
Report to Gosport Borough Council

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an Examiner appointed by the Council

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

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

Charging Schedule submitted for examination on 28 November 2014

Examination hearing held on 17 March 2015

File Ref: PINS/J1725/429/5

Non-Technical Summary

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

One minor modification is needed to the Schedule for clarity and to achieve consistency with the Gosport Borough Local Plan 2011 – 2029. This is as follows:

- Add a footnote clarifying residential development to Table 2 of the Draft Charging Schedule as follows: *Defined as all development within the three categories of Class C3 (dwelling house) of the Use Classes Order 2010, except public sector sheltered housing, public sector extra care facilities or other public sector specialist housing providing care to meet the needs of older people or adults with disabilities.*

This modification is based on a recommendation by the Council during the Examination process and does not alter the basis of the Council's overall evidence or the outcome of this Examination.

Introduction

1. This report contains my assessment of the Gosport 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 (Community Infrastructure Levy Guidance –June 2014).
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 district. The basis for the examination, on which hearing sessions were held on 17 March 2015, is the submitted schedule of September 2014, published for public consultation on 19 September 2014.
3. The Council propose four charging zones for residential development with CIL rates ranging from £40 per sqm to £100 per sqm. A rate of £60 per sqm would apply to retail warehouses and supermarkets across the Borough. All other non- residential development would be zero rated.

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

Infrastructure planning evidence

4. The Gosport Borough Local Plan (LP) has been examined alongside the charging schedule. This sets out the main elements of growth that will need to be supported by further infrastructure in the Borough.
5. The LPs evidence base included a detailed Infrastructure Assessment Report and Infrastructure Delivery Plan (IDP). The IDP, which is dated June 2014, identifies funding gaps relating to various infrastructure categories. The total funding gap is estimated to be in the region of £17m with an as yet further significant, but not yet quantified, gap relating to coastal defences. The charging schedule is therefore supported by documents containing appropriate available evidence and the figures demonstrate the need to levy CIL. I will now deal with various aspects that underpin the proposed CIL Charge for residential and commercial development in two separate sections.

Residential

Economic viability evidence - residential

6. The Council commissioned a CIL Viability Report, (CVR) dated July 2013¹. The report was updated and added to by an Addendum Report dated July 2014². Both documents referred to both residential and non-residential development. The Addendum report responded to various matters raised during the consultation process. The Draft Charging Schedule³ effectively shows four charging zones for residential development. These are based on the identification of differing levels of sales values that would be applicable to different locations within the borough. The lowest sales value and hence lowest CIL rate would be applicable to locations mainly in the north of the borough, the medium sales value and CIL rate would be applicable to locations mainly in the centre and some parts of the north of the borough, and the highest sales value and CIL rate would be applicable to locations in the south and west of the borough. The Waterfront site is treated as a small separate zone. These locations are shown on the map contained within Appendix 1 of the Charging Schedule.
7. The assessment uses a residual valuation approach using reasonable standard assumptions for a range of factors such as building costs, profit levels, fees and finance costs. The assessment looked at a range of existing site uses including residential, greenfield, industrial, and former MoD land and also considered various affordable housing and sustainability scenarios. The methodology is described in detail in section B2 of the CVR, and I have been given no reason to question the overall approach.

¹ CIL-5

² CIL-6

³ CIL-1

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

8. During the consultation process respondents questioned various appraisal inputs and I will deal with these in order of the questions tabled at the Examination Hearing.

Sales and marketing costs and professional fees

9. The sales and marketing costs for residential development are shown in the CVR as being 3%. This issue was given consideration in the Addendum Report which noted that three other consultants use the same or similar percentages in CIL viability reports to other authorities. The Addendum Report also looked at a 5% rate for sales and marketing costs, and concluded that even with an £80 CIL charge and affordable housing at 40%, the resulting land value still exceeded the greenfield, garage court and MoD existing use values, implying that the application of a 5% sales and marketing rate would not put the strategic land supply at risk.
10. I also note that the 3% applies to the revenue from affordable homes as well as market ones. As affordable homes are often simply transferred from the developer to a registered provider with no marketing involved, the effective allowance for sales and marketing fee percentage for the market homes would rise beyond 3%. The Addendum Report concluded that a change to the recommended CIL rates was not merited. Whilst one respondent considered that a 6% rate would be more appropriate, I have been given no substantial evidence to support that contention.
11. In terms of professional fees the CVR allows 7% for architect and consultants fees with allowances also made for insurances, land survey costs and planning application costs. The total percentages for all of these ranges between 10.3% and 11.2%. This is commensurate with the professional fees used by several other consultants in CIL viability reports as shown in figure 1 of the Addendum Report. Once again I have been supplied with no substantial evidence to support the use of a different percentage to that used in the CVR.

Mix of house types

12. The mix of house types used in the residential appraisals in the CVR resulted from initial discussions with the Council and included a range of mixes from 100% flats to 100% 3 and 4 bedroom houses. Nothing contained in correspondence from respondents leads me to conclude that the appraisals are flawed with respect to the mix of house types.

Developers profit for affordable housing

13. The CVR assumes a developer's profit for market housing of 20% and for affordable housing 6%. The rationale for this is that a developer's profit is based on the risk taken. Generally in the case of affordable housing the developer sells the units to a registered provider at a pre-agreed price. The risk incurred is therefore greatly reduced compared to market housing where the price could in theory reduce during the construction phase. I note that the Homes and Communities Agency's development appraisal toolkit states that

the return on affordable homes should be *moderate* to reflect the low level of risk attached to affordable housing development and I also note that 6% is a figure commonly used in other CIL viability assessments. It seems to me therefore, that in the absence of significant evidence to the contrary, the figure of 6% is justified.

Other matters

14. The Council made clear in answer to questions put to them at the Hearing that the Draft Charging Schedule is one of a suite of documents that will include protocols giving details of (i) discretionary relief available in exceptional circumstances (ii) payment in kind and (iii) the phasing of payments. The future publication of these documents is also indicated in paragraph 12.1 of the Draft Charging Schedule.
15. The setting of differential CIL rates is done to ensure the viability of development in differing geographical locations that have different sales values. This is not therefore a scenario that would result in the engagement of State Aid.
16. The IDP does not include all of the recommendations included in the Playing Pitches and Sports Facilities Assessment. However, it does include those schemes that are required as part of a major development or where there is a firm commitment by the infrastructure provider to deliver it. This seems to me to be an appropriate and proportionate approach and I also note that the IDP will be updated annually as part of the Annual Monitoring Report process.
17. One respondent commented upon the lack of clarity relating to the definition of residential development. In response to this the Council propose to add a footnote to Table 2 of the Draft Charging Schedule. The footnote would define residential as follows: *Defined as all development within the three categories of Class C3 (dwelling house) of the Use Classes Order 2010, except public sector sheltered housing, public sector extra care facilities or other public sector specialist housing providing care to meet the needs of older people or adults with disabilities.*
18. Several other matters were brought to my attention by respondents. These have been adequately commented upon by the Council and none are of such significance that they cause me to consider that the evidence which supports the Draft Charging Schedule is not reasonable.

Conclusion - residential

19. Overall, I am satisfied that the inputs and general methodology of the CVR and the Addendum in respect of residential development are realistic and that therefore the proposed CIL rates for residential development are appropriate and are informed by and consistent with the evidence.
20. It should be noted at this point that the CIL Charging Schedule shows two categories of residential development, these being *developments with less than 10 dwellings or units* and *developments with 10 or more dwellings or units*. Following the Written Ministerial Statement (WMS) of 28 November 2014 these parameters should have been changed to *less than 11 dwellings*

and *11 or more dwellings* respectively. However, in light of the High Court Judgement of 31 July 2015⁴, which effectively reversed the implications of the WMS, the original parameters are in line with current guidance.

Commercial

Economic viability evidence – commercial

21. The CVR and the Addendum used a residual valuation approach to examine the viability of a variety of non-residential development including offices, retail, residential care homes and industrial/warehousing. The modelling involved firstly assessing the Gross Development Value (GDV) based on an assumed size of building. From this value the purchaser's costs of acquiring the completed development are deducted. The next step is to assess the Gross Development Costs (GDC) incurred in the construction of the new building. This value included the CIL amount and also allowed for a standard developers profit of 20%. The amount left when the GDC is subtracted from the GDV and purchasing costs are factored in is the surplus left to acquire the site. This is then tested against the notional threshold value to establish the viability in the form of what the reports call a *Surplus to fund CIL*. The sensitivity of the surplus to fund CIL is then tested against different levels of assumed yield and rent.
22. The CVR makes clear that there is very limited evidence of non-residential land transactions in the Borough and therefore the threshold site values have been arrived at by comparing evidence from local market data, published reports and discussions with local agents. The only categories that the reports considered would support a CIL charge were retail warehouses and supermarkets. For both of these a CIL rate of £60 per square metre was identified. Several respondents challenged the assumptions and evidence contained within the CVR and I will now consider these in more detail.

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

Existing site values

23. To obtain an existing site value for either retail warehouses or supermarkets the CVR assumed the existing commercial space to be 50% of the proposed development. This was accepted by the Council at the Hearing as being a somewhat crude assessment. I acknowledge that the Planning Practice Guidance (PPG) requires that a charging authority should draw on available existing data and an appropriate sample of sites across the administrative area. However, in the absence of such data it seems to me that a starting point for the estimation of the existing land value has to be made somewhere, and using an assessment of 50% is not unreasonable provided that sensitivity testing shows that there is sufficient latitude for development scenarios either

⁴ West Berkshire District Council and Reading Borough Council v SSCLG

side of the assumed percentage.

Rental levels (supermarkets)

24. The Development Appraisal assumes a rental value for a supermarket of £162 per square metre. This was considered too much by one respondent who considered £151 per square metre to be a more realistic figure. However, other than an opinion with selected examples from a property firm no substantial evidence was presented to justify a lower figure. Whilst I acknowledge that not all of the Council's evidence to justify their figure is published in the CVR, appendix 13 of that document gives samples of the research that has been undertaken. I also note that rental levels for supermarkets are complex in that they may well be linked to a wide range of terms including rent free periods, stepped rental deals and capital contributions. Furthermore, the CVR's sensitivity testing uses a low rental figure of £152 per square metre and this still shows a surplus for yields of 5.25% or greater. Consequently I consider the Council's assumptions to be valid and the assumed rental levels to be reasonable.

Yield values (supermarkets)

25. The Development Appraisal assumes a yield value of 5.5% for a supermarket and this was questioned by one respondent who considered 5.75% to be a more realistic figure. However, the data to support the assumed 5.5% rate is taken from an overview of appropriate and available evidence from a variety of sources including agent's marketing particulars and documents such as the UK Supermarket Investment Report 2014. This latter document shows average yields yearly from 2010 to 2014, and none are less than 4.79%. It also shows a sample of supermarket transactions during 2014 with their respective yields. The lowest was 5.0% and the highest was 3.85%. It seems to me therefore that 5.5% is an appropriate and reasonable rate.

Size of likely supermarkets

26. The sizes of likely supermarkets was also questioned by one respondent who noted that due to the lack of demand within Gosport by the major four supermarket brands then a smaller discount store would be the most likely development option. The Council subsequently provided an appraisal for a smaller (1700sqm) supermarket that showed that at an assumed 5.5% yield and rental of £162 per sqm there would be an adequate surplus to fund CIL at £60/sqm. Given my findings regarding rental levels and yield rates above I am therefore satisfied that a smaller discount type store would be viable.

Building and external works costs (retail warehousing)

27. The Development Appraisal for a retail warehouse in the CVR draws the building and external works costs from the Building Cost Information Service (BCIS) produced by the Royal Institution of Chartered Surveyors. This is a widely used index drawn from data collected from the market place and geographically adjusted. Whilst one respondent considered the building and external works costs to be too low, I have been supplied with little substantial evidence to lead me to conclude that the Council's evidence is not well founded.

Development duration (retail warehousing)

28. The CVR assumes a development duration of 24 months for a retail warehouse scheme. This is based on an assumption that construction will begin 2-3 months after the expiry of a Judicial Review period following the grant of planning permission. The actual construction period would therefore be about eighteen months. Retail warehouses are generally relatively simple steel structures, and whilst one respondent considered that a development duration of 36 months would be more appropriate, I have been supplied with no substantial evidence to justify the longer period.

Other matters

29. One respondent questioned whether there was sufficient clarity to show when a development would be subject to a Section 106 Agreement and whether any such agreement, when combined with the CIL Charge, could result in a supermarket development becoming unviable. The Council recognise that, more often or not, a Section 106 or 278 Agreement is required for supermarket developments, and point to the addition of 'planning costs' in the development costs section of the development appraisals for both supermarkets and retail warehouses. This would go some way to covering the costs of a Section 106 or 278 Agreement and the buffer afforded by virtue of the sensitivity test would also come into play to ensure that any additional costs would not cause a supermarket development to become unviable.
30. The viability of development schemes involving the conversion of existing premises was also questioned. These would however be likely to incur less development costs than a new development on a greenfield site and the revenues likely to be achieved would be similar to those achieved from a new build scheme. It follows that conversion schemes would not be prejudiced by the proposed CIL charge.
31. The proposed CIL Charge of £60 per square metre is half that imposed in the nearby Councils of Winchester and Eastleigh. The CVR looked at CIL rates up to £120 per square metre on retail warehouse and supermarket developments and found that these were potentially sustainable. However, the CVR also acknowledged that minor changes to rent levels or yields could result in significant changes to viability. Overall, I conclude that an appropriate balance has been struck between the desirability of funding infrastructure and the potential impact upon the economic viability of supermarkets and retail warehouses.

Conclusion - commercial

32. I consider that the background economic viability evidence that has been used for commercial development is reasonable, robust and proportionate. As a result the CIL charge is appropriate.

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

33. The Council’s decision to set varying rates for different areas 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. 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

34. 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 Gosport. 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 Gosport area. The Gosport Local Plan 2011-2029 has just been examined and should be adopted during 2015. It may be an appropriate time to consider any revision to the charge after it has been in place for two years.

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

35. I conclude that subject to the modification set out in the above summary the Gosport 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.

John Wilde

Examiner