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# Report to Gedling Borough Council

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an Examiner appointed by the Council

Date: 14 May 2015

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

## **REPORT ON THE EXAMINATION OF THE GEDLING BOROUGH COUNCIL REVISED DRAFT COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

Charging Schedule submitted for examination on 22 December 2014.

Examination hearing held on 3 March 2015

File Ref: PINS/N3020/429/4

## **Non Technical Summary**

This report concludes that the Gedling Borough Council Revised Draft Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the Borough. 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.

## **Introduction**

1. This report contains my assessment of the Gedling Borough Council Revised Draft 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 the Planning Practice Guidance (PPG).
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, on which a hearing was held on 3 March 2015, is the submitted schedule of December 2014. At the same time the Council published a statement of modifications, which was consulted on between 19 December 2014 and 23 January 2015. The examination is therefore of the December 2014 schedule as amended by the statement of modifications.
3. At the hearing I requested that the Council provide additional information as follows:
  - Update the calculation of retail CIL income;
  - Produce the viability appraisal for the north of Papplewick Lane strategic site;
  - Produce a plan showing the site boundary of the Gedling Colliery/Chase Farm strategic site.
4. These have been provided and were consulted on between 9 and 23 March 2015. One consultation response was received. The Council's own response to this was received on 26 March 2015. I have taken all consultation responses into account in writing this report.

5. The Council proposes to include differential charging rates for residential development, based on three geographical areas: zone 1 at £0 per square metre (sqm), zone 2 at £45 per sqm and zone 3 at £70 per sqm; and a Borough wide charge of £60 per sqm charge for retail developments. A zero rate would apply to all other uses.

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

*Infrastructure planning evidence*

6. The Greater Nottingham Broxtowe Borough, Gedling Borough, Nottingham City Aligned Core Strategies Part 1 (ACS) was adopted by Gedling Borough Council in September 2014. This sets out the main elements of growth, including the provision for a minimum of 7,250 new homes within the Borough between 2011 and 2028. This development will need to be supported by further infrastructure, including education, transport, open space / green infrastructure, community facilities and health. This is detailed within the Infrastructure Development Plan (IDP), which has been informed by appropriate consultations with service providers, such as Nottinghamshire County Council.
7. Central to the ACS approach of accommodating planned growth is the policy of urban concentration with regeneration, including the delivery of four strategic sites which alone would provide at least 2,730 new homes within the Borough. One of these sites, Teal Close has planning permission and land north of Papplewick Lane has a resolution to grant permission but the s106 agreement has not yet been signed.
8. The IDP broadly identifies the infrastructure that is likely to be required from the growth strategy set out within the ACS and was considered as part of the ACS Examination. The IDP includes an estimate for total infrastructure costs of about £88 million during the plan period up to 2028. The Council has determined the extent to which these projects could be delivered through funding sources other than CIL. The Council's assessment shows that there is a funding gap of at least £23.3 million (m) up to 2028.
9. The Council has produced a Regulation 123 list which sets out four specific projects that it intends to fund, partly or wholly, through CIL receipts. The Council confirmed during the hearing sessions that these four projects have been prioritised over other infrastructure within the IDP because of their importance in assisting delivery of two of the strategic sites – Gedling Colliery/Chase Farm and Top Wighay Farm. The list includes the Gedling Access Road, Gedling Colliery Country Park visitor centre, and secondary school contributions for the Gedling Colliery/Chase Farm and Top Wighay Farm strategic sites. The cost of the infrastructure identified in the list is around

£11.7m.

10. The Council originally estimated that its CIL receipts in the plan period would be around £7.2m. This omitted any receipts from the Top Wighay Farm site. However during the hearing the Council confirmed that the Top Wighay Farm site would now be eligible to pay CIL which would increase the receipts by around £4.3m. The total receipts from CIL would therefore increase from the estimated £7.2m as set out in the submitted document to around £11.5m.
11. The CIL revenue would therefore make a significant contribution towards filling the likely £23.3m funding gap. An element of the CIL revenue would be passed on to Parish Councils as is required under the CIL Regulations. The figures demonstrate the need to levy CIL.
12. It is not the purpose of the CIL examination to challenge the Regulation 123 list. Although a number of representations have sought revisions to the list to add other types of infrastructure projects, given the size of the overall funding gap for infrastructure alone, there are inevitably going to be some difficult decisions around prioritisation. In my view, the Council has clearly identified the key infrastructure required and the list provides transparency and clarity about the use of the CIL receipts. Furthermore, adding further infrastructure requirements would simply increase the already significant funding gap. Consequently, it would not lessen the justification for introducing a levy.

*Economic viability evidence and approach to rate setting*

13. The Council has produced viability evidence in the form of a CIL Viability Assessment (December 2014), supported by a Land and Value Appraisal Study update (April 2014), Construction Cost Study (March 2014) and Appraisal Results document (June 2014). For simplicity I refer to these documents collectively as the viability assessments (VA).
14. The assessments for both residential and commercial development are based on a residual valuation approach using industry standard assumptions for a range of factors including building costs and profit levels. In summary they seek to establish a residual value by subtracting all costs (except for land purchase) from the value of the completed development (the *gross development value*). The price at which a typical willing landowner would be prepared to sell the land (the *threshold* or *benchmark land value*) is then subtracted from the residual value to arrive at the *overage* or '*theoretical maximum charge*'. This is the sum from which the CIL charge can be taken provided that there is a sufficient viability buffer or margin.

15. The provision of a viability buffer is recommended by the PPG<sup>1</sup> so that the levy rate is not set at the margins of viability and is able to support development when economic circumstances adjust. This can also provide some degree of safeguard in the event that gross development values (GDV) have been over-estimated or costs under-estimated and to allow for variations in costs and values between sites.

#### Land values

16. The assumptions about land values have been based on various sources including the latest available versions of the Valuation Office Agency property market report 2011, Homes and Communities Agency building land report 2010 and other available information from locally active developers. The threshold land value, which represents the value at which a typical willing landowner is likely to release land for development, is based on the existing use value plus the premium (uplift in value) from obtaining planning permission.
17. This methodology accords with the recommended '*premium over current use values*' approach cited within the Viability Testing Local Plans June 2012 document (the Harman report).
18. Queries have also been raised regarding the proportion of gross to net developable area used in the VA for the Top Wighay Farm strategic site. The VA assumes that 25% of the gross site area would be utilised for major infrastructure including spine roads and strategic open space, leaving 75% of the total area developable. The Council considers that an average density of 28 homes per hectare would be achieved on the net developable site area of 75% and that this would include minor infrastructure such as residential roads. Although some representors have argued that the developable area should be 50-60%, I have no firm evidence to indicate that a significantly lower net developable area for this specific site should be applied. I therefore find that the VA assumptions appear reasonable for this site.

#### Sales values

19. The Council suggest that for residential development the sales values as set out within the VA are a fair assessment of market value of between £1,830 and £2,261 per square metre (sqm) based on a combination of asking and sales prices as at 2012. Although the evidence shows that there has been a marked increase in market activity and house prices in the East Midlands between 2012 and 2014, the approach taken in the VA helps indicate that sales values have not been over-estimated and that the Council has taken a

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<sup>1</sup> Planning Practice Guidance Paragraph 019 - Reference ID: 25-019-20140612

reasonably cautious approach when calculating development values. Commercial valuations are based on rental values and yields, using local evidence collated by Heb Chartered Surveyors.

#### Build costs

20. Build costs for both residential and commercial uses are based on a bespoke construction cost survey provided by Gleeds Cost Consultants. The survey uses information gathered from the company's nationwide database specifically relevant to the Borough with a base date of 2<sup>nd</sup> quarter 2012. The costs are based on new build on cleared sites and include an allowance for external works, drainage, preliminaries, overheads and profit. Demolition, abnormal costs and off site works are excluded from the VA, as the threshold land values assume sites are ready to develop, with no significant off site secondary infrastructure required. While there may be some sites where there are significant abnormal construction costs, these are unlikely to be typical and this would, in any case, be reflected in a lower threshold land value for a specific site. In addition such costs could, at least to some degree, be covered by the sum allowed for contingencies.
21. Although the Code for Sustainable Homes (CSH) has recently been withdrawn by the Government, I note the intention is to set energy performance requirements out in the Building Regulations from late 2016. Although the VA does not include the CSH Level 4 costs within its assessment, there is no firm evidence that this would significantly increase costs to the extent that viability would be threatened.

#### Section 106 costs

22. For non-strategic residential sites, an assumption of £1,500 per dwelling has been used to cover Section 106 costs in the VA. However this is lower than the historic average of £2,700 per dwelling received from relevant development between 2006 and 2013. It is therefore possible that contributions might, to some degree, be higher than assumed by the Council because the Regulation 123 list indicates that CIL would only be used to fund four projects for two strategic sites. However, the PPG states that tariff style contributions should not be sought from developments of 10 units or less. In addition, the viability margins are sufficient to accommodate some additional costs without prejudicing development coming forward.
23. For strategic sites the S106 requirements assumed in the VA are much larger and are more bespoke, in recognition of the additional infrastructure needed to develop larger sites. This approach is reasonable.
24. Overall the evidence shows that developments would still be viable even though CIL would exceed past levels of S106 contributions.

### Development scenarios

25. The VA provides appraisals for five types of residential development scenarios ranging from single plot development to a 100 unit housing scheme. Each type of development has then been tested for viability according to its location (CIL charging zone 1, 2 or 3) and existing land use (greenfield, brownfield and existing 'market comparable'). Although some representors query the boundaries of the charging zones, the density assumptions and the size of sites used in the VA, the sampling covers a reasonably representative selection of the types and sizes of planned development within the borough.
26. For commercial uses the VA has appraised 11 development types including office, retail, agriculture, hotel etc. There is no indication that rental values and yields might vary significantly across the borough and therefore there is no clear justification for carrying out finer grained sampling.
27. The 'market comparable' base land value development scenario was discussed at the hearing as in all the appraisals the resultant figure was negative. The Council's contention that this land value is based on pre-CIL actual land transactions and is therefore not directly comparable with the other two scenarios, is realistic. This scenario is not based on the threshold land value likely to be achieved when CIL is in place and therefore if used could over-estimate costs and underestimate viability.

### Affordable housing

28. The VA includes the testing of different proportions of affordable housing with zone 1 at 10%, zone 2 at 20% and zone 3 at 30%. In all cases the affordable housing has a tenure split of 30% intermediate housing and 70% rented housing (social and affordable). No land value has been attributed to the plots as the development costs exceed the sales values.
29. The Council's ACS contains a general policy on affordable housing where targets will be sought through negotiation for 10%, 20% or 30% depending on location. Further detail on this is proposed to be set out within the Council's part 2 Local Plan which is being progressed. In the interim the Council is reliant upon the Affordable Housing Supplementary Planning Document 2009 (SPD).
30. However, the VA contains a more up to date and detailed analysis of housing values across the Borough compared to the older SPD, which is a reasonable approach. Although this results in some differences in the geographical spread of the affordable housing percentages used in the VA compared to the SPD, the VA assumes that the affordable housing policy requirements will be met in full. However I also recognise that the ACS policy is flexible and allows the amount of affordable housing to be reduced to assist scheme viability.

31. I therefore find that ahead of the part 2 Local Plan being examined and adopted, the assumptions made by the Council are based on reasonable available evidence.

Developer Profit

32. The VA assumes a developer profit of 20% of GDV for market housing and 6% of GDV for affordable housing. This equates to around 17.5% of overall GDV. The assumptions made seem reasonable and are sufficient to ensure that development would not be prejudiced. The rate of return for commercial development also seems reasonable.

Other costs

33. The viability assessment and appraisal results include 8% of build costs for professional fees, 0.5% for legal fees, 5% contingencies, finance interest at 6% and arrangement fees of 1%. There is a slight variation between residential and commercial for statutory fees and sales/marketing costs. A number of representations criticise these figures as being too low. However the assumptions appear reasonable and I have no firm evidence to indicate that significantly higher percentages should be applied.
34. Whilst suggestions have been made that enabling costs of £7,000 per dwelling should be applied to the Gedling Colliery/Chase Farm and Top Wighay Farm strategic sites, I have no specific evidence before me setting out what this cost would be for. Although I agree that enabling costs should be applied to strategic sites, the VA assumes that sites are ready to be developed and therefore such costs have already been incorporated in to the land value. I find that this approach is reasonable.
35. In addition, other specific enabling infrastructure for these sites is to be provided through S106 contributions or CIL. The S106 contribution of £13,200 per dwelling for the Top Wighay Farm site is a significant sum and provides for health, primary education and transport enabling costs. Secondary education contributions are set out within the Regulation 123 list. The S106 contributions for Gedling Colliery/Chase Farm are lower at £6,783 per dwelling providing for health and primary education only, as the provision of secondary education contributions and the Gedling Access Road are on the Regulation 123 list. No evidence of other enabling costs for either site has been provided.

*Conclusion*

36. The draft Charging Schedule is supported by detailed evidence of community infrastructure needs and economic viability. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and



appropriate. I recognise that there are different opinions on individual cost elements and that small variations in some could cumulatively have an impact on viability. However there are no definitive right or wrong figures to be applied and the assumptions made by the Council in their VA, in the main reflect appropriate industry costs and are not set significantly low. The existence of contingency costs and significant viability buffers reinforces the Council's approach and provides reasonable margins for any additional costs.

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

*CIL rates for residential development*

37. The VA details that for non-strategic residential development sites within zone 1, little development is proposed to come forward on greenfield sites. As a typical mixed residential scenario on brownfield land would have a maximum charge of £14, a CIL charge could hinder the delivery of such development. The proposed nil rate is therefore consistent with the evidence and is justified.
38. For zone 2 a typical development would be mixed residential on greenfield land which would have a maximum charging rate of £137. Single dwellings on brownfield land would have a maximum charge of £95. The proposed £45 CIL rate would therefore provide a significant buffer for greenfield development and also provide a reasonable buffer for brownfield development in most cases and is therefore justified.
39. For zone 3 an average scenario of mixed residential development on both greenfield and brownfield land produces maximum charging rates of £194 and £115 respectively. The proposed £70 CIL charge rate would therefore provide a significant buffer for development within this zone.
40. The proposed charging zones therefore would provide sufficient margins to address representors concerns about the risks to development of potential increased or additional costs.
41. The VA for the Top Wighay Farm strategic site calculates that a viability margin of around £3.3m would be achieved taking into account all costs, including a CIL payment of around £4.3m. For the north of Papplewick Lane site the viability margin would be around £1.6m taking into account all costs and a CIL payment of around £1.3m. These are substantial buffers and a £70 charge is justified on this basis.

*Gedling Colliery/Chase Farm strategic site*

42. The Gedling Colliery/Chase Farm strategic site is intended to deliver approximately 1000 dwellings, 700 of which can only be developed following the construction of the Gedling Access Road (GAR). The cost of this road is significant and if met solely by the developer would adversely affect the

viability of the scheme. Consequently, the Council's intention is that the road would be funded by CIL receipts and other sources including the Homes and Communities Agency and the County Council. Accordingly, the road is listed as one of four items of infrastructure in the Regulation 123 list.

43. The cost of the road is estimated to be £32.4m. Assuming the £26.2m funding referred to in the Regulation 123 list is achieved (including the bids), the Council considers that the projected CIL receipts would provide for the £6.2m funding gap. Given that funding for the road would not fall on the developer through planning contributions, the VA shows that the site would have a viability margin of around £1.8m. This takes account of all costs and the CIL payment of around £1.9m. This is a significant viability buffer and a £45 charge is justified.
44. I appreciate that the highways authority has advised that this cost estimate for the road may be out of date and it has been put to me that this could affect the viability of the development because the developer may need to contribute to meeting any additional costs. However, there is no firm evidence before me to confirm that the cost of the road might rise and if so by how much and why? Consequently, there is no firm evidence to justify any different assumptions about cost. Therefore, this in itself would not justify varying the rate for Gedling Colliery/Chase Farm.
45. Furthermore, the PPG makes it clear that where a Regulation 123 list includes project specific infrastructure, as is the case here, the charging authority should not seek any planning obligations in relation to that infrastructure<sup>2</sup>. In addition Regulation 123 (2) states that a planning obligation may not constitute a reason for granting planning permission for the development, to the extent that the obligation provides for the funding or provision of relevant infrastructure (ie that to be wholly or partly funded by CIL).
46. It is clear therefore that such infrastructure should be funded either by CIL or by S106, but not by both. It has been suggested to me that the developer could make contributions towards the road by means other than S106. However, there is no clear evidence as to how this would be achieved or whether any such mechanism exists. Accordingly, even if the cost of the road were to increase, any additional costs would need to be met from CIL receipts or other sources of funding of the kind specified in the Regulation 123 list. On this basis, there is no clear justification for reducing the CIL rate for the Gedling Colliery/Chase Farm site.

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<sup>2</sup> Planning Practice Guidance paragraph 097 Reference ID: 25-097-20140612 and paragraph 100 Reference ID: 25-100-20140612

### *Commercial rates*

47. Concerns have been raised that charging a CIL rate for retail development could affect the delivery of retail policy within the Borough, particularly within the town centres. Arguments have been raised that such development may be marginally viable but I have no specific viability evidence before me that supports this. Indeed the VA identifies that in contrast to all other types of commercial development, food retail and general retail generate positive residual values within the Borough. Although the CIL income from retail development would be modest, this does not mean that this would be insignificant, as has been suggested by some representations. The proposed Borough wide £60 rate for retail development is therefore consistent with the evidence and is justified.
48. The VA shows that viability for all other development, including industrial, office, residential institution, hotel, community use and leisure, is negative without CIL being charged. A £0 CIL rate for all other development is therefore appropriate.

### *Other matters*

49. Representors have raised concerns about the instalments policy, relief in exceptional circumstances and the amount of CIL receipts that will be passed to parish councils. The first issue is a matter for the Council, and the others are controlled by the Regulations and nationally set levels so there is no need for me to comment further on these matters.

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

50. The Council's decision to set the rates in the charging schedule is based on reasonable assumptions about development values and likely costs. The evidence suggests that the overall development of the area, as set out in the development plan, will not be put at risk if the proposed charges are applied.
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 the Borough of Gedling. The Council has generally been realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, whilst ensuring that a range of development remains viable across Gedling Borough.

### **Conclusion**

52. Overall therefore an appropriate balance has been achieved between the desirability of funding the costs of new infrastructure and the potential effects on the economic viability of development across the charging area. However it

would be prudent for the Council to review the schedule within 3 years of adoption to ensure that the overall approaches taken remain valid, that development remains viable and that an appropriate balance is being struck.

<b>LEGAL REQUIREMENTS</b>	
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 adopted Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

53. I conclude that the Gedling Borough Council Draft Revised 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.

*Y Wright*

Examiner