The Planning Inspectorate

Report to Worthing Borough Council

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an Examiner appointed by the Council

Date: 19 November 2014

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT WORTHING BOROUGH COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 19 June 2014

Examination hearing held on 16 September 2014

File Ref: PINS/M3835/429/7

Non-Technical Summary

This report concludes that, subject to modification, the Worthing Borough Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. The Council has sufficient evidence to support the schedule and can show that the levy is set at a level that will not put the overall development of the area at risk.

Two modifications are needed to meet the statutory requirements. These can be summarised as follows:

- Setting a nil rate for residential development in low value areas, as defined in the *October 2013 CIL Viability Assessment*, in order that CIL does not threaten the viability of such development in these areas;
- Excluding ancillary car parking from the retail development to be the subject of the retail CIL charge, in order that the levy does not threaten the viability of retail development incorporating such facilities.

The specified modifications recommended in this report are based on matters discussed during the public hearing sessions.

Introduction

1. This report contains my assessment of the Worthing Borough Council Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance: the Department of Communities and Local Government's *Planning Practice Guidance – Community Infrastructure Levy*.

2. To comply with the relevant legislation the local charging authority has to submit a charging schedule which sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the Borough. The basis for the examination, on which a hearing session was held on 16 September 2014, is the submitted schedule of 19 June 2014 (Document CD05/02) which is not materially different from the document published for public consultation on 6 March 2014.

3. The Council proposes a rate of £100 per sq m for residential (C3) development and £150 per sq m for retail (A1-A5) development.

Is the charging schedule supported by background documents containing appropriate available evidence?

Infrastructure Planning Evidence

4. The *Worthing Borough Council Core Strategy* (CS) was adopted in April 2011.

Regeneration is the strategy's key focus with strategic development proposed at West Durrington and 12 areas of change identified as major regeneration priorities in the period to 2026. New housing is proposed to be provided at an average rate of 190 dwellings per year[1] and Worthing town centre's retail offer is to be transformed through a Master Plan. The plan also seeks to retain existing employment opportunities and promotes environmental protection as a key priority.

5. Supporting the CS is the September 2010 *Infrastructure Delivery Plan* (IDP). This identifies the infrastructure necessary to support the development and regeneration envisaged by the CS in terms of transport, housing, education, health, green infrastructure/leisure, flood defences and the identified development sites. It also indicates (where known) the cost and potential sources of funding for the necessary infrastructure. The May 2013 *Infrastructure Funding Gap Review* identifies that, taking account of other sources of funding, there is a funding gap of approximately £83.6m in relation to 43 IDP schemes which would be potentially eligible/suitable for CIL funding.

6. The *October 2013 CIL Viability Assessment* estimates that CIL revenue to 2026 would be in the order of £16.9m and, thus, the proposed charge would make only a modest contribution towards meeting the likely funding gap. Nonetheless, the figures demonstrate the need to levy CIL.

Economic Viability Evidence

7. The Council commissioned a *CIL Viability Assessment*, dated December 2012, which formed the evidence base supporting its Preliminary Draft Charging Schedule of January 2013. In response to consultation (and changes in CIL Regulations) the *October 2013 CIL Viability Assessment* was prepared evidencing the Draft Charging Schedule of March 2014, which then, subject to some non-material modifications, became the submission Draft Charging Schedule of June 2014. To correct some identified errors, and in response to representations and my own *Matters and Questions for the Examination*, the Council undertook further appraisals (CD06/9-13) in support of the *October 2013 CIL Viability Assessment*, which were published on 8 September 2014.

8. The assessment uses a residual appraisal model to assess a range of types of residential and commercial development likely to come forward in Worthing during the CS plan period. The assessment assumes that CIL contributions will be funded from the gross residual value of the land on which it is constructed, which represents the value of the development less the costs of the development and the developer's profit. The difference between the gross residual value and the threshold land value is the margin available for developer contributions (ie CIL and also Affordable Housing and other s106 contributions) – the threshold land value being the minimum value at which the landowner will sell the land. The assessment assumes that a reasonable threshold land value is the existing use value of the land plus 50% of the increase in its value resulting from the planning permission for its

[1] The Core Strategy provides for 200 dwellings per year during the plan period; the 190 dwellings per year figure, to the end of the plan period, reflects delivery in the plan period years prior to the Strategy's adoption.

development. In effect, it is assumed that the increase in the value of the land resulting from the planning permission is shared equally between the landowner and the local authority/community, in the form of CIL and other developer contributions.

9. I recognise, as expressed at the hearing, that many landowners have traditionally secured considerably more than 50% of the increase in the value of land, and indeed that, elsewhere, some are continuing to do so even where CIL has been introduced. It is also the case that earlier in its preparation of the CIL schedule the Council had assumed that landowners would secure a 60% share. However, none of this is convincing evidence that in Worthing a 50% share would "shock the market" or result in a significant number of sites not coming forward for development which would otherwise have done so. Inevitably, depending upon their individual circumstances, some landowners would require more than a 50% share in order to sell their land whilst others would willingly accept less. On this basis I conclude that, as an average, a 50% share is a reasonable assumption and that it represents an appropriate balance between the desirability of funding infrastructure through CIL and the potential impact on the viability of development.

10. With specific reference to actual land prices considerably higher than those assumed in the appraisals, it is argued by many that the CIL rates should be based on historic market values rather than the threshold land value. However, historic market values (reflected in the form of a 'sense check' in the assessment by the "Market Comparable" appraisals) will have been affected by the wide variety of circumstances applicable at the time and these may have changed or no longer be relevant. Moreover, and crucially, historic market values will not have been influenced by CIL as they are likely to be if and when CIL is in place. All in all I conclude that the Council's approach of assuming that land can be bought at the current use value plus a 50% share of the uplift value arising from the relevant planning permission is a sound one.

11. The assessment is informed by the *Land and Property Valuation Study*, which identifies land and property values in three sub-areas of the Borough for each type of development, whilst the *Construction Cost Study* provides the evidence base on construction costs, including professional fees, warranties, statutory fees and contingencies. The appraisals take account of the CS's affordable housing policy (30% on sites of 15 of more dwellings) and an assumed cost for on-going s106 contributions. Whilst the appraisals do not include an allowance for abnormal costs, I concur with the Council that the more significant such costs are appropriately reflected in the land price, whilst the "buffer" between the maximum viable level of CIL identified and the actual rate proposed would, in most instances, cover the cost of less significant 'abnormals'.

12. The Council's evidence that, historically, s106 costs for residential development have averaged £1,596 per dwelling is comprehensive and convincing, notwithstanding the cited examples of individual schemes where there have been considerably higher s106 costs. Given the Council's statement at the hearing that the majority of residential scheme s106 costs have been formula-based education, open space and transport related contributions, all of which would in future be funded by CIL, the assumption that post-CIL on-going s106 costs would average £500 per dwelling is a reasonable one.

13. However, it is not clear that there is potential for CIL to fund a significant element of the infrastructure historically secured through s106 agreements in connection with retail development. Therefore, the Council's assumption that s106 costs for retail would be likely to reduce from an average of £17 per sq m to £5 per sq m if CIL is in place is unpersuasive. Nonetheless, the additional appraisal work undertaken (CD06/13 updated 16 September 2014) indicates that, even if the historic average of £17 per sq m s106 costs for retail development were to continue post-CIL, the maximum viable level of CIL for each type of retail development would remain above the proposed £150 per sq m charge. The Council has indicated its intention to review its draft Regulation 123 list to ensure that developers are not charged for infrastructure through both CIL and planning obligations.

Conclusion

14. The proposed rates have been challenged in a number of ways: I consider the significant points in detail below and in two respects conclude that the proposed charges are not appropriately informed by the evidence and have thus recommended modifications. Nonetheless, the draft Charging Schedule is supported by detailed evidence of community infrastructure needs and the evidence itself which has been used to inform the Charging Schedule is proportionate, appropriate and in most cases robust.

Are the charging rates informed by and consistent with the evidence?

CIL Rate for Residential Development

15. The *October 2013 CIL Viability Assessment* appraised five types of general purpose residential development (mixed residential, high rise apartments, low rise apartments, executive housing and suburban housing) on both greenfield and brownfield sites in areas of low, medium and high value property value, defined in paragraph 4.2 of the document. The updated appraisals (CD06/9) indicate that the proposed £100 per sq m CIL levy could be viably charged, with a "buffer" of between £24 and £491 per sq m, for all categories of residential development in the medium and high value areas and for executive housing on greenfield sites in low value areas.

16. The CD06/9 appraisal assumes industrial value for brownfield land which the Council argues is representative of 'under-performing' land likely to be the subject of redevelopment. In response to the contention that not all residential development is likely to take place on low value brownfield land a separate appraisal (CD06/10) considers residential redevelopment of existing residential land. This identifies that, on such a basis, only low rise apartments, suburban housing and mixed residential development in high value areas would be viable with the proposed CIL charge, the latter being only just viable with a "buffer" of £2 per sq m. However, in the medium and high value areas all residential to residential development is shown to be viable without the CIL charge. Furthermore, I share the concern of some representors that the appraisal's assumption that a 0.2ha high value area site in Worthing in existing residential use could be secured for less than £400,000 does not pass a 'sense check'. And, whilst in general terms an assumed residential developer profit of 20% is reasonable, I accept that a higher profit may be appropriate for the developers of apartment schemes (bearing in mind the potential

difficulty in selling any of the dwellings until the development is entirely complete), particularly for smaller developers who do not have the volume home builders' ability to share costs and risks across a large number of developments.

17. On the other hand the appraisals do not account for existing floorspace which would be discounted from the CIL charge, reducing, or even eliminating, the CIL charge for residential development on existing residential land. Moreover, I accept the Council's contention that a developer's profit of significantly less than 20% is appropriate for, effectively pre-sold, affordable housing given the minimal risk.

18. On the submitted evidence, it is not possible to balance these various factors to clearly identify which residential schemes on existing residential land would be viable with the proposed £100 CIL charge. However, taking account of CD06/10 and the points outlined above, it is reasonable to assume that whilst some such schemes would be viable, the CIL charge would make others not. It is therefore necessary to understand the likely importance of residential development on existing residential land to the sites and scale of development identified in the CS: the CIL Guidance makes clear that charging authorities should set a rate which does not threaten the ability to develop viably the sites and scale of development identified in the relevant plan.

19. Based on the average rate of 190 dwellings per year[2], the CS seeks to provide in the order of 2470 new dwellings to the end of the plan period in 2026. Document CD06/2 identifies that for the period 2013-2018 there are extant permissions for 1529 dwellings which are considered to be deliverable. With permission in place these developments would not be subject to CIL, although it is notable that around only 10% of these dwellings would be on existing residential sites. Additionally, the *Strategic Housing Land Availability Assessment* (SHLAA) *Review* identifies the availability/suitability of land for 969 dwellings (as of 1 April 2014), only 37 of which are sites currently in residential use. Together this provides for 2498 dwellings slightly more than the CS target, around only 200 of which are on existing residential sites.

20. The Council accepts that it is unlikely that every single existing permission and SHLAA site will be developed as envisaged and that, thus, some residential development on "windfall" sites is likely to be necessary to meet the CS housing target. I recognise that there cannot be an unlimited supply of suitable windfall sites in existing commercial, as opposed to residential, use. However, there is no persuasive evidence that the existing situation of the vast majority of new housing being developed on sites not currently in residential use will not continue for the current plan period. Consequently, I conclude that the residential redevelopment of existing residential sites is likely to be of minimal importance to the delivery of the sites and scale of development identified in the CS.

21. I recognise that there may be a need to increase housing provision in Worthing in the future and that this may require greater redevelopment of existing residential land. However, that would require a reviewed or new Core

[2] See footnote 1.

Strategy, whereas the CIL schedule must be considered against that which was adopted in 2011.

22. Given the likely effect of the proposed CIL charge on the viability of some residential schemes on existing residential land it has been suggested that such development should be the subject of a zero rate. However, whilst the Regulations permit rates to be varied by geographical zone, intended use and gross internal area/number of units, they do not permit variation based on the existing use of the land. Consequently, the only feasible way to ensure that the proposed CIL charge would not make any residential to residential development unviable would be to zero rate all residential development in the Borough. This would reduce the forecast CIL income by around 60%. Given the likely minimal importance of residential to residential development to the delivery of the sites and scale of development identified in the CS, this would not represent an appropriate balance between securing the funding of infrastructure and the potential impact on the economic viability of development.

23. Nonetheless, the updated appraisals of general purpose housing (CD06/9) indicate that in low value areas only executive housing on greenfield land would be viable with the proposed £100 CIL charge, although on the basis primarily that little residential development would be likely to come forward in these locations, the Council has concluded that a separate rate should not be set for these areas. However, this argument is not logical in terms of striking an appropriate balance. The updated appraisals show that, whilst viable in their own right, it is the proposed £100 CIL charge which in low value areas would make unviable executive housing on brownfield land, suburban housing on greenfield land and mixed residential development on both greenfield and brownfield land. Consequently, by imposing a £100 CIL charge it is very likely that this development would not materialise and thus no CIL income would be secured. Conversely, if no CIL were to be charged on residential development in low value areas, little or no CIL income would be foregone but the potential for otherwise viable residential development to come forward to contribute towards housing needs would be significantly increased.

24. Notwithstanding the evidence of the updated (September 2014) appraisals, the Council has argued that in recent months the housing market has improved in the low value areas and refers to the recent Cissbury Chase development (located in a low value area) achieving average prices per sq m significantly higher than the Yeoman Chase development, located in what is described as a medium value – edge of low value area. Additionally, September 2014 ZOOPLA data indicates that for Broadwater, one of the low value area wards, the current average house price per sq m is around the same as that of the medium value areas when the value areas were set in the *October 2013 CIL Viability Assessment*.

25. Whilst this evidence is, to some extent, supported by the contention of some representors that there are two rather than three residential value areas in Worthing, it is little more than anecdotal. Therefore, although more recent, this evidence should not override the detailed analysis and appraisal work set out in the *October 2013 CIL Viability Assessment* as supported by the *Land and Property Valuation Study*, which clearly points to a nil rate for residential development in low value areas. Moreover, given that the CIL Guidance

indicates that development cost, including policies on affordable housing, should be taken into account when setting CIL rates, it would not be appropriate to assume that affordable housing requirements could be reduced to make residential development in the low value areas viably able to pay the proposed £100 per sq m CIL charge.

26. Two rates for residential development would of course make the Charging Schedule more complicated and the CIL Guidance advises against overly complex schedules. However, geographical zone-based rates are common amongst adopted CILs and, even with a nil rate for residential development in low value areas, Worthing's schedule would remain relatively simple.

27. I accept that defining boundaries between zones is not easy and that almost inevitably zones will include some development out of kilter with that which predominates in the area. Indeed, it is possible that the Cissbury Chase and Yeoman Chase evidence referred to above reflects this. It is thus likely that with a nil rate for the low value areas some residential development which would be viable with the £100 CIL charge will take place and that a small amount of CIL income will be foregone. However, this in an almost inevitable feature of CIL: there will always be development which, in reality, could viably pay a higher level of CIL than the rate proposed.

28. At the hearing the Council referred to the possibility of Exceptional Circumstances Relief being applied in respect of residential development in low value areas made unviable by CIL. However, its name implies that this relief should be applied to development which is <u>exceptionally</u> not viable because of CIL. In this case the evidence clearly identifies that most residential development in low value areas would not be viable and thus a finding that, in reality, a specific such scheme could not viably pay the proposed CIL charge would not be an exceptional circumstance. Notwithstanding this, whether or not the Council decides to introduce an Exceptional Circumstances Relief policy is primarily not a matter for consideration in the Examination.

29. Consequently, I conclude that the proposed £100 CIL charge for residential development in low value areas (as defined in paragraph 4.2 of the *October 2013 CIL Viability Assessment*) is not supported by the evidence and thus modification **EM1** is necessary to set a nil rate for such development in these areas.

30. The majority of points addressed above apply equally to sheltered housing as to general purpose residential development, and based on the specific updated appraisal undertaken (CD06/12), maximum viable CIL levels for sheltered housing generally lie in the middle of the range of levels for the other appraised types of residential development as set out in paragraphs 15 and 16 above. In addition to concerns about appraisal assumptions which are addressed elsewhere in this report, it is contended that sales rates for sheltered housing are much slower (and empty property costs are thus higher) than assumed by the Council. Whilst the respresentor's evidence on this is surprising, it is also persuasive. However, equally persuasive is the evidence submitted at the hearing about likely sales values of the representor's own 'retirement living' developments which are significantly higher than those assumed in the Council's appraisals.

31. There is not the detailed appraisal work necessary to accurately compare the negative impact on scheme viability of the slower sales rate with the positive impact of the higher sales values. However, the latter would inevitably go some way, at least, towards offsetting the impact of the former. Moreover, modification EM1 would set a nil CIL rate for sheltered housing in the low value areas and, in the medium and high value areas, the minimum "buffer" between the maximum viable CIL rate for such development and the proposed £100 per sq m rate is £42 per sq m. Consequently, even accounting for slower sales rates than assumed by the Council, it is unlikely that CIL would threaten the viability of most sheltered housing development in the Borough.

32. In conclusion, the evidence demonstrates the need to set a nil rate for residential development in lower value areas, in order that CIL does not threaten the viability of such development in these locations. However, for the remainder of the proposed charging area, the residential rate is appropriately informed by and is consistent with the evidence.

CIL Rate for Retail Development

33. In response to arguments that the appraisals of retail development set out in the *October 2013 CIL Viability Assessment*[3] do not adequately reflect the full range of retail development likely to come forward in the Borough, the Council undertook, and submitted to the Examination (CD06/13), a number of further appraisals of different types of retail development. Together with the October 2013 assessment, the additional appraisals cover a comprehensive range of retail development from a 100 sq m general retail store and a 150 sq m food store, through a 1500 sq m and 2000 sq m supermarket to a 5000 sq m retail warehouse and a 7500 sq m food superstore. As referred to above separate results are provided assuming a £5 per sq m and a £17 per sq m on-going s106 cost. The results indicate that, assuming the higher on-going s106 cost, all the appraised retail developments could comfortably pay the proposed £150 per sq m CIL rate and that, even on brownfield land, there would be a minimum "buffer" of £30 per sq m between the maximum CIL which would be viable and the rate proposed.

34. The appraisals do not include demolition costs. However, taking account of the reduction in CIL for existing floorspace (not included in the appraisals but almost inevitable if demolition is involved) and the "buffer" between the maximum CIL rate shown to be viable and the proposed £150 per sq m charge, it is likely that, notwithstanding such costs, most retail development would remain viable with CIL in place. Given that fit-out costs for retail development can vary so significantly between different specific operators it makes sense for the assumed costs and values in the appraisals to be based on a retail 'shell' and I have seen no persuasive evidence to indicate that the assumed such costs, based on analysis by Gleeds, or the related assumptions for professional fees, are inaccurate or inappropriate. Bearing in mind that the

[3] A representor states that the detailed appraisals were not made available. I cannot say whether or not this was the case at the time the comment was made. However, the appraisals were available on the Examination Website during the period in which all representors were invited to submit statements in response to the Main Issues and Questions for the Examination which I posed.

majority of retail development is pre-let or pre-sold the assumed developer's profit of 17.5% is also appropriate.

35. The maximum viable CIL rates indicated by the appraisals generally vary more by type of retail use (eg food retail versus general retail) than they do by size of development and, thus, the evidence does not support a differential CIL rate for smaller and larger retail development. The appraisals indicate that a higher than proposed CIL charge could be viably levied on certain types of retail development (eg general retail). However, whilst other authorities have done so, there is no specific evidence to indicate that Worthing Borough Council's decision not to do so means that it has not struck an appropriate balance in setting its rate, bearing in mind the need to avoid selective assistance resulting from differential rates and the desirability of an uncomplicated schedule. The key point is that the evidence demonstrates that the viability of most retail development likely to come forward in the borough would not be undermined by the proposed £150 per sq m charge. That the proposed rate is significantly higher than retail rates proposed or in place in other districts in the area is not evidence that a £150 per sq m levy would be likely to render unviable otherwise viable retail development in Worthing.

36. Although it is not a factor specifically tested in the appraisals, the Council does not contradict the contention that the proposed retail CIL charge could threaten the viability of retail development which incorporates car parking in a building (eg a multi-storey or undercroft car park). I concur with this point and it is common sense evidence that such car parking provision, on which CIL would be levied, would be unlikely to add any more value to a development than would an open car park on which CIL would not be levied. The Council envisages that there will not be many such developments during the plan period, although that does not address the potential viability problems for the schemes which do come forward, even if there are only a small number of them. Moreover, the CS identifies retail development in Worthing town centre as an important element of the Borough's regeneration. The Council also suggests that a developer could apply for planning permission for the car park separately from the retail unit to avoid having to pay CIL on the car park. However, even if feasible, this would be unnecessarily complicated. Consequently, given the potential for CIL to undermine the viability of retail development incorporating ancillary car parking in buildings, it is appropriate to specifically exclude ancillary car parking from the CIL charge. Modification **EM2** is therefore necessary.

37. In conclusion, and modification EM2 aside, the rate for retail development is informed by and consistent with the evidence.

Does the evidence demonstrate that the proposed charge rate would not put the overall development of the area at serious risk?

38. Assuming that the CIL schedule is modified in accordance with my recommendations, the evidence suggests that the sites and scale of development set out in the Core Strategy would remain viable with CIL in place. I reach this conclusion notwithstanding the fact that the *October 2013 CIL Viability Assessment* was prepared prior to the enactment of the 2014 CIL Regulations. Moreover, bearing in mind the "buffer" between the maximum CIL level identified to be viable for each type of development and the proposed

charges, I am satisfied that other detailed criticisms of the appraisals' assumptions would be unlikely have a significant impact on the viability of development.

39. Consequently, CIL would be unlikely to put the overall development of the area at serious risk.

Conclusion

40. Changing economic circumstances have been a feature of the period during which the Council has sought to develop its CIL schedule. However, my recommendations are based on the detailed viability evidence as set out in the *October 2013 CIL Viability Assessment* and the September 2014 Revised and Additional Viability Appraisals. Other, essentially anecdotal, evidence about improved economic conditions is not an appropriate basis on which to make recommendations about the schedule, although it may point to the desirability of a fully evidence-based early review of the schedule.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule (modified as recommended) complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedule (modified as recommended) complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

41. In the light of the above, and having regard to all other matters raised in writing and at the hearing session, I conclude that subject to the modifications set out in the Appendix the Worthing Borough Council Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

Malcolm Rivett

EXAMINER

Appendix – Modifications

In respect of modifications **EM1** and **EM2** modify the Worthing Borough Council Community Infrastructure Levy Draft Charging Schedule (Draft for Submission, June 2014) as follows:

1. Replace the table on page 6 with:

Use	Levy (£/sq m)	
	Zone 1	Zone 2
Residential (C3)	£100	Nil
Retail (A1-A5), excluding ancillary car parking	£150	£150

2. Amend Appendix 1 – Charging Area to identify two zones: Zone 2 to include the low value areas, in accordance with that detailed in the *October 2013 CIL Viability Assessment*, and Zone 1 to include the remainder of the Worthing CIL Charging Area.

3. Any consequent changes to the Schedule to reflect the above modifications.