



The Planning
Inspectorate

Report to Southampton City Council

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an Examiner appointed by the Council

Date: 16 April 2013

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT SOUTHAMPTON COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 4 February 2013

Examination hearings held on 11 and 12 March 2013

File Ref: PINS/D1780/429/7

Non Technical Summary

This report concludes that with one major and one minor modification the Southampton Community Infrastructure Levy Charging Schedule is capable of providing an appropriate basis for the collection of the levy in the city.

The Council has sufficient evidence to support the schedule and show that the retail levy is set at a level that will not put the overall development of the area at risk. However, the evidence also shows that the rate proposed for new residential development, including new student housing, is too high and would pose a significant threat to the viability of housing schemes in the city and thus to the delivery of the adopted Core Strategy. Accordingly, it needs to be reduced.

Two modifications, one major and one minor, are needed to meet the statutory requirements. These are listed in Appendix A and can be summarised as follows:

- Reduce the residential charging rate from £90 psm to £70 psm.
- Clarify the applicability of the residential charging rate to the different types of new student housing.

The specified modifications recommended in this report are based on matters discussed during the public hearing sessions and do not materially alter the basis of the Council's overall approach or the appropriate balance achieved.

Introduction

1. This report contains my assessment of the Southampton 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 (Charge Setting and Charging Schedule Procedures – DCLG – March 2010 and Community Infrastructure Levy – Guidance – DCLG - Dec 2012).
2. To comply with the relevant legislation the local charging authority has to submit what it considers to be 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 city. The basis for the examination, on which hearings sessions were held on 11 and 12 March 2013, is the submitted schedule of 4 February 2013, which is effectively the same as that published for public consultation on 12 September 2012.
3. The Council proposes two charging rates across the city, one of £43 per square metre (psm) for all retail uses (A1 – A5 classes) and one of £90 psm for residential (C3, C4 uses and sui generis houses in multiple occupation). All other uses, including hotels (C1), residential institutions (C2) and all business development (B classes) would be nil rated.

4. Two footnotes to the schedule confirm that first the nil rating for residential institutions (C2) will apply to new student accommodation that includes individual bedrooms with shared facilities and where residents do not live as a single family. The second says that other types of student housing including self contained or cluster flats could be subject to the residential charging rate.

Infrastructure planning evidence

5. The Southampton Core Strategy (CS) was adopted in January 2010 and sets out the main elements of growth that will need to be supported by further infrastructure in the city. The accompanying Infrastructure Delivery Plan has been updated to October 2011. At current prices the Council estimates the total infrastructure funding required to deliver the CS over the plan period at approximately £528 million (m), of which only about £256m, or just less than half, has been identified to date, thereby leaving a significant gap for the CIL to help fill.
6. CIL receipts are presently expected to raise approximately £32.7m between 2013 and 2026, or about £2.5m per year, towards filling that gap, alongside other sources. This is only slightly more than the city's average annual S106 legal agreement receipts of £2.4m over the last few years. In the light of the information provided, the proposed charge would therefore make only a modest contribution towards filling the likely funding gap. However, the figures clearly demonstrate the need to introduce the CIL.

Economic viability evidence

7. The Council commissioned a CIL Viability Assessment, dated April 2010, which was updated in April 2012 (EV 1), based on January 2012 figures. The assessment essentially uses a residual valuation approach, using reasonable standard assumptions for a range of factors such as local building costs (including Code for Sustainable Homes Level 4 requirements), developer profit levels and professional fees. The model incorporates relevant and up to date local data on existing land values; likely sale prices based on a range of sites across the area and anticipated housing densities, as well as the full impacts of the Council's relevant planning policies, including for affordable housing, set out in the adopted CS. It has also been compared to some examples of recently delivered schemes in the city and, in general terms, found to be fit for purpose in that respect too.
8. The local industrial, office and storage/warehouse markets are depressed at present and all the available evidence demonstrates that the imposition of the CIL on new business and related development (B class uses) across the city would not be economically viable or appropriate currently. The same is true for hotels (C1), residential institutions (C2) and community uses (D1). The Council's judgement in this respect is universally endorsed by consultees and there is nothing to justify a different conclusion at present.
9. The draft Charging Schedule is also supported by suitable detailed evidence of identified community infrastructure needs, including the Council's draft Regulation 123 list. On this basis, the evidence which has been used to inform the rates proposed is largely robust, proportionate and appropriate.

Main Issues

10. In addition to the above and taking into account all the evidence, the representations and the discussions at the examination hearings, I have identified two main issues upon which the viability of the CIL charging schedule depends.

Issue 1 - Retail Rate

(a) Is the local levy rate for new retail floorspace justified by appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the Council's adopted Core Strategy, the City Centre Action Plan and regeneration ?

(b) Overall, does it strike an appropriate balance between helping to fund the new infrastructure required and the potential effect on the economic viability of new retail floorspace and related/mixed use development across the city ?

11. Although limited in scope and extent, the Council's evidence clearly demonstrates that the proposed CIL rate of £43 per square metre (psm) for new build retail floorspace would be currently viable across the city at both the supermarket and neighbourhood convenience store scale. Moreover, in a relatively small and compact city, there are insufficient economic viability, geographical or any other important differences between the various parts of Southampton that might, individually or collectively, help to justify a need for separate retail charging zones.
12. Under the national CIL Regulations the application of differential rates for the different forms of retail use, such as convenience and comparison shopping, and/or distinction by size of unit/floorspace, could only be justified by rigorously tested evidence related to viability. No such local evidence exists. The fact that, once established, A2 – A5 uses can benefit from permitted development rights to change to A1 reinforces the conclusion that there is no justification for any exemptions from the CIL rate that would apply across the city, at present.
13. In the city centre the CS envisages a post 2016 major expansion of retail floorspace, together with new dwellings and offices. It is common ground that mixed use redevelopment schemes already permitted but not yet started may well need to be reconsidered and/or reconfigured in the light of the ongoing national economic difficulties, not least in the retail sector, to remain viable in the current market. Nevertheless, once adopted, the implications of the CIL on the overall viability of such schemes can be taken into account at the outset of any such redesign process. This would include in respect of all other infrastructure requirements and expectations, arising from the Council's (draft) Regulation 123 list and revised Planning Obligations SPD (draft June 2012) in relation to any S106 legal agreements necessary.
14. The national CIL Regulations do not permit rates in general or for any particular schemes to be "negotiated" on a "one off", or site specific basis, in relation to individual proposals, no matter how large or important. Nor is a separate city centre charging zone appropriate in a very largely built up and

homogeneous urban area, particularly in the absence of any obvious or logical boundary definition or clear viability evidence to justify such a division, as distinct from policy considerations.

15. In such circumstances, and bearing in mind the viability evidence relating to new retail development in the city, nor is there any reason to resist or delay the imposition of the CIL, either in the city centre as a whole or on any particular site or sites. This includes those that have been specifically identified as essential (VIPs - Very Important Projects) to the delivery of the Council's overall strategy for the city. The application of a zero CIL rate to these sites would not only lead to an inappropriate and unreasonable "cross subsidy" effect on suburban sites but also a significant reduction in likely CIL income that would materially alter the balance drawn by the Council.
16. In the absence of any specific evidence to the contrary, it is clear from further analysis of the Council's figures that the proposed CIL rate for new retail development would constitute a limited and manageable proportion, of less than 5%, of total build costs, and less than 2% of GDV, for a new convenience store of 300 sq. m. For larger retail stores the relevant percentages would be materially lower, thus ensuring that a suitable viability margin, or "cushion", would be maintained for such projects when the CIL is introduced. Thus, the relatively modest retail rate of £43 psm would not, of itself, create a serious risk to the delivery of the new shopping provision envisaged in the CS and/or in the city centre in particular, and it is justified and endorsed accordingly.

Issue 2 - Residential Rate

(a) Is the local levy rate for residential development in the city justified by appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the Council's adopted Core Strategy ?

(b) Is the local levy rate for residential development in the city reasonable and realistic in relation to an appropriate balance between helping to fund new infrastructure and the potential effects on economic viability, and/or should there be different rates for different parts of the city, and if so, why and where ?

17. The residential market in the city remains challenging for private developers and there is ample evidence of schemes being permitted with significantly less affordable housing (or even none) than would normally be expected under policy CS15 of the CS for viability reasons. But, importantly, average new housing completions in the city over the first few years of the plan period to 2026 are still meeting the overall requirements of the CS, despite the difficult economic circumstances, as evidenced in the latest Annual Monitoring Reports.
18. Furthermore, in total, new affordable housing delivery across the city also continues to meet CS targets, despite a significant proportion of new housing continuing to come forward on smaller/windfall sites. Equally, there will always be some, usually previously developed, sites where abnormal costs, such as for remediation, ground conditions and/or servicing, require flexibility to be applied if they are to be delivered, as recognised in policy CS15.

19. Accordingly, the suggestion that the CIL should be delayed to await a potential return to earlier/more favourable market conditions is unnecessary and unrealistic. This is particularly so bearing in mind the funding gap identified and the long lead in times needed to bring forward some elements of the new infrastructure required and which the CIL will help to fund.
20. For new housing, the various assumptions used in the Council's generic testing of different development scenarios have been criticised by some representors in a number of specific respects and also in terms of the overall cumulative effect of the single CIL rate for housing to be applied across the city. However, the Council's Viability Studies (EV 1) have taken account of all the relevant policies of the adopted CS, as required by national guidance, including the provision of 35/20% affordable housing, as appropriate, under policy CS15.
21. Moreover, the Council's studies do not make any allowance for the fact that on previously developed land any existing floorspace on site (in lawful use) will be exempt from the CIL, thus assisting viability in many instances in a city with few, if any, greenfield sites. In these circumstances, and allowing that the rate will be known at the outset of a project, in principle, the adoption of a CIL for new housing should not normally risk such schemes becoming economically unviable, even in the present difficult market conditions.
22. By definition, the CIL cannot make allowance for abnormal, site specific, costs on individual projects. The rates have to be based on a generic analysis of a variety of size and type of schemes across the area, taking into account average local build costs, not the individual circumstances of particular sites. The fact that a few specific schemes that are already marginal may become unviable in certain locations should not have a significant impact on the delivery of new housing across the city to meet the requirements of the CS.
23. Respondents have also criticised the profit level assumed by the Council as too low, particularly in the present difficult market conditions that include bank lending restrictions. Obviously, such levels vary with each scheme, including as the market changes over time. Nevertheless, using an average figure of 20% on total build costs across the city is not unreasonable or unrealistic in generic analyses, as distinct from the detailed costing of a fully designed project for a particular developer on a specific site.
24. Particularly in relation to large housing sites there is also a concern that an insufficient allowance has been made for likely site specific infrastructure contributions. These could include for roads and public transport, with recent local examples referred to of higher contributions being required. However, these arrangements are not directly comparable with the intended future operation of the CIL, once adopted, and the Council's accompanying revised SPD on Planning Obligations (BG 1), which will be used as the basis for new legal agreements for site specific infrastructure.
25. Coincidentally, the Council's figures indicate that, for those housing schemes providing affordable housing at least, the use of the CIL rates and the new SPD will lead to broadly equivalent total contributions as under the present S106 legal agreements system that it would replace. Of course, there may well be limited increases for some and slight reductions for others, depending

on the exact nature of each scheme, but not, overall, a significant risk to the economic viability of new build development compared to the present position, providing that the rate itself is set an appropriate level.

26. From the available evidence it is also clear that a realistic recent level for the average sales values for new housing in the district has been taken as an input to the viability testing undertaken. The figures used have also been checked against actual current asking prices in the city and found to be generally consistent in CIL terms. The fact that certain recent schemes may not have proved viable had the CIL rates been in place at the time is an inevitable consequence of its imposition, in that the margins of viability will be affected. However, once established, the CIL will be taken into account early in the development process, including in relation to land and building values, with new project viability having to be considered accordingly by landowners, developers, lenders and their advisors.
27. The evidence shows that there are material differences in the current viability of new residential development across the city, but not of such scale or variance, in themselves, as to create a significant risk to the overall delivery of new housing in particular parts of the city. In general, the Council responded appropriately to specific additional viability evidence, provided in response to the preliminary draft charging schedule, by reducing the rate for new housing in the later submission draft to better reflect current sales values and overall viability, as well as the national economic situation.
28. The CIL must be based solely on the economic viability of development across the city. There is no necessity or requirement to co-ordinate rates with those being introduced or contemplated by adjoining Councils as the "duty to co-operate", applicable to Local Plans, does not apply to the CIL. For the same reason, it would be inappropriate to make any exception or exemption from the CIL rates for any particular part of the city, including the city centre, for planning or other policy reasons, despite the need for regeneration in places.
29. In a small compact city like Southampton the evidence is not sufficiently distinctive to justify any separate charging zones, which would be difficult to define in any event, particularly as ward boundaries do not provide a satisfactory answer locally. The use of a single consistent rate also has the advantages of clarity for all concerned and ease of implementation.
30. Importantly, the Council has also made it clear that the economic viability of any scheme, that is otherwise acceptable in all other respects, would be assessed for all other possible non CIL contributions on an overall basis. This would mean taking into account the fixed CIL liability first and then, if necessary, where the overall viability is in genuine doubt, any further infrastructure needs in a flexible and negotiated process. The Council can demonstrate a recent track record in this regard and the absence of objections from the major national residential developers supports this conclusion.
31. The Council's evidence has included the additional build costs associated with the Code for Sustainable Homes (CSH) Level 4 and policy CS 20 relating to sustainable design, construction and energy measures. Whilst the final introduction date and full implementation details of higher CSH Levels remains uncertain, if and when it occurs residential build costs are likely to increase to

a material degree. However, given the present general lack of demand for new build construction, it might be reasonably assumed that any such building price rises would be tempered through competitive tendering. This would be so even if basic raw materials become somewhat more expensive too, as predicted by some respondents.

32. Furthermore, previous experience suggests that additional unit costs are likely to be mitigated as construction expertise develops and relevant technologies improve. Nevertheless, the viability margins need to be sufficient to absorb the percentage increase without serious difficulty and this factor reinforces my conclusion on the need for a larger viability margin or "cushion", in accord with advice in the Harman Report - "Viability Testing Local Plans" (June 2012).
33. The Council's evidence shows that the initially proposed rate was, essentially, the maximum possible and that this has subsequently been reduced by around 20% to address the concerns expressed by respondents in the consultation period and the continuing national economic difficulties, as well as more up to date information. It also indicates that the effect of the CIL rate, as now proposed, is likely to amount to about 7% of total build costs or 4 to 7% (average 5.5%) of gross development value (GDV) for typical new housing schemes at present. At this level, I consider that the relevant evidence, including from representors, shows that the rate proposed is still too high and would therefore pose a significant threat to the viability of new housing development in the city and therefore the delivery of the CS and its objectives.
34. In the light of all of the above, the viability margin or "cushion", as referred to in the Harman Report, needs to be increased to about 30%, including to reflect the impact of the CSH and policy CS20, if the imposition of the CIL rates is not to lead to a serious risk of non delivery of enough new housing schemes to matter over the next 5 years or so at least. This should also reduce any effect of the CIL introduction on the continuing supply of windfall sites throughout the city, particularly those smaller schemes where affordable housing requirements do not apply, as it forms a material element of overall new housing delivery in current market conditions.
35. I therefore conclude on the second main issue that the local levy rate for new housing as justified by the available evidence should be modified by a reduction from £90 psm to £70 psm in order to strike a more realistic and appropriate balance between helping to fund new infrastructure and the effect on the economic viability of residential development across the city (**EM 1**).
36. There is firm evidence of significant levels of new student housing provision, such as in the form of "studio led" schemes, remaining viable and continuing to come forward in the city during the recent economic recession. Current local demand is bolstered by the presence of the two universities and other local educational establishments. Student accommodation built and operated directly by universities and similar education establishments, including schools, may be entirely exempt from the CIL if they have charitable status. It would be subject to the nil rate for residential institutions (C2) if in the form of "halls of residence", or similar.
37. The current evidence (including the late clarification provided by the Council at my request and on which representors were invited to comment further) is

clear that, on average and in most cases, new student housing provided by commercial operators is generally capable of absorbing the (modified) CIL rate proposed and remaining economically viable. This is partly, at least, because it does not normally make a contribution to affordable housing and often provides less car parking and open space in accord with relevant CS policies. Although some such schemes may well pay more under the CIL than the Council's current S106 legal agreement based system of contributions, which it would replace, others may pay less. Overall, the changes will not be significant comparatively and thus not in general economic viability terms.

38. Similarly, the CIL is not based on any direct link between the impact of a particular scheme on services or facilities and mitigation contributions, but rather the overall needs of the wider area and, crucially, the ability to pay in viability terms. Therefore, arguments that the impact of new student housing on requirements for new infrastructure are different to other types of residential development are not directly relevant to the consideration of a reasonable and realistic rate of the CIL to be applied. Nor is it to be compared with rates applied or to be applied in other areas, but based only on viability in the locality concerned.
39. Consequently, there is no clear evidence to justify a blanket exemption, or even a significant reduction, from the CIL rate for new student accommodation that falls outside use class C2 (residential institutions) in the city on viability grounds at present. The fact that the Council seeks to generally encourage such provision, in suitable locations, to reduce pressure on the existing stock in established residential areas is a policy matter that cannot properly be taken into account in relation to the viability considerations alone on which the CIL rates must be based.
40. I therefore conclude that applying the local residential levy rate, as modified, to new student housing that does not fall within use class C2 as a residential institution is justified by the available evidence and helps to strike an appropriate balance between funding necessary new infrastructure and the effect on the economic viability of these forms of development across the city. However, the wording of the schedule needs to be modified (**EM 2**) to confirm how it will apply, in practice.

Overall Conclusions

41. The Council's decisions to set single overall rates for retail and residential across the city are based on generally reasonable assumptions about current local development values and likely costs. The evidence suggests that retail and residential development will remain viable across most of the area if the charges, as modified, are applied. Only if development sales values are at the lowest end of the predicted spectrum would development in some parts of the city be at risk.
42. In setting the two CIL charging rates the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in Southampton, albeit a reduction is required in relation to new housing. The Council has tried to be realistic in terms of achieving a reasonable income to help address an acknowledged gap in infrastructure funding, while ensuring that a range of development remains viable in the city.

43. Matters of implementation and governance, as referred to by various respondents, whilst not strictly within the remit of this examination, nevertheless have an impact on the smooth introduction and efficient administration of the CIL. By way of reassurance, the Council points out that their proposed phased payments policy should have a positive effect on cash flow and thus overall economic viability, especially for larger projects.
44. In addition, the Council's emerging revised Supplementary Planning Document (SPD) on Planning Obligations (BG 1) (June 2012) should improve clarity for interested parties on the expected interaction between the CIL and S106 legal agreements for site specific infrastructure, where the latter would still be necessary, to avoid any possible "double counting" of financial contributions.
45. In accord with the national CIL Regulations "exceptional circumstances" are intended to be exactly that and therefore I fully endorse the Council's stance that it would be inappropriate and unhelpful to try to define those very rare circumstances in advance in some sort of policy statement alongside the introduction of the CIL. This is also consistent with the position adopted by the Mayor of London and other Councils elsewhere in the country.
46. Nevertheless, it is relevant to note here that the Council has acknowledged publicly that there may be a case for such treatment in respect of both the Royal Pier Waterfront and the Watermark West Quay projects in the city centre, in the event that alternative schemes to those already permitted come forward after the introduction of the CIL.
47. However, also recognising the period of public notice necessary prior to the first introduction of the CIL, any such schemes would have to be prepared and negotiated in full knowledge of the implementation date in any event. Consequently, the direct effects of the CIL can also be taken into account in relation to the various elements of such mixed use schemes and any other infrastructure contributions sought on site in negotiations.
48. Overall, therefore, it is reasonable to conclude that, in general terms and with the modifications recommended, the Council will have found an appropriate balance in imposing the CIL. Subject to the modifications, it will make a material contribution to funding new infrastructure across the city without a serious risk to the economic viability of new built development locally.
49. As discussed at the examination hearings, the Council intends to review the CIL rates if and when there is any significant change in the local economic circumstances, but in any event it may well be appropriate to do so after it has been in place for no longer than 3 years.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule, as modified, complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended 2011)	The Charging Schedule, as modified, complies with the Act and the Regulations, including in respect of the statutory processes and public

	consultation, consistency with the adopted Core Strategy and the Infrastructure Delivery Plan and is supported by an adequate financial appraisal.
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50. I conclude that subject to the modifications set out in Appendix A the Southampton Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 (as amended 2011) and 2012 Regulations. I therefore recommend that the modified Charging Schedule be approved.

Nigel Payne

Examiner

This report is accompanied by:

Appendix A (attached) – Modifications that the Examiner specifies so that the Charging Schedule may be approved.

Appendix A – Modifications that the Examiner specifies so that the Charging Schedule may be approved.

Examiner Mod. No.	Rate/Figure/Column	Modification
EM 1	Residential (C3, C4 and Sui Generis Houses in Multiple Occupation)	Reduce from £90 psm to £70 psm.
EM2	Residential (C3, C4 and Sui Generis Houses in Multiple Occupation) – Footnote 2	Replace “This could include self – contained student flats or cluster flats” with “This includes self – contained student flats and cluster flats”.