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**Oxford City Council's response
to Initial Questions to the CIL
Charging Schedule
Examination**

CIL IC1A

January 2019

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Legal and Procedural Compliance

Question 1

One of the issues to be tested by the examination is whether the Council, as the charging authority, has complied with the procedural and legal requirements of Part 11 of the Planning Act 2008 and the CIL Regulations 2010 (as amended) in preparing the DCS. I have been unable to find any evidence in the submission documents confirming compliance with the Act and the Regulations. Will the Council be producing a statement to evidence that in preparing the DCS it has complied with all of the legal and procedural requirements in the Act and the CIL Regulations (as amended)?

CIL Draft Charging Schedule - Statement of Compliance January 2020

Background

- 1.1 This statement has been produced to demonstrate Oxford City Council's compliance with the requirements set out in the Planning Act 2008, the CIL Regulations 2010 (as amended).

Compliance

- 1.2 Oxford City Council hereby declares that:
- a. As the charging authority, it has complied with the Requirements of Section 212(4) of the Planning Act 2008 and the CIL Regulation 2010 (as amended);
 - b. That the charging authority has used appropriate available evidence to inform the draft charging schedule; and,
 - c. That any other matters prescribed in the CIL Regulations 2010 (as amended) have been dealt with.
- 1.3 Legislation relating to the introduction of CIL is set out in Part 11 of the Planning Act (2008) as amended by the Localism Act (2011). The provisions relating to the examination of a CIL Draft Charging Schedule are set out in the following sections. The table below demonstrates that the Council has complied with these provisions.

Planning Act 2008	
Section 211 - Amount	<p>In setting the rates and preparing the Draft Charging Schedule Oxford City Council has had regard to the actual and expected costs of infrastructure; the economic viability of development; other actual or expected sources of funding for infrastructure; the actual or expected administrative expenses in connection with CIL and the Statutory Guidance.</p> <p>With regards to this, Oxford City Council have published on our website:</p> <ul style="list-style-type: none"> • An infrastructure delivery plan (IDP) • An economic viability assessment (EVA) • An addendum to the EVA <p>In addition, Oxford City Council has also consulted with a range of stakeholders in preparing the Draft Charging Schedule, with formal consultations on the following dates:</p> <ul style="list-style-type: none"> • Preliminary Draft Charging Schedule: From the 2nd October 2018 to the 30th October 2018. (4 weeks) • Draft Charging Schedule: From the 1st November to the 13th December 2018 (6 weeks)
Section 212 – charging schedule examination	<p>The Council has submitted the CIL Draft Charging Schedule and accompanying evidence to the Planning Inspectorate who will provide an independent inspector to examine the Draft CIL Charging Schedule for approval. The planning inspectorate are independent of the Council and have appropriate experience and expertise.</p> <p>All persons who have submitted representations to the consultation on the Draft CIL Charging Schedule stating that they would like to be heard by the examiner, will be given this opportunity.</p>

1.4 The regulations that apply to the processes involved in progressing a CIL Draft Charging Schedule to examination are as follows:

- Regulation 12 - Format and content of charging schedules
- Regulation 13 - Differential rates
- Regulation 14 - Setting rates
- Regulation 15 - Consultation on a preliminary draft charging schedule
- Regulation 16 - Publication of a draft charging schedule
- Regulation 17 - Representations relating to a draft charging schedule
- Regulation 18 - Withdrawal of a draft charging schedule
- Regulation 19 - Submission of documents and information to the examiner
- Regulation 20 - Consideration of representations by examiner
- Regulation 21 - CIL examination: right to be heard

1.5 The table below demonstrates that the Council has complied with these Regulations:

The Community Infrastructure Levy Regulations 2010 (as amended)	
Reg 12 – Format and content of charging schedules	<p>Oxford City Council’s Draft CIL Charging Schedule contains the information required by the Regulation 12, part 2 including:</p> <p>(a) The name of the Charging Authority;</p> <p>(b) The rates in pounds per square metre at which CIL is to be charged in the authority’s area; and,</p> <p>(d) An explanation of how the chargeable amount will be calculated.</p>
Reg 13 – Differential Rates	<p>This regulation applies to differential rates.</p> <p>1b) Oxford City Council proposes to set differential rates with a higher £200 rate for A1-A5 class, C3, C4 and Student accommodation; and a lower £50 rate for all other use classes. This is set out in the Council’s Draft CIL Charging Schedule.</p>
Reg 14 – Setting Rates	<p>In setting its levy rates, Oxford City Council has complied with Regulation 14(1), which requires that it, <i>“must aim to strike what appears to the charging authority to be an appropriate balance between (a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and (b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area. (2) In setting rates in a charging schedule, a charging authority may also have regard to actual and expected administrative expenses in connection with CIL to the extent that those expenses can be funded from CIL in accordance with regulation 61...”</i></p> <p>This is set out in the following documents:</p> <ul style="list-style-type: none"> • OCC Draft CIL Charging Schedule; • Oxford City Council Infrastructure Delivery Plan • Oxford City Council Infrastructure Funding Gap • Oxford City Council Economic Viability Assessment (EVA) • The Oxford City Council EVA Addendum <p>Other evidence base documents submitted as part of the examination. These documents are available to view and download on the Council’s website.</p>

<p>Reg 15 – Consultation on a Preliminary Draft Charging Schedule</p>	<p>Oxford City Council issued a CIL Preliminary Draft Charging Schedule for consultation between 2nd October 2018 and 30th October 2018 (4 weeks).</p> <p>The Council complied with Regulation 15 of the CIL Regulations in terms of the requirements for consultation on the PDCS. Regulation 15 sets out that a charging authority must send a copy of the PDCS to each of the consultation bodies, and invite them to make representations on it.</p> <p>The following methods of consultation were used on the 2nd of October:</p> <ul style="list-style-type: none"> • Letter/e-mail notification to the consultees, which included local planning authorities; Oxfordshire County Council; Parish Councils within the City and Persons exercising the function of the local planning authority. (Reg. 15(1-3)) • The Council also invited Representations via Letter/email on the preliminary draft from persons who are resident or carrying on business; voluntary bodies and bodies which represent the interests of persons carrying on business in Oxford City.(Reg. 15(5)) • Information about the consultation, including documents and how to respond, on the Council’s public website.
<p>Reg 16 – Publication of a draft charging schedule & Reg 17 – Representations relating to a charging schedule</p>	<p>The Draft Charging Schedule and Preliminary Draft Charging Consultations Document was published on the Council website and available in the Council’s offices and Oxford City Libraries on the 31th of October 2018. Published alongside it were: the CIL Regulation 123 list; a Statement of Representation Procedure; relevant evidence base documents and a statement of the fact that hardcopies were available for inspection at the Council’s Offices and on the Council’s website.</p> <p>A copy of the draft charging schedule and a statement of the representations procedure were sent to the consultation bodies (as listed above in Reg 15) via email and post on the 1st of November for comment.</p> <p>A local advertisement which set out the Regulation 16 Statement of Representations Procedure, and a statement of the fact that hardcopies of the Draft Charging Schedule, statement of representations and relevant evidence were available for inspection at the Council’s Offices was published in the Oxford Times on the 1st of November (see below):</p> <p>The period for representations on the Draft Charging Schedule was 1st November 2018 to 13th December 2018 (6 weeks). A total of 14 representations were received.</p> <p>Full copies of representations can be found in the Regulation 19 Statement of Representations Received- including a summary of all representations as well as individual responses to those representations these documents have been available to view on the Council’s website. All representations were taken into account before the submission of the DCS for examination. This is further addressed in our response to question 3.</p>

8 PUBLIC NOTICES

Announcements - Public Notices

PLANNING APPLICATIONS

THE TOWN AND COUNTRY PLANNING ACT REQUIRES THE FOLLOWING TO BE ADVERTISED:

(DEL = Delegated Applications • COMM = To be decided by Committee)



Conservation Area

18/02706/FUL DEL 94A BANBURY ROAD Erection of a single storey office studio to the rear of the property.

18/02716/FUL DEL GROUND FLOOR AND BASEMENT, 28 - 31 ST EBBE'S STREET Change of use of basement and ground floor from (Use Class A4) to mixed Use Class B1(a) and Use Class D1.

18/02809/POM COMM MILLBANK, MILL STREET Variation of legal agreement attached to planning permission 94/00413/NFZ (Erection of 2 buildings, part 3/part 4 storey, to provide 30 x2 bedroom flats. Alterations to existing access off Mill St to serve 30 parking spaces. Provision of riverside walk, landscaping & pedestrian/cycle access from Gibbs Crescent (Millbank, Mill Street) to discharge clauses 3(3) and 3(4) from the S106 Agreement.

18/02811/FUL DEL 10 SOUTH STREET Erection of a single storey side infill extension. Formation of 1no. dormer in association with loft conversion. Insertion of 2no. windows to north elevation. Insertion of 1no. patio doors to south elevation.

18/02842/VAR DEL 4 ST ANDREW'S LANE Variation of condition 2 (compliance with details) and 5 (rear doors quoins) of planning permission 95/00575/NFH (Three dormers at first floor rear) to allow minor alterations to the rear door and the single storey rear extension.

Major Development that are also EIA Development and affect the setting of a Conservation Area

18/02587/FUL COMM SITE OF BLOCKS C F G H J K L AND M, CLIVE BOOTH HALL, JOHN GARNEWAY Proposed demolition of Blocks C, F, G, H, J, K, L and M of the Clive Booth Student Village and erection of 1,077 student bedrooms with associated communal and social facilities.

Major Development

This application requires re-advertisement

18/02303/RES COMM LITTLEMORE PARK, ARMSTRONG ROAD Details of reserved matters (layout, scale, appearance, landscaping and access) pursuant to planning application 18/02231/VAR (variation of condition 3 (approved plans and documents) to revise indicative parameters plans and condition 18 (noise levels) to revise residential noise levels of planning permission 14/02940/OUT as varied by 14/02940/NMA and 14/02940/NMA2 (Outline planning application (with all matters reserved) seeking permission for up to 270 residential dwellings to incorporate a maximum of 92 houses on 2 to 3 floors of 1 to 4 bedrooms with one dwelling being a house with 5 bedrooms and 178 flats of 1 to 4 bedrooms on 2 to 5 floors. Provision of car parking, cycle and bin storage, landscaping and ancillary works. (Amended plans and additional information).

Announcements - Public Notices

Part 11 of the Planning Act 2008 (as amended by the Localism Act 2011)
The Community Infrastructure Levy Regulations 2010 (as amended)
Notice of publication of a Community Infrastructure Levy (CIL) Draft Charging Schedule Review



Oxford City Council has published a CIL Draft Charging Schedule Review for consultation (Regulations 16 and 17).

The City Council is inviting comments on this document. The period for representations to be made will run from 1st November to 13th December 2018. All comments must be received by 4.00 pm on the 13th December 2018.

A copy of the draft charging schedule and the relevant evidence are available to view on the City Council's website: www.oxford.gov.uk/CIL and are available for inspection, free of charge, during the consultation period at the following locations:

- Oxford City Council Offices, St Aldate's Chambers, 109-113 St Aldate's, Oxford, OX1 1DS
- All libraries within Oxford City

A representations form can be obtained by emailing Planning Policy. Representations should be sent by the deadline to the email or postal addresses below or submitted online by registering at <http://www.oxford.gov.uk/consultation>. The representations form will provide you with the option to request the right to be heard by the examiner. Please note that your representation will be publicly available and a copy will be published on the Council's website. You may ask for your personal details to be withheld before publication, but representations cannot be anonymous.

The documents have been published in order for representations to be made prior to submission of the Draft Charging Schedule for examination. Representations received during the period will be considered alongside the submitted documents, which will be examined by an independent examiner.

The City Council will, upon written request, notify you when the Draft Charging Schedule has been submitted to the examiner; when the examiner has published his/her recommendations and the reasons for those recommendations, and that the Charging Schedule has been approved by the Council. On making such a request please provide full contact details.

Printed copies of the Draft Charging Schedule are available for purchase from St Aldate's Customer Services Centre, or by post from the address below. The price of the document is £15. Cheques should be made payable to Oxford City Council, and marked for the attention of Planning Policy.

Planning Policy, City Development, Oxford City Council,
St Aldate's Chambers, 109-113 St Aldate's, Oxford, OX1 1DS
Telephone: 01865 252847 Email: planningpolicy@oxford.gov.uk
Adrian Arnold, Interim Head of Planning 1st November 2018

**Reg 18 –
Withdrawal of a
draft charging
schedule**

The Council has not withdrawn its Draft Charging Schedule therefore this regulation does not apply.

**Reg 19 –
Submission of
documents and
information to the
examiner**

Oxford City Council submitted the following documents, in both paper and electronic form, to the Planning Inspectorate on 3rd of June 2019:

	<ul style="list-style-type: none"> • the Draft CIL Charging Schedule; • The CIL Regulation 123 list • A Regulation 19(1)(b) Statement of Representations; • Copies of representations made under Regulation 17 • Statement of modifications • Copies of the relevant evidence (including the EVA and addendum; Council cabinet report for approval of DCS to be submitted for examination; the PDCS, schedule of comments for the PDCS and the council approval for consultation on the PDCS and the Adopted charging schedule 2013) • Discretionary Exceptional Circumstances relief policy • Current CIL rates, January 2019 <p>Copies of the submitted Draft Charging Schedule and supporting documents were made available at the Council’s Customer Services Centre on 3rd of June 2019 (in compliance with (19(3) “<i>as soon as practicable after a charging authority submits</i>”). All documents were published on the Council’s website on the same date together with a statement of the fact that the documents were available for inspection and where they could be inspected.</p> <p>All persons who submitted responses to the CIL Draft Charging Schedule were notified of its submission and modifications (in compliance with Reg. 19(4-5)) on the 3rd of June 2019 at via email.</p>
<p>Reg 21 – CIL Examination: right to be heard</p>	<p>The Council received 4 requests to be heard by the Examiner within the period for making representations to the Draft CIL Charging Schedule.</p> <p>The Council has appointed a Programme Officer, who will support the Planning Inspector in their work during the examinations. The Programme Officer can be contacted at</p> <p>idxkemp@icloud.com</p> <p>The Council will publish the time and place of the CIL examination and the name of the Examiner on its website and notify all persons who made representations in accordance with Regulation 17.</p> <p>This statement will be updated to included additional information on compliance with Regulation 21.</p>

Question 2

As you know on 1 September 2019 the CIL (Amendment) Regulations came into force and the Government published revised Planning Practice Guidance (PPG) on CIL and Viability. Although the DCS was prepared and submitted in advance of the amendments to the Regulations, the changes apply to this examination and DCS, except in respect of the revised consultation procedures. Accordingly, please advise what bearing, if any, the amended Regulations and PPG have on the submitted DCS and evidence base. In particular, I draw your attention to:

2a) The deletion of Regulation 123 which removes the requirement for a Regulation 123 list and allows charging authorities to use both CIL and S106 obligations to fund the same infrastructure projects. The Regulation 123 list is referred to in a number of places in the DCS and informs evidence on the infrastructure funding gap and any allowances for residual S106 costs included in the Economic Viability Assessment;

- 2.1 References to the 123 list will need to be removed from the DCS, however this will not have an effect on the evidence base used in the viability assessments. The 123 list is drawn up from the Infrastructure Development plan and the 123 list is only a guide to infrastructure that could be funded from CIL.
- 2.2 The lifting of the 'pooling restriction', arises from the deletion of Regulation 123. With the removal of this requirement, local planning authorities are permitted to collect more than five contributions to fund the same infrastructure, by using s.106 planning agreements. It also means that contributions from CIL and S106 can now be used on the same piece of infrastructure that was not allowed for previously. However, this does not mean that LPAs are obligated to switch to the use of S106 agreements. It is important to note that the tests in Regulation 122 will continue to apply, and so the s.106 agreement will still need to be (a) necessary to make the development acceptable in planning terms, (b) directly related to the development, and (c) fairly and reasonably related in scale and kind to the development. Our understanding is that the intended effect of this is to allow CIL and planning obligations to fund the same piece of infrastructure and accordingly remove what can be a barrier to development. However, we have not found this to be a specific issue in Oxford under the previous regulations.
- 2.3 Generally, sites in Oxford are relatively small redevelopment or greenfield sites that do not trigger large off site infrastructure items. Indeed, city centre redevelopments often seek to reduce traffic movements in line with local policies so often significant highway infrastructure is not required. Often works are to public realm, cycle improvements, controlled parking zones to support the low car or car free developments, enhancements to community facilities and health centres as populations grow. The council has been able to appropriately manage improvements in these areas through CIL funding to date. When preparing the Local Plan it was identified that one secondary school was needed and that the rest of the growth could be accommodated in existing schools or through expansion of schools that will be monitored over time and provided as required using CIL funding alongside other funding sources. The secondary school has now been provided at Swan School. Infrastructure Funding Statements (IFSs)

required annually from 31 December 2020 will keep an appropriate audit trail of all contributions to receiving authorities and how they are spent, whether s106 or CIL and provide transparency as to how CIL is being spent and monitor its alignment to infrastructure needs.

- 2.4 As set out in response to question 8 we have not been able to gather the evidence to zero rate some complex strategic sites at this time but have tried to put in place other mechanisms to try and mitigate for this if it arises. For example, the changes mean that if the council did consider there to be exceptional circumstances on any of the complex strategic sites in the future we could revert to S106 for site specific reasons and would no longer be prevented to combine S106 and CIL funds under the discretionary exceptional circumstances policy.
- 2.5 The change in Regulations also means that if the Inspector was minded to recommend the zero rating of specific sites or zones, S106 could be utilised in combination with CIL where it could not have done before without the potential for pooling restrictions being reached.

2b) The replacement of the RICS BCIS ‘All-in Tender Price Index’ with the RICS CIL Index from 2020 onwards and other changes to the method for calculating the chargeable amount in Schedule 1 of the CIL (Amendment) Regulations, which are referred to in paragraph 28 and Annex 2 of the DCS; and

- 2.6 The replacement of RICS BCIS ‘All-in Tender Price Index’ with the RICS CIL Index from 2020 will have little or no impact as the only difference is that rather than using a figure for a single quarter it will now be based on an annual average and CIL rates were only updated annually under the previous method in any event.
- 2.7 The changes to the indexation will have no impact on the viability assessment as the testing is all done at the newly proposed rate. This is standard practice and would not be appropriate to test sites based on potential future indexed rates. The testing is all current day costs, values and CIL rates, hence the indexation does not have any effect.
- 2.8 Since we introduced CIL in 2013 the rates have increased by the following percentages:

Year	Rate (A1-A5, C3,C4 Student Accommodation)	Rate (B1-B8, C1-C2A, D1, D2, Other)	% increase
Oct 2013	£100	£20	
Jan 2015	£106.30	£21.26	6.3 %
Jan 2016	£115.65	£23.13	8.8 %
Jan 2017	£120.97	£24.19	4.6 %
Jan 2018	£125.93	£25.18	4.10%
Jan 2019	£144.19	£28.83	14.5%
Jan 2020 (using RICS CIL Index)	£148.64	£29.72	3.09%

- 2.9 References to the RICS BCIS 'All-in Tender Price Index' in the DCS will be updated with the 'RICS CIL Index' as per Schedule 1 Part 1 of the CIL regulations (as amended September 2019).

2c) Amendments to the Regulations in respect of Section 73 applications referred to in paragraph 29 of the DCS.

- 2.10 The amendment to the regulations in respect of s73 applications mean that where a planning permission benefits from exemption or relief or the right to pay by instalments this can now be carried over into an amended planning permission.
- 2.11 The regulations also provide further clarification regarding any increase in floor area. They ensure that any increases in liability resulting from a section 73 application are charged at the latest rate, while previously permissioned floorspace continues to be charged at the rate/rates in place when those elements of the development were first permitted. Oxford City Council have advised of this in para 29 in the DCS.
- 2.12 The amendments also include provisions relating to similar situations where permissions are changed or phased across a period of the adoption or updating of CIL charging schedules.
- 2.13 These amendments do not affect the viability assessments as they are carried out on whole schemes and using the proposed new rates, assuming those rates apply to the whole scheme. We have not sought to assess viability of scheme amendments over time or of any transition from the previous to the new CIL rates, and it would not be appropriate to do so in testing the viability in general terms of the new rates. We note that the new provisions will allow for application of the old CIL rates for a proportion of any scheme amended over the course of introduction of new rates. That will have the effect of reducing the CIL liability and improving viability of those schemes compared to the application of new rates over the whole of the scheme, as applied in the modeling.

Question 3

Regulation 15(7) of the CIL Regulations requires charging authorities to take into account representations on the Preliminary DCS before publishing a DCS. As the DCS was published before the CIL Amendment Regulations came into effect, this requirement still applies. I note the summary of responses to the Preliminary DCS consultation (CD1.10), but where can I find in the submitted documents evidence to show that the Council has taken these into account before publishing the DCS?

- 3.1 The City Council published the Preliminary Draft Charging Schedule (PDCS) for consultation on 2 October 2018 which lasted until the 31 October 2018.
- 3.2 A Summary of Comments was subsequently published following this consultation. That consultation was undertaken while the Community Infrastructure Levy Regulations (2010) were extant. This is no longer the case as they have been superseded by the 2019 Regulations, but at that time – Regulation 15 (7) of the 2010 Regulations stated that:
- 3.3 ‘The charging authority must take into account any representations made to it under this regulation before it publishes a draft of the charging schedule for examination in accordance with section 212 of PA 2008.’
- 3.4 It did not however require the charging authority to publish an audit trail of how the City Council had taken into account the responses submitted during the consultation. This does not mean the City Council did not consider the responses received following both consultations.
- 3.5 The City Council had ongoing discussions with our viability consultants during the course of the PDCS consultation as representations were submitted. This allowed us to consider the detail of the representations and to challenge our consultants as to whether any changes would be necessary.
- 3.6 General approach to considering responses to Preliminary Draft Charging Schedule (PDCS) consultation before publishing the Draft Charging Schedule(DCS)
- 3.7 During the consultation on the PDCS in October 2018 the City Council received a total of 30 responses, the timeline and volume of responses were as follows:
 - 02 October – 1 response
 - 03 October – 1 response
 - 04 October – 2 responses
 - 05 October – 2 responses
 - 06 October – 1 response
 - 08 October – 1 response
 - 15 October – 1 response
 - 17 October – 1 response
 - 18 October – 2 responses
 - 22 October – 1 response
 - 23 October – 1 response

24 October – 2 responses
25 October – 1 response
29 October – 6 responses
30 October – 7 responses

- 3.8 The responses came through evenly across the four week consultation period. Nearly a third of the overall responses were received in the first two weeks of the consultation, but the rate of return for responses was easily manageable for officers to review as they were submitted, and therefore take into account comments, and consider what changes, if any, were needed to the charging schedule while the consultation was underway. The response rate averaged two responses per day.
- 3.9 The process of receipt allowed officers ample time to review and consider each response as they were received before the consultation period had finished.
- 3.10 Officers also held internal meetings and met with the Council's consultants, before the end of the consultation period to discuss the responses, viability, etc. on the following dates:
- 15 October
16 October
29 October
30 October
- 3.11 There were also a range of other conversations by phone and email at the time between officers and the consultants considering the responses.
- 3.12 The Regulations do not stipulate that consideration of representations cannot take place while the consultation is still open. Furthermore, the Regulations do not require the Council to make changes between the two consultation stages, and is not the only outcome that can follow consideration of responses. Having said that, in this case it is relevant that there was a decision to make a change in relation to strategic sites from the approach consulted upon in the PDCS before publishing the draft charging schedule for consultation. This is explained below under strategic sites.
- 3.13 There were other comments on the PDCS where the council made no change. This was either because the comments were supportive, or the council believed the evidence presented by the respondent did not justify a change.
- 3.14 As can be seen from the summary of representations received, the majority of the comments made during the PDCS consultation (66%) were either comments relating to items on the Regulation 123 list or the future spending of CIL (i.e. not relevant to the charging rate or viability evidence). In addition, there were several very high level responses raising general in-principle concerns about increasing the rate, particularly for housing, but not supported by specific evidence to explain why the viability evidence of the council was flawed. The council considered these concerns but felt it had taken an evidence led approach and had considered carefully the principle of increasing the rate against the evidence.

3.15 The main substantive issues raised at the time related to the approach to B2/B8 and strategic sites. Below we have sought to set out the key points raised relating to these issues at the time and how they were taken into account in the draft schedule and the evidence base.

Strategic Sites

3.16 The PDCS proposed that all strategic sites over a certain threshold (to be confirmed) would have a CIL rate of £0/m². After the close of the consultation, and in the subsequent draft charging schedule, the Council removed the reference to the CIL rate of £0/m² for strategic sites.

3.17 The City Council consider that the points raised in relation to strategic sites were adequately taken into account before publishing the DCS based on the available evidence from the responses and the council's own evidence.

3.18 Five responses/ comments were received in relation to this matter. These were from BMW Group, Oxford Bus Company, Thomas White Oxford, South Oxfordshire and Vale of White Horse District Councils regarding the application of the levy on strategic sites.

3.19 Their responses, summarised below, outlined the following concerns with the inclusion of strategic sites:

BMW Group

3.20 'We request that the following modifications are incorporated in the Draft Charging Schedule prior to the next stage of consultation: identify the MINI Plant Oxford site, which included adjoining land allocated for industrial uses linked to car manufacturing, as a "Strategic Site";

Oxford Bus Company

3.21 'Introducing S106 to such sites (Northern Gateway) instead of CIL will only cause more delays. Such strategic sites would generate a large CIL income which would then help deliver key infrastructure for Oxford at the earliest opportunity'

South Oxfordshire & Vale of White Horse District Council

3.22 'The Charging Schedule will need to take into account of all new strategic sites allocated within [the Local Plan 2036], as these sites are expected to be exempted from CIL. The examination in public of the Local Plan 2036 may result in additional strategic sites being included within the plan. It is therefore important that the infrastructure requirements of such sites are fully considered within the Charging Schedule and accompanying Regulation 123 list.'

Thomas White Oxford

- 3.23 'TWO supports the position set out in the Preliminary Draft Charging Schedule that the site at Northern Gateway should be zero rated for CIL.'
- 3.24 All responses were considered and it was decided that zero rating of strategic sites would not be continued into the DCS as there was no clear evidence presented to support the decision for the differential rate as required by the Planning Practice Guidance and further evidence had not come forward through the consultation. The viability evidence of the council also did not support it as a blanket exemption, particularly for greenfield sites. Officers were also concerned, on reflection and having considered the responses, that it could lead to issues with pooling restrictions on S106 given the number of sites affected and the CIL Regulations in effect at the time. Emails and phone calls were made to all those that had commented on strategic sites to discuss this decision. Examples of the correspondence can be provided if necessary.

B2/ B8 CIL Rates

- 3.25 The preliminary charging schedule proposed a CIL rate of £20/m² for B2 and B8 uses. This was criticised by BMW Group, Mini Plant Oxford, c/o David Lock Associates in their response to the PDCS and they pointed to the Council's evidence showing such a proposal was unviable.
- 3.26 Officers reviewed and considered the representation. The response did not provide specific additional evidence but simply referred to the City Council's evidence base. The City Council were aware that the viability evidence supporting the PDCS showed the rate to be unviable when they proposed it but did not consider this to be the only consideration, particularly in the context of the 2013 Examiner's report.
- 3.27 The BMW Group had made a similar representation with regards to the B2/B8 CIL rate, c/o Higham & Co in the 2013 consultation of the CIL Charging Schedule, however the Examiner's report did not agree with this representation.
- 3.28 The Examiner's July 2013 report preceding the publication of the CIL Charging Schedule accepted the setting of the relatively low rate of £20 per sqm for all commercial uses, despite the concerns around viability and limited evidence to support the charge.
- 3.29 In the report the Examiner stated that: 'The non-residential appraisal indicated that a notional industrial development of 1,625 per sqm would not be viable, based on the assumptions in the model.'
- 3.30 However, the Examiner also stated that: '[the Council's] consultants found evidence that industrial plots are often sold at a premium, particularly to prospective owner/ occupiers who do not account for developer's profit in their calculations of land bid value.'
- 3.31 The Inspector concluded that: 'On balance, a CIL rate of £20 per sqm, which is likely to be a small proportion of overall costs, would be unlikely to threaten development at BMW, given the Council's commitment to supporting such a major employer.'
- 3.32 As a rate for B2/B8 use classes was already in place since 2013, the limited representations received and the lack of evidence being put forward in the response

received during the PDCS consultation it wasn't considered sufficient to justify a change or removal of the rate. For example, there had been no specific examples given in the representation of how it had caused developments within these use classes to be unviable up to 2013. The concern was considered by officers in discussion with the viability consultants but at the time it was still considered justified for similar reasons to those in 2013. This was in line with planning practice guidance that sets out that proposed rate or rates should be reasonable, given the available evidence, but there is no requirement for a proposed rate to exactly mirror the evidence.

- 3.33 However, the City Council did keep their position under review following the DCS consultation where further information was put forward by BMW Group. Officers spoke with and met with BMW representatives to better understand the qualitative concerns that were being presented and how they related to the emerging Local Plan.
- 3.34 Following the DCS consultation, which received 14 responses, the council undertook an addendum to the viability appraisal to ensure it was up to date both for CIL and the Local Plan.
- 3.35 Officers also held meetings with BMW in January and February 2019 to feedback on further viability testing the Council had undertaken and better understand issues in relation to B2 and B8 uses within the City and the challenges the rates posed. This reduced the CIL charge rate on B2 and B8 uses to £0. This culminated in the Council publishing a statement of modification in March 2019 (CD1.5). This is explained in the Cabinet report from May 2019 (CD1.8)
- 3.36 The decision was not simply based on the viability appraisal. It was wider consideration against the emerging plan and balancing the risk raised by this Category 1 protected employment site that is important to the strategy of the plan and the economy versus the benefits of the charge.

Conclusions

- 3.37 Documents were not submitted to show how the City Council has taken representations on the PDCS into account before publishing the DCS because Regulation 15 (7) did not require the City Council to do so. The absence of an evidence document does not mean that the representations were not taken into consideration.
- 3.38 It would be incorrect to assume that the short time between the closing the PDCS and DCS was not enough time for the Council to fully consider the representations received. The response provided above shows that small amount of representations that were being received during the PDCS were being considered by officers as they were received and indeed changes were made before publishing the Draft Charging Schedule on strategic sites but having taken into account the available evidence on other issues raised changes were not felt justified at that point in time.

Statement of Modifications

Question 4

Please confirm whether any requests to be heard on the modifications were submitted to the Council by the closing date of 1 July 2019 and if so supply copies.

- 4.1 An email was sent on 3 June 2019 from our planning policy inbox to all neighbouring authorities, Oxfordshire County Council, all respondents to the draft charging schedule, parish councils and the 2 neighbourhood forums within Oxford, notifying them that Statement of Modification had been published. It explained that anyone wishing to comment on the statement of modifications may ask to be heard by the examiner, within 4 weeks of the statement being published. The email explained to send any requests to the Programme Officer.
- 4.2 In response to the Statement of Modification, the City Council received one response, via the Programme Officer. This was received on 24 June 2019 from BMW Group, Mini Plant Oxford, c/o David Lock Associates.
- 4.3 Requests to be heard at examination hearings were received on the CIL Draft Charging Schedule Consultation from:
 - 12 December 2018 – Vale of White Horse District Council
 - 12 December 2018 – South Oxfordshire District Council
 - 12 December 2018 – Department for Education

Infrastructure Planning Evidence

Question 5

Are you anticipating any main modifications to the OLP which may affect the development or infrastructure requirements for Oxford City, including any of the allocated development sites, as set out in the submission version of the OLP and the Infrastructure Delivery Plan (IDP)? If so please advise when these will be available.

- 5.1 Consultation on the Main modifications to the Oxford Local Plan 2036 is scheduled to begin in February. The modifications are currently being finalised with the Local Plan Inspectors. A schedule of modifications agreed as at 18th December is available in the OLP examination library as OCC.3A.
[https://www.oxford.gov.uk/downloads/file/6702/occ3a - councils draft schedule of proposed main modifications - dec 19](https://www.oxford.gov.uk/downloads/file/6702/occ3a_-_councils_draft_schedule_of_proposed_main_modifications_-_dec_19)
- 5.2 Because of the nature of development in Oxford, i.e. that there are a large proportion of small sites, infrastructure requirements are generally assessed based on cumulative anticipated development and impacts across the city. Few sites generate a need for a whole piece of infrastructure alone. Need is generated cumulatively from developments across the city and associated population increases. Therefore, changes to individual site policies are unlikely to have a significant impact alone on infrastructure requirements. In any event, the OLP Inspectors have not so far suggested any sites be added as site allocations or that any allocated sites be removed from allocation. Furthermore, no significant changes to the types of uses provided for by the site allocation policies have been suggested.
- 5.3 The most significant changes to the site allocations policies are that the phrase previously included in all policies 'planning permission will not be granted for any other uses' has been changed to 'other complementary uses will be considered on their merits', and in tandem with this minimum housing capacity figures have been added to many of the policies. This is to ensure that, even with the possible addition of other uses, housing that is required to meet the Plan's housing requirement will still be delivered on suitable sites. The minimum housing capacities included in the policies are those assumed in the housing trajectory. Therefore, these do not have implications for the level of housing delivery, and therefore infrastructure requirements, beyond the setting of the housing requirement set in Policy H1 of the OLP, as informed by the housing trajectory.
- 5.4 A main modification is proposed to OLP Policy H1 which changes the housing requirement for the Plan period from 8,620 new homes (included in the submission plan) to 10,884 new homes. The Inspectors' interim conclusion letter says that their preliminary view, subject to consultation on these modifications, is that the housing requirement figure modification is required for soundness and the stepped trajectory is realistic.
- 5.5 The change to the housing requirement was first proposed alongside submission of an

updated HELAA in June 2019 (see PSD.2-PSD.5). Discussions with the County Council, as key infrastructure provider, have taken place since, including about the Infrastructure Development Plan. However, the change in housing requirement does not result in a significant change to infrastructure requirements across the city. PSD.3 [https://www.oxford.gov.uk/downloads/file/6399/psd3 - note to accompany the updated housing trajectory](https://www.oxford.gov.uk/downloads/file/6399/psd3_-_note_to_accompany_the_updated_housing_trajectory) is a note to accompany the updated housing trajectory. It explains the reasons for the change to the assessed housing capacity. One of the key reasons for the change in the assessed capacity is the different ratio used to calculate the equivalent number of homes from communal accommodation, in particular student accommodation. The ratio has change from 5 student rooms being equivalent to a new home to 2.5 student rooms being equivalent. This change will not have any impact on infrastructure need. The other key reasons for the change in capacity were the inclusion of commitments and the change in calculation of a windfall rate, which has increased because of the inclusion of garden land in the assessment. The commitments added are sites with planning permission and thus already in the pipeline, so these will not impact on future infrastructure requirements. Likewise the technical change to the calculation of windfalls is not expected to impact on infrastructure need.

- 5.6 Outside of the site allocation policies, only one modification is considered to have a significant impact on infrastructure requirements in the city, which is that housing sites of under 10 units will not be required to make an affordable housing contribution, as would have been required by Policy H2 in the submission version of the Plan. The viability report for CIL (CD1.6 and CD1.7) made the assumption for these sites that affordable housing contributions would be required for sites of 4-9 units. Therefore, the impact on affordability of the CIL rates for sites of this size would be positive.

Economic Viability Assessment (EVA)

Question 6

To assist my examination of the viability evidence and to ensure the assessments are transparent and the proposed rates informed by 'appropriate available evidence' in accordance with the expectations of the PPG, please supply the following:

6a) Copies of the appraisal spreadsheets underpinning the residential and non-residential appraisal outputs and viability results found in both the September 2018 EVA (CD1.6) and the May 2019 Addendum (CD1.7);

6.1 Please see the Model Sheets folder enclosed which provides copies of all the inputs, main calculation and results modelling sheets for both the EVA 2018 ('EVA 18') and the Addendum 2019 ('Adden 19').

6b) The transactional data and market evidence on which the residential sales values and commercial values used in the EVA and its Addendum are based;

6.2 Please see the Transactional Data and Evidence folder enclosed which provides copies of the evidence considered in arriving at the residential and commercial value inputs in the modelling.

6c) The relevant BCIS comparison data sheets on which the build cost assumptions for residential and commercial development types in the EVA and its Addendum are based;

6.3 Please find the BCIS sheets used for the build costs within the modelling in the BCIS folder enclosed.

6d) An explanation for the use of a 15% developer profit for student accommodation and care home development, compared to the figure of 20% used for residential and all other commercial development;

6.4 Both student accommodation and care home developments are most commonly delivered on a different basis than typical speculative residential and commercial development.

6.5 Student accommodation is usually de-risked through some form of agreement for the occupation and operation of the asset secured prior to delivery of the scheme. For example, a student accommodation developer may secure an agreement for nomination rights to a University or other educational institution, or agree a lease to a student operator, prior to delivery. This elimination of letting risk reduces the return typically required by the developer.

6.6 Risk may be reduced further through forward sale or forward funding agreements, where the asset is agreed to be sold to an institutional investor either following completion and stabilisation of lettings, or during construction with build costs funded by the purchaser. Both secure an exit, again reducing risk and the return required.

- 6.7 All these approaches are typical in student accommodation development.
- 6.8 Commercial student accommodation can also be built directly by the operator, where the intention is to hold and manage the asset following completion. In this instance, return to the developer will be based more on the revenue to be generated by the asset and the overall return on investment across the whole lifecycle of the building. This is a different model and measure of profit, though the adopted profit is considered to be closely similar in absolute terms to alternative measures that may apply in such cases, such as Return on Capital Employed.
- 6.9 The rate of 15% on cost is adopted to reflect the above typical reduced or alternative return requirements prevalent in the sector. This is a conservative assumption. Developers may typically seek lower returns than this in the event risk is significantly reduced, especially in the case of forward funding, and our advisers Avison Young are aware of this assumption currently being used in such cases within the context of competitive bidding for sites and consider this to be a reasonable assumption reflective of the current development market in forward sale and forward funding contexts.
- 6.10 Much of the above reasoning also applies to care homes. Care home assets are also typically built either with pre-secured agreements for the disposal and/or operation of the asset, or built directly by operators for their own holding and management. The only difference would be that the operators are care home providers rather than educational institutions or private student operators. A reduced return requirement is therefore also considered appropriate in this instance, and again the adopted rate is considered conservative.

6e) The evidence on which the assumption of £500,000 per hectare for S278 costs is based;

- 6.11 The assumption of £500,000 per hectare for S278 costs is incorrectly stated in the EVA 2018. This is acknowledged and corrected in the Addendum 2019 paragraph 4.7. For avoidance of doubt, the assumptions applied for S278 costs within the model, consistently at both the EVA 2018 and Addendum 2019 stages, are £500 per residential unit and 1% of build costs for commercial uses.

6f) The justification for excluding from the appraisals an allowance for residual S106 costs for on-site mitigation.

- 6.12 Allowance has been made for S106 costs at a rate of £1,000 per residential units. This was listed in the EVA 2018 Appendix 2, though it was excluded from the assumptions list at paragraph 7.30 in error, which may have caused the confusion.
- 6.13 This is in addition to the allowances for S278 costs. In total, allowances for residual planning obligations are therefore £1,500 per residential unit and 1% of build costs for commercial.

Question 7

Paragraph 7.14 of the EVA refers to the differential economics of build to rent schemes but offers no further analysis of this tenure type. To what extent is residential development in Oxford over the lifetime of the OLP expected to rely on the build to rent sector?

- 7.1 The Oxford Local Plan 2036 places no specific reliance on this sector. The Oxford Local Plan 2036 makes no policy provision to specifically seek private residential properties for rent.
- 7.2 This is not a delivery model that has been experienced in Oxford to date. The only related type of housing that will be similar to build to rent is Employer Linked Affordable Housing (Policy H3). This is subject to a specific policy in the Local Plan that has a different approach to affordable housing. This is different to build to rent and an approach developed in consultation with the universities, Oxfordshire County Council and NHS Trust in Oxford to meet their needs. This type of housing will not be subject to the general affordable housing requirements under Policy H2. We understand from the representations made by the University of Oxford that they have concerns about the viability of the approach if CIL is charged and would like this zero rated.
- 7.3 We do not consider this to be justified. We would also note that where these tenures are to be delivered by institutions on their own land, there will be no land transaction and no 'hurdle' for the schemes to exceed in order to incentivise the landowner to develop. In that sense there is no benchmark land value in those cases, and this serves to further increase viability. In addition, Employer Linked Affordable Housing under Policy H3 may be subject to exemption if the requirements of Regulation 49(7A) are met.
- 7.4 We would also repeat comments made in response to 6d concerning student development and the varied models for delivery. These comments will also apply for institutions delivering other tenures on their own land, where the return they will seek may be significantly diminished below normal market requirements as the purpose of development is to provide accommodation for the on-going operation of the institution, rather than to drive commercial return. Though investment decisions will still need to be made, these will be with reference to long time horizons and different return measures, likely to result in lower returns and greater viability compared to the commercial development appraisal approach taken in the testing.
- 7.5 There has been extensive work with landowners in Oxford through the Local Plan process and to date we are not aware of any schemes that are coming for private build to rent. There have been no representations made to the Local Plan or this CIL examination to indicate a concern about the Local Plan or CIL causing challenges to the build to rent sector if it were to emerge in Oxford.
- 7.6 It is often stated that build to rent products trade at a lower value than open market sales; c 15% is often quoted as a typical value differential. However this is a very broad

generalisation more reflective of the market a number of years ago, and the extent to which there is any differential is highly dependent on the level of affordable housing.

- 7.7 The value of build to rent is also highly sensitive to the yield applied in a capital valuation of the asset. Where yields are low, built to rent assets can often trade at values comparable to open market sales. Build to rent yields are currently low in general terms due to the low macro-economic interest rate environment and the ability for build to rent to deliver reliable revenue returns, often with significant growth potential. For these reasons we would anticipate the viability of any built to rent schemes to closely follow that of general market housing.
- 7.8 It is also important to note that the majority of residential typologies tested in the Addendum 2019 were not only viable but had significant headroom over assumed benchmark land values. The table at paragraph 5.8 demonstrate the extent of headroom. This suggests that even if built to rent schemes are less valuable than general housing; they are likely to still be viable.
- 7.9 We note that build to rent is not a separate use class and that even if it were necessary or desirable to charge for this residential model separately it may be difficult in practice.

Question 8

Q8: The delivery of the housing requirement in the OLP relies on a number of strategic sites including Oxpens (SP1), Osney (SP2), Cowley Centre (SP3), Blackbird Leys Central Area (SP4), Littlemore Park (SP45) and Neilsen (SP48), which are likely to require significant site preparation, infrastructure and on-site S106 costs. Whilst I note that further viability testing of such sites was considered following the DCS consultation, none appears to have been undertaken. What evidence is there in the EVA that the ability of such sites to viably support the proposed residential and commercial CIL charges has been adequately tested?

8.1 The Planning Practice Guidance at the time and indeed the current guidance both require differential rates for sites to be demonstrated in terms of viability evidence. In order to undertake further work we identified that as a minimum we needed to know for each site was:

- Outline of scheme including number of residential units and proposed floor area of non-residential uses
- Any planning reason we should deviate from the assumed residential unit mix already adopted in the modelling
- Floor area of non-residential uses
- Cost associated with abnormal items
- Nature of abnormal items e.g. land area or infrastructure scheme involved
- Ideally there would also be information on phasing/timing assumptions.

8.2 Further viability testing was considered for sites that were not adequately covered by the existing typologies and would be affected by the new schedule. This does not affect all the sites listed in the question. The sites identified in the question above split down into four main categories.

- a) Sites with full planning permission
- b) Sites with resolution to grant planning permission
- c) Greenfield sites with no identified abnormal costs through plan making process
- d) Complex mixed use brownfield sites that enable or unlock other development sites or sites within priority regeneration areas

8.3 The sites considered for further viability testing were Oxpens, Osney and Blackbird Leys Central Area. This was because they in category d and could have abnormalities that are not covered by the viability assessment. We contacted the promoters for each site where we had identified through the plan making exercise or raised at consultation on the CIL charging schedule that there could be potential site specific reasons for further consideration. However, following this exercise we were unable to gather the minimum needed to undertake further modelling. This is reflected in the Cabinet report from May 2019 (CD1.8).

8.4 The other sites in this question fall within (a) to (c). We do not consider that sites within (a) or (b) will be affected by the CIL charging schedule review. We also do not

consider there is any evidence from the Local Plan, Infrastructure Delivery Plan or viability work to warrant further consideration of the predominantly greenfield site particularly given the further testing of greenfield sites undertaken in the Addendum to the viability report. We acknowledge that the situation is less certain for category (d) and we have explained the circumstances for each site and the other mitigating actions the council have taken due to this uncertainty as allowed for in the CIL regulations.

Sites with full planning permission

- 8.5 Littlemore Park (SP45) – Reserved Matters application determined and decision issued. This site will not be affected therefore by the new charging schedule.

Sites with resolution to grant planning permission

- 8.6 Cowley Centre (SP3) – decision notice on full application expected to be issued ahead of a new CIL charging schedule coming into effect. This site is therefore highly unlikely to be affected by the new charging schedule.

Greenfield sites with no identified abnormal costs through plan making process

- 8.7 Neilson (SP48) - The Local Plan requires a minimum of 400 homes on the undeveloped part of the site (134 have already been completed through conversion of existing building under prior approval), some employment (undefined amount) and retention of the playing field unless its loss can be otherwise compensated for in line with the requirements of Policy G5. The remainder of the homes are on greenfield land.
- 8.8 The council has not identified any abnormal site preparation costs of significant infrastructure costs on this greenfield site.
- 8.9 To re-confirm this, Avison Young in support of answering this question, have run this site through the testing based on the 400 homes and up to 3,000sqm of B1 office space, which would in the council's view be enough to meet the policy requirement. The rates per acre are the same as used for the other greenfield sites tested. The office assumptions are the same as those used for Zone 5, which is adjacent and considered comparable (no office schemes were previously tested for Zone 3). The colour coding reflects whether the site comes to more than 30% above EUV (green), below the EUV (red) or in between (orange) as per the original testing. The surplus in the tables above effectively tells you the approximate headroom or the additional cost that could be levied on the scheme and it still exceed the EUV.
- 8.10 This shows that using the Planning Practice Guidance requirement of EUV only there is significant headroom for additional costs. In fact it shows that the applied land value needs to get very high as a greenfield value before the scheme starts to struggle in viability terms.

Results for Nielson (SP48)

Site Ref	Gross Site Area (Ha)	Zone	EUV per ac	EUV	Benchmark	Net Residual Land Value	Surplus/Deficit	Surplus Above EUV
35	3.88	Zone 3	£7,500	£278,996	£362,694	£10,695,448	£10,416,452	3734%
35	3.88	Zone 3	£50,000	£1,859,971	£2,417,962	£10,695,448	£8,835,477	475%
35	3.88	Zone 3	£100,000	£3,719,942	£4,835,925	£10,695,448	£6,975,506	188%
35	3.88	Zone 3	£150,000	£5,579,913	£7,253,887	£10,695,448	£5,115,535	92%
35	3.88	Zone 3	£200,000	£7,439,884	£9,671,850	£10,695,448	£3,255,564	44%
35	3.88	Zone 3	£250,000	£9,299,856	£12,089,812	£10,695,448	£1,395,593	15%
35	3.88	Zone 3	£300,000	£11,159,827	£14,507,775	£10,695,448	£-464,379	-4%

Complex mixed use brownfield sites without a specifically identified mix or scheme for testing

Oxpens (SP1)

- 8.11 Policy SP1 covers several sites in the West End of Oxford. Oxpens is one of these sites. The West End is identified and covered by an area of change policy in the Local Plan. The Oxpens site is being brought forward by a joint venture partnership between Oxford City Council and Nuffield College called OxWed. A development partner for the scheme is being appointed at present. The Local Plan Housing Trajectory included in OCC.8 Appendix 1 anticipates first completions on this site in 2026.
- 8.12 Although the emerging plan has included an assumed capacity of 450 homes on the site the other uses are left to be determined through a masterplanning exercise. The floorspace for these non-residential uses remains unknown.
- 8.13 The Local Plan has not identified or required specific abnormal infrastructure for this site specifically. Infrastructure improvements in this area are likely not to be triggered in whole by a single site but by several covered by policy SP1 and potentially SP2. It is therefore likely that CIL funds from this and other sites in the area could be used alongside other funding to deliver the infrastructure that is collectively triggered. Redevelopments of this nature under the Local Plan policies should seek to reduce traffic movements and minimise the private car and even be car free. Therefore, significant highway infrastructure is unlikely to be required. Works are more likely to be to public realm, cycle and pedestrian route improvements and controlled parking zones to support the low car or car free developments.
- 8.14 We have not at this point in time been able to specifically identify and cost any abnormal site preparation for this site. The site promoters have not been able to provide to date information of site abnormal costs. We believe this is due to the early stage of scheme development. We have therefore been unable to undertake more detailed viability testing to check whether the CIL rate will not compromise the viability of the scheme. As a result, in accordance with the PPG the council have been unable to justify a differential rate for the site.
- 8.15 The council have acknowledged that this leaves residual risks. This was set out in the Cabinet report ahead of submission in May 2019 (CD1.8). As a result, the council have put in place other measures to try and mitigate this risk. These are set out in the summary section of this answer.

Osney (SP2)

- 8.16 Osney is an existing operational industrial estate in multiple ownerships. The Local Plan policy allows for mixed use redevelopment that includes employment uses, academic uses, student accommodation, employer-linked affordable housing and market housing. The development of an innovation quarter is encouraged by the policy. Policy SP2 sets out that the site is expected to deliver around 247 homes. It is not anticipated that redevelopment of this site will come forward as a single scheme given the various ownerships but Policy SP2 sets out that a comprehensive masterplan will be developed in the future through an SPD. Zero rating this site would have posed issues under the previous regulations due to pooling restrictions on S106 although this is no longer an issue under the 2019 revisions. The Local Plan Housing Trajectory included in OCC.8 Appendix 1 anticipates first completions on this site in 2026.
- 8.17 The University of Oxford own a proportion of the site and are likely to bring forward a scheme on their land that could deliver the minimum dwelling numbers. Discussions with the University of Oxford have been ongoing and in 2019 the council contacted them to ask for the information set out in bullet points at paragraph 8.1 to allow for some further testing to be undertaken. Unfortunately, they were unable to gather sufficient information due to the early stage of site assembly and project development. We have therefore been unable to undertake more detailed viability testing to check whether the CIL rate will not compromise the viability of the scheme. As a result, in accordance with the PPG the council have been unable to justify a differential rate for the site.
- 8.18 The council have acknowledged that this leaves residual risks. This was set out in the Cabinet report ahead of submission in May 2019 (CD1.8). As a result, the council have put in place other measures to try and mitigate this risk. These are set out in the summary section of this answer.

Blackbird Leys Central Area (SP4)

- 8.19 Policy SP4 sets out that planning permission will be granted for a mixed use development that includes retail, start-up employment units, residential homes and community facilities at the Blackbird Leys Central Area site. The minimum number of homes to be delivered is 200. This is a City Council regeneration project in partnership with Catalyst.
- 8.20 Again, given its regeneration nature the council acknowledges there are risks around viability for this scheme that requires elements of estate renewal. Given the regeneration nature of the scheme it will be supported by other subsidy from the council and also has Homes from Infrastructure Funding to support the social and transport infrastructure. The regeneration project may also include new infrastructure that may benefit from CIL from other developments too as they are to improve the area rather than simply mitigate the impact of the development and therefore this is a not a straight forward testing of viability.

8.21 The council have acknowledged that this leaves residual risks. This was set out in the Cabinet report ahead of submission in May 2019 (CD1.8). As a result, the council have put in place other measures to try and mitigate this risk. These are set out in the summary section of this answer. For example, the CIL receipts could be allocated to support the infrastructure elements of this scheme to ensure delivery and as a City Council led project we think the danger of the CIL Charging Schedule itself putting the development here at risk is minimal.

Summary

8.22 We consider therefore that there is insufficient evidence at this time to justify a conclusion that the sites cannot support the proposed CIL charges. The council consider that there are only 3 of the sites listed in this question where the council consider there to be risks due to unknown site circumstances. The council has made concerted efforts to get evidence to allow them to undertake further viability but it is not available. We consider the testing undertaken to date to be sufficient and adequate to support the proposed CIL charge given the information available. The council has made proactive and concerted efforts to get this information throughout the preparation of the CIL review but it is not available.

8.23 The council have taken other steps to mitigate risk and ensure that schemes will not be undermined in the future if it is demonstrated that significant site preparation, infrastructure and on-site S106 costs exist that were not accounted for in setting the CIL charge and are substantial enough to threaten development. These are:

- Discretionary Exceptional Circumstances Relief Policy (CD1.12)
- CIL spending agreements with developers and key infrastructure providers linked to planning applications, where necessary to give appropriate certainty to infrastructure delivery

Discretionary Exceptional Circumstances Relief Policy (CD1.12)

8.24 Oxford City Council has determined to make relief for exceptional circumstances available, in accordance with Regulations 55 and 56 of the Community Infrastructure Levy Regulations 2010 (as amended). This was introduced on 1 June 2019 and can be used in circumstances where requiring payment of the Community Infrastructure Levy charged by the Council would have an unacceptable impact on the economic viability of the chargeable development, and granting relief would not constitute state aid. The May 2019 Cabinet report (CSD1.8) explicitly sets out that these complex brownfield sites are part of the reasoning to introduce this policy given that more detailed testing has not been possible on them (paragraph 16).

CIL spending agreements with developers and key infrastructure providers for on-site infrastructure linked to planning applications

8.25 Although the regulations now allow S106 to be used on items also funded from CIL this does not mean that charging authorities must use S106s instead as set out in response

to question 2a. There are ways for the authority to use CIL for on-site S106 costs above those factored into the viability utilising CIL fund from the scheme.

- 8.26 If viability issues arise on these sites and infrastructure is part of that issue we have demonstrated through the Oxford North planning application that the CIL funding can appropriately be tied to the scheme and directing CIL to certain infrastructure which is related to a development proposal. Certain items of infrastructure relating to the Oxford North planning application – both on-site and off-site – were identified as appropriate to be funded by CIL. This approach could be used if necessary again to help mitigate risk of significant S106 infrastructure emerging as necessary on top of CIL, which could cause viability issues. In order to provide certainty for delivery of this infrastructure, the City Council resolved to “apply CIL receipts generated from future strategic scale development at Northern Gateway/Oxford North in order to fund investment in highways/transport infrastructure provision to support the delivery of the Northern Gateway strategic site allocation”. This could be done for other strategic sites in the future if evidence emerges that it is necessary.

Question 9

The Northern Gateway (Oxford North) strategic site also has not been viability assessed for CIL purposes, due to a live planning application expected to be determined before the new CIL schedule is adopted. What is the current status of the planning application for this site?

9.1 This application has a resolution to grant permission (16 December 2019) subject to the completion of a Section 106 legal agreement. This is a hybrid application which is liable for £456,955.50 of CIL at the current rates (decision expected to be issued April/May 2020) with further CIL payable on each of the reserved matters applications. This was subject to a detailed viability assessment as part of the planning application that took account of current and future CIL rates included in the emerging draft charging schedule. Please see attached committee reports and minutes for further information.

Question 10

The results of the residential appraisals for sites 1 and 11 suggest that residential development in Zone 1 would not be viably able to support the proposed CIL charge of £200 per square metre (psm). Paragraph 6.14 of the Addendum justifies this on the basis that relatively less residential development is proposed in Zone 1. However, from an analysis of the sites allocated in the OLP, it appears almost 1,400 dwellings are proposed on sites in Zone 1. This amounts to 16% of the overall housing requirement of the OLP, which could be put at risk. I would be grateful for the Council’s explanation of this position.

- 10.1 Though the EVA 2018 provides that site 1 is not viable, this is on the basis of applying the small sites financial contribution to affordable housing at a rate of 15% of GDV. Site 1 is a typology for a single house. Extant policy (Affordable Housing and Planning Obligations SPD policy HP4) does not require the payment of this contribution for schemes of less than 4 units. The analysis was nevertheless run for all sites of less than 10 units in order to re-test this threshold. Proposed Local Plan 2016-2036 policy H2 (NB now a modification is now proposed, at the instruction of the Local Plan Inspectors, to delete this policy in any event) also does not apply to sites of less than 4 units. If the contribution is removed from the EVA 2018 modelling, site 1 is viable. Site 1 is therefore viable when viewed in the context of Local Plan policy as it is likely to be adopted.
- 10.2 This result is also the case within the Addendum 2019 modelling, and is addressed at paragraph 6.6.
- 10.3 To assist the Inspector in assessing the impact of the charging schedule on the housing trajectory we have provided a breakdown of the number of homes within each of the five proposed charging zones. To assess the impact of the proposed charging schedule it is necessary to determine the likelihood of sites being affected by the new charge. We have therefore graded each of the sites in the housing trajectory based on the likely “risk” of a detailed planning application being determined after the adoption of the schedule. These are shown on Table 10.1 below.

Table 10.1: Categorisation of sites by relationship to revised CIL Charging Schedule	
Category	Explanation
A – subject to revised CIL	These sites are not subject to a live planning application, or have outline consent, but are waiting for subsequent reserved matters applications to be submitted (where a Section 106 agreement is not in place). They are likely to be affected by the new charging schedule.
B – Potentially subject to revised CIL depending on adoption	These sites are subject to a live detailed planning application. If they are not determined prior to the adoption of the new schedule, they will be covered by the new rates.

timescale	
C- Unlikely to be affected by revised CIL	These sites have detailed planning permission in place but have not yet implemented their consent. The category also includes major outline consent where a Section 106 agreement is in place in lieu of CIL e.g. Barton Park. These sites are unlikely to be affected by the change in CIL, unless the applicant resubmits the application.
D – unaffected by revised CIL	These sites have built out or are under construction. Also includes prior approval sites that are not CIL liable as no increase in floor area. There is almost no risk these sites will be affected by a change in the CIL rate.

10.4 We have provided a full breakdown of all sites in the housing trajectory along with their individual categories (from A to E) and the CIL zone that they fall in. Table 10.2 provides the breakdown of the number of homes in each zone that fall into each of the risk categories. It only includes major housing sites that are yet to build out – i.e. it ignores completions, minor sites, and the windfall allowance.

Table 10.2: Number of homes in each category by CIL zone						
Category	Number of homes per CIL charging zone					
	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Total
A – subject to revised CIL	1,064	491	1,359	1,623	673	5,210
B – Potentially subject to revised CIL depending on adoption timescale	496	57	195	0	0	748
C- Unlikely to be affected by revised CIL	1,027	0	37	59	30	1,153
D – unaffected by revised CIL	516	94	150	232	335	1,183
Total	3,103	642	1,741	1,914	1,038	8,438

10.5 Of the 10,884 housing requirement in the Local Plan 2036, 1,064 homes fall under the category A for CIL zone 1. This represents 9.8% of the total housing requirement for Oxford in the emerging Local Plan. If category B sites are included, this number rises to 1,560 homes – or 14% of the housing requirement for the plan.

10.6 There are however 1,543 homes that already benefit from a planning permission or are under construction in Zone 1. The zone is therefore viable in principle for development. This includes the following major developments:

- a) Former BT Site at Hollow Way / James Wolfe Road. This was a redevelopment scheme proposing a net additional 19,361m² of floor student accommodation floorspace in Zone 1.

Planning reference: [17/02140/FUL](#) // Category D Site

- b) Land north of Littlemore Healthcare Trust. A major development that is currently under construction comprising 14,412m² of additional residential floorspace.

Planning reference: [17/03050/FUL](#) // Category D Site

- c) Former Murco Garage, Between Towns Road. A major development with detailed planning permission for 38 residential dwellings. The proposed development involves the demolition of an existing service station, and the erection of a 2,514m² net additional floorspace.

Planning reference: [18/03287/FUL](#) // Category C Site

- d) Rose Hill Community Centre. A major development of 1,563m² net additional residential floorspace.

Planning reference: [18/02817/FUL](#) // Category C Site

- e) Rose Hill Scout Hut and Advice Centre. A major development of 707m² net additional residential floorspace.

Planning reference: [18/02818/FUL](#) // Category C Site

10.7 This is evidence of schemes being viably promoted within Site 1.

10.8 There are a number of reasons why the typology approach to modelling may show development in zone 1 as unviable, but this not necessarily be reflective of development conditions on specific sites.

10.9 Firstly, the Addendum modelling assumes no existing floor area and allows for no offset from CIL, i.e. all typologies pay a full CIL charge as if promoted on bare land. Proposals likely to come forwards for residential in Zone 1 are generally unlikely to have no existing floor area to be demolished and will typically therefore have significant offsets applied that will reduce the CIL charged and improve viability.

10.10 Secondly, it is perhaps telling that the sites described above which have come forwards in Zone 1 are generally on sites with very low existing value. They generally comprise former community uses, spare land existing to existing uses or obsolete uses. These may be of lower value than the benchmark land values assumed in the Addendum modelling. If the above sites are typical, then it follows that development which does come forwards is generally on lower value sites and is therefore more viable than the modelling assumes.

- 10.11 The benchmark land values in the modelling were set at conservative (i.e. high) levels purposely in order to be robust. Analysis of sites underlying the values included a school valued at the prevailing rate assuming viable on-going use, and for a building with large site coverage and high density. This may have skewed the analysis and resulted in the adoption of too high a value in the case of zone 1. The evidence of the sites above where development has viable come forwards is generally where existing uses have become obsolete and where community uses were provided which are of low commercial value in any event.
- 10.12 Thirdly, it is important to note that there was very limited comparable evidence of residential sales in Zone 1 at the time of undertaking the study. Land Registry only recorded two new build sales of flats in all of 2018, and at the time only one new build property was found on the market. These data were extrapolated to infer values for all flat sizes adopted in the modelling, but there is the potential that this process undervalued the units, and that developers are anticipating greater value growth potential above prevailing second hand values, particularly for flats, which are the time of the assessment was a relatively untested market. As more development is delivered, there is the potential for a general tone of new build values to be established, and for values to rise generally as the new schemes improve the perception of the area. Currently there are new build houses on the market in Zone one asking c £400,000 - £470,000. The modelling has adopted £400,000. Though it is accepted that the modelling was undertaken at a point in time, this nevertheless demonstrates the potential for value growth beyond the current assumptions.
- 10.13 Site 11 was not unviable in terms of not meeting the benchmark in the Addendum testing, it was unviable irrespective of benchmark land value given it generated a negative residual sum. This conclusion is clearly contrary to evidence of schemes nevertheless being advanced through planning, and may suggest that a reassessment based on the latest values could yield a different result.
- 10.14 As set out in our response to question 2b, the current charging schedule, index-linked, represents a CIL rate of £148/m². In Zone 1, the rate will increase to £200/m², representing an increase of £52/m². This is a relatively marginal increase and is very unlikely in itself to be the difference in determining the viability of a site. Site 11 would remain unviable at the £148/m² rate and is not therefore the determining factor.

Question 11

A number of the proposed CIL rates do not appear to be supported by evidence of viability testing within the EVA. This includes C2A secure residential institutions, C4 houses in multiple occupation, D1 non-residential institutions and D2 assembly and leisure uses, all of which would be subject to a rate of £50psm. Whilst extra care homes have been tested as a D1 use class, they are a residential use and do not fall within Class D1. Please supply the viability evidence on which the proposed CIL rate of £50psm for Classes C2A, C4, D1 and D2 development types is based.

Introduction

- 11.1 The C2A, C4, D1 and D2 use classes have been considered by our consultants GVA/Avison Young in the preparation of the EVA and the nominal rate of £50/m² was adopted. This has been based on our knowledge that developments in these use classes do not form a significant proportion of anticipated developments and consist primarily of replacements and extensions, resulting in relatively minor changes in GIA. Furthermore, many of the developments in these use classes are subject to CIL exemptions. The application of levy is thus likely to be applied only in relatively few cases where there are private commercial uses within these classes which generate revenue and can absorb contributions to infrastructure.
- 11.2 These reasons have meant that developments in these use classes have not been generally rendered unviable due to the application of a CIL charge. We note that the £50/m² rate is a marginal increase from our previous rate of £28/m² and there has been no indication of viability issues arising in relation to the application of the current rate, with developments consistently coming forth in these use classes. The relatively low frequency of such cases and their site-specific nature makes these classes difficult to test which is why such cases were not presented in the EVA. Our consultants have noted that in their professional expertise working across other local authorities, these use classes are typically not tested in viability assessments for the above reasons.
- 11.3 Our consultants further note that in the recent examination of the Chiltern and South Bucks CIL (5th November 2019) a CIL rate for these use classes was accepted despite a lack of appraisal testing within the evidence base, given that the rate was set at a marginal level. It was accepted in this examination that many of these uses come forwards as part of wider mixed use proposals where the primary driver of value is residential or retail, which is capable of making CIL contributions to infrastructure. This is also the case for Oxford, as can be found in the discussion of D-class sites in 11.8 and 11.10 and the table below.
- 11.4 We list below the following examples, where D-class developments come forward only as part of larger mixed-use developments (only as 5% or less of the overall development floorspace proposed):

Use Class	Application No.	Site/ Address	Development Description	Total CIL Charge	D-class floor space in relation to overall development
D1	18/02065/OUTFUL	Oxford North (Northern Gateway) Land Adjacent To A44, A40, A34 And Wolvercote Roundabout Northern By-Pass Road	<p>Hybrid planning application comprising:</p> <p>(i) Outline application (with all matters reserved save for "access"), for the erection of up to 87,300 m2 (GIA) of employment space (Use Class B1), up to 550 m2 (GIA) of community space (Use Class D1), up to 2,500 m2 (GIA) of Use Classes A1, A2, A3, A4 and A5 floorspace, up to a 180 bedroom hotel (Use Class C1) and up to 480 residential units (Use Class C3), installation of an energy sharing loop, main vehicle access points from A40 and A44, link road between A40 and A44 through the site, pedestrian and cycle access points and routes, car and cycle parking, open space, landscaping and associated infrastructure works. Works to the A40 and A44 in the vicinity of the site.</p> <p>(ii) Full application for part of Phase 1A comprising 15,850 m2 (GIA) of employment space (Use Class B1), installation of an energy sharing loop, access junctions from the A40 and A44 (temporary junction design on A44), construction of a link road between the A40 and A44, open space, landscaping, temporary car parking (for limited period), installation of cycle parking (some temporary for limited period), foul and surface water drainage, pedestrian and cycle links (some temporary for limited period) along with associated infrastructure works. Works to the A40 and A44 in the vicinity of the site.</p>	£399,103.00	<p>Up to 550m² D1 part of outline for 87,300m² mixed-use development</p> <p>(0.6% of overall development)</p>

D1	16/02687/FUL	265 - 279 Iffley Road And Garages	Re-development of the application site to include the demolition of existing buildings, erection of buildings to provide student accommodation (117 student rooms) and ancillary facilities, 11 x self-contained flats, a single storey garden room accommodating flexible space for use as student common room/teaching/lecturing space, 150sqm GIA for employment uses (Use Class B1), and associated landscaping and infrastructure.	£276,115.92	271m ² D1 part of 5431m ² mixed class development (5% of overall development)
D1	18/00966/RES	Wolvercote Paper Mill Mill Road Oxford Oxfordshire OX2 8PR	Reserved matters of outline planning permission 13/01861/OUT seeking permission for the appearance, landscaping, layout and scale of 190 residential units, employment space, community facilities, public open space and facilities.	£2,895,960.93	662m ² D2 part of 24,567m ² proposed GIA mixed development (3% of overall development)
D2	14/02402/RES	Westgate Centre And Adjacent Land Encompassing CARFAX 20/11/14 The Existing Westgate Centre And Land Bounded By Thames St, Castle Mill Stream, Abbey Place, Norfolk St, Castle St, Bonn Square, St Ebbes St, Turn Again Lane And Old Greyfriars St.	Demolition of southern part of Westgate Centre, 1-14 Abbey Place and multi-storey car park, retention of library, refurbishment of remainder of the existing Westgate Centre and construction of a retail-led mixed use development together providing A1 (retail), A2 (finance and professional services) and/or A3 (restaurants and cafes) and/or A4 (public house, etc.) and/or A5 (hot food takeaways) uses, C3 (residential) use and D2 (assembly and leisure) uses, public toilets, associated car and cycle parking, shopmobility facility, servicing and access arrangements together with alterations to the public highway (Reserved matters of outline planning permission 13/02557/OUT seeking permission for details of appearance, landscaping, layout and scale).	£4,554,843.25	Up to 5986m ² D2 development part of 123,120m ² development (5% of overall development)

D2	18/01206/VAR (16/02945/FUL)	Oxford Business Centre, Osney Lane	Variation of condition 2 (Development in accordance with approved plans) of planning permission 16/02945/FUL (Demolition of units 1-15 Oxford Business Centre and redevelopment including erection of purpose built student accommodation with small-scale A1, A3, A4 and B1 units, with associated landscaping.) to allow reductions in the size of the fitness centre, studio, commercial start up area and the community hub layout. Increase in size of cafe area and proposed store room changed to 1no. bedroom.	£1,263,904.00	164 m ² Part of 15822m ² mixed use development (1% of overall development)
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11.5 We note that when our CIL charging schedule was first adopted in 2013 – we had already put a lot of consideration into introducing a CIL charge for the above use classes. The council also took into consideration a representation which was raised by Oxfordshire County Council, which expressed concern about the charging of CIL on D-class educational facilities which come primarily from public funds. In the Examiner’s Report, the examiner agreed with the Council’s considerations in paragraph 18: “However, in practice the additional costs on the small amount of development likely to come forward in this way could be funded through use of the levy itself or through other grant funding. More significantly, the charge would be appropriately levied on a number of private developments falling within Use Class D1, such as private colleges and language schools. Other institutions may have charitable status and would be exempt from CIL. In these circumstances I consider that the proposed rate for all other uses is reasonable and would be most unlikely to pose a significant threat to the development of the city area as a whole.”

Specific context of the C2A, C4, D1 and D2 use classes in Oxford:

11.6 C2A class developments, (primarily care homes) have already been considered in the original EVA as the ‘Standard Care Home’ (deemed viable) and ‘Extra Care Home’ (which was previously listed as D1 class in error). In general, developments in this class are uncommon in Oxford (the Council is not aware of any currently in the pipeline) and previous care home developments have also been CIL exempt under charitable relief. Such schemes are also often either promoted as conversions/redevelopments of existing buildings where significant offsets for existing floor area will apply, or on greenfield sites where existing land values will be very low.

11.7 C4 class (HMOs) are typically not purpose-built developments, but are often change of use or extensions from existing C3 developments. Thus, in practice this charge will only be applied very rarely, or with significant offsets for existing floor area where there would therefore not be any significant viability risks which would arise from charging at the nominal rate. Many HMO developments (for 6+ people) would be classified within the ‘Sui Generis’ use class.

- 11.8 For D1 class developments – typically, public sector organisations, charities and Universities which deliver these would apply for CIL exemption under charitable relief. This is especially the case where D1 uses are proposed on a standalone basis, and often historically such schemes have consisted of small extensions, for example: nurseries and additional study rooms, where the impact of CIL rates had minimal impact on viability risk. In general, developments in the D1 class consistently come forth for educational uses from the Universities, which are exempt from CIL. Otherwise, D1 uses are often proposed as small parts of larger mixed use developments, for example nursery space in residential schemes. In such cases, the D1 use is relatively incidental to the primary purpose of the development and the driver of return for the developer. Any CIL charge for the D1 use will typically be relatively minor in the context of overall scheme cost and capable of being afforded by private developers.
- 11.9 For our current Draft Charging Schedule, we did receive a representation from the department of education around the D1 use class, which was related to a specific scheme, the Swan School. The DfE was eligible for charitable relief for the development, but proceeded to develop without the exemption. For this case, the City Council would be investing the CIL into the delivery school and thus the application of CIL has not posed a risk to viability. More broadly, we have not received wider representations which raise a concern about viability for the highlighted use classes in relation to CIL. We would note that imposition of a marginal charge for D1 uses is desirable in order to capture payments from for example private schools, language schools or private health facilities which utilise private rather than public funds and should be capable of providing contributions.
- 11.10 D2 use classes such as leisure centres are often replacements or extensions of existing facilities and thus do not incur significant CIL charges which may put the viability of such development at risk, due to offsetting for existing floorspace. D2 uses are also often promoted as part of wider mixed use schemes as discussed above. Viability of specific D2 proposals is heavily site and sector specific and a function of existing competing uses. This makes testing such uses on a typology basis in a robust manner very difficult. There is an extant CIL charge for D2 uses and the Council is not aware of any D2 proposals that have been stalled due to CIL. We would reiterate that in the context of overall development costs the proposed charge is marginal. We note that there have been no representations made to the Local Plan or this CIL Examination in objection to this proposed rate.

Conclusion

- 11.11 To conclude, CIL will generally only be applied in a small number of cases to the aforementioned use classes, usually with offsets. The rate has been set at a relatively marginal level, which is very unlikely to render unviable what would otherwise have been a viable commercial proposition (as we have seen since the application of rates to these uses classes since 2013). The proposed rates are considered reasonable, given the available evidence. The council is seeking to address the cumulative impacts on infrastructure of such developments as part of sustainable development, whilst having a minimal impact on viability. We furthermore do not intend to incentivise

developments in these use classes over any other use classes, which might happen if we were not to apply a CIL charge.