

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 the Retirement Housing Group and McCarthy and Stone as requested by Examiner Mr Kemmann-Lane

1.0 This paper sets out the Council's response to issues raised by the Planning Bureau Limited on behalf of McCarthy and Stone (MS) and from Tanner and Tilley on behalf of the Retirement Housing Group (RHG) submitted during the consultation of the Dartford Community Infrastructure Levy (CIL) Draft Charging Schedule January 2013. Both submissions raise concerns regarding the application of the proposed levy rates to specialist retirement housing products. 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 individual party.

2.0 Following receipt of both party representations^{1&2} the Council has proposed a modification of the Draft Charging Schedule (DCS) to provide a clearer distinction between types of specialist accommodation according to their viability impacting characteristics³. The proposed modification expanded the initial draft proposal which proposed a zero CIL rate to use class order C2 (residential institutions) accommodation. An extract of the modified proposal is set out in Appendix 1. The Council acknowledges that at present the distinctions provided between the classification of different types of retirement housing in the use classes order (UCO)⁴ results in a grey area in planning terms, between C2 (residential institutions) and C3 (general housing). It is understood that at a national level the definition of C2 residential institutions is a matter which a number of specialist providers have recommended requires further revision to include other retirement development types. The proposed modification to the DCS seeks to set out a practical process, under the current UCO provisions, to enable the Council to take into account acknowledged viability impacting characteristics on a case by case basis in determining the relevant CIL rate to be applied to a development scheme. The distinction proposed is in-line with the approach accepted, by other CIL charging authority approaches in the country and have been subject to independent examination⁵.

3.0 RHG have sought, through their representation, that the DCS be modified to provide a differentiation between all retirement housing (whether C2 or C3) and general housing. Both parties have indicated that the viability of all specialist accommodation is affected by a number of factors which are not applicable to general housing. These include characteristics such as provision of communal areas or spaces associated with care staff requirements, slower sales rates, additional marketing and sales costs, high service charges and additional build costs. RHG state that these factors affect the ability to acquire land and may lead to distortion of competition.

¹ McCarthy and Stone
http://www.dartford.gov.uk/_data/assets/pdf_file/0011/94925/2.013-McCarthy-and-Stone.pdf

² Retirement Housing Group http://www.dartford.gov.uk/_data/assets/pdf_file/0010/94744/004-Retirement-Housing-Group.pdf

³ Dartford CIL Overview Report August 2013 para 5.28

⁴ Town and Country Planning (Use Classes) Order 1987 (as amended)

⁵ For example Havant Borough Council and Oxford City CIL Council Charging Schedules

4.0 In response to preliminary consultation submissions on the matter of viability of specialist accommodation, the Council asked its consultants, GVA, to specifically consider the ability of development of residential care homes including extra care to contribute to CIL⁶. The consultants provided advice that in their experience “developments that are genuinely and wholly within Use Class C2 will not be able to afford a CIL contribution”. The distinction between C2 and other residential development in the DCS January 2012 responded to the advice provided by the Council’s consultants.

5.0 MS have indicated that they believe that the DCS has been based on an insufficient economic viability evidence. The consultants have provided additional information in response to the issues raised by the respondents. This is set out in Appendix 2.

6.0 In further considering both RHG and MS responses to consultation on the draft schedule and in considering the future potential supply of different kinds of specialist accommodation, the Council has reconsidered the DCS proposals in the light of the evidence provided by the parties. This sets out that “extra care housing” incorporates significant proportions of communal (non-saleable floor areas) which impacts on the economics of a scheme and results in a different viability to general housing types. In all cases residents will require a higher degree of personal care provision, than sheltered or general housing types, which requires significant additional non-residential floorspaces. In recognition that specialist extra care accommodation shares many of the same viability impacting characteristics to residential care homes, further clarification has been proposed through the proposed modifications. This sets out that this type of accommodation falls outside the residential development rates proposed. The Council believes that this clarification responds to concerns raised by RHG and to the concern by MS that extra-care development “may or may not be considered a C2 use based on a pre-conceived definition of this form of housing”.

7.0 Whilst the viability similarities between residential care homes and extra care accommodation is accepted, the Council does not accept that there are clear viability distinctions between sheltered housing accommodation or those marketed as retirement homes and general housing types. The characteristics of these sheltered developments are varied and may not include any or limited communal space or support facilities over that provided by many general housing developments. In many cases retirement housing of this kind is sold at a premium to reflect the additional provision and costs associated with development. In Dartford there have been three planning approvals for specialist retirement housing products since the beginning of the plan period these have included a variety of types, details of which are set out below.

Table 1 Retirement Housing Types approved in Dartford since 2006

Year	Type	Information
2009	Sheltered apartments	Incorporates 3% communal/service floorspace
2012	Care Home	Incorporates both extra care apartments and residential bed space
2013	Sheltered apartments	No new floorspace – reconfiguration of existing provision. Council provision. Incorporates less than 5% communal/service floorspace

8.0 The case identified as receiving approval in 2009 indicates that some future retirement provision in the borough may take the form of sheltered apartments. These will contain limited specific factors that may impact on viability over and above that tested in the

⁶ CIL Economic Viability Study: Addendum November 2012

residential scenarios tested by the viability consultants. Setting a CIL rate to be applied to all developments marketed as retirement housing, other than those proposed to be zero rated in the proposed modification, may result in distortion to competition between developers of sheltered and general housing. In addition it may imply a difference in treatment to specialist retirement forms of development which in turn may lead to state aid issues. National CIL Regulations and guidance have been framed to avoid issues of state aid by authorities bringing forward CIL proposals. Para 40 says “differential rates must be set in such a way so as not to give rise to notifiable State aid – one element is selective advantage”. The requirement is for charging authorities to set rates which are based on economic viability evidence on the impact of the proposals across its area. The Council considers that the viability advice provided by its consultants alongside consideration of the representations made and consideration of similar matters by other CIL charging authorities in the country, does not provide the viability justification to provide further distinction between other forms of retirement housing than that proposed.

9.0 The RHG submission expresses a concern that the impact of CIL on economic viability of specialist accommodation will in turn affect the deliverability of such schemes and will not achieve national planning objectives for housing for an “Ageing Society”. CIL Regulation 14 says that in setting CIL rates a charging authority must strike what appears to be an appropriate balance between the desirability to fund infrastructure and the potential effects on development as a whole of the imposition of CIL on the economic viability of development across its area⁷. The Council considers that the modified proposal with regard to applying a zero rate to C2 and extra-care development (which meets the definition provided), will ensure that opportunities will continue be provided to private developers to ensure a supply of specialist retirement housing over the plan period to meet need.

⁷ The Community Infrastructure Levy Regulations 2010 as amended

Appendix 1: Extract of Dartford Council's proposed modification footnote to Draft Charging Schedule

1.1 Residential development includes self-contained sheltered accommodation falling outside the definition of extra care sheltered accommodation set out below.

1.2 Extra care sheltered accommodation is self-contained properties, which are available to rent or buy. On-site care and support is provided, sometimes up to 24 hours depending on the needs of residents and emergency call response scheme. A range of communal facilities such as lounge and gardens are normally available. Definition derived from Better Homes: housing for the third age. A framework for delivering older people's accommodation across Kent and Medway August 2012⁸

1.3 The Council will make an assessment of residential type, to determine the rate of CIL payable, based on the definition set out above. Applicants are encouraged to seek pre-application advice to establish whether their proposal may be liable to CIL

⁸ Background document BD17

Appendix 2 GVA response on matters regarding retirement accommodation

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20th September 2013

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Dear Tania,

CIL VIABILITY STUDY – REPRESENTATIONS TO DRAFT CHARGING SCHEDULE RETIREMENT HOMES, SHELTERED HOMES & EXTRA CARE HOMES

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

1. Retirement Housing Group; and
2. Planning Bureau on behalf of McCarthy & Stone

We are aware of the testing undertaken by BNP for East Northamptonshire as we are currently advising West Northamptonshire JPU on its CIL Viability evidence. We also have also acted on planning applications involving retirement homes, sheltered homes and extra care homes, both for applicants and for Councils.

In our experience, it is not correct to suggest, as seemingly is implied by the testing undertaken by BNP, that development which can properly be classified as Use Class C3 leads to a nominal, nil or negative land value. Commercial operators and the charities can and do buy sites on the open market, and are willing to pay the appropriate value. Indeed, mainstream housebuilders have noted that they can be outbid for land on occasions by these specialist developers.

As has been noted before, one of the main difficulties of dealing with these forms of development is the use class classification that should be applied to any scheme. Where an application is classified as C3 then it is likely that the Council would seek to apply its policies for general housing, which would include affordable housing (in such cases this is often a commuted sum rather than on-site provision). Consequently, we understand that applications for many schemes are now made for Use Class C2. It is possible for a scheme to incorporate both Use Class C2 and C3 within the same complex. The test as to which Use Class applies, in our experience, usually depends on the services to be made available to the residents, according to their needs and what they wish to receive/purchase, and the degree of the care provided. It is also the case that a resident may begin by receiving or purchasing few services, but, as they age, requires increasingly more help, which can be provided without the need for them to move. This test may not take into account the specific layout of the building(s), which can often be indistinguishable as between the two uses, and the final definition is dictated by the planning conditions and S106 obligations that are imposed.

We note the comment about the net to gross ratio that usually applies for these types of schemes. Clearly this comment presumes that the development will be a block of apartments, but it should be noted that on occasion the development may include or comprise housing. Where there are communal facilities then, based on our

experience, it is right to suggest that the net to gross ratio may be in the order of 65-75%, it is not correct to suggest that blocks of flats for conventional housing have a ratio of 90 -100%. For example, we have adopted 80% for Scheme 5, and we have seen examples of small, low schemes with a ratio of less than 80%.

We understand the comment about the level of service charge that may apply, but this is in part as a result of the level of services that each occupier requires, and those services can be integral to the argument as to whether a unit is properly classified Use Class C2 or C3 i.e. the more services that are provided, and paid for within the service charge the greater the likelihood that the unit may be considered Use Class C2.

We are aware of the suggestion that properties within retirement schemes can take longer to sell, and the evidence for this. We are also aware of the difficulty of selling such units off-plan, and that most buyers are reluctant to commit to a purchase until they are able to see and visit the completed scheme. On the other hand, it is also our experience that private developers will seek to secure a premium for the accommodation, which is materially above the prices that would apply to conventional, new build units in the locality.

We consider that many of these issues are difficult to deal with on high level testing, and do not necessarily turn on the exact physical form of the development. We stand by our recommendation that it is fair and appropriate to apply £0 CIL to those units that are classified Use Class C2 and the appropriate rate for those that are Use Class C3. Finally, we would note that a number of schemes are promoted and operated by Housing Associations and charities, all of whom benefit from the exemption to pay CIL (Regulation 43).

Yours sincerely,

CHARLES TRUSTRAM EVE
Director

For and On Behalf of GVA Grimley Ltd