



The Planning
Inspectorate

Report to Waveney District Council

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an Examiner appointed by the Council

Date: 11 April 2013

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

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

Charging Schedule submitted for examination on 14 December 2012

File Ref: PINS/T3535/429/7

Non Technical Summary

This report concludes that the Waveney District Council Community Infrastructure Levy 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 threaten the delivery of the relevant Plan for the area as a whole.

I have recommended that the schedule should be approved in its published form, without changes.

Introduction

1. This report contains my assessment of the Waveney 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 (Community Infrastructure Levy Guidance - DCLG – December 2012).
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, which took place through written representations, is the submitted schedule of December 2012. Following public consultation on the draft Schedule published in October 2012, the Council made a number of modifications on which further consultation took place. These modifications are incorporated in the submitted Schedule but consultation on them had not been concluded at the time of submission. However, I have taken into account the further representations received on the modifications.
3. The new CIL Guidance, December 2012, applies to the submitted Schedule. As such, respondents and the Council were consulted on the implications of the Guidance. A further consultation then took place on the Council's response to this, which included a draft list of projects or types of infrastructure that will be, or may be, wholly or partly funded by CIL in accordance with Regulation 123 of the CIL Regulations 2010 (as amended). I have taken account of the responses received.
4. The Council proposes variable residential rates applying in different parts of the District. It also proposes rates for holiday lets and supermarkets, superstores and retail warehouses that would apply uniformly across the area. All other types of development would have a nil rate. The Council is not the charging authority for the Broads Authority area part of the District and so the proposed rates would not apply there.

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

Infrastructure planning evidence

5. The Waveney Core Strategy (*The Approach to Future Development in Waveney to 2021*) (CS) was adopted in January 2009. This sets out the main elements of growth that will need to be supported by further infrastructure in the District. More detail has subsequently been provided in the Waveney Development Management Policies and Site Specific Allocations Development Plan Documents (*Policies to Help Make Decisions on Planning Applications* and *Sites for Future Development*) (DMP and SSA, respectively), both adopted in January 2011, and the Lake Lothing and Outer Harbour Area Action Plan (AAP), adopted in January 2012. Together these documents comprise the relevant Plan for the area for the purposes of this examination.
6. The adopted plans provide for some 7,000 new dwellings over the plan period to 2025 (from 2001) and 5,000 additional jobs to 2021. More than 50% of housing and 60% of employment is anticipated to be on previously developed land. 70 to 80% of this additional development would be located in Lowestoft with a particular emphasis on the regeneration areas around Lake Lothing, where at least 1,000 jobs, 1,500 homes and new retail and leisure uses are proposed.
7. The Council's Infrastructure Study 2012-2025 (March 2012) identifies the infrastructure needed to support development. This comprises infrastructure for transport, education, open space and community and cultural facilities. The Study estimates that this would cost between about £56 million and £59 million. Other funding sources have been considered and that which is current and committed would amount to between about £29 million and £34 million (all figures rounded). Some of the infrastructure identified relates to existing deficiencies. Taking account only of that which is a consequence of the new development proposed, there would be a funding gap of between £11,612,877 and £14,839,027.
8. The Council's Background Document sets out the future split between funding achieved under s106 of the Act and that from CIL. The intention is that CIL will be the primary source of infrastructure funding with s106 planning obligations being used in limited circumstances for on-site and site specific infrastructure. The draft Regulation 123 list specifies the infrastructure that may be funded by CIL. The Council considers that s106 will be used only in the sites allocated in the AAP (where a zero residential CIL rate is proposed) and for on-site allotment provision on three sites allocated in the SSA.
9. The CIL Guidance stresses the importance of collaboration with County Councils in agreeing priorities for how the levy will be spent in two-tier areas. In this case, Suffolk County Council has identified some other circumstances where in its view on-site education or transport issues should continue to be addressed by s106 or other legislation. However, the District Council's approach in the draft Regulation 123 list is generally consistent with the Guidance in seeking to scale back s106 requirements. The Guidance only requires the charging authority to set out the known site specific matters where s106 contributions may continue to be sought. As long as the final

Regulation 123 list is based on the draft, there is some scope for considering the implications of any new information relating to site specific matters which may not have been available at the time the draft was prepared. The District Council has previously worked with the County Council and other authorities in producing a Section 106 Developer's Guide to Infrastructure Contributions in Suffolk and there is an organisational mechanism in place for developing appropriate protocols for spending CIL.

10. The Infrastructure Study has not referred to some other potential funding sources, such as the New Homes Bonus. However, no assessment has been made of the amount that could be raised, possible competing demands on these sources or the likelihood that they would be available for infrastructure investment. Based on the projected levels of development in the Plan, the Council estimates that the CIL charge rates proposed would raise £2.44 million over the period to 2025 and this calculation has not been challenged. This would still leave a considerable funding gap. In this context, there is insufficient evidence to suggest that other funding sources would be available to the extent that the gap would be materially reduced.
11. In the light of the information provided and the likely scale of the funding gap, the proposed charge would make only a modest contribution towards filling the gap. Nevertheless, the figures demonstrate the need to levy CIL.

Economic viability evidence

12. The Council commissioned a CIL Viability Study (VS), dated March 2012. This assessment by BNP Paribas Real Estate uses a residual valuation approach, with reasonable standard assumptions for a range of factors. For residential schemes a series of generic developments have been appraised, reflecting the range of sales values/capital values, different sizes and types of development and densities across the District. For commercial development a series of generic developments were appraised, reflecting a range of use classes at average rent levels on lettings of commercial space in actual local developments.
13. The residential development key variables that have been assessed include sales values, density, gross to net floor space, base construction costs, exceptional costs and developer's profit. Subject to the specific considerations relating to s106 contributions and affordable housing, considered below, the assumptions made in relation to these variables are appropriate and justified by the VS.
14. In response to the requirement in the new Guidance that charging authorities should provide information on the amounts raised in recent years through s106 agreements the Council has set out the funding agreed in the last 5 years. In the light of the Council's intentions reflected in the Regulation 123 list most of this would transfer to CIL. The development plan contains no specific targets relating to planning obligations other than affordable housing, which would remain with s106. Supplementary Planning Guidance on Open Space makes it clear that planning obligations for financial contributions will no longer be sought when CIL is introduced. The VS includes an allowance of £1,000 per dwelling for any residual s106 funding (excluding affordable housing). On the basis of the further analysis this is a reasonable assumption.

15. The Council's additional information also provides details of the amount of affordable housing agreed through s106 planning obligations since the DMP was adopted and the site size and percentage requirements of Policy DM18 were introduced. These show that in all but one case, where there were special circumstances, the amount accords with the development plan. The VS has appropriately tested the provision of affordable housing in accordance with the requirements indicated in the DMP.
16. For commercial development the variables that have been assessed include commercial rents and yields as well as factors in common with residential development. In the light of concerns raised during consultation on the draft Schedule, revisions were made to some of the assumptions in the VS relating to retail development, including those for build costs, an allowance for the achievement of the BREEAM 'Very Good' standard and interest costs. The resulting revised appraisals have also considered additional scenarios to reflect concerns over the mix and size of retail units considered in the VS and have had regard to benchmark commercial land values rather than assumed existing use values as in the VS. The outcomes do not alter the conclusions reached by the original viability assessment.
17. In terms of assumptions about developer's profit it should not be concluded that all developments carry a significant risk. That assumed for retail development in the VS is reasonable and normal for the purposes of a general economic viability appraisal. Equally, the professional fees used in the VS are based on actual retail schemes and are a justifiable assumption.
18. There is concern that the retail appraisals have not made appropriate allowance for residual s106 and s278 costs. There may also be additional costs associated with developing brownfield sites. However, for the types of retail development for which the Schedule indicates CIL should apply, and having regard to the variety of site circumstances that might occur, it is difficult to predict in general terms the likely site specific requirements that might be addressed other than through the levy. The CIL rate for these developments is set significantly below the maximum viable rate which should provide considerable scope for any abnormal on-site costs to be tackled without harm to viability.

Conclusion

19. The draft Charging Schedule is supported by detailed evidence of community infrastructure needs and a funding gap has been identified. The VS contains adequate information to support the Schedule. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.

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

CIL rates for residential development

20. The District is divided into 4 Zones (defined on maps in the Schedule) for the purposes of the rates for residential development (C3 and C4 Use Classes) where the following rates would be set:

Residential Charging Zone	CIL Rate per square metre
Zone 1 – Lake Lothing Flood Zone and the Sustainable Urban Neighbourhood and Kirkley Waterfront Site	£0
Zone 2 – Inner Lowestoft	£45
Zone 3 - Outer Lowestoft, Beccles, Bungay, Halesworth and surrounding rural areas	£60
Zone 4 – Reydon and Southwold and surrounding rural areas	£150

21. The Guidance indicates that charging authorities may want to set differential rates as a way of dealing with different levels of economic viability within the same charging area. They need to be justified by reference to the economic viability of development.
22. Zone 1 relates to the key strategic sites in the AAP where there are abnormal costs associated with flood mitigation and site preparation (demolition and remediation). The VS has appraised 3 of the sites and shown that the viability of development is challenging as a result of these considerations to the extent that a zero CIL rate is justified.
23. In the rest of the District there is considerable variation in sales values. The VS shows values of £1,615 per square metre (psm) in inner Lowestoft compared with £4,660 psm in Southwold. Such a wide difference provides justification for not setting a single rate across the whole area. The use of 3 zones outside the zero rated area is supported by the analysis in the VS. It should not result in more development taking place in one area rather than another as the pattern of building should accord with the development plan and the VS has in any event shown that the viability of development overall should not be at risk as a result of the differential approach.
24. A case has been put forward for Beccles and outer Lowestoft and surrounding areas to be included in Zone 2 rather than in Zone 3. However, the VS shows sales values to be higher in Beccles and suburban Lowestoft than inner Lowestoft and that a charge of up to £80 psm would be viable in the majority of scenarios. Allowing for an appropriate margin, the rate for these areas is supported by the evidence.
25. Regulation 14 recognises that the introduction of CIL may put some potential development sites at risk. However, it is for charging authorities to decide what CIL rate sets an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects (taken as a whole) for the economic viability of development across their area. Overall, the evidence on the economic viability of development supports differential residential rates in different parts of the District and the definition of the zones for this purpose.

CIL rate for supermarkets, superstores and retail warehouses

26. The Schedule sets a single rate for supermarkets, superstores and retail warehouses of £130 psm. Other retail development would be zero rated.
27. The Guidance allows charging authorities to articulate differential rates by reference to different intended uses of development provided that the different rates can be justified by a comparative assessment of the economic viability of those categories of development. The definition of "use" for this purpose is not tied to the classes of development in the Town and Country Planning Act (Use Classes) Order 1987, although that Order does provide a useful reference point. In principle, therefore setting rates for different types of retail development would accord with the Guidance and this approach has been accepted by Examiners in considering other Charging Schedules. However, a clear delineation must be made between the different intended retail uses and these must have demonstrably different viability characteristics.
28. The VS concludes that residual values generated by retail developments vary significantly between local centre and high street retail (defined as developments with a gross floor area of less than 280 sqm), which are just marginally viable, and retail warehousing and supermarkets (defined as having a gross floor area of 280 sqm or more) where a maximum rate of £200 psm would be possible. In terms of the latter, the Council's rate of £130 psm allows for a significant cushion and therefore some flexibility in terms of site specific costs.
29. The local centre and high street developments appraised in the VS relate to non-food outlets. In the light of consultee comments the Council has undertaken appraisals of further scenarios which confirm the original VS conclusions but show in addition that small food stores may be able to support the charge. The Schedule sets out definitions of supermarkets/superstores and retail warehouses which are not based on size but on function. It is most unlikely that a retail warehouse would be under 280 sqm. Developments under 100 sqm are exempt from CIL under the Regulations in any event. The Council indicates that only 2 small food stores have been built in the District since 2001 and one of these would have been exempt. There are no specific proposals for small supermarkets in the development plan. In this context, the delivery of the relevant Plan as a whole would not be threatened by the application of the rate to smaller supermarkets.
30. The definitions used are similar to those in other Charging Schedules that have been recommended for approval by Examiners. I consider that they provide sufficient clarity for the purposes of CIL.
31. One of the strategic sites identified in the AAP (SSP2 – Peto Square and South Quay) includes provision for retail and leisure development comprising A1, A2, A3, A4 and A5 uses along with other leisure facilities, hotel and tourism development in the area between Denmark Road and Town Quay. Any retail development proposed in Use Classes A2 to A5 and the other uses proposed would not be subject to a charge. Retail development that would be subject to CIL would be part of a wider mix of uses for the site as a whole. The VS has concluded that there would need to be a significant increase in commercial capital values before the strategic site would become viable given the

abnormal costs in this location. It would be unlikely therefore to proceed in the short term in any event. As such, the development is not currently at risk due to the retail charge. However, the Council should monitor closely the progress towards the development sought in the AAP and review the Charging Schedule in due course if appropriate.

32. Reference has been made to lower retail rates set by other authorities but that proposed here is supported by the viability evidence. It has been demonstrated that different types of retail development have different viability characteristics and the rates proposed have been justified by the evidence.

CIL rates for other uses

33. The Schedule sets a single rate of £40 psm for holiday lets, defined as permanent buildings for the purposes of tourist accommodation, restricted from permanent residential use by condition. As such development is unlikely in Zones 1 and 2, the rate is based on the Charge for Zone 3 but, on the recommendation of the VS, this has been reduced by a buffer of about 30% to take into account special factors such as mortgage availability and void periods. There is no need for the Schedule to explain that holiday lets do not include visitor accommodation such as chalets and caravans sited in holiday villages as the definition included in the Schedule is sufficiently clear. Accommodation that is not normally considered as a building, such as mobile homes, would not be liable for CIL in any event. I conclude that the holiday lets rate has been justified.
34. In response to comments on the consultation draft Schedule, further appraisals were undertaken on care homes and nursing homes that fall under the C2 Use Class. The submitted Schedule was amended to include a zero rate for this type of residential development. The additional appraisals show that in most of the District such development would not be viable, justifying the zero rate.
35. All other development is zero rated. It is a clear conclusion of the VS that other development types are either unviable in current conditions or only marginally viable.

Conclusion

36. Overall, the charging rates proposed have been informed by and are consistent with the evidence.

Does the evidence demonstrate that the proposed charge rates would not threaten the delivery of the relevant Plan as a whole?

37. The VS recommends that rates should be set within a range between 20 and 30% below the maximum viable rates for each area and the draft Schedule has taken the mid point of this for residential development with, as previously discussed, a larger buffer for those retail developments where a charge would apply. The margins proposed are appropriate in ensuring that the Council has avoided setting charges up to the margin of viability across the vast majority of sites in the area.

38. The Council’s decision to set different rates for different uses and to vary the residential rate in different parts of the District 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. Only if development sales values are at the lowest end of the predicted spectrum would development in some parts of the District be at risk as a result of CIL. The charge rates would not threaten the delivery of the relevant Plan as a whole.

Other Matters and Conclusion

39. The Council’s policies on discretionary relief, payment by instalments and other administrative aspects are matters for the charging authority and there is no requirement that they should be set out at Examination.

40. 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 the District. The Council has tried to be realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a range of development remains viable across the authority area.

LEGAL REQUIREMENTS	
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 Local Plan and the Infrastructure Study and is supported by an adequate financial appraisal.

41. I conclude that the Waveney 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). I therefore recommend that the Charging Schedule be approved.

M J Moore

Examiner