



Suffolk Coastal District Council

Community Infrastructure Levy - Draft Charging Schedule

The Community Infrastructure Levy Draft Charging Schedule is subject to public consultation from **Monday 6th October until Monday 17th November 2014**.

The Council invites comments on the details contained within the consultation document; those making representations are encouraged to do so by using this form.

Representations made on the Draft Charging Schedule during the representation period will be considered by the Council prior to submission for independent examination.

The independent examiner will be checking:

- Whether the charging authority (Suffolk Coastal District Council) has complied with the required procedures set out in the Planning Act 2008 and the CIL Regulations 2010 (as amended).
- Whether the Draft Charging Schedule is supported by appropriate available evidence,
- Whether the proposed rates are informed by and consistent with the evidence on economic viability across the charging authority's area.
- Whether the proposed rates would put at serious risk the overall development of the area.

Contact Details:

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Q1: Do you consider that the Council has adequately identified a funding gap using appropriate infrastructure evidence?

Please see separate sheet attached.

Please continue on a separate sheet if necessary

Q2: In setting the CIL rates, do you consider that the Council's economic viability assessment has used appropriate available evidence? If you disagree please provide evidence.

Please see separate sheet attached.

Please continue on a separate sheet if necessary

Q3: In setting the CIL rates, do you consider that the rates proposed represent the appropriate balance between the desirability of funding infrastructure and the need to maintain overall viability of growth across the District?

Please see separate sheet attached.

Please continue on a separate sheet if necessary

Q4: Do you consider the boundaries for the different charging zones to be appropriate? If you disagree please provide evidence.

Please see separate sheet attached.

Please continue on a separate sheet if necessary

Q5: Do you have any other comments on the Draft Charging Schedule or any of the associated documents or evidence base documents?

Please see separate sheet attached.

Please continue on a separate sheet if necessary

Anyone making representations on the Draft Charging Schedule has a right to be heard by the examiner in a public hearing. If you wish to exercise this right please indicate it by ticking the relevant box below.

	I wish to be heard at the public hearing by the examiner
✓	I wish to be notified that the Draft Charging Schedule has been submitted for examination
✓	I wish to be notified of the publication of the report of recommendations of the examiner
✓	I wish to be notified of approval of the Charging Schedule by Suffolk Coastal District Council.

Thank you for your comments.

Please return this form to:

Planning Policy and Delivery Team
 Suffolk Coastal District Council
 Melton Hill
 Woodbridge
 Suffolk
 IP12 1AU

Or alternatively via email to suffolkcoastallocalplan@eastsoffolk.gov.uk before the consultation closes on **Monday 17th November at 17.00.**

Data Protection Statement: The information you have supplied may be processed by computer or form the basis of manual records. Suffolk Coastal District Council will only use the data you have provided for purposes relevant to the preparation of the Local Plan or the Community Infrastructure Levy.

If you do not wish to receive further updates relating to the Local Plan for Suffolk Coastal, please tick here

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.

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 for non-residential development.

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.

Q1: Do you consider that the Council has adequately identified a funding gap using appropriate infrastructure evidence?

We do not consider that the Council has adequately identified a funding gap using appropriate infrastructure evidence. Whilst the Local Plan was adopted in July 2013, in recognition of the lengthy time period involved in the development of the Plan, we suggest a review of the Plan with full up-to-date evidence in order to fully assess the funding gap.

The Navigus Planning Report identifies that not all of the funding gap is expected to be borne by the developer. However the Council at present does not know how much will be invested by other providers, such as UK Power Networks, who are expected to invest as part of their investment programmes. This creates great uncertainty and potential fluctuations to the identified funding gap. Furthermore, there are some costs which are not known which could add to costs and therefore increase the funding gap.

Q2. In setting the CIL rates, do you consider that the Council's economic viability assessment has used appropriate evidence?

We also have a number of concerns about the study Peter Brett Associates conducted in May 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.

As stated above, the Viability Study does not provide analysis of the cost for non-residential residual s106 / s278 agreements. It is our view that the retail development assumptions are inadequate as they do not make allowances for s.106 contributions which need to be paid by developers in addition to CIL payments. 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 matters such as green infrastructure, off site landscaping, improvements to the public transport network or highways 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. The costs of these works are almost certain to exceed the £10,000 allowance included in the Viability Assessment.

Taking the example of a 4,000 sqm convenience supermarket used in the Viability Report, this sized store, would be expected to bear a CIL payment of £400,000 and potentially fund all of the following costs:

- demolition, remediation and on site highways works
- the cost of non-strategic 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.

Q3. In setting the CIL rates, do you consider that the rates proposed represent the appropriate balance between the desirability of funding infrastructure and the need to maintain overall viability of growth across the District?

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.

Q4. Do you consider the boundaries for the different charging zones to be appropriate?

It is noted that the boundary running through Trimley St Mary creates two distinct charging zones of mid and low. We ask the Council to clarify its position creating certainty for those wishing to develop throughout the district.

Q5. Do you have any other comments on the Draft Charging Schedule or any of the associated documents or evidence base documents?

1. 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.

2. 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 support the Councils decision to introduce an instalment policy for CIL payments. 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 the Council has indicated that at present it will provide any 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 support the Councils decision to introduce a provision of infrastructure as 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.

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.