

Shropshire Levy Draft Charging Schedule: Representations Form



Community Infrastructure Levy  
Draft Charging Schedule

Representations Form

**Please return to:**

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

**BY 21<sup>st</sup> April 2011**

**1. Personal Details\***

*\*If an agent is appointed, please complete only the Title, Name and Organisation boxes below but complete the full contact details of the agent in 2.*

**2. Agent's Details (if applicable)**

Title	<input type="text"/>	<input type="text" value="Mr"/>
First Name	<input type="text"/>	<input type="text" value="Mark"/>
Last Name	<input type="text"/>	<input type="text" value="Sackett"/>
Job Title (where relevant)	<input type="text"/>	<input type="text" value="Senior Director"/>
Organisation (where relevant)	<input type="text" value="J Ross Developments"/>	<input type="text" value="RPS Planning &amp; Development"/>
Address Line 1	<input type="text" value="c/o Agent"/>	<input type="text" value="Highfield House, 5 Ridgeway"/>
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## Shropshire Levy Draft Charging Schedule: Representations Form

### Matters on which representations may be made

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

- (a) That the charging authority has complied with the requirements of the Planning Act 2008 and the CIL Regulations;
- (b) That the charging authority has used appropriate available evidence to inform the draft charging schedule;
- (c) That the charging authority has had regard to the Statutory Guidance, "Charging setting and charging schedule procedure guidance" (March 2010).

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

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

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

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

### (a) Procedural and Legal Points

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

a) No	No
b) Yes <i>(please detail using continuation sheets if necessary)</i>	

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**(b) Appropriate Available Evidence**

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

*(please detail using continuation sheets if necessary)*

Yes - see attached representation statement

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

*(please detail using continuation sheets if necessary)*

Yes - see attached representation statement

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

*(please detail using continuation sheets if necessary)*

Yes - see attached representation statement

**(c) Regard to the Statutory Guidance**

Q6. Do you have any comments on the proposed Levy rates for residential development, of £40/m<sup>2</sup> in Shrewsbury, the towns and key centres and £80/m<sup>2</sup> in the rural area?

(NB. Comments relating to charging zones should be addressed in Q7 and comments relating to affordable housing should be addressed in Q8)

*(please detail using continuation sheets if necessary)*

Yes - see attached representation statement

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

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*(please detail using continuation sheets if necessary)*

No

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

*(please detail using continuation sheets if necessary)*

No

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

*(please detail using continuation sheets if necessary)*

No

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

*(please detail using continuation sheets if necessary)*

Yes - see attached representation statement

**Comments on other matters**

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



## **SHROPSHIRE LOCAL DEVELOPMENT FRAMEWORK**

### **RESPONSE TO SHROPSHIRE COUNCIL –DRAFT COMMUNITY INFRASTRUCTURE LEVY (CIL) CHARGING SCHEDULE AND DRAFT DEVELOPER CONTRIBUTIONS SUPPLEMENTARY PLANNING DOCUMENT**

#### **ON BEHALF OF J ROSS DEVELOPMENTS**

**21 APRIL 2011**

#### **Introduction**

RPS Planning & Development (RPS) is retained by J Ross Developments (J Ross) in respect of the company's interests at South East Oswestry within the defined area of the Sustainable Urban Extension (SUE) in the adopted Core Strategy, in the context of the current consultation on the 21 April 2011 Community Infrastructure Levy Draft Charging Schedule (CIL DCS) and Developer Contributions SPD. J Ross Developments have the majority interest in the Oswestry SUE proposal, with Mosaic Estates having a minority interest, for whom RPS has made separate representations to the CIL DCS and SPD.

Other consultants are retained in respect of J Ross' land interests in other parts of the Local Planning Authority's area.

Representations were made on behalf of J Ross to the 19 January 2011 CIL Preliminary Draft Charging Schedule consultation. These representations are also in respect of references to the CIL Charging Schedule (CILCS) within the Draft Developer Contributions SPD (DCSPD) due to the cross-referencing between the documents. The latter was also published on 19 January 2011 but requires amendment to be aligned with the CILCS. It is understood that the Council proposes to consider the adoption of the DCSPD at the July 2011 Cabinet meeting with the intention of ensuring an aligned position with the CILCS is achieved at the time of the examination also in July 2011.

Shropshire Council has determined that it will establish a combination of Community Infrastructure Levy (CIL) and S106 Planning Obligations to address the infrastructure requirements of new development in Shropshire.

The CIL DCS indicates that it is proposed to apply only to residential developments of Use Class C3. This includes S106 requirements for affordable housing which has 100% relief from CIL. Contributions from other forms of development will be considered through S106 Planning Obligations.

The CIL DCS includes a series of Charging Zone maps for the urban areas. These include defined buffers around the urban edges which will ensure that potential peripheral site allocations are included within the 'urban charging zones' which is the intention of the Shropshire CIL approach. This is considered sound and acceptable, and has the advantage of avoiding the need for a formal review of the Charging Schedule following the adoption of the *Site Allocations and Management of Development* Development Plan Document (SAMDev). This approach was introduced following the



Developer Panel meeting held on 28 February 2011 at which issues relating to the CIL DCS were discussed with industry representatives (which included RPS representing J Ross and others). The Oswestry Charging Zone map includes the Sustainable Urban Extension (SUE) within the urban area which is supported by RPS.

The previous draft CIL DCS included a separate Charging Zone category for the SUEs albeit the tariff was proposed at the same level. In responding, J Ross supported the distinction between the areas on the basis that a reduced level of CIL may be appropriate for the Oswestry SUE compared with the rest of Oswestry, for example, due to the understood intention in January that the SUE would be expected to make a disproportionately large contribution towards improvements to the A5(T) and A483 junctions through a S106 obligation (with the junction improvements excluded from CIL funding eligibility). The proposal has other development costs associated with delivery of a road link between Middleton Road and Shrewsbury Road and, potentially, contributions towards a site and buildings for a new primary school.

The revised CIL DCS no longer includes a list of qualifying infrastructure and has removed the Charging Zone distinction between the SUEs and the rest of the urban locations. This is an area of great concern to J Ross in the absence of a clear understanding on what additional S106 contributions and infrastructure works beyond the CIL charges will be sought in respect of the South East Oswestry site.

There has been a constructive dialogue between Shropshire Council and J Ross whereby there is an expectation that this concern can be allayed. However, as at 21 April, the position remains to be resolved. The potential remedies are set out below.

RPS supports the CIL DCS in respect of excluding existing permitted floorspace within the chargeable rate as this equitably relates the amount payable for any change of use or redevelopment schemes only to the additional floorspace created.

RPS supports the provisions for phasing of payments and discretionary relief where S106 obligations require very high levels of additional contributions. The principle of discretionary relief where a planning obligation has been entered into for a sum greater than the chargeable CIL amount is supported. It is recognised that a viability assessment would be needed in such cases.

RPS and J Ross have concerns over the level of £40/sqm on the basis that it was selected as a level that was accepted by the development industry to be affordable and viable in comparison with the levels of contributions secured previously under S106 planning obligations. However, that level included significant costs associated with commuted sum payments for open space maintenance which would now be sought in addition to the CIL charges. An alternative approach is set out below, in the context of consideration of the evidence and rationale for the level of contribution.

RPS and J Ross support the principle of the differential between urban and rural areas which is aligned with the Core Strategy approach of positively directing development to the defined towns and other Key Centres and encouraging locally generated proposals for housing growth in the rural areas, particularly at Community Hubs and Community Clusters. Housing growth in rural areas can therefore be complemented by more



significant new funding towards local infrastructure priorities. In the earlier draft proposal a very high rate of £120/sqm had been suggested for the rural areas. Following discussion inter alia with the development industry panel, the proposed charging rate has been reduced to £80/sqm and is accepted. At this reduced level the rate is considered less likely to deter investment in the rural areas of Shropshire on viability grounds. The strength of the housing market is not uniform across the rural areas and the charging rate must be sensitive to the least strong areas in the far north and west of the area which contrasts significantly from the generally higher value south east of Shropshire.

The proposal to ensure that at least 90% of CIL money is retained locally for investment in infrastructure is supported. However, the potential for 10% of CIL to be used for strategic or Shropshire-wide infrastructure is particularly important given the use that all residents of the area will make of infrastructure improvements such as to the A5(T) junctions at Shrewsbury and Oswestry, broadband speeds and availability and the public transport network.

### **South East Oswestry Sustainable Urban Extension**

As stated above, the Oswestry SUE proposal has a significant infrastructure burden such that the additionality of major S106 costs and CIL to the necessary on site infrastructure costs could threaten the deliverability of the proposal. It is essential that there is a fair and equitable apportionment of infrastructure costs across all development at Oswestry.

J Ross understands that the site has been selected for allocation on the grounds that it is able to deliver a mixed use scheme including new homes, new employment land, a link road across the south east of the town and significant public open space to complement the existing proposals for the relocated Oswestry Leisure Centre to the west of the site, creating a town park serving the south-east of the town. The cost of delivering all these will be fully borne by the development. These latter scheme elements will have significant benefits to the wider Oswestry area at no public cost or use of CIL.

J Ross and RPS have also taken the view consistently that improvements to the A5(T) and A483/Maesbury Road junctions will have benefit to all users of the trunk roads including strategic through movements. These should be identified clearly in the CIL statements as "Strategic Infrastructure for Shropshire" as well as "Local Infrastructure for the Oswestry Place Plan Area". On this basis, it is considered that a significant proportion of the South East Oswestry CIL contribution can be attributed towards the Mile End improvement on the A5 which can also be expected to draw in 'local' CIL funds from other local residential developments in the Oswestry area, 'strategic' CIL funds from housing developments in other areas, S106 contributions (where justified by the relevant tests from non-residential developments in the area for example retail development at the Cattle Market site), Regional Growth Fund bids and national expenditure on the Strategic Highway Network. This is considered to be an equitable basis for apportionment of costs.



On the basis of agreement to CIL funding of the A5 and A483 junction improvements, J Ross is willing to agree to the same charging rate applying to the Oswestry SUE as to the rest of the urban areas.

If this is not agreed and there is a requirement for housing development on the Oswestry SUE to contribute towards the A5 and A483 junction improvements on a disproportionate basis (ie a S106 contribution), then J Ross seeks a separate and reduced charging rate for this development commensurate with the size of the S106 contribution sought.

### **The Charging Rate for Shrewsbury, the Market Towns and Other Key Centres**

As stated above, the differential approach between urban and rural locations is supported in principle and is considered to be aligned with the Core Strategy vision and strategic objectives.

The January 2011 *Rationale* for the CIL DCS explained that the proposed setting of the level of the charging rate for the urban areas and SUEs at that time had been influenced by an assessment of the average S106 contributions secured on housing proposals in Shropshire in recent years. This was presented to the development industry representatives on 28 February 2011 at a specially convened meeting at which there was a consensus among the industry representatives that setting the level at that rate would be acceptable and would be unlikely to deter the delivery of housing schemes on that basis. It was also noted that, as the CIL would 'bite' on future smaller housing schemes that had not been required to contribute previously, there would be a significant overall increase in the scale of contributions towards infrastructure in Shropshire from residential developments as a result of introducing CIL.

However, it was clearly expressed by the developer panel members on 28 February 2011 that the comparison would only be valid if was 'like for like'. The £40/sqm average S106 yield included the significant element of commuted sum payments associated with the maintenance of on site public open space. Whether this is paid to Shropshire Council (as in the past through S106 payments), or to another body through a separate agreement to secure on-going maintenance of open spaces (as required through the planning process), it will remain a significant cost to development which will affect the assessment of overall scheme viability.

The CIL charging rate for Shrewsbury, the market towns and other key centres remains at £40/sqm (£4,000 per 100m<sup>2</sup> dwelling) is considered by J Ross and RPS to be realistic for development in these areas provided that maintenance payments are covered by CIL along with the capital costs of play equipment on Public Open Space provision either on or off site.

The more recent *rationale* background paper to CIL (March 2011) does not refer to the average S106 costs evidence base, and so does not provide any support for selecting £40/sqm for the urban charging rate. RPS therefore considers it to be unreasonable to charge this rate if it does not include all contributions to Public Open Space including maintenance payments. If this change is not incorporated, the appropriate remedy will be to reduce the charging rate proportionately. A reduction of 20% would be a





reasonable basis for dealing with this issue, such is the scale of the costs associated with this element of S106 obligations previously.

### **Developer Contributions Supplementary Planning Document (SPD)**

There is evidently significant interaction between the CIL DCS and the Developer Contributions SPD. The latter was also published in draft in January 2011. It was written to complement the January draft of the CIL DCS and is no longer consistent with the current draft CIL document issued in March 2011. The SPD anticipated that a separate charging rate category would apply to the SUEs for example.

The particular significance of the interaction of the two documents for J Ross relates to how the documents combine overall in terms of the extent of development contributions that will be sought from development towards infrastructure, particularly from the Oswestry West mixed use SUE.

The overall contribution must be fair. It must avoid duplicate payments. It is necessary that developers understand what infrastructure is eligible for CIL funding and on what basis and what can reasonably be the subject of additional contributions through S106 contributions.

It is understood that non-residential developments will be assessed through the SPD for the need to contribute towards infrastructure to address impacts arising from the development. This is likely to include transport improvements for example.

In addition, the principle that there will be some on-site works that will be required to address the impact of development for both housing and non-residential uses and generally these will not be covered by CIL funding is accepted, for example the provision of landscape buffers.

Paragraph 3.7 of the draft Developer Contributions SPD states that for the SUEs:

***'on-site design and section 106 obligations will also be an important part of the package that is required to ensure that development in these locations is sustainable ... and this is reflected in the Levy rate for the sustainable urban extensions.'***

RPS does not support this for the reasons explained in preceding sections. Clearly, also, the CIL DCS no longer proposes a separate charging rate for the SUEs. Although it is recognised that some provisions are better addressed through S106 payments, RPS considers it to be unreasonable that the urban extensions are required to pay a full levy rate of £40/sqm as well as S106 payments which may include improvements to, for example, junctions on the A5(T). It is not considered equitable that the same CIL charging rate should be applied to the Oswestry SUE as to other developments at the urban areas where such S106 contributions would not be required.

The SUE at Oswestry will provide benefits for the area through the infrastructure delivered which will also serve the wider population. RPS, therefore, unless there is clear recognition of the eligibility of the A5(T) and A483 junctions to attract strategic CIL



contributions from across the whole of Shropshire and locally from all housing development in the Shrewsbury area, does not support the inclusion of the SUEs within the levy rate for the urban areas, and considers that the CIL payment required from the Oswestry SUE is set at a reduced level to reflect additional S106 payments that would be sought from this development.

### ***Place Plans***

The Council has undertaken an extensive assessment of infrastructure requirements and plans across a range of sectors in Shropshire which has been collated in the Local Development Framework Implementation Plan (LDFIP), which includes a series of Place Plans. The Place Plans deal individually with the main settlements and surrounding areas relating to Shrewsbury, the Market Towns and other Key Centres and the Rural Areas. The Place Plans are agreed to be an essential tool for identifying the infrastructure needs of each area and determining priority status between the categories of *critical*, *priority* and *key* and therefore the delivery programme for infrastructure towards which CIL will contribute along with S106 payments.

In the January 2011 version, Paragraph 2.7 of the Draft Developer Contributions SPD refers to the Place Plans and the identification of 'critical' and 'priority' infrastructure. The paragraph stopped in mid-sentence after '*Development is expected to...*'. RPS received a revised version completing the paragraph on 28 April 2011. The additional text usefully confirms RPS's understanding of the operation of Core Strategy Policy CS9, the priority categories and the role of the LDF Implementation Plan (LDFIP) and the Place Plan infrastructure schedules.

The Place Plan for Oswestry identified the requirement for a primary school as part of the SUE. However, this requirement was not included within the Shropshire Core Strategy or its evidence base work. RPS does not consider it appropriate for the Place Plans to include other requirements which would cause additional high costs for developments which should have been set out at the start, rather than in the Place Plans.

### ***Eligible Infrastructure for CIL***

The SDP should provide a clear explanation of how CIL and S106 funding will interact and how eligible infrastructure for CIL contributions will be identified.

The LDFIP includes costs for infrastructure items and grades them between 'critical', 'priority' and 'key' categories in order of priority for attracting contributions or CIL expenditure. The January 2011 consultation on the Preliminary CIL DCS included a list containing the eligible infrastructure which can benefit from CIL payments.

It is understood that this is not a requirement of the CIL Regulations. However, any assessment of the reasonableness of the proposed charging rate requires an understanding of what is eligible and what is excluded. It is understood that the Inspector has requested that an infrastructure list is available for the Examination of the Shropshire CIL DCS as the current (March 2011) consultation draft does not contain a list.



It is understood that a CIL infrastructure list will be included and revised within the annual review of the LDFIP. As, therefore an appropriate list will be available for public viewing at all times through the operation of CIL, RPS considers that there should be reference to this in the CIL Charging Schedule if not actually included as an appendix as it was previously.

#### *Strategic and Local Infrastructure*

It is stated at paragraph 3.14 of the SPD that although the majority of the levy will go towards local infrastructure provision, a small amount will be used for strategic infrastructure. Although the SPD does not state how much this will be, Shropshire Council has proposed CIL contributions for strategic infrastructure will be up to 10%, as indicated in the Code of Practice, which is suggested will be included as a supplement to the SPD.

The CIL Preliminary DCS January 2011 proposed to exclude certain strategic infrastructure within the eligible infrastructure list, identifying for example A5 and A483 junction improvements at Oswestry as such exclusions. J Ross objected to the exclusion of these improvements, taking the view this is a Shropshire strategic infrastructure item which should attract CIL contributions, as stated above.

Following this representation and before the March CIL DCS was published, J Ross understood that the Council was willing to reconsider the position and include named junction improvements on the A5(T) and A483 at Oswestry on the list. This approach would be supported by J Ross.

Recent discussions between the parties in April 2011 have suggested the Council may now be considering some hybrid approach where residential development at the Oswestry SUE may be required to contribute significantly towards the A5 Mile End junction improvement through a S106 element in addition to a full CIL payment. As stated above, this matter remains to be resolved.

Notwithstanding representations made on the earlier CIL DCS consultation and subsequent discussions, and the fact that there is no currently available CIL eligible infrastructure list to view in any formal document, the Developer Contributions SPD states at paragraph 2.10, in referring to the infrastructure on the *Levy list* being available on the Council's web-site (on the basis that S106 contributions would not be sought on listed items):

***"... for example, developer contributions to upgrades to some of the major junctions on the A5 will be achieved through planning obligations, where appropriate, rather than the levy."***

As stated above, this is a major concern for J Ross. The SPD is out of tune with recent discussions between Shropshire Council and RPS. The concern relates, in particular, to the indication that the proposed A5 and A483 junction improvements at Oswestry are excluded from CIL funding eligibility. Therefore, in the absence of any change to the CIL eligibility of these junction improvements and recognition as strategic infrastructure for Shropshire as a whole as well as local infrastructure to Oswestry (similar considerations



apply at Shrewsbury), arrangements will need to be introduced whereby developers or landowners of the SUEs should receive a CIL credit through the Planning Obligation process to reflect the disproportionate contribution made towards this infrastructure requirement.

RPS considers it highly unreasonable for the Council to be proposing that only the SUEs be expected to contribute towards the high costs of improving the A5, which must be regarded as strategic infrastructure requirements of significant benefit to a much wider area.

For the avoidance of doubt, it is necessary that it be clearly established that the proposed A5 improvements are classed as strategic infrastructure for Shropshire as a whole and local infrastructure respectively for the Shrewsbury and Oswestry and surrounding areas Place Plans.

### ***S106 Administration Fees***

The Local Planning Authority is proposing to apply a 2% administration fee for S106 agreements in the SPD. RPS considers this may be reasonable for smaller schemes which would generally have smaller developer obligations. However, larger schemes including the SUEs may be likely to generate a much higher level of developer contributions. It will be appropriate to introduce a cap at £10,000 for such an administration fee which would apply to all agreements securing £500,000 or more in contributions.

### ***Other Comments***

In setting levy rates for the main towns, SUEs and market towns, RPS agrees that there should be an appropriate balance between CIL funding for infrastructure requirements, and the economic viability of implementing CIL (SPD Para. 3.6). RPS considers it appropriate that the Council recognises that 'caution' is applied in setting the levy rate to achieve a suitable balance.

SDP Paragraph 3.13 needs to be amended to clarify how the 'ring-fencing' will work in practice, as this is not clear from the explanation provided.

### **Conclusions**

J Ross Developments' response to CIL DCS and the Planning Obligations SPD is that they:

- (a) **Comment:** generally commend the intentions of Shropshire Council to create and operate an effective CIL and Planning Obligations policy environment which will encourage the delivery of necessary development alongside associated infrastructure;
- (b) **Object:** although broadly support the overall approach to setting a realistic CIL level in Shropshire's towns and key centres of £40/sqm (and the reduction of the levy for the rural area to £80/sqm, with a significant

differential between urban and rural areas), this support is **subject to a necessary change to the Council's statements confirming that CIL money will be used towards on-going maintenance of public open space provided on site by developments and no additional cost will be required from development for this purpose;**

- (c) **Object:** although support the inclusion of the SUEs within the urban levy rate, this is subject to a necessary **clear recognition that the significant costs of the A5(T) and A483 junction improvements at Oswestry are recognised as strategic infrastructure items for Shropshire as a whole and a local infrastructure item for the Oswestry and surrounding area;**
- (d) **Object:** in the alternative to (c), seek
  - 1) **a separate rate for the Oswestry SUE Charging Rate which would have a significant reduction below that required for the urban areas, due to the additional S106 contributions that may be required from the development if the A5(T) and A483 junction improvements were not eligible for CIL funding; and/or**
  - 2) **a mechanism for securing credits from delivery of CIL qualifying infrastructure which is provided at a disproportionately high level of contribution through development; and**
- (e) **Object:** seek **a cap on the level of administration fee on S106 planning obligations.**

Mark Sackett at RPS Birmingham will be pleased to discuss this representation on behalf of J Ross with the intention of resolving many, if not all, of the issues before the SPD is adopted by Shropshire Council and the Examination hearing is held into the CIL DCS.