



AN EXAMINATION UNDER SECTION 212
OF THE PLANNING ACT 2008 (AS AMENDED)

CHILTERN DISTRICT COUNCIL
SOUTH BUCKS DISTRICT COUNCIL

REPORT ON THE DRAFT
COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULES

Independent Examiner (appointed by the Councils): Geoff Salter BA MRTPI

Charging Schedule Submitted for Examination: 20 September 2019

Date of Report: 13 December 2019

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Main Findings - Executive Summary

In this report I have concluded that the draft Chiltern and South Bucks District Councils Community Infrastructure Levy Charging Schedules provide an appropriate basis for the collection of the levy in the areas.

The Councils have provided sufficient evidence that shows the proposed rates would not undermine the deliverability of the Local Plan.

A modification is necessary to meet the drafting requirements. This can be summarised as follows:

- Clarification of the definition of Large Sites, which are not subject to a charge.

The specified modification recommended in this report does not alter the basis of the Councils' overall approach or the appropriate balance achieved.

Introduction

1. I have been appointed by Chiltern District Council and South Bucks District Council, the charging authorities, to examine their draft Community Infrastructure Levy (CIL) Charging Schedules. I am a chartered town planner with more than 20 years previous experience inspecting and examining Development Plans and CIL Charging Schedules as a Government Planning Inspector and a planning consultant with IPE.
2. This report contains my assessment of the Charging Schedules in terms of compliance with the requirements in Part 11 of the Planning Act 2008 as amended ('the Act') and the Community Infrastructure Levy Regulations 2010 as amended ('the Regulations').¹ Section 212(4) of the Act terms these collectively as the "drafting requirements". I have also had regard to the National Planning Policy Framework (NPPF) and the CIL section of the Planning Practice Guidance (PPG).²
3. To comply with the relevant legislation, the submitted Charging Schedules must strike what appears to the charging authorities to be an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the districts.

¹ The Regulations have been updated through numerous statutory instruments since 2010, most recently through the Community Infrastructure Levy (Amendment) (England)(No. 2) Regulations 2019, which came into force on 1 September 2019 (subject to a transitional arrangement in relation to Part 3 of the 2010 Regulations).

² The CIL section of the PPG was substantially updated on 1 September 2019.

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4. The PPG states³ that the examiner should establish that:
- the charging authority has complied with the legislative requirements set out in the Act and the Regulations;
 - the draft charging schedule is supported by background documents containing appropriate available evidence;
 - the charging authority has undertaken an appropriate level of consultation;
 - the proposed rate or rates are informed by, and consistent with, the evidence on viability across the charging authority's area; and
 - evidence has been provided that shows the proposed rate or rates would not undermine the deliverability of the plan (see NPPF paragraph 34).
5. The basis for the examination, which took place through written representations and a hearing session held on 5 November 2019, is the Submitted Schedules of 20 September 2019, which are effectively the same as the draft Schedules published for public consultation in June 2019.
6. In summary, the Councils propose a matrix approach, with development in Classes A1-5, C3 and C4 subject to a charge of £150 per square metre (sq m) and all other development subject to a charge of £35 per sq m, with the exception of Large Sites (essentially those with more than 400 dwellings or a gross area of more than 10 hectares (ha)), which are not subject to a charge.

Has the charging authority complied with the legislative requirements set out in the Act and the Regulations, including undertaking an appropriate level of consultation?

7. Regulation 13 of the Community Infrastructure Levy (Amendment) (England)(No. 2) Regulations 2019 ('the 2019 Regulations') provides a transitional arrangement, whereby Part 3 of the 2010 Regulations continues to apply in relation to a draft charging schedule which has been published in accordance with regulation 16(1) of the 2010 Regulations before 1 September 2019, as if the amendments in Regulation 3 (of the 2019 Regulations) had not been made. Given the Charging Schedules' Regulation 16 consultation took place prior to 1 September 2019, Part 3 of the Regulations continues to apply unamended. However, it should be noted that in all other respects, where relevant, the amendments made by the 2019 Regulations to the 2010 Regulations apply to this examination.

³ See PPG Reference ID: 25-040-20190901.

8. Accordingly, in line with the 2010 Regulations, a Regulation 15 preliminary draft CIL Charging Schedules consultation took place between 2 November and 14 December 2018. Consultation under Regulation 16 on the final draft CIL Schedules took place between 7 June and 23 August 2019. 50 responses were received.
9. The Charging Schedules comply with the Act and the Regulations, including in respect of the statutory processes, the levels of public engagement and consultation, consistency with the draft Local Plan and the Infrastructure Delivery Plan, and are supported by an adequate financial appraisal. I also consider them compliant with the national policy and guidance contained in the NPPF and PPG respectively.

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

Infrastructure Planning Evidence

10. The Councils are preparing a joint Local Plan (LP), which was intended to be advanced at the same time as the CIL Charging Schedules. The LP has been submitted to the Planning Inspectorate for examination but the dates of any hearings or timescale for reporting have not been fixed. The draft Plan does set out the proposed main elements of growth that will need to be supported by further infrastructure in the period up to 2036 and provides the most up to date evidence for the purposes of this examination. Whilst this is a joint examination under the terms of Regulation 22(1), it is not so in relation to Regulation 22(2)(a).⁴ Regulation 22(2)(a), for example, facilitates the potential to formally combine the CIL and LP hearing sessions. At this juncture, I do not see it would be helpful to place this CIL examination in abeyance pending more progress on the LP examination. Even though some elements of the strategy may change, it is clear that development, in particular new housing and supporting infrastructure, will be required. In this context I note that PPG Reference ID 25-012-20190901 states that "Where practical, there are benefits to undertaking infrastructure planning for the purpose of plan making and setting the levy at the same time. A charging authority may use a draft plan if they are proposing a joint examination of their relevant plan and their levy charging schedule". I am satisfied the approach in this instance reflects the spirit of the PPG advice and I see no statutory impediment to progressing the CIL examination at this stage.
11. The main elements of growth set out in the submitted draft LP are about 5,000 new homes, some 11,000 sq m of retail floorspace and some 56,000 sq m of employment floorspace. The Councils' draft Infrastructure Delivery Plan (IDP) June 2019 identifies a number of infrastructure requirements

⁴ Regulation 22(5) requires that the charging authority and Secretary of State must agree to a joint examination under Regulation 22(2)(a).

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needed to support the development proposed in the draft LP. These include: healthcare facilities; works provided by statutory undertakers to prevent flooding and provide services such as water supply, waste treatment, electricity etc; improved transport networks and new education facilities. A Funding Gap Analysis statement (June 2019) indicates a shortfall of between approximately £180-230 million over the whole LP area. The Councils estimate that the proposed CIL rates would generate about £21 million, leaving a significant shortfall through Section 106 obligations with developers, government funding, or service or utility providers. In the light of the information provided, the proposed charge would therefore make only a modest contribution towards filling the likely funding gap. The figures demonstrate the need to levy CIL.

Economic Viability Evidence

12. The Councils commissioned a CIL Viability Assessment (VA), dated June 2019. The assessment uses a residual valuation approach, using reasonable standard assumptions for a range of factors such as building costs, profit levels, fees etc. The model was adapted by a detailed assessment of relevant local data on existing land values, likely sale prices based on a range of sites across the area, housing densities and gross to net ratios. A range of different CIL values were applied to a range of commercial uses and various sizes of residential development to test what level of CIL would be at the margins of viability, so the rate could be set within a suitable buffer. The residential tenure split was in accordance with draft LP policy and an allowance was made for provision of 10% 'affordable home ownership', in accordance with the advice in the NPPF. Another point to note is the assumption that all new homes will be built to an energy efficient standard at least equivalent to the former Code for Sustainable Homes (CfSH) Level 4. The VA indicates that costs and values for many types of development have changed little over the past year or so and it remains up to date.
13. The Councils' Draft Infrastructure Plan and its associated appendices clearly show that the draft Charging Schedules are supported by detailed evidence of community infrastructure needs. The Viability Assessment shows that the proposed rates will not prevent development coming forward. On this basis, the evidence which has been used to inform the Charging Schedules is robust, proportionate and appropriate.

Are the proposed rates informed by and consistent with the evidence on viability across the charging authority's area?

Residential Development

14. It seems likely that the bulk of development in the Councils' areas is likely to be new residential development. The VA used a standard methodology to assess viability over a variety of residential site typologies, ranging from 3 to 100 dwellings, and also tested the site allocations in the draft LP specifically.

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Likely sales values were considered in a number of sub areas across both districts. In general, the costs of development are likely to show very little variation; whilst there were some differences, there was nothing of such significance as to affect outcomes in any particular part of the two Councils' areas. I consider the bench mark values to be realistic, as are the potential development values and costs. I have no doubt from the evidence of the VA that a rate of £150 per sq m across both districts would not affect the viability of residential development.

15. The VA makes an appropriate allowance for such infrastructure based on the proposals contained in the draft IDP and also takes account of affordable housing provision at 40% across all sites of 10 or more units (or 5 or more units on non-allocated sites in the Area of Outstanding Natural Beauty), in accordance with the draft LP. The results of the VA for large scale residential development in the draft allocations suggest a varied picture, with some proposals unable to support both CIL at £150 per sq m and significant site specific Section 106 contributions for infrastructure and others with minimal viability buffer. I agree with the Councils that provision for major infrastructure within such areas is likely to be more effectively secured through Section 106 planning obligations. The zero rating of Large Sites or major allocations has been widely accepted in many areas where CIL is being levied, including on those sites where there are multiple developers. The amount of contributions or provision of infrastructure in defined Large Sites is likely to be at least as much, if not greater, than potential CIL levies at £150 per sq m.
16. All but two of the proposed LP residential allocations would fall within the Councils' definition of Large Sites of more than 400 dwellings or 10 ha (gross). This definition was subject to a revision during the hearing and subsequently refined further after the hearing, and I recommend an Examiner Modification set out in **EM1** (in the Appendix to this Report) to insert the revised definition into the Charging Schedules. Having taken into account all supplementary representations, I consider that the revised Schedules provide sufficient clarification of the residential and mixed use sites where a zero rate would apply. The Councils confirmed that on this basis a higher level of infrastructure provision is likely to result than that obtained through the CIL mechanism alone.
17. The VA indicates that extra care (specialist) housing in developments of apartments is likely to incur higher construction costs for community facilities, adversely affecting viability at £150 per sq m. However, those developments falling within Classes 2 and 2A of the Use Classes Order would certainly be viable at a rate of £35 per sq m, as proposed. The potentially higher costs of such schemes with self-contained units can be offset by higher values and some lower costs for external works, and the higher rate of £150 per sq m can be justified.

Commercial Rate

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18. Large retail units, particularly convenience stores and retail warehouses are still amongst the most clearly viable forms of development throughout the Council areas and are able to support a charge of £150 per sq m. At present, there appears to be significant over trading throughout both districts but no major new proposals are expected to come forward in the short term. Given the rapid changes and viability challenges currently being experienced in the sector and the nature of development patterns in the Council areas, it seems unlikely that any major new comparison schemes will come forward. Smaller retail development appears unlikely to come forward in any significant quantity but viability may be less certain. The Councils should therefore consider setting a lower rate for smaller retail schemes after an early review if there is evidence that the CIL is preventing new development.
19. The VA found that there was little variation in viability for other types of commercial development in different parts of the Councils' areas. Generally, the viability of many other forms of commercial development is likely to be 'challenging', although some business park and hotel development appears viable at low yields and high value assumptions. On that basis, the proposed rate of £35 per sq m is considered to be 'nominal' and would not have any significant impact on the likelihood of development being pursued.

Other Uses

20. As the education authority and the Buckinghamshire NHS Trust argued, it is clear that charging CIL on uses for community facilities such as education and healthcare premises would merely add to the costs of development that would have to come from the public purse. However, in practice the additional costs on the small amount of development likely to come forward in this way could possibly be funded through the use of the levy itself or through other grant funding. More significantly, the charge would be appropriately levied on a number of private developments falling within Use Class D1, such as private hospitals, care homes and schools. Other institutions may have charitable status and would be exempt from CIL. Clearly, it would not be possible to have differential rates for uses in public or private sectors, which would be likely to be construed as 'State Aid' conferring a selective advantage on a particular undertaking. The major facilities are likely to fall within the boundaries of the Large Sites and would not be subject to charge. The Councils' stated indication to use CIL receipts to reimburse community facilities, such as schools, would appear to be an appropriate way forward in these cases.
21. Although the Councils intend to impose a rate of £35 per sq m on all development, some of which may well be at the margins of viability, the key point here is that CIL charges would be unlikely to exceed 1.5% of development costs for most non-residential uses, as Appendix 1 to the Councils' hearing statement indicates. In these circumstances, I consider it unlikely that the proposed rate for all other uses would prove to be a critical factor in preventing development from coming forward in the Councils' areas overall. However, given the acknowledged marginal or lack of viability for

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some uses, I consider that the application of the £35 per sq m rate across the board should be reviewed after 12 months.

Other Matters

22. The application of CIL regulations such as those relating to exceptional circumstances relief are for the Councils to administer and are outside the scope of the examination of the proposed charging rates themselves.

Has evidence been provided that shows the proposed rate or rates would not undermine the deliverability of the plan (see National Planning Policy Framework paragraph 34)?

23. The Councils' decision to set a matrix approach is based on reasonable assumptions about development values and likely costs.

24. In setting the CIL charging rate, the Councils have had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in Chiltern and South Bucks. The Councils have 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 authority areas. The draft LP is about to undergo examination and I consider it would be appropriate to consider any revision to the charge after it has been in place for 12 months.

25. I consider the viability assessment to be robust and conclude that the residential and retail rates proposed would not undermine the deliverability of the draft Local Plan. The proposed rates are justified therefore.

Overall Conclusion

26. I conclude that the draft Chiltern and South Bucks Councils' Community Infrastructure Levy Charging Schedules, subject to the making of the modification set out in **EM1**, satisfy the drafting requirements and I therefore recommend that the draft Charging Schedules be approved.

Geoff Salter

Examiner

Attachments:

Appendix – Modifications that the examiner specifies so that the Charging Schedules may be approved.

Appendix

Examiner Modifications (**EM**) recommended in order that the Charging Schedules may be approved.

Examiner Modification(EM)	Page no./ other reference	Modification
EM1	Table 1 and Table 2	*Large Sites are defined as any site allocated in an emerging/adopted Local Plan with 400 homes or more (gross) or 10 hectares or more (gross), irrespective of land use and include any parcel within a Large Site irrespective of the size of the parcel.