

## **STRATEGIC SCRUTINY COMMITTEE - SPECIAL**

12 December 2022

### Present:

Councillor Rob Hannaford (Chair)

Councillors Allcock, Asvachin, Atkinson, Harvey, Jobson, Knott, Mitchell, K, Oliver, Read and Vizard

### Apologies:

Councillors Leadbetter and Moore, J

### Also present:

Director of City Development, Assistant Service Lead – Local Plan and Democratic Services Officer (SLS)

### In attendance:

Councillor Philip Bialyk - Leader

Councillor Michael Mitchell - Speaking Under Standing Order 17 (Subscriber)

Councillor Diana Moore - Speaking Under Standing Order 44

### **30 Declaration of Interest**

No declarations of interest were made by Members.

### **31 Questions from the Public Under Standing Order No.19**

No questions were received by the public.

### **32 Community Infrastructure Levy: Partial Review Consultation**

The Chair had advised that, in accordance with Standing Order 17, a special meeting of Strategic Scrutiny Committee had been called following the decision made by the Executive on 29 November, to commence a partial review, with a consultation of the Council's Community Infrastructure Levy (CIL) Charging Schedule from December 2022 and, depending on the nature of the responses and any revisions, submit for examination.

For information, it was noted that the Executive on the 29 November had resolved the following:-

- (1) the Draft Charging Schedule (Appendix A of the report) and the supporting evidence (Appendices B and C of the report) be approved as the basis for a six-week consultation, commencing in December 2022;
- (2) delegated authority be given to the Director of City Development, in consultation with the Council Leader, to agree minor changes to the Draft Charging Schedule before it is published for consultation;
- (3) following the consultation, the submission of the Draft Charging Schedule, supporting evidence and consultation responses and other information be approved to enable an independent examination on the Draft Charging Schedule to take place, subject to there being no revisions to the proposed CIL charges; and
- (4) following the consultation, if any further proposed revisions to the CIL charges are proposed, that an updated draft be brought to the Executive in advance of submission for examination.

Following the publication of the decision made by the Executive and in accordance with Standing Order 13(1) Councillors Sparling, K. Mitchell, M. Mitchell, Harvey, Bennett, Read and J. Moore indicated that they wished to Call-In the decision. The Members also known as the Subscribers gave the following reasons and grounds on which they had submitted the Call-In under Standing Order 17:-

The decision maker had failed to take account of relevant factors by:-

**1. Deficient Process:**

- a) At the July 2019 Executive, and agreed at the subsequent Council, the allocation of a budget of up to £75,000 in order to instruct Consultants to review the Community Infrastructure Levy Charging Schedule was allocated. The decision was for a review not a partial review, a partial review was not presented as an option in the paper.
- b) There has been no report back or request to Executive and Council to change the decision to for partial review to be undertaken as an alternative option since the decision in 2019 above was taken.

**2. Decision-maker failed to take account of relevant factors:**

- a) The Executive have failed to take into consideration the consequences of not taking a full review. The issues for consideration which were set out on page14 in the procurement pack of 12th February 2020 ref no: PR 772019HR.
- b) The partial review omits consideration of other factors such as the assumption is that the Exeter Development Fund will proceed, but as identified in the Council's risk register the fund is high risk, so if it doesn't proceed then then there may not be sufficient CIL to contribute to required infrastructure.

**3. Decision maker is wrong in fact or law:**

The Executive paper (29/11/22) include 'co-living': this is not defined in planning policy either nationally or locally. Local schemes branded as 'co-living' have been bought forward as build to rent schemes, which are defined in law. There is no basis therefore such an undefined term to be used in a planning document which requires absolute clarity to determine CIL liability.

The Chair invited Members to review the process by which the Executive made their decision. If it was considered that the Executive had not taken account of the information raised in the Call-In, then a recommendation could be made to the Executive to reconsider this matter giving the reasons for doing so, and to this effect a meeting of the Executive had been provisionally scheduled for 19 December 2022. He confirmed that the Leader of the Council, as the relevant Portfolio Holder with responsibility for CIL, was present to answer any questions put forward. The Director City Development and the Assistant Service Lead (Local Plan) were also present to answer questions of an operational nature. Mr Dominic Houston, an Associate of Three Dragons Consultancy and author of the report commissioned by the City Council in relation to the CIL review, was also in attendance.

The Chair advised that there were three options to consider for action under the Call-In Procedure which were to:-

- resolve to take no further action;

- refer the matter back to the Executive for reconsideration, setting out in writing the reason for its request; or
- refer the matter to Council who may refer the decision back to the Executive

He also stated that Councillor D. Moore was present having given notice to speak under Standing Order 44. Councillor M. Mitchell was also in attendance as a Subscriber under Standing Order 17, to seek any further clarification or put any further points relating to the Call-In Notice.

The Director City Development set out the need for a review of the CIL charging schedule, with many factors having changed in the housing market, including property values and viability over the ten years since CIL was first adopted in the city. The proposed review would reflect on those changes and in particular some of the new tenures that had come forward such as co-living, and Purpose Built Student Accommodation (PBSA). The review was an important component of the housing delivery process and enable the Council to continue funding the critical infrastructure needed to allow Exeter to improve and meet the vision. It would include a consultation on the draft revised charging schedule and it was important to note that this was an evidential led process around viability with adherence to Government regulations and guidance.

The Assistant Service Lead (Local Plan) advised that the consultation would run in accordance with the Council's Consultation Charter and the recently adopted Statement of Community Involvement, and be held, subject to approval, from December until January. The post consultation period would look at all of the responses received, analyse the topics raised, and as appropriate, include any revisions to the charging schedule or be included in the submission and examination process. There would also be the opportunity for those individuals who responded to be invited to speak to the examiner.

Councillor D Moore was invited to speak having given Notice under Standing Order 44. She welcomed the review of the CIL rates, but requested that a number of matters required further consideration before going out to consultation and the Call In had set out the reasons. She raised the following points which the Assistant Service Lead (Local Plan) responded to as appropriate as set out in italics:-

- the first stage of a Regulation 18 consultation of the Local Plan was currently being undertaken. The viability report produced by Three Dragons Consultancy was out of synchronisation with the full charging schedule and the viability assessment was not drawn on any emerging policies from the outline draft Exeter Plan.  
*The CIL review related to the current policy position of the Local Plan and Core Strategy. Good progress had been made but there were not sufficiently developed policies across the full range of policy areas or site allocations. The Government wished to include a review of charges to the wider planning system and a new infrastructure tariff or levy may or may not be in place by the time the Exeter Plan is adopted. It was not appropriate to make reference to the whole suite of costs.*
- Council had agreed to take a full review of the CIL and that included a procurement brief which had been drawn up, but it was not clear who took, or when a decision for a partial review was made. This was pertinent in the light of the decision to update the Local Plan, with no regard given to emerging policies, which will begin to have weight. The review of the Core Strategy adopted in 2012 identifying the policies reviewed was significant.

*The work carried out in putting forward the draft charging schedule had taken account of the full schedule, including all four areas of CIL rates where it had been considered that viability in development for emerging tenures was most in use. The consultation of the full draft charging schedule had set out the range of rates for all land uses that was currently charged for. The term partial was only a reference and the review does focus on the full CIL charging schedule.*

*The Director City Development added that the proposed charges to the charging schedule were based on evidence that was being prepared for the Council, and the consultation and subsequent examination would consider the whole of the draft charging schedule, even those areas that the Council was not proposing to change.*

- in respect of Co Living, the Three Dragons report referenced that Purpose Built Student Accommodation (PBSA) was in respect of a time when this form of development was relatively untested. This point is made in the Strategic Housing Needs Assessment, produced for the Local Plan. There was concern that the same fact, which was not true for co-living, where a very low rate could incentivise developers? Could we learn from the difficulties that this high density accommodation has caused - of luxury unaffordable developments, over concentration of one type of accommodation designed for transient communities in small neighbourhood areas, when the goal of the current plan is to create balanced communities?
- in relation to balanced communities, why has the core issue of the current Plan in relation to PBSA and co-living not been included in the review as part of this work on the CIL.  
*A key revision being proposed in the consultation was to introduce a specific CIL rate for co-living that was currently not in place. There were some similarities with PBSA, but co-living was not an established type of development in the city, with no local evidence available to date.*
- there are further issues around zoning - which is covered in the report and a very small area recommended, and whether the Article 4 area and the areas acceptable for co-living and PBSA do not all align to regulate and limit the number of HMO's, PBSA and co-living developments in one area. The CIL and planning policy must clearly connect.
- in this regard, Scrutiny Committee should consider affordability. In the report, it sets out that co-living style developments are like PBSA blocks, and the viability assessment demonstrates that such developments can well afford to contribute towards the CIL and so why was this style of development being proposed at same rate as flats which are seen to be less viable.
- the rent per month for Build to Rent is expected to be £1,250. In the report, co-living, a specialist form of Build to Rent, will have 'bed spaces' turnover one or two times a year and therefore the rent is set at 48 weeks. The market value suggests that PBSA for the cost of an ensuite flat is £164 a week and for co-living £237, which makes the rent for a co-living place £11,883 pa. She asked if the Council needed to offer further incentives with a lower rate of CIL. The Strategic Housing Needs Assessment included the following reference - "One startling statistic from the demographic data for Exeter is that single person households aged 15-24 years are projected to fall by 210 households to a rounded figure of zero by 2040." Net Zero should relate to carbon emissions, not driving young people out of the city due to the unaffordable housing crisis.

The Housing Needs Assessment also sets out: “At the same time, the number of ‘Other’ households headed by someone aged 15-24 years is projected to rise by 690 households in the same timeframe, with a rise of 50 households for those aged 25-34 years.” With the CIL likely to be in place for a number of years, an oversupply of co-living could mean that young people were prevented from not only from living, but also loving and setting up homes in the city. If co-living is to work it needs to be founded on proper policy, properly funding infrastructure and to be affordable.

The Assessment document also points out that the Council follows national Build to Rent guidance seeking 20% of units as discount market rent i.e. 80% of market rent. Why does the Council not choose to increase the proportion of affordable units? A suggestion would be to reduce both levels of community infrastructure, but there may be reduced levels of affordable housing. That is not considered by the review, but the affordability crisis must be considered by the Council, and planning policy especially the community infrastructure levy is key to this.

*The CIL rate was not the appropriate form for setting policy but was set for different types of development. The Exeter Plan consultation was in draft outline and did not set out the specific requirement of different tenures. This would come in the first draft of the Exeter Plan consultation next year and reflect the consultation responses currently coming in.*

*Co-living as a general approach would provide a new product in the city and has not yet been placed. It would meet some of the needs not met by standard forms of development. The CIL rate was not the appropriate mechanism for setting policy but was set for different types of development.*

Dominic Houston also responded to the points raised by Councillor Moore, in italics:-

- on the general point of Build to Rent flats discussed in the report, it suggests that the taller and larger schemes are less viable than medium-sized ones. The CIL is skewed to support taller denser flats- but without the corresponding investment in the community infrastructure that makes high density living viable, liveable. What consideration will be given to the Local Plan as a result of this finding and is it right to pitch the CIL rates to make it easier for the tallest/ largest flatted developments rather than what the medium sized ones can contribute to both housing supply and CIL as more viable developments?  
*The Three Dragons report referred to the forms that flat development might take in Exeter. Providers of Build to Rent schemes had been contacted as part of the consultation work. The contact was made in the context of the role they had in advising the Council on the CIL rate that could be supported. An approach could take place when the Build to Rent market in the city was more established. Should there be an application, the proposed CIL rates should seek to accommodate that as part of the housing supply for Exeter in the lead up to the next Local Plan Review.*
- the reference in the report to net zero carbon emissions was welcomed. This points out that future changes to building regulations to move towards carbon net zero development have been indicated for 2025. Whilst it is unclear as to how these will be brought forward, why is there not a lower rate for developers who wish to achieve net zero construction to incentivise that form of building before any government regulation is introduced? This point was, after all, in the brief for the full review.

*The cost for new build regulations was not included in the report, but all development had to meet certain standards. Costs for electric vehicle charging points and fire safety had been included. Over the next two years, a future homes standard will be proposed and likely include a requirement for a further reduction in carbon in new build, but this has yet to be determined.*

- the review says that connection to District Heating is not taken into account because there is none in the city. If this is not accounted for then developers will not make any financial contribution to it, arguing it is not viable. So if the District Heating system is powered by renewable heat, rather than incineration, does this mean the Council is abandoning any role for renewable powered district heating in the NZ 2030 target?

*District Heating was part of the concept for different carbon standards of new build coming forward. The fabric first approach has been a part of the most recent changes in building regulations for future homes standards to reduce carbon emissions. Some of the imperatives to encourage a District Heating system has been superseded with changes in building standards and a greater emphasis on reducing energy use.*

The Chair invited Councillor M. Mitchell to speak as a Subscriber.

- clarification was sought on a differential of the CIL charging rates in respect of co-living and PBSA developments, when they were similar in design and function with shared facilities, and the impact on the Council should a future co-living development be totally occupied by students. *The Assistant Service Lead (Local Plan) stated that in relation co-living and PBSA were two distinct products and described as such. The characteristics of PBSA or co-living occupation would be set through the planning regime with the Council's general monitoring and enforcement regime available as required.*

- as part of the rationale for having a lower cost level for co-living, were there any other local authorities who had introduced a similar rate at this level. *Whilst there may be other local authorities, Bromley Council had introduced a separate charge which had been adopted in 2021.*

*The Assistant Service Lead (Local Plan) suggested that irrespective of the charges proposed in a Council area, it was based on viability in that local Council area and it was hard to compare Council to Council.*

- whether the CIL charge should continue to be embedded in the Local Plan, and risk becoming out of date along with any Plan, rather than having a CIL Policy. *The Assistant Service Lead (Local Plan) said that Exeter was an early adopter of CIL and there have been significant changes in that period to the viability development and the market. It was reasonable to expect the market to pay a viable CIL rate and to attach to the current Local Plan. It was appropriate to have a review of the draft charging schedule now.*

Members made the following comments -

- a review may offer the possibility of more funding for infrastructure. Any delay in implementing the new CIL charging regime could result in a loss for the Council.
- the review had only been called a partial review, because the period covered was only up until 2026.

- thanks to the officers for the excellent work, which included an independent element from the Three Dragons Consultancy to help prepare a consultation using the Council's Consultation Strategy.
- the proposal for a review, be it referenced as partial rather than full, put forward to the Executive had now been fully explained.
- co living could offer a balanced community and it was essential that efforts were made to help stem the housing crisis as quickly as possible. Any comments or concerns could be raised as part of the consultation.
- the comments on the scope and process of the Call-In, have also included comments on substance which it was hoped would be channelled through the consultation. The democratic process was not deficient and there will be a full review; the review focus was on current policy and not a wish list relating to CIL, and any concerns on the definition of co-living would come out through the consultation and examination.
- anecdotally staff in some sectors found it hard to find accommodation, with a particular shortage of one bed bedroom flats for single occupants or couples. Developers should be encouraged to build co-living schemes and help alleviate some of the accommodation issues in the city.
- that the consultation dates should not include the Christmas period
- some workers including key workers may need a peaceful environment and may not want co living accommodation which can be expensive, making affordability an issue.
- the Executive as a constitutionally defined decision making body of the Council had been entitled to make that decision to go out to consultation, which would have led to further scrutiny of the process. The issues raised had also been addressed by the input at the meeting by officers.

The following subscribers who were Members of the Scrutiny Committee made further comments:-

Councillor K Mitchell welcomed the opportunity to raise this matter legitimately through the Call-In process, because of the nature of the resolution at the Executive and to ensure there was an opportunity for a full scrutiny of the matter. He also referred to the recommendation made by the Executive in 2019, which was for a full review and suggested it may have been helpful to have been considered by the Planning Member Working Group, prior to the recent meeting of the Executive to enable the matter to be looked at in far greater detail by Members. He also sought clarification on the CIL rates decided in relation to PBSA and co-living and referred to the charge made at Bromley Council. He accepted that Bromley Council were entitled to charge their own rate.

*The Director City Development responded and confirmed that the matter had, prior to the Executive also been discussed at the CIL Working Group. He also reiterated that no local authority could benchmark a CIL rate with another local authority, as the evidence was unique to that place.*

The Leader also spoke briefly, in response and having previously discussed the matter with other decision makers and officers at the informal working group to help maintain a rationale and structure in relation to this matter, he had made the decision as the Portfolio Holder to bring this matter forward to the Executive.

Councillor K Mitchell also sought clarification on the viability study and would have expected there to be more of a reference to Article 4 areas, as that had an impact on the housing market. He had not seen a reference to the St. James Neighbourhood Plan, which was a policy specific to that area of the city relating to PBSA and housing in multiple occupation (HMO).

*The Assistant Service Lead (Local Plan) advised that the provision of HMO in the Article 4 area was written into the Core Strategy, and there was also a reference to the provision of PBSA and student growth in the city centre. The St. James Neighbourhood Plan was a part of the Development Plan, but the viability evidence which the CIL rates were predicated upon do acknowledge the policies which have costs attached to them when development comes forward. The viability methodology would not be impacted by the St James Neighbourhood Plan.*

- Councillor Read referred to the distinction made between co-living and PBSA and referenced a view from the Leader about balanced and sustainable communities.

The Leader responded that co-living would give the opportunity for individuals including key or peripatetic workers to rent for a period of time.

- Councillor Read referred to the increased profitability of co living, which was not reflected in the CIL rate. She thanked the Assistant Service Lead (Local Plan) for his commentary, but reiterated that the city does not have a co-living policy and she felt the study had demonstrated that one was needed. She also sought a response in relation to creating a lower rate of CIL for developers that make efforts to reduce carbon emissions and contribute to Net Zero.

*Dominic Houston referred to the built form of co-living which may look like student accommodation but nevertheless it was a specialist form of Build to Rent. Student accommodation was not generally expected to provide for affordable housing, effecting the viability of the scheme, and unlike co-living, its occupants were not liable for council tax. CIL was not meant to be an instrument of policy, but a mechanism to raise building standards. The regulations state that there can be different CIL rates by use or geography and those definitions should relate to some difference in viability on a particular type of scheme.*

*The study did not offer a mechanism or determination of the way by which the charging schedule may vary by carbon performance.*

The Chair thanked Members for the detailed discussion of this matter. He urged anyone who had concerns to contribute to the consultation.

Councillor Knott made a proposal that no further action be taken. Councillor Atkinson seconded the proposal.

**RESOLVED** that in accordance with Standing Order 17 5(a), no further action be taken in respect of the Call-In.

It should be noted the proposed meeting of the Executive to be scheduled for 19 December would be cancelled accordingly.

The meeting commenced at 6.00 pm and closed at 7.20 pm

Chair