Hertsmere Borough Council

COMMUNITY INFRASTRUCTURE LEVY (CIL)

DRAFT CHARGING SCHEDULE

BACKGROUND DOCUMENT

July 2013

Document Title	Purpose
Draft Charging Schedule Background Document	Supporting document outlining progress made to date on the Community Infrastructure Levy; including summary of PDCS responses; amendments in light of consultation; and, approach to S106

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1. INTRODUCTION

1.1 This document outlines Hertsmere Borough Council's process to date for the introduction of a Community Infrastructure Levy (CIL) and describes the next steps towards adoption. It summarises why the Council is proceeding with the Draft Charging Schedule as proposed, taking account of comments made to date and describes what arrangements and policies may accompany the introduction of CIL.

1.2 Upon adoption Hertsmere's Charging Schedule will comprises of the following:

CIL Charging Schedule		
Charging Schedule Document setting out the proposed levy rates for CIL in the Hertsmere.	**Infrastructure (R123) List** Infrastructure types or projects listed in this document will not be secured through planning obligations.	**CIL Instalment Policy** Document setting out our policy for allowing the payment of CIL liabilities by instalments.

1.3 The following documents comprise the evidence base and supporting documents:

- **Draft Charging Schedule Background Document (THIS DOCUMENT)**
  Background document to support the Draft Charging Schedule consultation.

- **Hertsmere Borough Council Local Plan Core Strategy**
  The Hertsmere Borough Council Local Plan Core Strategy (adopted January 2013) sets out how much development will take place in the Borough to 2027 and the broad locations of that development. Furthermore, it provides the policy basis for the collection of developer contributions and the provision of on-site infrastructure to support new development through obligations, agreements and tariffs.

- **CIL Viability Assessment**
  An Economic Viability Assessment (January 2013) was prepared for the Council by consultants Lambert Smith Hampton (LSH). This assessed what level of CIL could be introduced for 11 different development types (5 forms of residential across different postcodes plus 6 other property uses – offices, industrial/distribution, hotels, care homes and gyms) without putting future development at risk. The viability assessment was based on well-established development appraisal techniques endorsed in RICS guidance. These involved looking at the impact of potential CIL rates on residual land values. The appraisal took account of other costs such as affordable housing and used assumptions which reflect the local market and relevant planning policy.

- **Hertsmere Borough Council Infrastructure Assessment**
  The Infrastructure Assessment (February 2013) forms part of the evidence base for the Local Plan Core Strategy. It gives a broad overview of the way certain infrastructure is planned and the agencies involved in its delivery. It also considers the costs and likely funding mechanisms for some items of infrastructure, in particular those that are critical to delivering the Core Strategy.

2. RESPONDING TO THE CIL DRAFT CHARGING SCHEDULE CONSULTATION

2.1 Having taken the comments received on the PDCS into account, the Council considers that the Draft Charging Schedule (DCS) is ready to be submitted for independent examination and therefore publishes it in order to gather comments on it from interested stakeholders. The comments will be used by the independent examiner in their consideration of the Charging Schedule. The Council can make further changes to the Charging Schedule before submitting it for independent examination but it is not obliged to. Any further changes would require a further round of consultation.

3. PRELIMINARY DRAFT CHARGING SCHEDULE (PDCS) - SUMMARY OF COMMENTS RECEIVED

3.1 In total 15 representations were received on the PDCS and these covered a broad range of issues. The detailed representations and the Council's responses to the specific points raised are included in the PDCS Consultation Statement. In addition further clarifications are provided in the remainder of this report.

3.2 The comments received can be summarised as follows:

- There is a need for additional infrastructure planning work to satisfy the requirements of the amended (2012) CIL Regulations.
- There is a need to agree appropriate governance arrangements and the level of CIL monies that will be made available prior to the Examination.
- The rates as proposed will undermined the delivery of the planned growth.
- The Viability Assessment should provide a development scenario for a typical flatted retirement housing scheme.
- Payment by instalments should be offered.
- Some of the assumptions used in the viability assessment are not realistic.
- A range of comments were received in relation to how funds will be used and how decisions to release funds will be made.

4. ISSUES RAISED IN THE PDCS CONSULTATION AND THE COUNCIL'S PROPOSED WAY FORWARD WITHIN THE DCS

Suitability of infrastructure evidence

4.1 Representations were made by Hertfordshire County Council in response to the Council's Infrastructure evidence. Concerns were raised that at present the current infrastructure planning work (relating to infrastructure provided by the County Council) may not satisfy the requirements of the new CIL guidance (amended CIL Regulation 2012). Hertfordshire County Council considered that further work will be required to; refine the list of schemes in the IDS and Infrastructure Funding Gap Assessment (to ensure that proposed schemes relate to the demand being generated by growth set out within the adopted Core Strategy); clarify the relationship between the use of CIL and S106 for infrastructure projects in the Borough; identify or make informed judgements as to the potential of alternative funding sources; and, prioritise projects that are to be funded via CIL monies.

4.2 The Council has sought Legal Advice as to the level of infrastructure evidence required to support the introduction of CIL, and is confident that the infrastructure evidence meets the requirements of the CIL Regulations 2010 (as amended 2013).

4.3 Paragraph 13 of the DCLG Guidance Note of December 2012 indicates that *"Information on the charging authority area's infrastructure needs should be directly related to the infrastructure assessment that underpins their relevant Plan, as that planning identifies the quantum and type of Infrastructure required to realise their local development and growth needs."* Hertsmere Borough Council's Local Plan Core Strategy was found sound in January 2013, the Borough's infrastructure planning which underpinned the Core Strategy has continued to be developed, the Infrastructure Assessment which collates known infrastructure work is a 'live document' and is updated when details become available.

4.4 The Government recognises that available data is unlikely to be fully comprehensive or exhaustive and that "appropriate available evidence" is the requirement (paragraph 25 of the DCLG Guidance Note). Additionally, Paragraph 14 of the DCLG Guidance Note of December 2012 continues *"In determining the size of its total or aggregate infrastructure funding gap, the charging authority should consider known and expected Infrastructure costs and the other sources of possible funding available to meet those costs. This process will identify a Community Infrastructure Levy infrastructure funding target. This target should be informed by a selection of infrastructure projects or types (drawn from infrastructure planning for the area) which are identified as candidates to be funded by the levy in whole or in part in that area. The Government recognises that there will be uncertainty in pinpointing other infrastructure funding sources, particularly beyond the short term. The focus should be on providing evidence of an aggregate funding gap that demonstrates the need to levy the Community Infrastructure Levy."* The council has sought to work with Hertfordshire County Council (HCC) who has committed to support the production of a Hertsmere CIL. In addition, HCC produced parts of the Hertsmere Infrastructure Assessment.

Identification of infrastructure priorities for CIL spend

4.5 A series of representations were made in relation to infrastructure for CIL spend. The Council has produced a CIL Infrastructure (R123) List which outlines the types of infrastructure which will be secured through CIL. A CIL Governance structure is also being prepared by the Council in associated with Hertfordshire County Council.

4.6 Representations received from Hertfordshire County Council reference the 2012 amendments to the CIL Regulations as placing greater restriction on the ability for Charging Authorities to update their 'Regulation 123 list' and requires greater transparency as part of the examination as to why CIL monies will be collected and how they will be spent. In light of the amended Regulations Hertfordshire County Council consider it necessary for it to determine which of its infrastructure schemes should be prioritised for the receipt of CIL monies; and, for the Charging Authority to demonstrate how these priorities are reflected in its Regulation 123 list. Additionally, Hertfordshire County Council considers the proposed wording on the draft Regulation 123 list may be over generalised.

4.7 The Council considers that the Amended Regulations do not give rise to the requirement for greater detail nor that they require the naming of specific Infrastructure projects on the Regulation 123 list. Such a view is supported within the guidance note issued by the DCLG. Paragraph 25 indicates that *"It is recognised that the available data is unlikely to be fully comprehensive or exhaustive".* In terms of the suitability of including general infrastructure types paragraphs 13 and 14 refer to infrastructure types" which of itself suggests there is no need to be project-specific. Perhaps most tellingly paragraph 88 indicates that "*Where the*

Regulation 123 List includes a generic item (such as education or transport) S.106 contributions should not normally be sought on any specific projects in that category."

Viability Assumptions

Profit level:

4.8 Savills (on behalf of The Home Builders Federation) question the appropriateness of applying a return to the developer of 17% on GDV (20% on Cost). They propose, in the case of land relating to a proposed development of 126 homes in Shinfield, Reading, 20% on GDV was regarded as being reasonable and therefore this should be applied to the proposed calculation of CIL. In considering an appropriate authority wide CIL, LSH have considered appropriate assumptions over the lifetime of the CIL, that profit margins have increased and fallen over time and risk to development opportunities arising. Therefore, LSH have taken reasonable profit level in difficult market conditions, if the market were to improve, it should be anticipated viability would also improve.

4.9 Profit level should represent appropriate risk to a development and LSH have to consider an appropriate balance across the authority rather than that of any individual scheme. Developers represent that risk in different ways; some place the risk firmly in their profit margin, whilst others represent the risk through contingency in their schemes. I do not believe that it would be reasonable to increase the rate simply based on letters provided by a number of house builders without understanding their various approaches to risk within their schemes.

4.10 Furthermore, individual schemes will vary in their risk. LSH have undertaken a significant amount of viability appraisals in the last 12 months in central London for a number of Local Authorities. In all cases the agreed reasonable return applied to the reviews was circa 17% on GDV. It should be noted that the risk in delivering major development schemes in central London is likely to be higher than that found in Hertsmere, due to the bespoke nature of development. Wider London planning policies, building costs and other influencing factors will impact development coming forward. Therefore, it does not appear that it has been evidenced that a higher profit level in Hertsmere would be an appropriate reflection of risk to development.

4.11 When commenting on an appropriate reflection of risk represented in the scheme, it is important to consider all assumptions and not simply to consider profit margin in isolation. LSH have allowed for professional fees of 12% which is at the upper region of recent bespoke schemes. Schemes coming forward in the South East are in fact regularly being proposed at 10% by applicants involved in viability reviews for bespoke schemes. Furthermore it would be anticipated that for a mainstream house building producing bulk product that the professional fee margin would be very low or inclusive in internal overheads or profit.

4.12 Furthermore, LSH have made an allowance of 15% to reflect unknown costs to the scheme – identified as externals and abnormals. This additional cost is effectively a buffer to ensure the CIL rate is flexible enough to deal with a range of development schemes with varying costs. Additionally LSH have also allowed for improved Code levels to code 4 over and above current BCIS build costs, which include prelims and overheads. And finally LSH allowed 5% contingency on all costs to represent standard risk of build.

4.13 Given that Savills are representing the main national house builders, which build a standard product in most cases, it would seem LSH have been appropriately reasonable in representing the risk in the scheme and a reasonable level of profit to the developer.

4.14 Savills also note that LSH have assumed 6% profit on affordable housing, again stating the Shinfield appeal as an example where no variation was made to affordable units. Savills proposed that an appropriate market risk should be applied to affordable housing and that no distinction should be made in the profit levels.

4.15 LSH considered an appropriate level of profit on affordable housing giving consideration to that currently employed by the HCA and also the GLA, which both apply a contractor's profit of 6% on cost. Affordable Housing, is by definition a non-profit making business with the sole intention of delivering affordable homes. Private house builders generally request a quote from Registered Providers to purchase the Affordable Housing element from the developer. The Developer then includes this income to their appraisal. Anecdotally developers often assume that the income received will, on the most part, cover the cost of delivering the affordable units, and will not in its own right produce any additional profit.

4.16 LSH therefore, have followed accepted guidance on approximate profit levels for affordable housing and furthermore have made an additional allowance over and above that usually anticipated by a developer. LSH have factored in the proposed additional risk in delivering the affordable units in the applied yields when capitalising the various tenures to be provided on site and to this end have reasonably considered any potential risk raised by Savills in the same manner applied by a Register Provider. Therefore, LSH consider they have been entirely appropriate in their approach towards profit and would propose that the profit levels are not amended in line with Savills request.

Elstree Corridor:

4.17 Savills have suggested that the method applied to Elstree Corridor is inappropriate as LSH have considered an assessment of 100 units rather than undertaken a full cash-flowed model of all 800 units. In assessing Elstree, LSH have considered the development of a single phase, as it would be inappropriate to consider that 800 units would be delivered in one year or potentially by one developer. A developer usually will produce circa 100 gross units (including affordable) from any one outlet a year. Therefore, LSH took a snapshot of a single phase of the scheme an applied a pro-rata estimated cost of infrastructure to this scheme.

4.18 Currently the overall scheme has not been agreed, nor has the delivery of the required infrastructure (however this has been costed). Therefore an assessment was made on the information provided. The approach taken effectively presents what any individual phase can support in additional costs, however, the costs used were at the higher end of the proposed range and therefore it is possible the scheme may be more viable than suggested. Furthermore, it is assumed that Savills are proposing that the overall scheme will need to make the proposed profit return and therefore the approach taken will provide the same overall return.

4.19 Savills have not provided any evidence to suggest a cash-flow of the overall scheme would deliver a different result, nor any indication the applied infrastructure costs and timings would impact the CIL rate.

Viability Cushion:

4.20 Savills highlight that Authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area. Savills suggest that, inevitably, site specific circumstances will mean that viability will vary between sites and that therefore there should be a cushion in any CIL rate to account for this – either in the land value benchmark or elsewhere in the CIL model. Savills suggest that no margin had been made between the land value benchmark and the residual when CIL is include the appraisal. Therefore the CIL rate should be adjusted.

4.21 As highlighted LSH have made considerable allowance/tolerance in their assumptions in identifying a CIL which have not been recognised by Savills. Furthermore Savills have not considered the appropriateness of the proposed land value benchmark. LSH have given careful consideration to the proposed reasonable land value benchmark and believe a reasonable tolerance has also been allowed for in the land value benchmarks. Furthermore, LSH have also varied the rate across the authority so as not to overload any particular area within the authority with inappropriate CIL rate. Therefore, taking into account the approach taken to the generation of the proposed CIL rates, LSH believe they have robustly allowed for sufficient tolerance in the CIL rates to ensure that, on balance, most developments across the authority are not at the margin of economic tolerance.

Modelling of development scenarios

4.22 The Planning Bureau (on behalf of McCarthy & Stone) has stated that a CIL will prejudice the delivery of retirement housing within Hertsmere. They have stated that only a handful of their proposed schemes can support policy compliant levels of affordable housing, and requested that a CIL be differentiate between property type.

4.23 The Viability Assessments have considered a range of density type schemes in their assessment including houses and flats to conclude a single residential rate. Given the amount of potential McCarthy & Stone schemes which are anticipated in the plan period and the proportion of the overall development they deliver, it is considered that it would not be appropriate to break down the CIL rate charging schedule further.

4.24 McCarthy & Stone suggest that the approach to Care Homes (C2) within the PDCS is not applicable to private elderly housing. It is understood that McCarthy & Stone build a series of products including both assisted living and later living, the Council will assess the use class (C2/C3) of a development based on an assessment of the individual case. McCarthy & Stone compete on an open market currently and often outperform standard housing developers; therefore there is no indication that they would be any more affected by a CIL contribution than another Developer. Furthermore CIL is anticipated to replace elements of Section 106 costs, and therefore its overall impact on land value variation is minimal (other than the contributions would be non-negotiable).

4.25 The Viability Assessment identifies that in general sufficient surpluses are generated within retirement housing to charge a CIL, this has been referred to as a 'Care Home' within the PDCS. It is acknowledged that extra care housing has significantly different viability considerations to retirement housing and standard residential dwellings and is unlikely to be sufficiently viable to absorb any CIL contributions. For clarity and to acknowledge the difference between these types of development, the Care Home rate will be renamed as 'Retirement Housing' with the Draft Charging Schedule.

Instalment Policy

4.26 A series of representations made reference to the need for the Charging Authority to adopt an Instalment Policy for the payment of CIL. Although not forming part of the Examination, an Instalment Policy has been drafted and representations are invited on the proposed payment stages. Further details of the Council's draft Instalment Policy is contained with section 6.

Provision of Infrastructure within the Elstree Way Corridor

4.27 The residential-led redevelopment of the Elstree Way Corridor is recognised within the Local Plan Core Strategy, and is identified for at least 800 residential units. An Area Action Plan (AAP) is being prepared to guide the area's redevelopment. As recognised within the Viability Assessments the Elstree Way Corridor will be predominantly high density development and will require improvement to the highway network and public realm.

4.28 Within the Viability Assessments the Elstree Way Corridor was assessed independently, taking into account the additional costs required for onsite infrastructure and Section 106 contributions proposed. Within the Preliminary Draft Charging Schedule it was proposed that the highway works associated with the redevelopment were to be funded through S106. A £6,000 per unit S106 was factored into the Elstree Way Corridor development scenario; this demonstrated that a residential CIL of £60 per sqm could apply. In its representation HCC requested education provision in the Elstree Way Corridor be provided through S106. Following discussions with HCC as part of the emerging AAP it is considered that the combined infrastructure costs associated with the delivery of the Elstree Way Corridor will be in excess of £8,000 per unit. As the table from the Viability Assessment demonstrates it is reasonable to conclude no CIL can be provided within the Elstree Way Corridor without a reduction in the current infrastructure and Section 106 provisions proposed.

Table 1: Elstree Way Corridor S106 contributions

S106 Contribution	**£6,000**	**£8,000**	**£10,000**
Achievable CIL	£60	-£2	-£63

4.29 It is important to recognise that development within the Elstree Way Corridor is anticipated to provide significant infrastructure through their Section 106 agreements. It should therefore be understood that they will be providing significantly to the infrastructure of the Authority, albeit through Section 106 contributions rather than a CIL.

The grouping of rates

4.30 The PDCS proposed three CIL rates for residential development set geographically across Hertsmere, and a further five borough wide rates based on development types (hotels, care homes, retail, office and industrial). Following consideration it is proposed within the DCS that while there is justification for the series of rates as proposed within the PDCS it is reasonable to group a number together into four CIL rates (£0, £80, £120 and £210). The difference between the PDCS and DCS are as follows:

- Hotel Development from £145 to £120
- Retirement Home (formally referred to as Care Home) from £163 to £120
- Retail from £84 to £80

As demonstrated in paragraph 4.27 the Elstree Way Corridor a nil rate applies within the Elstree Way Corridor to account for the higher contributions of S106.

Table 2: Draft Charging Schedule - Proposed Charges (per sqm)

Residential Development	
Area	**CIL Rate** (per sqm)
Area 1	£120
Area 2	£210
Elstree Way Corridor	£0
Commercial Development	
Type	**CIL Rate** (per sqm)
Hotel	£120
Retirement Home	£120
Retail	£80
Office	£0
Industrial	£0

5. APPROACH TO S106

5.1 Provision for Section 106 agreements will remain, but under the current Regulations from April 2014, under Regulation 123, the ability to pool contributions from developers via S106 to deliver larger items of infrastructure will be substantially curtailed. The Council's intention is that CIL will be used to deliver larger strategic items with S106 retained only for direct mitigation of site-specific impacts. As outlined in paragraph 4.29 infrastructure associated with the delivery of the Elstree Way Corridor will be secured through S106.

5.2 This Council currently seeks developer contributions on a formulaic basis to mitigate the impact of development, guidance for which is set out in our Planning Obligations SPD (2010). For clarification, it is intended that contributions currently sought on a formulaic basis under S106 will no longer be sought once a CIL charge is adopted, in accordance with Regulation 123. The Council's Planning Obligations SPD is to be updated prior to the adoption of CIL further details of which will be provided in due course.

5.3 Under Regulation 123, the Council must prepare a list setting out the types of infrastructure that it intends to fund through CIL, prior to the adoption of its Charging Schedule. CIL cannot be used as well as Section 106 to deliver the same piece of infrastructure. The Regulation 123 list can be reviewed at any time and it is initially suggested that this would be on an annual basis linked to the publication of the Council's annual Monitoring Report that would identify progress on collecting and spending CIL. An **Infrastructure (R123) List** has been prepared and forms part of the Draft Charging Schedule.

6. PAYMENT OF CIL

6.1 CIL is payable on commencement of development but the Council is able to introduce payment by instalments. This would need to be agreed before any development commences and be in accordance with a published policy.

6.2 A series of representations made as part of the consultation on the Preliminary Draft Charging Schedule recommended that the Council adopt such an instalment policy as without one it is possible that delivery of the core Strategy could be put at risk. While an instalment policy does not form part of the Examination a draft policy has been prepared for consultation and is available for comment as part of the consultation on the draft charging schedule.

Table 3: Draft Hertsmere CIL Instalment Policy

1. Where the chargeable amount is <u>less than £35,000</u> Full payment within 60 days of the commencement of development
2. Where the chargeable amount is between <u>£35,000 but below £100,000</u> Instalment 1: 25% of payment within 60 days of the commencement date Instalment 2: 75% of payment within 120 days of commencement date
3. Where the chargeable amount is <u>£100,000 or above</u> Instalment 1: 25% of payment within 60 days of commencement Instalment 2: 25% of payment within 120 days of commencement date Instalment 3: 50% within 360 days of commencement date

Where an instalment payment is not received by the date it is due then the full unpaid balance must be paid in full immediately.

7. EXEMPTIONS AND EXCEPTIONAL CIRCUMSTANCES

Exemptions

7.1 The regulations set out the exemptions for paying CIL:

- Development of less than 100 sqm gross internal floorspace will not be liable, unless it is a new dwelling

- Full relief from the levy will apply on those parts of a chargeable development which are to be used as social/affordable housing

- A charity landowner will receive full relief from their portion of the liability where the chargeable development will be used wholly or mainly for charitable purposes.

Exceptional Circumstances

7.2 The regulations provide that charging authorities have the option to offer a process for giving relief from the levy in exceptional circumstances where a specific scheme would be unviable if it were to pay the levy. The guidance and regulations make clear that this would only apply in very exceptional circumstances where a S106 agreement was also in place and the value of this exceeds the cost of the CIL charge. Also relief must not constitute a notifiable state aid.

7.3 A charging authority wishing to offer exceptional circumstances relief in its area must first give notice publicly of its intention to have an exceptional circumstances policy. A charging authority can then consider claims for relief on chargeable developments from landowners on a case by case basis, provided the conditions are met. It is not anticipated that the council will adopt an exceptional circumstances policy, however this decision will be reviewed as part of the monitoring of CIL.

8. CIL FOR LOCAL COMMUNITIES

8.1 The Council will be required to pass a proportion of CIL receipts to parish councils for use on infrastructure identified as important by the local community. The Government indicated early in 2013 that this proportion would be set at 25% of the receipts within a community having a neighbourhood plan in place, and 15% elsewhere but capped at £100 per household. Further detailed guidance is anticipated on this matter shortly.