



Local Development Framework

Community Infrastructure Levy (CIL) Draft Charging Schedule

Statement of Modifications Consultation - Summary of Comments and Council's Responses 2015

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INTRODUCTION AND SUMMARY

The Council made minor modifications to the Draft Charging Schedule (February 2015) as a result of the Community Infrastructure Levy (Amendment) Regulations 2015, revised CIL Guidance and representations received on the Draft Charging Schedule (DCS) during February / March 2015.

The Regulations only allow comments relating to the modifications, indicating whether the modifications are supported or opposed and reasons why. Requests to be heard by the examiner in relation to the modifications could also be made at this stage. In total 18 minor modifications were made to the DCS which are set out in the Statement of Modifications document (July 2015) and reflected in the DCS Submission version. The Regulation 123 list was also updated following the Draft Charging Schedule consultation and modifications made.

The Statement of Modifications was consulted on from 9 July to 5 August 2015. In total 18 representations were received which are summarised below. These included 3 requests to be heard by the examiner in relation to the modifications. However, these are not new requests to be heard. Comments received can be viewed in full at the consultation portal <http://consult.wakefield.gov.uk/portal>

A copy of all representations received and requests to be heard were forwarded to the examiner on close of the modification consultation, along with this summary and Council's responses.

The comments made relate mainly to the following:-

- The relationship between the continued use of section 106 agreements and CIL, and whether double counting of education infrastructure would occur as a result of the wording of the amended regulation 123 list.
- Whether the categories of chargeable development are clear in relation to use Class D1 - provision of medical and health care services.
- Whether the definition of retail warehousing is clear, and appropriate and whether a threshold should be applied to retail warehouse developments above which CIL would be chargeable.
- Whether the Infrastructure Delivery Plan Evidence is fit for purpose

SUMMARY OF COMMENTS AND RESPONSES

Comment Reference and Name	Organisation	Document Paragraph or Question Number	Comment (Summarised by Wakefield MDC)	Council's Response
General responses:				
CILSoM1 HSE	HSE	N/a	No comments to make. Details provided relating to plan making process / allocating sites.	Noted.
CIL SoM2 Cllr David Alan Dews	Wrenthorpe & Outwood West	N/a	No comments to make.	Noted
CILSoM4 Laura Hughes	Leeds City Council	N/a	Leeds City Council has reviewed the minor modifications to the Draft Charging Schedule and has no comments to make.	Noted
CILSoM5 Mr James Donlon	Resident	N/a	Planning decisions in Wakefield are not being made on a plan led basis. Local impacts of new development are not being adequately mitigated through the planning decision making process. Infrastructure to support the increased pressure of new development in local areas is not being delivered through the planning process, such as public open space. It is doubtful that CIL would help this process as any money raised by developments is likely to be spent elsewhere. S106 agreements have been used to restrict residents' ability to park in the locality. It is unlikely that CIL will be able to stop this discriminatory behaviour. The implementation of CIL and s106 is unfair, contrary to the principles of the Localism Act and the three pillars of Sustainable Development. There is a danger that CIL money raised in an area that should be spent on mitigating	These comments do not relate to the modifications. Nevertheless, it is relevant to reaffirm that CIL money should be spent on infrastructure to support the development of the district, rather than mitigate the impact of individual planning applications. Section 106 contributions will continue to be sought for site specific matters to make the development acceptable in planning terms. This is indicated on the 123 list and the associated information on the continued use of s106 and s278 agreements.

COMMUNITY INFRASTRUCTURE LEVY: DCS STATEMENT OF MODIFICATIONS SUMMARY OF COMMENTS AND COUNCIL'S RESPONSE 2015

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			development will not be spent locally, but will be used to offset government cuts to services.	
CILSoM6 Mr James Copeland	National Farmers Union	N/a	Further to clarification provided by Wakefield Council, we have no further comments or outstanding issues.	Noted
CILSoM7 Stephanie Walden	Yorkshire Water	N/a	We have no comment to make on the Modifications Statement.	Noted
CILSoM8 Cllr Margaret Holwell	Horbury and South Ossett Ward Cllr	N/a	I have read the draft as updated and have no comments to add.	Noted
CILSoM9 Mr Ian Stokes	City of York Council	N/a	No further comment to make in respect of the Statement of Modifications.	Noted.
CILSoM10 Mr Patrick Cross	Individual (email is to Saul Homes)	N/a	No comment.	Noted.
CILSoM12 Mr Merlin Ash	Natural England	N/a	Thank you for consulting Natural England on the modifications to the Wakefield Community Infrastructure Levy Draft Charging Schedule Submission. Natural England have no further comments to make.	Noted.
CILSoM13 Lyndsey Whitaker	Federation of Small Businesses (Wakefield Branch)	N/a	Having reviewed the Statement of Modifications, and amendments to the Draft Charging Schedule, the Federation of Small Businesses does not have any further comments to make at this stage.	Noted.
CILSoM14 Robert Greenwood	Sanderson Associates on behalf of: Mid Yorkshire	N/a	other Our comments are in relation to clarification within the Draft Charging Schedule Submission (July 2015) on zero CIL charges on use Class D1 -	Comment noted. Charges are proposed for residential, retail warehouses and large supermarkets. The Council considers that it is clear what uses would be charged and which

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	NHS Trust (Ian Brodie)		<p>provision of medical and health care services</p> <p>Although we note the final line "all other uses" in the revised table in 7.1 - given that the table is so specific on a number of land uses incurring zero charge rate – and that the final bullet point in 9.1 "Exemptions", makes reference to specific types of development which are subject to zero charge rate – it would be appropriate to make clear specific reference to this important land use classification, (D1), as incurring zero CIL charge in the table in 7.1 and in the script of para' 9.1</p>	<p>wouldn't. Not all development types are listed and if not listed they are captured under the All other uses category and this would cover D1 uses.</p> <p>Should the CIL Examiner consider it necessary to add a further category for D1 uses, this can be incorporated in the charging schedule adopted version.</p>
CILSoM16 Alyn Nicholls	Trawden Forest Properties Ltd.		<p>The CIL Charging Schedule should be clear and unambiguous about the type of development to which the charging rates are applicable. The schedule includes seven categories of retail development. One of these categories is "retail warehouse (A1)". Modification 10 provides a definition of retail warehouses which is:</p> <p>"Large store specialising in the sale of household goods (such as carpets, furniture and electrical goods), clothes, DIY items and other ranges of goods, catering mainly for car borne customers."</p> <p>This definition is similar to the definition of retail warehouses contained within Annex B of Planning Policy Statement 4: Planning for Sustainable Economic Growth which has been superseded by the National Planning Policy Framework ("the NPPF"). Whilst the definition in the Draft Charging Schedule is</p>	<p>The charging schedule is clear that charges are only proposed for large supermarkets ≥2000square metres G.I.A. and retail warehouses.</p> <p>This definition was added to the modifications for clarify. PPS4 has been superseded by NPPF. However, NPPF does not include a definition of retail warehouses. Therefore, it is for the Council to provide an appropriate definition based on the viability evidence and the characteristics of retail warehousing in the district.</p> <p>The definition provided in the Draft Charging Schedule has been based on the PPS 4 definition but reflects the more recent diversification of traditional edge-of-centre retail warehouses in Wakefield, as identified in the Retail Study 2013.</p>

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			<p>similar, it is different because it inserts “clothes” amongst the ranges of goods that are identified. This definition is too imprecise for the purposes of the CIL Charging Schedule. Specifically:</p> <ol style="list-style-type: none"> 1. There is no indication of the scale of development that constitutes a “large store”. 2. The range of goods identified in the definition is not a closed list which creates uncertainty. 3. Reference to developments catering mainly for car borne customers may reflect the historic characteristic of retail warehouse development but fails to acknowledge circumstances where large non-food retail units are sited in edge-of-centre locations which are designed to cater for shoppers travelling on foot and by public transport and provide car parking that serves the centre as a whole. <p>The definition therefore raises numerous questions as to whether a non-food retail development falls to be classified as a retail warehouse.</p> <p>We suggest that the definition should be amended to refer to non-food retail developments over 2,500 square metres gross internal area. The change should not apply to extensions unless the extension itself is over 2,500 square metres gross internal area. The threshold of 2,500 square metres is consistent</p>	<p>National Planning Policy (paragraph 23) and local planning policy (CS2, CW13, saved UDP Policy S2 and emerging RTC117) promote a town centre first approach, but recognise that large retail outlets (foodstores and retail warehouses) may not always be accommodated in locations within existing town centres. In which case edge-of-centre sites should be considered that are in accessible locations, well connected to the town that are served by public transport. So it is not considered appropriate to exclude large edge-of-centre retail units from this definition because they might be well connected to the town centre.</p> <p>Wakefield district has a number of edge-of-centre and out-of-centre non-food retail units, whether stand alone or in retail parks, from which a wide range of goods are sold. This has been reflected in the definition that has been expanded from PPS4. The Council’s retail study identifies that there is no apparent quantitative or qualitative deficiencies in retail warehouse provision. But there is a need to manage the mix of edge and out-of-centre comparison retail uses, particularly high street comparison retail uses by preventing a drift towards open Class A1 retail use.</p> <p>The suggestion of not charging for units where there is a restriction on the range of good sold, i.e. those units where there is not an open A1 consent, does not therefore follow this logic given</p>

COMMUNITY INFRASTRUCTURE LEVY: DCS STATEMENT OF MODIFICATIONS SUMMARY OF COMMENTS AND COUNCIL'S RESPONSE 2015

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			<p>with the definition of major development within national policy.</p> <p>Having regard to our substantive objection to the proposed charging rate for retail warehouse developments, we draw attention to the Preliminary Draft Charging Schedule produced by Bradford Council (July 2015) where a charge on retail warehouse development does not apply when there are restrictions over the ranges of goods that may be sold from the development.</p> <p>The Bradford approach in this regard is a sensible response to the fact that the retail warehouse market is not homogeneous.</p>	<p>the diversity of goods now sold from these units, and is not supported by the viability evidence presented. It is also noted that Bradford Council have not provided a threshold for which the proposed charge would apply either.</p> <p>It is considered that the location of these types of retail developments, in edge-of and out-of-centre locations, is more relevant to whether they should be considered retail warehouses, as larger format stores tend to be found in these locations because they cannot be accommodated within the town centre. However, if the examiner concludes that it is relevant to include a threshold within the definition based on appropriate available evidence then the Council will consider this.</p> <p>Contrary to the Draft Charging Schedule Submission, it has been brought to the Council's attention that that mezzanine floors of any size are exempt from CIL, as per details on the Planning Portal website. As such the Council will amend the charging schedule accordingly before it is published</p>
CILSoM17 Abdul Gaffar	Environment Agency	N/a	<p>Having reviewed the modified schedule, we have no comments to make on the modifications.</p> <p>We have previously been consulted on and commented on the supporting documents and we</p>	<p>Noted.</p> <p>These comments do not relate to the modifications and have been previously made,</p>

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			<p>would welcome the opportunity to work with you again on any further work related to the council's proposed mechanisms for apportioning the CIL revenue and identifying the specific infrastructure items which it will contribute towards. The areas of work we would be interested in include;</p> <ul style="list-style-type: none"> • Any future work/updates on the Infrastructure Delivery Plan or related evidence documents, which includes identifying priorities and infrastructure needs. • The Regulation 123 stage in helping to identify specific projects or types of infrastructure the CIL may potentially fund. • Consideration of the relationship between CIL and ongoing use of S106 related to flood defences and other flood risk solutions. • Any other work related to the spending mechanisms of the CIL and identifying infrastructure needs. <p>CIL Infrastructure Delivery Plan Evidence Update Oct 2014 (as amended July 2015)</p> <p>WMDC Drainage team can provide you with updates on future schemes on the Medium Term Plan (MTP) including project costs. There are a number of future schemes on the Medium Term Plan (MTP) for Wakefield Council that the CIL could potentially contribute towards in terms of development costs and future maintenance, where these are related to</p>	<p>noted and responded to. The Council will continue to work with the EA. The R123 list has been amended during the CIL process and will continue to be reviewed and schemes added as appropriate. Any amendments to the 123 list will be subject to appropriate consultation in line with the CIL regulations.</p>

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			<p>proposed growth.</p> <p>Reg 123 list</p> <p>We are happy to see flood infrastructure projects and Green Infrastructure projects included on the list. However you may want to consider identifying specific projects which are priority for the council and can be achievable without restricting funding from other sources.</p>	
<p>CILSoM18 Andrew Rose</p>	<p>Spawforths on behalf of: CIL Consortium</p>	<p>N/a</p>	<p>The Consortium supports the majority of Modifications, which are purely factual reflecting the updated CIL Regulations and the current stage of the document.</p> <p>However the Consortium has the following concerns regarding double dipping, education and catchment areas and in relation to the IDPE. Also, the modifications do not address the issue of "<i>double dipping</i>" in relation to public open space and green infrastructure and therefore the Consortium maintains their original objection.</p> <p>Concerns regarding paragraph 8.9 have been raised and that there appears to be an element of double dipping. Wakefield SPA will pay CIL and s106 towards primary education. Would be more appropriate if the site was entirely CIL.</p>	<p>Comments noted.</p> <p>The detailed comments made regarding education and double dipping for the City Fields Site (SPA 2) and those relating to the IDPE are not new issues raised by the consortium. The Council has provided answers to these as the CIL work has progressed and in response to the Examiner's questions.</p> <p>S106 agreements will continue to be used for primary education for Wakefield East urban extension (SPA 2), as such provision has been identified in the Site Specific Policy Local Plan. As the need for primary education would arise from this development itself, creating a new catchment area, it is a site specific matter necessary to make</p>

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			<p>The approach means Wakefield East SPA is paying more education than other sites in the vicinity. Approach is different to other SPA and housing allocations. Ashfields allocations in Normanton (HS43, HS44 & HS45) will be required to contribute towards education provision. £1,853 per dwelling has been sought for the current planning application for the first phase, later phases to contribute in similar manner, reduction in s106 for one developer due to the purchase of land for the school – how would CIL interact with such a mechanism?</p> <p>Approach raises viability concerns and would have to seek Exceptional Circumstances Relief.</p>	<p>the development acceptable in planning terms and is therefore considered to meet the tests of regulation 122. It would not be appropriate for the site to be only CIL as the site's infrastructure need would not be addressed. Double dipping would not occur as the CIL charge would not contribute to the provision of primary education.</p> <p>No other housing allocation identifies an on-sire education requirement - a need in its own right from the scale of development. As such, it is appropriate that the education need as a result of growth from these developments would be partly funded by CIL and not s106 contributions. Once CIL is implemented, if required, payment in kind (land) would be the mechanism to be used which would offset the value of the land against the CIL charge. There would not be any education s106 contributions for future phases if the applications are determined when a CIL is in place.</p> <p>This has been answered previously in the response to the representation received at the DCS stage. In brief, the s106 contribution for primary education and CIL payment would not be any greater than the contribution sought per unit for the first phase of this development which has commenced on site.</p> <p>If the infrastructure / matters are site specific</p>

COMMUNITY INFRASTRUCTURE LEVY: DCS STATEMENT OF MODIFICATIONS SUMMARY OF COMMENTS AND COUNCIL'S RESPONSE 2015

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			<p>Modifications do not address double dipping in relation to open space and green infrastructure.</p> <p>Still concerns that the IDPE document provides a lack of conclusion on the need and scale for some projects. Process should identify a CIL infrastructure funding target and also identify projects which could be funded by CIL. Funding gap includes £75m towards sport stadia. Consider the net funding gap is significantly lower around £103m. Aspirational document rather than a route map for delivery of essential infrastructure. Concerns that the IDPE does not provide a sufficiently reliable basis upon which to form a view on the soundness of the proposed charging schedule and levels. Further work is require to update and relate the document to the list of infrastructure projects, their potential funding and the delivery of the levels of growth proposed under the Development Plan.</p>	<p>matters necessary to make a development acceptable in planning terms, a s106 agreement will still be required, subject to meeting all the obligation tests. CIL will be sought to help fund strategic infrastructure to support the growth of the district.</p> <p>In terms of the IDPE concerns, a funding gap has been identified. Whilst the CIL guidance requires councils to identify the total cost of infrastructure they wish to fund wholly or partly through the levy, it also recognises that there will be uncertainty in pin pointing other infrastructure funding sources (ID25-016-20140612). This point has already been made in response to the representations received in Draft Charging Schedule.</p> <p>The setting of the proposed rates is based on viability evidence and not the level of infrastructure funding gap identified.</p> <p>The CIL will only contribute to a small portion of the identified funding gap. A detailed explanation of the funding of stadiums has been provided to the Examiner in response to the Examiners' initial questions and is therefore not repeated here.</p>
CILSoM21 Turley Associates (Mr Nathan Smith)	Barratt and David Wilson Homes	N/a	Comments submitted to the Draft Charging Schedule 2015 still stand.	Noted. Responses to these representations have already been provided at the Draft Charging Schedule stage.

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Modification 5 – Paragraph 2.3				
CILSoM11 Patrick Cross	Individual	N/a	5. Does this mean that after April 2015 there will be no S106 Agreements for other than for Social Housing, certain primary education provision.	Modification 5 was made to reflect the 2015 Regulations and relates to the pooling of obligations. There will still be S106 agreements after April 2015. They will need to meet the tests of R122 of the CIL regulations and will address matters to make a planning application acceptable.
Modification 12 - Paragraph 8.8				
CILSoM11 Patrick Cross	Individual	N/a	12. CIL was supposed to counter the uncertainty of S106. The draft and modifications are creating a regime that will be just as uncertain and more complex, is this progress?	Modification 12 was made to provide clarity on how s106 and CIL receipts will work together. Comment is noted. CIL will provide more certainty for developers in that the charge is mandatory once introduced. CIL does not replace s106 agreements, the mechanisms will sit alongside of each other.

Summary Table of comments received for the Statement of Modifications stage categorised into relevant consultation groups / bodies:

Comments received from:	Number of comments received:	Further details:
Developers	3	Spawforths (for CIL consortium) Turleys (for BDW) Alyn Nicholls and Associates (for Trawden Forest Properties)
Statutory Consultees (Government / Consultation Bodies)	7	HSE, Historic England, Yorkshire Water Services, Natural England, Environment Agency, Mid Yorkshire NHS Trust
Local Planning Authorities / Councils	1	Leeds City Council
Specific Organisations	3	Federation of Small Businesses, National Farmers Union
General Organisations (Groups / Societies)	1	Wrenthorpe Environmental Society
Residents / individuals	1	Patrick Cross, James Donlan
Councillors	2	Wrenthorpe and Outwood West, Horbury and South Ossett
Town, Parish and Community Councils (specific organisations)	-	-
Total	18	

The following withdrawal of requests to be heard have been made:-

- NFU have withdrawn their request to be heard at examination

Requests to be heard at examination were received from the following, which are repeated from the Draft Charging Schedule:-

- Alyn Nicholls on behalf of Trawden Forest Properties Ltd.
- Spawforths on behalf of CIL Consortium
- Turley Associates on behalf of Barratt David Wilson Homes

