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## Report to Sevenoaks District Council

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Examiner appointed by the Council

Date: 13 November 2013

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

### REPORT ON THE EXAMINATION OF THE DRAFT SEVENOAKS DISTRICT COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 22 July 2013

Examination hearing held on 8 October 2013

File Ref: PINS/G2245/429/7

## Non Technical Summary

This report concludes that the Sevenoaks District Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the District. 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: the map within the Schedule should be amended so as to identify the areas as 'Area A' and 'Area B' where the two different rates for residential development will be charged

The specified modification recommended in this report is based on a matter 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 Sevenoaks District Council Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance (Charge Setting and Charging Schedule Procedures – DCLG – March 2010).
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 a hearing session was held on 8 October 2013, is the submitted schedule of 22 July 2013, which is the same as the document published for public consultation on 21 March 2013.
3. The Council propose a matrix approach including differing CIL rates for housing, supermarkets and superstores, and retail warehousing, with the housing rate divided into two zones, Area A and Area B, based on viability alone and defined on an OS map base as required by the CIL Regulations.

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

#### *Infrastructure planning evidence*

4. The Sevenoaks District Council Core Strategy (CS) was adopted in February 2011. It sets out the main elements of growth that will need to be supported by further infrastructure. In particular it provides for the development of 3,300

new dwellings to be built in Sevenoaks District over the period 2006-2026. Appendix 4 of the adopted Core Strategy sets out the Infrastructure Delivery Plan which was prepared in 2010 based on information from infrastructure providers. This has been used by the Council to develop an initial indicative list of infrastructure to support development that could be funded through CIL.

5. The initial indicative list referred to above sets out scheme types, the lead body, the estimated cost, committed funding and the funding gap. The committed funding takes account of, for instance, Council Tax or Grant increase as a result of development, and existing resources and revenue from redevelopment of other sites. Once committed and anticipated funding has been taken into account, amounting to some £4,701,000, the list indicates that there is a need for approximately an additional £18,000,000 to support the infrastructure required as a result of development. Thus there is a significant gap for the CIL to help fill.
6. The Council estimates that at the levels of CIL proposed, approximately £5,000,000 will be secured to fund the necessary infrastructure. This estimate includes the 'meaningful proportion' of CIL which is to be paid to town and parish councils. 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*

7. The Council commissioned a CIL Viability Assessment from consultants Dixon Searle Partnership, delivered in June 2012. A "Brief Addendum" to the Viability Assessment was produced in December 2012 to further inform and support the Council's approach, and take stock following the first formal consultation stage, moving to the Draft Charging Schedule. The assessments used the calculation of residual land value for a potential development by the usual methodology of subtracting the costs of achieving that development from the revenue generated by the completed scheme – the gross development value. Reasonable standard assumptions were used for a range of factors such as build costs, fees, finance, profit levels, etc. The process sought to reflect the local market through research on local values, costs and types of provision as well as the locally relevant planning policies of the Core Strategy.

#### *Conclusion on the evidence*

8. The draft Charging Schedule is supported by detailed evidence of community infrastructure needs, including the Council's draft Regulation 123 list. The economic viability evidence has been prepared by experienced consultants using an approach which is generally standard practice for viability assessments. The assessment involved well researched inputs for a range of factors including local values and policies. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.

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

### *CIL rates for residential development*

9. The Viability Assessment considered houses and mixed developments, flats and sheltered housing (C3 use). No viability evidence has been put forward in representations which suggest that the inputs to the assessment are unrealistic or that different values should be used. It has been suggested that the level of affordable housing provision which has been achieved is evidence that a number of residential schemes in the District are currently at the margins of viability. However, Core Strategy policy SP3 allows for lower levels of provision or contribution where demonstrated by viability evidence for specific schemes, and the Viability Assessment puts the full policy SP3 requirement into the calculation.
10. Furthermore, the Council's recent record of securing affordable housing is set out in Appendix B of the 'Summary of Evidence and Proposals' document (CD112), which shows that out of 83 planning permissions granted between 22 February 2011 and 31 March 2013, to which SP3 was considered to apply, affordable housing or a financial contribution, was secured on 78 schemes, and only on 5 schemes was the requirement waived on viability grounds. I am not satisfied that the evidence shows that residential developments are generally at the margins of viability in the District. Also Appendix B of document CD112 identifies that all but one of the sites on which a reduced requirement was secured involved redevelopment or refurbishment of existing buildings: Regulation 40 only allows CIL to be charged on net increases in ('in use') floorspace, so that CIL would have a reduced or nil impact on these developments. In any event the test is that the rate or rates should not threaten the delivery of the relevant plan as a whole
11. The 'margins of viability' argument relates particularly to the higher rate areas and that these boundaries have been set arbitrarily. I do not consider that there is any evidence for this. In my opinion the use of the ward boundaries provides clarity for the demarcation and are appropriate bearing in mind that information on average house prices per square metre by ward from 'Hometrack' was used in the Assessment. I see no reason to think that the proposed CIL rates will not support and incentivise new residential development and there is no sound basis for applying the lower charge across the whole of the district. With regard to the argument that land which has already been acquired for development by the housebuilding industry should have a differential rate, there is no provision within the CIL Regulations for this. The Regulations only allow for differential rates to be set for "different zones in which development would be situated" and "by reference to different intended use of development".
12. I see no basis for differentiating rural housing built for market rent (as opposed to being built for affordable rent). Turning to housing for essential rural workers, it is clear that there is not a need for such housing upon which the delivery of the Council's Core Strategy depends. Nevertheless I can see that this is not the only consideration. However, as the Council points out, the CIL Regulations 2010, as amended, identify the types of 'social housing' that the government considers should be offered a 100% exemption from the levy where applications are duly made. Regulation 49 provides that social housing

includes 'assured agricultural occupancies', where the landlord is appropriately registered, and that this provides for rural worker housing to be delivered without a requirement for CIL payments.

13. A case is put that retirement housing, such as that provided by McCarthy and Stone Retirement Lifestyles Ltd and Churchill Retirement Living Ltd, has particular viability characteristics which mean that they should not be subject to CIL charging requirements or that the charge should be lower. It is contended that the submitted Charging Schedule would impact disproportionately on this particular specialist form of development against the advice in paragraph 37 of the CIL Guidance published in April 2013 by the Department of Communities and Local Government. The adopted Core Strategy identifies that the demographic profile of the district is ageing, raising concerns over the future provision of adequate support and accommodation for the growing elderly population. Such housing is encouraged by Core Strategy policy SP5, indicating that it is a priority for the Council.
14. In response to McCarthy and Stones' representations on the Preliminary Draft Charging Schedule, the Council commissioned further viability appraisals to specifically consider the viability of retirement/sheltered housing (see Core Documents CD108 and CD109). The Viability Assessment Addendum finds sheltered housing development to be as viable as other forms of market housing. It is explained that this is because, whilst certain higher costs are accepted (as recognised in the addendum work), there are balancing factors weighing in favour of the viability of such schemes. These include the premium level of sales values, the reduced extent of external works and, in practice, the often more flexible view in relation to on-site affordable housing requirements.
15. Furthermore, paragraphs 2.21 and 2.22 of the addendum show that the Residual Land Value per hectare produced for typographical sheltered housing at value point 6 (selected on the basis of a recent development in the District) exceeds the Residual Land Value per hectare for a 'standard' flatted development at the same value point. Other arguments, which I need not detail here, suggest that the high percentage of non-saleable floorspace is balance by more intensive use of the site and premium sales values, while the assumption used for voids costs in the addendum assessment were at approximately double the figure suggested by the Representors, thus building flexibility into the appraisal.
16. The Representors agree that this viability evidence is broadly reflective of the specific development economics of a sheltered housing development, but point out that small differences in inputs compound and multiply throughout the appraisal to affect the residual land value to a greater degree, and does not produce a 'typical' result. More specifically, the point is made that sheltered housing schemes typically provide for an affordable housing contribution by way of a commuted sum: this leaves the whole of the on-site development without an affordable housing exemption and having CIL applied to 100% of the units.
17. At the hearing there was some discussion as to the precise wording which might be used in a charging schedule to differentiate this form of market housing from other C3 uses. None of these were entirely satisfactory, but in any event I found the viability assessments undertaken by the Dixon Searle

Partnership convincing: that generally the developments undertaken by the

Representors should remain viable. Set against this I did not find the Representors case convincing to the point where I would be justified in recommending additional complexity in the Schedule.

*CIL rates for Retail*

18. Supermarkets and superstores primarily selling convenience goods and retail warehousing are the only forms of retailing which have a charge proposed. Representations on behalf of Asda Stores Ltd assert that the Council's Charging Schedule does not support the aim of promoting economic development and employment opportunities; does not take account of planning costs and residual Section 106 and Section 278 payments; differentiation between different retail uses is not justified; and the Viability Assessments do not acknowledge the economics of conversion schemes.
19. Since the Council has commissioned extensive viability assessments from a specialised consultancy, and that work has demonstrated that, at the CIL levels proposed, development will remain viable, I cannot accept the claim that the rates proposed will not support economic development growth. All development applications have planning costs, and I cannot see that any objection can be made to an individual charging schedule on this basis. As to Section 106 and Section 278 payments, these will arise out of site specific factors. I understand that allowance has been made in the viability assessment for significant development costs, and any abnormal site related costs should be taken into account in determining site value.
20. There can be no objection to differentiation between different retail uses in principle: the Guidance shows that there is no such restriction. I find the Council's explanation convincing that the viability assessment indicates doubt over whether other forms of retail development would be viable, other than supermarkets and superstores, primarily selling convenience goods, and retail warehousing. This is especially so since town centre comparison goods stores, which are important components of Core Strategy policies, are shown to be not viable currently. I consider that the judgement made by the Council is supported by the evidence and is justified. The thresholds applied in the Schedule have been established on a sound rational basis. As to the economics of conversion schemes, the viability assessment does not take account of any deductions in CIL resulting from replacement or redevelopment of existing buildings, and this could in fact result in a reduction of CIL in individual cases.
21. In addition to the above matters, there are points raised which I can deal with shortly. There is no requirement for a direct link between the charges for a particular development and the infrastructure to support it. The Council's supporting evidence includes the Infrastructure Delivery Plan and the draft Regulation 123 List. The funding gap and the identification of funding sources ensure that Section 106 funds will not have paid already for infrastructure to be covered by CIL. Exceptional circumstances relief can only be made in exceptional circumstances: by nature it cannot be a provision within the Charging Schedule. In any event, exceptional circumstances relief is not a

matter for my examination, which is also true of an instalment policy. It is a matter for the Council to decide when it puts forward a draft Charging Schedule and not a matter for me.

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

22. The Council's decision to adopt a matrix approach is based on reasonable assumptions about development values and likely costs. The evidence suggests that residential and the forms of retail development covered in the Charging Schedule will remain viable across most of the area if the charge is applied. The assumptions on which the Viability Assessment is based and the conclusions drawn have taken into account identified good practice so that charges are not set near the limits of viability. A nil charge is proposed for some uses, including offices, other warehousing, hotels, residential care homes (C2 use) and agricultural buildings, as the Viability Assessment concludes that such development would be at significant risk of not being viable across the District if a CIL charge were levied.

**Other Matters**

23. There is one matter which is of a technical/presentational nature upon which I have to make a recommendation. It concerns the map within the Charging Schedule. For residential development the Schedule sets two CIL rates, one for Area A at £125 per m<sup>2</sup> and one for Area B at £75 per m<sup>2</sup>. However, on the map delineating these two areas the Key has no reference to Area A and Area B, simply relying on the two different rates to identify the areas. Whilst I do not anticipate that this would confuse anyone, for the sake of absolute clarity I consider that the Key should be modified to include the names of the two areas alongside the rates. I mentioned this at the hearing and the Council officers agreed that this was a change which should be made.
24. All written representations have been considered: where the matters raised are pertinent to the examination, they have been dealt with above. A number relate to matters that are not within the scope of this examination: for example, seeking a higher rate of CIL, mention of Section 106 agreements within the CIL schedule, and the content of the infrastructure plan.

**Overall Conclusion**

25. 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 Sevenoaks District. The Council has sought 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 district.

<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 adopted Sevenoaks District Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

26. I conclude that, subject to the modification set out in Appendix A, the Sevenoaks District Council 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 2011, 2012 and 2013). 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**

**Modification that the Examiner specifies so that the Charging Schedule may be approved.**

<b>Modification Number</b>	<b>Modification</b>
<b>EM1</b>	<b>Modify the Key on the Map within the Schedule to include the names of the two areas with separate rates for residential development as Area A at £125 per m<sup>2</sup> and Area B at £75 per m<sup>2</sup></b>