Shropshire Council	**Community Infrastructure Levy Draft Charging Schedule** Representations Form

Please return to:

Planning Policy Team, Shropshire Council, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND, preferably by email to

BY 21st April 2011

1. Personal Details*		2. Agent's Details (if applicable)
**If an agent is appointed, please complete only the Title, Name and Organisation boxes below but complete the full contact details of the agent in 2.*		
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Matters on which representations may be made

The purpose of the examination is to consider whether the Draft Charging Schedule meets the following statutory tests in accordance with sections 212(4) and 221 of the Planning Act 2008:

(a) That the charging authority has complied with the requirements of the Planning Act 2008 and the CIL Regulations;

(b) That the charging authority has used appropriate available evidence to inform the draft charging schedule;

(c) That the charging authority has had regard to the Statutory Guidance, "Charging setting and charging schedule procedure guidance" (March 2010).

Representations must relate to these matters. Other matters may be outside the scope of the examination and will be subject to the Examiner's judgement as to their relevance.

All representations will be considered by the Examiner as written representations. In addition, any persons or organisations making representations have the right to be heard in person at the examination, should they choose to appear. The examination will take the format of a hearing, using an informal 'round table' format under the direction of the Examiner.

Q1. Please indicate whether you wish to be present at the Hearing

a) Yes	X
b) Possibly: to be decided at a later date and confirmed with the Council in May / June (we will write to you to confirm)	
c) No: please treat my representation as a Written Representation (note that equal weight will be given by the Examiner to written representations)	

(a) Procedural and Legal Points

Q2. Do you wish to make representations regarding matters of technical compliance with the Planning Act 2008 or the CIL Regulations?

a) No	X
b) Yes *(please detail using continuation sheets if necessary)*	

(b) Appropriate Available Evidence

Q3. Do you have any representations regarding the evidence that has been used to inform the Draft Charging Schedule?

Yes, please see attached sheet

Q4. Do you have any representations regarding the Council's interpretation or use of the evidence?

Yes, please see attached sheet

Q5. Do you have any other representations regarding the statutory test, "That the charging authority has used appropriate available evidence to inform the draft charging schedule"?

Yes, please see attached sheet

(c) Regard to the Statutory Guidance

Q6. Do you have any comments on the proposed Levy rates for residential development, of £40/m2 in Shrewsbury, the towns and key centres and £80/m2 in the rural area?
(NB. Comments relating to charging zones should be addressed in Q7 and comments relating to affordable housing should be addressed in Q8)

There appears to be no justification for the substantial rate increase in the rural areas. There does not appear to be evidence to illustrate that economic viability alters by 100% as soon as the charging zone boundary is crossed and then remains consistent through a very large rural area.

Q7. Do you have any comments on the boundary line between the two Charging Zones?

Charging Zones should reflect varied economic circumstances over a very wide area. It is too simplistic to adopt an urban and rural rate.

Q8. Do you have any comments on the proposed nil Levy rate for affordable housing?

No

Q9. Do you have any comments on the proposed Levy rates for any other type of development (commercial, industrial, employment, retail, hotels, residential institutions, assembly and leisure, agricultural or other uses)?

Yes, please see attached sheet

Q10. Do you have any other comments relating the Council's Charging Schedule?

We should preface our comments by accepting that it is unusual for a Local Authority with no geographical connection to comment on the submissions of another Authority in this way. We are however very concerned about the approach being adopted by the Shropshire DCS in respect of the zero rates being applied to commercial development in a manner which is contrary to the evidence and statutory guidance.

Newark and Sherwood is currently in the process of submitting a DCS and it is likely that Newark and Shropshire will be amongst the first Charging Schedules to be examined – setting a precedent for what may be deemed an acceptable approach to CIL for the rest of England and Wales.

The Newark DCS proposes to adopt CIL rates that are proportionate to the economic viability of development categories and proposes CIL charges on industrial and retail development in line with the available evidence. The Shropshire DCS ignores the available evidence and sets zero rates for all commercial development.

If the Shropshire approach is deemed acceptable in compliance with the Regulations and Statutory Guidance under examination, then it will enable any Charging Authority to set a tax that will selectively favour one development sector over another. It will, for instance, enable Authorities to set zero rates on employment uses (regardless of the evidence) to encourage new businesses to locate in their areas, in a manner that is unfair and which is not State Aid compliant.

We are concerned about setting an undesirable precedent that would allow our neighbouring Authorities, which have very similar economic circumstances, to choose not to charge on commercial development categories and gain an unreasonable economic advantage by using CIL as a political tool rather than an evidence based infrastructure levy.

Comments on other matters

Please note that comments on the Accompanying Notes or any other matters that do not form part of the Charging Schedule will not be considered in the examination, but will be included as part of the responses to the concurrent consultation on the Developer Contributions Supplementary Planning Document. This includes comments on the types of infrastructure on which the CIL may be spent in the future.

We would comment as follows on the evidence base and approach of the Shropshire Draft Charging Schedule.

Analysis of CIL and Affordable Targets Final Report August 2010

The initial CIL viability study looked at only three categories of development – Residential, Industrial and Offices.

The commercial part of the study concluded that on Greenfield Sites there was considerable scope to charge CIL on office and industrial development in a number of locations in the study area, in particular Shrewsbury which could stand rates of up to £151 per sqm for large industrial and up to £416 per sqm for large offices. Similarly brownfield development of industrial and office uses in Shrewsbury was shown to be capable of accommodating CIL payments.

The Shropshire Draft Charging Schedule proposes a zero rate for all industrial and office development in all locations. The DCS ignores its own supporting viability evidence and Section 38 of the Charge Setting and Charging Schedule Procedures which states :-

"............Charging authorities should not exempt or set a zero rate for a particular zone or category of development from CIL, unless they can demonstrate that this is justifiable in economic viability terms (which would require evidence of very low (i.e. at the margins of viability, such that any charge would be de minimis), zero or negative viability across that zone or category of development). However, if the evidence shows that their area includes a zone or category of development of low viability, charging authorities should consider setting a low CIL rate in that area or for that category (consistent with the evidence)..... "

The Shropshire draft charging schedule is therefore not compliant with CIL Regulation 13.

Further Analysis of CIL – Fordham Research Feb 2011

The study has been commissioned to look at other categories of development in respect of CIL viability, following up on earlier research into residential, industrial and office development.

The study aims to illustrate how much CIL each category of development could afford whilst making a reasonable profit.

We believe that there is an obligation to test the ability of all categories of development to pay CIL under a robust viability test in compliance with Regulation 14 and the Charge Setting Guidance. This additional report appeared to be commissioned to cover the gaps in previous research. However there is no viability testing of the following uses :-

Agriculture

The study concludes that there is general move towards farm diversification and so uses that fall into other categories ie industrial/office/leisure should be assessed separately. The study goes on to conclude that there is no need to carry out further viability testing for agriculture. We fail to follow this logic and would question its validity.

Hotels and Leisure

This refers to an industry research report that discusses potential for the location of different grades of hotel development. Fordham Research conclude that the lack of sector activity indicates that hotels and leisure are at the margins of viability.

This is hardly a robust methodology for viability testing. There is no evidence of land or property value or proper sample development appraisal.

There is no consideration of leisure uses at all.

The report concludes that since the Council's policies wish to promote tourism these uses have not been tested. The report goes on to state that If they were tested there would need to be numerous charging rates for different types of development which would be against the spirit of the CIL Regulations.

That is the whole point. Shropshire has chosen to adopt a differential rate CIL system. The Charge Setting and Charging Schedule Procedures state :-

36. Regulation 13 also allows charging authorities to articulate differential rates by reference to different intended uses of development (for example residential and commercial development) across their charging area <u>provided that</u> the different rates can be justified by a comparative assessment of the economic viability of those categories of development.....

As such it is the responsibility of the Charging Authority to properly assess the relative ability of each development category in each charging zone to pay CIL through proper viability assessment, not just by statements of policy or perception of market circumstances.

Residential Institutions/Community/Institutional

The report alludes to a conclusion that it doesn’t believe CIL would be viable in the Care sector and based on discussions with Shropshire Council indicating that it is keen to promote and encourage medical, health and educational services, the assessment does not seek to investigate these uses any further.

It is considered that this approach does not comply with the Charge Setting Procedures or CIL Reg 13. It is clearly in contravention of the CIL Regulations to set rates to promote Council policies, particularly where there is no evidence or testing to support such a position.

Retail

The report concludes that, on greenfield sites, there is scope to charge up to £349 per sqm for small food retail and £248 per sqm for large food retail development in the urban areas. In addition there is scope to charge up to £133 per sqm for small retail and £248 for large food retail in the rural areas.

Shropshire has decided to adopt a Zero rate for food retail development in its Draft CIL Charging schedule, again in contravention of Section 38 of the Charge Setting and Charging Schedule Procedures and CIL Regulation 13.

Shropshire Levy Rationale Background Paper March 2011

The ‘rationale’ for the proposed CIL rates (ie £40-£80 for residential and zero rates for all other uses) contains a number of statements which we would comment on as follows :-

> *4.10 Any viability study is an approximation of reality, which will vary greatly from site to site, and an element of error should be assumed as a result. It is therefore preferable to not set Levy rates too close to the maximums indicated in the study. A “safe” Levy rate that is some way below the ceiling of the “maximum” Levy rate is a matter of judgement. £20/m2 is considered too marginal to be within the margin of error of viability studies and therefore a nil Levy rate is considered by Shropshire Council to be a sensible and pragmatic response in relation to developments where the capacity to carry CIL is low.*
>
> *4.11 The study showed that there is potential capacity for some CIL on developments of large offices on greenfield sites in the former Bridgnorth District, South Shropshire District and Shrewsbury and Atcham Borough areas. In addition, small offices on brownfield sites in Shrewsbury could carry some CIL. However, the consultants urged caution as the commercial property market remains highly volatile and uncertain.*

This explanation does not fairly or accurately reflect the viability assessment results which show, inter alia, that Greenfield sites in Shrewsbury and Atcham are capable of accommodating a CIL charge of up to £150 for industrial development and £410 for office development.

The rationale goes on to justify Zero rates for these categories of development by applying a 20% reduction in market prices. There is no evidence to suggest that such a crash in values is likely or that there is any underlying trend to reflect this. It appears an illogical and unjustified approach to justify zero rates by simply applying a % reduction to the valuation evidence base.

The explanation is contained in paragraph 4.13 which states that consultation responses revealed support for a nil levy on employment uses, though there is nothing in the Regulations or Charge Setting guidance that would allow for an approach based on planning policy or local support that is contrary to economic viability evidence.

Para 4.15 summarises the viability assessment of other development categories. For the reasons expressed in the comments in the evidence It is considered that no proper viability testing has been undertaken as required by CIL Regulation 13 and para 36 of the Charge Setting Procedures.

Para 4.16 summarises the viability testing results for retail development which illustrate that on Greenfield sites, there is scope to charge up to £349 per sqm for small food retail and £248 per sqm for large food retail development in the urban areas. In addition there is scope to charge up to £133 per sqm for small retail and £248 for large food retail in the rural areas.

Shropshire has decided to adopt a Zero rate for food retail development in its Draft CIL Charging schedule, again in contravention of Para 38 of the Charge Setting and Charging Schedule Procedures and CIL Regulation 13.

Para 4.17 attempts to justify the zero rate approach by arbitrarily applying a 10% reduction in market prices to the evidence base. Again there seems to be no evidence to justify this approach.

As an overarching comment, the distinction between brownfield and greenfield sites is interesting. Much of the evidence indicates that brownfield sites will not be able to stand CIL. It should be recognised that CIL will be primarily aimed at greenfield development since it is likely that the deduction for existing floorspace on brownfield sites will make the impact of the application of CIL quite limited. The evidence suggests that it is primarily greenfield development that is capable of accommodating significant charges and this strengthens the case for adopting commercial CIL rates.

Residential

Paras 4.18 – 4.27. We would not wish to make specific comments on the evidence but would question whether the simplistic zoning approach which applies £40 per sqm to development one side of an urban area boundary and twice the rate (at £80 per sqm) 1 metre beyond it, regardless of the market circumstances of the individual urban area, is strictly justified on economic grounds. It would appear that the significantly differential rate of CIL is being used as a policy tool to divert growth from rural to urban areas and that is not the purpose of CIL.

Para 6.1 makes a very telling statement in relation to the approach of the Charging Authority to setting rates for different categories of development. It states

> *'.........For example, a reduction in development in the rural area would not put at serious risk the development strategy, which seeks a reduction in rural residential development compared to past trends. However, a reduction in development in the market towns and other key centres and in Shrewsbury would be far more detrimental to the Shropshire development strategy. Similarly, a significant reduction in economic development would jeopardise delivery of the Shropshire development strategy, and delivery of the Sustainable Community Strategy and the Core Strategy Spatial Vision. Consequently the effect of the Levy on delivery of the development strategy for Shropshire varies by type and location of development'.*

This implies that it is development strategy and Council policy driving the setting of CIL rates and not the economic viability evidence as required by the Regulations and Statutory Guidance. This approach is also evidenced by para 6.5 which states :-

> *'Any reduction in employment related development would adversely impact upon Shropshire's development strategy. In light of viability evidence, the results of consultation and the Council's balance of considerations, it appears to Shropshire Council that the desirability of funding from CIL is outweighed by its potential impacts on economic viability of development and on the development strategy, and consequently the Levy rate for these uses is set at nil.*

Para 7.1 states that 'Land values beyond development boundaries are generally lower, as planning permission is far less likely to be forthcoming, whilst house prices are generally significantly higher, resulting in higher profitability (and capacity to carry a higher Levy) where planning permission can be obtained'. This is considered to be an erroneous statement and a poor justification for the proposed Charging Zones which define a 100% increase in CIL rates for the rural areas. Land values are only low in rural areas where there is no prospect of planning permission. Where development can occur (ie in areas where CIL is relevant) land values will be extremely high and residential development profitability will be in ratio with property value. It is wrong to justify the rates and zones on a higher proportion of profitability in rural areas as this premise is incorrect.

CONCLUSION

We object to the Shropshire Draft Charging Schedule as it fails to comply with CIL Regulations and Statutory Guidance. We would summarise our objections in relation to the DCLG Community Infrastructure Levy Guidance - Charge Setting and Charging Schedule Procedures March 2010, as follows :-.

Para 36 states :-

> *Regulation 13 also allows charging authorities to articulate differential rates by reference to different intended uses of development (for example residential and commercial development) across their charging area provided that the different rates can be justified by a comparative assessment of the economic viability of those categories of development. Where an authority has applied differential rates in this way, the charging schedule should reflect those rates by reference to the intended use of development.*

The Shropshire DCS makes no attempt to properly assess the economic viability of any development category other than residential, industrial, office and retail. As such the arbitrary allocation of zero rates to the untested commercial categories is unjustified under the statutory guidance.

Para 38 states :-

> *Charging authorities that plan to set differential CIL rates should seek to avoid undue complexity, and limit the permutations of different charges that they set within their area. Charging authorities should not exempt or set a zero rate for a particular zone or category of development from CIL, unless they can demonstrate that this is justifiable in economic viability terms (which would require evidence of very low (i.e. at the margins of viability, such that any charge would be de minimis), zero or negative viability across that zone or category of development). However, if the evidence shows that their area includes a zone or category of development of low viability, charging authorities should consider setting a low CIL rate in that area or for that category (consistent with the evidence). Charging authorities should not seek to exempt individual development sites from CIL through setting a differential rate. CIL is based upon broad assessments and it will not be appropriate to seek to draw zones on the basis of the individual sites.*

The Shropshire DCS completely ignores this guidance. The only commercial development evidence that has been properly collected and assessed for retail, industrial and office development clearly demonstrates that all these categories of development are capable of accommodating very significant rates of CIL in many locations within the study area. No attempt has been made at considering low rates of CIL in categories that can stand CIL in any way that is consistent with the evidence.

Para 39 states.

> *Resulting charging schedules should not impact disproportionately on a particular sector or small group of developers.*

The Shropshire DCS has adopted a blanket approach to applying zero rates to all commercial development that is completely inconsistent with viability evidence. The DCS takes an entirely disproportionate approach, requiring the entire levy for infrastructure to be paid by the residential development sector.

Para 40 states

> *Differential rates must be set in such a way so as not to give rise to notifiable State aid – one element of which is selective advantage. Thus, authorities who choose to differentiate rates by class of development or by reference to different areas, should do so only where there is consistent evidence relating to economic viability that constitutes the basis for any such differences in treatment. It will be the responsibility of charging authorities to ensure that their charging schedules are State aids compliant.*

In adopting a disproportionate approach to setting the CIL rates the Shropshire DCS is giving a selective advantage to the commercial development sector over the residential development sector. Commercial developers will bear no tax and this has the potential to unfairly skew market conditions and land prices. This is clearly not compliant with State Aid rules.