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## Report to Taunton Deane Borough Council

by Paul Crysell BSc MSc MRTPI

an Examiner appointed by the Council

Date: 14 October 2013

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

### REPORT ON THE EXAMINATION OF THE DRAFT TAUNTON DEANE BOROUGH COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 16 May 2013

Examination hearings held on 24 July 2013

File Ref: PINS/D3315/429/6

## Non Technical Summary

This report concludes that the Taunton Deane 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.

Two modifications are needed for the schedule to meet the statutory requirements. These can be summarised as follows:

- Clarify the Council's intention to apply lower residential charging rates to broad locations for growth on the periphery of Taunton.
- Clarify the range of uses to which the rates for retail development apply.

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

## Introduction

1. This report contains my assessment of the Taunton Deane Borough 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 and Community Infrastructure Levy Guidance, DCLG – April 2013).
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 supporting the funding of necessary new infrastructure and the potential effects on the economic viability of development across the Borough. The basis for the examination, for which a hearing session was held on 24 July 2013, is the submitted schedule of 16 May 2013, which is effectively the same as the document published for public consultation between 1 February and 15 March 2013. I have also had regard to further written submissions made by Savills on behalf of the House Builder Consortium Group and the Council in response to suggested changes to the instalment policy and the outcome of an alternative assumptions impact assessment.
3. The Council proposes charges for residential and retail development. Residential development in Taunton town centre would attract a zero charge with the remainder of the town levied at £70 per square metre (sqm.). A zero rate applies at Wellington with the rest of the Borough subject to a residential charge of £125 sqm. Taunton and Wellington town centres would be zero rated for retail development but there would be a charge of £140 sqm.

elsewhere. No charges are proposed for other uses. The charging zones are shown on a plan which forms part of the charging schedule<sup>1</sup>.

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

*Infrastructure planning evidence*

4. The Taunton Deane Core Strategy (CS) was adopted in September 2012. It sets out strategic areas for growth in the period to 2028 and recognises that the provision of infrastructure is critical to the success of the strategy. Policies SS6 (Staplegrove) and SS7 (Comeytrowe/Trull) identify broad locations for growth on the edge of the Taunton urban area which have yet to be defined in detail. This will be done in the Council's Site Allocations and Development Management Policies Plan (SADMPP).
5. Infrastructure requirements are contained in an Infrastructure Delivery Plan (IDP) published in June 2011. The IDP provides details on what will be needed during the plan period although, as the Council acknowledges, the most reliable data relates to the first five years. It also accepts that policies, the role of key service providers and funding streams will change over time making it imperative that the IDP is regularly updated. As part of this process a review of the IDP is about to commence to ensure the SADMPP is supported by a comprehensive and up-to-date list of infrastructure requirements.
6. The Council has produced a draft Regulation 123 list of projects that it intends to fund through the CIL. This list will take effect on adoption of the CIL and will be subject to annual review. The estimated cost of all infrastructure needs across the Borough over the CS plan period is in the order of £200m. Having assessed all possible funding sources, including finance from the New Homes Bonus, a shortfall of about £180m would remain. The figures clearly justify the need to introduce the CIL.

*Economic viability evidence*

7. The Council commissioned a CIL Viability Appraisal<sup>2</sup> (VA) which followed a residual valuation approach, employing standard assumptions for a range of factors such as building costs (including the Code for Sustainable Homes), market values, profit levels and fees. Build costs were based on the industry standard RICS Building Cost Information Service (BCIS), indexed separately to Taunton Deane prices. This was supplemented by information held by the Council and from other sources and amended following discussions with local agents, housing providers and the feedback received from a development industry workshop.
8. The VA examined a variety of residential and non-residential schemes and used a notional 1ha. site for the purposes of testing the viability of CIL levels. For residential development rates ranging from £0 to £125 sqm. were assessed for all market areas with an additional rate of £150 tested 'In the Rest of the Borough'. A number of retail, office, industrial, leisure and other typologies were investigated to determine what CIL rates were feasible for

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<sup>1</sup> Declaration under Section 212 of the Planning Act 2008 by Taunton Deane Borough Council

<sup>2</sup> Community Infrastructure Levy Viability Appraisal – Three Dragons and Roger Tym and Partners, June 2012

non-residential uses.

9. There was criticism the case studies did not encompass sufficient development options although a range of greenfield and brownfield schemes of different sizes were identified as representative of residential developments at Taunton and Wellington. Single plots were included for both towns and the remainder of the Borough, a large scheme also being modelled for the rural areas. A number of retail, employment, leisure and other uses were identified as non-residential typologies with different size schemes chosen where appropriate.
10. It is unrealistic to cover every possible type and form of development and I am satisfied the types of cases identified are representative of schemes which are more likely to come forward. In helping to supplement other data these provide an appropriate basis to inform the charging schedule consistent with the requirements of the latest guidance<sup>3</sup>.

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

#### *CIL rates for residential development*

11. The Strategic Housing Land Availability Assessment and information derived from past planning permissions was used to define thirteen case types. The typologies assume provision will be made for affordable housing in accordance with the 25% rate established in the CS adopting a tenure split of 45% social rent, 40% intermediate (as discount market housing) and 15% affordable rent with rental levels drawn from established sources.
12. The CS provides for major urban extensions at Taunton and Wellington which are intended to meet housing needs during the plan period. A number of housebuilders, however, believe that assumptions made in relation to site coverage undermine the viability of schemes at Taunton which would be subject to CIL. Support for this view can be found in recent work on viability issues in local plans (The Harman Report<sup>4</sup>) which underlined that differences between net and gross developable areas can be significant for all but the smallest developments, finding that in some cases net developable areas can fall well below 50%.
13. The Council says its assumptions on development percentages were based on a detailed analysis of proposals for its large sites. On average, it considers these are capable of achieving 65% site coverage. Those challenging its figures, it suggests, fail to take relevant site specific factors into account. Thus land at Monkton Heathfield includes value generating employment and local centre uses which should be discounted while Longforth Farm provides for 62.3% coverage despite ecological issues requiring the habitats of protected species to be safeguarded. Similarly, calculations for site areas and densities have led to differences in estimates of coverage at Cades Farm, Wellington.
14. The Council's sensitivity testing, however, shows values remain above benchmark levels even at 50% coverage. While individual site characteristics may mean that this level cannot be achieved in every case, charging schedules

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<sup>3</sup> Community Infrastructure Levy Guidance, DCLG – April 2013

<sup>4</sup> Viability Testing Local Plans, Local Housing Delivery Group, June 2012 (The Harman Report)

are not intended to cover all eventualities. On the available evidence, I consider the Council has had due regard to the extent to which sites can be utilised and that its average assumption for 65% site coverage for large-scale strategic sites represents a realistic and achievable target.

15. The VA shows how density and market values influence residual values. A notional 1ha. site has been used to test different assumptions and illustrates the impact of different densities and how viability is sensitive to changes in values in each of the market areas. The latter is particularly important and the reason why the VA recommends CIL rates should be reviewed if a sustained change in values occurs.
16. The exceptional costs associated with many sites in Taunton town centre means the imposition of a CIL charge would inhibit regeneration. Schemes in the remainder of the Taunton urban area could support a charge of £100 at densities of 40 dwellings per hectare (dph). This would allow the mix of development required to meet housing needs although the Council accepts the levy would put schemes at the margin of viability. At £75 residual values would be exceeded at both 40 and 50 dph. Imposing a charge of £70 is intended to ensure the majority of schemes are viable.
17. In Wellington residual values are significantly lower and the introduction of a CIL charge would make development unviable justifying the Council's decision to set a nil rate. For the remainder of the Borough the VA shows residual values to be more robust with sensitivity testing suggesting a higher rate of CIL is sustainable.
18. Costs associated with the Code for Sustainable Homes and Lifetime Homes were taken into account although the former was based on Level 3 provision. The Council claims that DCLG figures<sup>5</sup> suggest residual values would not fall below the benchmark figures for greenfield developments (£300,000 - £350,000) in moving to Level 4 standards. An allowance of £1,000 per dwelling has been included in the VA to cover additional costs while the Council expects unit costs to reduce as construction methods and technologies improve.
19. Recent Government announcements on Building Regulations makes it unlikely that the transition to full Code 4 standards will be achieved during 2013 as envisaged in policy DM5 of the CS. Whilst the CS advocates action to improve the energy efficiency of new homes the supporting text acknowledges that this may be constrained by other factors, including viability. The Council also confirmed it was not seeking to exceed national standards for sustainable buildings. Consequently, there is no justification for reducing CIL rates in view of current circumstances. However, if standards were raised significantly in future years, it seems likely the Council would need to review its charging schedule.
20. The lack of reference to abnormal costs was a further source of concern. The Harman Report found that these are likely to vary significantly from site to site. The Taunton Deane charging schedule is necessarily based on generic analysis using average build costs which make no allowance for site specific

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<sup>5</sup> Cost of building to the Code for Sustainable Homes, Updated cost review, August 2011

variations. Even so, these costs are founded on BCIS standards which have been augmented by local information with a 15% uplift included to cover external costs including internal roads, pavements, lighting and local open space. In addition, no allowance has been made for the efficiency savings to be realised through the economies of scale which are possible on larger sites. Similarly, affordable housing rentals have been set below the maximum levels that could be achieved by a registered provider.

21. No provision for contingencies has been incorporated into the VA but an allowance of 5% (excluding the cost of external works) has been suggested by representatives of the development industry. The Harman Report says regard should be had to these and other costs based on average costs for each site type unless specific information is available. The Council has undertaken further work since the Report was published to reassure itself that allowances, such as opening-up costs, remain reasonable and appropriate, acknowledging for instance, that the costs involved in providing strategic infrastructure on greenfield sites is likely to increase with the increasing size of site. However, in the absence of any compelling evidence that larger sites would be likely to incur abnormal costs, I do not consider there is sufficient justification for introducing a contingency allowance.
22. A profit margin of 20% of the Gross Development Value (GDA) was adopted as an acceptable level of return for developers. This includes an allowance for internal overheads but was criticised for failing to recognise the risks involved on large sites and the time taken for more complex schemes to be completed. Timescales and risks will vary from site to site depending on various factors but there is no evidence to show that an assumed return of 20% is unreasonable or would curtail developer interest.
23. The intention is that land values should take account of policy requirements including S106 obligations. The Council's view is that the introduction of CIL and site specific S106 requirements will be broadly equivalent to the current S106 agreements the new system would replace. For instance, it calculates that CIL will represent 4% of property costs in Taunton and vary between 6 – 7 % in the Rest of the Borough depending on the dwelling type. These figures take no account of the reduced S106 contributions resulting from the introduction of CIL. The Council confirmed the former will include an allowance of £4,250 per dwelling for travel planning measures, immediate site access works and children's play provision.
24. Developers referred to the possibility of 'obligation creep' in future years as pressure on resources increase. It is clear from the Regulation 123 list, however, that CIL and S106 receipts will not be used for the same purposes.
25. It is evident that providers of retirement housing are increasingly concerned that councils do not take into account the higher build costs involved in constructing specialised housing. Additional costs arise, for example, because of the need to provide more communal space while it is common to experience slower rates of sales, adding to financial pressures. A limited supply of sites in suitable locations further reduces opportunities to compete with other operators thereby justifying, according to providers, lower rates of CIL.
26. Levying an uncompetitive rate could jeopardise the objective of the CS to

meet the housing needs of an ageing population. However, the Council says it has no evidence of lower prices being paid for land and is aware of at least one scheme which has achieved values significantly in excess of benchmark levels. This may not be a typical example of specialised accommodation and further information provided on behalf of a specialist developer has been reviewed by the Council<sup>6</sup>. This suggests schemes might require a modest uplift in sale values to ensure they are viable although the Council has reservations about some of the assumptions which have been made. It is confident that sale values of around 6% higher can be expected but there remains a danger that current schemes would be at the margin of viability, an outcome which the CIL guidance and the Harman Report says it is important to avoid.

27. Nevertheless, charging schedules should avoid undue complexity according to the CIL guidance and show that a proposed rate would not threaten delivery of the Plan as a whole. The annual output of the retirement sector in Taunton Deane is modest (25 – 30 units per annum) and there is little evidence to support differential charging on an area basis because of the variation in viability of different types of specialised housing and the difficulty of distinguishing between them in terms of CIL rates. Alternative solutions, such as linking CIL rates to the age of occupants or the saleable element of developments, would be difficult to implement through a charging schedule.
28. Furthermore, the impact of the CIL charge is largely restricted to the Taunton urban area outside the town centre because other locations are less suitable for retirement dwellings or do not attract CIL. This is consistent with the Council's position that none of the proposals which have come forward have been outside Taunton or Wellington. The Council is confident its residential rate will not unduly hinder retirement schemes but it will need to monitor the situation and review its charging schedule if this proves not to be the case.
29. The Council's intention is to take forward development proposals for land at Comeytrove/Trull and Staplegrove through the SADMPP but the physical extent of these schemes has yet to be defined. In the meanwhile these areas have been excluded from the Taunton CIL rate even though the Council accepts it will apply to the developments in due course. This results in an unsatisfactory position for the landowner/developer because currently the charge for the Rest of the Borough would apply although at the higher rate neither scheme would be viable.
30. Ultimately it will be necessary for the Council to review its charging zones but until this is done I consider it would assist in clarifying the status of these large-scale peripheral locations by including a footnote in the schedule and adding a notation to the plan. I therefore recommend a modification is made (**EM1**) to confirm that the broad locations for growth identified in the CS should be subject to the residential charging rate for Taunton. To ensure consistency, the same approach should be followed for relevant allocations coming forward through the SADMPP. The plan should also be modified by identifying the approximate location of the sites with the notation explaining that the CIL charge for Taunton will apply to the development of these areas once they have been determined and the SADMPP has been adopted or if planning permission is obtained prior to plan adoption.

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<sup>6</sup> Review of viability evidence re: retirement housing, Taunton Deane Borough Council, 22<sup>nd</sup> July 2013

31. Significantly better land values outside Taunton and Wellington mean the Rest of the Borough can support a higher CIL levy even though the proposed rate of £125 was regarded as excessive by one parish council. However, the VA demonstrates that even with a 20% reduction in market values, the notional scheme returned a residual value that exceeded the benchmark figures at £150 sqm. A rate of £125 sqm. is therefore well below levels where there would be any impact on viability.
32. The robustness of the assumptions employed in the VA were challenged by a number of parties and there was concern that rates might put residential schemes at the margins of viability. The Council has, however, generally used standard rates and assumptions and had regard to feedback from the development industry. A majority of case types at Taunton are shown as being viable between £75 – 100 sqm. but the Council has set a rate below this range. Similarly, while a charge of up to £25 at Wellington may be possible values are substantially lower than those achieved at Taunton, justifying the decision to exclude the town from the CIL. My overall view is that the proposed charging regime for residential uses is acceptable.

#### *Retail rate*

33. The VA identified five retail typologies ranging in size from local convenience stores to large stores/superstores. The analysis showed that most retail schemes are capable of supporting a levy although this varies according to the type and size of outlet and location. Differential rates for retail developments can be employed providing they are justified by the viability evidence having regard to the characteristics of retail form and location.
34. The analysis shows that larger format stores are generally able to support a charge of up to £300 sqm. and local convenience stores and smaller supermarkets a more modest rate of £180. As CIL can only be levied on non-residential floorspace above 100 sqm, small retail units would be exempt. Sensitivity testing showed that values in Taunton and Wellington town centres would have to increase by 20% before either could support a charge because of higher development costs. I am therefore satisfied the differential rates proposed are an appropriate response to viability issues rather than a means of pursuing planning policy objectives.
35. Testing showed other retail types remained relatively robust to cost changes although the risk of legal challenge if variable rates were adopted led the Council to simplify its approach. A single rate of £140 sqm. is now proposed to provide sufficient 'headroom' and ensure both supermarket and local convenience stores remain viable. It was suggested this rate could adversely affect 'deep discount' retailers but no evidence has been provided to demonstrate these types of outlet would be seriously disadvantaged.
36. The Council clarified the rate would apply across the retail use classes (A1 – A5). This was not clear from the charging schedule and is appropriate as changes are permitted between classes. I therefore recommend the charging schedule is modified to make this clear (**EM2**).

### *Other uses*

37. The viability evidence does not support charges being levied on other types of non residential development. This includes community uses where negative residual values result once build costs are set against commercial values. Until market conditions and demand improve there is little likelihood that other forms of development will be sufficiently viable to justify a CIL charge and consequently a nil rate is appropriate for all other uses.

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

38. The Council's decision to set rates at £70, £125 and £140 per sqm. depending on use and location, is based on reasonable assumptions about development values and likely costs. The evidence suggests that rates for residential and retail uses will remain viable across most of the Borough and will not put the overall development of the area at risk.

### **Other matters**

39. An instalment policy does not form part of the charging schedule but the Council intends to introduce one to allow for variations in rates of build and sale which can result in cash flow problems for developers. It admits there are difficulties in producing a practicable and workable mechanism having initially proposed four threshold levels for residential schemes and three for non-residential developments.
40. Though welcomed by most parties, the policy was seen as having little benefit for larger sites where the time taken to complete developments would reduce its effectiveness. Having reviewed its position the Council proposes to extend payment periods for schemes exceeding £1m in levy charges while splitting payment on the smallest schemes. This would provide additional flexibility. A further threshold rate for charges over £1.5m with a final instalment being made within 6 years of commencement was rejected. The Council claims that very few developments exceed a four year build period because the largest sites are likely to have more than one outlet building and selling homes.

### **Conclusion**

41. 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 Taunton Deane. 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 a range of development will remain viable if the charge is applied.

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

42. I conclude that subject to the modifications set out in Appendix A the Taunton Deane 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.

*P R Crysell*

Examiner

This report is accompanied by:

Appendix A (attached) – Modifications that the examiner specifies so that the Charging Schedule may be approved.

## Appendix A

Modification recommended by the Examiner to allow the charging schedule to be approved.

Modification No.	Modification
EM1	<p>Add the following footnotes:</p> <ol style="list-style-type: none"> <li data-bbox="842 712 1439 990">1. Broad locations for future growth at Taunton, identified in the adopted Core Strategy and in allocations coming forward in the Site Allocations and Development Management Policies Plan, will be subject to the residential rate for the urban area.</li> </ol> <p>(to be accompanied by a notation on the charging schedule plan showing the approximate location of relevant sites for which the CIL rate for Taunton will apply in due course)</p>
EM2	<ol style="list-style-type: none"> <li data-bbox="842 1303 1439 1473">2. Retail development includes uses within Use Classes A1 –A5 as defined in the Town and Country Planning (Use Classes Order) 1987, as amended.</li> </ol>