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## **Report to West Berkshire Council**

**by David Hogger BA MA MRTPI MCIHT**

**an Examiner appointed by the Council**

**Date: 8 November 2013**

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

### **REPORT ON THE EXAMINATION OF THE DRAFT WEST BERKSHIRE COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

Charging Schedule submitted for examination on 28 August 2013

Examination hearing held on 23 October 2013

File Ref: PINS/WO340/429/5

## Non Technical Summary

This report concludes that the West Berkshire 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.

I have recommended that the schedule should be approved in its published form.

Following submission the Council has proposed two minor changes for clarification purposes. Firstly the identification of the specific Use Classes within which the type of development listed in the schedule falls and secondly the inclusion of a reference in paragraph 1.5 to the table of CIL rates. These changes are not required to meet the statutory requirements but nevertheless are supported in the interests of clarity.

## Introduction

1. This report contains my assessment of the West Berkshire 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 Guidance)<sup>1</sup>.
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 area. The basis for the examination, which included a hearing session on 23 October 2013, is the submitted schedule of August 2013, which is effectively the same as the document published for public consultation in June 2013.
3. The Council proposes two charging rates for residential development, one of £75 per sqm in Newbury, Thatcham and the Eastern Urban Area; and one of £125 per sqm in the North Wessex Downs Area of Outstanding Natural Beauty and the East Kennet Valley. For retail uses (A1 to A5), throughout West Berkshire, the rate would be £125. All other uses including business development, hotels, residential institutions and community uses would be nil rated.

## Preliminary Matters

4. At the hearing session a participant stated that a copy of a letter dated 3 June 2013 from the Parliamentary Under Secretary of State (Planning) to the Retirement Housing Group had been submitted with their representation.

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<sup>1</sup> Community Infrastructure Levy Guidance – DCLG – April 2013

The Council had no record of receipt. The letter was referred to in written evidence and because of the uncertainty regarding its delivery I agreed to accept a hard copy of the letter but provided the Council the opportunity to assess its contents. I have taken the correspondence (and consequent debate) into account but have given the letter only little weight because of its status.

5. Secondly DCLG<sup>2</sup> published a press release, on 25<sup>th</sup> October, confirming that it is the intention to lay regulations in Parliament, enabling changes to be made to the CIL guidance (including in relation to self-build) by the end of January 2014. Because of its current status I have afforded little weight to these potential changes, which in any event are unlikely to have significant consequences for the Charging Levy in West Berkshire.

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

#### ***Infrastructure planning evidence***

6. The West Berkshire Core Strategy (CS) was adopted in July 2012. This sets out the main elements of growth that will need to be supported by further infrastructure in the area. The Infrastructure Delivery Plan<sup>3</sup> was updated in March 2013. The Council estimates that the infrastructure funding required would be just over £257 million. Some funding is already earmarked and the shortfall would be over £163 million. This is a significant funding gap for the CIL to help fill.
7. Of this shortfall it is anticipated that the levy could contribute, at maximum, about £42 million<sup>4</sup> and therefore the proposed charges would make only a modest contribution towards filling the funding gap. The figures clearly demonstrate that there is a need to introduce the CIL.

#### ***Economic viability evidence - Residential***

8. The Council commissioned a CIL Viability Study (VS) from experienced consultants - the Final Report being dated January 2013. The assessment uses a residual land valuation approach, using reasonable standard assumptions for a range of factors such as building costs (including an allowance in respect of achieving sustainable design in accordance with CS policy CS15), profit levels, an allowance for S106 contributions, land values and fees. The Council's adopted policy on affordable housing provision (CS6) has been taken into account. A number of elements within the VS were challenged, as summarised in the paragraphs below.
9. In terms of existing land values and sales values, a wide range of sources were tapped (including seeking the views of local agents and other interested parties) and the evidence submitted provides an appropriate level of detail.

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<sup>2</sup> Department for Communities and Local Government

<sup>3</sup> Ref: CD05/18

<sup>4</sup> Funding Gap Analysis – paragraph 4.8 of Draft Charging Schedule

Information on sale values was based on the geographical areas identified in the CS, thus enabling the consideration of differential charging rates across West Berkshire. Information regarding build costs was primarily sourced from the RICS Building Cost Information Service. Although these figures do not allow for abnormal costs, these are by their nature site-specific and therefore difficult to apply in a generic fashion. In any event an allowance for 'externals' has been added to the base build costs in order to ensure that the variable nature of site works is recognised. The residential build costs are based on standard rates for Code for Sustainable Homes Level 4 which is currently an appropriate approach to take.

10. In terms of gross to net ratios, the Council confirmed at the hearing that there are no strategic sites (which may be required to accommodate significant areas of public open space, community facilities etc.) which would be liable to the CIL charge. The Council argued that in the current circumstances the consideration of net developable area versus gross site area is not of over-riding importance locally, particularly because the two strategic development sites in the area (Sandleford and Newbury Racecourse) are (or will be) both subject to S106 Agreements. However, this is an issue which would be re-visited during the preparation of the Site Allocations and Delivery DPD (scheduled for adoption in September 2016) and I concur with the suggestion made by the Council at the hearing session that if larger development sites are identified, then the CIL evidence will need to be refreshed.
11. Concern was expressed regarding the assumed profit levels and in particular the 6% level with regard to the provision of affordable housing. However, this form of development affords a lower level of risk to the developer primarily because such development would be managed by a Registered Provider. The 20% profit level for other forms of development appears to be appropriate and realistic.
12. I have considered the evidence that was submitted relating to other issues, for example fees, densities (based on densities set out in CS policy CS4), build costs, sales periods and land values but consider that the Council's approach to these matters has been proportionate and reasonable. It is possible that some of the individual assumptions made by the Council may not apply to each and every site that comes forward but it must be remembered that the VS should be considered as a whole. The important factor is that the assessment is based on reasoned judgements and I am satisfied that this is the case.
13. It is inevitable that as markets change there will be implications for the evidence base, however, it is clear that the charging authority should use data that is available and that it is unlikely to be fully comprehensive or exhaustive. A pragmatic approach must be adopted and the level of precision and detail which has been requested by some respondents would be contrary to the advice which suggests that a broad test of viability should be used and that the evidence should inform the Schedule and that there is no requirement for the proposed rate to exactly mirror the evidence.
14. Turning now to the range of residential scenarios that were assessed, it is evident that they have been based on a combination of historical evidence,

the interpretation of the policies of the CS, the Strategic Housing Land Availability Assessment and the S106 monitoring database. Clearly it is not possible to assess every potential permutation but the Council has considered an appropriate number and range of development scenarios and explored trial charging rates over a range of figures.

15. The main issue related to the lack of a scenario with regard to specialist accommodation for the elderly. It was suggested that the Council should have specifically tested this form of development (which sits within the C3 Use Class) as an independent component of residential development.
16. The Council argues that there is no justification for singling out specialist housing for the retired and that there are other residential uses that arguably could be 'detached' from the generic C3 use, for example student accommodation. The Guidance advises in paragraph 37 that undue complexity should be avoided and that permutations should be limited.
17. It is also suggested by the Council that some higher costs related to this type of accommodation, for example related to build costs, the slower sales rate and the provision of communal floorspace, are balanced by premium sales values, the high density of the development and the reduced amount of external works. From the evidence before me I am satisfied that this is a reasonable balance to take into account.
18. I am, however, mindful that the National Planning Policy Framework requires all objectively assessed housing needs to be met and that the CS does seek to ensure that the housing needs of all sectors (including those with specialist requirements) are met. Nevertheless this has to be balanced against the fact that the Council has only considered three planning applications for this form of development between April 2004 and March 2012. It cannot therefore accurately be described as a fundamental component of overall housing provision or an issue that would threaten the delivery of the CS as a whole. Regulation 14 requires consideration to be given to 'the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area' and that is what the Council has achieved.
19. On that basis I conclude that, in this case, there is currently insufficient justification for identifying specialist accommodation for the elderly as an independent residential element and that the Council's approach is reasonable. This conclusion is strengthened by the fact that there could be difficulties in defining exactly what development would be described as 'specialist accommodation for the elderly' and there is therefore the risk that the Schedule could become unduly complex. I have also taken into account the level of flexibility that already exists in terms of meeting the other requirements of the CS; the proposed instalment payment plan; and the 'netting off' of existing floorspace (which is likely to apply to many town centre brownfield sites) – all of which may well improve the viability of providing specialist accommodation for the elderly.
20. Although not a matter for my determination I noted that the Council did confirm that it does not currently monitor specialist housing market areas but suggested that there is no reason why the matter could not be considered in the future if justified by evidence.

21. The availability of evidence was questioned, particularly in relation to the inclusion in the VS of only one 'Residual Land Value Data Summary' (Appendix IIa). I was told that over 600 residential appraisals were undertaken across 11 scenario types and that the inclusion of only the one summary was intended to demonstrate the structure of the calculations. There is no reason to conclude that the summaries of any of the other appraisals would have identified any differences in approach and therefore I am satisfied that appropriate and proportionate evidence has been submitted in this regard.

#### ***Other economic viability evidence***

22. Consideration was given in the VS to a number of other land use scenarios including retail, business development, equestrian uses, hotels and care homes and an appropriate range of evidence was collected on these land uses. In terms of retail development the evidence demonstrates that it would be viable with a charge of £125 per sqm. With regard to business development, hotels, care homes and community uses, the evidence indicates that they would be unable to support any meaningful level of CIL and no substantive evidence was submitted to the contrary.

#### ***Conclusions on the evidence***

23. I am mindful that the Guidance advises that 'a broad test of viability' should be undertaken (para 23) and that charging authorities may 'need to summarise evidence' (para 21). This advice is also reflected in the Harman Report<sup>5</sup> (page 11) which advises that a proportionate and practical approach is adopted. On that basis I am satisfied that the Draft Charging Schedule is supported by detailed evidence of community infrastructure needs and that the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate and in line with the expectations outlined in the Guidance.

#### **Is the charging rate informed by and consistent with the evidence?**

##### ***CIL rates for residential development***

24. The proposed rates of £75 and £125 are based on the evidence in the VS, which I have found to be acceptable. No substantive evidence regarding details of any alternative rates was submitted by representors.

##### ***CIL rates for retail development***

25. Objections to the £125 levy for retail were submitted but the VS (section 3.4) concludes that the proposed rate would retain viability – indeed it indicates that a higher rate (up to £200 per sqm) could be justified (particularly for larger retail units) but this was not pursued by the Council. It has also been suggested that distinctions should be made between different forms of retail use and between different scales of development. However, no conclusive evidence was submitted to demonstrate that the Council's approach would threaten the delivery of the adopted CS and in any event there is evidence to

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<sup>5</sup> Viability Testing Local Plans – Advice for Planning Practitioners (June 2012)

show that, currently, no new retail space is required in the District<sup>6</sup>.

26. With regard to farm shops, no substantive evidence was submitted to demonstrate that the levy may have viability implications and in any event they may be exempt from CIL (i.e. if less than 100m<sup>2</sup> net).
27. The fact that other local authorities have imposed a lower charge for retail development cannot be given significant weight because it is likely that different circumstances prevail in other areas.

***Conclusions on the relationship between the charging rates and the evidence***

28. Although the Council acknowledges that there are variables, for example future market prices, construction costs and land values, which cannot be precisely reflected in the Schedule, it has taken a pragmatic and balanced approach. The charging rates have been informed by and are 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?**

29. The Council's decision to set rates at £75 and £125 per sqm, depending on the use proposed and location, is based on reasonable assumptions about development values and likely costs. The proposed charges will only amount to a small percentage of gross development value.
30. Concern was expressed that the rates are set at the margins of viability and that there would not be a sufficient buffer. However, the evidence indicates that potentially, for some scenarios, the rates could have been set at a higher level<sup>7</sup> whilst still retaining viability (for example a rate of £200 per sqm may have been justified for proposals for the development of one house and for larger retail developments). I am satisfied that the Council has adequately justified its approach<sup>8</sup> and that the risk to the overall development of the area is not significant.
31. The Council's proposed rates are based on reasonable assumptions about development values and likely costs. The evidence suggests that, overall, residential and retail development will remain viable across West Berkshire, if the charges are applied.

**Other Matters**

32. A number of issues were raised that are not strictly within the remit of the Examination. Firstly concerns were expressed relating to the implementation and monitoring of the CIL but the Council confirmed that the delivery of development is monitored annually and that although the opportunity to refresh the CIL charging rates on an annual basis is unlikely to be available, the rates would be reconsidered in conjunction with the forthcoming Site

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<sup>6</sup> West Berkshire Retail Study (CD06/05 and CD06/06) and the VS (CD05/20)

<sup>7</sup> CD05/21 – Appendices IIa and IIb

<sup>8</sup> For example see paragraph 1.2.12 of WBC/2

Allocations and Delivery DPD (scheduled for adoption in September 2016).

- 33. Secondly requests were made for the Council to introduce discretionary relief for exceptional circumstances but the Council has satisfactorily demonstrated that this would not be appropriate in West Berkshire<sup>9</sup>.
- 34. Thirdly there was some concern expressed regarding the relationship between CIL and S106 Agreements but the Council's 'Statement of S106 Policy and Receipts', together with commentary in the VS (e.g. section 2.10 and paragraph 3.2.10) and the answer to question 3(ii) in WBC/4, all indicate that the Council's approach is appropriate.

**Conclusion**

- 35. In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in West Berkshire. The Council has tried to be realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a range of development remains viable across the area.
- 36. There were calls for both higher and lower charges but I am satisfied that the Council has achieved a reasonable balance which is broadly consistent with the evidence on economic viability and which would not threaten the delivery of the Core Strategy as a whole.

<b>LEGAL REQUIREMENTS</b>	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended 2011)	The Charging Schedule 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.

- 37. I conclude that the West Berkshire 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 2011). I therefore recommend that the Charging Schedule be approved.

**David Hogger**

**Examiner**

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<sup>9</sup> See answer to Question 3(v) in WBC/4