

Independent examination of Dartford Borough Council's Community Infrastructure Levy (CIL) Draft Charging Schedule with modifications

Response by Dartford Borough Council to the representations of RPS Planning and Development Ltd and Asda Stores Limited as requested by Examiner Mr Kemmann-Lane

1.1 This paper sets out the Council's response to issues raised by RPS Planning and Development Limited (RPS)¹ and Thomas Eggar LLP on behalf of Asda Stores Limited² (AS) submitted during the consultation of the Dartford Community Infrastructure Levy (CIL) Draft Charging Schedule January 2013. Both submissions raise concerns regarding the impact of the proposed CIL rates (particularly retail) on achieving economic growth and employment opportunities in the Borough; and the assumptions applied in the economic viability report prepared by the Council's consultants. This paper provides Dartford Borough Council's response to the matters raised by both parties. A number of points raised covered similar matters. Where appropriate the paper indicates individual points raised by each party.

Viability of proposed CIL rates and impact on investment

2.1 Issues were raised at both the Preliminary and Draft consultation stages about the proposed CIL rate for large retail developments outside the town centre. In response to concerns at the Preliminary consultation stage, the consultants carried out further testing of retail development scenarios³ both within and outside the town centre prior to the Draft consultation stage. The additional scenarios selected reflect the type of retail development which is likely to come forward as part of the Dartford Core Strategy. After considering the additional assessments and the consultant's advice, the Council reduced the proposed CIL rate from £200 to £125 per sq m for retail development of over 500 sq m outside the town centre in the Draft Charging Schedule (DCS).

2.2 The RPS response to the DCS consultation, whilst welcoming the proposed reduction has expressed concern that the proposed level for large scale retail development is too high, does not provide sufficient flexibility in changing conditions and will prevent investment both by retail developers and occupiers in the Dartford area, particularly in the current economic climate. The AS representation expresses concern concerning the impact of the proposed retail and residential rates on economic growth and employment opportunities and that they will undermine the achievement of the vision and strategic area policies set out in the Dartford Core Strategy. They consider that the proposed retail and residential rates will subsidise other development types and will be a disincentive to investment. The submission highlights that the retail sector plays a key role in providing additional employment and that this role has not been considered in setting the rate level.

¹ RPS representation to Dartford Draft Charging Schedule consultation January 2013
http://www.dartford.gov.uk/_data/assets/pdf_file/0015/95010/2.005.1-RPS-Planning.pdf

² Thomas Eggar on behalf of Asda Store Ltd representation to Dartford Draft Charging Schedule consultation January 2013 http://www.dartford.gov.uk/_data/assets/pdf_file/0008/94751/012-Asda.pdf

³ DBC CIL Economic Viability Study: Addendum on Retail November 2012

2.3 The Council, in setting the proposed rates for retail development, has taken into consideration the wide range of retail scenarios tested by its consultants. It has been mindful of the Guidance⁴ which states in para 9 “evidence has been provided that shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole” and in para 24 that this should be appropriate available evidence to inform the DCS but may not be necessarily fully comprehensive or exhaustive⁵. In considering the application of differential rates the Council has taken into account the findings of the viability assessment which shows variations in viability between Dartford town centre and other parts of the Borough. The viability assessment also shows differences in viability between different sizes of retail stores, these being a proxy for different forms of retail provision and the way they are used by people. Para 34 of the Guidance says that charging authorities may want to consider setting differential rates as a way of dealing with different levels of economic viability (demonstrated by evidence) within the same charging area as this allows for the levy to be more flexible to local conditions.

2.4 The proposed rates for large scale development outside of Dartford town centre are set at the lower end of the range of scenarios tested and has taken into account the potential retail development pipeline (that does not have planning approval) which is required to meet the spatial strategy⁶ for the Borough up to 2026. Key areas for new retail provision are Dartford town centre, sites within Ebbsfleet Valley with retail facilities to support new communities and workers in new business districts and Bluewater which is an existing regional shopping centre. It should be noted that the majority of larger floorspace provision set out in the Core Strategy and shown in table 4 of the Core Strategy has planning approval. In addition the strategic retail assessment for the Borough undertaken to guide policy development of the Core Strategy concluded that outside of the town centre there was no significant quantitative retail need outside of the areas identified above⁷. The rates set for retail development are, therefore, unlikely to prejudice the implementation of the Core Strategy.

2.5 RPS have commented that no distinction has been made between different forms of retail uses within the DCS and that retail warehousing should be distinguished from food supermarkets outside the Dartford town centre (zone D). The viability modelling has considered a number of different scenarios for retail outside of the town centre which includes separate testing of convenience, comparison and retail warehouse typologies. As stated in the retail addendum para 4.2, the appraisals are high level and hypothetical schemes in the study area. Since the circumstances of each development will vary, the scenarios will not necessarily be reflective of a specific case. Viability could be affected both positively and negatively by the specifics of any scheme. The Council has considered and used the consultants’ conclusions regarding the maximum rates that should be set for both comparison and food shopping. The rates recommended by the consultants and accepted by the Council provide for a high level of cushion as compared to the potential rates for all

⁴ Community Infrastructure Levy Guidance April 2013

⁵ The guidance confirms that these provisions are in accordance with national legislation and regulations

⁶ Dartford Core Strategy

⁷ Dartford Retail and Commercial Leisure Study 2010

http://www.dartford.gov.uk/data/assets/pdf_file/0016/63322/EB37DartfordRetailandCommericalLeisureStudy2010.pdf

out of town centre scenarios shown in the viability study. This provides the flexibility for any additional factors impacting on viability. The consultants identify that the potential CIL values for food retail fall within the range for comparison schemes. It is, therefore, considered that a single charge at the lower end of this range of values identified through testing can appropriately be applied to both comparison and food retail outside the town centre.

2.6 The viability assessment has tested both a comparison and convenience large scheme in Dartford Town Centre. The consultants conclude that if a separate rate was to be set for comparison it should be set at zero in the town centre. For food shopping in the town centre, the viability testing shows that there is potential for a CIL charge but it is below that shown as the maximum CIL potential for a similar development scenario elsewhere in the Borough. The Council has proposed that a rate of £65 per sq m be set for food retail in the town centre. This rate represents approximately 50% of the retail rate proposed for large scale retail outside of the town centre. The Dartford Retail Study 2010 indicated that there would be a need for both qualitative and quantitative increase in convenience floorspace in the town centre and some provision has been indicated in table 4 of the Core Strategy. An application by a major food operator for 6,694 sq m floorspace in the town centre has recently been approved in principle by the Council, with conclusion of a S106 anticipated shortly. This provision will meet the plan objective for food retail floorspace in the town centre.

2.7 RPS have commented that no distinction has been made between different forms of retail uses within the DCS and that retail warehousing should be distinguished from food supermarkets outside the Dartford town centre (zone D). The respondents have not provided alternative viability scenarios to those carried out by the Council's consultants. As noted above, these included a retail warehouse scenario. It is considered that the proposed rate, supported by the consultants' assessment provides sufficient viability buffer for the location and types of retail schemes planned for Dartford. The Council considers that it will not threaten delivery of the plan, since the retail development planned for through the Core Strategy is largely provided for by existing consents. In addition the findings of the viability assessment provide reassurance that should additional retail development come forward, the rates set will not impede such development. The employment projections of approximately 26,500 jobs in the Core Strategy are based on identified sites (providing commercial and retail provision.). There is no evidence to suggest that the rates proposed will deter investment by retail developers or operators or that it will undermine the projected job potential identified in the Core Strategy.

2.8 The AS submission expresses concern that the retail rates proposed will undermine the retail function of local centres outside of Dartford Town Centre. Work is currently underway on the preparation of the Development Management DPD which will identify and provide planning policies to support the management of these centres. In addition, Longfield is identified as a district shopping centre in the Core Strategy. Evidence provided through the Retail and Leisure Study 2010 and emerging reviews of local centres indicates that the centres are performing fairly well. Other than small scale renewal or reconfiguration of existing retail spaces there is unlikely to be a need to expand or rejuvenate local centres resulting in new floorspace liable to CIL.

Differentiation based on size of retail development

3.1 In contrast to the view expressed by AS the Council considers the approach taken in identifying a floorspace threshold to indicate different types of use by people is within regulatory requirements⁸. The differentiation is supported by appropriate viability evidence and thresholds applied using additional local evidence of retail typologies and floorspace. Viability testing has considered the CIL potential for both smaller retail schemes of 300 sq m and 200 sq m. In Dartford this size of scheme is generally of a convenience nature, providing for day to day top-up shopping or a small unit providing comparison⁹ retail by an independent retailer.

3.2 In addition to the larger scale shopping development proposed, the Core Strategy identifies small local shops providing convenience shopping within the larger housing developments. A number of consented large-scale housing developments include such small scale retail schemes, supporting day to day shopping needs for the planned communities. A schedule setting out either consented or emerging proposals for retail development within large schemes is set out in Appendix 1. The size of the retail element is mostly below 500 sq m. Future provision at the lower scale is likely to be of a similar size and performing the same kind of function.

3.3 Taking into account the planning history and pipeline in the Borough and the demonstrated inability of smaller scale schemes to support CIL, a zero rate for this type of retail development is proposed. Taking into consideration Dartford's planned and past retail development, schemes of this size will, generally speaking, provide a different function to those above the threshold. They are unlikely to be shopping destinations where weekly food shopping needs are met but, rather, will meet day to day shopping needs.

3.4 Further to this a number of charging authorities have applied a different CIL retail rate in their charging schedules to developments over or below a floorspace threshold (used as a proxy for how stores are used) where viability evidence has demonstrated this distinction. This approach has been accepted through independent examination¹⁰ and it has been accepted that the Regulations do not prohibit different charges within the same use class provided that the difference is based on viability evidence and the way the premises are used.

3.5 RPS have suggested that a lower rate be applied to developments over a specific threshold as is applied to other taxation systems which make allowances for quantum of development. Any differentiation as set out above must be supported by viability evidence. Scenarios tested have considered both large and small retail developments with different trading characteristics, the findings do not support the approach suggested

⁸ CIL Regulations 2010 as amended 13

⁹ Comparison retailing is the provision of items not obtained on a frequent basis. These include clothing, footwear, household and recreational goods.

¹⁰ For example Wycombe CIL and Greater Norwich Development Partnership (3 charging authorities)

Financial Assumptions used in the viability assessments

4.1 The AS representation sets out that some assumptions used by the consultants in the viability reports have not taken into account Section 106 and S278 contributions which will continue to be applied in addition to CIL. The response also raised issues regarding the assumptions applied with regard to site preparation and other matters. The consultant's response is provided at Appendix 2.

4.2 Historic S106 obligations in the Borough for non-residential development have primarily been focused on contributions to strategic transport schemes. Other provisions have sometimes included local junction improvements, public transport contributions and employment schemes. Other mitigations have been provided directly through the scheme by condition. The Council has indicated in the draft 123 list that after adoption of CIL, strategic transport schemes will be funded through levies raised. This will have the effect of significantly restricting additional S106 requirements with regard to retail development. It is likely that the S106 provisions set out in schedule 1 of the AS response will be limited and restricted primarily to site specific highways works. There may potentially be further limited requirements related to site specific matters, which can only be identified on a case-by-case basis. Potential requirements are identified in Appendix 2 of the Dartford CIL Overview Report August 2013. The Council considers that the viability buffer provided by the proposed CIL rates as compared to the potential for CIL identified in the viability assessments will provide the ability of retail schemes to fund additional measures on a site by site basis. Any S106 matters will be prioritised in accordance with Core Strategy Policy CS26. In addition the policy provides a flexible mechanism to address any potential viability constraints arising on a scheme.

4.3 Overall the Council has worked constructively with GVA to identify appropriate assumptions to be applied in the viability testing of the residential and non-residential scenarios.

Other matters raised by RPS and AS

5.1 The Council considers that a number of matters raised by the parties do not fall within the scope of CIL rate setting or provisions as set out in legislation and regulations.

Party	Comment	Council Response
RPS/ AS	The Council should ensure that it makes discretionary relief available for major developments. This will provide flexibility to assess whether a Section 106 would be a more appropriate mechanism than CIL on a case by case basis.	Para 7.10 sets out that the Council will issue a statement to this effect before it is made available. It should be noted that such relief will be rare and must be within State Aid rules. It is not considered that this will provide a more flexible mechanism to assess the potential for S106 rather than CIL.
AS	Change of use and conversion schemes have not been considered in the viability	Conversion and change of use schemes do not provide additional floorspace and fall outside the remit of CIL

	assessment	
AS	No connection made between the rates proposed and infrastructure requirements of the particular development	CIL provisions do not provide for a connection to be made between rates proposed and the infrastructure requirements of specific development or in specific locations. Viability considerations have to be applied in the consideration of the rates and distinctions set.
AS	Propose that total district wide infrastructure costs be divided by the total floorspace expected development floorspace	CIL provisions require broad development viability considerations to be made in setting CIL rates and that the rates proposed will not threaten the delivery of local plan. Guidance indicates that charging authorities need to identify the total cost of infrastructure it desires to fund in whole or part by the levy. The forecast CIL revenues do not have to match the funding gap identified. In Dartford's case, CIL provides for only 32 to 40% of total infrastructure costs. To divide the total costs between expected floorspace would likely undermine the Plan and make certain types of development unviable. The proposed differentiated rates for different types of development seek to maintain the viability of all uses.

Retail proposals at large development sites (food other where indicated)

Appendix 1

Site	Square Metres Provided	Who?	Nature of Floorspace
St James Lane Application	200m ² max	Independent operator/specialist	Residential development with supporting retail. Café/coffee shop
Northfleet West Sub Station Application	Conditions likely to restrict units to no larger than 200m ² comparison 300m ² convenience	Independent operator/specialist	Residential development with small centre to provide for community retail needs.
The Bridge Approved	400m ²	Independent/specialist operator	Residential development with small centre to provide for community retail needs (could be subdivided and may include non - food).
Ingress Park Waterfront Approved	250-400m ² convenience store (A1/A2 up to 533m ² , A3/A4 – 761m ²)	Independent/specialist operator	Residential development with small centre to provide for community retail needs. Lower and upper limit convenience store. A3/A4 – to serve local needs but also likely to be destination as riverside location.
Crossways Approved	531m ² comparison	Specialist	Development within existing business park - mix of unit size allows floorspace to be either retail/office

Appendix 2 Response by GVA September 2013

Our Ref.: CTE/js/02B149499

20th September 2013

Tania Smith
Dartford Borough Council
Civic Centre, Home Gardens
Dartford
DA1 1DR

Direct Line 020 7911 2412
charles.trustrameve@gva.co.uk

Dear Tania,

CIL VIABILITY STUDY – REPRESENTATIONS TO DRAFT CHARGING SCHEDULE RETAIL

As requested, I write with comments on the representations made by

1. Thomas Eggar on behalf of Asda; and
2. RPS

I disagree with the comments made by Thomas Eggar. They made representations and appeared at the CIL Examination for Greater Norwich Development partnership, where GVA undertook the viability testing for GNDP. In that case the Examiner found no issue with the testing or the proposed retail rates, which included a differential rate for supermarkets above 2,000 sq m. Likewise at Plymouth CC, where GVA acted for the Council, the Examiner found no issue with the principle or rates proposed for supermarkets above 1,000 sq m. As far as I can tell the question as to whether a Council is entitled to set a different rate for different forms of A1 development, and for different areas within its boundaries is accepted.

We note that it is said that our testing for retail schemes outside the town centre does not include enabling costs. This is incorrect, we have allowed for a cost in all these schemes, see Table 8 of the Report of 2012 and Table 4 of the Addendum Report 30th November 2012.

Our appraisals make full and proper allowance for the costs that can reasonably be expected to be incurred, including planning.

We would also note that the testing for the supermarkets/convenience stores assume that they are developer led, and a full commercial profit has been taken into account. Indeed, we have used a profit of 20% on the Gross Development Value, it would be more usual to apply a test based on the Costs, and currently we would expect developers to seek c 17.5%. Our valuations therefore credit the developer with a larger profit than might usually be expected, and therefore a lower residual land value. As noted in our evidence to Greater Norwich Development Partnership CIL Examination, which was not challenged, the operators may accept a profit of c 5% on Costs. If an operator was to construct the store then it could potentially pay significantly more for the site than a developer, based on its own business model. We have seen examples where an operator has offered more than

double the bids from developers. We therefore consider our approach and appraisals to be robust and reliable.

I note the request for an instalment policy to be applied. Our calculations have been made on the assumption that the CIL is payable at the commencement of construction.

I note the comment about the difficulty of meeting the current test under Regulation 40 to deduct existing floorspace. As you know, we are still awaiting the response of the Government to the Consultation it conducted in April 2013 to amend the Regulations, including the test under Regulation 40. However, it is widely expected that the change mooted, that the test be based on abandonment of use rather than physical occupation, will be adopted. Our appraisals assume that there is no set off for existing floorspace i.e. that all the new floorspace will be subject to CIL. This is considered to be a very conservative approach, and unlikely to be the case except in the case of greenfield development or vacant, cleared land. I have read the letter from RPS, but I do not consider that there is anything I can usefully say in response.

Yours sincerely,

CHARLES TRUSTRAM EVE
Director

For and On Behalf of GVA Grimley Ltd