket development.
- The recent changes to the Regulations (Regulation 9 (7)) will allow the Levy to be paid through the provision of infrastructure in accordance with the charging authority's policy. There may be circumstances where the cost of certain S106 and S278 works could be offset accordingly.
- The draft CIL (Amendment) Regulations 2014 were made public on 9th December and were brought into force on 24th February 2014. The amended Regulation, however, would not affect differential retail rates, other than providing a more generous timeframe for providing a discount for 'existing use'.
- Previous Examiners' Reports refer to difficulty in making site-specific assumptions for high-level broad-brush appraisals, e.g.
 - Para. 26 - Bristol

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- Para. 24 – East Cambs
 - Para. 18 – Bassetlaw
 - Para. 18 - Waveney
- & fact that redevelopments would be less likely to attract CIL, e.g.:
- Para. 21 – Southampton
 - Para. 10 & 21 – Taunton Deane
 - Para. 18 – Merton

Examiners' Reports refer to CIL coming off land value, not adding to sale value:

- Para. 21 - Huntingdonshire
- Para. 21 - Wandsworth
- Para. 39 – Exeter
- Para. 17 – Central Lancs
- Para. 13 – Harrow
- Para. 20 – Sevenoaks
- Para. 20 – Dartford

Sheltered/Retirement accommodation

- The Council acknowledges Nick Boles' letter, which basically points out how CIL Guidance has been strengthened in Dec 2012 to reflect that "charging schedules should not impact disproportionately on particular sectors or specialist forms of development". However, the same paragraph also states: "Charging authorities that plan to set differential levy rates should seek to avoid undue complexity, and limit the permutations of different charges that they set within their area."
- The Draft Charging Schedule does not seek to impact disproportionately on particular sectors; that is not only contrary to the Regulations, but also the EU rules on State Aid. Furthermore, it would undermine the effective delivery of the Local Plan.
- The Council acknowledges that specialist accommodation for the elderly is included in recently adopted Local Plan policy P4.
- It is incorrect to state that sheltered/retirement homes would not be policy compliant with the proposed level of CIL as the modelling for Site 41 Sheltered Apartments demonstrates development comfortably within the margins of viability at the proposed CIL rate and taking into account affordable housing requirements.
- The modelling of Sites 40 and 41 clearly reflects build cost rates and net to gross areas bespoke to this type of development.
- Site 40 is not demonstrating viability but it is a brownfield site where there would be significant offset of the existing floor area. The viability is also affected by a high existing use value (EUV) to reflect its suburban location.
- Under the new CIL Regulations for 2014, most brownfield sites will have an existing use discount (as a building will have had to be in use for 6 consecutive months of the past 36 and not 12 months). This will be of particular relevance in an area with a consistently high level of small re-development windfall residential sites as Solihull.
- The GNDP and Mid-Devon appraisals assumed a lower percentage of affordable housing than that contained within their adopted local plan policies. It is for this reason that they were not considered consistent and the residential CIL rates lowered to account for a higher affordable housing ratio. The CBRE Viability Assessment assumes a 40% on-site

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affordable housing ratio for all qualifying developments, even though the adopted local plan policy includes more flexibility and room for negotiation.

- The Examiner's report to the West Berkshire CIL Examination (dated 8th Nov 2013) states that "*there could be difficulties in defining exactly what development would be described as 'specialist accommodation for the elderly' and there is therefore the risk that the Schedule could become unduly complex.*"
- Affordable housing commuted sums have been achieved on sheltered housing schemes since the recession. Since 2010 four such schemes have come forward, and two sites re-negotiated. Due to the site and design constraints it has not been possible to provide on-site affordable housing; therefore a commuted sum payment has been agreed. This has been in lieu of the 40% affordable housing and calculated on a method within the Council's adopted SPG, but these negotiations have not questioned viability in that it would render development unviable.
- Real case studies are included in the Viability Study, from a range of sites, as evidenced in the Affordable Housing Viability Assessment and tested at the Local Plan hearings.

Infrastructure Funding Gap

- The Council has identified a funding gap for infrastructure that is required to facilitate the delivery of the Local Plan. The Community Infrastructure Levy is one source of funding to help bridge that gap, however, in line with the Harman Guidance and CIL Guidance, the proposed rates have been set at a moderate level that should not disincentivise or disproportionately impact on any particular sector of development.
- A number of Examiners' Reports have reiterated the message that the funding gap is to provide a justification for charging schedule; the rates, however, are based on viability analysis. For example, the Inspector's CIL examination for Bristol City Council states that: "CIL is not based on any direct link between the impact of a particular scheme on services or facilities and mitigation contributions, but rather the overall needs of the wider area and, crucially, the ability to pay in viability terms." This has since been reiterated in the Sevenoaks District Council Examiner's Report.

Recommendations:

- The Council is satisfied that the proposed rates take into sufficient account abnormalities associated with commercial and residential development, and would not therefore undermine delivery of the development.

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Q2. Do you believe the Council's draft charging schedule is supported by background documents containing appropriate available evidence? If not, what additional evidence do you believe is necessary?

All Representations received:

1, 5, 12, 13, 14, 16, 20, 26, 27, 28, 29, 30, 37, 41, 42, 43.

Key Issues raised by the above representations:

- Concerns regarding the methodology and transparency of raw data and assumptions
- Insufficient evidence provided to assess the Viability Study, e.g. full workings of appraisals:
 - BSV 20% uplift is too low – reasonable to expect competitive return of 50%.
 - Developer's profit of 16.67% of Gross Development Value is too low.
- Should have considered the level of S.106 and S.278 contributions that developers may still be liable to pay.

Council's response to the representations listed above:

Viability appraisal assumptions - Retail

- The Council agrees that CIL should not be set at the margin of viability.
- The Council believes that they have responded comprehensively to the issues raised in the Preliminary Draft Charging Schedule (see Appendix 2 of 12/09/13 Cabinet Report on the Community Infrastructure Levy).
- The Viability Analysis has largely followed the RICS and Harman guidance on the financial viability appraisals and incorporated reasonable, standard assumptions, taking into account the impact of other Local Plan policies.
- Yield assumptions foodstore – the yield shown in Table 2.1 is for "All Shops" i.e. it is a blended average of yields relevant to all prime and secondary retail units and not focused on supermarkets or convenience stores.
- CBRE consider that the profit levels used are conservative at 17.5% profit on cost for foodstore development projects and where a pre-let is secured with a national foodstore operator. The profit levels could be lower than the 17.5% profit on cost shown in the examples and in reality the market could demonstrate 12% to 15% profit on cost.
- The professional fees allowed for are 15% on cost for Site 15 and 10% on cost for Site 42.
- The traffic light system shows that £300 psm rate is not set at the margin of viability. Site 15 is not in "amber" until circa £650 CIL rate and Site 42 is not in "amber" until circa £975 per sq m CIL rate (para 7.7 of the CIL Viability Study). We therefore do not consider the proposed CIL rate to be a threat to large supermarket development.
- The CIL Viability Study states that, at that snapshot in time, the replacement of existing town centre retail by other retail is not viable. This is primarily due to high existing use values and high land assembly costs. However, due to the location of such development

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it is likely that there will be an opportunity to offset existing floor areas and negate CIL liability.

- Retail development for multiple retailers in high street locations is likely to demonstrate better viability due to lower yields and higher rents and consequently be able to support CIL payments. Secondary retail locations and independent retailers are less likely to demonstrate viability but development for them is likely to be in cheaper locations.
- The approach to the Viability Study has been to review a number of commercial sites for high level analysis and which offer generic development opportunities. Following the earlier consultation on the PDCS, an additional foodstore site and hotel site were included to allow more fine-grained sampling.
- By working closely with Officers and through market knowledge and property agency input, it is considered that an appropriate range of types of site have been used for modelling and that these reflect the different types of site in the Local Plan. This was also reviewed as part of the recent Local Plan Examination in Public.
- There are differential rates proposed between convenience retail and 'all other retail' due to the nature of the retailing. Convenience stores can justify higher rents and lower yields due to their business models and higher turnover per sqm. This has been demonstrated in the financial modelling.
- In terms of the 550 sqm threshold, the Competition Commission Groceries Market Report 2006 had referred to "grocery stores" having a sales area of 280 sq m as the threshold between convenience and larger format foodstores. This net sales area has been converted into a gross area for the purposes of CIL to allow for staff areas and storage areas.
- In terms of the State Aid comment, this issue has been superseded by the recent CIL (Amendment) Regulations 2014 as the principle of differential rates is now allowed for by Regulation 5(2). This states that the scale of development can be taken into account and differential rates can be set by reference to the intended floorspace of the development.
- In response to the objections raised to the PDCS, further viability work was carried out. In the light of the results to this further work, the rates were left unchanged; other than correcting an error with regard to car showrooms.

Viability appraisal assumptions - Sheltered/Retirement accommodation modelling

- The Council acknowledges that the Planning Bureau consultancy generally agree with financial appraisal assumptions for Site 40.
- The principal reason that Site 40 is unable to demonstrate viability is due to the high existing use value where the land value is reflective of its brownfield location. In practice the existing floor area would be offset against CIL.
- In modelling Sites 40 and 41, the build cost rates were changed to be bespoke to this type of development and the gross to net areas were adjusted down to 75% (see Section 4). As the appraisal inputs have therefore been adapted, it is appropriate to include sheltered housing in the C3 rate. Sheltered apartment development can often successfully compete against private residential development in acquiring sites.
- Where extra care is required, such development falls within C2 (residential institutions) with its lower CIL rate of £25 psm.

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- Both the West Berkshire and Sevenoaks District Council CIL Examiners' Reports state that the proposed caveat by the Planning Bureau for McCarthy and Stone-style retirement housing would add undue complexity to the charging schedules (Para. 19 and Para. 17 respectively).
- The Council does not agree that the proposed CIL rates will prevent the delivery of sheltered/retirement accommodation. As such, the Council does not agree that proposed rates will deter elderly residents to downsize.
- Planning policy is an important, but not the sole factor in influencing market forces. The provision of affordable housing and CIL will influence the land value rather than price of units. The policy for affordable housing also has flexibility built in so not to deter development. This issue was discussed at the Local Plan Examination in Public. Individual decisions in house occupancy will also influence take up of market products.

Residential rates

- The approach adopted has been to test a range of sites across the Borough on a high level basis. The output to the exercise is therefore a high level guide to likely scheme viability; taking into account a variety of development situations but using general assumptions rather than analysing specific site constraints.
- The £150psm rural residential rate is the highest of the three residential rates; however, this rate is based on viability evidence and is not directed by policy objectives.
- CBRE have provided amended tables (4.1 and 4.3) of the Viability Study. The residential mix for sites 6 and 7 are now a mix of 2, 3, and 4-bed housing. Site 8 is comprised of 1 and 2-bed flats.
- CBRE have tested the policy compliance of 40% affordable housing on eligible sites. Including a range of affordable housing rates would be contrary to Guidance and this has been proved at Examination. At any rate, the affordable housing policy in the Local Plan allows for flexibility, as does the Growth and Infrastructure Act (2013) provision to renegotiate affordable housing Section 106s.
- The Viability Study does include real case studies for the notional sites. However, the approach outlined in the statutory Guidance does not ask for a series of individual site-specific residual valuations, but a broad test of viability to allow comparison across sites in the Borough.
- As stated above, there are a number of factors influencing CIL rates, and a simple comparison of rates across the country does not reflect the underlying viability variables. The Solihull residential rates are based on a range of viability evidence, not just house prices. However, they are within the normal range of those adopted in the South-East; and much lower than higher value areas in London:
 - Barnet - £135 psm
 - Brent - £200 psm
 - Dartford - £200 psm
 - Poole - £150 psm
 - Waveney - £150 psm
 - Winchester - £120 psm
 - Wycombe - £150 psm

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Section 106 contributions

- Approved charging schedules have varied in the viability evidence with regards to Section 106 contributions.
- £1000 per unit is a generic figure that will evidently vary from site to site. A range of Section 106 contributions have been used as assumptions in residual valuations supporting approved CIL Charging Schedules. The CBRE study also includes 10% uplift on BCIS costs for external works, a 5% contingency and a generous £8000 for meeting sustainability objectives (see Para.'s 4.17 and 4.26 of the CIL Viability Study, 2013).
- The CIL (Amendment) Regulations 2014 have changed the regulations regarding developer contributions, so that neither Section 278 nor S106 can be double-dipped with the Levy. However, these obligations are necessary to make a planning application acceptable in planning terms, sought either through condition or legal agreement respectively. Regulation 122 of the CIL Regulations 2010 (as amended) and Para. 204 of the NPPF are very clear on the three tests and CIL is not intended to fund the site-specific necessary mitigations.
- Historical Section 106 contributions have been published alongside the draft Regulation 123 list at the consultation stage of the Draft Charging Schedule. These show that the Council has not historically sought generalised contributions for planning applications. The scope of Section 106 obligations is restricted to those site-specific works that render the planning application acceptable in planning terms, as outlined in Regulation 122 of the CIL Regulations (2010) and Para. 204 of the NPPF.
- Asda have stated in their representation that the Viability Study does not make sufficient allowances for site-specific S106 and S278 payments, and includes examples of food stores where the Section 106 allowance exceeded the 5% contingency allowed for in the site appraisals. As stated above, any S106 or S278s to be paid would depend on particular site access issues, and would not be for a general contribution for transport measures. The Viability Study takes a broad-brush approach to compare sites, allows a very generous buffer, and does not discount existing buildings from the calculated levy. As such, the rate is not considered an impediment to economic growth. This view is supported by the Examiner's Report for Sevenoaks:

"Para. 19. Since the Council has commissioned extensive viability assessments from a specialised consultancy, and that work has demonstrated that, at the CIL levels proposed, development will remain viable, I cannot accept the claim that the rates proposed will not support economic development growth. All development applications have planning costs, and I cannot see that any objection can be made to an individual charging schedule on this basis. As to Section 106 and Section 278 payments, these will arise out of site specific factors. I understand that allowance has been made in the viability assessment for significant development costs, and any abnormal site related costs should be taken into account in determining site value."

- See also Council's response to Q1 above with regard to Section 106s and infrastructure planning.

The following are the comments on residential rates from the Council's response to the Preliminary Draft Charging Schedule consultation:

- The approach adopted has been to test a range of sites across the Borough on a high level basis. The output to the exercise is therefore a high level guide to likely scheme

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viability; taking into account a variety of development situations but using general assumptions rather than analysing specific site constraints.

- We do not consider that incorrect assumptions have been used in the viability study:
 - The base residential build costs come from the industry recognised Building Cost Information Service (BCIS) regionally adjusted for the West Midlands Region. Table 4.4. of the CIL Viability evidence uses the BCIS figures (rebased for the West Midlands Region) which have been agreed as a benchmark for build costs at previous CIL Charging Schedule examinations.
 - An allowance for external works has been added to the base build cost together with the sum of £8,000 per unit for additional costs related to delivering Code Level 4 and other cost items related to policy delivery for climate change etc on residential properties.
 - Paragraph 6.1 of the CIL Viability Analysis (2012) states that: “In the tables below, for each site and each level of CIL, the colour green comprises a viable scheme; amber comprises a marginal scheme where the RLV sits between EUV and BSV; and red indicates an unviable scheme.”
 - In terms of the approach to an uplift on BSV, we have adopted 20% uplift to the existing use value to derive the “Benchmark Site Value”. We consider the 20% uplift to be a reasonable assumption to reflect an incentive to enable the release of land for development. The 20% uplift has been adopted by practitioners and recognised by Inspectors in many CIL viability studies. The justification for the methodology and use of terms ‘existing use value’ and ‘benchmark value’ is clearly set out in Paragraphs 3.1 to 3.16 of the CIL Viability Analysis Report (Dec 2012). The Benchmark Land Value is effectively the Threshold Land Value. It is acknowledged that the benchmark value is the threshold value at which a seller would be most likely to sell land.
 - For brownfield / greenfield sites already allocated for development, we have assumed a Benchmark Land Value that reflects their greater readiness for development based on employment land prices.
 - In the recent Planning Inspectorate examination report for the Greater Norwich Development Partnership, the Inspector stated that it was “reasonable to see a 25% reduction in benchmark values as the maximum that should be used in calculating a threshold land value”. In addition the viability testing (reported in the CIL Viability Study) ran sensitivity analysis to assess the impact of increases / decrease to BSV and this was taken into account in proposing the CIL rates.
- The return on Gross Development Value is a blended rate comprising 20% on open market and 6.5% on affordable housing (HCA figure). The Council and CBRE would not expect as a matter of course to make the detailed appraisals available. The headline inputs are contained within Tables 4.5 and 4.6 of the CIL Viability Analysis (2012), which should provide sufficient information to assess the viability assumptions made.
- The costs of finance have been applied through the build period until final sales, with assumptions adopted on sales rates.
- We have published all of the relevant evidence including extracts within the text of Section 7 where the CIL rate can be justified above £150 psm.

Recommendations:

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- Officers recommend that the Draft Charging Schedule is submitted for Examination without any changes to the rates in this consultation.

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Q3. Do you believe that the proposed rates are informed by and consistent with, the evidence on economic viability across the Borough? If not, why not?

All Representations received:

1, 5, 12, 13, 14, 16, 20, 27, 28, 29, 30, 37, 39, 41, 42.

Key Issues raised by the above representations:

- Too high a charge on rural housing
- Viability evidence does not support the inclusion of Sheltered/Retirement housing in the CIL residential charge for Mature Suburbs
- Should reduce proposed rate for convenience retail and all A class retail uses in town centres

Council's response to the representations listed above:

Rural residential rate

- The Council have undertaken a tried and tested approach of residual land valuation, taking into account local circumstances. This is a standard approach for viability studies and uses the recognised principles of residual valuation. The residual method also allowed any Council policies emerging from the draft Local Plan to be taken into account within the modelling.
- The Council contends that the residential charging zones are not arbitrary, but are in line with the Housing Market Areas and are supported by the viability evidence.
- The Council undertook further viability analysis of rural residential sites to justify the proposed rate of £150 psm. This is in accordance with the DCLG Guidance for more fine-grained sampling. The viability analysis showed that the residential rate was viable across the Rural Area.
- It should be noted that none of the representors have provided alternative appraisals to evidence the statement that the proposed rural residential rates are too high.
- Policy P5 of the Local Plan does prioritise the redevelopment of brownfield sites over greenfield sites, where feasible. However, Solihull has much less brownfield land than neighbouring West Midlands Metropolitan Authorities.
- Existing floorspace is offset against the new build, when the application is 1) a change of use or 2) a demolition of existing buildings that have been in continuous use for 6 months during the 3 years prior to grant of planning permission.
- Central Government has brought in initiatives, such as the relaxation of change of use legislation, to encourage bringing unused floorspace into active use, especially for housing.
- According to the statutory Guidance, the spending of CIL should be directed at delivering the Local Plan objectives, however, CIL rates cannot be charged based on policy directives.
- It is not a requirement that all sites tested should be shown to be viable and capable of delivering CIL. CIL needs to be viable across "most" of the area (Mid Devon District

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Council examination). The updated CIL Guidance (2014) expresses this as a 'broad test of viability'.

Sheltered/retirement residential rate

- It is agreed that some categories of older people' housing will fall within the C2 Use Class and therefore attract a lower CIL payment requirement.
- Since 2010 six sheltered housing schemes have come forward. Due to the site and design constraints it has not been possible to provide on-site affordable housing; therefore a commuted sum payment has been agreed. This has been in lieu of the 40% affordable housing and calculated on a method within the Council's adopted SPG, but these negotiations have not questioned viability in that it would render development unviable.
- Site 40 is unable to demonstrate viability due to its brownfield location where it has a high existing use value. In practice the existing floor area would be offset against CIL to improve viability.

Retail rate

- The Viability Study has tested both the rural and urban retail rates.
- Business rates are worked out by multiplying the 'rateable value' of the property (set by the Valuation Office Agency) by the business rates multiplier (set by central government). They are therefore directly related to the value of the property, and as such, tend to be lower in rural than town centre locations.
- Farm buildings are exempt from paying business rates.
- Businesses in rural areas can now claim business rural rate relief (brought in December 2013) In order to qualify, the property must:
 - be located within a designated rural settlement (population not more than 3,000)
 - be the sole general store, post office, public house, or petrol filling station within the settlement or be a qualifying food shop within the settlement
 - have a rateable value within the prescribed limits
- Development for A3, A4 and A5 uses in town centres, where such development is encouraged by Local Plan policies, is likely to include multiples and covenants that are attractive to investors. These will assist in delivering viability due to lower yields and higher rents and consequently be able to support CIL payments. As with A1 uses, secondary locations and independents are less likely to demonstrate viability but development for them is likely to be in cheaper locations allowing greater CIL affordability.
- See also the Council's response to Question 2 representations on retail above.

Recommendations:

- Officers recommend that the Draft Charging Schedule is submitted for Examination without any changes to the rates in this consultation.

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Q4. Do you believe that the evidence provided shows that the proposed rates would not threaten delivery of the Local Plan? If not, why not?

All Representations received:

1, 9, 12, 13, 16, 20, 26, 27, 28, 29, 30, 37, 39, 41, 42, 43.

Key Issues raised by the above representations:

- Rural residential, retail and hotel rates will be a disincentive to investment
- Sheltered/retirement housing rate will reduce delivery of specialist accommodation and affordable housing contrary to delivery in Policy P4 of the Local Plan
- Limited support for differential thresholds

Council's response to the representations listed above:

- The Council acknowledges support expressed for the CIL Charging Schedule rates.

Retail rates

- As stated in the Council's response to the representations made to the Preliminary Draft Charging Schedule, farm shops are classed as A1, unless they are considered an ancillary use. However, in many cases a farm shop would be a conversion of an existing building and therefore potentially not liable to pay CIL.
- The Examiner's Report on the Winchester City Council CIL Charging Schedule (dated 7th October 2013) says the following:
 - Para. 26. *"With regard to farm shops, no substantive evidence was submitted to demonstrate that the levy may have viability implications and in any event they may be exempt from CIL (i.e. if less than 100m² net)."*
 - Para. 41. *"A specific concern about the impact of the retail CIL on farm shops was raised. However, I share the Council's view, expressed at the hearing, that, in most cases, such outlets would relate to existing floorspace or small new buildings (under 100 sq. metres) and would therefore fall outside the CIL charging regime."*
- The Council does not agree that the proposed charges will put large supermarket developments at undue risk in a time of economic recession. The modelling of the foodstore examples in the Viability Study demonstrates that there is a substantial viability buffer. It is therefore not considered a disincentive to invest.
- It is not the intention of CIL charges to establish a complex scale of charges related to differing uses within a specific Use Class. This principle has been established within other CIL examination reports where it has been acknowledged that setting a "fairly simple structure of charges complies with government guidance" (Inspector's Report for Oxford).
- The CIL charging schedule assumes a rate of £50 psm for large format retail, i.e. retail warehousing and out of centre units. The modelling of the large format units demonstrates viability reflective of the yield and rent profile. The modelling of the out of centre units showed less viability hence the proposal for a mid-range of £50 psm.

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- Land values remain high for foodstore development and the provision of CIL is likely to influence land values rather than deter development. We consider that the revenues from site sales would remain sufficiently robust to allow the landowners to give up their existing uses.

Residential rates

- The approach adopted has been to test a range of sites across the Borough on a high level basis. The output to the exercise is therefore a high level guide to likely scheme viability; taking into account a variety of development situations but using general assumptions rather than analysing specific site constraints. The Viability Study has taken into account the accumulation Local Plan standards, and been tested successfully at the Solihull Local Plan Examination (adopted 3rd December 2013).
- The Council does not consider that it has provided contrary viability evidence; the affordable housing element has been consistent across the residential examples. The Mid-Devon Viability Assessment used a lower affordable housing ratio than the one approved in the local plan policy for the area, and as such it was recommended to lower the charging rate. The proposed residential rates are considered to be consistent with the economic viability across the Borough (in accordance with Para. 9 of the Guidance) and have taken into account the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across the Borough (in accordance with Regulation 14).
- The Viability Study has included a housing mix reflected in the now adopted Local Plan Policy P4 'Meeting Housing Needs', and includes a range of residential development scenarios, including smaller house types and older persons' accommodation.
- As stated above, the rates are based on viability evidence, not a policy objective.
- No viability evidence has been provided to support a lower rate in the rural housing market
- Affordable housing relief from CIL is nationally prescribed.
- Where there have been shown to be issues of viability, for example in the North Solihull Regeneration Area, CIL is not the critical factor. Grants and other funding streams to kick-start development have not been included in the assessments.
- It is acknowledged that viability will vary within a charging zone. However, for ease of implementation and clarity, the charging rates have been kept as simple as possible, with differential rates/zones only where it is considered justified by the evidence. In response to the PDCS consultation, further fine-grained analysis was undertaken to test the rural residential rate, and it has been shown to be viable across locations.

Recommendations:

- Officers recommend that the Draft Charging Schedule is submitted for Examination without any changes to the rates in this consultation.

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Draft Charging Schedule Consultation – 21st October – 2nd December 2013
Council's Response to the Representations

Q5. General comments

All Representations received:

1, 5, 9, 12, 13, 14, 16, 17, 20, 21, 26, 27, 28, 29, 30, 31, 33, 36, 37, 38, 41, 42, 43.

Key Issues raised by the above representations:

- Council should commit now to an exceptions and instalments policy
- How will the Parish Councils be awarded their CIL contribution?
- CIL and public bodies
- CS does not sufficiently account for rural businesses
- CIL rate will deter hotel investment in Solihull

Council's response to the representations listed above:

Exceptions and Instalments policy

- The Council agrees that the phasing of CIL payments will ease cash flow for developers. The principle of phasing is to allow a cash-flow benefit to the developer as the development is unlikely to be revenue generating until much later in the development process.
- It will be necessary to balance the timing of the CIL receipts with the delivery of infrastructure necessary for sites to come forward and unlock growth, if the monies were received on completion, then it would delay the delivery of infrastructure.
- It will be easier to administer the CIL charge if payment is linked to commencement of development and not the completion of development.
- The granting of exceptional circumstance relief is optional and discretionary (See Para. 31 of the statutory Guidance (2014)).
- The Council agrees that infrastructure improvements should be provided in a timely manner to allow development to proceed. Schedules for providing the right infrastructure will be part of the planning application process.
- The Council has consulted on a potential exceptional circumstances policy and phasing policy during its Preliminary Draft Charging Schedule consultation. The Council is not obliged to commit to such a policy at Examination.

Parish Councils

- The CIL (Amendment) Regulations 2013 included provisions for Parish Councils to receive a proportion of CIL receipts when development occurs within their Parish boundaries.
- Delegation of powers and responsibilities in line with the Localism Act. It is for Parish members to get involved with the local democratic process. Solihull Council can offer support on this.
- Parish Councils would have to publish their CIL expenditure each year on the Council's website.

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- CIL is not included in a planning consent as a Section 106 agreement or as a planning condition. CIL is calculated upfront, as a liability notice, on grant of the planning permission. Timescales can vary, however, in when the CIL charge has to be paid.
- Calculation of inflation measure is set out in Regulation 40 of the CIL Regulations (2010) (as amended):
 - Regulation 40: (7) The index referred to in paragraph (5) is the national All-in Tender Price Index published from time to time by the Building Cost Information Service of the Royal Institution of Chartered Surveyors (a); and the figure for a given year is the figure for 1st November of the preceding year.
 - The CIL Guidance, Para. 108, states “This amount will be indexed for the year in which the Levy is passed to the Parish or Community Council using the national All-in Tender Index published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors. Where this ceases to be published, the Retail Prices Index will be used.”
- Overall, highway improvements can be on-site, provide or improve direct access to the site, or be off-site. Highway improvements outside of the red line boundary of the site can still be secured through Section 206 or Section 278 if they are considered necessary to make the development acceptable.
- Knowle is an unparished area, but it would still come under the same rules of Neighbourhood funding as a Parish, i.e. capped to £100 per Council tax dwelling without a Neighbourhood Plan up to 15% of CIL generated in the local area and 25% uncapped with a Neighbourhood Plan. However, where there is not a Parish or Town Council, the Local Planning Authority does not pass on the CIL receipts, but spends them in accordance with the local community needs. These needs can be further clarified within the evidence base for the Neighbourhood Plan.

CIL and public bodies

- The Council is grateful for PCCWM for bringing to our attention that local authorities in the country have paid Section 106 contributions towards police authorities.
- Local Authority funding as well as other public services have been substantially cut as part of the Comprehensive Spending Review in 2010.
- There will always be a number of competing demands for a CIL pot, many of which are recognised in the NPPF and /or have a statutory function.
- The Emergency Services may provide evidence at planning application stage for a need for Section 106 monies; and these should meet the three statutory tests.
- Definition of buildings is provided by the CIL Regulations (2010) as amended.
- Public bodies are not automatically exempt from paying CIL. In many cases, the types of development brought forward by public bodies would not be liable for CIL under the Council's proposals. For example, most police and emergency services buildings will be classed as sui generis, and therefore exempt.
- The infrastructure planning to support the Local Plan has been examined and found sound. Para. 18 of the CIL Guidance (April 2013) states:

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“The Community Infrastructure Levy examination should not re-open infrastructure planning that has already been submitted in support of a sound relevant Plan. It is not the role of the Community Infrastructure Levy examination to challenge the soundness of an adopted development plan.”

Rural

- The draft SPD states that “The Council does not have a local definition of ‘Key Workers’. Because of the wide range of potential key worker groups and their different income levels, they can be expected to require both rented and intermediate housing. Therefore, the Council will expect that the affordable housing element of all appropriate planning applications is expressed as social and affordable rented and intermediate housing rather than in terms of accommodation for key workers. The Council considers that the definition of affordable housing should relate to affordability and not to employment status or function of individual household members”. However, this does not exclude Regulation 49 provides that social housing includes ‘assured agricultural occupancies’, where the landlord is appropriately registered, and that this provides for rural worker housing to be delivered without a requirement for CIL payments.
- If landowners decide to build houses to keep within their own long-term ownership to diversify their income through a residential portfolio of properties, these would represent a very small percentage of the housing market, and would not want warrant changing the rate for the rest of the Borough. Furthermore, since 24th February 2014, self-build housing is exempt from being charged CIL.

Hotels

- We do not consider that the low rate of CIL proposed will be an unjustifiable cost burden to hotel development. £25psm is considered a low charge; local evidence suggests that the hotel market is viable in Solihull given recent development activity in the Borough. Where low rates of CIL have been proposed elsewhere, it has been acknowledged in the Examination reports that such low costs are not the factor in determining viability (e.g. Oxford). In Solihull, CIL would be a low proportion of development costs for hotels (about 1.5% to 2% of base build costs).
- Contrary to the representation, the Council considers that hotels do impose some demands on infrastructure, e.g. tourist attractions and transport systems.

Other

- The Council has considered the accumulation of charges levied on development, e.g. affordable housing, local standards and Section 106 agreements in the viability evidence.
- Representations regarding the principle of CIL are not related to the specifics of the Council's proposed Charging Schedule.
- In general, we consider that CIL will not be a critical factor in determining whether development proceeds at the levels that have been proposed in the Draft Charging Schedule.
- The IDP is a live document and will be updated in the future. We will continue engagement through the CIL and Local Plan consultation process.

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- It is not sufficient to merely compare rates between authorities, as the viability evidence underlying those rates will vary (see above).
- The traffic light system demonstrates that £300 psm rate is not set at the margin of viability. Site 15 is not in “amber” until circa £650 CIL rate and Site 42 is not in “amber” until circa £975 psm CIL rate (para 7.7 of the CIL Viability Study). We therefore do not consider the proposed CIL rate to be a threat to large supermarket development.
- Requirements of IDP have not influenced rates themselves – that is independent, but whether there is a funding gap. Notwithstanding the above, the justification for charging CIL is underpinned by the IDP and transposed into the Regulation 123 list.
- The recent proposed changes to the Regulations (Regulation 9 (7)) will allow the Levy to be paid through the provision of infrastructure in accordance with the charging authority's policy. There may be circumstances where the cost of certain S106 and S278 works could be offset accordingly.
- The Council agrees that CIL should be introduced with minimum delay; the Local Plan has now been adopted (3rd December 2013).
- Up to 5% of the CIL receipts can be passed onto administrative costs; it is yet to be decided if/how much the Council will take advantage of this.
- The Viability Study included assumptions made in the Local Plan policies, which included Lifetime Homes. The Government has not finalised its response to the Housing Standards review consultation, however, removing such a standard would likely improve overall viability.
- Noted that there is an error on p.7 where the CIL rate is expressed in pounds per m²².
- As stated above, both the West Berkshire and Sevenoaks District Council CIL Examiners' Reports state that the proposed caveat by the Planning Bureau for McCarthy and Stone-style retirement housing would add undue complexity to the charging schedules (Para. 19 and Para. 17 respectively).
- Provision of Green Infrastructure has been included in the Infrastructure Delivery Plan and the draft Regulation 123 list.

Recommendations:

- Officers recommend that the Draft Charging Schedule is submitted for Examination without any changes to the rates in this consultation.

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Q8. Comments on Draft Regulation 123 list

All Representations received:

5, 17, 21, 22, 26, 31, 33, 38, 43.

Key Issues raised by the above representations:

- Para. 2.5 states that CIL would become the main source of developer contributions, and that S.106 contributions will be significantly scaled back. This is likely to prove false as any major junction improvements will need to be funded through s.106/s.278 agreements.
- Police infrastructure, railways, major road improvements should be included on Regulation 123 list
- Should list which Green Infrastructure projects would be funded by CIL
- Limited in scope

Council's response to the representations listed above:

- It has been assumed that CIL will become the main source of developer contributions towards infrastructure beyond the immediate needs of the development site. Any site-specific Section 106 contributions would still be required to make a development acceptable in planning terms. As a consequence of this, any contributions regarding wider infrastructure needs will be scaled back, unless they are specifically required to make that application acceptable.
- The CIL Charging Schedule examination shall not re-open the infrastructure evidence found sound at the Local Plan hearings.
- The Regulation 123 list will remain under review throughout the lifetime of the CIL Charging Schedule, and can be updated with due consultation.
- Green Infrastructure projects that are directly linked to the delivery of the development may be secured by Section 106 agreement or condition. Any wider strategic works to the green (including blue) infrastructure network, as defined in the Green Infrastructure Study (2012), would only be eligible for Section 106 monies if it met the three Regulation 122 tests. In the absence of sufficient evidence to agree that infrastructure provision meets those tests, green infrastructure providers may have recourse to CIL to fund strategic creation/enhancement/protection of their assets.
- The Draft Regulation 123 list is not meant to replace site specific Section 106 or Section 278 agreements, but nationwide to replace tariff-based Section 106 pooling charges. The Draft Regulation 123 list provides scope for funding town centre transport improvements; primary school places; green infrastructure; flood alleviation works; community based social or health care facilities; enterprise zones; and enhancements to the Borough's digital connectivity. These are chosen as the top priorities for the Council in delivering the Local Plan. Neighbourhood CIL funding is not included in the list, and may be put towards other projects.
- The draft Regulation 123 list excludes secondary school places as these can be met by fewer developments than primary school places; and pupils can travel further. The revised Regulation 123 list will provide further definition of these distinctions between what will be provided as Section 106, Section 278 and CIL.

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- The Council may consider the use of CIL funding for strategic transport infrastructure development, road junction improvements, railways and emergency services at a future date.

Recommendations:

- The Council will further review the Draft Regulation 123 list.

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List of representors

N.B. 1-33 responded to the PDCS.

CIL Ref	Consultee Name	Consultee Title	Consultee Organisation	Agent's Name	Agent Title	Agent's Organisation	Overall
1	Graham Nicholson	Planning Officer	Inland Waterways Assoc, Warks Branch				Support
4	John Short	Chief Executive	Birmingham and Solihull Mental NHS Foundation Trust				Letter due
5			Asda	<i>Nicola Gooch</i>		<i>Thomas Eggar LLP</i>	Object
9	Richard Goodwin	Rural Surveyor	Country Land & Business Association (Midlands)				Object
11	Hayley Anderson	Planning Obligations Officer	Birmingham City Council				Comment
12	Peter Frampton		Framptons				Object
13			WM Morrisons Supermarkets Plc	<i>Kate Tinsley</i>	<i>Senior Planner</i>	<i>Peacock and Smith</i>	Object
14	Chris Noble	Chairman	Cheswick Green Parish Council				Support
16	Trevor Eames	Secretary	Solihull Ratepayers Assoc				Object
17			West Midlands Police	<i>Gail Collins</i>	<i>Senior Consultant Planner</i>	<i>Tyler Parkes</i>	Object
20 & 44			McCarthy & Stone Retirement Lifestyles Ltd & Churchill Retirement Ltd.	<i>Ziyad Thomas</i>	<i>Policy Planner</i>	<i>The Planning Bureau Ltd</i>	Object
21	Piotr Behnke	Land Use Operations Team	Natural England				Comment
22	Katherine Burnett	Area Planner	Canal and Rivers Trust				Comment

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CIL Ref	Consultee Name	Consultee Title	Consultee Organisation	Agent's Name	Agent Title	Agent's Organisation	Overall
26			Bloor Homes	<i>Chris May</i>	<i>Director</i>	<i>Pegasus Planning Group</i>	Object
27	Fergus Thomas	Senior Planning Manager	Catesby Property Group				Object
28	Martin Robeson		Martin Robeson Planning Practice				Object
29			Sainsbury's Supermarkets	<i>Damien Holdstock</i>	<i>Planner</i>	<i>Turley Associates</i>	Object
30			West Midlands HARP Planning Consortium	<i>Christopher Burton</i>		<i>Tetlow King Planning</i>	Object
31	Richard Campbell-Kelly	Property and Insurance Manager	NEC Group				Comment
33	Matthew Taylor	Asset Manager	Highways Agency				Comment
36	Nicki Farenden	Lands Administration Assistant	British Pipeline Agency - Lands				No Comment
37	Wendy Reeve						Comment
38	Jill Stephenson	Town Planning Manager LNW	Network Rail				Comment
39			LendLease Retail Partnership	<i>Nicholas Alston</i>	<i>Director</i>	<i>GVA Grimley</i>	Object
40	Michael Brereton	Planning, Monitoring and Delivery Officer	Walsall MBC				No comment
41	Nicole Penfold	Planner	Gladman				Object
42	Andrew Marston		Knowle Society				Object
43			Banner Homes	<i>Chris May</i>	<i>Director</i>	<i>Pegasus Planning</i>	Object

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CIL Ref	Consultee Name	Consultee Title	Consultee Organisation	Agent's Name	Agent Title	Agent's Organisation	Overall
						<i>Group</i>	
20 & 44			McCarthy & Stone Retirement Lifestyles Ltd & Churchill Retirement Ltd.	<i>Ziyad Thomas</i>	<i>Policy Planner</i>	<i>The Planning Bureau Ltd</i>	Object

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