



The Planning  
Inspectorate

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# **Report to East Cambridgeshire District Council**

**by Robert Yuille MRTPI, MSc Dip TP**

**an Examiner appointed by the Council**

**Date: 16 November 2012**

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

## **REPORT ON THE EXAMINATION OF THE EAST CAMBRIDGESHIRE DISTRICT COUNCIL COMMUNITY INFRASTRUCTURE LEVY DRAFT CHARGING SCHEDULE**

Charging Schedule submitted for examination on 31 July 2012

Examination Hearing held on 18 October 2012

File Ref: PINS/V0510/429/4

## Non Technical Summary

This report concludes that the East Cambridgeshire Community Infrastructure Levy Draft 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.

One modification is needed to meet the statutory requirements. This can be summarised as follows:

- Delete differential rate of CIL based on the size of retail units.

The modification recommended in this report is based on matters discussed during the public hearing session and does not alter the basis of the Council's overall approach or the appropriate balance achieved.

## Introduction

1. This report contains an assessment of the East Cambridgeshire District Council Community Infrastructure Levy (CIL) Draft 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<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 district. The basis for the examination, on which Hearings sessions were held on 18 October 2012, is the submitted schedule of July 2012 - which is effectively the same as the document published for public consultation in May 2012.
3. The Council proposes to distinguish residential charges by geographical areas (Littleport and Soham £40, Ely £70 and the rest of the District £90) while retail charges would be distinguished by floorspace (£60 per sq m for units of up to 350sq m, £120 per sq m for units of more than 350 sq m). A zero rate would apply to all other uses.

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<sup>1</sup> Charge Setting and Charging Schedule Procedures, DCLG March 2010

## **Preliminary Matters**

4. A number of representors considered that the introduction of CIL should be postponed and it should be published alongside the emerging East Cambridgeshire Local Plan which will contain the most up to date policies and proposals for growth in the area. Such a postponement would also allow for the publication of other documents such as the Supplementary Planning Document on Planning Obligations and the CIL Guidance note which would address concerns that developers would be required, in effect, to pay twice for infrastructure, once by way of CIL and once by way of s.106 obligations.
5. Where practical, CIL charges should be worked up and tested alongside the Local Plan<sup>2</sup>. In this instance, however, there is a Core Strategy<sup>3</sup> for the area which was adopted in 2009. This plan proposes substantial levels of growth and, as will be established subsequently in this report, there is a shortfall in the funding necessary to provide the infrastructure needed to support this growth. While the emerging Local Plan proposes higher levels of growth it does not propose to alter existing Core Strategy policies in relation to matters such as affordable housing provision, housing mix or housing density. The Council has therefore decided, as it is entitled to do<sup>4</sup>, that the Core Strategy is sufficiently up to date to implement CIL.
6. The Council confirmed at the Hearing that it will be reviewing CIL regularly and that one such review will take place as the Local Plan approaches adoption. In this way any changes arising from the Local Plan can be taken into account.
7. As to the various documents that will give guidance on how CIL payments will relate to s.106 payments, the Council intends to publish these alongside or shortly after the implementation of CIL. In the interim it has published some guidance on this matter.<sup>5</sup> While there would have been merit in publishing these documents earlier there is nothing that requires the Council to do so and such matters, which relate essentially to how CIL will be implemented, are beyond the scope of this Examination.

### **Issue 1. Is the charging schedule supported by background documents containing appropriate available evidence?**

#### *Infrastructure planning evidence*

8. The CIL Infrastructure Study of December 2011 (the Infrastructure Study) seeks to identify the infrastructure necessary to support future growth up to 2025 as set out in the East Cambridgeshire Core Strategy. Such infrastructure includes provision for education, healthcare, emergency services, community facilities, sport, open space, transport and utilities. At the Hearing the Council

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<sup>2</sup> National Planning Policy Framework paragraph 175

<sup>3</sup> East Cambridgeshire Core Strategy Development Plan Document 2009.

<sup>4</sup> Charge Setting and Charging Schedule Procedures March 2010 paragraph 11

<sup>5</sup> Consultation on a Draft Charging Schedule May 2012. Table 1.

accepted that two schemes identified in the Infrastructure Study should be deleted and two further schemes would be funded by developers.<sup>6</sup> The result is that, taking account of other funding sources, there is a projected infrastructure funding gap of some £163 million. The Council's initial rough estimates indicate that CIL would generate something in the region of £17.5 million.

9. This information shows there to be a substantial gap in the funding necessary to provide the infrastructure to support the growth proposals in the Core Strategy and the proposed CIL charges would make a modest contribution to filling that gap. A need to levy CIL has, therefore, been demonstrated.

#### *Economic viability evidence*

10. In the Viability Assessment commissioned by the Council<sup>7</sup> the ability of a range of notional schemes to support varying levels of CIL has been examined using the residual land valuation technique.<sup>8</sup> This is a recognised way of carrying out such an assessment but as with any such technique the reliability of the results depends on the quality of the assumptions made about key variables.
11. Broadly speaking representors were of the opinion that the costs of development assumed in the Viability Assessment were too low; the assumed gross development value was too high; the threshold land value at which it was judged likely that land owners would sell their land was too low and the 'buffer' between the maximum viable level of CIL and the proposed level of CIL was too small. These points will be examined in turn.

#### *Costs*

12. The build costs assumed in the Viability Assessment have been informed principally by the RICS Building Cost Information Service (BCIS). These are a widely used and accepted source of such information and while the data they provide can vary from week to week it was established at the Hearing that the correct figures had been used in the Viability Assessment. The BCIS figures do not allow for abnormal costs - but this is standard practice as abnormal costs by their very nature are site specific and are not usually factored in to high level viability assessments. The approach taken in the Viability Assessment is, therefore, reasonable in this respect.
13. The residential build costs in the Viability Assessment are based on standard rates for Code for Sustainable Homes Level 4. Given that the Charging Schedule will be reviewed every two years or so this is a sensible assumption.

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<sup>6</sup> Document HD2. Changes to the Infrastructure Study proposed by the Council.

<sup>7</sup> East Cambridgeshire Viability District Council Assessment (December 2011) and its Addendum dated April 2012

<sup>8</sup> The residual land value of a scheme is calculated by subtracting the cost of developing that scheme from its gross development value, ie the sales value or rental income/yield it will generate. The resulting residual land value is compared with a threshold land value at which it is assumed a land owner would be likely to sell and if it is higher than that threshold value the scheme is judged to be viable.

If a higher code level were to be required in the future then this would be taken into account in any subsequent viability assessment.

14. Another element of cost is the figure assumed for s.106 contributions. At the Hearing discussion concentrated on the £10,000 per dwelling assumed for sites of 400 dwellings and the zero figure assumed for retail sites. While there is evidence from initial negotiations on a particular site to the north of Ely that the s.106 contribution could exceed the assumed figure, those negotiations are far from complete and cannot form the basis for determining the assumed size of s.106 contributions across the District. As to the zero amount assumed for retail schemes, the evidence is that in the past s.106 contributions associated with such schemes have mainly dealt with off site and strategic highway matters and CIL is largely intended to replace such contributions. Additional s.106 contributions would, it is anticipated, only be sought in the minority of cases. The assumptions about the costs of s.106 contributions made in the Viability Assessment are, therefore, reasonable.

*Gross Development Value*

15. The gross development value of a housing scheme is measured in terms of the sales values of the dwellings. Concern was expressed by representors that evidence from a comparable housing site indicated that the assumed sales values for dwellings in Ely in the Viability Assessment were too high. However, that evidence was taken into account in the Addendum to the Viability Assessment in which further research and sensitivity testing was carried out.<sup>9</sup> As a result the assumed sales values for Ely were revised downwards.
16. While the revised sales value remains slightly higher than the average figure for the comparable site, this is not unreasonable. The Viability Assessment needs to be based on a robust sales revenue figure. While, in the current state of the housing market, there is a dearth of information from comparable sites, such a robust figure would not simply be obtained by relying on historic evidence from a single large site. Sales values within Ely will vary according to the particular type of housing proposed and its precise location. With this in mind the residential sales values assumed in the Viability Assessment are reasonable and no substantial body of evidence was produced at the Examination which undermined them to any significant degree.
17. The gross development value of a retail scheme is measured in terms of yield and rental value. The yields assumed in the Viability Assessment were not questioned at the Hearing but the rental levels were. The rental levels in the Viability Assessment are based principally on evidence from the Valuation Office Agency Rating List. While it was suggested by representors that, based on the evidence of similar transactions in the area, these figures should be somewhat lower, details of these transactions were not made available during the Examination and little weight can be afforded to them. The retail sales values in the Viability Assessment are, therefore, the best available.

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<sup>9</sup> Addendum to the Viability Assessment (April 2012)

*Threshold Land Values*

18. Concern was expressed at the Hearing that the threshold land values assumed in the Viability Assessment would be used to set a target figure for the price at which land should be sold and this would be applied in subsequent site specific viability assessments. The Council confirmed at the Hearing that this would not be the case and that it would approach site specific viability assessments in a flexible way. This is sensible as it would be difficult to see how a range of assumptions used as part of a District wide viability assessment could reasonably be used as a fixed marker when considering individual sites.
19. The Viability Assessment identifies a broad range of figures intended to act as a guide or filter giving varying degrees of confidence as to whether a particular site would be likely to be developed and thus be regarded as viable. For greenfield residential uses the threshold land values range from £250,000 to £500,000 per ha, for retail uses the range is from £250,000 to £1,000,000 per ha. Given that there is no firm evidence on this matter to be gained from recent local transactions these figures were arrived at having considered the information for the wider area available from Valuation Office Agency figures, Estates Gazette Interactive and other property and land marketing web sites. This gave an impression of what a site's existing or alternative use value would be and then a judgement was made as to the premium or incentive that needed to be added to encourage land owners to sell.
20. As far as residential uses are concerned, while the suggestion was made that these threshold land values were too low no substantial information to support a higher figure was provided. As for retail uses, it was suggested that for large units, the threshold figure should be as high as £3.7 million per ha. However, while this figure is based on two recent supermarket sites in Ely, no details are available as to the valuation inputs which underpin these land values. So, for example, it would be necessary to know the % yields that were applied since a small adjustment in these could boost land values. Without this information little weight can be attached to this data. There is, therefore, insufficient evidence to warrant substituting the higher threshold land values for retail preferred by representors for those used in the Viability Assessment.
21. As an aside, it is interesting to note that while on the face of it there is a significant difference between the £1 million per ha threshold land value used in the Viability Assessment and the £3.7 million ha favoured by representors, it emerged at the Hearing that most of the large retail sites tested in the Viability Assessment produced a land value figure in excess of £2m per ha. This indicates that large retail uses are among the most viable considered in the Viability Assessment.

*Buffer*

22. It was agreed at the Hearing that there was a 14% or so buffer between the maximum level of CIL that was tested and the level that it is proposed to charge. This is useful in that it confirms that the proposed CIL charges are not set close to the limits of viability and gives reassurance that the proposed charges could accommodate some changes in the market over time. It was suggested by representors that a buffer of some 25% would be needed to cope with increased costs and threshold land values and decreased gross

development values which they considered should be applied. However, for the reasons set out above, the assumptions contained in the Viability Assessment are to be preferred and there is insufficient justification for the larger buffer favoured by representors.

### *Conclusions*

23. In this report a number of assumptions have been examined separately but it was common ground between the valuers at the Hearing that the Viability Assessment should be judged in the round. It is an assessment of the ability of a range of sites across the District to support CIL and as such contains a number of high level assumptions. These assumptions are not intended to, and inevitably will not, hold good in every site specific viability assessment and it should not be criticised for this.
24. As was evident at the Hearing, no two valuers will carry out a viability assessment in an identical way and come to an identical conclusion. The important thing is that their assessment should be based on reasoned judgements. Taken as a whole the Viability Assessment is supported by such reasoned judgements.
25. There can be no certainty that events will not prove the assumptions made in the Viability Assessment to have been optimistic but equally the assumptions made by representors may prove pessimistic. The available evidence indicates that the Viability Assessment has steered a robust middle course between these two possibilities and no better evidence has been put forward to suggest that it is a flawed piece of work.
26. Overall, therefore, the charging schedule is supported by background documents containing appropriate available evidence. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate. The single exception to this is the proposal to charge differential rates for large and small retail units – this matter will be discussed subsequently.

### **Issue 2. Is the charging rate informed by and consistent with the evidence?**

#### *CIL rates for residential development*

27. The proposed CIL rates for residential development follow from the findings of the Viability Assessment. This assessment has been considered in some detail in the preceding section of this report with the conclusion that it is an appropriate piece of evidence on which to base the proposed charging rates. The proposed charging rates for residential uses are informed by and consistent with the evidence in that document.
28. The point was made that as it had been accepted that activities such as stud farms could not support CIL, it made little sense for CIL to be levied on a stud workers dwelling - particularly as it is not expected that such a dwelling would ever generate open market value. However, while this may be a point for the Council to reflect on, stud workers dwellings account for a very small proportion of dwellings in the District and even if CIL were to affect their

viability it would not put the overall development of the area at serious risk.

*CIL rates for retail development*

29. The proposed charging rate of £120 per sq m for retail units above 350 sq m is informed by and consistent with the evidence in the Viability Assessment.
30. However, the position regarding the proposal to charge a rate of £60 per sq m for retail units of up to 350 sq m is less clear cut. Clearly there is a difference between the size and character of a small retail unit such as a corner shop and that of a large retail unit such as a superstore, a supermarket or a retail warehouse. It is also the case that such small and large retail units serve a different purpose in the market. Moreover, small retail units typically produce lower development values (lower rents and higher yields) and have lower build costs per sq m than superstore or supermarkets. The distinction between small convenience shops and other larger shops is also recognised in Sunday Trading Legislation and in the retail industry generally.<sup>10</sup>
31. To that extent, therefore, a small retail unit is a different use to a large retail unit - as opposed to being in a different use class as defined in the Town and Country Planning Use Class Order 1987. There is, therefore, nothing in Regulation 13 (1) (b) of the Community Infrastructure Levy Regulations 2010 which prevents the charging of differential rates for such distinct uses as long this is supported by viability evidence.
32. However, while the relevant figures in the Viability Assessment<sup>11</sup> show that for small retail units the actual sums of money available for land purchase are relatively small, when looked at in terms of £'s per ha there appears to be little difference between small and large retail units in terms of viability. In other words this evidence does not clearly show a significant difference between the ability of small and large retail units to support CIL. On the contrary it indicates that a CIL charge of £120 per sq m is equally viable for both small and large units.
33. Significantly, it was confirmed at the Hearing that while this evidence points to some differences between small and large retail units, it does not itself support the proposed 350 sq m threshold. Similar points are made in paragraph 3.4.6 of the Viability Assessment and in paragraph 2.6.1 of its Addendum. Moreover, where it is intended to distinguish different categories of intended use, Government Guidance makes mention of the possibility of carrying out fine-grained sampling of a higher percentage of total sites.<sup>12</sup> Such fine-grained sampling has not been carried out.
34. At the Hearing the Council acknowledged that removing the lower CIL charging rate for small retail units would not prejudice the implementation of the Core

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<sup>10</sup> Paragraphs 1.12 and 1.13 of the Council's Hearing Statement on Matter 2ii) and iii)

<sup>11</sup> Tables 3, 4, 5 and 6 of Appendix IIb of the Viability Assessment, December 2011

<sup>12</sup> CIL Guidance. Charge Setting and Charging Schedule Procedures, paragraph 25



Strategy since the vast majority of retail in the past had been in the form of large units and it was anticipated that this would be the case in the future.

35. The Council mooted the possibility at the Hearing of making an amendment to the draft charging schedule which would clarify what is meant by the terms superstore, supermarket and retail warehouse. However, it is not clarity of terms that is needed but clarity of evidence. For the reasons set out above there is insufficient clear evidence to support a lower CIL charge for retail units of 350sq m and below.
36. In order to ensure that the charging rate is informed by and consistent with the evidence it is recommended that the schedule is modified to delete reference to the 350 sq m threshold and the lower charging rate associated with this as set out in **MM1** in appendix A.

**Issue 3. Does the evidence demonstrate that the proposed charge rate would not put the overall development of the area at serious risk?**

37. Although the proposed CIL charges only amount to a small percentage of gross development value, between 2.2% and 3.3% for residential and between 3% and 5% for retail, it will still be an additional cost to developers at a time when all such costs have to be carefully scrutinised. In the current economic climate it can be difficult for land owners and developers to obtain competitive returns.
38. Nonetheless the housing market in East Cambridgeshire has remained relatively strong and the indications are that a number of supermarket proposals are in the offing. The CIL rates proposed in the Draft Charging Schedule are derived from a Viability Assessment based on reasonable assumptions about development values, development costs and threshold land values. This evidence suggests that most residential and retail development will remain viable across the area if the proposed charge is applied.

**Conclusion**

39. 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 East Cambridgeshire. The Council has sought to achieve a realistic and reasonable level of income to help fill an acknowledged gap in infrastructure funding, while ensuring that a range of development remains viable across the District. The East Cambridgeshire Core Strategy will shortly be replaced by the East Cambridgeshire Local Plan at which time the Council has indicated that it will review the Charging Schedule. This is a sensible approach.

<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 East Cambridgeshire Core Strategy and Infrastructure Delivery Plan and is supported by an adequate Viability Assessment.

40. It is concluded that (subject to the modifications set out in Appendix A) the East Cambridgeshire Community Infrastructure Levy Charging Schedule July 2012 satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended 2011). It is therefore recommended that the Charging Schedule be approved.

*RJ Yuille*

Examiner

This report is accompanied by:

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

## **APPENDIX A**

### **MM1**

Deleted text shown ~~thus~~. Additional text shown thus.

<b>Development type</b>	<b>CIL rate (per square metre)</b>
Residential Zone A – Littleport and Soham (C3)	£40
Residential Zone B – Ely (C3)	£70
Residential Zone C - Rest of the district (C3)	£90
<del>Retail development1 (A1/A2/A3/A4/A5) up to 350m2, and sui generis uses akin to retail (e.g. petrol filling stations and motor sales units)</del>	£60
<u>Retail development1 (A1/A2/A3/A4/A5) more than 350m2 and sui generis uses akin to retail (e.g. petrol filling stations and motor sales units)</u>	£120
All other uses (unless stated otherwise in this table)	£0