



**Statement of Consultation
on the**

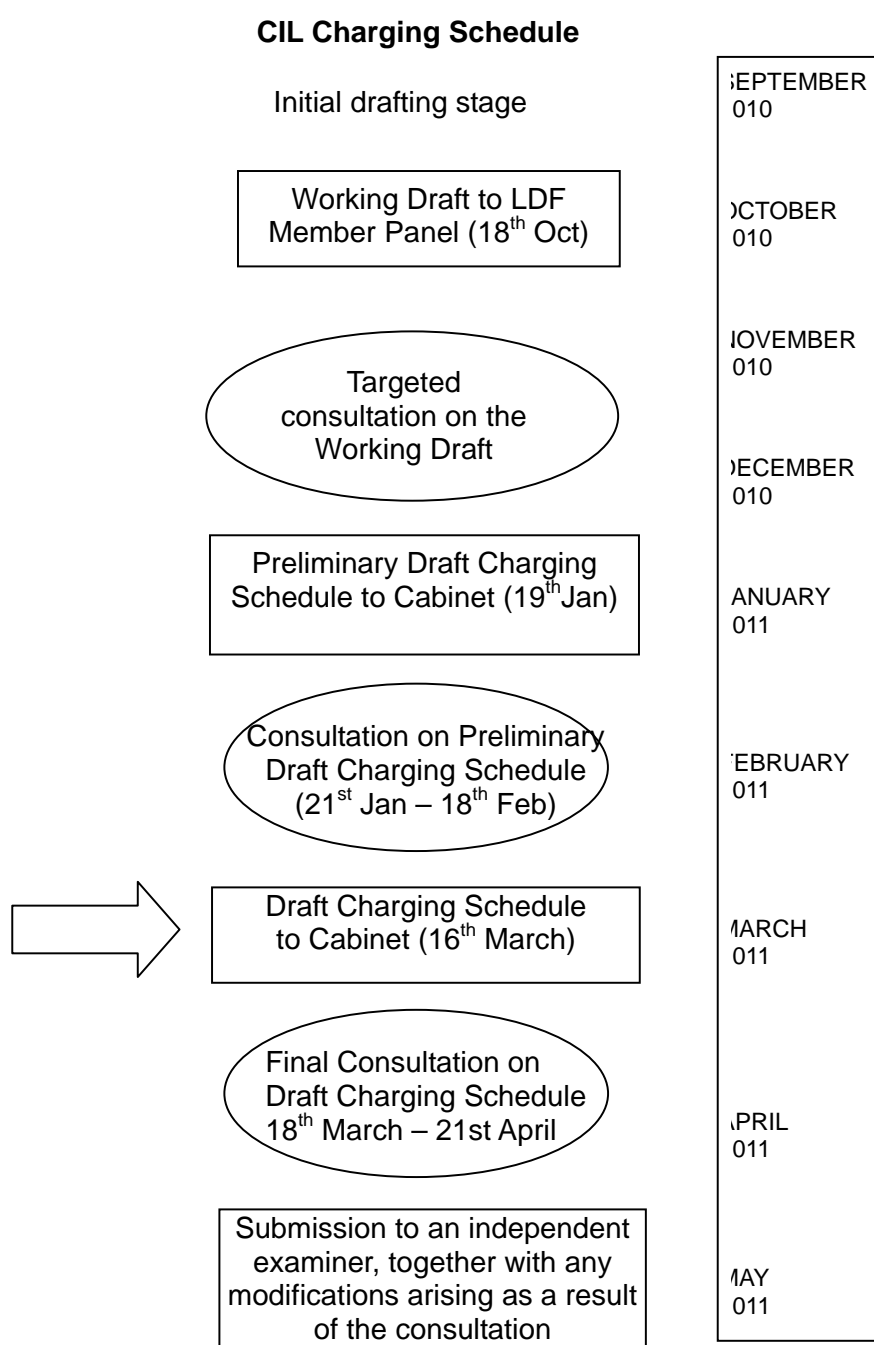
**Shropshire Community Infrastructure Levy
Preliminary Draft Charging Schedule**

reported to Shropshire Cabinet
16th March 2011

1. Introduction

- The preparation of a Charging Schedule is governed by the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010. Regulation 15(7) requires that the charging authority must take into account any representations made on its Preliminary Draft Charging Schedule before it publishes a Draft Charging Schedule for examination. This Statement of Consultation reports to Shropshire's Cabinet what responses have been received from two rounds of consultation, on the working draft and on the Preliminary Draft, and how they have been taken into account in preparing the Draft Charging Schedule.

Timetable



2. Consultation on the working draft

2.1 In preparing the Preliminary Draft Charging Schedule the Council sought out those with technical knowledge of the subject. A CIL working group, comprised of relevant Council departments and a representative from the PCT, met on 24th June and 14th September 2010.

2.2 A working draft of the Preliminary Draft Charging Schedule and a summary of the evidence base, was circulated to the following in October 2010:

- the LDF Member Panel
- Development Management Officers*
- Shropshire Council's legal team
- Shropshire Council's finance team*
- Shropshire Council's Enabling and Implementation team
- Shropshire Council's Education Department*
- Shropshire Council's Transport and Highways Department*
- Shropshire Council's Leisure and Outdoor Recreation Department*
- Shropshire Council's Natural Environment team*
- Shropshire Council's Drainage Engineers*
- The Environment Agency
- The Shropshire Primary Care Trust*
- Herefordshire Council's Section 106 officer
- Representatives of the development industry, through the pre-existing SHLAA Developer Panel, at its meetings on 10th September, 29th September and 22nd October.

* *Members of the CIL working group*

2.3 As the CIL Charging Schedule will elaborate the implementation of Core Strategy Policies CS4, CS8 and CS9, it was desirable to have the working draft available during the Core Strategy examination in November 2010. The working draft was published with the other Core Strategy evidence papers as "ShropsEV141" and was available to the Inspector and participants at the Core Strategy examination.

2.4 The working draft Charging Schedule was also discussed at the Infrastructure Planning and CIL Project Group, comprised of around 20 local authorities that share emerging best practice, on 9th December.

2.5 In response to targeted consultation on the working draft, comments were received on the following:

- (i) The economic viability of development and the proposed Levy rates
The SHLAA Developer Panel raised concerns that the rates proposed in the "Analysis of CIL and Affordable Targets" report by Fordham Research (August 2010) were too high. Subsequently the Levy rate for Shrewsbury, the Market Towns and Other Key Centres was reduced to the average contribution rate currently being obtained through section 106 agreements (£40 per square metre).

(ii) The geographic variability of economic viability

The SHLAA Developer Panel raised the issue of variable economic viability between the market towns. However, there is currently insufficient evidence to underpin variable rates between the market towns, nor is there a policy basis in the Core Strategy to distinguish between the market towns in relation to developer contributions for infrastructure.

The SHLAA Developer Panel agreed with the principle of a differential rate in the rural areas, in accordance with Core Strategy Policy CS4, albeit at a lower rate than that suggested by the evidence base.

Comments were also received from the Council's legal team and the Infrastructure Planning and CIL Project Group regarding the geographical differential in the Levy rate. In response to these comments, the rationale for differential rates was clarified in both the draft Developer Contributions SPD and the Preliminary Draft Charging Schedule.

(iii) The relationship between section 106 agreements and the Levy

The CIL working group and the SHLAA Developer Panel informed the emerging approach. From discussions held, it was clear that guidance is needed to distinguish between on-site design requirements, site specific planning obligations and developer contributions through the Levy. These are respectively addressed by the Sustainable Design SPD, the Developer Contributions SPD and the CIL Charging Schedule, highlighting the importance of ensuring coordination between the three documents.

The Government has indicated its intentions to encourage use of the Levy whilst scaling back planning obligations. Its consultation paper on Planning Obligations (March 2010) addresses the issue of preventing duplication between section 106 agreements and the Levy.

(iv) The list of infrastructure that will benefit from the Levy in Shropshire

Particular care has been taken with the list of the types of infrastructure to benefit from the Levy, given the accompanying restrictions on the subsequent number of planning obligations allowed for infrastructure on the list. The infrastructure list is part of the consultation on the Preliminary Draft Charging Schedule (Annex C), with cross references made to it in the draft SPD. The draft list was influenced by CIL working group, Shropshire Council Arts Manager and the Infrastructure Planning and CIL Project Group. In addition, comments received in relation to the Core Strategy examination had an influence, including comments from developers, the Highways Agency and the Environment Agency.

3. Consultation on the Preliminary Draft Charging Schedule

3.1 Consultation on the Preliminary Draft was carried out between 21st January and 18th February 2011 with the following:

- All Parish and Town Councils in Shropshire
- All adjoining local planning authorities
- Statutory consultees, including the Homes and Communities Agency
- All developers on the LDF consultation database
- Agents, landowners and interested parties on the LDF consultation database
- Housing associations
- Local businesses on the Economic Development mailing list
- The Shropshire CIL working group and other internal consultees
- Registered Providers on Shropshire's Social Housing Forum

3.2 A copy of the Preliminary Draft was made available in all public libraries and in Customer Service Points in Shropshire, and on the Council's website. A press release was provided to the local press.

3.3 The main issues that were raised are considered below, with responses to issues raised given in italics where appropriate. A tabular summary of the responses received is available on our website under Planning Policy > Community Infrastructure Levy.

Comparison with planning obligations

3.4 It was noted that section 106 agreements can cause lengthy delays to a scheme and there is a desire for a shorter, more certain and simpler system¹. There was qualified support for the Levy as a more transparent and certain method of delivering infrastructure, providing that additional developer contributions are not also sought over and above the CIL².

Timing of the Charging Schedule

3.5 One respondent thought a Charging Schedule should not be produced before the Localism Bill and subsequent Regulations are finalised³. Some respondents expressed concern that only a very short period has been given for preparing representations on a very significant emerging policy document⁴. Others commended the Council for its prompt action in seizing the opportunity afforded by the Community Infrastructure Levy⁵.

Increasing costs of development

3.6 A number of respondents raised concerns about the increasing costs on developers⁶. Some noted that other costs, such as sustainable design and pre-application fees,

1 Respondent 2, 26

2 Respondents 18, 21, 50

3 Respondent 23

4 Respondents 47, 48, 49

5 Respondent 32

6 Respondents 2, 3, 27, 50

will have a cumulative impact that should be considered⁷.

- 3.7 A number of respondents were concerned by the double impact of the Levy in combination with affordable housing contributions⁸.
- 3.8 *The evidence base for the Levy rates factors in sustainable design and affordable housing costs. It assumes that an affordable housing contribution of 20% is also being made by the developer, which is comfortably above that actually sought (for 2011/12 the Shropshire affordable housing target rate will be 13%). The crucial factor for developers is certainty. Certainty reduces risk for developers, and enables them to reflect the costs in their assumptions, particularly in the price they are prepared to pay for land.*

Impact on delivery of development

- 3.9 The point was made that we should be encouraging development, in order to help the economy, and that the Levy may have the opposite effect⁹. It was contended that local authorities who set lower levels of development contributions would attract more development¹⁰.
- 3.10 Some respondents pointed to the New Homes Bonus as another source of funding to be spent locally, and suggested a lower Levy would result in more development and therefore more total funding due to greater New Homes Bonus funding from Government¹¹.
- 3.11 One respondent alleged that developer contributions have depressed the level of development in the past¹², and another that reducing the profitability of development will make it harder to deliver the more difficult sites, thereby undermining the development strategy¹³.
- 3.12 *To address this point, we have examined the impact of increasing developer contributions to affordable housing from 0% to 50% in South Shropshire in 2004. The average quantity of housing development in South Shropshire over the 5 years 1999-2004 before the 50% affordable housing contribution was introduced was 261 dwellings per annum, whereas the average for the 5 years 2004-2009 post introduction of the 50% rate was 199 per annum. This represents a drop in the level of development in the 2004-2009 period to 76% of the 1999-2004 level. It should be noted, however, that some of this decline will be related to the downturn in the general housing market in the latter period.*
- 3.13 *Other local authorities that have introduced developer contributions, some at a significantly higher rate than that proposed for Shropshire, have found no reduction in the level of development over the long term resulting from the contributions or tariffs. More recently other factors, such as the downturn in the economy, a shortage of bank lending and a collapsing housing market have had a much more direct impact on the*

7 Respondents 1, 2, 3, 27

8 Respondents 5, 12, 18, 20, 22, 28

9 Respondents 2, 15, 20, 21, 26, 27, 42, 43

10 Respondents 3, 15, 28

11 Respondent 3

12 Respondent 1

13 Respondent 39

quantity of development.

Levy rate for market housing

- 3.14 There was support for a Levy rate on market housing¹⁴, particularly for development related to incomers to Shropshire¹⁵. Some respondents felt the rate of £40/m² in Shrewsbury and the market towns is insufficient to meet infrastructure requirements¹⁶. One respondent suggested that a rate of £30/m² was more appropriate in the current market conditions¹⁷. Another thought that the high number of schemes that are currently not viable means that the relief offered for “exceptional circumstances” may not be so exceptional and therefore the rate has been set too high¹⁸.
- 3.15 Some respondents thought that the Levy has the potential to massively increase the cost of properties making them even less affordable to buyers¹⁹.
- 3.16 *These concerns do not take into account the fact that market prices are set by the market as a whole, which is comprised predominantly of older houses. New build properties are such a small proportion of the market that there is a real limit to how much higher their prices can be, if they are to sell. Therefore, developers set the sale price of their properties by local market values, rather than the cost of development. To ensure they do not make a loss, the developer has to pay less for the land, thereby passing the cost of the Levy on to the landowner. A critical factor, therefore, is the question of land supply, and whether there are sufficient landowners who are willing to bring their land forward for development at a lower price.*
- 3.17 *At 12 homes to the acre (30/hectare), and an average Levy of £4,000 per dwelling, there should be a reduction of £48,000 per acre. With average land prices (with the benefit of planning permission) of between £1 million - £1.5 million per acre²⁰ the Levy represents an approximate reduction in land value of between 3% and 5%. At an average Levy of £8,000 per dwelling, there should be a reduction in land value of £96,000 per acre, equivalent to a reduction in land value of between 6% and 10%.*
- 3.18 *The amount at which a landowner is willing to release their land for development varies widely, in the region of between £25,000 per acre to over £250,000 per acre, but broadly a landowner “profit” of £75,000 per acre is usually sufficient for land to come forward for development²¹.*
- 3.19 Others queried the robustness of the Fordham viability studies, as based on too small a sample²² or disagreed with the assumptions used²³.
- 3.20 Some respondents were unconvinced that land values would reduce to reflect the

14 Respondent 4, 14, 40, 41, 45, 47, 48, 49

15 Respondent 1

16 Respondent 4, 7, 28

17 Respondent 37

18 Respondent 39

19 Respondent 3, 12, 26, 27, 35

20 paragraph 4.24, “Shropshire Affordable Housing Viability Study” (AHVS)

21 paragraph 6.17 – 6.18, AHVS

22 Respondents 12, 33, 37

23 Respondent 18

Levy, due to (a) high landowner expectations and (b) land already bought for development at a higher price²⁴.

3.21 *The Levy provides the developer with highly predictable developer contributions, enabling him to reflect this cost in the price bid for land. Although this predictability will not apply to land that has already been purchased, it should be remembered that land values have increased significantly in recent years, with typical figures rising from around £4,000/acre in 2007 to around £5,500/acre in 2010 (a 37% increase) for unequipped agricultural land in the Shropshire area²⁵. Land values for land with planning consent are currently very high, and a market correction downwards is considered by many to be overdue regardless of the impact of a Levy.*

3.22 Another respondent asked, "How does Shropshire Council propose to encourage landowners to make building land available?"²⁶

3.23 *Land supply is certainly key to the whole approach. The Core Strategy provides a framework for a plentiful land supply in Shrewsbury (Core Strategy Policy CS2), the market towns and other key centres (Policy CS3) and the rural area (Policy CS4). The Site Allocations and Management of Development DPD will provide greater certainty about land supply by allocating sufficient land to deliver at least 27,500 homes over the plan period (Policy CS1).*

3.24 *In the rural area, the development strategy (Policy CS4) explicitly recognises the contribution that development brings to making rural communities more sustainable, including its contribution to affordable housing and infrastructure. The higher the developer contributions are, the more impact development will have on improving a rural community's sustainability. The level of developer contributions is therefore expected to have a direct impact on decisions by communities regarding whether or not they wish to put themselves forward as settlements for development, namely Community Hubs or Community Clusters, in which a suitable scale of market development will be allowed.*

Differential Levy for the sustainable urban extensions (SUE)

3.25 One respondent queried a differential rate for the SUE sites, and whether a specific and focused viability has been undertaken to inform a differential levy rate²⁷. Another queried whether it is necessary to have additional definitions of geographical areas if the rate is the same²⁸. *As the proposed levy rate for the SUEs is the same as for Shrewsbury and the market towns and other key centres, they have been combined into a single geographical zone in the Draft Charging Schedule.*

3.26 The main developers for the Oswestry SUE thought that contributions towards the trunk road junction improvements should also be made from other developments occurring in Oswestry²⁹.

3.27 *The CIL infrastructure list, to be published when the Charging Schedule takes effect,*

24 Respondents 3, 29, 39

25 Valuation Office Agency "Agricultural land and property reports" Jan 2007 and Jan 2010.

26 Respondent 29

27 Respondent 18

28 Respondent 41

29 Respondents 48, 49

will be carefully considered so that the burden for the A5 junction improvements does not fall entirely on the SUEs. However, the Council will also seek contributions through planning obligations, where these are necessary and appropriate, from developments that have a particularly heavy impact on the road junctions (including retail and commercial developments). Regulation 123 (2) of the CIL Regulations 2010 does not allow any overlap between items on the CIL infrastructure list and projects for which planning obligations are sought. Consequently it is highly likely that the CIL infrastructure list will be very specific in detailing the infrastructure projects for which the CIL will be used, thereby not preventing planning obligations for other infrastructure projects.

3.28 The developers for the Shrewsbury West SUE³⁰ argued there was a compelling case for a lower CIL rate of £15/m² as the cost of the Churncote Island improvement works alone are likely to be about £2.5 million, before any consideration is given to construction of the Oxon Link Road (estimated at some £6.5m) and laying out of the relocated park & ride facility. At a rate of £40/m², the CIL contribution would be in the region of a further £2.9m. The developers argued that a reduction of the Levy was a more transparent approach than the alternative of the developers having to seek discretionary relief.

3.29 *Detailed negotiations will take place on the infrastructure requirements of this SUE as the scheme advances through the master-planning stage and the Levy payments will be taken into account in these site specific negotiations.*

3.30 It was suggested that the principle should be established whereby developments, which fully fund or which disproportionately contribute directly towards CIL qualifying infrastructure on site, for example through road construction or securing an education facility serving a wider population than the development itself, are able to receive CIL credits from other developments³¹. *This point will be addressed in the Developer Contributions SPD, which covers on-site contributions, payments in kind and the use of Levy funds.*

Urban fringe developments

3.31 Clarity was requested that the £40/m² rate will apply to land allocated for development on the edge of settlements. *The Charging Zone maps have been amended to ensure that the urban zones include all land that may be allocated for development in the future through the Site Allocations and Management of Development DPD (SAMDev) process. The Charging Zones are without prejudice to future allocations, and do not imply that land will, or will not, be allocated through the SAMDev process.*

Differential Levy between the towns and the rural area

3.32 Some developers considered £40/m² in the towns to be “generally reasonable and realistic for urban sites” and “the principle of a higher rate in rural areas is also considered reasonable”³² but strongly objected to the threefold increase as highly likely to undermine development viability and to deter investment and the provision of

30 Respondent 48

31 Respondents 47, 48, 49

32 Respondents 47, 48, 49

new homes. Evidence was provided that the £120/m² rate would effectively reduce the average land value of a residential plot by over £5,500³³.

3.33 The proposed higher Levy rate in the rural areas may result in lower delivery in these locations, and conversely more in the market towns, thought some respondents³⁴. This is perceived as a negative outcome by those who wish to see more development in the rural areas³⁵, including having a detrimental effect on those employed in the construction industry in the rural areas and the rural economy generally³⁶.

3.34 *Over the ten years 1998-2008, around 42% of residential development occurred outside Shrewsbury, the market towns and other key centres. With the Core Strategy seeking around 35% of residential development in the rural areas over 2006-2026, a reduction in rural development would be consistent with Shropshire development's strategy. However, for the reasons given on pages 5 and 6 above, the levy is unlikely to depress rural development in the long term. Furthermore, Shropshire's community-orientated approach to identifying Community Hubs and Community Clusters will potentially open more villages for small-scale development than previously.*

3.35 Whilst recognising the potential for the Levy to encourage communities to welcome rural development, one respondent thought this will only be effective if the developer contributions arising are sufficiently substantial, either through a sufficiently high Levy rate and/or through sufficient quantity of housing, to deliver on local priorities³⁷. Others supported the proposed £120/m² Levy rate because developers need to provide resources for the infrastructure that is needed in a rural area to support new development³⁸.

3.36 Some respondents pointed to the benefits of development per se on local infrastructure, through increased population to support schools, services and facilities, and raised concerns that the Levy would have a negative impact on the Core Strategy's "rural rebalance" objective by discouraging rural development³⁹.

3.37 Many respondents held the view that the higher rate in the rural area unfairly penalised development in rural areas and that the rate should be the same as for the towns⁴⁰. Others queried how such a differential was arrived at⁴¹. The sense of injustice was to some extent tied to the existing lack of infrastructure in the rural areas⁴², which may reflect a scepticism that the Levy will result in better infrastructure.

3.38 There was agreement that some of the infrastructure elements are more expensive in rural areas, but on the other hand respondents pointed out that general expectations

33 Respondents 49

34 Respondent 3, 5, 35, 44, 49, 53

35 Respondent 3, 5, 8, 12, 13, 20, 23, 26, 27, 28, 29, 42, 44, 46, 53

36 Respondent 12, 35, 39, 42, 49, 53

37 Respondent 3

38 Respondent 40, 45

39 Respondent 13, 26, 49

40 Respondents 8, 9, 10, 11, 13, 14, 23, 26, 28, 29, 31, 39, 52, 53

41 Respondents 36, 39, 41, 46, 51, 54

42 Respondents 11, 26, 28, 29, 31

of rural dwellers are less⁴³ and that green infrastructure requirements may be less⁴⁴. Another questioned the need for universal infrastructure contributions⁴⁵. Some respondents disagreed that the balance of considerations (between the desirability of funding infrastructure on the one hand, and its impact on development on the other) is different in the rural areas compared to the towns⁴⁶. Another pointed out that the infrastructure costs differential in rural areas and urban areas is considered broadly marginal (£125 v £128/m²) and concluded that this cannot justify a threefold increase⁴⁷.

- 3.39 One respondent⁴⁸ thought the rate in the towns should be closer to that of the rural areas, perhaps at £100/m², to reflect (a) the high value/profit that has been realised from housing developments in popular market towns in recent years, and the evidence that shows that a higher rate is clearly justifiable and feasible, and (b) that the need for infrastructure is not so different in scale between the market towns and rural areas as the difference in CIL rates would suggest. They suggested that Shropshire should not sell itself short by requiring lower contributions than what is being achieved by other local authorities.
- 3.40 It was suggested that the differential be reduced by increasing the Levy for towns to £50/m² and reducing the Levy for the rural area to £100/m², as a more equitable solution⁴⁹. *In light of the responses received, the Council has reduced the rural Levy rate to £80/m².*
- 3.41 One respondent pointed to the proposed Central London CIL rates of £50/m² and £40/m² in the suburbs, and suggested that, given the land values and potential profits associated with development in the City, it is hard to comprehend how rural Shropshire merits charges at the suggested £120/m² level⁵⁰. Another respondent suggested that a rate of £80/m² would be more reasonable and would still generate funds to provide local facilities and services⁵¹.
- 3.42 *It should be remembered that the Mayor of London's proposed Levy to help fund Crossrail is only part of developers' contributions in London, where the London Boroughs may also set their own charges in addition to the Mayor's Levy. For example, the London Borough of Redbridge has proposed a local levy of £70/m². It is the uplift in land values upon the grant of planning permission that funds the Levy. The uplift from agricultural land value in Shropshire may in many cases be greater than the uplift in land value in a heavily urbanised area where the existing land values are high.*

Alternative differential for north / south Shropshire

- 3.43 Some respondents⁵² consider that the towns in the north of Shropshire have a

43 Respondent 5
 44 Respondent 28
 45 Respondent 35
 46 Respondent 5, 7, 23
 47 Respondent 49
 48 Respondent 7
 49 Respondent 44
 50 Respondent 28
 51 Respondent 37
 52 Respondent 7, 49, 50

different set of circumstances to towns in the south and east where proximity to Telford and the metropolitan Green Belt leads to a combination of higher development pressures and fewer development opportunities. A variable North Shropshire/ South & East Shropshire rate would allow higher rates in appropriate locations whilst not deterring necessary development in more marginal locations. *For the Council's response to this point see paragraph 2.5(ii) on page 3.*

Affordable housing Levy rate

3.44 There was a great deal of support for a nil Levy rate for affordable housing⁵³. Some respondents pointed out that this should also apply to agricultural and forestry workers' dwellings⁵⁴ and to Gypsy and Traveller sites⁵⁵. Others thought housing associations and other affordable housing should contribute the Levy, although at a lower rate⁵⁶.

3.45 The Ministry of Defence requested that their Service Family Accommodation (SFA) be included in the affordable housing category, as rents are significantly below private market rents and, more importantly, also below the rents associated with social rented properties⁵⁷.

3.46 *Up to 1,000 dwellings for military personnel are planned in the Core Strategy. Although some of these may be within town boundaries (at the £40/m2 Levy rate), it is also possible that existing military bases may be considered for such development (at the £120/m2 Levy rate). Therefore the contribution to local infrastructure that would be foregone could potentially be in the order of £4 million - £12 million. Whilst it has been accepted, as stated in the Type and Affordability of Housing SPD, that a contribution to affordable housing will be foregone, the case for making no contribution to local infrastructure is less convincing. Service family accommodation places a burden on local infrastructure such as schools and sustainable transport, and it will cause resentment in those communities that are asked to accommodate significant military development if it is not accompanied by adequate infrastructure.*

Other land uses

3.47 There was support for a nil Levy rate for agricultural buildings⁵⁸ and a great deal of support for a nil Levy on land uses that create employment⁵⁹. A small number thought that employment should not have a nil rate because it does have an impact on green infrastructure, water supply and drainage, energy network, traffic, etc, and the fact that viability is variable and complicated is not sufficient reason to abandon a contribution from commercial developments⁶⁰.

3.48 Some objected to a nil levy rate for commercial, industrial, retail and other uses as unfairly placing the burden of infrastructure upon the residential sector⁶¹. It was

53 Respondent 1, 6, 13, 20, 27, 33, 37, 39, 40, 44, 50, 51

54 Respondent 7, 37, 38

55 Respondent 7

56 Respondent 8, 41

57 Respondent 30

58 Respondent 1, 39

59 Respondent 7, 12, 13, 20, 27, 33, 37, 39, 40, 44

60 Respondent 41

61 Respondent 3, 18, 43, 46

pointed out that the residential sector also faces significantly volatile and uncertain housing market conditions. Others understood the exclusion of non-residential development provided that policies are in place in the Site Allocations and Management of Development DPD and the Developer Contributions SPD to ensure appropriate contributions are sought and secured from them⁶².

- 3.49 There was support for using section 106 legal agreements rather than the Levy, to reflect the variability in impact between different uses and different sites⁶³.
- 3.50 The Highways Agency noted that employment and retail uses have a significant impact on road traffic, and expressed concern that section 106 agreements may not fully be able to address such impacts, as their relationship to the development site is not always sufficiently direct to meet the statutory tests for planning obligations⁶⁴. Improvements to the strategic road network should, in the Highways Agency's view, be classified as "critical" and therefore prioritised for Levy and other funding. It noted that the Draft Developer Contributions SPD proposes that a "minority proportion" of CIL receipts will be spent on strategic infrastructure, but that this is in line with the Localism Bill.
- 3.51 *The use of Levy receipts, including the split between strategic and local infrastructure, is a key issue that will be dealt with further in the Developer Contributions SPD.*
- 3.52 It was suggested that care homes (use class C2) should not be exempt⁶⁵.
- 3.53 One respondent suggested there should be a Levy rate on holiday lets while two suggested there should not be⁶⁶. *Note: holiday lets are regarded as use class C3 and therefore the market housing Levy rate would apply to them.*
- 3.54 It was suggested that dwellings that have a planning condition tying them to commercial uses should have a nil rate⁶⁷.

Thresholds and liability calculations

- 3.55 Some respondents would prefer different thresholds, excluding smaller properties, and different payment arrangements or excluding small developments. Others would prefer to include household extensions in the interests of fairness⁶⁸. There was also concern over the use of the construction index as an inflation measure because it is likely to see higher increases than general inflation⁶⁹. English Heritage expressed concern over the subtraction of demolitions from the liability calculation⁷⁰.
- 3.56 *The Council has no discretion in these matters, which are set by statute (The Planning Act 2008 and the Community Infrastructure Levy Regulations 2010).*

62 Respondents 47, 48, 49, 51

63 Respondent 4

64 Respondent 22

65 Respondent 15

66 Respondent 1, 5, 31

67 Respondent 5

68 Respondent 5, 10, 12

69 Respondent 5

70 Respondent 34

However, Shropshire Council will raise these issues with the Department for Communities and Local Government through its participation in the CIL Front Runners programme.

- 3.57 Clarification was requested regarding at what stage of the development process the Local Authority considers that a scheme has been commenced. For instance, would agreed demolition, remediation and land re-profiling works constitute commencement for the purposes of the Levy?⁷¹ A related issue is concern over the timing of Levy payments⁷². This is important to reducing the cost of borrowing on a development, with its knock-on impact on viability. The house building industry has sought to generate finance through the phased release of plots within a development, to provide a capital return from which to commence further stages of a project. The imposition of a Levy with rigid timescales could therefore compromise the availability of development finance, and so further impact upon the implementation and delivery of development.
- 3.58 *New Regulations currently before Parliament (The Community Infrastructure Amendment Regulations 2011) propose that charging authorities may allow payments by instalments, in accordance with an instalment policy that it must publish on its website. A cross reference has been inserted in the Charging Schedule to reflect this.*
- 3.59 The consultation also does not set out what the consequences would be if payment is not made within the 60 day period⁷³.
- 3.60 *The process for administration of the Levy in Shropshire will be clarified before the examination of the Charging Schedule.*

Discretionary relief for exceptional circumstances

- 3.61 There was support for the flexibility to reduce the levy where the developer can demonstrate that the scheme is not viable, whilst noting that this could make the process of negotiation drawn out and uncertain⁷⁴. Others expressed concern⁷⁵ about the dubious transparency of "Open Book Accounting" where the outcomes for the public are reliant on the negotiating skills, acumen and the unshakeable integrity of the officers undertaking the negotiation. It was felt that there was a need to be very specific about what democratic checks and balances are to be built into the system of negotiation and agreement to protect individual officers from undue pressure and to protect the public interest.
- 3.62 *Clarification of the process that will apply when discretionary relief is sought have been added to the Charging Schedule Accompanying Notes.*

Other contributions to infrastructure

- 3.63 It should not be forgotten that development brings other benefits, supporting infrastructure provision, for example by providing children to fill Shropshire schools'

71 Respondent 50

72 Respondent 5, 26, 29, 42, 50

73 Respondent 50

74 Respondent 21, 47, 48, 49, 50

75 Respondent 6, 23

surplus places and customers for local shops⁷⁶.

3.64 Concern was voiced that Government cut-backs mean that there will be less public funding for infrastructure in the future, placing more of the burden on the construction industry / landowners. There was felt to be a need for other significant parties including utility companies and local authorities to invest in infrastructure improvements⁷⁷.

Contributions from planning obligations, including section 106 agreements

3.65 There was some confusion expressed over the role of section 106 agreements once the levy is introduced⁷⁸. Some respondents thought that it would not be possible for non-residential development to contribute to defined infrastructure due to the restrictions on S106 planning obligations towards infrastructure items within the CIL list⁷⁹.

3.66 *Section 106 agreements cannot be sought for infrastructure projects that are on the CIL list. For infrastructure projects not on the CIL list, up to five section 106 agreements can be sought. This enables a limited number of large developments, such as retail stores, to be required to contribute. It should also not be forgotten that large developments may be conditioned to make on-site provision, for example a large retail store may be required to provide adequate car parking, bus pull-in and landscaping within its site boundary as part of the design of the scheme.*

3.67 *It should be noted that the CIL list may change over time. In accordance with its localism approach, Shropshire Council intends to annually review the CIL list, following the process set out in the Developer Contributions SPD. An initial CIL list will be determined before the Charging Schedule takes effect, based on the current review of the LDF Implementation Plan's "Place Plans" as part of the SAMDev process.*

3.68 The Highways Agency was concerned that more than 5 obligations may be required for some junction improvements at Shrewsbury and Oswestry⁸⁰. *The use of the CIL for junction improvements to the A5 is being considered. However, the CIL list does not form part of the statutory Charging Schedule.*

3.69 Another respondent agreed that the exclusions identified in criteria k) and l) should be identified because the works at Churncote Island and the delivery of the Oxon Link Road are acknowledged by the Council (and the site promoters) to be a specific and inherent part of the Sustainable Urban Extension at Shrewsbury West and as such should be excluded from the Levy⁸¹. It was suggested that for clarity and to ensure consistency with Annex C, reference to the Oxon Link Road project should be deleted from Appendix A of the 'Levy Rationale Background Paper'.

76 Respondent 3

77 Respondent 3, 27

78 Respondent 19

79 Respondent 18

80 Respondent 22

81 Respondent 24

Charitable Relief

3.70 The National Trust requested a change to the policy on charitable relief on page 6 of the Draft Charging Schedule from “the amount of relief will be in direct proportion to the proposed development’s benefit to the community” to reflect instead the contribution to the community of the *charitable purpose funded by the development*, rather than simply the contribution of the development itself⁸².

3.71 *The change proposed by the National Trust would effectively enable development, for example residential development, to qualify for charitable relief on the grounds that it raised money for the charity. The policy as currently worded tests the “benefit to the community” against whether “the chargeable development delivers facilities, services or infrastructure that have been identified as a requirement in the LDF Implementation Plan or Place Plans”. A local charity can usually meet this test by persuading the Town or Parish Council to reflect their proposals in the annually updated Place Plan. The National Trust’s proposed amendment would replace this with a test of whether the “charitable purpose” benefits the community. As this is much less specific, it is likely to apply to every charity and consequently the test is much less related to the community’s views.*

Infrastructure funding requirements

3.72 Shropshire Council's Children and Young Peoples' Services raised concerns that the costs of providing additional educational facilities to meet the needs of new development will not be met by the proposed Levy rate, which should therefore be set higher in its view⁸³. The DfE has indicated that the provision of school places to meet increased birth rates in existing stock will be a priority, but that there is no additional funding to LAs to provide school places in all-new development. The assumption remains that this should be funded by developers.

3.73 Sport England thought that the costs of swimming pools and sports halls should be included in the calculation of the infrastructure funding gap⁸⁴.

3.74 The Shropshire Wildlife Trust raised concerns that, as Levy funding is not designed for maintenance payments, how will on-going management of green spaces, which is essential to retain their ecological value, be financed?⁸⁵

3.75 Others contended that the funding gap was not as high as claimed by the Council, particularly for transport schemes⁸⁶ and the rural area⁸⁷. The funding gap requires further work, particularly in separating out infrastructure costs that are associated with specific developments, such as the sustainable urban extensions⁸⁸. Another respondent thought information on infrastructure requirements would be inadequate until the other DPD in the LDF suite (ie. the SAMDev) is complete and that the Charging Schedule should therefore wait until that point in time⁸⁹.

82 Respondent 38

83 Respondent 4

84 Respondent 17

85 Respondent 41

86 Respondent 15, 18, 21

87 Respondent 39

88 Respondent 18, 24

89 Respondent 23

3.76 One respondent referred to their identified infrastructure needs, already provided to the Council through the consultations on the Place Plans⁹⁰.

Infrastructure benefiting from the Levy

3.77 The Council's Children and Young People's Services Directorate responded childcare/early years should be listed separately and that ordering of the list should reflect the Council's statutory and mandatory responsibilities and the Council's priorities for service development⁹¹.

3.78 *Core Strategy Policy CS9 states that developer contributions will follow the priorities set in the Local Development Framework (LDF) Implementation Plan, which provides the mechanism by which infrastructure requirements and their relative priority are identified by Shropshire Council in association with local communities and delivery partners. The LDF Implementation Plan's appendices are the 18 Place Plans, which reflect close working with local communities and locally determined priorities. There is therefore a strong element of localism in determining priorities. Policy CS9 will be supplemented by the Developer Contributions SPD (a draft of which is currently out for public consultation) and this will contain the detailed governance arrangements for the use of Levy funds. Current proposals in the Draft SPD are that Shropshire Council, as the charging authority, sets its priorities for spending Levy monies in each area for the year ahead through an annual report to Cabinet. This will reflect the amount of development in each area, the Place Plans, the local communities' aspirations and any other relevant factors.*

3.79 One respondent felt that the priority need for rural infrastructure was affordable housing, and that the potential impact of the Levy may be to undermine delivery of affordable housing⁹².

3.80 Another questioned the inclusion of flood risk management provisions on the basis that new development should not be located in areas at risk of flooding⁹³.

3.81 The Highway Agency was pleased to note that sustainable transport and urban traffic management (items k and m) are on the CIL list, as it considers behavioural change to be important in managing traffic impacts⁹⁴.

3.82 West Mercia Police requested that police and emergency services should be on the CIL list⁹⁵. They also requested that if the use of the Levy is widened in future to fund of the ongoing costs of operating infrastructure (as indicated by Government in the Localism Bill), then safeguards be put in place to prevent (a) an ever increasing chunk of the CIL being used for continuing service provision rather than new infrastructure, and (b) individual types of infrastructure benefiting disproportionately at the expense of others.

3.83 English Heritage suggested additions to the CIL list to reflect improvements to

90 Respondent 7

91 Respondent 4

92 Respondent 13

93 Respondent 23

94 Respondent 22

95 Respondent 32

heritage, culture and public realm assets⁹⁶. The Shropshire Wildlife Trust would like to see the addition of Natural & Semi-natural Open Space to Annex C⁹⁷. The National Trust suggested that “enhancement of publicly accessible open space (category c)” be extended to include to “provision or enhancement...” and that “flood risk management” should include “upstream land management”⁹⁸.

3.84 There was a plea for greater clarity as to the limits for use of the community Levy, and in particular whether they must be used in the parish and adjoining parishes, and whether they are restricted to capital rather than recurring infrastructure funding. Clarification is essential to ensure a transparent equitable system in which the public can have faith⁹⁹. There was clearly an appetite for the Levy to be spent entirely in the area in which the development takes place¹⁰⁰ or for a specified proportion (eg. 75%) to be dedicated for use in the local area or conversely specified for strategic (ie. non-local) infrastructure¹⁰¹. However, the link to locally determined priorities was insufficiently clear to some, who criticised the long list of potential types of infrastructure as lacking priorities and including specific items (such as the Whitchurch electricity capacity upgrade) that only benefited part of Shropshire¹⁰².

3.85 *The use of Levy funds for priorities identified in the 18 local “Place Plans”, and the role of parish and town councils in relation to the levy, will be detailed in the Developer Contributions Supplementary Planning Document (SPD), a draft of which is currently out for consultation until 21st April 2011. Operational procedures will be put in place to ensure that all negotiations are properly conducted and that checks and balances are built into the system of negotiation and agreement. A cross-reference to the SPD and the “Place Plans” has been added to the Charging Schedule Accompanying Notes.*

3.86 It was suggested that Shropshire Council consider the impact of the Localism Bill’s proposals that CIL revenues might be allocated direct to local communities or infrastructure providers, and that the Charging Schedule should give explicit recognition to the potential provision of strategic infrastructure with a county wide significance and identify legitimate recipients such as West Mercia Police¹⁰³.

3.87 *The spending of Levy funds will be addressed in the Developer Contributions SPD rather than the Charging Schedule. There is no legislative requirement to specify the use of the funds or their Governance arrangements in the Charging Schedule. Furthermore, the Localism Bill is expected to be enacted in autumn 2011, with enabling Regulations following in spring 2012. An early review of the Developer Contributions SPD in spring 2012 will be able to reflect legislative changes regarding the Governance of Levy funds, if necessary.*

Financial management

3.88 The costs of administering the levy were requested, as these costs reduce the benefit

96 Respondent 34

97 Respondent 41

98 Respondent 38

99 Respondent 6, 19, 50

100 Respondent 6, 8, 12, 19, 31, 36, 51

101 Respondent 25, 28, 32

102 Respondent 23

103 Respondent 32

derived by the community from the infrastructure levy¹⁰⁴. *The Regulations allow up to 5% of the levy in any one year to be used to fund its administration.*

- 3.89 Clarification was requested over whether the levy is returned to developers if it is not spent within a period of time¹⁰⁵. *There is no requirement to spend the levy within a specified period of time, although there is a requirement for the Charging Authority to produce an annual report on CIL receipts, expenditure and year end balances.*

Developer Panel meeting

- 3.90 The Preliminary Draft Charging Schedule was tabled as an agenda item at the meeting of the Shropshire Developer Panel on 28th February. This provided a further opportunity to listen to views from the industry. The differential between the urban and rural Levy rates was discussed at length, with developers repeating the points made in paragraphs 3.9 to 3.43 above. It was recognised by both developers and the Council that a higher Levy rate in rural areas would only incentivise communities to accept development if a high proportion of the Levy were geographically ring-fenced to be spent in the vicinity of the development.
- 3.91 It was also recognised that landowners' expectations would need to adjust to the Levy and its impact on land values, and this may lead to a lull in land supply for a period of time. The impact of the Local Development Framework on land supply was recognised as important. A limited number of allocations would reduce competition between landowners, whilst a more flexible approach would increase competition. For example, if there were no development boundaries around Community Hubs and Community Clusters (as was suggested in the spring 2010 Issues and Options consultation on the Site Allocations and Management of Development Plan Document) then the number of potential sites would be maximised, providing competition between landowners and thereby increasing supply.
- 3.92 Concerns were expressed over what infrastructure would be included in the Levy, and what would be additional, site-specific requirements. In particular, the point was made that section 106 agreements have traditionally included the cost of maintenance of public open space and therefore the Levy should cover this cost. It was also suggested that site specific road schemes should be paid for by the CIL receipts. It was suggested that land take for infrastructure (including public open space, and land for community and educational uses) be discounted from the CIL liability as payments in kind.
- 3.93 *CLG's consultation on the use of planning obligations provides guidance on the inter-relationship between the CIL and site specific contributions and concludes that it is, "legitimate in principle to seek contributions through both routes" (ie. the CIL and planning obligations), "provided that the purposes of each instrument are clear and separate.....Planning obligations should aim to secure necessary requirements that facilitate the granting of planning permission for a particular development, while CIL contributions are for general infrastructure need." (paragraphs 1.14 – 1.17 in "New Policy Document for Planning Obligations Consultation" March 2010). However, planning obligations cannot be used for any type of infrastructure or infrastructure projects that are listed on its published CIL infrastructure list (Regulation 123(2) of the*

104 Respondent 19

105 Respondent 21

Community Infrastructure Levy Regulations 2010).

3.94 *Issues regarding the role of the CIL in relation to other planning considerations are the subject of the Shropshire Developer Contributions SPD that is currently out for consultation. The degree to which site specific contributions (whether as part of the design, or as planning obligations) may be sought in addition to the standard Levy rate is properly an issue to be considered at planning application stage. Therefore the response to these concerns on the use of the Levy is threefold, namely through(1) the Developer Contributions SPD; (2) the CIL infrastructure list which Shropshire Council intends to publish annually, and (3) site specific negotiation at planning application stage.*

Conclusion

3.95 The points raised by respondents have been carefully considered, alongside the evidence base, which is outlined in the “Rationale for the Levy” March 2011 background paper, available on our website.

3.96 In response to the points raised in the consultation, and further evidence on viability, Shropshire’s Draft Charging Schedule has been amended as follows:

- Greater clarity on the role of the Levy in achieving the objectives of the Shropshire Local Development Framework, and reference to the underpinning evidence base, in the preamble to the Levy rates.
- Combining of the three geographic zones that are proposed at the same £40/m² rate, namely Shrewsbury, the sustainable urban extensions and the market towns and other key centres, into a single geographic zone for levy purposes.
- Reduction of the rural Levy rate from £120/m² to £80/m².
- Widening of the “single plot exception site” category to “Affordable housing that meets the Council’s definition of affordable dwellings and occupational dwellings that will default to affordable housing”. A nil Levy is proposed for all housing that meets this definition.
- Agricultural development has specifically been identified at a ‘nil’ rate.
- Greater reference in the Accompanying Notes (Appendix 3) to the use of “Place Plans” in identifying local priorities for the use of Levy funds and to the Developer Contributions SPD as the document that details governance arrangements for spending the Levy.
- Clarity in the CIL list that the Levy is intended for capital expenditure, and not to subsidise revenue.
- Incorporation of the Community Infrastructure Levy (Amendment) Regulations 2011 (due to come into force April 2011).

Appendix A: Respondents

Ref	Name	Organisation
1	Mr Kerswell	Local farmer
2	Mr M Wilde	Les Stephan
3	Cllr T Woodward	Shropshire Councillor
4	Mr N Porter, Head of Premises and Planning	LA Children & Young People’s Services
5	Mr S Jones	Halls Holdings Ltd

6	Mr H Horsley, Hon. Secretary	Much Wenlock Civic Society
7	Ms S Clayton, Town Clerk	Much Wenlock Town Council
8	Ms C Warner, Clerk	Welshampton and Lyneal Parish Council
9	Mrs J Nicholls, Clerk	Astley Parish Council
10	Mr K Bailey	K M Bailey Ltd
11	Mrs C Morgan, Clerk	Church Pulverbatch Parish Council
12	Mr C Jones	
13	Mr R Plowden, Chair	Lydbury North Parish Council
14	Mr T Evans	
15	Mr G Cattle	Hope Conservation Trust
16	Mr J Quallington	
17	Mr J Berry	Sport England
18	Mr J Tait	Taylor Wimpey (Planning Prospects Ltd)
19	G. Powell (GDP Planning)	Norton in Hales Parish Council
20	P. Richards	Peter Richards & Co.
21	S Miller	Persimmon Homes North West
22	P. Cahill	Highways Agency
23	N. Blackie	FBC Manby Bowdler
24	A. Ross	Commercial Estates Group, c/o Broadway Malyan
25	T. Barrett	Broseley Town Council
26	B. Ellison	
27	Mr A Fox	Fox Associates
28	L Goff	Balfours
29	D Leiper	
30	J McCabe	Ministry of Defence
31	A Seabury	Cardington Parish Council
32	A Morgan	West Mercia Police
33	Mr & Mrs Whittingham	
34	Mr A Smith	English Heritage
35	J Good	
36	S Hackett	Leebotwood & Longnor Parish Council
37	S Locke	Berrys
38	C Lambert	The National Trust
39	S Faulkner	NFU
40	V Smout	Oswestry Rural Parish Council
41	R Mager	Shropshire Wildlife Trust
42	R Tweedale	
43	D Wall	
44	K Jones	Donington with Boscobel Parish Council; Albrighton Parish Council
45	S Blackburn	Hope Bowdler and Eaton Parish Council
46	A McCann	Bromford Housing Group
47	M Sackett	Persimmon Homes c/o RPS
48	M Sackett	Mosaic Estates c/o RPS
49	M Sackett	J Ross Developments c/o RPS
50	P Downes	Bovale Ltd c/o Harris Lamb
51	S Hackett	Condover Parish Council
52	J Griffiths	Longden Parish Council
53	R Hewat-Jaboor	
54	M Turner	