Community Infrastructure Levy consultation response

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Exeter City Council intends to introduce partial changes to the charges it levies on most new development towards the cost of infrastructure that is needed to mitigate its impact that are based on untested assumptions, insufficient evidence and the influence of vested interests.A

Community Infrastructure Levy charges are used to pay for community grants, habitat impact mitigation and larger projects like Marsh Barton railway station. Of the £10.84 million committed to significant infrastructure costs since the council introduced its levy in 2013 nearly three-quarters has been spent on St Sidwell's Point leisure centre while another £840,000 was used to reconfigure a road junction at Sandy Park.

The council intends to introduce differential charging rates for Purpose Built Student Accommodation (PBSA) and co-living, and for flats that are built for rent and sale, despite the essentially identical development forms of each pair and there being nothing to prevent students occupying co-living, or flats that are built for sale subsequently being rented out.A

It employed external consultants to produce viability evidence and a background report to justify its new charging proposals, imposing this differential typology in line with its development policy objectives and excluding any assessment of other residential or retail levy charges despite these development forms contributing a significant proportion of levy revenue.A

It also ignored its own statutory infrastructure funding statement and the new local plan's evidence base and emerging policies, relied on a private consultation with vested interests for its viability assessment assumptions and failed to comply with relevant government guidance.A

Its new levy charges will not bring in any more money than the current charges. It will contribute only 27% of an expected infrastructure funding gap of at least £93 million, leaving Exeter far short of the new infrastructure it needs.A

The council opened a consultation on its proposals as the Christmas holiday period began immediately after an attempt by opposition councillors to prevent them going ahead in their current form failed. It is a model of obfuscation and has only been publicised once.A

The new charging schedule, with any revisions that may be made in response to the consultation, will be submitted for public examination later this year after which it will come into force if approved.A

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This is the first time Exeter City Council has reviewed its Community Infrastructure Levy since it was introduced in the context of the current local plan, which was finalised by the adoption of its 2012 Core Strategy.A

The current local plan is underpinned by an evidence base, some of which is nearly 20 years old, and also incorporates policies saved from the 1995-2011 Exeter Local Plan First Review. County mineral and waste plans, Supplementary Planning Documents and a single neighbourhood plan all also inform the city's planning policy framework.A

Many of these policies, like the evidence that underpins them, are out of date. They are being accorded less and less weight in planning decisions, particularly at appeal.A

The new Exeter Local Plan which, according to the council's development scheme, is expected to reach publication stage next month before being submitted to the planning inspectorate in June, has already passed through two consultation stages after being launched two years ago.A

A local plan evidence base review has also taken place, with extensive new up-to-date evidence published alongside the draft version of the new plan last year.A

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Despite this, the council's new levy proposals do not take into account any of the new local plan's evidence base or emerging policies, instead depending on the current, largely outdated planning policy framework.A

Council officers insisted that this is an appropriate way to proceed at a meeting called by opposition councillors at which they sought to challenge the basis on which the levy review had taken place, and the council's consultants limited their assessment to policies contained in the 2012 Core Strategy alone on the basis it is the "most up to date".A

However government guidance on Community Infrastructure Levy charging, which explains its legislative context, says that "the relevant plan" in relation to the levy can be "any strategic policy".A

It says: Where practical, there are benefits to undertaking infrastructure planning for the purpose of plan making and setting the levy at the same time. A charging authority may use a draft plan if they are proposing a joint examination of their relevant plan and their levy charging schedule."A

It also says: The law does not prescribe when reviews should take place. However, in addition to taking account of market conditions and infrastructure needs, charging authorities should also consider linking a review of their charging schedule to any substantive review of the evidence base for the relevant plan."A

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The council also decided not to follow government guidance by not including the statutory infrastructure funding statement it is required to publish each year in its levy review.A

Despite its 2021–22 statement being published in November, and appearing on the agenda of the same council meeting that discussed the levy review, it was absent from the discussion of the levy at the meeting and has neither been used as evidence in the review nor published alongside it as required.A

The government says:ALocal authorities must publish an infrastructure funding statement, and information should be drawn from this [...] to identify the infrastructure funding gap and a levy funding target".A

It also says:AAt examination, the charging authority should set out the projects or types of infrastructure that are to be funded in whole or in part by the levy. From December 2020, this should be set out in an infrastructure funding statement."A

The council's current infrastructure funding statement sets out the projects which it expects Community Infrastructure Levy revenue to pay for in the form of a draft infrastructure list. These are the Liveable Exeter developments at Water Lane, the quay and canal basin, Marsh Barton, Red Cow Village (Exeter St David's), East, West, South and North Gate, Wonford and Exeter Arena.

None of these, except Alphington Road corridor motor vehicle capacity and schools provision related to Water Lane, are included in the infrastructure delivery plan that the council used for its levy review.A

The council says it intends to update this plan to include the Liveable Exeter development sites on which the new local plan is centred, but not until after its levy proposals have been submitted for examination.A

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And although the council's levy review ignored its Liveable Exeter development scheme infrastructure funding requirements, the basis of the differential levy charging rates it proposes are the policy objectives that it is pursuing via these developments.A

These are for high density development, primarily on brownfield land, primarily for rent, to be delivered primarily by its wholly-owned property development company, Exeter City Living, and by a new development corporation being planned by Exeter City Futures on the council's behalf as part of the controversial Exeter Development Fund.A

While Community Infrastructure Levy charges must be implemented in the context of local development policies, the government is clear: "Differential rates should not be used as a means to deliver policy objectives".

And yet the council has manipulated its new levy charges to incentivise the kind of development it wants while ensuring financial benefits for its own development company partners.A

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The government offers clear guidance on how local authorities should set Community Infrastructure Levy rates. It says they should use "an area-based approach, involving a broad test of viability across their area, as the evidence base to underpin their charge".A

It also says theyAmust use appropAriate available evidence (as defined in the section 211(7A) of the Planning Act 2008) to inform the preparation of their draft charging schedule" and that they "need to demonstrate that their proposed levy rate or rates are informed by 'appropriate available evidence' and [are] consistent with that evidence across their area as a whole".A

However the viability assessment it commissioned was unable to supply area based evidence to support most of its conclusionsAbecause the council's determination to structure its levy charges around its development policy objectives means there are no "tested forms of development in Exeter" to use as evidence for the three new charging types it wants to introduce.A

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A private consultation organised by the council in February last year confirmed its cart before horse approach at the outset.A

Council development director Ian Collinson described it asAengagement with the local development industry and the wider planning team to inform assumptions for a viability assessment". However it merely sought the views of "stakeholders who are involved with the forms of development subject to this partial review".A

Eight ofAaround 50 organisationsAwho were contacted responded. These included three very large firms with interests in thousands of UK properties but without any apparent connection to Exeter or the region despite having footprints in "nearly all major cities" between them, and two local planning consultants, one a micro-entiAty and anAotherAbasedAat a residentialAaddressA.

There were three others: Exeter City Council, Exeter City Living and Exeter City Futures. DespiteA government guidance that local authorities "must consult and should collaborate with [countyA councils] in setting the levy" it appears that Devon County Council did not take part.

Inconveniently for the council, its respondents confirmed the lack of evidence for its three new chAarging types. One said there is a "lack of applications" to provide evidence for a flats for sale levy rate, another that flats for rent and co-living are both untested and a third that it is difficult to assess co-living "as there are currently no operable schemes in Exeter".A

The council s consultants agreed with all three comments, and acknowledged their reliance on property data from outside Exeter to assess build to rent schemes, confirming that "neither build to rent nor co-living is currently available in Exeter". A council officer even admitted during a meeting that there is no local viability evidence to determine a differential rate for co-living.A

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None of this deterred the council from pursuing its policy driven levy charging proposals, even though governmentAguidance makes clear that setting differential levy rates raises the viability evidence bar even higher.A

It says local authoritiesAwill need to ensure that the differential rates are supported by robust evidence on viability" and that "fine-grained sampling is also likely to be necessary where they wish to differentiate between categories or scales of intended use" to "provide a robust evidence base about the potential effects of the rates proposed".A

However instead of first assessing whether there is sufficiently robust viability evidence from existing local development to back up the council's policy-driven development typology,Aits consultants sought to supply a rationale to support their use.A

They citedAchanges and new products in the local property marketAsince 2013, although they admitted that these were only "likely to come forward in the future in Exeter", according to "Aa review of planning applications and discussion with council officers" around "potential future development".A

To justify PBSAs inclusion in the review they said it had changed significantly because more studio flats and communal areas were being provided in student blocks than previously, based on a review of eight privately-provided Exeter schemes among the 62 that have so far been built in the city.A

At the same time they found that the two Exeter coAliving schemes which have been granted planning permission provided a "basis for the typologies" even though work has not begun on Harlequins redeveloment in the two years and two months since it was approved and work stopped at The Gorge a month ago after contractors pulled out.A

They claimedAspecific characteristics and acknowledged difference to others types of development" for co-living without explaining what those characteristics might be or who it is that "acknowledged" them.A

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The consultants appeared to feel on firmer ground with flats built for rent, on the basis there isAat least one build to rent example in Exeter and the council understands that there is a growing interest in this type of development use".A

They also cited unspecifiedAcommentaryAand said this development type isAdifferent to traditional sale and standard private rent" with a "different intended use", even though they used the same floor sizes, site areas and density assumptions they adopted for flats built for sale as there are "limited differences" between the twoAA

They did not consider that nothing prevents flats built for sale being purchased then rented out.A

While they acknowledged theAlimited examplesAof flats built for sale in ExeterAas it has not been a common form of development in the city in recent years", they nevertheless said that it had been "suggested anecdotally" that the current levy rates "could be one of the factors effecting delivery".

Confirming again that the council s development objectives were driving the levy review, the consultants then said that their viability assessment of such schemes partly "reflected early design work by the council on potential larger brownfield sites that may come forward in the future".A

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Having supposedly identified "areas of change in the local market" to justify the council's differential levy charging structure, the consultants then proceeded to lump together all four types to estimate development costs.A

They derived a brownfield benchmark land value of £1.2 million per hectare by taking existing use estimates ranging from £330,000 to £18 million per hectare then saying former commercial premises sites "suggested a narrower range" from £750,000 to £2.3 million per hectare.A

They acknowledged thatAthere are situations where brownfield land existing use values in Exeter can be significantly lower (or higher) than DLUHC estimates" but then chose the DLUHC out of centre office land existing use value of £990,000 per hectare as their basis without explaining how thisAapplied.A

They then applied an uplift factor of 20% on the grounds that urban area benchmarksAtend to be in a range of 10% to 30%" above existing use values. No reference was supplied for the source of this thirteen year-old claim, which does not appear to be Exeter-specific in any way.A

Nor were build costs for the council s development types based on Exeter evidence, except for PBSA.A

The consultants used some work they had done in Salford to calculate Exeter co living build costs, andA relied on normal residential development costs to provide values for both flats built for sale and rent despite the council's insistence that these are different development forms.A

Unsurprisingly, these calculations produced development costs that are more or less the same for PBSA and co-living and exactly the same for flats built for sale and rent.A

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The consultants also struggled to evidence assumptions about unit mixes and sizes as well as values for each type except PBSA.A

They said unit mixes and sizes had beenAdevised for each typology using Nationally Described Space Standards plus housing delivery including Land Registry/EPC data and planning applications" even though there are no such space standards for PBSA or co-living and hardly any ExAter applicationsAorAdelivery data foAco-livinAg, flats built for rent or flats built for saleA

They then combined their development cost assumptions with their unit mix, unit size and values assumptions in each case to derive net viability "headroom" per development type per square metre after all costs and developer profits had been deducted.A

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PBSA unit mixes, sizes and values were derived from their local review of privately provided blocks.A

Bedrooms in cluster flats were priced at £8,344 per annum and studios at £10,963.A

All three modelled schemes were found to be viable with significant headroom to support a Community Infrastructure Levy charge.A

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Unit mixes and sizes for coAliving wereAassumedAand values were derived by adding a 10% uplift on PBSA rents as "co-living values are not yet available within Exeter".A

The evidence for the uplift came from locations elsewhere (unspecified) although, as the consultants also noted that "the uplift can be in the region of 30%".

The decision (for which no evidence was supplied) to reduce this by two thirds titled the viability assessment significantly in favour of developers.

Co living studios were thus priced at £11,883 per annum, which is at the lower end of the range of prices advertised at The Gorge last year before the development ran into trouble. Premium rooms were expected to cost £13,272 per annum.

Again, all three modelled schemes were found to be viable with substantial headroom to support a levy charge.

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Unit mixes and sizes for flats built for rent were unsurprisingly considered likely to be similar to unit mixes and sizes for flats built for sale, while values were based on market rents.

The consultants didn t specify where from, but they cannot be Exeter figures.

An average rent of £15,000 per annum was derived on this basis, but this figure disguises the rent for market rate flats because it includes units offered at a 20% discount (supposedly making them "affordable") and does not account for rents differing by bedroom numbers.

Again, all three modelled schemes were found to be viable with substantial headroom to support a levy charge, although the ten storey scheme modelled at PBSA densities appears implausible.

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Unit mixes and sizes for flats built for sale were based on the average size of delivered flats over the past five years" and values were "derived from an analysis of new build Land Registry data"

The consultants derived several conclusions from these calculations. The unsurprising finding that co-living development is more profitable than building flats for rent or sale, given the very high densities in co-living (and PBSA) permitted by a lack of space standards, nevertheless gave the consultants cause to conclude that co-living constitutes a "different model of housing provision" that is "clearly distinct in viability terms", thus justifying the council's typology.

The trouble with the council's proposed Community Infrastructure Levy is not just that its differential charging structure is predicated on Liveable Exeter policy objectives for which local evidence cannot be supplied, it is that the typology itself is fundamentally flawed.A

When Exeter City Council introduced its Community Infrastructure Levy in 2013 it was expected to contribute £39 million towards a £92 million shortfall in infrastructure funding over the thirteen years between then and 2026: 42% of the total.A