

Kendal Town Council

Comments on SLDC's "Preliminary Draft Charging Schedule"

Executive Summary

This report gives Kendal Town Council's response to SLDC's *Preliminary Draft Charging Schedule* (PDCS) published in March 2014, and the Community Infrastructure Levy (CIL) rates proposed in the document.

The Council has previously submitted its *Comments* on the Draft *Infrastructure Delivery Plan* (IDP) published in January 2104. The Council concluded the Draft IDP needed considerably more work before it could be considered fit for purpose, and that using the Draft IDP as it stood for calculating a CIL would result in a serious (£m's) shortfall in developers' contribution to the town's infrastructure, a significant loss of amenity for the town's residents, and a threat to its economic development.

The Council notes with concern that the Draft IDP has now been carried forward unmodified into the PDCS. What is even more concerning is that the CIL proposed in the PDCS is set at such a low figure that it will not yield sufficient revenue even to meet the inadequate level of public infrastructure provision in the Draft IDP.

The Council believes that SLDC's process in drawing up the PDCS has been unduly weighted towards ensuring a CIL that will not threaten development, while failing to ensure that the revenue raised will be adequate to mitigate against the impact of the developments.

The Council calls on SLDC urgently to review the IDP, and engage in full consultation with residents over its proposals for the town, just as it engaged in multiple rounds of consultation with landowners and developers over the CIL viability criteria. The Council also calls for a full and transparent review of the decision making process used to set the rate of CIL versus the 'additional profit' data, particularly the decision to set a single rate of residential CIL.

The Council believes that the Local Plan can no longer be said to be deliverable until it is demonstrated that CIL revenues will substantially finance a credible infrastructure plan to mitigate the impact of developments in the town.

For convenience, the Appendix to this consultation response gives the eight specific recommendations made in the body of the document. The Council awaits SLDC's response with interest, and is happy to engage in dialogue to develop any of these recommendations further.

Kendal Town Council

Comments on SLDC's "Preliminary Draft Charging Schedule"

1. Scope of this report

This report gives Kendal Town Council's (*the Council*) response to South Lakeland District Council's *Preliminary Draft Charging Schedule*¹ (PDCS). It was prepared by a Working Group of the Council's Planning Committee, and was approved by the Council on 7th April 2104. It is submitted to SLDC to help progress thinking about the appropriate level of Community Infrastructure Levy (CIL) to be set to create a viable Local Plan.

In consultation responses, the Council normally takes care to restrict its comments to issues affecting Kendal town, its residents, its businesses, and its visitors. However, as the CIL is proposed to be a district-wide levy, some of the comments in this document do cover issues beyond the town's boundaries.

2. The purpose of the PDCS

Local Planning Authorities (LPAs) who set a CIL rate have to balance two aims (which may be in conflict):

- the CIL has to raise enough revenue to fill funding gaps in delivering the necessary public infrastructure required to support the Local Plan
- the CIL cannot be set so high that development is discouraged or even does not take place at all

In other words, for a Local Plan to meet the test of being 'deliverable', it has to deliver both the developments and the supporting infrastructure. A CIL has to be set which meets both goals. The publication of the PCDS is the first opportunity for consultation on SLDC's approach so far.

3. Infrastructure Requirements

In January 2014 SLDC published a *Draft Infrastructure Delivery Plan*² (IDP), showing its view of the infrastructure required to make the Local Plan deliverable. This Draft IDP was compiled from a variety of sources, relying heavily on inputs from delivery partners. It showed a funding requirement from the CIL of around £40m over the Local Plan period.

The Council submitted *Comments*³ on the Draft IDP, which included a series of 14 specific recommendations for consideration in the final IDP. The Council's conclusion was that the Draft IDP:

...needs considerably more work before it can be considered fit for purpose. Specifically, using this draft IDP as it stands for calculating a CIL would result in a serious (£m's) shortfall in developers' contribution to the town's infrastructure, a

1 *Preliminary Draft Charging Schedule*, SLDC, March 2014

2 *Draft Infrastructure Delivery Plan*, SLDC, Update January 2014

3 *Comments on SLDC's "Draft Infrastructure Delivery Plan"*, Kendal Town Council, March 2014

significant loss of amenity for the town's residents, and a threat to its economic development.

In its comments, the Council did not attempt to put a figure on the likely cost of the infrastructure missing from the Draft IDP. The Council would expect these figures to emerge as SLDC discussed the Council's recommendations - and feedback from other consultees - with delivery partners.

However, SLDC has now published a PDCS based on the Draft IDP, without the benefit of any consultation feedback. In order to test the PDCS, the Council has had to produce its own rough estimates of the possible shortfall in the IDP costings, covering three key issues for the town. These estimates can only be regarded as indicative.

3.1. Transport

The Council argued that a modal shift to sustainable transport would not happen unless the alternatives are both *available* and *sufficiently attractive*. The measures listed in the Draft IDP did not satisfy these criteria. What is required is a comprehensive package of improvements in bus availability and infrastructure, plus the delivery of a cycling / walking masterplan with associated highway developments. Using the figures in the *Kendal LDF Transport Improvements Study*⁴ (TIS) as a guide plus Price Book data suggests these missing elements could cost £1.5m upwards.

3.2. Air quality

The Council believes that diverting the northbound A6 from the town centre must be a deliverable from an IDP. Although this is put under the 'Air Quality' heading for convenience, this traffic management exercise is necessary not just for purposes of air quality, but also for traffic flow, supporting modal shift, and economic regeneration in the town centre. Previous studies for Canal Head⁵ suggest a figure of around £7m would be needed for this.

3.3. Education

The Council notes that the *Viability Study*⁶ stated that the overall requirement for education would be between £15m and £20m. This range was approved by the Inspector, and the Council believes it is more realistic than the £8.5m in the PDCS. Taking the bottom of the range gives a shortfall of £6.5m.

3.4. Others

The recommendations in the Council's *Comments* included a variety of other infrastructure requirements - an athletics track, new allotments, car parking, etc. However, the Council believes there is probably scope for these to be delivered within the aspirational £12m earmarked in the Draft IDP for Regeneration / Public Realm / Historic Environment, and is not suggesting additional funding at this stage.

4 *Kendal LDF Transport Improvements Study*, Development, Transport & Environment, Cumbria County Council, September 2012

5 *South Lakeland District Council Kendal Canal Head Area Action Plan Revised Preferred Options Report*, Ove Arup & Partners Ltd, September 2010

6 *South Lakeland Land Allocations DPD Viability Study*, HDH Planning and Development, April 2013

4. CIL Calculation

SLDC has produced three weighty tomes of supporting evidence for its proposed CIL - the *Viability Study* mentioned above, plus *Appendices*⁷, and a new *Annex*⁸. Despite the voluminous paperwork, the authors of the *Annex* are at pains to stress that “CIL is not set through a formula or calculation, it is more a quantitative process”. Having stated this caveat, the authors then attempt to quantify how different levels of CIL might affect the viability of typical types of development across the Local Plan area.

The *Annex* covers a variety of classes of development; the Council’s analysis in this document will consider only residential development. Table 5.2 from the *Annex* (reproduced in the PDCS) shows the calculated ‘additional profit’ figures for different types of development. This ‘additional profit’ figure is the amount which could be reduced by a CIL, and still allow landowners and developers to make the kind of returns typical in the industry.

The rate of CIL finally recommended in the *Annex* - and brought forward into the PDCS - is £60 / sq m.

5. CIL Yield versus Infrastructure Need

The *Annex* makes clear that its approach to CIL setting was made “without specific consideration of infrastructure requirements”. This aspect is considered within the PDCS, where the two figures - CIL Yield and Infrastructure Need - are brought together:

Projected CIL Yield at £60 / sq m on 5,592 units	£21.8 m
Estimated Infrastructure Requirement per Draft IPD	£40.0 m
Funding Gap	£18.2 m

So, at the proposed CIL rate of £60 / sq m, the Draft IPD is only 55% funded.

The PDCS does not state at what level of underfunding SLDC would consider the Draft IPD to be not viable.

The Council asks SLDC to publish its view of the minimum percentage of infrastructure funding from CIL for the Local Plan to be considered ‘deliverable’.

5.1. Areas of risk - CIL collection

However, these figures are over optimistic and do not represent the likely CIL yield.

- CIL will be complex to administer and collect, and central Government guidance is that 5% administration overheads can be expected
- The Localism agenda also dictates that between 15% (capped) and 25% (uncapped) of the CIL must be passed to parish / town councils. It is by no means guaranteed that these bodies will share SLDC’s priorities. This is particularly the case around Kendal, where the parish ward boundaries have not been adjusted to the new town development boundaries, meaning that the

7 *South Lakeland Land Allocations DPD Viability Study - Appendices*, HDH Planning and Development, April 2013

8 *South Lakeland CIL Viability Study*, HDH Planning and Development, Final Report January 2014

CIL from developments in Kendal will be administered by neighbouring parishes

- Even at £60 / sq m, the *Annex* makes it clear there will be some developments which will escape the CIL on viability grounds

Factoring these figures into the Funding Gap calculation:

Projected CIL Yield at £60 / sq m on 5,592 units	£21.8 m
Less 500 (say) exempt	£2.0 m
Less 5% administration cost	£1.0 m
Less 10% (say) localism cost	£2.0 m
Net CIL yield	£16.9 m
Estimated Infrastructure Requirement per Draft IPD	£40.0 m
Funding Gap	£23.1 m

This demonstrates that using more realistic assumptions, the Draft IDP is only 42% funded - i.e. In practice, less than half the funding is available.

The Council recommends that SLDC consider factors such as exempt properties, administration costs, and localism losses when calculating the potential yield from CIL.

The Council recommends that SLDC resolves the parish boundary issues as soon as possible to provide clarity about the distribution of CIL revenues.

5.2. Areas of risk - IDP estimates

As stated above, the Council has argued that the Draft IDP is seriously deficient in its approach to delivering its ambitions. Adding the additional spend identified above into the equation gives the following:

Estimated Infrastructure Requirement per Draft IPD	£40.0 m
Sustainable transport shortfall (minimum)	£1.5 m
'Air Quality' shortfall (minimum)	£7.0 m
Education shortfall (low end of range estimate)	£6.5 m
Revised Infrastructure Requirement	£55.0 m
Net CIL Yield from above	£16.9 m
Funding Gap	£38.1 m

This analysis suggests that the needed infrastructure is only 30% funded, and is unlikely to meet the criteria of 'deliverability'.

The Council recommends that work on the PDCS is put on hold until the issues around infrastructure funding identified in its previous *Comments* paper are resolved satisfactorily.

6. Closing the Gap

There are a number of ways this funding gap could be addressed.

6.1. Traditional Section 106 funding

The *Annex* and PDCS both contain references to possible S.106 funding. A contribution of £1,500 per unit is mentioned, which would yield another £8.4 m. This would close 22% of the funding gap. However, the infrastructure in the Draft IDP is mostly generic, and would be difficult to attribute to a single development. It is unlikely that S.106 would be supported for this use.

6.2. Increasing the CIL

The *Annex* actually comes up with a number of possible rates for a single residential CIL:

Using the average of all the CILs set to date by other Local Planning Authorities	£95 / sq m
Maximum Suggested Rate of CIL	£75 / sq m
Recommended Rate of CIL	£60 / sq m

The *Annex* does not explain how the Maximum Suggested Rate was calculated, other than to say this is “a cautious approach” and “it can be demonstrated that the Plan, as a whole, is not threatened at this level”. Similarly the difference between *Maximum Suggested* and *Recommended* does not have any supporting calculations. However, it is clear that any of these rates would permit considerable headroom against the additional profit figures of £300+ on the typical large sites.

Setting the CIL at the highest of these rates - £95 / sq m - would yield an additional £12.7 m gross, £9.6 m net. There is a risk that more developments would escape the CIL altogether on viability grounds. However, the data suggests that those which could not support £95 could not support £60 either, so this risk is small (and could be handled by setting a zero rate CIL in the most marginal areas). This additional CIL would reduce the gap by a useful 25%.

However, the Council believes there is a strong case that even this £95 is too low. Development areas within the SLDC boundaries such as Kirkby Lonsdale and Kendal regularly feature near the top of ‘best places to live in the UK’ lists⁹, a factor not unnoticed by developers¹⁰, who will expect to command a premium price as a result. Merely aiming for the average of all LPAs is very unambitious way of setting a CIL. Underinvestment in public infrastructure is a sure way of ensuring a relentless slide down any ‘best places’ list.

The Council requests SLDC and its consultants to ‘show its workings’ in full for its suggested rate of CIL, with a view to setting a higher figure reflecting the additional profit available and the desirability of residential developments within the district’s boundaries.

9.1. Differential Rates of CIL

Table 5.2 from the *Annex* (and quoted in the PDCS) shows the calculated ‘additional profit’ figures for different types of development. What is striking about Table 5.2 is the wide range of additional profit figures - from a loss of £1,896 / sq m to a gain of £716.

9 <http://www.itv.com/news/border/2013-03-17/kendal-is-one-of-the-best-places-to-live-in-the-uk/>

10 <http://www.oakmerehomes.co.uk/news/Kendal-one-of-the-best-places-to-live-in-the-UK->

Planning guidance quoted in the *Annex* shows that this level of variation in viability could be used to justify differential rates. However, the *Annex* states “in discussion with the Council a decision was taken that it would be preferable to set a single rate, across the whole area”. The *Annex* states this decision by the Council will result in a loss of revenue: “it is likely that the rates in the higher value areas ... would be higher, rather than the rates in the lower value areas being lower...” if differential rates were used.

In other words, differential rates would allow higher CIL to be generated by ‘honeypot’ areas, and reduce the risk of viability challenges from the least attractive sites. There is no reasoning given why SLDC decided to go down the single rate route.

However, it is possible to come up with some rough estimates of how much CIL could be generated if differential rates were used. The approach taken here is the reverse to that taken in the *Annex*. A target CIL yield is set to meet the overall infrastructure need. The various areas are weighted according to their additional profit rating (from Table 5.2). CIL rates are calculated appropriate to the weighting for each area, so that the Local Plan as a whole delivers the target yield. For simplicity, the various individual CIL rates are then grouped and rounded off into a manageable number of bands.

The table below gives some indicative examples of differential CIL rates that could be set to meet either the Draft DPD requirement (£40 m) or the Council’s revised requirement (£55 m):

	CIL to yield £40m (£ / sq m)	CIL to yield £55m (£ / sq m)
Lune Valley	£200	£200
Grange / Cartmel peninsula	£150	£150
Kendal, Kendal rural	£100	£150
Furness, other rural	£100	£100

Even at these rates, the CIL represents less than 50% of the available profit in most areas, and does not seem unachievable in some of the ‘best places to live in Britain’.

The Council recommends that differential rates of CIL are set to ensure appropriate and sufficient funds are raised for public infrastructure from Local Plan developments.

9.2. Payments in kind

The Council notes that other Planning Authorities have adopted policies which allow the payment of CIL ‘in kind’¹¹. There are a number of instances where the provision of public infrastructure is dependent on the availability of land - allotments, the new athletic track, possible new primary school site(s), etc. - but possible sites have not been identified in the Land Allocations process.

The Council recommends that sites for public infrastructure are specifically identified in the emerging Development Briefs, and adopts a policy which would allow these to be secured under CIL if necessary.

¹¹ e.g. *Community Infrastructure Levy (CIL) Payment in Kind Policy*, Dacorum Borough Council, January 2014

10. Comments on SLDC's process

At the start of this document, the Council noted the two conflicting aims of setting a CIL: raising revenue for public infrastructure; not stifling development. When setting a CIL, the planning guidance also stresses the importance of consultation.

From reading the supporting evidence, it is clear that the focus of SLDC's activity has been on the second target - not stifling development. The consultants engaged by SLDC state in the *Annex* that their scope excluded "specific consideration of infrastructure requirements". The five rounds of formal consultation noted in the *Annex* were exclusively with representatives of developers, land agents, and landowners. Considerable efforts were made to try and ensure consensus with these interest groups (not entirely successfully).

In contrast, the public record shows that SLDC's activity on the first target - raising revenue for public infrastructure - has been less intensive, as the Council's previous "*Comments*" have made clear. In contrast with the year-long engagement with developers etc. prior to publication of the *Annex*, there has been no public consultation with residents on the Draft IDP prior to the publication of the PDCS. For example, there has been no engagement on whether the masterplan for buses, cyclists, and pedestrians in Kendal would work for the residents of Kendal - for the simple reason that this masterplan does not exist.

Devising a CIL involves balancing two conflicting interests. Looking at the degree of engagement with consultants, the quantity and quality of supporting evidence produced, and the amount of consultation with interested parties, the Council believes that the PDCS has been created with a distinctly unequal process.

As a result, the document is seriously unbalanced, and needs fundamental reconsideration before it can be considered fit for purpose.

The Council recommends that work on an IDP is progressed to a stage at which meaningful public consultation can take place, and then conduct sufficient rounds of consultation that a satisfactory plan emerges.

11. Appendix - Summary of Recommendations

- 11.1. The Council asks SLDC to publish its view of the minimum percentage of infrastructure funding from CIL for the Local Plan to be considered 'deliverable'.
- 11.2. The Council recommends that SLDC consider factors such as exempt properties, administration costs, and localism losses when calculating the potential yield from CIL.
- 11.3. The Council recommends that SLDC resolves the parish boundary issues as soon as possible to provide clarity about the distribution of CIL revenues.
- 11.4. The Council recommends that work on the PDCS is put on hold until the issues around infrastructure funding identified in its previous *Comments* paper are resolved satisfactorily.
- 11.5. The Council requests SLDC and its consultants to 'show its workings' in full for the recommended rate of CIL, with a view to setting a higher figure reflecting the additional profit available and the desirability of residential developments within the district's boundaries.
- 11.6. The Council recommends that differential rates of CIL are set to ensure appropriate and sufficient funds are raised for public infrastructure from Local Plan developments.
- 11.7. The Council recommends that sites for public infrastructure are specifically identified in the emerging Development Briefs, and adopts a policy which would allow these to be secured under CIL if necessary.
- 11.8. The Council recommends that work on an IDP is progressed to a stage at which meaningful public consultation can take place, and then conduct sufficient rounds of consultation that a satisfactory plan emerges.