



Cllr Wasley



2 May 2014

Dear Cllr Wasley

COMMUNITY INFRASTRUCTURE LEVY

I write in response to your letter dated 22 April 2014.

As you are aware, the CIL Examination will be held on 7th May 2014 and the Planning Inspector appointed to examine the Council's CIL will reach a view on the uses, rates and zones the Council has proposed CIL will be charged. You have confirmed that your letter is submitted as a representation to the CIL Statement of Modifications consultation. Your letter has been sent to the Inspector and he will consider the points you have raised as part of the Examination process.

Taking the points you have raised in your letter in turn:-

CIL as a roof tax

I used the point in relation to CIL as being like a roof tax in an attempt to explain the difference from the current section 106 regime. Section 106 payments are directly related to individual development sites and the money collected must by law be spent mitigating the impact of the development it relates to. CIL on the other hand is not directly related to the development it is collected from and can be spent on any infrastructure as defined by Section 216 Planning Act 2008. This infrastructure could be unrelated to the development site. In this sense, CIL will operate like a roof tax rather than a pot of money tied to a specific development site.

It will be for Members to determine what infrastructure is included on the '123 List' and how CIL is spent. It is important to understand that CIL may be spent in other areas of the County Borough from which it is raised and/or on infrastructure which the development site paying CIL will not rely. Members could determine to spend the CIL money raised in Tonyrefail on a new road or school in Aberdare for example.

Point 1

Location of Tonyrefail – The CIL residential charging zones are based on economic viability not geography. The inclusion of Tonyrefail in zone 2 is not determined on its physical location in the north or south of the County Borough, although I accept that geographical location may influence the viability of a site or area. However, just because Tonyrefail is in the LDPs southern strategy area or was previously part of Taff Ely Borough Council has no real bearing on what CIL charging zone it should be located in.

Rateable value – I acknowledge your point about Council tax rates and rateable value, however the viability of the areas within RCT has been assessed by the District Valuer on behalf of the Council in accordance with established best practice and I am confident that the approach taken is sound and is a fair indication of development viability across RCT.

Point 2

You make reference to questions and requests that haven't been answered. For the avoidance of doubt I would be grateful if you could resend me exactly what you consider to be outstanding in order that I can reply accordingly.

CIL Process – the first CIL consultation was undertaken by the Council in December 2012. The process has been therefore underway for almost 18 months. The nature of CIL is that the Council publishes its proposals, consults on them and determines whether amendments should be made following consideration of any objections/comments received. You were consulted at each formal consultation stage and as you say did not make any comments.

During the consultation on the Draft Charging Schedule, objections and supporting evidence was submitted to the Council on behalf of this HBF and the Consortium of House Builders they represent. This evidence was considered by Council Officers and the District Valuer undertook additional viability testing to consider this evidence.

Following this additional testing and advice and in order to strike what I consider to be a more appropriate balance between funding new infrastructure and supporting new development, I recommended changes to the CIL rate. These changes were reported firstly to Cabinet on 22nd January 2014 and then Full Council on 26th February 2014. In order to ensure that all parties could comment on these proposed changes, a six week consultation was then undertaken. Essentially the changes have been in the public domain since mid-January.

Point 3

Savills Evidence – Savills (on behalf of the HBF) are entitled to submit any evidence they wish into the CIL process in accordance with the relevant CIL regulations. It would be difficult for the Council to progress a sound CIL in the absence of any involvement of the house building industry. We haven't taken their evidence at face value as suggested and it has been examined by the District Valuer. It is only the evidence he has deemed to be robust that has influenced our final CIL rate

It will be for the Inspector ultimately to determine the strength of Savills evidence.

Building Costs and the different products and prices available from different developers – There is a distinction between strategic Borough-wide viability assessments (such as those required to develop CIL) and individual site specific assessments. When preparing a viability assessment for an individual site, the developer would be expected to provide details of their specific building costs and this would be critically assessed by the Council. In the case of a Borough-wide viability assessment it is not appropriate to use different costs for the different potential house builders in an area. Rather an average figure is used, based on geographically weighted costs published by the Building Cost Information Service. The use of these figures is recognised as best practice and accepted by all sides involved in the development of CIL.

Affordable Housing – similar to building costs, an assumption has to be made on the costs likely to affect development sites. Given the Council's affordable housing policies affects all sites, it is reasonable to assume an affordable housing cost. This cost should be assumed in full accordance with the LDP requirements. Other Councils have sought to use affordable housing percentages in their viability testing for CIL at rates less than their LDP requirements and this approach has been found to be unsound.

In relation to your point about a specific development site in our ward, I would make two points. Firstly, whilst the Council agreed 10% provision it also included a trigger in the section 106 agreement requiring the viability of the site to be re-tested in the future. If the site is found to be more viable, it will be required to provide a higher level of affordable housing. Secondly the LDP is clear in that whilst 20% is the target, the Council will accept a lower level of provision where a viability assessment demonstrates the site can only provide a lower level.

In the planning application process individual decisions need to be taken on individual sites and there will be some instances where the particular characteristics at a site mean that not all the contributions required by the LDP will be achieved. Similarly, in the recent recession the Council made some decisions that were aimed at stimulating early house building when the market was at its lowest ebb.

Point 4

Land purchase cost – I refer to my earlier point about the need to make assumptions in relation to likely development costs when undertaking a Borough-wide viability assessment. These assumptions have been made by the District Valuer who is an experienced expert with access to real time transactions and values.

Point 5

Caerphilly CBC & Merthyr Tydfil CBC – CCBC and MTCBC have already had their CIL examination. The study prepared by the District Valuer was prepared jointly with CCBC and MTCBC. The Examination in May will consider RCT's CIL only.

CIL Reporting to Member Process & Scrutiny – The Council had progressed its CIL in accordance with the CIL regulations and its Constitution.

Record of meetings – all information that is required by the CIL regulations to be published has been published. It is not normal practice to publish records of all meetings with developers. This information is not however confidential and has been provided to you as part of your recent FOI requests. Please find enclosed a copy of these meetings.

Point 5 & Point 11

Relationship between planning officers and planning agent - Your letter raises concerns about the modifications to CIL and the relationship between planning officers and planning agents. You state:-

'...the largest benefactor in terms of a discount of C.I.L. in Tonyrefail, if Zone 2 should apply, uses a Planning Agency consisting of ex-RCT Senior Principle Planning Management Staff. For me this highlights obvious concerns, heightened in, that individual worked directly with both of the staff at RCT, charged with compiling this modified final report.'

and

'I likewise have concerns as to the connections between your Staff, and Staff of Planning Agents, as they were previously work colleagues at RCT. My concerns are heightened when it can be seen that it is those developments, which they represent, would be the largest benefactors of any discounted C.I.L. rate in Tonyrefail.'

You appear to be suggesting that planning officers have modified the Council's CIL as a result of their connections to planning agents who will benefit from a reduced CIL rate. If this is what you are suggesting, this would be a very serious allegation. In order that I can properly respond to these points, I would be grateful if you could please:-

- Clarify the exact nature of your concern;

- Clarify which planning agents you are referring to;
- Clarify who is the ex-RCT Senior Principle Planning Management Staff to whom you refer;
- Clarify which planning officers your concerns relate to; and
- Provide any evidence you have that has led you to your concerns.

This information will allow me to better understand and investigate your concerns. As you have raised these concerns in your representation to the Statement of Modifications they are in the public domain. For this reason and because these are potentially serious, I would request that you make available to me any evidence you have as a matter of urgency or if not retract the allegations.

If I have misunderstood the nature of your concerns, I would be grateful if you could clarify your position immediately and in any case I would suggest that you strongly consider withdrawing your letter and re-submitting your objections without reference to the concerns that appear to suggest an improper relationship between planning officers and planning agents.

I must advise you that these are serious allegations which you have chosen to raise in the public domain. I will investigate any allegations and any evidence brought to me fully and in accordance with the Council's established protocol. I will also ensure the reputation and integrity of the planning department is maintained and will refute strongly any unsubstantiated allegations that suggest improper conduct on behalf of the planning service.

Point 6

Evidence from HBF – as explained earlier, the HBF are entitled to submit any evidence they believe supports their position. The CIL regulations clearly allow this and whilst I do not necessarily agree with them on all the points they raise, I welcome their involvement in the process.

The Council has retained the services of the District Valuer to advise them on sales revenues, sales rates and all aspects underlying the development and viability of sites. The District Valuer receives details of all new house sales and therefore has a complete record of all sales in the Tonyrefail area. When he advises the Council on sales rates and revenues, he therefore does so in the knowledge of all the sales that have happened in this area. Whilst I appreciate that there will always be room for debate on what assumptions should be used in testing viability, I am entirely confident that the advice and evidence received from the District Valuer is sound.

Ultimately, it will be for the Inspector to consider the merit of the Council's, the HBFs and your viability evidence.

Point 7

Lack of build in Wales – I agree that the inclusion of Tonyrefail in zone 2 rather than zone 3 will not in itself address the issues affecting the building

industry in Wales or RCT. I do believe however that a lower CIL rate in Tonyrefail is likely to make the area economically viable and ultimately more attractive to house builders than if the CIL rate were set at £85 per square metre.

Point 8

Persimmon – I have no comment to offer on Persimmon's pricing strategy.

Viability of Allocated sites – sites allocated in the LDP were deemed to viable at the time the plan was found to be sound. The District Valuer's detailed viability work for CIL has shown that the vast majority of those sites remain viable. The question in hand therefore is what level of CIL they should pay.

Tonyrefail – I agree that Tonyrefail is a good location for new housing and as one of the Council's key settlements I would expect it to continue to play a role in meeting the Council's housing needs.

Infrastructure in Tonyrefail – CIL can be used to provide new infrastructure in Tonyrefail regardless of whether the CIL money is raised in the town. As an example, new primary school provision for Tonyrefail is identified on the draft Regulation 123 list.

Point 9

Council's evidence – Whilst the Council's original study dates from 2012, the Council has been in constant contact with the District Valuer throughout the CIL process. The District Valuer has been involved in assessing the representations made at both the Preliminary and Draft Charging Schedules. We have also worked with Caerphilly and Merthyr to continue to test and examine our evidence in light of representations made to their respective CILs and as part of their Examination process.

The District Valuer is confident that the conclusions of the original study are sound. Whilst revenues and costs do change over time, the District Valuer's position is that the Council's revised CIL levy (as set out in the Statement of Modifications) is viable and the Council is confident it has drawn the correct balance between funding new infrastructure and supporting development.

The Inspector will no doubt wish to explore this issue as part of the Examination process and I am confident the District Valuer will be able to demonstrate the Council's approach remains sound.

Point 10

Bullet point 1 – I am confident that the council's CIL has been progressed in accordance with the Regulations. I acknowledge that you feel that you were not directly consulted on the change to the Tonyrefail rate, however as a result of our latest round of consultation you have been able to make representations that will be considered by the Inspector

Bullet point 2 – I disagree and I refer to my answer under point 9.

Bullet point 3 – The Council's CIL is based on viability evidence only. No policy considerations are factored in when determining the rates or zones CIL will be charged and therefore Tonyrefail has not been singled out.

Bullet point 4 – The Council is required to take into account all representations made to the CIL consultation

It is fundamentally important that the house building industry is involved in this process. Their evidence has been carefully assessed with the DV and it has been concluded that a reduction in the rates originally proposed and the charging zones will strike a more appropriate balance between funding infrastructure and supporting new development.

Point 11

Regulation 123 List – The Regulation 123 List is not set in stone and will change over time. Infrastructure will be added to and removed from the list as circumstances change. The Regulation 123 List will be reviewed fully prior to the commencement of CIL.

Trane Farm Planning Application – The planning application at Trane Farm has yet to be determined and no decision has been taken on the acceptability of the scheme or the education provision required to serve any new development. I can offer no comment on comments by other parties.

Point 12

Help to Buy & Sprinklers – It is inevitable that circumstances will change over the course of developing both LDPs and CIL. Policy initiatives will start and end; Welsh Government policy will change; and in the case of CIL both the regulations and guidance have been subject to regular updating and replacement. Some changes (i.e. Home Buy) may help encourage new development, whilst others may not. It is not possible to start afresh each time something changes. It is important therefore to ensure appropriate buffers are factored in when assessing viability so that unknown costs can be allowed for as far as practicable. The Council's approach has included such buffers.

Point 13

Tonyrefail – I agree that Tonyrefail is a good location for new housing and as one of the Council's key settlements I would expect it to continue to play a role in meeting the Council's housing needs. How Welsh Government choose to support schemes on their own land is a matter for them and has no influence on the CIL rate in RCT.

Point 14

Loss of CIL revenue to community – I do not agree that the reduction in the CIL rate will affect our sustainability objectives. In addition it is important to note that money raised from developments in other parts of the County Borough could be spent in Tonyrefail.

Conclusion

Respondents with vested Interests – anyone was welcome to respond during the 3 public consultations. I refer to my earlier points regarding the importance of the development industry in the setting of CIL.

Caerphilly CBC – I note your point about minor changes to Caerphilly's CIL. Whilst the primary evidence base was developed together, each Council is responsible for establishing their own CIL rates and charging zones based on the particular circumstances in their area. Just because there is no proposed change to Caerphilly's residential CIL does not mean that changes in RCT are not justified.

Modifications to CIL – The consultation on the Statement of Modifications was undertaken in exactly the same manner as the consultations on the Preliminary and Draft Charging Schedules i.e. full public consultations involving correspondence to Members, key stakeholders, all those on the Council's consultation database, press ads, information available in all libraries and main Council offices and online. The consultation accords with the requirements of the CIL regulations.

I trust I have responded to all the points you have raised. I would repeat my request for further clarification and evidence in relationship to your concerns at points 5 and 11. As these serious concerns have been raised in the public domain, I am keen that they are addressed immediately.

Yours sincerely

Simon Gale
Service Director, Planning