



**GOSPORT**  
Borough Council

Date 21/10/14  
Ref No.

CIL REP-5

For office use only

# Gosport Community Infrastructure Levy Draft Charging Schedule Consultation Response Form

(Community Infrastructure Levy 2010 as amended Regulation 16)

Name:

Agent Name:

Organisation (if applicable):

Agent Organisation (if applicable):

Address:

Agent Address:

Post Code:

Post Code:

Telephone:

Telephone:

Email:

Email:

Gosport Community Infrastructure Levy documents are available to view on the Gosport Borough Council website: [www.gosport.gov.uk/cil](http://www.gosport.gov.uk/cil)

Paper copies of the response form are available in the libraries and at the Town Hall (3rd floor reception).

If you would like to discuss any element of the consultation documents further then please contact/telephone Planning Policy **023 9254 5228**

All comments and completed forms should be returned by **5.00pm on 30<sup>th</sup> October 2014**

either to **Planning Policy**  
Gosport Borough Council  
Town Hall  
High Street  
Gosport  
Hampshire  
PO12 1EB

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or response forms can be returned by email to [planning.policy@gosport.gov.uk](mailto:planning.policy@gosport.gov.uk)

# Gosport Community Infrastructure Levy Draft Charging Schedule consultation:

Please use a separate form for each representation

1. Do you consider that the CIL rates proposed in the draft charging schedule for different types of development are appropriate for Gosport Borough?

Please tick

Yes  No

If No please state reasons below:

Please find separate sheet attached.

Other comments:

Please find separate sheet attached.

2. If your representation is seeking a change, do you consider it necessary to participate at the Examination?

No I do not wish to participate in the examination hearings  
 Yes I do wish to participate in the examination hearings

3. If you wish to participate, please outline why you consider it necessary.  
(please note the Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate at the oral part of the examination).

N/A

4. Do you wish to be notified at the address/email stated on page 1 of any of the following:

- a. that the draft Charging Schedule has been submitted for independent examination
- b. the Inspector's report has been published
- c. the adoption of the Charging Schedule

**Data Protection**

The comments and details of the responses on this form will be recorded on the Borough Council's Local Development Framework database. The Council is registered in accordance with the Data Protection Act 1998 and any data collected will only be used for the purposes of the Gosport Local Development Framework. Please note that your responses are public documents and available for public scrutiny.

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Continued from Question  1     2     3    Other comments

Please find separate Sheet attached.

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 Draft Charging Schedule does not achieve an appropriate balance between these two objectives.

We wish to object to the approach taken to assessing the Draft Charging Schedule on the following grounds:

1. The fact that the consultation study fails to take adequately take account of changes introduced by the Community Infrastructure Levy (Amendment) Regulations 2014/385;
2. the impact on policies concerning enhanced economic performance;
3. the financial assumptions and viability assessments contained in the Council's Viability Study;
4. Issues relating to State Aid; and
5. concerns about the Council's approach to setting CIL charges generally.

#### **Impact of Community Infrastructure Levy (Amendment) Regulations 2014/385**

As the Council will be aware, the Community Infrastructure Levy (Amendment) Regulations 2014/385 came into effect in February.

These regulations have made a number of wide-reaching changes to the CIL regime, the most important of which, for the purposes of this letter, are summarised below:

- Regulation 14 has been amended so as to strengthen the obligations on the Council objectively to justify the adopted charging rates. Reg 14 now states that a Council "*must strike an appropriate balance*" as opposed to simply aiming to do so;
- Examiners are now being asked to assess whether an appropriate balance has, in fact, been struck;
- The Regulations governing payment in kind have been amended to allow local authorities to accept items of infrastructure as well as the transfer of land;
- Draft Regulation 123 lists should now be made available much earlier in the rate-setting process and these will be capable of being examined at inquiry; and
- There have been significant changes to the various CIL exemptions; which will significantly affect the Council's expected levels of receipts.

Although the Draft Charging schedule, and the viability report on which it is based, considers the impact of these amendments it does not include any analysis of the cost or types of infrastructure that are likely to require funding through s.106 Agreements.

The Council states that it has prepared a Planning Obligations and Developer Contributions Strategy setting out further details on the likely circumstances when a development will be subject to a Section 106 Agreement. This provides little evidence or analysis to clarify the matter.

As a result, the 'balancing exercise' carried out by the viability study is flawed, as it does not include all of the likely costs of bringing forward development. This in turn casts doubt on the level of 'headroom' available out of which CIL can be paid.

### **Impact on policies enhancing economic performance**

We will not repeat the Council's strategic objectives in full here, but in order to achieve its overall objectives, it will be important for the Council to set an appropriate CIL charge to encourage new development to come forward.

An appropriate CIL charge will encourage new development and promote redevelopment to create employment and ensure a range of shopping choices for consumers and enhance the vitality and viability in district and local centres.

The proposed retail CIL rates would discourage larger retail developments and would not ensure that the relevant retail and employment aims of the local plan are met. This could have the effect of reducing the range, variety and choice of retail shopping and, if no redevelopment or regeneration schemes are put forward, then existing buildings are unlikely to be refurbished and re-used.

It is our view that if the retail charges set out in the Draft Charging Schedule are adopted, there will be several consequences across the Borough that will put the Council's ability to achieve its key objectives at risk. For example:

- All other forms of development will receive a significant subsidy at the expense of retail schemes; and
- There will be a corresponding disincentive (and market distortion accordingly) to investment in this sector of the local economy.

The Government is keen to encourage the creation of additional employment across the economy and the retail sector as a whole 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 (71%) 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 scale retail is performing stronger in comparison to the other aspects of the retail sector and accordingly, it implies that large scale retail establishments have the capacity to pay potentially very large sums of CIL, whereas the Town Centre comparison and small convenience retail rates are much lower.

Any CIL schedule that imposes a substantial CIL charge on superstores or supermarkets and a very low or nil rate on all other uses could effectively undermine the retail function

of local and town centres, detracting from their viability and vitality as large scale 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.

### **3 The financial assumptions and viability assessments contained in the Council's Viability Study**

We also have a number of concerns about the study Adams Integra conducted in July 2014 (the "Viability Study").

The Viability Study contains retail development assumptions that in our view may not make sufficient allowance for the costs involved in obtaining planning permission for a development scheme.

By underestimating the true cost of residual planning obligations commercial developments, the Council is at risk of artificially inflated the residual land values used for the financial viability models. This will, in turn, have inflated the amount of CIL proposed for these uses.

The Viability Study does not appear to make an allowance for residual s106 / s278 agreements for non-residential development. Some allowance may have been made included in the planning costs, but it is not clear how this is split between the two cost elements and at what level these contributions have been set. We urge you to look again at the allowances for such residual s.106/s.278 contributions for non-residential schemes.

Although the Council will not be able to pool section 106 contributions once CIL is adopted, the types of commonly pooled contributions tend not to make up a large proportion of the contributions sought from commercial schemes – which are usually focussed on site specific highways and access works, employment and training contributions, environmental mitigation works and other, site specific, requirements.

The draft Regulation 123 list produced makes it clear that any site specific green infrastructure or network improvements, that are needed to mitigate the impact of the development and to make it acceptable in planning terms, are likely to be funded through section 106 and section 278 agreements.

Taking the example of a 2,323 sqm convenience supermarket used in the Viability Report, this sized store, would be expected to bear a CIL payment of £139,380 and potentially fund all of the following costs:

- demolition, remediation and on site highways works
- the cost of any off-site highways works required to make the development acceptable in planning terms including junction improvements, road widening schemes, new access roads, diversion orders and other highways works;

- the cost of extending the Council's CCTV 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.

To put this in context:

- the section 106 Contributions incurred in relation to a c.3,000 sqm food store in Ware, Hertfordshire amounted to £871,800. These sums related to bus service contributions; development of a community centre, nursery; education contributions; various highway safety improvements; youth service contribution; residents parking schemes and open space contribution. In addition to these Contributions, green travel plan contributions, monitoring fees and architectural lighting on pedestrian routes between the store and city centre were also incurred.
- the section 106 Contributions incurred in relation to a c.6,700 sqm food store in Newhaven, East Sussex amounted to £1,345,544. These sums related to contributions for improvements to and an extension of the local bus network; economic initiatives; contributions for relocating local habitats; improvement of recreational space; recycling contributions; residential and retail travel plan auditing; transportation and town centre contributions.

With this in mind, we again, suggest that the Council has significantly underestimated the impact of CIL on the viability of such developments. We request that the underlying viability evidence be revised accordingly.

### **State Aid**

We wish to bring it to your attention that there will be EU State Aid issues arising out of the setting of differential rates for different types of commercial entity within the same use class. Introducing such differential rates confers a selective economic advantage on certain retailers depending on the size of the shop they operate out of, or their type of business. For example, setting the levy for comparison retail schemes at a lower rate than an equivalent convenience retail scheme provides an economic advantage to comparison retailers. Alternatively, basing rate differentials on the size of a store favours smaller retailers over their larger competitors.

As far as we are aware, the UK government has not applied for a block exemption for CIL. CIL charges do not form part of the UK's taxation system and there does not appear to be an exemption in place to cover any State Aid issues that may arise. With this in mind, we would be grateful if the Council adopted a flat levy rate for comparable sectors of the economy/use classes or, if it is not prepared to do so, providing an explanation as to why State Aid issues are not engaged by the setting of differential rates within use classes to the Inspector at the Inquiry.

### **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**

The Council appears only to have taken the economics of regeneration projects into account when considering the strategic development areas as otherwise the viability assessments do not appear to have given any weight to this consideration (particularly for retail developments).

As you will be aware, Regulation 40 of the CIL Regulations only permits developers to deduct pre-existing floor space 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 three years 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 Study does 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.

## **ASDA's SUGGESTIONS**

### **1. Instalment Policy**

We note that once the Charging Schedule is adopted the Council will produce a number of protocols outlining the various procedures involved in collecting CIL including details of payment by instalments. We would encourage the Council to introduce an instalment policy, as managing cash flow during development is often key in determining whether a scheme will be successfully delivered. We would strongly encourage the Council to adopt a realistic instalment policy that spreads the cost of CIL over a number of months or years (depending on the size of the development scheme proposed).

We would recommend that any instalment policy should link the instalments to the pace of the actual development; and should not link the instalments to an arbitrary time frame following on from the date the development is commenced.

### **2. Exceptional Circumstances Relief**

We note that once the Charging Schedule is adopted the Council will produce a number of protocols outlining the various procedures involved in collecting CIL including details of discretionary relief from CIL.

We would encourage the Council to adopt an Exceptional Circumstances Relief Policy. By doing so, 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.

Given the rigid nature of the CIL regulations, which operate in a similar manner to a development land tax, this is a necessary and worthwhile safeguard that the Council will be able to use in appropriate circumstances.

### **3. Flat Rate Levy**

Accepting for the purpose of this argument the premise that CIL is necessary for the purpose of funding Borough-wide infrastructure, a much fairer solution would be to divide the Council's estimate of total infrastructure costs over the charging period (and in this connection, it is important to remember that the Government's guidance as recorded in the National Planning Policy Framework is that only deliverable infrastructure should be included) by the total expected development floor space and apply a flat rate levy across the 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 retail and residential 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 retail stores built, with a consequential loss of employment opportunities and investment.

### **4. Provision of Infrastructure as Payment in Kind**

We note that once the Charging Schedule is adopted the Council will produce a number of protocols outlining the various procedures involved in collecting CIL including details of payment in kind.

As stated above, the latest set of amendments to the CIL Regulations have now made it lawful for authorities CIL contributions to be paid by the provision of infrastructure in certain circumstances. Given that the provision of infrastructure is often key to unlocking unimplemented planning permissions and enabling developments, we would urge the Council seriously to consider adopting a policy to allow payment in kind in this manner.

### **CONCLUSION**

For these reasons, we would ask that the Council undertakes a rethink of its position and substantially alters its Charging Schedule in so far as it relates to retail development.

Accordingly, we would request that the Council:

- Revisits its viability assessments for retail development, to address the concerns set out above;
- Adopts a staged payments policy;
- Adopt an Exceptional Circumstances Relief Policy;
- Considers the allowing developers to pay their CIL Liability through the provision of infrastructure; and

- Adopts a single flat rate levy across all development within its boundaries.