The Planning Inspectorate

Report to Kirklees Council

By Katie Child B.Sc. (Hons) MA MRTPI

an Examiner appointed by the Council

Date: 10 January 2020

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE KIRKLEES COMMUNITY INFRASTRUCTURE LEVY DRAFT CHARGING SCHEDULE

Charging Schedule submitted for examination on 25 April 2017

Examination hearing held on 16 September 2019

File Ref: PINS/Z4718/429/8

Non-Technical Summary

This report concludes that, subject to modifications, the Kirklees Community Infrastructure Levy (CIL) Draft Charging Schedule (May 2019) 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.

The modifications that are needed to meet the statutory requirements can be summarised as follows:

- Insert Ordnance Survey (OS) gridlines, reference numbers and a clear OS base in the charging rate map.
- Amend the text to refer to the CIL Regulations 2019 and associated changes in infrastructure planning.
- Reduce the residential charging rate in zone 3 from £5 per square metre (psm) to £0 psm.
- Amend the residential zonal boundaries to include the whole of the Dewsbury Riverside strategic site in zone 3 and therefore subject to a zero CIL charge.
- Remove the Bradley strategic site from zones 2 and 3 and create a new site-specific residential charging zone with a rate of £5 psm.
- Remove the charging rate of £0 psm for retail warehousing (A1) to avoid duplication with the charging rate of £0 psm for 'all other uses'.

The specified modifications recommended in this report are based on matters discussed during the public hearing session and do not significantly alter the basis of the Council's overall approach or the appropriate balance achieved.

Introduction

1. This report contains my assessment of the Kirklees 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 with the Act and the CIL Regulations 2010 (as amended) and whether it is economically viable as well as reasonable, realistic and consistent with national guidance. It takes account of the CIL (Amendment) Regulations 2019 and the associated revisions to the Planning Practice Guidance (PPG) which came into effect on 1 September 2019.

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 is

the submitted Draft Charging Schedule (DCS) published for consultation between 7 November and 19 December 2016 as amended by the Statement of Modifications published for consultation between 20 May and 17 June 2019. A consolidated DCS incorporating the modifications was produced in May 2019 (CILSD/3). For the avoidance of doubt, I refer to this as 'the revised DCS'.

3. Following the hearing, additional evidence and information was produced by the Council and published for consultation between 22 October and 19 November 2019. I have taken the representations received on the Statement of Modifications and the post-hearing work into account in writing this report.

4. The Council proposes residential rates in the revised DCS of £80 per square metre (psm), £20 psm and £5 psm across three zones. All other development, including retirement living accommodation, would not be charged.

5. The zones are geographically illustrated on a map in the revised DCS. The map does not show Ordnance Survey (OS) grid lines and reference numbers as the Regulations require, and the OS base map is not sufficiently clear to allow settlements to be identified. Modification **M1** is necessary to correct the map and ensure it is legible and complies with the Regulations.

6. The revised DCS does not refer to or reflect the CIL Regulations 2019, and amendments are necessary to the text to ensure clarity and accuracy **(M2)**. This includes insertion of reference to the new Regulations and the CIL Regulations 'as amended', and deletion of the reference to Regulation 123 and restrictions on the pooling of planning obligations.

7. The charging schedule covers the part of Kirklees that falls outside the boundary of the Peak District National Park and is covered by the Kirklees Local Plan (2019). References in this report to 'the district' and Kirklees relate to this area.

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

Infrastructure planning evidence

8. The Kirklees Local Plan was adopted in February 2019. It sets out the main elements of growth that will need to be supported by further infrastructure in the period up to 2031. The Plan makes provision for some 31,000 new dwellings and over 190 hectares (ha) of employment floorspace over the Plan period and allocates a range of sites for housing, employment and mixed uses.

9. The examination of the Plan was supported by the Council's Infrastructure Delivery Plan (IDP) (2015) and IDP Addendum (2016), which identify key infrastructure likely to be required over the Plan period. Further updated evidence on infrastructure costs and funding is provided in the CIL DCS Background Paper (May 2019). The paper credibly identifies a funding gap of about £102 million (m) once current known funding sources are taken into account.

10. The Council's infrastructure work does not specifically list the strategic highway intervention scheme associated with the Dewsbury Riverside strategic site. However, evidence indicates that intervention will not be required until beyond 2031 and the form of provision has yet to be tested and determined. Furthermore, additional infrastructure costs may have the effect of increasing the funding gap, and as such would not lessen the justification for introducing CIL.

11. The CIL Regulations 2019 have removed Regulation 123, and CIL and S.106 planning obligations can now be used to fund the same infrastructure projects. However, the Council has confirmed that the evidence in the DCS Background Paper and submitted Regulation 123 list still reflects how it intends to fund relevant infrastructure from CIL and S.106. As such there are no consequential adjustments to the funding gap.

12. The Council estimates that some £33 m would be raised through CIL in the period up to 2031. This would reduce to some degree if my recommendations in this report are followed and lower CIL rates set. However, the Council has not factored windfall development into its income estimates, and has indicated that this source could generate a further £1 m to £20 m over the Plan period. It is clear that the proposed charges would make a reasonable contribution towards the funding gap. The figures therefore demonstrate the need to levy CIL.

Economic viability evidence

13. The Council commissioned a Viability Study in 2015 to support the Local Plan and CIL. This was updated in 2016 (the Viability Addendum) and most recently in May 2019 (the Viability Update). Further viability buffer workings for residential development are set out in the Council's Hearing Statement (EH1), along with viability results relating to retirement living accommodation. The Council's post-hearing work (CILEX/11) also includes sensitivity testing relating to S.106 and infrastructure costings for the three main strategic housing sites in the Local Plan, at Dewsbury Riverside, Bradley and Chidswell (sites HS61, HS11 AND MXS7/MXS5).

14. The Council's viability work uses a residual valuation approach. It provides separate appraisals for residential development including retirement living accommodation, and for commercial development including retail, offices and industrial development.

<u>General residential evidence</u>

15. Assessments were carried out for ten residential typologies, ranging from 5 to 350 dwellings, in four different value areas across the district, together with separate testing for retirement living accommodation. Assessments were also produced for specific sites, including the three main strategic housing allocations listed above. Parts of the Dewsbury Riverside and Bradley strategic sites are likely to be delivered beyond the Plan period, but the appraisal work includes a comprehensive assessment of overall scheme viability.

16. A policy compliant 20% affordable housing requirement was applied in the assessments where relevant, along with reasonable assumptions relating to

density and unit size. Overall I find that the Council has tested an appropriate range of typologies and specific sites which relate to the majority of residential development likely to come forward in the charging area over the Plan period.

17. The sales values in the assessments are underpinned by Land Registry data on average house prices by postal area, supplemented by new build sales data. The data shows clear differentials which has informed the division of the district into four value areas. Whilst the identified areas are large and may encompass some sales values variation, I consider the Council's identification of four broad areas is proportionate, evidenced and avoids undue complexity. In the case of the Dewsbury Riverside site bespoke sales values have been applied which are higher and based on phases of development. This approach takes account of the large scale of the scheme and its intended transformational impact on the local housing market and regeneration of Dewsbury, and rising values over the course of delivery. Overall I am satisfied that the applied sales values and identified value areas are broadly reasonable and supported by the evidence.

18. Affordable housing tenure and transfer values are based on the Council's current approach, which seeks a notional on-site split of about 55% affordable rented and 45% intermediate housing. Completions evidence shows that this proportion has broadly been achieved in the last few years, with intermediate housing often provided in the form of shared ownership. The transfer value of starter homes is higher than allowed for in the appraisals. However, there is no evidence to suggest that this typology is likely to be more than a small element of affordable housing supply in the district in the next few years. Furthermore, the higher transfer values of starter homes would have the effect of increasing the viability headroom. Overall I consider the affordable housing tenure and transfer values applied in the appraisal work to be reasonable and suitably conservative.

19. Residential build costs for schemes of less than 50 units are based on Building Cost Information Service (BCIS) median figures, rebased for Yorkshire and Humberside, with an uplift of 10% for external works. For schemes of 50 or more units the lower quartile BCIS build cost figures have been applied, with an uplift of 10% for external works. Due to commercial sensitivities the Council was unable to provide local evidence of schemes where volume housebuilders have benefited from discounts in build costs. However, having regard to Homes England's view on the issue, I am satisfied that the use of lower quartile BCIS costs for volume housebuilders is an accepted approach in viability work. Volume housebuilders do not typically develop small schemes, and in this context I consider that the threshold of 50 units is a reasonable judgement based on the Council's experience. The inclusion of an uplift of 10% for external works provides some flexibility to cater for schemes where above-average build costs are experienced.

20. The area typology assessments assume a notional £1000 per unit cost for S.106 agreements. This is based on evidence from previous applications adjusted to take account of the split between CIL and S.106 in the Regulation 123 list. As set out above, the Council has confirmed that they do not intend to alter the intended split in the near future, and in this regard further amendment of the S.106 figure is unnecessary.

21. The Council confirmed at the hearing that a notional S.106 costing of £1000 per unit is included in the generic abnormals allowance (£370,650 per ha) for the three strategic sites. These sites are anticipated to deliver a wide range of infrastructure and masterplanning work has progressed since submission of the charging schedule, and therefore further sensitivity testing was sought.

22. The Council's post-hearing work identifies a schedule of potential infrastructure and development costs for the Dewsbury Riverside and Bradley strategic sites totalling some £78 m and £42.8 m respectively. This includes elements which would realistically be delivered through S.106 obligations. Higher infrastructure costings per unit have therefore been incorporated in the updated appraisals in lieu of the abnormals allowance, with further sensitivity testing undertaken for Dewsbury Riverside based on the element likely to be delivered within the Plan period (some 2300 units) and on the non-inclusion of a potential River Calder Bridge. It is recognised that masterplan work is on-going. However, the higher costings for Dewsbury Riverside and Bradley are based on recent site-specific evidence and appear to be broadly reasonable estimates at this point in time.

23. In the case of the Chidswell strategic site, specific infrastructure and site development costs are not available and therefore generic S.106 costs of £2,500, £5,000 and £7,500 per unit have been included in addition to the abnormals allowance in the updated appraisals. I am satisfied that this represents a reasonable range of potential costings in lieu of more specific evidence at this stage.

24. The Council's residential viability work includes other cost allowances, including professional fees, contingency, marketing, sale agents and legal fees, finance and developer profit levels. The applied profit level of 20% of gross development value (GDV) for market housing and 6% of GDV for affordable housing is consistent with the range and advice in the PPG on Viability[1]. The other applied assumptions appear to be reasonable and broadly conform with industry norms. No substantive evidence has been submitted to justify alternative figures.

25. The Benchmark Land Values (BLV) in the Viability Update and post-hearing work are based on Existing Use Value plus a premium to incentivise the landowner to release land for development (EUV+), in line with national guidance. BLVs of £370,650 to £698,936 per ha for greenfield land and between £500,000 and £1,093,000 for brownfield land are identified. These rates are informed by market evidence of premiums achieved in recent transactions of Council-owned land and industrial land elsewhere in Kirklees. The greenfield rate is also consistent with the premium of 10-20 times above EUV indicated in the Homes and Communities Agency appraisal model. In the area-wide typology work the Council has applied the higher brownfield BLV rates. This represents a reasonably cautious approach which allows the tolerance for CIL to be assessed. A greenfield baseline BLV figure of £370,650 per ha has been applied in the strategic site modelling, reflecting the potential extent of abnormal costs on these sites.

[1] Paragraph 10-18-20190509.

Retirement living accommodation evidence

26. Retirement living accommodation is defined in the charging schedule as residential units falling with C3 Use Class which are sold with an age restriction, typically over 50s/55s, with design features and support services available to enable self-care and independent living.

27. The Council's retirement living accommodation assessment is based on a 40 unit scheme involving 70% net to gross area to allow for communal areas, tested across the four value areas in the district. Sales revenues are benchmarked against a 3-bed house, whilst BCIS median costs for apartments rebased for Yorkshire are applied, with a 10% uplift for external works. I am satisfied that the typology tested is broadly representative of the form of scheme that may come forward in Kirklees, and that the applied estimated sales revenues and build costs are reasonable.

28. The construction and sales programme is set over 2 years, with a lead-in period of 3 months. This period is longer than for general market housing, recognising that specialist housing has a more limited market. Other assumptions are the same as for general residential development.

Commercial evidence

29. The Viability Update includes testing of a range of retail schemes, including supermarkets, retail warehousing, superstores and convenience stores, in town centre, local centre, village and out of centre locations. A specific appraisal of retail warehousing in the Birstall retail park was also undertaken. Office schemes are tested in town centre and out of centre locations, whilst various scales of warehousing scheme are assessed. Previous viability work also included assessments of hotels, restaurants, cinemas, care homes and student accommodation. I am satisfied that an appropriate range of typologies has been appraised reflecting the majority of commercial development likely to come forward in the district.

30. The assumptions used in the commercial modelling appear to be reasonable and have not been significantly questioned by representors.

Conclusion

31. Overall, I conclude that the revised DCS is supported by detailed evidence of community infrastructure needs, and the economic viability evidence which has been used to inform the Charging Schedule is robust, proportionate and consistent with the PPG on viability.

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

Residential development rates

Zones 1 and 2

32. The Councils' residential typology testing shows clear viability differences between schemes on a geographical basis across the charging areas. In the case of zones 1 and 2 the appraisals show sizable buffers for the majority of

schemes, ranging from 24% to 73% above the respective CIL charges of £80 and £20 psm. This would allow for potential variations in the costs and value of particular developments, or changes in the market over time.

33. In zone 2 the appraisal evidence shows insufficient headroom for the proposed CIL charge of £20 psm for schemes of 280 and 350 units, and a lack of viability for schemes of 25 units. However, the appraisal work assumes a single payment for land at the start of the cashflow, and in the case of larger schemes there is likely to be scope for agreed payment phasing that could improve viability. Accordingly, phased payments may help to ensure there is no significant effect on supply and scope for the proposed CIL charge from this scale of scheme. For schemes of 25 units, I am satisfied that this size of development is only likely to provide a modest source of future supply in zone 2.

34. I therefore consider that the proposed £80/£20 psm residential charges in zones 1 and 2 are justified and would not significantly affect housing supply. This conclusion does not relate to the three strategic sites of Dewsbury Riverside, Bradley and Chidswell which are discussed separately below.

<u>Zone 3</u>

35. The Viability Update shows a lack of viability and insufficient headroom to support a CIL charge in zone 3 for all of the tested typologies. There is evidence that some recent development has taken place in zone 3, and that a small number of schemes have made infrastructure contributions. However, the Council indicated at the hearing that viability can sometimes be marginal in this area. Although the proposed CIL charge of £5 psm represents a modest amount, there is a risk it could make some marginal schemes unviable, and worsen the viability of all schemes. This could potentially affect the delivery of development over a large part of the district.

36. The PPG on CIL advises that rates should be reasonable given the evidence and '*it would be appropriate to ensure that a 'buffer' or margin is included so the levy rate is able to support development when economic circumstances adjust*.' The proposed rate of £5 psm does not allow a buffer and is not consistent with this guidance.

37. I therefore conclude that the proposed rate of £5 psm in zone 3 should be reduced to £0 psm through modification **M3**. A further modification to the boundary of the zone is proposed in connection with the Dewsbury Riverside and Bradley sites, as set out in the following section.

<u>Strategic sites</u>

38. The charging rates for the three strategic sites are based on the general zonal areas, rather than separate site-specific rates.

39. Dewsbury Riverside falls across charging zones 2 and 3 and therefore rates of £20 and £5 psm are proposed in different parts of the site. However, the Council's post-hearing work identifies that, taking account of infrastructure and development costs, the scheme would be unable to support a CIL charge. It is anticipated that much of the infrastructure to support development and

provide mitigation will be provided on-site and through S.106 planning obligations. The proposed charging rates for Dewsbury Riverside are therefore not justified by the updated site-specific evidence. The geographical boundaries of charging zones 2 and 3 appear to cut through different phases of the scheme and potential estates, which could also have practical implications for the calculation of a CIL charge. Further, although the rates are modest, when applied to 4,000 dwellings they would amount to a significant total monetary figure. I therefore recommend that the zonal boundaries are amended to include the whole of Dewsbury Riverside within zone 3 **(M4)**. Accordingly, taking account of modification **M3** to the zone 3 rate, the Riverside site would be subject to a zero CIL charge.

40. The Bradley strategic site falls mainly within zone 3 (£5 psm) with a small part in zone 2 (£20 psm). The Council's post-hearing work takes account of site-specific infrastructure and development costs, and identifies a modest amount of headroom for CIL amounting to some £6.99 psm. The evidence indicates that a charge of £5 psm would be deliverable across the site, and would provide a modest buffer of some 29%. This would allow for some variation in sales values, land values and development costs, or changes in market conditions. Accordingly, I recommend that the site is removed from zones 2 and 3 and included in a new site-specific zone with a charging rate of £5 psm **(M5)**.

41. The Chidswell strategic site lies wholly within zone 2 and development would therefore be subject to a charge of £20 psm. The Council's updated viability work shows potential headroom of between £35 and £95 psm, based on sensitivity testing for different rates of S.106 requirements. The evidence therefore supports the proposed charging rate of £20 psm and the inclusion of Chidswell within zone 2.

<u>Retirement living accommodation</u>

42. The Council's retirement living accommodation appraisal shows negative viability and inability to support a CIL charge in 3 of the 4 value areas across the district. In value area 1 there is limited headroom for CIL of £12 psm. However, the specialist nature of this form of accommodation means that there are particular requirements and potential for variation relating to sales rates, build costs and gross to net areas, and therefore a number of uncertainties. As such I consider there is a strong case for allowing a significant buffer above the estimated residual value. On this basis the small headroom shown for value area 1 is insufficient to support a CIL charge.

43. I therefore conclude that the exclusion of retirement living accommodation from the residential charge, as set out in the revised DCS, is justified. The definition of retirement living accommodation in the schedule is clear and captures the range of accommodation that may typically be provided within Use Class C3.

All other uses

44. The revised DCS sets a zero rate for 'all other uses'. This approach is supported by viability work which shows a lack of headroom for a CIL charge from a range of commercial development, including office development,

industrial warehousing, hotels, cinemas, restaurants and care homes.

45. The application of a zero rate to retail development is also supported by evidence in the Viability Update which shows negative or marginal viability for most typologies of retail development. The appraisal work indicates that retail warehousing in an out of centre location in Birstall could support a CIL charge. However, there is evidence that lower rental values have been secured in retail warehousing schemes in Birstall that trade in bulky goods compared to 'high street' goods. Furthermore, the exact boundary of the Birstall retail park area is not clearly established or defined in the Local Plan. In this context I consider that a differential rate based on use or area would be hard to justify. Accordingly, I conclude that a zero CIL rate for all retail development is justified and in line with guidance in the PPG on CIL which advises against undue complexity and having a disproportionate impact on a particular sector.

46. The appraisal of student accommodation in the Viability Addendum shows some headroom for a CIL charge. However, the Addendum highlights that there is a considerable degree of uncertainty regarding site abnormals and land costs linked to a town centre location, and that abnormal costs have not been allowed for in the appraisal. The sensitivity testing for different yields also highlights the sensitive nature of this form of development to changes in key variables. Taking this into account I consider that the proposed zero CIL charge relating to this form of development is appropriate and proportionate.

47. The revised DCS has a separate zero CIL charge for retail warehousing. This duplicates the zero charge for 'all other uses'. I therefore recommend it is deleted through modification **M6**.

Other matters

48. The Council's approach to exceptional circumstances relief, phased payments and instalments are matters which are predominantly outside the remit of this examination. However, I note that a draft instalment policy has been included in the revised DCS which allows payment in stages and would therefore be likely to assist cashflow and viability. This would particularly be the case for larger residential schemes.

49. The Regulation 123/infrastructure list provides evidence regarding the infrastructure funding gap and the split between CIL and S.106, but is not before me for examination. There is no reason to suggest that the introduction of CIL would result in double charging for infrastructure.

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

50. The Council has used appropriate and available evidence to inform the assumptions about development values and likely costs. In some cases the proposed rates in the revised DCS are not consistent with the viability evidence or do not leave a sufficient viability margin. However, this can be remedied by making the modifications recommended in this report, as listed in Appendix A. The evidence suggests that if the modified charges are applied residential development will remain viable and the overall development of the area will not be put at risk.

Conclusion

51. In setting the CIL charging rates the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in Kirklees. They have reviewed the evidence where necessary to ensure that there will be no serious risk to the viability of development. Subject to the modifications which I am recommending, I conclude that the revised DCS sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on economic viability of development across the district.

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 Kirklees Local Plan and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

52. I conclude that subject to the modifications set out in Appendix A the Kirklees Community Infrastructure Levy Draft Charging Schedule (the revised DCS) 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.

Katie Child

Examiner

Appendix A

Modifications specified by the examiner so that the Charging Schedule may be approved

These modifications apply to the Draft Charging Schedule as amended by the Statement of Modifications (May 2019) (revised DCS) (CILSD/3)

M1 Insert OS grid lines and reference numbers in the charging rate map, and provide a clearer OS base which allows settlements to be identified.

M2 Amend the text to refer to the CIL Regulations 2019 and associated changes in infrastructure planning, as specified in Appendix A in the Council's Hearing Statement (EH1). This includes the changes listed under AM1- AM6 and AM11.

M3 Reduce the charging rate in zone 3 from £5 psm to £0 psm.

M4 Amend the residential zonal boundaries to include the whole of Dewsbury Riverside strategic site in zone 3, and therefore subject to a zero CIL charge.

M5 Remove the Bradley strategic site from zones 2 and 3 and create a new site-specific residential charging zone with a charging rate of £5 psm.

M6 Remove the rate of £0 psm for retail warehousing (A1) from the schedule to avoid duplication with the charging rate of £0 psm for 'all other uses'.