



The Planning
Inspectorate

Report to Mid Devon District Council

by David Hogger BA MSc MRTPI MCIHT

an Examiner appointed by the Council

Date: 20 February 2013

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

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

Charging Schedule submitted for examination on 5 September 2012

Examination hearing held on 21 November 2012

File Ref: PINS/Y1138/429/11

Non Technical Summary

This report concludes that the Mid Devon District Council Community Infrastructure Levy Charging Schedule as submitted does not provide an appropriate basis for the collection of the levy in the District. The rate proposed for residential development does not reflect the Council's target for the provision of affordable housing (as set out in the Development Plan) and because the rate is set too high, there is a serious risk to affordable housing provision and thus the overall development of the area.

One modification is needed to overcome this deficiency and ensure that the statutory requirements are met. This can be summarised as follows:

- Replace the £90 per sqm charge for dwelling houses by a charge of £40 per sqm.

The modification recommended in this report is based on matters discussed during the public hearing session and in the written representations received.

Introduction

1. This report contains my assessment of the Mid Devon 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). 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.
2. The basis for the examination, which included one hearing session, is the Draft Charging Schedule dated July 2012 (submitted on 5 September 2012), the written representations and other material submitted prior to and at the hearing, and the submissions made in response to matters raised at, and following, the hearing.
3. The Council proposes a single charge of £90 per square metre (sqm) only in relation to dwelling houses (C3).

Preliminary Matter

4. Following the hearing session a legal opinion was submitted which sought to argue firstly that a CIL Charging Schedule is capable of being subject to the Strategic Environmental Assessment Directive and secondly that the Mid Devon CIL should have been subject to a sustainability appraisal (SA) because it seeks to re-order priorities set out in the Development Plan which may give

rise to significant environmental effects.

5. CIL is a levy set out in a Schedule, not a plan or a programme to which the Directive applies¹ and there is no requirement in the Regulations² or in the Localism Act for the Schedule to be accompanied by an SA. Indeed paragraph 19 of the Charge Setting and Charging Schedule Procedures (CSCSP)³ specifically advises that charging schedules will not require an SA.

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

Infrastructure planning evidence

6. The Mid Devon Core Strategy (CS) was adopted in July 2007 and the Allocations and Infrastructure Development Plan Document (AIDPD) in October 2010. These set out the main elements of growth in the District that will need to be supported by further infrastructure. The Council provided an up-dated list of infrastructure requirements and costs (pending publication of the Regulation 123 list) and these include improvements relating to transport, air quality and community facilities. The role of the evidence is not to provide assurances as to precisely how the levy would be spent and bearing in mind local authorities may spend their CIL revenues on different projects from those identified and that any list is only indicative in nature, I am satisfied that the provisional list provides a sound basis on which to assess the aggregate funding gap.
7. It is estimated that total infrastructure costs would be about £117 million and under the Council's currently proposed charge there would be a funding gap of at least £60 million, of which it is estimated that about £32 million could be raised from CIL. In light of the information provided, the proposed charge would therefore make a reasonable contribution towards filling the likely funding gap of £60 million. The figures demonstrate the need to levy CIL.
8. A number of comments were made regarding the relationship between the CIL charge and S106 planning obligations. The Council produced a supplementary paper on this matter setting out its position, which also refers to the forthcoming Regulation 123 list of infrastructure projects. Such clarification is to be welcome but it is not a matter for the current Examination to pursue.

Residential Viability Evidence

9. The Council relies primarily on the CIL Viability Supplementary Evidence Report, dated May 2012. This assessment uses a residual valuation approach, which is based on assumptions for a range of factors such as building costs (including Code for Sustainable Homes requirements), profit levels and fees. Five generic sites were appraised and although there was criticism about the small number of options assessed I am satisfied that they are representative. The CSCSP refers to assessing a few sites and the Council's approach is proportionate and reasonable. A number of concerns

¹ See Article 1 of the Directive

² The Community Infrastructure Levy Regulations 2010

³ Community Infrastructure Levy Guidance – March 2010

were raised by respondents, regarding various elements of the evidence, which I shall address later in the Report but of particular concern was the Council's approach to affordable housing.

Evidence Relating to Affordable Housing

10. The CS sets an overall target for affordable housing provision of 30%⁴ and it confirms that the delivery of affordable homes is a key issue for the District. For what are described as urban sites, however, the target in the AIDPD is 35% (Bampton, Crediton, Cullompton and Tiverton). The Council has not used the 35% figure but has utilised a figure of 22.5% in its calculations (a 36% reduction on its target) because it states that this represents the average percentage of affordable housing currently being achieved. However, reference is made to a current planning application at Farleigh Meadows in Tiverton, where the full 35% provision has been offered by the developers, although I acknowledge that sites in other locations have achieved much lower provision.
11. The policies in the Development Plan (DP) reflect the Council's objective which is to achieve at least 35% affordable housing on 'urban sites'. This approach accords with the advice in the National Planning Policy Framework (NPPF) which advises that requirements for affordable housing should be set out⁵. The NPPF also advises that CIL charges should be worked up and tested alongside the local plan⁶.
12. There was discussion regarding the terminology used and it is correct that policy AL/DE/3 refers to a *target* of 35% affordable housing provision. However, it is clear that there is a very significant need for affordable housing in the District and policy AL/DE/2 states that 2,000 or more affordable dwellings should be *provided* between 2006 and 2026.
13. The DP policies – including where appropriate the affordable housing targets – will remain the starting point in the consideration of any planning application. The key test is therefore whether or not the assumptions upon which the proposed level of CIL are based would undermine the delivery of the DP targets, particularly with regard to affordable housing provision. The CSCSP advises that consideration should be given to the implications of the charge for the priorities that the Council has identified in its DP⁷ and the specific example of affordable housing targets is given.
14. I consider that it is reasonable to conclude that the use of the 22.5% figure by the Council will be seen as a reason not to seek the achievement of the full target and consequently it will put the provision of affordable housing at serious risk. If the Council wishes to reduce the percentage of affordable housing to be provided (assuming such an approach could be justified, bearing in mind the advice in the NPPF that in principle the full objectively assessed needs for market and affordable housing should be met)⁸ then this should be

⁴ Policy COR3

⁵ Paragraph 174

⁶ Paragraph 175

⁷ Paragraph 10

⁸ Paragraph 47

achieved through a review of the adopted policies. The Council should have taken all its policy requirements, including affordable housing, into account when setting the CIL rate and on this basis it can be concluded that the viability evidence, on which the proposed charge of £90 per sqm is based, is not robust.

15. Following the identification of affordable housing provision as an issue of significant concern, the Council did submit evidence to show that if the calculations were based on 35% affordable housing provision, then a lower CIL charge of £40 per sqm would be viable. The five viability appraisals were re-assessed. The urban extension models at Cullompton and Tiverton and the urban infill model at Bampton were found to be viable with the lower charge. The situation with regard to the urban infill site models at Crediton and in a village location are described as marginal but bearing in mind there are likely to be considerable variables between such sites, there is no reason to conclude that the lower charge would put at serious risk overall development in the area.
16. Reference was made by the Council to the Redbridge CIL charge which is based on a 30% affordable housing provision, rather than on 50% which is the requirement in the Redbridge Core Strategy. I have not seen the evidence from which the Examiner drew his conclusions and can therefore only give little weight to this matter.
17. On the issue of affordable housing I conclude that the Council should have based its analysis on the foundation provided by the adopted DP and that the calculations should have reflected the 35% affordable housing target. I therefore recommend that the Charging Schedule is modified accordingly by reducing the charge from £90 per sqm to £40 per sqm, as set out in **EM1** in Appendix A.

Evidence Relating to Previously Developed Land

18. Concern was expressed by representors that the Council's target of achieving at least 30% of new dwellings on previously developed land⁹ would be placed at risk because of the scale of the proposed charge. However, with the recommended reduction of the rate to £40 per sqm the level of risk diminishes significantly and there is no evidence that would lead to the conclusion that the achievement of the Council's target of 30% would be at serious risk.

Other Evidence

19. The viability appraisals relate to sites that are identified in the DP and they are based on a number of assumptions which in turn are based on appropriate available information. The build costs, which are benchmarked against the Building Cost Information Service (BCIS) published figures, are derived from a number of sources and include sustainable design and construction requirements and an allowance is made for some on-site infrastructure. A separate figure is given for abnormal development costs.
20. The figures for sale prices are based on a review of the current situation in the

⁹ Policy COR 7 of the adopted Core Strategy

residential market of Mid Devon and following the hearing the Council provided up-dated sales figures which were criticised by respondents as being selective, inaccurate and misleading. It is inevitable that as markets change there will be implications for the evidence base, however, the CSCSP makes it clear that the charging authority should use data that is available and that it is unlikely to be fully comprehensive or exhaustive. A pragmatic approach must be adopted and the level of precision and detail which has been requested by respondents would be contrary to the advice in the CSCSP which suggests that a broad test of viability should be used and that the evidence should inform the Schedule and that there is no requirement for the proposed rate to exactly mirror the evidence. The rate should appear reasonable given the available evidence and bearing in mind the recommended reduction in the charge from £90 to £40 per sqm and the Council's commitment to review the levy in two years time, I am satisfied that the evidence used regarding sales prices was reasonable and that the use of the Council's figures would not contribute to putting at serious risk the overall development of the area.

21. In terms of residential land values the Council has used land values for green field sites that reflect values that have been achieved in recent transactions and for brown field sites the value has been primarily based on the uplift in the value of the land in its existing (or potential) use. The assumed dwelling mix reflects the character of the site and location and the build costs were based on appropriate average figures.
22. It is inevitable that much will depend on the characteristics of a particular site and it would not have been appropriate for the Council to factor in every potential variation. A reasonable balance has been achieved, using appropriate available evidence and there was insufficient substantive evidence to enable me to conclude that the Council's figures were inappropriate, including in relation to fees and profit levels. Paragraph 173 of the National Planning Policy Framework advises that to ensure viability competitive returns should be provided to a willing landowner and developer in order to ensure that development is deliverable. The evidence demonstrates that the Council has taken this objective into account and that with the lower charge it will be achieved.

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

CIL rates for residential development

23. As set out above the Council's viability appraisals have been based on an inappropriate reduction in affordable housing provision. The evidence is therefore flawed in this one respect and consequently the proposed charging rate of £90 per sqm cannot be justified. However, the Council has re-calculated the viability of CIL based on the assumptions previously used but with provision being made for 35% affordable housing. This results in a viable charging rate of £40 per sqm and I am satisfied that this is informed and consistent with the evidence, as amended.
24. Support for the reduced charge of £40 per sqm was voiced by a number of participants at the Hearing session but there was a call for there to be no CIL charge at all and that the Council should rely on Section 106 legal agreements to secure financial contributions towards infrastructure, although it was

conceded that this may place infrastructure provision at risk. I consider that there is insufficient justification for the Council to take what could be considered to be a retrograde step. The Council has decided to levy CIL and has provided appropriate available evidence on economic viability and infrastructure planning to justify the £40 charge.

25. Consideration was given to applying different rates in different parts of the District but there is comparatively little variation in development values across the area. There is therefore insufficient justification for applying different rates, particularly as it may unnecessarily complicate the administration of the charge and make it less easy to understand.

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

26. The proposed charge of £90 per sqm would put at risk the overall development of the area because it would not reflect the need to provide a significant number of affordable homes and the Council's decision to set this rate is not based on an appropriate approach to affordable housing provision. However, the assessment based on a rate of £40 per sqm is based on appropriate development values and likely costs. The evidence suggests that residential development will remain viable across most of the area if the lower charge is applied. Paragraph 7 of the CSCSP makes it clear that it is for the Council to decide on what balance to strike between infrastructure provision and the potential consequences of imposing CIL and because I am satisfied that the overall development of the area will not be at serious risk I am unable to question that balance.
27. It was suggested by the Council that the reduction in the CIL rate may have consequences for the provision of some infrastructure (e.g. that required to enable development to commence) and that this in turn may put development in the area at risk. However, the purpose of CIL is not necessarily to provide full funding for all infrastructure but to contribute towards bridging the gap between available funding and infrastructure costs. The latter will still be achieved with the lower rate proposed and no substantive evidence was submitted to demonstrate that the consequences of the lower charge would put the overall development of the area at serious risk.

Other Matters and Conclusion

28. Concern was expressed that other land uses, such as retail, business and leisure would not be subject to a charge. A non-residential Viability Study was undertaken (August 2011) which concluded that it would not currently be viable to impose a charge on such uses, based on the ratio of development costs against sales values. The Council consequently decided that no CIL charge would be levied on non-residential development and it is not within my power to recommend the introduction of a 'new' charge.
29. 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 Mid Devon. 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 District. The only significant shortcoming is the divergence from the Council's adopted policies in terms of affordable housing provision. This divergence would put at serious risk the overall development of the area and therefore the modification of the proposed CIL rate is necessary and justified.

30. It is recognised that the overall housing market is currently relatively depressed and that accurate predictions regarding economic recovery cannot be made with certainty. Consequently it is important that the situation continues to be monitored and the Council's intention to reconsider the CIL charging schedule in two years time and review its Core Strategy (in 2013) are to be welcomed. These two events provide the Council with the opportunity to ensure that there will be compatibility between the Development Plan and the CIL charge, thus reflecting the advice in the CSCSP.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule (as modified) complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended 2011)	The Charging Schedule (as modified) 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.

31. I conclude that subject to the modification set out in Appendix A the Mid Devon 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, as modified, be approved.

David Hogger

Examiner

This Report is accompanied by:

Appendix A – Modification that the Examiner specifies so that the Charging Schedule may be approved.

Appendix A

Modification that the Examiner recommends so that the Charging Schedule may be approved

Modification Number	Submitted CIL Rate	Modification
EM1	£90 for dwelling houses (C3)	£40 for dwelling houses (C3)