



The Planning
Inspectorate

Report to Havant Borough Council

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an Examiner appointed by the Council

Date: 16 November 2012

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

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

Charging Schedule submitted for examination on 6 July 2012

File Ref: PINS/X1735/429/6

Non Technical Summary

This report concludes that the Havant Borough Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the Borough. 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:

- delete the edge of centre category for the retail charge
- add maps to clarify the definition of town centres for the retail charge

The specified modifications recommended in this report do not alter the basis of the Council's overall approach or the appropriate balance achieved.

Introduction

1. This report contains my assessment of the Havant 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 (Charge Setting and Charging Schedule Procedures – DCLG – March 2010).
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 district. The basis for the examination, which took place through written representations, is the submitted Schedule of July 2012. Following public consultation on the preliminary draft Schedule published in December 2011 the Council made a number of modifications on which further consultation took place. These modifications are incorporated in the submitted Schedule but consultation on them had not been concluded at the time of submission. However, I have taken into account the further representations received on the modifications.
3. The Council propose a matrix approach with variable residential and retail rates applying in different parts of the Borough. Outside town centres the retail rates would also vary according to the size of the development. During the course of the examination the Council proposed further modifications to clarify the retail rate zones. This is considered later in this report. Other types of development, including hotels, industry, offices and community uses, would have a nil rate, as would extra care housing.

Is the Charging Schedule supported by background documents containing appropriate available evidence?

Infrastructure planning evidence

4. The Havant Borough Local Plan (Core Strategy) (CS) was adopted in March 2011. This sets out the main elements of growth that will need to be supported by further infrastructure in the Borough. Amongst other things, it provides for an additional 162,000 sqm of new employment floorspace and 6,300 new dwellings between 2006 and 2026. Five strategic sites are identified as critical to achieving the CS vision.
5. The CS sets out at Table 9.2 the strategic infrastructure necessary to implement the plan. This has been updated to form an Infrastructure Delivery Plan (IDP). Included in the infrastructure requirements are health facilities, new or expanded educational provision, water supply and waste water treatment improvements, public transport and highway improvement measures, sea and flood defences and a range of green infrastructure initiatives. Based on the evidence in the IDP the Council estimates that the costs associated with the identified infrastructure would amount to some £79,698,000 with the known identified available funds recorded as £14,547,000, leaving a funding gap of £65,151,000.
6. A significant element of the required infrastructure would relate to flood defences and coastal erosion measures (some £41,066,000) of which only about £10 million have identified funding. As a result, almost half the funding gap is attributable to the costs of these works. On the available evidence many of the works would not be in areas where new development is proposed. However, flood defences are included in the definition of infrastructure in the Planning Act 2008. The identification of the priority infrastructure for CIL funding is a matter for the Council to decide under Regulation 123, whereby it can publish a list of infrastructure projects or types of infrastructure that it intends will be funded by CIL (in whole or in part). This is not subject to examination and has not yet been published by the Council. The IDP does not currently show CIL as a funding source for flood defences or coastal works. In any event, the definition of priorities is not essential to the need to demonstrate a funding gap.
7. Widely varying estimates have been made of the potential income the Council may receive from the New Homes Bonus, which has not been taken into account in the identified sources of funding for infrastructure. The Council's intention is to focus spending from this on regeneration and on attracting further funding for infrastructure and related issues. Given the size of the funding gap, on the available evidence of current rates of income to the Council from this source, I consider that it would not be appropriate at this stage to assume that it would make a significant contribution to reducing that gap. There may be greater clarity over the role the Bonus may play in infrastructure provision when any future revisions to the charge are being considered.
8. In the light of the information provided and the likely scale of the funding gap, the proposed charge would make only a modest contribution towards filling the gap. Nevertheless, the figures demonstrate the need to levy CIL.

Economic viability evidence

9. The Council commissioned a CIL Economic Viability Assessment (EVA), dated December 2011. The assessment uses a residual land value approach, using reasonable standard assumptions for a range of factors such as sales values or commercial rents and yields, density, gross to net floorspace ratios, base construction costs (including Code for Sustainable Homes requirements), exceptional costs and developer's profit. For residential development a series of generic developments reflecting the range of sales values and the size and densities of development across the Borough were examined. For commercial development a series of generic developments were appraised, reflecting a range of use classes at average rent levels achieved on lettings of commercial space in actual developments.
10. The EVA makes an allowance of £1,000 per unit for residual on-site s106 funding, a figure which has been used in other adopted charging schedules. There is concern that the Regulations would permit some off site infrastructure to continue to be funded through s106 where it involved a specific named project and that this has not been factored into the assessment. Hampshire County Council has indicated that in addition to on site provision for large developments it would seek s106 funding for infrastructure that fell within its purview that was close to the site. It would also use s278 of the Highways Act to fund transport schemes directly related to the development. The relevant infrastructure to be funded through CIL is ultimately a matter for the Borough Council in its Regulation 123 list. If the approach at issue is followed it is likely to apply only to larger developments and elsewhere a significant proportion of the financial contributions that were previously made under s106 are likely to fall to CIL. On the available evidence the across the board assumption used in the EVA for s106 costs is reasonable.
11. Policy CS9 of the CS requires that on average new housing developments should provide 30-40% affordable housing on schemes of more than 5 units subject to viability. The viability assessment that underpinned the CS assumed that grant would probably be necessary to support a 40% target in most areas and the 30% target in low to medium value areas. Since that was undertaken in 2007 the residential market has weakened considerably and the Government has indicated that grant funding will not be available for housing provided through planning obligations. However, the EVA has tested 25%, 30% and 40% affordable housing, the lowest rate being used to demonstrate the impact of a reduction in exceptional circumstances. All the appraisals assume nil grant. The approach to differential residential CIL rates is considered below, but in the light of these considerations the EVA provides a satisfactory overall basis for assumptions about the impact of affordable housing.
12. Four threshold land values have been used to provide a broad indication of likely land values across the Borough. One of these is Valuation Office Agency (VOA) data for Southampton which is the closest available data to Havant from that source. The charging authority should draw on existing data wherever it is available and the CLG guidance cites VOA Property Reports as an example of this. While VOA data should be treated with considerable caution, the results have been adjusted to reflect lower sales values in Havant and they are not the sole source of land value information used. No premium

has been added to the threshold land values but the lowest benchmark is at a level where there would be a reasonable expectation that a willing landowner would release the land.

13. The assumption used on build costs in smaller schemes is unlikely to materially affect viability as these developments would not be required to contribute an element of affordable housing. There is a discrepancy between the assumptions relating to developer profit and finance costs used by the Council's EVA consultants in comparison with alternatives put forward in representations on behalf of a consortium of house builders. The finance rate assumed by the Council is based on advice from developers and the EVA has taken account of different profit levels for private and affordable housing. There is insufficient detailed contrary evidence on these matters to justify departing from the EVA assumptions. The EVA is not explicit about some other inputs and assumptions. However, charging authorities are expected to use appropriate available evidence and this is unlikely to be fully comprehensive or exhaustive. There is adequate evidence about the factors that are most critical to the assessment and it is therefore appropriate for its purpose in that regard.
14. Since the EVA was produced further guidance has been published in terms of the Local Housing Delivery Group advice on Viability Testing Local Plans and the RICS Guidance Note on Financial Viability in Planning. The latter has a particular focus on individual sites and the development management process rather than the strategic assessment required for CIL. The former recommends the residual land value approach as used here. It also advocates the use of current costs and values at least for the first five years. The EVA has undertaken a sensitivity analysis in which sales values and build costs increase but this is for illustrative purposes only. It is therefore broadly compatible with the thrust of the more recent advice.

Conclusion

15. The draft Charging Schedule is supported by detailed evidence of community infrastructure needs and a funding gap has been identified. The EVA contains adequate information to support the Schedule. It has not been demonstrated that circumstances have changed so significantly since it was published in December 2011 that its conclusions are invalid. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.

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

CIL rates for residential development

16. Residential development would be subject to a rate of £100 per square metre (psm) in Emsworth and Hayling Island and £80 psm in the rest of the Borough. The rates apply to sheltered housing but not to extra care housing. However, the EVA indicates that sales values fall into three bands, with higher values in Hayling Island and Emsworth but with medium values in Waterlooville and the lowest in Havant and Leigh Park. It has tested different development types across the three value areas, amounting to some 52 scenarios.

17. The Council's analysis shows that for some 7 scenarios in the lowest value areas the proposed £80 psm rate would either be unviable or include no viability 'buffer' whereby the charge would be right up to the margin of economic viability. However, a further five would have a buffer of £20 psm. In all other cases (77%) there would be a significant buffer such that it is clear that the rates proposed would be well below their potential maximum, including where the £100 psm rate is proposed in the identified higher value areas. The Council estimates that a CIL of £80 psm would equate to just under 2% of development costs and at this level is unlikely to put schemes at serious risk.
18. The viability buffer would be generally narrower in the areas of lowest sales values, which would account for almost half the planned new housing. The possibility of a third, lower CIL rate has been proposed in representations. The evidence on house prices from the CS viability assessment and 'heat map' information shows a more complex pattern of sales values than even three bands would reflect unless drawn on a very detailed basis. To include such a fine grain would require detailed justification. In any event, there is no requirement for a proposed rate to exactly mirror the evidence. The evidence indicates that the proposed £80 psm rate would provide an adequate buffer in most cases.
19. The nil rate for extra care housing, as explained and defined in the Charging Schedule document, is justified on the basis that such housing typically has on-site services and facilities which are likely to impact on development viability.
20. Regulation 14 recognises that the introduction of CIL may put some potential development sites at risk. However, it is for charging authorities to decide what CIL rate, in their view, sets an appropriate balance between the need to fund infrastructure and the potential effects (taken as a whole) for the economic viability of development across their area. The evidence here does not support the view that the proposed residential CIL rates would put the overall development of the area at serious risk.

CIL rates for retail development

21. The submitted draft Schedule proposes a zero rate for town centre retail development, £80 psm for edge/out of centre developments greater than 280 sqm and £40 psm for out of centre development of less than 280 sqm. The position of smaller edge of centre developments is not clear from this and the Schedule does not include a map showing the location and boundaries of the areas in which the different rates would apply. During the examination the Council requested that the proposal for edge of centre retail charges should be deleted as these areas had not been defined. In accordance with Regulation 12(2)(c) a Map Booklet, dated September 2012, was provided by the Council showing the extent of the town centre and out of centre zones as defined on the adopted local plan Proposals Map.
22. The EVA concludes that residual values generated by retail developments vary significantly between high street retail, which is on the margins of viability, and retail parks, which generate sufficient residual values to enable the payment of CIL. It recommends a CIL rate of around £80 psm on retail park

development and a zero rate on high street retail with consideration to be given to a discounted rate for smaller out of centre retail.

23. There is nothing in the CIL Regulations to prevent differential rates for retail development of different scales. However, paragraph 25 of the Department for Communities and Local Government Guidance (Charge setting and charging schedule procedures) indicates that where a charging authority is proposing to set differential rates, it may want to undertake more fine-grained sampling to identify a few data points to use in estimating the boundaries of particular zones, or different categories of intended use. Paragraph 34 indicates that differences in rates need to be justified by reference to the economic viability of development.
24. The Council has confirmed that high street retail development primarily means small retail/shopping centres containing multiple outlets which are usually contained within town, district and local centres. The evidence in the EVA clearly demonstrates that such development is unlikely to be viable in most circumstances. With modifications to the Schedule, as proposed by the Council, to delete the undefined edge of centre category (**EM1**) and the addition of the Map Booklet (**EM2**) to clarify the definition of town centres for this purpose, the zero rate for town centres has been justified.
25. The EVA has shown that retail park developments can be capable of supporting CIL. The 280 sqm threshold used in the Schedule to distinguish between the different sizes of development is that used in relation to Sunday trading laws. However, it has not been explicitly addressed in the EVA in terms of the viability evidence for developments in the Borough either side of the threshold.
26. The Council has received no representations from the retail sector on the differential retail rates. The Schedule should be supported by appropriate available evidence and existing data should be drawn on wherever it is available. The Council has drawn attention to the evidence for the neighbouring Portsmouth City Council Charging Schedule which considered a 300 sqm scenario and which formed the basis for a differential retail CIL rate with a 280 sqm threshold in the now adopted Schedule. Whereas the retail CIL rates in Portsmouth are different to those proposed in Havant Borough, the proximity of the two Council areas means that the rationale behind the two rates can reasonably be applied in Havant. As such, the differential approach with a lower rate for smaller out of centre retail developments and the threshold at which it would apply have been justified in this particular local context.

Other development

27. The preliminary draft Schedule included rates for hotels. I agree with the Council that, as there is very limited viability evidence on this and as some permitted hotel developments have not been implemented, a zero rate as shown in the submitted Schedule is appropriate. A nil rate is also set for industrial, office and community uses and there is no evidence to suggest that a different approach would be justified.

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

28. The collection of the charge, instalments, payments in kind and other administrative aspects are matters for the charging authority.
29. Subject to modifications **EM1** and **EM2**, the Council's decision to adopt a matrix approach is based on reasonable assumptions about development values and likely costs. The evidence suggests that residential and commercial development will remain viable across most of the area if the charge is applied as proposed. Only if development sales values are at the lowest end of the predicted spectrum would development in some parts of the Borough be at risk.

Conclusion

30. 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 the Borough. The Council has tried to be realistic in terms of achieving a reasonable level of income to address the identified gap in infrastructure funding, while ensuring that the overall development of the area would not be at risk.

LEGAL REQUIREMENTS	
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 the Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

31. I conclude that subject to the modifications set out in Appendix A the Havant 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 2011). I therefore recommend that the Charging Schedule be approved.

M J Moore

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 recommended by the Examiner to allow the Charging Schedule to be approved.

Modification No	Modification
EM1	Table 2 – under 'Retail' delete reference to edge of centre
EM2	Add CIL Map Booklet September 2012 as Appendix 2