

community infrastructure levy
november 2014

southend on sea borough council
local development framework



Contents

1. **Introduction**
2. **Consultation**
3. **Development Plan**
4. **Setting of the CIL rates**
 - Striking the appropriate balance
 - Viability evidence
 - Infrastructure evidence
 - Projected income and S.106 analysis
 - CIL in the context of other costs and values
 - Number of residential charging zones
 - Why charge a nominal, rather than a 'nil' rate
5. **What are our neighbours charging?**
6. **CIL in operation**
 - Position on discretionary relief
 - Instalment policy
 - What happens to Section 106 agreements?

Appendices

- Appendix 1: Representations made to Preliminary Charging Schedule consultation and the Council's initial response
- Appendix 2: BNP Paribas Real Estate's response to representations from Savills

1. Introduction

- 1.1 This document, referred to as the Overview Report, has been prepared in support of Southend Borough Council's Community Infrastructure Levy (CIL). It sets out the considerations the Council has taken into account in determining the appropriate rate at which to set CIL, and incorporates much of the background information that was previously included in the Preliminary Draft Charging Schedule (PDCS). The report also includes details of the representations made to the PDCS and the Council's initial response to these representations. The document sits alongside the CIL Viability Study (May 2014) and Viability Addendum Note (July 2014) produced by BNP Paribas Real Estate, and the Infrastructure Delivery Plan (IDP) 2014 as part of the evidence base for CIL.
- 1.2 The Community Infrastructure Levy Regulations 2010 ("the CIL regulations") came into force on 6 May 2010 and set out how CIL is to be introduced into an area. Subsequently, amendment regulations came into force in February 2011, November 2012, April 2013 and February 2014.
- 1.3 The CIL (as set out in the Planning Act 2008) allows local authorities to raise funds from new local development to make a financial contribution towards the infrastructure needed as a result of that development. The Council will use CIL alongside a range of other funding to continue to invest in a portfolio of infrastructure projects that are vital to delivery of the Development Plan.
- 1.4 Most development will have an impact on infrastructure needs within an area in some way or another, whether it is on education, utilities, community facilities, health, transport, open space or anything else. Without improvements and/or new provision, additional development could place undue pressure on existing facilities and services. Therefore, it is reasonable that development should partly contribute towards these costs as part of a complex blend of funding including Local Government Grants and Council Capital Funding.
- 1.5 In the past, development contributions towards infrastructure have been secured largely through Section 106 agreements (S.106) as part of planning permissions. Although limited use of S.106 will continue alongside CIL (as set out in the revised SPD2: Planning Obligations that forms part of this consultation), the Government has restricted how S.106 can be used. The Council believes that introducing CIL as the main mechanism to raise funding for strategic infrastructure is essential in Southend's circumstances. This has a number of benefits:
- The cost of funding infrastructure will be shared across a wider range of development;
 - CIL receipts can be pooled to pay for strategic infrastructure – this will no longer be possible with S.106;
 - It will provide certainty for developers – they will know from the outset how much they have to pay;
 - It is a simpler and quicker process for both the Council and developer – it will not delay development;

- Part of the funds raised can be used by local communities to address the impacts of new development in their neighbourhood.

2. Consultation

- 2.1 The following consultations were taken into account in preparing the Draft Charging Schedule (DCS):
- As part of the “Combined Policy Viability Study” produced for Southend Borough Council (SBC) in September 2013 a workshop was held with key stakeholders to provide opportunity to comment on the appraisal methodology and inputs to the study. These comments were reflected in the September 2013 study, which has informed the CIL Viability Study.
 - Consultation on Preliminary Draft Charging Schedule (PDCS) 28 July – 8 September 2014.
- 2.2 In addition, during the PDCS consultation local developers were invited to a Developers Forum on 13 August 2014 and Leigh Town Council Members were invited to a workshop session on 14 August 2014. These sessions included a presentation of the consultation documents and, in respect of developers, an opportunity for one-to-one meetings with BNP Paribas Real Estate (acting as advisers to the Council on viability issues) and Council officers to discuss viability assumptions etc.
- 2.3 In relation to the Infrastructure Delivery (IDP), which covers a full range of categories of infrastructure, key stakeholders/ infrastructure providers were given the opportunity to provide information relating to infrastructure projects during the document’s drafting.
- 2.4 The representations received in response to the consultation on the PDCS are discussed below and included in detail, together with the Council’s initial responses, in Appendix 1 and 2. This Overview Report seeks to deal with the main issues raised during the consultation.

3. Development Plan

- 3.1 CIL Guidance sets out that councils must have an up to date development strategy for the area in which they propose to charge CIL. And a Charging Authority must demonstrate how the proposed levy rates will contribute towards the implementation of the Development Plan.
- 3.2 Southend-on-Sea has an adopted Core Strategy Development Plan Document (DPD1) that was published in December 2007 and for the purposes of CIL is considered to be relevant and up to date. Preparation of the Council's Preliminary Draft Charging Schedule has been based on the proposed levels of growth and development set out in DPD1 for the plan period up to 2021.
- 3.3 The Core Strategy sets out the strategic priorities, including delivery of housing in Southend to 2021. This housing demand was tested at the strategic level before an allocation for the period (2001 to 2021) was agreed for Southend by a planning inspector, taking account of any adverse impacts and protected sites as well as moderating it against other relevant constraints. This is consistent with the approach outlined in the National Planning Policy Framework (NPPF). National Planning Practice Guidance (NPPG) acknowledges in paragraph 036 (Reference ID: 3-036-20140306) that 'housing requirement is set at the starting point of the plan, which can be earlier than the date the plan is adopted'. It also states that 'for a plan to be found sound it would have to be based on an objectively assessed need for housing.'
- 3.4 The Core Strategy was found sound at examination and its preferred approach was selected by the community above all other reasonable alternatives; this being to deliver regeneration of the existing urban area with a focus on the town centre, where a significant proportion of housing will be delivered over the plan period. The delivery of this housing is being taken forward through the Southend Central Area Action Plan (SCAAP), which includes site allocations. In addition, saved policies in the Borough Local Plan include proposals sites for delivery of housing both within the central area and wider Southend.
- 3.5 The NPPF states in paragraph 211 that *"for the purposes of decision-taking, the policies in the Local Plan should not be considered out of date simply because they were adopted prior to the publication of this Framework [in March 2012]"*. It is considered that the policies within the Core Strategy are consistent with the NPPF, seeking to deliver sustainable development that reflect the vision and aspirations of the local communities and was prepared using adequate, up to date and relevant evidence about economic, social and environmental characteristics and prospects of the area. Even so, it is acknowledged, and in accordance with policy and guidance in the NPPF and NPPG, that a review is required and this has commenced.
- 3.6 Southend published a Local Development Scheme 'Full Review' document in 2014 (LDS), which provides a 'live' timetable for preparation and review of the Southend Development Plan. The document outlines that it is now an appropriate time to

commence a review of the Core Strategy and the process and milestones for this are outlined in the LDS timetable, which is currently dated June 2014. This review will include the preparation of an updated evidence base, which may include an update to the Thames Gateway South Essex (TGSE) Strategic Housing Market Assessment (SHMA) to address the NPPF requirement to establish an objectively assessed need (OAN) within the TGSE housing market area. This process will require co-operation of TGSE authorities under the duty to co-operate. It is noteworthy that when assessing future sites against the OAN the NPPG states in Paragraph: 034 (Reference ID: 3-034-20140306) that *"unmet housing need (including traveller sites) is unlikely to outweigh the harm to the Green Belt and other harm to constitute the 'very special circumstances' justifying inappropriate development in the Green Belt"*. This will need to be taken into account when considering new housing requirements for Southend and within the wider TGSE area.

- 3.7 Core Strategy policies will also be complimented by policies in the London Southend Airport Joint Area Action Plan (JAAP) and the Development Management Development Plan Document (DPD) which are both at an advanced stage of preparation, are in conformity with the NPPF and will form a significant part of the development plan for Southend. In addition, the Council is progressing the SCAAP, which will help deliver a meaningful proportion of housing delivery required by the Core Strategy through site specific proposals.
- 3.8 In regard to Borough wide housing delivery the Core Strategy states that this growth will be phased over three periods, outlined in Policy CP8. The evidence used to inform this phased growth was based on an examination of existing sites with planning permission, as well as future and potential supply sites. This phasing has been derived in order to meet needs and ensure that a balance remains, and can be suitably monitored between housing, employment and infrastructure provision, thereby contributing to the government aim of delivering sustainable development. Front loading of housing delivery was, therefore, agreed by the planning inspector at the examination in public of the Core Strategy and this has been reflected in the higher delivery in the first phase.
- 3.9 A lower rate of delivery has occurred in the most recent years, although, a lower delivery was planned for in the second period of the Core Strategy housing allocation. This period has also been affected by recession since 2007 i.e. a 'trough', which of course was not isolated to Southend and additionally is a recognised phenomenon in the housing cycle. During this period it has not been evident that the local planning authority has not granted sufficient planning permissions for housing development to continue along or close to past trends, evidenced by the quantity of outstanding permissions, rather it may be that developers have had a reduced build out rate or may have not been able to, or have chosen not to, develop a site during this recessionary period. It is noteworthy that Southend has a good record and history of housing delivery, especially during positive market conditions i.e. 'peaks' and this is reflected by the authority being ahead of its Core Strategy minimum housing delivery target, illustrated in the Southend Annual Monitoring Report (AMR). It is likely that this will be revived as

more favourable market conditions resume in the near future as developers and buyers have more confidence.

- 3.10 NPPG states in Paragraph 035 (Reference ID: 3-035-20140306) that *“the assessment of a local [housing] delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle”*. It also states that *“the approach to identifying a record of persistent under delivery of housing involves questions of judgement for the decision maker in order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing”*. In addition, it emphasises that *“the factors behind persistent under delivery may vary from place to place and, therefore, there can be no universally applicable test or definition of the term”*.
- 3.11 When considering the meaning of “persistent under delivery” reference should also be made to recent case law. In *Cotswold District Council v Secretary of State for Communities and Local Government and Fay and Son and Hannick Homes and Development Limited (2013)* the judge explained that where there has been *“a record of persistent under delivery of housing”* local planning authorities should increase the buffer to 20% to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
- 3.12 In addition the judge stated that in the context of paragraph 47, the reference to “persistent” under delivery of housing is a reference to a state of affairs, under delivery of housing, which has continued over time. A decision maker would need to have regard to a reasonable period of time measured over years rather than looking at one particular point, to ensure that the situation is one of persistent under delivery rather than a temporary or short lived fluctuation. The precise period of time would be a matter of judgement of the decision maker. There has to be a ‘record’ of under delivery of housing. That points towards assessing previous performance. The need to establish a record of under delivery indicates there will need to be some measure of what the housing requirements were, and then a record of a failure to deliver that amount of housing persistently, i.e. a failure continuing over a relevant period of time.
- 3.13 In the context of the NPPG and this key judgement on the meaning of “persistent under delivery” it is considered to be justified for Southend Borough Council to approach its five year housing supply by applying a buffer of 5% rather than a buffer of 20% as there is not a persistent record of under delivery of housing over the longer term, when peaks and troughs in the housing market are taken into account; there is also realistic prospects of achieving the planned supply. It is noteworthy, therefore, that the authority is ahead of its planned housing supply also.
- 3.14 The approach taken to demonstrating a 5 year supply with, therefore, a buffer of 5% is detailed in the Southend on Sea Borough Council Strategic Housing Land Availability Assessment Update Report 2013. This document outlines the method of assessment, NPPF context, windfall allowance justification and also considers

supply over the longer term. It details the sites, benefiting from planning permission and deemed viable and deliverable according to existing evidence, which, as such, meet the NPPF requirement for inclusion in the Council's 5 year supply for housing. The document also provides a commentary of windfall and establishes that there is a strong and consistent historic delivery of windfall sites over the plan period to date; and outstanding planning permissions highlight that these sites will continue to provide a reliable source of supply in the future.

- 3.15 This supply will also be complimented by the allocation of proposals sites in the Site Allocations DPD, Shoebury Area Action Plan, SCAAP and those established by the planned review of the Core Strategy. As such windfall will still be a reasonable percentage of housing supply for Southend; however, it will sit alongside future housing allocations established through the plan making process.

4. Setting of the CIL rates

- 4.1 In setting the rate of CIL, regard has been had to the Planning Act 2008; Community Infrastructure Regulations 2010 (as amended) and National Planning Policy Guidance relating to the Community Infrastructure Levy. The CIL proposals have their basis in the Core Strategy (2007).
- 4.2 The Draft Charging Schedule is informed by an appropriate evidence base, which identifies the infrastructure required to support the growth outlined in the Local Plan, the infrastructure funding gap (i.e. the amount of funding still to be found as of the date of the IDP after actual and expected sources have been identified) and an assessment of the likely impact of CIL on the viability of development across the Borough. The evidence base documents include:
- Development Plan – Core Strategy (DPD1) available at: www.southend.gov.uk/corestrategy
 - Infrastructure Delivery Plan (IDP) September 2014 available at: www.southend.gov.uk/cil
 - CIL Viability Study (May 2014) and Viability Addendum Note (July 2014) available at: www.southend.gov.uk/cil

Striking the appropriate balance

- 4.3 The proposed CIL rates have been determined by considering, on the one hand, the cost of required infrastructure and, on the other, the viability of development. The infrastructure requirements are based on the Core Strategy and Infrastructure Delivery Plan (2014) assessment of what is needed to support planned development.
- 4.4 The Council has sought to strike an appropriate balance between the need for CIL to fund the infrastructure necessary to support the development of Southend, taking into account other actual and expected sources of funding; and the economic effects (taken as a whole) of the imposition of CIL on the economic viability of development across the Borough.
- 4.5 It is acknowledged that CIL is not the answer to the deficit in infrastructure funding but will make an important contribution. It is also recognised that if rates are set higher, in the interests of generating more income to fund infrastructure this could put at risk development in the Borough, in which case it would threaten the delivery of the Development Plan and growth. In this context, the viability evidence has tested the types of development that are likely to arise in Southend and taken into account policy requirements set out in the Core Strategy and other Local Development Framework documents.
- 4.6 The proposed rates are considered to be fair and reflect land values in the Borough as outlined in the viability evidence.

Viability evidence

- 4.7 See Section 2 of the PDCS for a summary of the findings of the Viability Study (May 2014) and Viability Addendum Note (July 2014). Subsequently, in response to Savills' representation on the PDCS further comments have been sought from BNP Paribas Real Estate as a number of viability related issues were raised (see Appendix 1 and 2 for details of the representations and BNPP's response). The representations received from Savills include comments in relation to the proposed nominal rates, the 'trade-off' between funding infrastructure and affordable housing, the viability buffer, benchmark land values, level of professional fees and developer's profit, and the draft Instalments Policy.

Infrastructure evidence

- 4.8 CIL Guidance requires local authorities to determine the size of its infrastructure funding gap and, in doing so, should consider known and expected infrastructure costs and other possible sources of funding to meet those costs. This process is to help the Charging Authority identify a levy funding target and justifies the introduction of CIL to provide an additional funding source.
- 4.9 In 2007 an infrastructure assessment was undertaken as part of preparing the Development Plan, which identified the scale and type of infrastructure needed to deliver the area's local development and growth needs. As a period of time has passed since the Core Strategy's adoption it was deemed appropriate to commission an updated Infrastructure Delivery Plan (IDP) to ensure that the infrastructure planning underpinning the Core Strategy accurately reflects the Council's latest priorities. This will also help inform the Core Strategy review process. Section 2 of the PDCS included further details in relation to the findings of the IDP. The IDP should be read in conjunction with the DCS consultation document.
- 4.10 During the PDCS consultation, Sport England made a representation raising concerns that the evidence in the IDP for indoor and outdoor sports facilities is inadequate due to the theoretical assessments not being robust. Navigus Planning, who drafted the IDP on behalf of the Council, have commented on this representation and have noted that the details in the IDP were based on the information available at the time, which the Council's acknowledges is limited and dated in this area. The Council will endeavour to commission/draft a detailed indoor and outdoor sports strategy to ascertain the extent of these needs and inform later versions of the IDP and CIL Charging Schedule; however, in the meantime opted not to delay the implementation of CIL whilst such a study was carried out.
- 4.11 In response to Sport England's representation the Council has made an amendment to Table 13.1 of the IDP (Summary of infrastructure costs) to clearly show that the costs stated for outdoor and indoor sports facilities are only based on theoretical assessments and not recent local evidence of need at this time. The comments do not weaken the justification for CIL based on the funding gap as the

Council still has a sufficiently large funding gap (approx. £102.2m) after the £1,195,000 stated as required for indoor/outdoor sports facilities is deducted. As there is no detailed evidence in relation to need or project costs, indoor/outdoor sports provision has not been included on the Council's draft Regulation 123 Infrastructure List at the present time although it may be added at a later date, once the evidence is available and the IDP reviewed.

- 4.12 The IDP shows that there is a funding gap for 2015-21 of approximately £103.4million (based on known and expected costs and sources of funding as at the date of the IDP). Such a substantial funding gap is not unusual among local authorities; for example, Thurrock identified an infrastructure funding gap of £446.14m (as at 31st March 2013) and Chelmsford identified an infrastructure funding gap of £113m ("Updated Infrastructure Planning and Funding Gap Assessment, February 2013", Chelmsford City Council).
- 4.13 The priorities shown in Table 13.2 of the IDP are based on individual infrastructure providers' judgements; and not the Council's current priorities as a whole. Therefore, the projects listed in the Council's draft Regulation 123 Infrastructure List do not necessarily reflect the priorities set out in this table. As currently drafted, the Regulation 123 Infrastructure List only excludes projects proposed by external infrastructure providers (for as CIL funds are limited, the Council is likely to wish funds to be directed to projects that Southend Borough Council are seeking to deliver before offering funds externally); and those with no information in relation to costs (as it is seen to be sensible to direct CIL funding to projects that are more advanced in terms of their delivery plan). This is seen to be more sensible than including every project identified with the Infrastructure Delivery Plan (IDP). Alternatively, a list including only a few projects could be published but the Council has chosen not to take this option as priorities are continually changing. It is considered that the advantage of producing a Regulation 123 Infrastructure List that is not too specific is that it will need less frequent revisions that would cause delay to infrastructure delivery due to the need for public consultation each time it is amended. In addition, as significant CIL receipts will not be realised immediately upon adoption of a CIL Charging Schedule it is considered more appropriate to produce a more specific list of prioritised projects (selected from the Regulation 123 Infrastructure List) that are to benefit from CIL receipts in an annual Infrastructure Business Plan (IBP), which would be agreed by the Council each year together with the CIL Annual Monitoring Report.

Projected income and S.106 analysis

- 4.14 It is difficult to estimate the likely income from CIL as development can be unpredictable particularly as the majority of development will be on brownfield sites within the Borough. Any estimate is highly sensitive to multiple assumptions. However, the Council's Annual Monitoring Reports monitor residential, Use Class B1-B8, A1 and A2, and D2 development. Information available in relation to these uses over a three year period, including 2009/10, 2010/11 and 2011/12, has been analysed to allow the following projections should development continue in a similar pattern to the last 3 years:

Residential:

Completions 2009/10 = 144; 2010/11 = 204; 2011/12 = 354 (Average 234/year)

Deducting 20%¹ affordable housing as CIL exempt = Average 187/year

Average dwelling size of 72sqm

Average proposed CIL rate of £30²/sqm

Projected annual CIL income **£403,920**

Projected monthly CIL income **£33,660³**

B1-B8:

There was a loss of this floorspace during this period so there would have been no CIL income.

A1 and A2:

There was a loss of this floorspace during this period so there would have been no CIL income.

D2:

Increase in floorspace 2010-2012 = 4,967sqm = average of 2,484sqm/year

Proposed nominal CIL rate of £10/sqm

Projected annual CIL income **£24,840**

Projected monthly CIL income **£2,070**

4.15 Based on average S.106 income from the last six financial years (see Table 1) and assumptions as detailed above, the following outlines the projected annual/monthly income from CIL and S.106 planning obligations (site specific obligations only that will continue after April 2015):

¹ 20% affordable housing policy used (larger schemes will require 30% AH and some schemes may be 100% affordable housing) to illustrate the maximum estimated CIL income.

² Average proposed CIL rate used as difficult to predict if residential development will come forward in high or low value areas.

³ The 2012 AMR states that "The implementation of all outstanding residential planning permissions would result in an additional 2,027 net additional dwellings, of which 1,706 are predicted to be delivered in the next five years, meeting the 5 year housing supply target + 5% of 1,670." This shows that a significant number of dwellings will pay no CIL having secured permission prior to the introduction of CIL. Hence, the projected CIL income may not be realised for 3 years i.e. until new permissions granted subject to CIL are implemented.

2008/9 – 2013/14 actual S.106 income:

Average total annual S.106 income £531,782

Average total monthly S.106 income £44,315

Average annual S.106 income (excluding pooled contributions) £313,653

Average monthly S.106 income (excluding pooled contributions) £26,138

Projected income:Projected annual CIL income **£428,760**Projected monthly CIL **£35,730**Projected annual S.106 and CIL income **£742,413**Projected monthly S.106 and CIL income **£61,868**

Table 1: Section 106 income

Type of contribution	April 2008 - March 2009	April 2009 - March 2010	April 2010 - March 2011	April 2011 - March 2012	April 2012 - March 2013	April 2013 - March 2014	TOTAL	AVERAGE £/year
Education contributions	295,267	117,233	1,044	50,144	581,803	132,937	1,178,428	196,405
Public realm works (e.g. parks and open space provision and associated facilities, landscaping/trees, streetscape improvements)	32,000	725	22,000	18,808	928,262	0	1,001,795	166,966
Site specific highway works	92,650	66,859	105,770	39,400	10,000	14,842	329,521	54,920
CPZ contributions	0	0	0	166,907	15,000	10,000	191,907	31,985
Affordable housing	11,000	661	0	120,000	69,641	80,000	281,302	46,884
Cycle routes	0	50,289	0	0	0	0	50,289	8,382
Bus infrastructure	0	10,058	0	0	0	0	10,058	1,676
Other public transport contributions	0	0	70,000	0	0	0	70,000	11,667
Public art	0	12,500	0	0	0	0	12,500	2,083
CCTV	0	0	23,000	10,000	0	0	33,000	5,500
S106 admin and monitoring fee	0	0	10,000	4,800	9,956	7,138	31,894	5,316
Total annual S106 receipts (£):	430,917	258,325	231,814	410,059	1,614,662	244,917	3,190,694	531,782
Excluding pooled contributions (rows highlighted yellow):	135,650	80,745	160,770	359,915	1,032,859	111,980	1,881,919	313,653

4.16 If a Charging Schedule were to be in place by the start of FY 2015/16 then six years would remain of the plan period up to 2021, and based on the above projections, this could generate £2,572,560 in CIL income. However, this figure simply reflects a projected maximum sum and does not take into account the 'lag' period, mentioned above, or the neighbourhood allocation that will need to be deducted.

4.17 Taking into account the emerging growth targets for the area and economic viability, CIL could potentially raise £2.5million towards the £103.4million funding gap identified up to 2021, leaving £100.9million to be found through other means and/or prioritising infrastructure provision.

4.18 The funding gap outlined above is based on known sources at this point in time so does not mean that in the Development Plan period up to 2021 other sources of funding will not come forward. Once all outstanding planning permissions subject to Section 106 agreements have been implemented (as CIL is not retrospective and only applies to permissions granted post-implementation) and those with a CIL liability start to be implemented, it is estimated that CIL could potentially make a

contribution of £428,760 per year (£35,730/month) towards infrastructure funding.

- 4.19 As outlined above, the funding gap is of such significance that it is highly unlikely that CIL income will exceed the identified funding gap, therefore Southend Borough Council can demonstrate a requirement to charge a CIL at the rates proposed. CIL will not generate sufficient funds to pay for the entire infrastructure needs across the authority area but will make an important contribution to infrastructure funding, even if as match funding.
- 4.20 The development appraisals forming part of the Viability Study supporting Southend's proposed CIL have factored in an allowance of £1,012 per residential unit and £19/sqm for commercial uses (included as a potential developer cost) to address any S.106/S.278 costs of site mitigation that may still be sought once CIL is in place. Together with the viability buffer (as discussed in paragraphs 2.39 onwards of the PDCS), this average allowance will ensure that the combined total impact of requests for developer contributions does not threaten the viability of sites and scale of development identified in the Development Plan. As affordable housing (required by Core Strategy policy CP8) will continue to be secured by planning obligations, this requirement has also been factored into the appraisals. These assumptions are reflected in the proposed levy charge rates and are based on the analysis in Table 2.

Table 2: Analysis of Section 106 records April 2008-December 2013 (inclusive)

Total amount requested for residential only schemes (excluding pooled contributions other than affordable housing in lieu payments ⁴):	£950,072
If analyse residential only schemes (939 units) and exclude pooled contributions: total amount requested on those schemes/no. of open market and affordable housing residential units = average £ contribution /residential unit	£1,012
Total amount requested for commercial only schemes (excluding pooled contributions):	£873,970
If analyse commercial only schemes and exclude pooled contributions: total amount requested on those schemes/total sqm (46,159sqm) = average £ contribution /sqm	£19

CIL in the context of other costs and values

- 4.21 For residential schemes, the application of CIL is unlikely to be an overriding factor in determining whether or not a scheme is viable. When considered in the context of total scheme value, CIL will be a modest amount, typically accounting for between 0.9% and 1.6% of gross development value (GDV, defined as the total current market value of the completed scheme).

⁴ The Council currently pools contributions relating to general education or public realm or public transport improvements from a number of developments. However, from April 2014 the pooling restriction will apply. Therefore, any contributions that are currently pooled have been excluded from the analysis to accurately reflect the residual S.106 payment that may be due in addition to CIL (with the exception of affordable housing as this is not included in CIL).

- 4.22 For commercial schemes, the suggested nominal charge of £10 per square metre is a marginal factor in a scheme's viability i.e. less than 1% of GDV in terms of the uses tested. In addition, it is considered that the suggested £70 per square metre rate, at 66% of the maximum viable rate and 2.54% of GDV for large supermarkets, superstores and retail warehousing meets the 'appropriate balance' test.
- 4.23 See BNPP's Viability Study and Addendum Note, together with the additional comments in Appendix 2 below for further details.

Number of residential charging zones

- 4.24 The CIL Guidance states that *"A Charging Authority that plans to set differential rates should seek to avoid undue complexity."* (Paragraph: 021 Reference ID: 25-021-20140612). On this basis, and on the basis of the viability evidence, only three residential charging zones have been drafted in the DCS to divide the Borough between those areas where residential schemes generally have been found to be more viable than elsewhere.

Why charge a nominal, rather than a 'nil' rate

- 4.25 Some may consider that if a use is deemed to be unviable then additional charges should not be imposed. However, the viability evidence demonstrates that the proposed nominal rates are unlikely to be the determining factor in relation to viability and to have an impact on a developer's decision making as to whether to bring forward a development or not. Beneficially though, the proposed nominal rates will help provide funding towards the supporting infrastructure for growth should such developments come forward. This approach is not uncommon and is the Council's proposed approach.
- 4.26 The CIL Guidance identifies that Charging Authorities do not have to set a nil rate; they can set a low rate in instances where developments appear to be unviable. It is the Charging Authority's prerogative to establish the appropriate balance between raising money from CIL to deliver much needed infrastructure to support development in their area and not putting development across the Charging Authority area at risk. In this regard it is noted that the CIL Guidance identifies that *"there is no requirement for a proposed rate to exactly mirror the evidence... There is room for some pragmatism."*

5. What are our neighbours charging?

- 5.1 The proposed rates compare to other authorities in Essex as follows:
- Thurrock – Residential £0/£38 in two zones; Commercial Class A uses £0/£25/£150 in two zones
 - Rochford – no published CIL documents to date (N.B. Very limited brownfield development opportunities so unless developing on Green Belt developers unlikely to be pushed from Southend to Rochford as a result of CIL)
 - Castle Point – Residential £30/£120 in two zones; Retail £40/£60/£140 in three zones
 - Colchester – Residential £120; Retail £90 comparison, £240 convenience
 - Chelmsford – Residential £125; Retail £150 convenience, £87 other retail

6. CIL in operation

Position on discretionary relief

- 6.1 The CIL Regulations allow Charging Authorities to permit discretionary relief from CIL (e.g. where a reduced or nil payment may be accepted). These cases are likely to be rare but could include the following:
- Development by charities for investment activities (as defined by Regulation 44)
 - Development by charities where relief would normally constitute State Aid (as defined in Regulation 45)
 - Provision of affordable housing by someone other than the local authority or a Registered Provider (as defined in Regulation 49A)
 - Where the Council considers there are exceptional circumstances to justify relief (as defined in Regulation 55).
- 6.2 It is not the intention of the Council to offer discretionary charitable or social housing relief at present. At this stage the need for discretionary relief in addition to the mandatory relief is not considered justifiable and moreover, discretionary relief will only add uncertainty for developers in relation to infrastructure contributions, which is a situation not dissimilar to the current system of planning obligations where lengthy planning application negotiations, particularly on viability grounds, are time consuming and costly to both developer and the Council. A policy of this kind could be introduced at any stage though if considered necessary (subject to appropriate public consultation) and this position will be kept under review.
- 6.3 In addition, Regulation 55 of the CIL Regulations permits a Charging Authority to grant relief from liability to pay CIL in 'exceptional circumstances'. This may only happen if a planning obligation has been entered into in respect of the planning permission that permits the chargeable development and the Charging Authority considers that payment of the levy would have an unacceptable impact on the economic viability of development. In such cases a developer would be expected to demonstrate this (as set out in Regulation 57) via an 'open book' approach with an agreed independent valuer (paid for by the developer). Relief can also only be granted if it does not constitute 'notifiable state aid' (as defined in European Law).
- 6.4 It is not the intention of the Council to offer discretionary exceptional circumstances relief at present. The circumstances in which a policy of this nature would be likely to be used would be extremely rare given that the CIL rate that will be set is based on viability evidence, and as stated above, will add undesirable uncertainty for developers. A policy of this kind could be introduced at any stage though if considered necessary (subject to appropriate public consultation) and this position will be kept under review.

Instalment policy

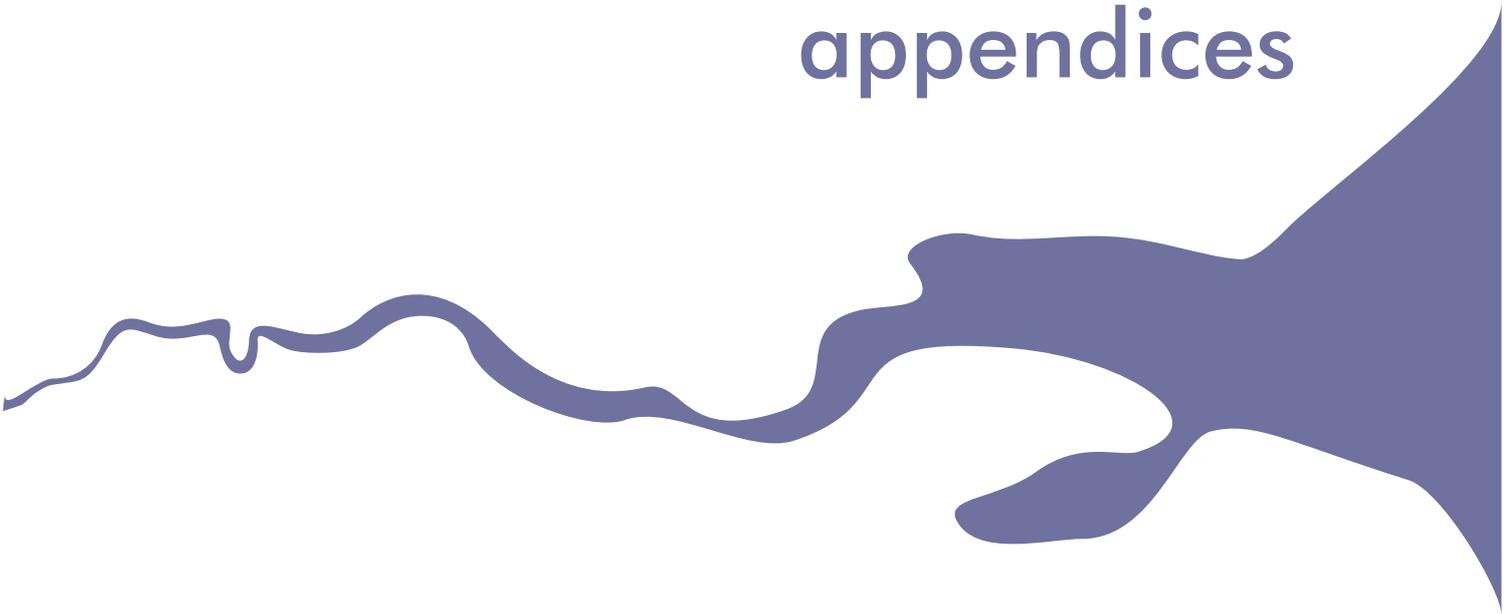
- 6.5 Consistent with a number of other Charging Authorities it is proposed to have an Instalment Policy as it is considered reasonable to allow for phased payments, particularly when the CIL liability is substantial.
- 6.6 Two representations have been received in respect of the draft Instalment Policy published in the PDCS. Further details in respect of the representation and the Council's initial response can be found in Appendix 1.
- 6.7 Essex County Council supports the proposed Instalment Policy as it involves a smaller number of instalments than some other Charging Authorities in Essex have offered. However, Savills consider that payments should be later and in more instalments.
- 6.8 The advice of the Council's viability consultant is that the Council's proposed Instalments Policy is not unreasonable given the likely scales of development that the identified liability would relate to. The majority of schemes coming forward in the Borough will be less than 50 unit schemes and given that the CIL applies to net additional floor area and that the large majority of schemes in the Borough will be delivered on brownfield sites, the CIL liability is likely to be relatively low. In addition, if larger schemes do come forward then such planning permissions may also be implemented in phases, in which case charges may be payable over an extended period of time as each phase would be treated as a separate chargeable development, to which the Council's Instalments Policy would then apply, thereby allowing a further extension to the timing of payments.
- 6.9 The Council considers it appropriate to proceed on the basis of the draft Instalment Policy published to date. This has been based on the majority of development types likely to come forward in the Borough. If at any point a large scheme comes forward that is experiencing cashflow issues and the policy is found to be problematic, the Council may consider a fourth level of CIL liability and corresponding instalments in a revised Instalments Policy (subject to the appropriate public consultation period).

What happens to Section 106 agreements?

- 6.10 To ensure that local authorities do not charge twice by seeking contributions through S.106, S.278 and CIL, CIL Regulation 123 states that planning obligations cannot be entered into where it would fund or provide relevant infrastructure listed on the Council's website that may be funded through CIL. The potential infrastructure projects that CIL will contribute funding to have been set out in the Council's draft 'Regulation 123 Infrastructure List' (revised to include more detail since the PDCS consultation) and a planning obligation will not be sought for any item of infrastructure included in this list.

6.11 Supplementary Planning Document 2 (SPD2): Planning Obligations has been revised to reflect the Council's proposals in respect of CIL, and the draft document forms part of this consultation.

appendices



Appendix 1: Representations made to Preliminary Charging Schedule consultation and the Council's initial response

	Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
Respondent	Leigh Town Council - Mrs Pat Holden				
Full Submission					
Reps	Q1	1683	Support	Yes	
	Q2	1684	Support	Yes	
	Q3	1685	Support	Looks reasonable	
	Q4	1686	Support	Yes	
	Q4	1687	Support	That answer was meant to be NO	Will seek clarification if they would like Rep 1686 withdrawn
	Q5	1688	Support	Yes	
	Q6	1689	Support	Yes	
	Q11	1690	Support	No	
Respondent	McCarthy and Stone Retirement Lifestyles Ltd – Mr Ziyad Thomas				
Full Submission	<p>This is a representation on behalf of McCarthy & Stone Retirement Lifestyles Ltd. the market leaders in the provision of retirement housing for sale to the elderly. It is therefore considered that with its extensive experience in providing development of this nature, the company is well placed to provide informed comments on the emerging Southend on Sea Borough Council Community Infrastructure Levy (CIL), insofar as it affects or relates to housing for the elderly.</p> <p>The demographic profile of the Borough is projected to age markedly, with the proportion of the population aged 60 and over increasing from 24.3% to 29.7% between 2008 and 2033. The most significant population increases are projected of the 'frail' elderly, those aged 75 and over, who are more likely to require specialist care and accommodation.</p> <p>The provision of specialist accommodation for the elderly therefore has a clear role in meeting housing needs over the Development Plan Period and by not properly considering the effect of CIL on these forms of development their delivery would be put at risk.</p>				

	Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
					<p>We therefore commend the Council for their decision to test the viability of both sheltered / retirement housing and Extra Care accommodation.</p> <p>Whilst a number of the viability assumptions used in the development scenario for a sheltered / retirement scheme and an Extra Care schemes are not what we consider 'typical'. We ultimately do consider the proposed Borough-wide rate of £20 per m² to be acceptable. We are therefore pleased to support the proposed CIL levy rate for Retirement and Extra Care development.</p> <p>Thank you for the opportunity for comment.</p>
Reps	Q3	1682	Support	Support proposed 'Retirement and Extra Care' levy rate.	
Respondent	Sports England (East Office) – Mr Roy Warren				
Full Submission	<p>Concern is raised about the approach taken to assessing needs for outdoor and indoor sports provision in the IDP for the following reasons:</p> <p>1. The interim approach to assessing needs for outdoor and indoor sport in the IDP is not robust and would not accord with any established guidance for assessing community sports facility needs such as Sport England's Playing Pitch Strategy guidance that has been referred to in the IDP and the Sport England's Assessing Needs and Opportunities guidance. It is therefore essential that these interim assessments are replaced as soon as possible by a robust needs assessment and strategy in order to inform and justify the draft Regulation 123 list in the CIL document and the estimated infrastructure costs associated with sports provision in table 1 of the CIL document. The current assessment would not stand up to scrutiny and the needs identified are unlikely to be representative of the extent and nature of actual needs.</p> <p>Paragraphs 11.19 and 11.36 of the IDP suggest that the completion of the sports audit may be uncertain. This is of concern as the completion of the audit is considered essential in the context of the limitations of the theoretical assessments in the IDP.</p> <p>The Council are advocated to address this by ensuring that the audit is completed before the CIL Charging Schedule reaches an advanced stage.</p> <p>2. While the preparation of an indoor and outdoor sports 'audit' is welcomed, there is a potential concern that the scope of such an audit may be insufficient for supporting the CIL. Audits conventionally assess supply and demand for sports facilities and identify needs and issues but do not usually go on to identify and prioritise specific actions and projects for addressing the identified needs which will be required for the IDP and the related CIL. An indoor and outdoor sports strategy (which incorporates an audit) is required to provide an appropriate and robust basis for identifying sports infrastructure needs in an IDP which can inform specific projects to be included in a Regulation 123 list.</p>				

	Policy, Para, Section	Rep No	Object/ Support	Representation	Council's initial response
	<p>To address this the Council is urged to ensure that the brief for the work is for an indoor and outdoor sports facility strategy rather than an audit to avoid a potential scenario where the scope of a completed audit is inadequate to support the IDP and CIL. It is advocated that the brief requires a strategy to be prepared in accordance with Sport England's Playing Pitch Strategy guidance (playing pitches) and Assessing Needs and Opportunities guidance (other sports facilities)</p> <p>In any case, a strategy for indoor and outdoor sport is considered to be necessary to support a future review of the Council's core strategy as well as assisting with the delivery of other Council services such as leisure, property etc in view of the absence of an up-to-date and robust assessment of needs to objectively inform strategic decisions about community sports facility provision in Southend.</p> <p>Sport England would be willing to provide the Council with further advice and support in relation to strategy preparation.</p>				
Rep	Q1	1681	Object	<p>The evidence base used in the IDP for outdoor and indoor sport is currently considered inadequate due to the theoretical assessments not being robust. There is also concern that the proposed indoor and outdoor sports audit will not be in the form of a strategy.</p> <p>These concerns can be addressed through the production of an indoor and outdoor sports facility strategy prepared in accordance with Sport England's relevant guidance. Sport England would be willing to provide the Council with further advice and support in relation to strategy preparation.</p>	<p>See paragraph 4.10 and 4.11 in this Overview Report for details of how this concern is being addressed.</p>
Respondent	Essex County Council – Mr Keith Blackburn				
Full Submission	<p>I am writing on behalf of Essex County Council (ECC) to give its formal response to Southend's Preliminary Draft Charging Schedule (PDCS) for CIL .</p> <p>ECC wishes to stress the positive relationship which has been built up over time between ECC, Southend and its two neighbouring Essex Districts, Castle Point and Rochford, including through Thames Gateway South Essex. ECC particularly welcomes the statement in para.1.14 of the PDCS document which states that Southend will wish to work with ECC on projects on the A127 and A13. ECC will wish to continue to work collaboratively with Southend in ECC's role as Highway Authority in Castle Point and Rochford and in developing projects through the Integrated County Strategy which includes Southend, Thurrock , the 12 Essex Districts and ECC. ECC is aware that Southend is a unitary authority over which ECC has less influence than over Essex Districts on CIL and other matters. The next section answers some of the detailed questions posed by Southend in the PDCS.</p> <p>Q1 Do you agree with the contents of the Infrastructure Delivery Plan and does the evidence show there is a sufficient funding gap and justification for CIL?</p>				

	Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
	Yes Q6. Do you consider that the draft instalment policy is reasonable? ECC supports the proposed instalment policy as it involves a smaller number of instalments than some other Charging Authorities in Greater Essex have offered .ECC has stressed its preference for a smaller number of instalments. Q11 .ECC wishes to express its broad support for Southend's CIL and its wish to work with Southend on projects such as the A127 and A13. It also wishes to suggest that Southend should complete an equality impact assessment prior to finalising the schedule. ECC has declined to answer questions 2-5 and 7-10 as it feels that to answer them might be seen as trying to 'second guess' Southend's assessment which it would not wish to do. It has taken a similar stance in responding to PDCS and DCS documents from Essex Districts.				
Reps	Q11	1694	Support	ECC wishes to express its broad support for Southend's CIL and its wish to work with Southend on projects such as the A127 and A13. It also wishes to suggest that Southend should complete an equality impact assessment prior to finalising the schedule. ECC has declined to answer questions 2-5 and 7-10 as it feels that to answer them might be seen as trying to 'second guess' Southend's assessment which it would not wish to do. It has taken a similar stance in responding to PDCS and DCS documents from Essex Districts.	Equalities Analysis drafted to form part of the DCS consultation.
	Q6	1693	Support	ECC supports the proposed instalment policy as it involves a smaller number of instalments than some other Charging Authorities in Greater Essex have offered .ECC has stressed its preference for a smaller number of instalments.	
	Q1	1692	Support	Yes	
	Q11	1691	Comment	ECC wishes to stress the positive relationship which has been built up over time between ECC, Southend and its two neighbouring Essex Districts, Castle Point and Rochford, including through Thames Gateway South Essex. ECC particularly welcomes the statement in para.1.14 of the PDCS document which states that Southend will wish to work with ECC on projects on the A127 and A13. ECC will wish to continue to work collaboratively with Southend in ECC's role as Highway Authority in Castle Point and Rochford and in developing projects through the Integrated County Strategy which includes Southend, Thurrock , the 12 Essex Districts and ECC. ECC	

	Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
				is aware that Southend is a unitary authority over which ECC has less influence than over Essex Districts on CIL and other matters	
Respondent	Anglian Water				
Full Submission	<p>We are not able to provide costs of wastewater infrastructure required to serve the proposed growth. However, I would not expect there to be provision within the CIL for wastewater infrastructure. We would be pleased to engage in further discussion should wastewater network infrastructure be considered for inclusion.</p> <p>In general, wastewater treatment infrastructure upgrades to provide for residential growth are wholly funded by Anglian Water through our Asset Management Plan.</p> <p>Network improvements (on-site and off-site) are generally funded/part funded through developer contribution via the relevant sections of the Water Industry Act 1991. The cost and extent of the required network improvement are investigated and determined when we are approached by a developer and an appraisal is carried out. There are a number of payment options available to developers. Options include deducting the revenue that will be raised from the newly connected dwellings (through the household wastewater charges) over a period of twelve years off the capital cost of the network upgrades. The developer then pays the outstanding sum. Further information can be found at: http://www.ofwat.gov.uk/consumerissues/selflay/</p>				
Reps	Q11	1695	Comment	We are not able to provide costs of wastewater infrastructure required to serve the proposed growth. However, I would not expect there to be provision within the CIL for wastewater infrastructure. We would be pleased to engage in further discussion should wastewater network infrastructure be considered for inclusion.	
	Q11	1696	Comment	In general, wastewater treatment infrastructure upgrades to provide for residential growth are wholly funded by Anglian Water through our Asset Management Plan.	
	Q11	1697	Comment	Network improvements (on-site and off-site) are generally funded/part funded through developer contribution via the relevant sections of the Water Industry Act 1991. The cost and extent of the required network improvement are investigated and determined when we are approached by a developer and an appraisal is carried out. The cost and extent of the required network improvement are investigated and determined when we are approached by a	

	Policy, Para, Section	Rep No	Object/ Support	Representation	Council's initial response
				developer and an appraisal is carried out. There are a number of payment options available to developers. Options include deducting the revenue that will be raised from the newly connected dwellings (through the household wastewater charges) over a period of twelve years off the capital cost of the network upgrades. The developer then pays the outstanding sum.	
Respondent	Savills on behalf of Cogent Land LLP				
Full Submission	Representation submitted on behalf of Cogent Land LLP				
	<p>1.0 Savills (UK) Limited (Savills) has been asked by Cogent Land LLP (CLL) to prepare the following representation in respect of the emerging Southend-on-Sea Borough Council (SBC) Preliminary Draft Charging Schedule (PDCS).</p> <p>1.1 Savills, as part of the HBF CIL Initiative, is representing house builders and landowners nationwide on emerging CIL Charging Schedules to scrutinise the available evidence, notably in respect of infrastructure provision and the testing of viability against both the emerging planning policy requirements and the housing land supply. This representation has therefore been submitted to influence the emerging PDCS published for public consultation in the period July to September 2014.</p> <p>1.2 Savills has been asked by CLL to prepare the following formal response to the PDCS consultation following concerns with the approach proposed by SBC, notably regarding the viability of the proposed rates for residential development. CLL are pursuing a number of opportunities in the Borough and is therefore keen to ensure that the residential CIL rates are viable.</p> <p>1.3 Following a thorough review of the PDCS and supporting evidence, CLL wish to make the following key observations:</p> <ul style="list-style-type: none"> ▪ The Council does not currently have an up-to-date Objectively Assessed Housing Needs (OAHN) or NPPF-compliant Local Plan including site allocations. We would therefore recommend that this work is undertaken to inform the CIL process, prior to the Draft Charging Schedule being published for consultation; ▪ The proposed "nominal" CIL rates are not supported by the Viability Study; ▪ An insufficient viability buffer has been applied to the proposed CIL rates; and <p>A number of the assumptions adopted in the Viability Study are inappropriate and result in the Viability Study over-estimating the capacity for CIL.</p>				

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
			<p>1.4 The following representation is structured in four parts. Part 1 outlines commentary on the proposed CIL charging rates and the adopted Southend-on-Sea Core Spatial Strategy. Part 2 provides commentary on the Viability Study prepared by BNP Paribas RE (BNP). Part 3 addresses infrastructure and Section 106 contributions, as proposed by the emerging Regulation 123 List, and finally Part 4 looks at the effective operation of CIL.</p> <p>Part 1 - The Proposed CIL Charges and the Core Spatial Strategy</p> <p>1.5 This representation is made in the context of the Community Infrastructure Levy (Amendment) Regulations 2014 and relevant statutory guidance (February 2014). These Regulations and associated guidance came into force on 24 February 2014. The publication of the PDCS, after this date, means that the Charging Schedule will be subject to the requirements of these latest set of Regulations and Guidance.</p> <p>“Striking an Appropriate Balance”</p> <p>1.6 Viability is at the forefront of Local Plan and CIL testing. It is therefore important that the Council fully understands the trade-off that occurs between affordable housing, Section 106 contributions and CIL when assessing the potential for charging a CIL in the Borough.</p> <p>1.7 The fundamental premise is that to enable delivery, sites must achieve a competitive land value for the landowner and provide developers the required return on investment, otherwise development will be stifled. This is recognised by the National Planning Policy Framework¹ (NPPF) and is ‘in-built’ within the CIL Regulations (as amended). It is also the basis of the definition of viability within the Harman report.²</p> <p>1.8 Regulation 14(1) of the CIL Regulations sets out the key test that the Charging Schedule is measured against: <i>“In setting rates (including differential rates) in a Charging Schedule, a Charging Authority must strike an appropriate balance between –</i> a) <i>The desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking in to account other actual and expected sources of funding; and</i> b) <i>The potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.”</i></p> <p>1.9 The CIL Regulations previously required the Charging Authority to ‘<i>aim to strike what appears to the Charging Authority to be an appropriate balance...</i>’ (emphasis added), but the amendments now mean that the Charging Authority is required to ‘strike an appropriate balance’. The onus has therefore shifted away from being a matter of opinion to a matter of fact.</p> <p>1.10 It is therefore of paramount importance that the proposed CIL rates are supported and consistent with the viability evidence and that the Council has undertaken sufficient work to demonstrate that the proposed rates will not put their housing supply at risk.</p>	

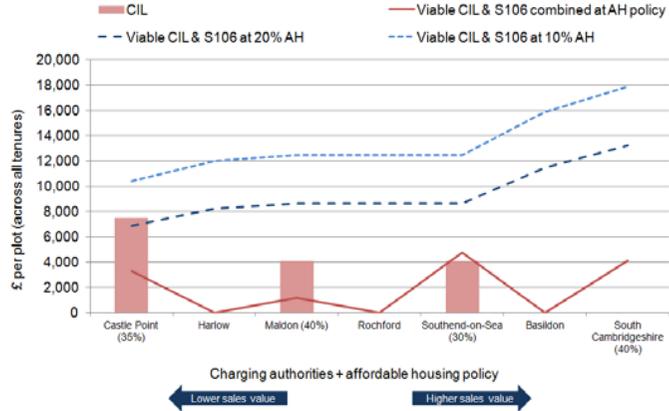
Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
-----------------------	--------	----------------	----------------	----------------------------

Savills Research

1.11 Savills has recently published research which assesses the impact of CIL on development viability, notably the delivery of affordable housing[1]. This research, which is attached to this representation, demonstrates the trade off required to enable a deliverable five year housing land supply, in respect of the level of CIL against affordable housing provision. The key finding of the report is that *“For local planning policies to be viable, there is a three way trade-off between the costs of CIL, Section 106 funding of infrastructure and affordable housing policy, with the costs of local standards and the move to zero carbon being additional costs to be factored into the trade-off”* (emphasis added).

1.12 The research notes that the ability of large greenfield sites to support CIL, Section 106 and affordable housing provision is largely driven by the strength of the local housing market. Where the housing market is stronger (higher £ per sq ft) the total “pot” available for these contributions increases. In contrast, lower value areas see reduced viability and subsequently a reduced “pot”. It therefore becomes a question for Local Authorities to consider what the appropriate trade-off should be, taking into account adopted affordable housing policies.

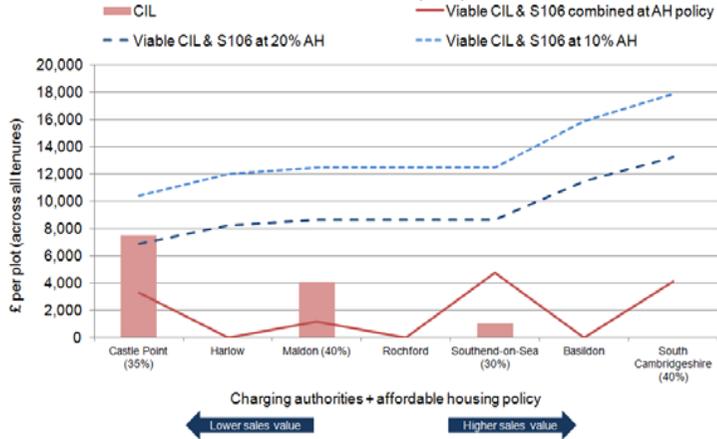
1.13 In the graph below, we have applied the Savills benchmarking model to SBC’s maximum residential CIL rate (£60 per sq m) alongside a number of Local Authorities that have also published CIL rates; to assess the viability of this proposed rate.



1.14 This illustrates that the viable level of CIL and Section 106 (combined) at the policy level of 30% affordable housing is just above the proposed CIL rate (£60 per sq m) across all units. Whilst the proposed rate is therefore indicated as being below the maximum CIL rate, the Council needs to consider the level of residual Section 106 and 278 contributions that sites will be expected to provide post-CIL, as the model indicates a limited ‘headroom’.

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
-----------------------	--------	----------------	----------------	----------------------------

1.15 We have also looked at the proposed rate for the strategic sites (£15 per sq m), which will apply to the following sites:



1.16 This shows the viable level of CIL and Section 106 (combined) at the policy level of 30% affordable housing is significantly above the proposed CIL rate (£15 per sq m) across all units. However, as discussed above, it is important that the Council clearly sets out the infrastructure that will continue to be sought through Section 106/278 to “mitigate the impact of development”.

1.17 The model currently indicates ‘headroom’ of approximately £3,700 per unit assuming 30% affordable housing and £15 per sq m. The Council therefore needs to consider whether this is a suitable allowance based on the level of Section 106 that will continue to be sought on developments of this scale. This is essential as failure to include this in the viability testing could result in inappropriate CIL rates being adopted, which in turn will threaten the delivery of the housing supply.

Delivery of the Development Plan

1.18 As discussed above it is critical for the adequate delivery of housing that CIL does not threaten the delivery of the development plan. The National Planning Policy Framework (NPPF) confirms and supports this by highlighting that for Local Plans to be found ‘sound’, the identified housing supply should be deliverable within the plan period. Paragraph 137 of the NPPF states:

“Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development,

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
<p><i>such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable."</i></p>				
<p>1.19 The introduction of CIL represents an additional obligation and therefore must be assessed holistically to establish the combined impact of CIL and existing planning obligations to ensure that the delivery of development would not be threatened by the introduction of CIL. We have therefore reviewed the identified housing supply for the Borough to determine whether the proposed CIL rates would threaten the delivery of development within the district.</p>				
<p>The Core Strategy</p>				
<p>1.20 The CIL Guidance³ confirms that Local Authorities must have an "up-to-date" development strategy for the area in which they propose to charge CIL. In addition, it states that a Charging Authority must be able to demonstrate how the proposed levy rates will contribute towards the implementation of the Local Plan. This is not exclusive in approach and stems from the contents of Paragraph 137 of the NPPF highlighted above.</p>				
<p>1.21 SBC has a Core Strategy, adopted in 2007, along with Saved Policies from both the Southend Local Plan 1994 and the Essex and Southend Replacement Structure Plan 2001. The local policy context for Southend therefore precedes the introduction of the NPPF. The Council has indicated that they intend to undertake a review of their Core Strategy, but this has not been undertaken at this stage.</p>				
<p>1.22 The Core Strategy contains a housing target of 6,500 dwellings over the plan period (2001 – 2021). This equates to a figure of 325 dwellings per annum. The 2013 SHLAA update indicates that the intention is to 'front load' this figure (as shown in the table below) given the apparent overprovision in completions within the early years of the plan period.</p>				
<p>Windfall Development</p>				
<p>1.23 We have noted that a substantial proportion of future dwellings in the Borough are intended to be delivered through windfall development. The NPPF (Paragraph 48) clearly sets out that Councils can include windfall sites in their five year land supply figures, but only where there is compelling evidence - <i>"Local planning authorities may make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens."</i>⁵</p>				
<p>1.24 We have therefore looked at historic evidence (see table below), which the Council has produced. This indicates the reliance on windfall development to deliver a significant proportion of the Borough's housing need.</p>				

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
			<p>1.25 The Council has identified a strong and consistent historic delivery of windfall sites. However Paragraph 48 not only requires Authorities to show compelling evidence of delivery, but also that Windfall sites will continue to provide a reliable source of supply.</p> <p>1.26 SBC is a reasonably constrained district in both administrative and physical terms. The potential for windfall development to be reliable in the future is therefore compromised. We would advise caution in respect of a reliance on windfall development to bring forward a significant proportion of housing supply in the future. No evidence is provided that current rates of delivery will endure. In respect of CIL, care should be taken to ensure that there would not be an over-reliance on windfall development such that the anticipated collection of CIL funding, and consequently infrastructure delivery are compromised.</p> <p>1.27 The viability testing has been undertaken across a range of areas within the Borough and across a range of scales and typologies of development in an attempt to address this. The results of this testing shows that a significant number of scenarios across a significant number of areas would be rendered unviable by the proposed CIL rates (in particular the "nominal rates"). We are therefore concerned that a range of development types across all identified value areas in the Borough will not come forward for development if an unviable CIL rate is applied. A point further strengthened by the fact that a number of these development scenarios are already being shown to be on the margins of viability prior to the introduction of a CIL charge.</p> <p>1.28 This is a serious concern, indicating that the areas are at the margins of viability and therefore the application of a CIL charge could threaten the delivery of the Plan. We welcome therefore the Council's inclusion of a buffer on the proposed viability rates, but question whether the buffer is set at the correct level given the assumptions made in the testing scenarios, as discussed further in the sections below.</p> <p>Housing Supply & Delivery</p> <p>1.29 In its Core Strategy, the Council identifies a requirement for 6,500 new homes over the plan period (2001 – 2021). A Strategic Housing Land Availability Assessment (SHLAA) was produced in 2010 to identify a housing land supply to support the delivery of the identified housing need. The SHLAA was subsequently updated in 2012 and 2013.</p> <p>1.30 The 2013 SHLAA Update identifies housing completions as per Table 2 shown above. This illustrates a good level of delivery up until 2007, where completions fell well below the Core Strategy annual target of 325 dwellings. In all but one year since 2007 housing completions have been below the Core Strategy target. In calculating its five year housing land supply the NPPF (Paragraph 47) requires for Councils to:</p> <p><i>"identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a</i></p>	

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
			<p><i>realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land</i>"6</p> <p>1.31 When taking an average of completions across the plan period, SBC is on target to meet the housing need identified in the Core Strategy. However, we consider it unacceptable for a Council to use an 'average' figure to make up for shortfall in completions within other years and effectively 'mask' a persistent under delivery. As such we would expect a 20% buffer to be applied to the calculation of Objectively Assessed Need (OAN) to take account of the persistent under delivery in housing across the Borough since 2007. We therefore believe that the Council currently has a housing land supply of 4.75 years, as applying a 20% buffer to the OHN indicates a need for 2,003 dwellings.</p> <p>Based on this above analysis, it is therefore vital that all identified sites in the Borough come forward. The Council should therefore take steps to ensure that the CIL charges are set well below the margins of viability to ensure that they do not threaten the delivery of the identified housing need. An argument supported by the CIL Guidance, which states that "<i>Charging Authorities should set a rate which does not threaten the ability to develop viably the sites and scale of development identified in the relevant Plan</i>".7</p> <p>Part 2 - The CIL Rates & Viability Study</p> <p>2.1 Section 211 (7a) of the Planning Act 2008 (as amended) which established CIL, requires SBC to use "appropriate available evidence" to inform the Charging Schedule, which in the case of the PDCS is the BNP CIL Viability Study (May 2014) and Viability Addendum Note (July 2014). Owing to the key test of Regulation 14(1)8 it is important that the viability appraisals prepared are fit for purpose. In addition, at Examination the Charging Schedule will need to be supported by "relevant evidence"9.</p> <p>2.2 At this stage no alternative viability evidence has been prepared, although Savills or CLL may do so at the Draft Charging Schedule stage if it is felt this is required. We offer below some initial thoughts on the assumptions within the viability assessments and outline our concern about the interpretation of the viability evidence when setting the proposed CIL rates.</p> <p>Benchmark Land Values (BLVs) Values</p> <p>2.3 The approach taken by BNP in assessing the BLVs is complex and does not appear to be directly linked back to the five year land supply. The four BLVs quoted do not appear to be supported by market evidence and there is no explanation of how these BLVs apply to each of the identified market areas.</p> <p>2.4 The CIL Guidance states that "<i>A Charging Authority should directly sample an appropriate range of types of sites across its area....The exercise should focus on strategic sites on which the relevant Plan relies, and those sites where the impact of the levy on economic viability is likely to be most significant.</i>"10 BNP acknowledge this limitation by commenting that they only give "<i>a broad indication of likely land values</i>"11, noting "<i>that other site uses and values may exist</i>" which have been excluded from their viability testing. It is also unclear whether the BLVs are per gross or net developable acre.</p>	

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
			<p>2.5 We would therefore ask that SBC provide further market evidence and commentary to explain, in relation to each market area, which BLV is most appropriate and how this relates back to the land supply coming forward in these areas (i.e. which BLV is most appropriate in each market area). This will ensure that the analysis of the viability appraisals in each area is appropriate given the nature of the sites coming forward for development.</p> <p>Application</p> <p>2.6 Large, strategic sites require a significant amount of land to enable them to deliver certain items of on-site infrastructure, such as public open space and educational facilities. Consequently the reduction from gross land area to net developable area can range substantially with reductions ranging from 40 – 60%.</p> <p>2.7 Whilst the development density applied to the net site area may be appropriate within the Viability Study, the gross land take is particularly important when comparing the Residual Land Value (RLV) with the BLV. If the BLV is reported on a per net acre basis, it is therefore important that the RLV is applied to the correct net area. Similarly, if the BLV is on a gross basis then the RLV should be applied to the total (gross) site area.</p> <p>2.8 Looking at the viability summary tables contained in the BNP viability study¹² it is unclear whether the BLV has been applied to the net or gross site area. We would therefore ask that BNP confirm what assumption has been made as this is critical in establishing whether or not the proposed rates of CIL are viable.</p> <p>Professional Fees</p> <p>2.9 CLL is concerned that the level of professional fees adopted is too low (10% across all typologies). In our experience, the level of professional fees do not vary across location or market areas but depend on the size and complexity of the site in question. We would therefore advocate that large greenfield and complex brownfield sites are likely to attract higher professional fees on account of enabling works and additional abnormal costs (i.e. remediation, demolition).</p> <p>2.10 We would therefore request that a minimum allowance of 12% for professional fees be adopted across all typologies to reflect the nature of the five year land supply coming forward.</p> <p>Cashflow & Distribution of Costs</p> <p>2.11 We understand that BNP adopt a bespoke spreadsheet model to undertake the appraisals for each of the typologies. Within the Viability Study, the appraisal summary sheet detailing the inputs for each typology has been attached as an appendix to the report. There is little explanation in the viability assessment on the distribution of the costs throughout the development period. We would welcome further disclosure of the cashflow assumptions used during the appraisals.</p>	

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
			<p>Developer's Profit</p> <p>2.12 The minimum acceptable profit margin for the lending institutions and national house builders is a minimum of 20% on GDV blended across both the private and affordable dwellings. At present, the viability appraisals assume 20% on GDV for the private housing and 6% on cost for the affordable, which equates to a blended rate of approximately 17.5% on GDV.</p> <p>2.13 We would therefore ask that an allowance of 20% on GDV is included in the viability testing. This profit level was endorsed via the Manor appeal decision in Shinfield.¹³ It has also been included in Maldon District Council's supporting viability work produced by HDH Planning & Development who are currently preparing supporting viability evidence for 24 Local Authorities.¹⁴</p> <p>Interpretation of Viability Results</p> <p>2.14 We have reviewed the Viability Study supporting the PDCS, in particular the results of the viability appraisals run by BNP. Our client's particular concern relates to the "nominal" rate of £20 per sq m proposed by BNP, which has been applied to Market Areas 1-3.</p> <p>2.15 We have reproduced the viability appraisal results for Typologies 7-9, which are based on policy compliant affordable housing (30%) provision and a residual Section 106 allowance of £1,012 per unit:</p> <p>2.16 All of these results show that the Market Area 1-3 sites cannot support a CIL rate, even with varying BLVs. A point acknowledged by BNP, who commented "<i>the results indicate that viability of residential development is currently challenging in certain locations</i>". Even with reductions in affordable housing levels, BNP acknowledges that "<i>the results indicate that viability of residential development is currently challenging in certain locations</i>"¹⁵. These certain locations refer to Market Areas 1-3, with Areas 2-3 remaining widely unviable and Area 1 completely unviable.</p> <p>2.17 We therefore question how a CIL rate of £20 per sq m can be justified when the supporting viability evidence clearly shows that it is unviable. A point that becomes even harder to understand when you consider the local housing supply position, which indicates a reliance on windfall sites and a previous under-delivery. The Council does not therefore know where a significant amount of housing will be delivered, which puts an even greater importance on the CIL rates be set at a viable rate in all market areas. The following commentary by BNP is therefore concerning: <i>"For residential schemes, the application of CIL is unlikely to be an overriding factor in determining whether or not a scheme is viable. When considered in context of total scheme value, CIL will be a modest amount, typically accounting for between 0.9% and 1.6% of value. Some schemes would be unviable even if a zero CIL were adopted. We therefore recommend that the Council pays limited regard to these schemes."</i></p> <p>2.18 The CIL Guidance clearly states that "<i>If the evidence shows that the area includes a zone, which could be a strategic site, which has low, very low or zero</i></p>	

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
			<p><i>viability, the Charging Authority should consider setting a low or zero levy rate in that area. The same principle should apply where the evidence shows similarly low viability for particular types and/or scales of development.</i>" A point further emphasised by the CIL Guidance which highlights that Local Authorities have a positive duty to show that their CIL rates are appropriate: <i>"A Charging Authority must use 'appropriate available evidence' to inform their draft Charging Schedule...Charging Authorities need to demonstrate that their proposed levy rate or rates are informed by 'appropriate available' evidence and consistent with that evidence across their areas as a whole.</i>"</p> <p>2.19 A point raised and supported by the Trafford Metropolitan Borough Council CIL examination, where the evidence supporting the CIL rate for apartments showed that in the moderate and lower value bands (with a proposed CIL rate of £10/m² in each case) sites were unviable. The Examiner discussed this point and commented: <i>"This base rate debate, concerning employment development types [albeit equally applicable in this instance to apartments in moderate and low value areas as noted above], raises important issues about the CIL charging concept and about the process of Examination. I have weighed these issues carefully."</i> He also went on to say: <i>"I must give greater weight [than to the need to spread the burden of infrastructure] to the fact that CIL examination is an evidence based process and charges cannot, in my view, be imposed where the Council's own evidence base indicates that developments are not viable."</i> (emphasis added). The Examiner therefore concluded these £10/m² rates be reduced to £0/m² and highlighted the importance of Paragraph 8 of the CIL Guidance (2013), which says that CIL should have a 'positive economic effect'.</p> <p>2.20 This approach has been further supported by the Richmond Upon Thames Borough Council CIL Examination¹⁶, where the evidence supporting the standard CIL charge for other development (with a proposed CIL rate of £25 per sq m) were shown to be unviable by the supporting viability evidence. The Examiner discussed this point and commented <i>"Local economic conditions in general cannot be taken as a demonstration that these uses could bear the levy"</i>¹⁷. The Examiner therefore concluded the £25 per sq m rate be reduced to £0 per sq m, noting <i>"the rate poses a threat to the viability of schemes. Imposing it would not meet the drafting requirements or the NPPF guidance that CIL charges support and incentivise new development"</i>. A conclusion which the Examiner is led to by highlighting that <i>"the guidance is clear that the rate should be consistent with the evidence"</i>¹⁸</p> <p>2.21 In light of these decisions, we are therefore of the view that a "nominal" rate of £20 per sq m is not appropriate. Particularly as the evidence base prepared by BNP clearly indicates that the application of a CIL rate renders sites unviable.</p> <p>2.22 We would therefore ask that SBC review their CIL rates.</p> <p>Part 3 - Emerging Regulation 123 List / Infrastructure & Section 106/278 Regulation 123 List</p> <p>3.1 The new Community Infrastructure Levy (Amendment) Regulations 2014 require the Regulation 123 list to form part of the evidence base¹⁹. We therefore welcome the publication of a draft Regulation 123 list of infrastructure for the Borough. Whilst we acknowledge this is not the final version, nor will it ever be</p>	

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
<p>exhaustive, it does serve as a useful guide as to the direction that the Council envisages taking in providing for the delivery of infrastructure to support the Plan.</p>				
<p>3.2 The proposed "Regulation 123 Lists" comprises the following:</p>				
<ul style="list-style-type: none"> ▪ <i>Schools, other educational facilities and employment schemes (excluding any facility/provision that will primarily meet demand arising directly from a large site)</i> ▪ <i>Health, social wellbeing and emergency services (excluding any facility that will primarily meet demand arising directly from a large site)</i> ▪ <i>Utility infrastructure except where related to a specific site</i> ▪ <i>Highway and public transport improvements except where related to site specific mitigation or demand directly arising from a site</i> ▪ <i>Flood defences and management of unstable land excluding any local and site specific mitigation measures to ensure a development meets national requirements</i> ▪ <i>Waste facilities excluding any site specific mitigation measures</i> ▪ <i>Social and community facilities (excluding any facility that will primarily meet demand arising directly from a large site)</i> ▪ <i>Leisure and recreational facilities (excluding any facility that will primarily meet demand arising directly from a large site)</i> ▪ <i>Green infrastructure and open space/public realm except where mitigating for the loss of existing provision or primarily meeting demand arising directly from a large site</i>²⁰ 				
<p>3.3 Whilst CLL welcomes a number of the items included on the Regulation 123 list, and the general approach taken by the Council in linking the Regulation 123 list directly with the IDP; we would highlight that a number of infrastructure projects included on the list are also likely to be delivered through Section 106. There is subsequently a high potential for 'double dipping'. We are therefore concerned that a significant amount of infrastructure will continue to be sought through "site mitigation" Section 106 obligations for items of infrastructure that could otherwise have been funded by CIL and that an insufficient allowance has been tested in the supporting Viability Study.</p>				
<p>3.4 The Council should also be aware that the use of Section 106 obligations post-CIL are limited, as explained in the CIL Guidance – <i>"At that point no more may be collected in respect of a specific infrastructure project or a type of infrastructure through a section 106 agreement, if five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy. Where a section 106 agreement makes provision for a number of staged payments as part of a planning obligation, these payments will collectively count as a single obligation in relation to the pooling restriction"</i> ²¹ (emphasis added).</p>				
<p>3.5 It is therefore unnecessary to repeatedly exclude demand resulting from large sites and site specific mitigations as the Section 106 regulations already specify that this must be so. This is important as a single development and Section 106 agreement can have more than one obligation in relation to a type of</p>				

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
			<p>infrastructure, which further restricts the Councils' ability to pool obligations. We would therefore recommend that the Council ensure that they understand the implications of Section 106 pooling post-CIL and its impact on their intended delivery mechanism for infrastructure, with particular focus on the use of planning obligations to secure contributions towards Education provision.</p> <p>3.6 CLL would like to see further refinement of the proposed Regulation 123 list in conjunction with the production of an SPD on Planning Obligations to ensure that any potential for 'double dipping' is reduced. In addition to this whilst we welcome the close relationship between the IDP and the Regulation 123 list, the meaning of a number of the items on the Regulation 123 list is unclear and furthermore a number of items included on the list are very similar. We would therefore request that the level of complexity is reduced and clarity improved on the Regulation 123 List to ensure potential for 'double dipping' and/ or misinterpretation is minimised and certainty is provided to the development industry.</p> <p>Section 106 Obligations vs. CIL</p> <p>3.7 The CIL Guidance places a strong emphasis on the need for Local Authorities to demonstrate, when setting their Charging Schedule, that they have been realistic, when testing viability, about what residual Section 106 and 278 requirements will remain: <i>"When a Charging Authority introduces the levy, section 106 requirements should be scaled back to those matters that are directly related to a specific site... For transparency, Charging Authorities should have set out at examination how their section 106 policies will be varied, and the extent to which they have met their section 106 targets"</i>22.</p> <p>3.8 As noted in 3.6 above, we would recommend that alongside its draft Regulation 123 list and CIL Charging Schedule the Council should be seeking to produce a Section 106 and Planning Obligations SPD. The production of an SPD would support a holistic and realistic approach to the introduction of CIL and best ensure that the delivery of the plan is not compromised.</p> <p>3.9 Section 106 and CIL are inextricably linked and as such should not be considered in isolation. It is therefore of paramount importance that the Council produces a draft Planning Obligations SPD document to clearly set out how CIL and Section 106 will work alongside one another on all sites. This will provide certainty to the development industry and ensure that no 'double-dipping' occurs. This should be prepared in conjunction with the draft Regulation 123 list to ensure that no items included on the list are items that the Council anticipates wanting to collect through Section 106.</p> <p>3.10 Having reviewed this list we do not believe that the operation of CIL and Section 106 has been clearly defined and properly accounted for within the viability evidence. We are subsequently concerned about the scale of Section 106 contributions that will continue to be sought alongside the proposed CIL rates on sites within the Borough, particularly strategic or large sites. Given that a number of development scenarios tested were shown to be unviable irrespective of the introduction of a CIL, extra care should be taken to ensure that the obligations required through S.106 in addition to CIL do not combine to threaten the delivery of development in the Borough.</p>	

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
			<p>3.11 In preparing this document, we would advise that the Council has suitable regard to the provisions of Regulation 122 of the CIL Regulations²³ which states: <i>"A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is –</i> a) <i>necessary to make the development acceptable in planning terms;</i> b) <i>directly related to the development; and</i> c) <i>fairly and reasonably related in scale and kind to the development."</i></p> <p>3.12 We would therefore highlight again that it is critical that the Council produces a Planning Obligations Strategy SPD outlining what is included within each of these generic infrastructure types. This will ensure that Section 106 and CIL can be used effectively to secure infrastructure, without 'double dipping' occurring.</p> <p>Part 4 – Effective Operation of CIL</p> <p>4.1 Despite the narrow Regulatory requirements of the Examination, our clients urge SBC to make clear at the earliest opportunity the supporting documentation needed to operate CIL and to make it available for consultation. Practically, this needs to be done prior to the Examination so that participants and stakeholders are able to comment on the effective operation of CIL. Whilst this supporting information is not tested at Examination, this information is critical to allow for the successful implementation of CIL and to demonstrate that the CIL has been prepared positively and supports sustainable development.</p> <p>4.2 The documentation should include:</p> <ul style="list-style-type: none"> ▪ Guidance on how to calculate the relevant 'chargeable development'/level of CIL; ▪ Guidance on liability to pay CIL/Appeals process; ▪ Policy for payments by instalments; ▪ Approach to payments in kind; ▪ Guidance on relief from CIL and a policy on exceptional circumstances for relief from CIL. <p>4.3 We provide further comment on some of these points below.</p> <p>Instalments Policy Methodology</p> <p>4.4 We welcome the publication of a draft Instalments Policy by the Council.</p>	

Policy, Para, Section	Rep No	Object/ Support	Representation	Council's initial response
-----------------------	--------	-----------------	----------------	----------------------------

4.5 An Instalments Policy is particularly important for larger sites, notably in respect of upfront infrastructure costs typically associated with strategic development that have a significant impact on the development's cashflow. A proposed Instalment Policy should aim to reflect, as closely as possible, the timing of delivery of the development, to ensure that the CIL does not put unnecessary pressure on cashflow and viability.

4.6 We would therefore recommend that the Instalments Policy is amended to reflect the following:

Sum	Number of Instalments	of Payments
Less than £25,000	1	Full payment within 120 days of commencement of development
£25,000 - £74,999	3	10% of payment within 120 days of commencement 40% of payment within 180 days of commencement 50% of payment within 270 days of commencement, or remaining balance to be paid upon substantial completion should this date fall within 270 days
£75,000 or more	4	10% of payment within 120 days of commencement 30% of payment within 360 days of commencement 40% of payment within 720 days of commencement 20% of payment within 900 days of commencement, or remaining balance to be paid upon substantial completion should this date fall within 900 days

Testing

4.7 However, as SBC is able to remove an instalments policy at any time, we would recommend that the viability testing does not include phased payments. This will ensure that sites are able to support the proposed CIL rates in the event that an instalments policy is not in place.

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
Relief				
<p>4.8 It is not the intention of the Council to offer discretionary charitable or social housing relief at present. We would remind the Council that such policies can only be applied if they are in force prior to an application being submitted, therefore the need for the policy will arise prior to it being made available.</p>				
<p>4.9 We do not consider there to be any detriment arising from the Council making such reliefs available within policies as part of the Charging Schedule, as the Council will still retain control over the application of the policies. There are strict tests surrounding the availability and applicability of Exceptional Circumstances Relief. It would therefore only be applicable to those schemes that can justify the need for it and meet those strict tests.</p>				
<p>4.10 There may well be instances where CIL (even with a buffer) would render development, which the Council may otherwise want to support, unviable. For example, there can be instances where enabling development is permitted to support the delivery of some other planning objectives, such as ensuring the future of listed buildings or to facilitate the relocation of particular uses. With the lack of flexibility under CIL compared to Section 106, it is likely that such developments will simply not happen and important policy objectives might be undermined. It is also the case that where residential development is rendered unviable, by the cumulative impact of CIL and Section 106, that the only option open to the Council will be to negotiate on affordable housing. That may not always be the most appropriate planning balance.</p>				
<p>4.11 We urge therefore the Council to make available Exceptional Circumstances Relief from the adoption of CIL so that it may be available within the area should planning or other policy considerations indicate that would be the most desirable outcome.</p>				
Payment in Kind				
<p>4.12 The CIL Regulations now allow for Payment in Kind through the provision of infrastructure. However, there remain notable deficiencies in the operation of CIL, caused primarily by the CIL Regulations, which places MDC and the development industry in a difficult position.</p>				
<p>4.13 The scope to reduce the CIL liability via utilisation of Payment in Kind is therefore restricted to those items of infrastructure which are not required to mitigate the impact of a development, which for strategic sites would exclude most (if not all) site-specific and 'scheme mitigation' infrastructure.</p>				
<p>4.14 Payment in Kind is therefore not a credible option, which further emphasises the need to ensure that the Regulation 123 list does not include any items of infrastructure intended to be delivered through Section 106 agreements.</p>				
Reviewing CIL				
<p>4.15 The Council intends to monitor the operation and implementation of CIL, conducting a review of the Charging Schedule in 2018, or earlier should the market be perceived to have changed significantly.</p>				

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
			<p>4.16 The CIL Guidance outlines that Charging Authorities 'must keep their Charging Schedules under review'²⁴ to ensure that CIL is fulfilling its aim and responds to market conditions. We welcome the Council's commitment to undertake a review <i>"in 2018, or earlier should the market be perceived to have changed significantly"</i>.²⁵ However, we would recommend that regular monitoring is undertaken to ensure that any detrimental impact of CIL on housing delivery is noticed promptly and remedied. A review period of between 2-3 years from adoption, or sooner if there is a substantive change in market conditions or Central Government policy, should be publicly committed to by the Council.</p> <p>Conclusion</p> <p>4.17 Three of the key tests of the examination of a Charging Schedule are that:</p> <ol style="list-style-type: none"> i. "the Charging Authority's Charging Schedule is supported by background documents containing appropriate available evidence"; ii. "the proposed rate or rates are informed by and consistent with, the evidence on economic viability across the Charging Authority's areas"; and iii. "evidence has been provided that shows the proposed rate would not put at serious risk overall development of the area". <p>4.18 The assessment of planned development and its viability is therefore an inherent test of the Examination. The following points are therefore significant:</p> <ul style="list-style-type: none"> ▪ The Council does not currently have an up-to-date Objectively Assessed Housing Needs (OAHN) or a NPPF-compliant Local Plan. It is therefore difficult for the Council to accurately assess the potential impact of CIL on the delivery of the housing supply. We would therefore recommend that this work is undertaken to inform the CIL process, prior to the Draft Charging Schedule being published for consultation. ▪ The proposed CIL rates are at the margins of viability. Given the Council's lack of a five year land supply (applying a 20% buffer) and historic under delivery there is a subsequent risk that the CIL rates could further threaten the housing delivery in the Borough. We would therefore recommend that a minimum 40% buffer is included on all CIL rates, as all identified sites and a significant number of windfall sites need to come forward for development. ▪ The numerical inputs of the Viability Study are generally considered to be reasonable however there are some background assumptions that need to be re-tested. Our clients would therefore like to see these changes incorporated in to the appraisals and re-run. ▪ The draft Regulation 123 list is too complex and risks 'double dipping'. We would recommend that this list is simplified to include only those items that are essential for the delivery of the Aligned Core Strategy. ▪ The "nominal" rate of £20 per sq m is not supported by viability evidence and risks putting the housing supply at risk. ▪ A Planning Obligations SPD should be produced to ensure that the use of Section 106 contributions and CIL does not threaten the delivery of housing allocations and to ensure that no 'double dipping' will occur. 	

	Policy, Para, Section	Rep No	Object/ Support	Representation	Council's initial response
	4.19 Moving forward, our clients are open to a meeting with SBC and its advisors to discuss the approach taken and to discuss common ground in advance of the publication of the Draft Charging Schedule.				
Rep			Object		See comments in the Overview Report above and Appendix 2 for a response from BNP Paribas Real Estate acting for the Council in respect of viability advice.
Respondent	Savills on behalf of Roots Hall Ltd				
Full Submission	<p>On behalf of Roots Hall Ltd we have reviewed Southend-on-Sea Borough Council's Preliminary Draft Charging Schedule and associated documents and have some comments as set out below.</p> <p>Roots Hall Ltd has an interest in land in the Borough at Roots Hall SUFC and land known as Fossetts Farm, which is identified in the Core Strategy as a Priority Urban Area and as a site suitable for a football stadium.</p> <p>We are concerned generally about the impact the proposed rates in the Preliminary Draft Charging Schedule will have on developments and that it may render them unviable. Additionally, the NPPF places a strong emphasis on growth but the rates proposed in the Draft Charging Schedule are contrary to this and may in effect curb growth. Our main concerns are set out below.</p> <p>Regulation 14 of the Community Infrastructure Levy Regulations 2010 (as amended) requires that a Charging Authority, in setting levy rates, <i>'must strike an appropriate balance between'</i> the desirability of funding infrastructure from the levy and <i>'the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area'</i>. Amendments to the CIL Regulations which came into force on 24 February 2014 made an important change to Regulation 14 deleting the words "aim to" and "what appears to the Charging Authority to be" to strengthen this requirement.</p> <p>Paragraph 8 of the Community Infrastructure Levy Guidance (December 2012) provides further guidance on what is meant by the appropriate balance and states that: <i>'By providing additional infrastructure to support development of an area, the levy is expected to have a positive economic effect on development across an area. In deciding the rate(s) of the levy for inclusion in its draft Charging Schedule, a key consideration is the balance between securing additional investment for infrastructure to support development and the potential economic effect of imposing the levy upon development across their area.'</i></p> <p>It is imperative that the evidence supporting CIL:</p> <ul style="list-style-type: none"> clearly outlines, and is based on an up to date list of, the key infrastructure projects required to support development (this being the key test of the 				

Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
			<p>Regulations);</p> <ul style="list-style-type: none"> ▪ Outlines an up to date, consistent and well informed evidence base of economic viability in order to test various scenarios against CIL rates. <p>With regard to the preparation of Charging Schedules and supporting documentation it is important to have due regard to the available Government guidance, notably, the CLG Community Infrastructure Levy – an Overview (May 2011), CLG Community Infrastructure Levy Guidance (December 2012), CLG Community Infrastructure Levy Relief (May 2011), the Planning Act 2008 and the CIL Regulations 2010 (as amended). It is also important that the preparation of CIL is in line with the National Planning Policy Framework (NPPF), notably that it is delivery focused and '<i>positively prepared</i>'. Our comments are based on these publications and the Regulations.</p> <p>Paragraph 17 of the NPPF outlines 12 principles for both plan making and decision taking, notably that planning should "<i>proactively drive and support sustainable economic growth</i>". and that plan making should "<i>take account of market signals such as land prices and housing affordability</i>". Paragraph 19 states that "<i>the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth</i>".</p> <p>We are particularly concerned about the residential rates proposed in and are concerned that these could make housing developments unviable. The Viability Study (May 2014) by BNP Paribas Real Estate states:</p> <p><i>'It is also worth noting that Market Areas 1, 2 and 3 have been identified as being generally unviable and as such the application of CIL is unlikely to be the defining factor and the imposition of CIL at a zero level will not make schemes viable. Other factors (i.e. sales values, build costs or benchmark land values) would need to change to make the scheme viable. In this regard we would recommend that the Council considers a maximum nominal rate of around £20 per square metre.'</i></p> <p>We are not convinced by this justification. The report acknowledges that viability is already questionable in areas 1, 2 and 3 and therefore imposing any CIL rate, even if considered nominal, will further discourage housing development and therefore preclude growth / regeneration in these areas.</p> <p>A similar approach is taken for other uses where rates are proposed. The following extracts from the Viability Study highlight this:</p> <p><i>'At current values Hotel developments are identified as not being able to generate a surplus and in this regard we would recommend that the Council considers setting a nil or nominal rate for Hotel use.</i></p> <p><i>Should the Council wish to do so, they would be able to set a nominal rate of CIL on all other uses of perhaps no more than £10 per square metre. A nominal rate is unlikely to be a significant factor in developers' decision making and could be absorbed without having a significant impact on viability across the Borough. In addition, the Council could consider excluding uses such as community facilities, public healthcare and education facilities and emergency services facilities from this category, in line with the approach taken for the Mayoral CIL. Should the Council not wish to proceed with a nominal rate on all other uses, a nil rate would apply by default unless a rate has been explicitly set.</i></p>	

	Policy, Para, Section	Rep No	Object/ Support	Representation	Council's initial response
				<p><i>The results of our appraisals indicate that office developments are unlikely to be viable, unless rents increase and yields harden significantly over the life of the Charging Schedule. In this regard we recommend that the Council considers a nil or nominal rate on office developments in the Borough.'</i></p> <p>Where there is an acknowledgement that viability is already questionable, the CIL rate should be set at nil. However the Council has proposed a rate of £10 in these cases on BNP's suggestion that this is a nominal rate. This could have the effect of undermining schemes which incorporate less valuable uses as part of a mixed use development.</p> <p>The CIL Guidance outlines that CIL should only be considered where an identified funding gap is demonstrated. The process of demonstrating this should also identify a CIL "infrastructure funding target" which should be based upon the selection of infrastructure projects or types that are identified as candidates to be funded by the levy in whole or in part. The 'gap' and 'target' is not presently clear as it is not explicitly stated and a draft Regulation 123 list has not been made available for consultation.</p> <p>The CIL Guidance states that, at Examination, authorities should '<i>set out those known site-specific matters where section 106 contributions may continue to be sought</i>'. Whilst we are aware authorities are not required to produce this information and their Regulation 123 list until the Examination, we would suggest this is done earlier, preferably before the Draft Charging Schedule consultation, to allow more consultation and input from the development industry.</p> <p>Roots Hall Ltd requests to be heard by the CIL examiner in respect of their representations (if and when the CIL draft Charging Schedule is submitted by the Council for examination). Please ensure we are kept updated on CIL developments and in the meantime do not hesitate to contact me should you have any queries.</p>	
Rep			Object		See comments in the Overview Report above and Appendix 2 for a response from BNP Paribas Real Estate acting for the Council in respect of viability advice.
Respondent	Smart Planning on behalf of NHS England				
Full Submission	<p>Thank you for consulting NHS England on the above emerging Local Development Plan (LDP) Document.</p> <p>NHS England was consulted in the preparation of the Council's Infrastructure Delivery Plan (IDP) prior to the publication of this Preliminary Draft Charging Schedule. The initial response is reported in the IDP by Navigus Planning in June 2014, which outlined that a fee of £624,000 would be required to increase capacity and provision, in line with the Essex Primary Care Strategy, Transforming Primary Care in Essex, to meet the planned growth. However, the healthcare</p>				

	Policy, Para, Section	Rep No	Object/Support	Representation	Council's initial response
				<p>landscape has changed to a degree, with the NHS Premises Strategy moving forward and coming closer to formal publication. In addition to general healthcare needs within Southend-on-Sea and the requirement of increased capacity to meet growth, there is potential for further major projects that will require funding.</p> <p>Two projects have been identified (currently at inception stage) that may potentially be advanced within the forthcoming Local Plan period and that are necessary to meet the needs of the population. The first is the relocation of St Luke's Healthcare Centre to provide a permanent facility capable of meeting the demand (which it currently is unable to achieve due to its size and temporary accommodation nature). The second is to completely redevelop the Shoebury Health Centre at Campfield Road, which is in a poor state of repair to an extent that refurbishment is not a viable option.</p> <p>At the present time neither project has an costed scheme in place, but both projects will involve new facilities with an associated high capital cost. It is considered both of these projects would benefit from CIL funding. As these are projects that NHS England may seek to undertake in due course it is considered that these should be added to the Infrastructure Delivery Plan for Southend, in order that they may subsequently receive CIL funding. Specifics in relation to the above can be discussed directly with NHS England via the named contact on this response form.</p> <p>In reviewing the Preliminary Draft Charging Schedule generally, it is noted that healthcare is referred to on the Regulation 123 list in 'general' terms, without being specific as to what the funding will go towards (it is noted that health impacts arising from a large development will still be subject to S.106 agreements from this list). Referring to healthcare in generic terms (non-specific and ambiguous), could prejudice NHS England's ability to obtain the necessary funding for healthcare improvements within Southend. It is suggested that there is clarification given on this matter prior to the Charging Schedule being progressed, and perhaps CIL funding expressly stated to go towards the healthcare service projects identified above. If a more detailed definition is not formulated, then certainty with regard to healthcare funding it may be better achieved through the continued use of S.106 Agreements, and therefore healthcare removed from the Regulation 123 list. Assuming the recommendations are incorporated wholly within the future CIL Charging Schedule then NHS England would not wish to raise an objection. The recommendations set out above are those that NHS England deem appropriate having regard to the projected needs arising. However, if the recommendations are not implemented then NHS England reserve the right to make representations about the soundness of the Charging Schedule at relevant junctures during the adoption process.</p>	
Rep	Q11	1699	Comment	NHS England was consulted in the preparation of the Council's Infrastructure Delivery Plan (IDP) prior to the publication of this Preliminary Draft Charging Schedule. The initial response is reported in the IDP by Navigus Planning in June 2014, which outlined that a fee of £624,000 would be required to increase capacity and	Provision, improvement, replacement, operation or maintenance of Primary Healthcare facilities included in the Council's draft Regulation 123 Infrastructure List.

	Policy, Para, Section	Rep No	Object/ Support	Representation	Council's initial response
				provision, in line with the Essex Primary Care Strategy, Transforming Primary Care in Essex, to meet the planned growth. However, the healthcare landscape has changed to a degree, with the NHS Premises Strategy moving forward and coming closer to formal publication. In addition to general healthcare needs within Southend-on-Sea and the requirement of increased capacity to meet growth, there is potential for further major projects that will require funding.	
	Q11	1700	Comment	Two projects have been identified (currently at inception stage) that may potentially be advanced within the forthcoming Local Plan period and that are necessary to meet the needs of the population. The first is the relocation of St Luke's Healthcare Centre to provide a permanent facility capable of meeting the demand (which it currently is unable to achieve due to its size and temporary accommodation nature). The second is to completely redevelop the Shoebury Health Centre at Campfield Road, which is in a poor state of repair to an extent that refurbishment is not a viable option.	See above
	Q11	1701	Comment	At the present time neither project has an costed scheme in place, but both projects will involve new facilities with an associated high capital cost. It is considered both of these projects would benefit from CIL funding. As these are projects that NHS England may seek to undertake in due course it is considered that these should be added to the Infrastructure Delivery Plan for Southend, in order that they may subsequently receive CIL funding	See above
	Q11	1702	Comment	In reviewing the Preliminary Draft Charging Schedule generally, it is noted that healthcare is referred to on the Regulation 123 list in 'general' terms, without being specific as to what the funding will go towards (it is noted that health impacts arising from a large development will still be subject to S.106 agreements from this list). Referring to healthcare in generic terms (non-specific and	See above

	Policy, Para, Section	Rep No	Object/ Support	Representation	Council's initial response
				<p>ambiguous), could prejudice NHS England's ability to obtain the necessary funding for healthcare improvements within Southend. It is suggested that there is clarification given on this matter prior to the Charging Schedule being progressed, and perhaps CIL funding expressly stated to go towards the healthcare service projects identified above. If a more detailed definition is not formulated, then certainty with regard to healthcare funding it may be better achieved through the continued use of S.106 Agreements, and therefore healthcare removed from the Regulation 123 list.</p> <p>Assuming the recommendations are incorporated wholly within the future CIL Charging Schedule then NHS England would not wish to raise an objection. The recommendations set out above are those that NHS England deem appropriate having regard to the projected needs arising. However, if the recommendations are not implemented then NHS England reserve the right to make representations about the soundness of the Charging Schedule at relevant junctures during the adoption process</p>	

Appendix 2: BNP Paribas Real Estate's response to representations from Savills



Responses to Savills' Representations to: Southend-on-Sea's Preliminary Draft Charging Schedule Consultation September 2014

Proposed rates

The CIL Guidance identifies that Charging Authorities do not have to set a nil rate, they can set a low rate. It is the Charging Authority's prerogative to establish the appropriate balance between raising money from CIL to deliver much needed infrastructure to support development in their area and not putting development across the Charging Authority area at risk. In this regard it is noted that the CIL Guidance identifies that *'there is no requirement for a proposed rate to exactly mirror the evidence... There is room for some pragmatism.'*

The rates proposed are of a nominal level and the CIL charge proposed is unlikely to be the determining factor in relation to viability and to have an impact on a developer's decision making as to whether to bring forward a development or not i.e. the proposed charges equate to no more than 2% and in most cases below 1.5% of scheme costs for residential and 1% for commercial uses⁵. A CIL Charge of this level is hardly likely to threaten the delivery of the Local Plan, particularly as CIL is not an entirely new charge and Savills have not provided any evidence that would demonstrate that a cost that amounts to less than 2% of development costs would threaten the economic viability of development across the Council's area and therefore the delivery of the Local Plan.

In relation to residential Market Areas 1, 2 and 3, hotel and office uses, which are identified as being unviable, we would highlight that it is not CIL that is making development unviable. Such developments will require changes in sales values and build costs, which will have a larger impact on viability to improve before they come forward.

We note that the LB Newham CIL Examiner identified in his report that, *'if a scheme is not viable before CIL is levied it is unlikely to come forward and CIL is, therefore, unlikely to be a material consideration in any development decision'*. This is particularly pertinent in Southend on Sea, where should a development come forward, the CIL charges proposed are of such a nominal level that they are unlikely to have an impact on a developer's decision making as to whether to bring forward a development or not. It is also worth noting that CIL is not a wholly new charge; it will replace the majority of S.106 and S278 contributions previously required. It would be unreasonable to expect developments not to contribute towards the delivery of necessary infrastructure required to support the growth envisaged by the Local Plan and without such infrastructure development would not be sustainable. In this regard the Council considers that it has struck an appropriate balance between needing to raise money to fund infrastructure whilst not putting the delivery of their Local Plan a risk, as required by Regulation 14.

We would also highlight that the rates have been set based on the assumption of no deduction for existing floorspace, thereby providing the worst case scenario. This is particularly pertinent given that the Borough's housing supply is identified as coming predominantly from previously developed sites.

Trade-off between funding infrastructure and affordable housing

As identified above CIL should not be regarded simply as a cost on top of current development costs. S.106 contributions are to be scaled back from April 2015 and CIL is replacing a S.106 charge that was previously sought on sites, the only difference being that this element would no longer be negotiable and taking a practical view of the viability position of sites, going forward other policies may need to flex to accommodate this in certain circumstances. This is the current position and we understand that the Council has in some recent instances accepted a reduced affordable housing provision based on overall scheme viability.

⁵ With the exception of retail Convenience based supermarkets and superstores and retail warehousing (net retailing space of over 280 square metres) for which the charge equates to circa 2.5% of scheme value.



Responses to Savills' Representations to: Southend-on-Sea's Preliminary Draft Charging Schedule Consultation September 2014

It is noted that not all sites in the Borough are capable of delivering the full policy levels of affordable housing at 20-30% and this is the Councils' experience on the ground. In this regard we would highlight that the CIL Examiner's report for the LB Newham's CIL Charging Schedule acknowledged at paras 15 and 16 that;

'The Core Strategy was adopted in January 2012. Policy H2 was supported by an Affordable Housing Economic Viability Study and seeks the provision of 35 to 50% affordable housing on sites with a capacity of 10 units or more. However, the Council concede that, at present, the majority of new schemes are unable to deliver affordable housing at the level required by Policy H2. According to the Viability Study, at 35% affordable housing, most sites are not viable regardless of CIL.

As stated in the Viability Study, if a scheme is not viable before CIL is levied it is unlikely to come forward and CIL is, therefore, unlikely to be a material consideration in any development decision. Consequently, the Viability Study, sensibly in my view, did not factor in unviable schemes in recommending appropriate rates. The Viability Study is based on 35% provision of affordable housing.'

In BNPPRE's experience the proposed residential CIL rates will be a marginal factor in a scheme's viability representing an opportunity cost of circa 4% affordable housing. The quantum of affordable housing delivered on a site has a much greater impact on viability. In light of this BNP Paribas Real Estate consider that even in setting a nil rate of CIL would not ensure that the Council achieves its target level of 20/30% affordable housing on every site in the Council's area. Further, we are of the opinion that this approach would also not strike an appropriate balance between the delivery of development and the provision of infrastructure to support the growth envisaged in the adopted and emerging Local Plan. The delivery of affordable housing in a local authority area is based on all sites delivering the maximum possible amount of affordable housing. This means that delivery of affordable housing on some sites will exceed the target, including 100%, whilst others will only be able to support levels lower than the target. This is due to all sites having different viability characteristics, and as such the ability to deliver affordable housing will differ from site to site and potentially even from scheme to scheme on a particular site.

Viability buffer

There is no prescribed level of buffer that a Charging Authority is required to adopt; this is entirely a matter for the Charging Authority's judgement when striking the appropriate balance; the CIL Guidance and regulations simply require the CIL charge not to be set at the margins of viability. Given that the Council has adopted a reasonable buffer and that the rates proposed are of such a nominal level that they are unlikely to impact on the deliverability of schemes, it is considered that the Council has struck an appropriate balance as required by Regulation 14.

It should be noted that the rate for Areas 1, 2 and 3 is not a maximum viable rate as these areas are identified as being unviable. Rather, the rates are a maximum nominal rate suggested by BNP Paribas Real Estate, i.e. at this level it is considered that the rate would not have an impact on a developer's decision making as it is such a small percentage of development costs. In this regard there is no need for a buffer as the rate is simply set at a nominal rate.

Benchmark Land Values

The Council's proposed residential growth is identified as coming predominantly from previously developed/brownfield sites and in this regard we have adopted benchmarks reflecting higher and lower value offices, industrial/warehouse uses and sites in community use/owned by the Council as our benchmark values. These benchmark land values are based



Responses to Savills' Representations to: Southend-on-Sea's Preliminary Draft Charging Schedule Consultation September 2014

on a market approach i.e. the values are arrived at through undertaking research on comparable evidence in the Borough of such uses and allowing for appropriate rents and yields based on this research and over and above this we have allowed for a premium of 20% to account for the competitive return to the landowner. This approach is in line with the Harman Group Guidance and has been through examination on various occasions and found to be appropriate by Examiners.

Given that the Councils' land supply for development is identified as being predominantly previously developed/brownfield sites we have assumed a 100% gross to net for the sites. It should be noted that the typologies tested are derived from research undertaken by BNPPRE and the Council on historic planning applications received in the Borough. As such the typologies are based on a range of actual developments within the Borough. These typologies are therefore reflective of developments that have been consented/delivered as well as those expected to come forward in the Southend-on-Sea area in future.

Professional fees

We note that no evidence has been submitted by Savills to substantiate that their assertion that a 10% allowance is too low. In BNPPRE's experience professional fees range between 8% and 12%, depending on the nature of the site. We have allowed for 10% professional fees which we consider to be a reasonable assumption for an area wide viability assessment, which has been accepted at numerous Examinations. The Council have also advised that in a couple of instances the level of professional fees that have been stated in site specific viability assessments submitted in the Borough have been lower than 10%. We would highlight that the 5% contingency allowance has also been made on top of the professional fees.

With regard to abnormal costs, it is unlikely that all sites will incur abnormal costs and it is not possible or reasonable to incorporate abnormal costs such as for remediation within an area wide viability study. These costs are site specific and as such will vary across all sites. The main reason for allowing a buffer from the maximum CIL charge is to account for differences between sites. The Bristol CIL examiner identified this at Para 26 of his report dated July 2012, stating that, *'By definition, the CIL cannot make allowance for abnormal, site specific, costs. The rates have to be based on a generic analysis of a variety of size and type of schemes across the area, taking into account average local build costs, not the individual circumstances of particular sites. The fact that a few specific schemes that are already marginal may become unviable in certain locations should not have a significant impact on the delivery of new housing across the city to meet the requirements of the adopted CS.'* In addition it is considered that the costs associated with the remediation of such sites would be taken into consideration in the land value.

Developer's profit

BNPPRE strongly disagrees, the profit margin relates to risk. The approach taken reflects the reduced risk associated with developing affordable housing as any risk associated with take up of intermediate housing is borne by the acquiring RP, not by the developer. A reduced profit level on the affordable housing reflects the GLA 'Development Control Toolkit' guidance and the Homes and Communities Agency's guidelines in both its Economic Appraisal Tool (EAT) and Development Appraisal Tool (DAT). We would also highlight that this approach has been accepted at numerous CIL examinations and site specific assessments that BNPPRE has undertaken.

Instalments policy

BNPPRE note that the Council's Instalments Policy is not a matter that the Examiner is required to consider as part of the examination of the Council's Charging Schedule and further that the Council is able to amend their instalments policy at any point in time. The CIL Guidance 2014 identifies that, 'If



**Responses to Savills' Representations to:
Southend-on-Sea's Preliminary Draft Charging Schedule Consultation
September 2014**

the Charging Authority wishes to publish a new instalments policy, or withdraw the policy, it must give at least 28 days' notice before the new policy takes effect and/or old policy is withdrawn.'

Notwithstanding the above, we have considered the Savills' proposed amendments to the Council's instalments policy and set out our analysis and subsequent recommendations on this below.

Table 1: Analysis of development based on CIL liability of £75,000

CIL rate	Total GIA	No. Units (Ave of 72 sq m per unit)	No. Units (Ave of 95 sq m per unit)	Dev period	Council instalments policy	Savills' recommended instalments
£60	1,250	17	13	12 months 365 days	10% – 60 days (3 months) 40% – 360 days (12 months)	10% – 120 days (4 months) 30% – 360 days (12 months)
£30	2,500	35	26	18 months 540 days	50% – 540 days (18 months) or remaining balance paid on substantial completion within 540 days (18 months).	40% – 720 days (24 months) 20% - 900 days (30 months) or remaining balance paid on substantial completion within 900 days (30 months).
£20	3,750	52	39	24 months 730 days		

In light of the above analysis we consider that the Council's proposed instalments policy is not unreasonable given the likely scales of development that the identified liability would relate to. We understand that the majority of schemes coming forward in the Borough will be less than 50 unit schemes and given that the CIL applies to net additional floor area and that the large majority of schemes in the Borough will be delivered on brownfield sites, the CIL liability is likely to be lower for such schemes.

That being said the Council may wish to consider a fourth level of CIL liability and corresponding instalments say of circa £125,000/£150,000 where the payments would be in line with that identified by Savills for the £75,000 liability, to assist larger schemes' cashflows. We would also highlight that such planning permissions may also be implemented in phases, in which case charges may be payable over an extended period of time as each phase would be treated as a separate chargeable development, to which the Council's instalments policy would then apply, thereby allowing a further extension to the timing of payments. Paragraph: 056 Reference ID: 25-056-20140612 of the CIL Guidance identifies that;

'this is expected to be especially useful for large scale, locally planned development, which is an essential element of increasing housing supply. Large scale developments which are delivered over a number of years face particular issues in relation to cashflow and the delivery of on-site infrastructure. The regulations allow for both detailed and outline permissions (and therefore 'hybrid' permissions as well) to be treated as phased developments for the purposes of the levy. This means that each phase would be a separate chargeable development and therefore liable for payment in line with any instalment policy that may be in force. The principle of phased delivery must be apparent from the planning permission. Local authorities should work positively with developers to allow such developments to be delivered in phases.'

