PLANNING ACT 2008 (AS AMENDED)
SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT TANDRIDGE DISTRICT COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 9 December 2014
Examination Hearing held on 11 March 2014

File Ref: PINS/M3645/429/3
Non Technical Summary

This report concludes that, as submitted, the Tandridge District Community Infrastructure Levy Charging Schedule does not fully provide an appropriate basis for the collection of the levy in the district. The proposed rate for residential development would not be viable insofar as it relates to sheltered and extra care housing for the elderly, but with modification that will not put developments at risk, it can be recommended for approval.

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

- Modify footnote 2 of the residential development element of the CIL Charging Schedule to exclude Sheltered / Retirement Housing and Extra Care accommodation from the rate

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

Introduction

1. This report contains my assessment of the Tandridge 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 (Community Infrastructure Levy Guidance, DCLG, February 2014).

2. To comply with the relevant legislation the local charging authority has to submit what it considers to be a charging schedule that 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 11 March is the submitted modified schedule of November 2013, which was published for public consultation with a closing date for representations of 13 January 2014.

3. The Council proposes two rates: one for all residential development at £120 per square metre, and one for convenience retailing, including convenience based supermarkets and superstores, at £100 per square metre. All other development has a Nil rate.
Is the charging schedule supported by background documents containing appropriate available evidence?

Does the Infrastructure Delivery Schedule support the introduction of CIL?

4. The Tandridge District Core Strategy (CS) was adopted in October 2008. This sets out the main elements of growth that will need to be supported by further infrastructure in the District until 2026. When the CS was adopted there was no requirement for an Infrastructure Delivery Schedule (IDS). Therefore, for the purposes of the CIL submission, an IDS, published in September 2012 and updated to 24 December 2013, has been compiled by the Council. As the IDS was prepared to support the draft Charging Schedule and has not been tested at another examination, it comes within the ambit of this examination. As a result the IDS was the first topic on the agenda of my Examination Hearing.

5. The IDS is not clear that the infrastructure identified is to deal solely with the requirements arising from the level of development being proposed (or what proportion of it is – just to take one example, the new cemetery is needed because the existing cemetery is full: a new cemetery would not just deal with the needs of new development). Nor (with a few exceptions) are the potential funding sources other than CIL identified: there are 58 infrastructure items on the Schedule, but no funding streams, other than CIL, are identified in 53.

6. My initial conclusions that I drew from this were i) that there must be doubts about whether the majority of the infrastructure identified on the IDS arises from the impact of new development and ii) in the near total absence of any alternative funding sources, the evidence is not persuasive of a credible funding gap against which the requirement to impose the CIL can be justified. I sought further explanation from the Council.

7. The Council’s response is set out in Examination Document TDC ED/9, the following being the main points. The Infrastructure Delivery Schedule (TDC 07) has been prepared specifically for the Community Infrastructure Levy and directly relates to the quantum and type of infrastructure that is required to underpin the Tandridge Core Strategy. In determining the size of the total infrastructure gap the Council has engaged with the key providers to assess the impact of new development on infrastructure within the District and identify sources of possible funding available to meet those costs. The Council did not blindly accept every suggestion for infrastructure and made judgments about what should be included within the IDS. The work that was undertaken with the providers was rigorous. The overall trend is for small-scale development within Tandridge and it is expected to continue as all new development is focused on the built up areas. This type of development will mean the incremental pressure on local infrastructure will continue. Future development should not create deficiencies in infrastructure or exacerbate existing deficiencies.
8. The Council also addresses the point about alternative funding sources, submitting that there are effectively no other sources of funding available for a district such as Tandridge. In addition revised CIL revenue figures are given which take account of the new mandatory exemption for self-build housing, as well as highlighting the “meaningful proportion” of revenue to be paid to village and parish councils.

9. Representors’ comments include that the small amount of new development planned for the District will not demand the provision of much infrastructure. The existing deficiencies are due to the Council’s failure to fund infrastructure in the past, which should not be passed on to new developments. DCLG figures show that Tandridge is currently ranked the tenth least affordable district in the Country (out of 326) – the introduction of the proposed CIL rates would make this situation worse. Whilst the Council’s offer that the charging rate be reduced to £96 per square metre is acknowledged, it does not alter the argument that this CIL should not be approved.

10. In addition, representations to the draft Schedule made submissions that the Council’s Core Strategy is out of date in the sense that it does not comply with the National Planning Policy Framework (NPPF), does not address an objectively assessed housing need, has an out of date Strategic Housing Land Availability Assessment and will have to be replaced with a new Local Plan within two years. CIL should only be introduced in conjunction with a Local Plan: a plan which will have to provide for 9,000 new dwellings, rather than the maximum 750 that are likely to be provided under the existing one. This CIL should be not be approved since it is not based on an up-to-date plan, would address infrastructure needs because no investment has been made and that result from existing development and would make, particularly smaller sites unviable which even now struggle to be economic.

11. In coming to my conclusions on these matters I will deal firstly with the arguments set out in paragraph 10 above. The Council has a Core Strategy adopted in October 2008, preceding the March 2012 publication of the NPPF by more than three years. It may be that some of its policies are capable of being considered out of date when judged against the policies of the NPPF, but until replaced it remains the principal document of the Development Plan for the district. The CIL charges proposed by the Council are based on infrastructure needs arising from the development required for the implementation of that plan. So long as there is a funding gap, and that funding is to provide for infrastructure needed to meet the costs of supporting development of the area, I see no legal basis to find that the submitted CIL Charging Schedule should not be approved just because it is based on a plan which, no doubt, will be reviewed in the near future.

12. I now turn to the questions of whether the proposed CIL addresses the funding of infrastructure requirements arising from new development, and whether there is a funding gap when other funding sources are taken into account. In the case of Tandridge District the need for additional infrastructure arising from new development as opposed to that required to remedy existing deficiencies is difficult to identify with any exactitude. I accept that new development will obviously impact on infrastructure that is already under
pressure, and that it is legitimate to seek funding which will address such additional pressure. I am not satisfied that the whole of the infrastructure funding set out in the IDS is necessary to deal with new development, but I do not suppose that this is unique to Tandridge: the question arises in Tandridge because of the relatively little development which is currently planned and that generally there is no obvious link with most of the items in the IDS.

13. In its latest submissions, the Council has also revised its calculations of the funding gap. As a result of recent revisions of the CIL Regulations, within document TDC ED/9 the Council has revised its estimates of CIL receipts, which it now calculates as being £1,008,720 per annum. Taking into account that a “meaningful proportion” of the revenue will be paid to village and parish councils (including taking into account the adoption of the ‘CR3 Neighbourhood Plan) and the necessary costs of administration, the likely annual levy income which can be directed to provision of infrastructure is of the order of £766,627. With overall revenue at £1,008,720, income for infrastructure delivery over a ten-year period would only be £7,666,270, compared to the identified funding gap of over £12 million.

14. Within document TDC ED/9 the Council also suggests that if I am not convinced about these matters and consider the CIL burden too great, a figure of £96.00 per square metre for residential development would be comparable with recent averages for s106 payments. However, I consider that decisions as to appropriate CIL rates for development must depend upon judgements arising from the viability evidence, which I deal with below.

15. The submissions by the Council, as set out in its document TDC ED/9, satisfy me that there is little in the way of alternative funding which can confidently be expected to help pay for new infrastructure, and that which might be available from alternative sources would not significantly reduce the gap – certainly there has been no evidence put before me which convinces me otherwise.

16. The result is that I am satisfied that the IDS reflects the requirements of the development plan for the District and that there is a funding gap. Whilst the total cost of infrastructure in the IDS of £16,539,951 cannot be shown to be solely needed to deal with new development, a funding gap of just over £10 million and receipts of about £7.7 million indicates to me that there is a gap against which it is legitimate to raise contributions through CIL. The proposed charge would make a significant contribution, and I consider that the figures demonstrate the need to impose the CIL.

Economic viability evidence

17. The Council commissioned a CIL Viability Study (VS), dated February 2013. The VS uses a residual land value method, involving calculating the value of completed schemes and deducting development costs such as build costs, fees, finance, and CIL plus developer’s profit. This is a standard method used by developers when determining how much to bid for land – the residual amount is the sum left after the costs have been deducted from the value of the development. Levels of CIL have been tested in combination with the
Council’s planning requirements, including the provision of affordable housing. Since the housing and commercial property markets are inherently cyclical, a sensitivity analysis has been run which decreases sales values by 5% to enable a view to be taken of the impact of any adverse movements in sales values in the short term. The commercial appraisals incorporate sensitivity analyses on rent levels and yields. Some additional viability testing was carried out at my request in respect of small residential development following the examination hearing (document TDC ED/7).

Conclusion

18. The draft Charging Schedule is supported by evidence of community infrastructure needs and a funding gap has been identified. Accepted valuation methodology has been used which was informed by reasonable assumptions about local sale values, rents and yields.

Are the charging rates informed by and consistent with the evidence?

CIL rate for residential development

Is the level of CIL proposed for residential development in general justified?

19. The pertinent representations about the proposed CIL level for residential development generally included the following points: sites comprised of previously developed land and with less than 20 units should be differentiated from larger sites because there would be a particular viability impact on these; the allowance for development finance is inadequate for small schemes, and no account has been taken of lower density development and changes to parking standards. More generally, it is said that small residential schemes are at the margins of viability at present, that flatted schemes are particularly vulnerable, little consideration has been given to the impact on affordable housing, and that room sizes will decrease as a result of the levy. Representors have submitted examples of recent small schemes that are said to illustrate the point that the proposed rate would make them unviable, some of which, it is indicated, provide a profit level now that is well below normal developer expectations.

20. As I referred to in paragraphs 17 and 18 above, the rate for residential development has been established by the Council on the basis of a Viability Study commissioned from experienced consultants in development economics. The methodology of the VS is consistent with CIL Guidance, using an area-based approach involving a broad test of viability across the District. The Local Housing Delivery Group guidance, which has found general acceptance in CIL examinations, sets out a detailed methodology for conducting area-based assessments, and this is the approach that has been adopted by the consultants. I can find nothing in the VS which does not follow what is now accepted practice, and the input assumptions which have been made in the testing of various developments and the range of benchmark land values are appropriate and reasonable.
21. The detailed example schemes put forward by Representors post hearing were the result of my invitation to provide additional viability testing of small residential development schemes in the light of the discussion at the hearing. The Council’s consultants, in the original VS, tested a range of site typologies, the smallest of which was 5 units. As part of the response to my invitation, the consultants carried out additional testing of three small residential scheme scenarios, each involving the demolition of a single house and its replacement by three, by four and by five new dwellings. This work used the key inputs in the main VS appraisals, ensuring that the evidence is on a consistent basis.

22. This small scheme testing allowed for the currently normal expected profit margin of 20% (% of revenue) and made appropriate deductions for the assumed floor area of the existing house. The appraisal results indicate a modest impact of CIL on these schemes, ranging from 1.76% to 2.40% as a percentage of development costs including land costs. This supplementary VS also showed the impact of CIL on the residual land value generated by each scheme. In the words of the Council, this showed that CIL at the level proposed has a very marginal impact on residual land value.

23. The Council’s response also rejects the contention at the hearing that small sites make up a major proportion of the housing supply in the district. Its evidence shows that between 2006/07 and 2012/13 sites providing four or less residential units amounted to only 18% of dwellings built within the District. The point is also made that the recent amendments to CIL regulations introduced a mandatory exemption for self-build housing, and that on certain assumptions, only 13% of the housing supply will come from small sites that are eligible for a CIL payment. However, in my view the last percentage figure is somewhat speculative, and 13 to 18 per cent of sites providing housing in the District, whilst considerably less that Representors suggest, is not an insignificant number, and therefore if a viability issue was shown, this would be of concern.

Conclusion

24. My overall conclusion on these matters is that I prefer the consistent approach in the Council’s evidence and its reliance on standard accepted methodology. My main concern about the case put forward by Representors relates to assumed land values or land prices that have apparently actually been paid in recent times. It is fundamental to the CIL regime that a reduction in development land value is inevitable to accommodate it as a cost of development. Reported land sales values before the imposition of CIL in an area will clearly not have had to take the Levy into account. It may also be the case that there will be a period when land owners will be reluctant to see their value expectations decrease, but I do not see that as being a significant inhibitor on land coming forward for development in anything other than the short term. In the same way, the cost of development finance is a cost of development, which must be taken into account in the calculation of the price of land.

25. Additionally, development of previously developed land will often involve a reduction in liability in relation to existing floorspace on the site, and there is
evidence that such land will often have a relatively low existing use value. I note that in some of the example developments put forward by Representors, the reduction for existing floor space on site has not been accounted for in the calculations. The Representors’ points about lower density development (less than 30 dwellings per hectare) does not appear to stand up to scrutiny since the Council’s evidence shows that by far the majority of schemes recently granted planning permission had a density well above 30 dph (Table 1 of document TDC ED/5). The new parking standards were among the policy constraints within the District that the VS took into account. Those developers who tend to build with larger room sizes are likely to secure a premium value, and I see no obvious connection between CIL and smaller room sizes. The Council’s affordable housing policies were accounted for in the VS, which was the subject of sensitivity testing.

26. In conclusion, the evidence before me is a clear indication that general residential development will remain viable across most of the District if the proposed CIL rate is applied.

Would the proposed CIL rates impact adversely on specialist housing accommodation for the elderly so as to make such development unviable?

27. Following representations at the Preliminary Draft stage, additional appraisals were undertaken in respect of retirement housing, the results being expressed using the same format as in the February 2013 VS (document TDC 05A1). Document TDC ED/6 responded to Representations at Draft submission stage, in which additional viability testing results are included. Whilst welcoming these further appraisals, the Representors criticise the outcome on the basis that i) the provision of non-saleable floorspace is too low and hence overall costs are under-estimated; and ii) the assumed sales rate is too high and hence interest costs are insufficient. In addition their evidence also refers to higher value land in town centre locations – the most likely location for such developments - and empty property costs/service charges.

28. For the hearing the Representors provided detailed evidence, including floor plans of twelve recent developments in the South East of England. This showed that nine Sheltered/Retirement schemes had an average of 28.6% non-saleable floorspace, whilst three Extra Care developments had an average of 37.4% non-saleable floorspace. These measurements had been undertaken by qualified professionals in accordance with the RICS Code of Measuring Practice. The document TDC 05A1 appraisal used a 75% efficiency rate – ie 25% of floor area as non-saleable, but at the hearing it was said that the Council accepts these Representors’ figures.

29. The viability assessments for retirement housing use increments of 5% when allowing for non-saleable floorspace. The Representors’ evidence shows an average for sheltered/retirement schemes of 28.6 which, also bearing in mind the additional factors mentioned in their evidence, referred to in paragraph 27 above, leads me to conclude that it is prudent to take 30% as the appropriate level for assessment purposes. For extra care developments this figure should be rounded to 40%.
30. As to sales rates, the Representors’ evidence is clear that the appropriate sales rate that should be used is 1 unit per month. The Council does not accept this, on the basis that it is “unduly pessimistic”, and 1.5 units per month is the sales rate used in the 05A1 appraisal, and it is 1.5 unit sales per month that is used in document TDC ED/5. To me the evidence on sales rates is not as clear cut as the saleable floorspace matter, but I am persuaded by the Representors’ evidence that 1 unit per month should be used as the best available evidence.

Conclusions

31. Taking the testing shown in Appendix 1 of TDC ED/6, the first table shows sheltered housing with an allowance for the policy requirement of 34% affordable housing. Four variants are considered: 15%, 20%, 25% and 30% non-saleable space. As I have indicated above, 30% non-saleable space is the appropriate level to use for sheltered housing schemes. Since locations near shops, services, GP practices, transport links, etc, are the favoured areas for such schemes, sites are likely to have higher land values. Therefore I consider that it is Benchmark Land Value (BLV) Areas 1 and 2 that give the best indication of viability. In these two BLVs, it is only the area of Oxted and Surrounds that achieves a possible CIL value; and if one looks at BLV3 and BLV4, it is only additionally in Warlingham and Surrounds that such a value emerges. Bearing these facts in mind, and the need to provide a ‘buffer’ below the maximum rates, I am persuaded that the viability evidence points to a Nil rate for sheltered housing. With regard to extra care housing, this has not been shown to be any more able to support CIL than sheltered housing, and I conclude that both forms of housing for older people should have a Nil rate.

32. I therefore turn to consider the appropriate way in which the Charging Schedule should be modified to put this into effect. The Representors asked the Council to deal with the point by inserting a footnote with the following text: “Excluding Sheltered / Retirement Housing and Extra Care accommodation which are defined as grouped units, usually flats, specially designed or designated for older people encompassing communal non-saleable facilities over 25% Gross floorspace”. The Council’s response to this was to include in its modifications to the Draft Charging Schedule a footnote to define “all residential development” as follows: “including all dwellings falling within use class C3 and Extra Care units as defined by policy CSP8 of the Tandridge District Core Strategy 2008 that fall within class C2” (the opposite of that requested). Whilst the Council has resisted the Representors’ request on viability grounds, there has not been any suggestion that the text put forward would be unclear or otherwise inappropriate. The reference by the Council to policy CSP8 of the Tandridge District Core Strategy 2008 does not seem to me to be helpful, since that policy does not in fact provide any clear definition. I consider that the suggested text is clear enough on its face. I will therefore adopt the Representors’ text in my recommendation.
CIL rates for Commercial Development

Is the CIL rate for Convenience Retail development justified by the Viability Assessment?

33. Criticism is made of the VS on the basis that it does not take sufficient account of “prevailing values being paid in the market place” and has not followed the RICS Financial Viability in Planning Guidance document, which sets out an alternative approach to that used in the VS. In particular, the Representors state that a 20% ‘landowner premium’ is too low: it should be in excess of 50%, and that there is no rationale for the rental levels and yields.

34. The approach taken in the VS follows that taken in many other studies for CIL and has been recognised as appropriate and effective in identifying viability levels against which Levy charges can be formulated and judged. In its response, the Council quotes the conclusions of the Examiner of the Mayor of London’s CIL charging schedule. I adopt his reasoning that the market value approach, as endorsed in the RICS document, is not the appropriate benchmark because it relies on historic values based on existing policies. The report Viability Testing Local Plans by the Local Housing Delivery Group advises against using market values in testing planning policies.

Conclusion

35. I am satisfied that the VS follows good and accepted practice. Furthermore, there is evidence for the various inputs used in the VS, and I have heard and read nothing that persuades me that the rate for retail is misjudged or unsupported.

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

36. The Council’s decision to set a rate of £120 psm for residential development and of £100 psm for convenience retail 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.

Overall Conclusion

37. 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 Tandridge District. The Council has tried to be realistic in terms of achieving a reasonable level of income to address a gap in infrastructure funding, while ensuring that a range of development remains viable across the authority’s area. The Tandridge District Core Strategy was adopted in October 2008, preceding the March 2012 publication of the NPPF by more than three years. I am told that a new Local Plan may not be adopted for
some time. It may be appropriate to review the effect and effectiveness of the charge after it has been in place for 12 months.

### LEGAL REQUIREMENTS

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<td>2008 Planning Act and 2010 Regulations (as amended 2011)</td>
<td>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 Schedule and is supported by an adequate financial appraisal.</td>
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38. I conclude that, subject to the modification set out in Appendix A the Tandridge District 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.

*Terrence Kemmann-Lane*

Examiner

This report is accompanied by Appendix A (below) – Modification 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.**

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<th>Modification Number</th>
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<tr>
<td>EM1</td>
<td>Modify footnote 2 of the residential development element of the CIL Charging Schedule to read:</td>
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<td></td>
<td>“²Excluding Sheltered / Retirement Housing and Extra Care accommodation which are defined as grouped units, usually flats, specially designed or designated for older people encompassing communal non-saleable facilities over 25% Gross floorspace”.</td>
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