



The Planning
Inspectorate

Report to Newark and Sherwood District Council

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an Independent Examiner appointed by the Council

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PLANNING ACT 2008

SECTION 212

REPORT ON THE EXAMINATION INTO THE NEWARK AND SHERWOOD COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Document submitted for examination on 13 April 2011

Examination hearings held on 20 and 21 July 2010

File Ref: PINS/B3030/429/6

Abbreviations Used in this Report

CIL	Community Infrastructure Levy
CS	Core Strategy
NGP	Newark Growth Point
SLR	Southern Link Road (Newark)
VA	Viability Assessment

Non-Technical Summary

This report concludes that the Newark and Sherwood Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the district over the next 3 years. The Council has sufficient evidence to support the schedule and can show that the infrastructure that it is intended to help fund has a reasonable chance of being delivered.

One modification is needed to meet legal and statutory requirements. This can be summarised as follows:

- Delete the separate rate for Small Retail (< 500 sq m)

The specified modification recommended in this report is based on matters discussed during the public examination and does not alter the basis of the Council's overall approach or the appropriate balance achieved.

Introduction

1. This report contains my assessment of the Newark and Sherwood Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance (Charge Setting and Charging Schedule Procedures – DCLG – March 2010).
2. The starting point for the examination is the assumption that the local charging authority has submitted what it considers to be a schedule of levy rates with 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 is the submitted schedule of April 2011, which is effectively the same as the document published for public consultation in March 2011.
3. This report also deals with the one specified modification recommended to make the schedule reasonable, realistic and consistent with national guidance. It is identified in bold in the report (**EM**) and in Appendix A. This does not materially alter the substance of the levy rates or undermine the viability appraisals and participatory processes undertaken by the Council. I am also content for the Council to make any additional minor changes to page, figure, paragraph numbering or maps and to correct any other spelling or punctuation errors prior to approval. The references in round brackets are to the Council's list of submission documents to accompany the charging schedule.

Assessment

4. This report has been written prior to any parliamentary consent for the Localism Bill 2011, which contains clauses directly relevant to the CIL and its implementation by local charging authorities. The Council will have to take the final outcome thereof into account in the event that it receives royal assent in due course.

Procedural Requirements

5. The Council has submitted a declaration on 30 March 2011 (SD 2) under Section 212 of the Planning Act 2008. This confirms that the Council, as charging authority, has complied with the requirements of Part 11 of the Planning Act 2008 and the CIL Regulations 2010, as amended by the CIL Regulations 2011, including the requirements to have regard to the matters listed in Section 211 (2) and (4) of the 2008 Act. This includes two statutory phases of public consultation in November – December 2010 and March – April 2011, in accord with Regulations 15, 16, 17 + 19, with the comments received properly assessed and taken into account where appropriate.

Main Issues

6. Taking account of all the representations, written evidence and discussions that took place at the examination hearings, I have identified 4 main issues upon which the viability of the CIL charging schedule depends.

Issue 1 – Justification/Balance/Viability

Is the schedule justified by appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the Core Strategy and Infrastructure Delivery Plan, and, overall, does it strike an appropriate balance between helping to fund the new infrastructure required and the potential effects on the economic viability of development across the district ?

7. The Council's evidence includes a recent Construction Costs Study (DCS 6A), Valuation Report (DCS 6B) and detailed Viability Appraisals (VA) of all significant forms of new built development (DCS 7A – R). There is also an up to date Infrastructure Delivery Schedule (DCS 5) that derives directly from and updates Appendix E of the adopted Core Strategy (CS) (March 2011) and the supporting Infrastructure Delivery Plan (DCS 6C + D). The Council has identified a funding gap of approximately £40m over the CS plan period to 2026 with the CIL estimated to raise around £35m based on current rates and on the same timescale.
8. It is clear from the Council's evidence, as endorsed by nearly all examination participants and respondents, that it would not be economically viable, at present, to apply the CIL to all forms of new built development in the district. Most local schemes involving mainly offices [B1a], hotels [C1], residential institutions [C2], community uses [D1], leisure [D2] and agriculture, as well as most "sui generis" uses, would be put at serious risk if the CIL was to apply currently, as evidenced in the VAs. In present circumstances locally, it is therefore appropriate in principle and in accordance with Regulations 12 and 13 of the CIL Regulations that charging should apply only to new built development for residential, retail and industrial, including storage and distribution, purposes.
9. The VAs (DCS 7A – R) have been based on generic testing of various development scenarios in each part of the district, with inputs taken from an analysis of the comparative costs and actual sales values of specific schemes, where available. This includes from Land Registry and Valuation Office data, particularly for the less common categories of development where few comparables are available at any one time. Therefore, by definition, they cannot directly take into account site specific abnormal cost factors, such as ground conditions, land contamination or flood risks, although a 5% contingency has been included in the Construction Costs Study (DCS 6A). Clearly, such matters can have a significant influence on the overall viability of development in individual cases.
10. Nevertheless, the role of the CIL charging schedule is to set rates that would be economically viable in each area or zone and for each type of new development under most "normal" circumstances. This is in line with the area based approach and broad assessment test of viability across the district suggested in national guidance (Charge Setting and Charging Schedule Procedures – DCLG – March 2010). Whilst having to involve some elements of subjective judgement, it is nevertheless clear that this work has been carried out in accord with acknowledged and acceptable professional standards.
11. Provided that there is a sufficient margin of viability identified, over and above

the standard assumption of 20% developer's profit, as is the case here, the incidence of abnormal costs would still be accounted for on many sites, depending on the exact nature of the scheme. This being so, only a small percentage of development projects that would otherwise be acceptable in other respects would be put at serious risk of non implementation for financial reasons alone. In such circumstances neither the overall development of the district as envisaged in the adopted CS nor the anticipated return from the CIL rates imposed need be materially affected.

12. At the examination hearings, the Council confirmed that the various VAs, including those for new housing, had taken into account the costs of providing all necessary services, including roads, water, gas, electricity, telecoms and foul/surface water drainage, and not just the construction costs of new buildings alone. Inevitably, this has had to be done largely on an average costs basis, albeit with a 5% contingency. Where any significantly higher offsite costs to bring services onto a site would be involved there may well be an additional influence on overall project viability. Nevertheless, as set out above, such site specific considerations do not undermine the general validity of the charging schedule as intended to apply across the district.
13. Moreover, the Council and other authorities including the County Council, acknowledge that, in those circumstances, the economic viability of any scheme that is otherwise acceptable in all other respects would be assessed for other possible non CIL infrastructure contributions on an overall basis. This would take into account first, the relevant CIL rates and then, in a flexible and negotiated process, any further local infrastructure needs, as well as affordable housing provision if applicable. This is, effectively, no different to current local practice in respect of major developments and thus does not cast doubt on either the viability or proposed implementation of the CIL rates.
14. In the light of the above, suggestions that the CIL rates should be "rebalanced" to include a much wider range of development types within the remit of the charging schedule would not be appropriate or practical, in the current local circumstances at least. In line with national guidance, the Council has demonstrated through their evidence that the identification of types of new development for which the CIL rates would be nil is justified across the district. In addition, this has been shown as properly based on economic viability considerations alone, rather than any planning or any other public policy related choices by the local charging authority.
15. Similarly, in relation to the different geographical zones selected, it is equally clear from the evidence that significant differences exist in terms of the economic viability of most forms of new development across the district. This judgement is reinforced by the notable absence of representations indicating otherwise. The generally expressed local view is that the Council has identified zones based on existing parish boundaries that are both internally consistent and relate logically to one another. They also reflect the concentration of new development in the Newark Growth Point (NGP) area set out in the adopted CS, but have not been determined by it but rather the outcome of the independent Valuation Report (DCS 6B) and related studies.
16. As proposed, the Council's latest calculations indicate that the CIL rates would raise about 87% of the anticipated infrastructure funding deficit over the

whole of the CS plan period to 2026. Other sources of funding, such as the New Homes Bonus, are also available to the Council to make up the remainder of the predicted shortfall. It can therefore be concluded that, in principle, the schedule is justified by appropriate available evidence, having regard to national guidance, local context and infrastructure needs and that, in general, an appropriate balance has been struck across the district.

Issue 2 – Non Residential Rates

Are the rates/zones for retail/industrial [and other non residential] development reasonable and realistic in relation to an appropriate balance between helping to fund new infrastructure and the potential effects on economic viability ?

17. The need for a differential rate by zone in relation to both industrial and retail development is properly justified by the Council's evidence, albeit more clearly for the former. It is also clearly demonstrated that a nil rate is the only logical and practical one for all other types of non residential development at the present time. Land and development values for employment differ significantly across the area and of the 8 different zones suitably defined by the Council, there is no doubt that applying even low CIL rates to such uses in most would not be financially realistic. Even in Southwell (see also Issue 3), the scope is clearly limited for industrial development. However, given the evidence on economic viability, nil rating all new industrial development across the whole district, as suggested by some, would not be justified.
18. It has also been argued that having the highest CIL rate in the NGP area would be counterproductive in delivering the development needed to fulfil the CS. As the equivalent of a tax of about 4% on sales of industrial property it could deter some of the new investment required to match growth in new housing if the NGP is to be a success and sustainable. However, based on recent sales values in Newark, the Council estimates the impact to be approximately the same as a 2.6% local tax.
19. Whatever the exact figure it should not be materially harmful to the economic viability of new industrial development in Newark given the margins identified in the Council's evidence, over and above a 20% profit for the developer. It is also relevant that the industrial CIL rate is expected to raise about £3m in the NGP over the CS plan period. The loss of this income at around 8.5% of the CIL total would materially increase the identified infrastructure funding gap.
20. Regarding retail, the Valuation Report (DCS 6B) indicates noticeable differences in the overall values of larger A1 units compared to other sizes and types of retail uses, as distinct from the limited differentials evident across the district. These essentially reflect the operation of the market. As a result, new larger stores would be capable of absorbing a higher CIL rate on average. Nevertheless, the proposed division in CIL rates between new retail buildings at 500 sq. m. appears somewhat arbitrary and lacks a convincing evidential justification in relation to a serious risk of deterring new development. For example, there is no reference to the distinction in the CIL Guide (DCS 2) or Methodology (DCS 3) documents prepared by the Council in March 2011. Nor is the evidence sufficiently fine grained to justify the choice of this particular division within the retail use class.

21. Without a very clear viability justification two different rates for retail development could be said to unreasonably favour smaller retailers over larger ones and/or constitute a policy decision by the charging authority to support smaller units that goes beyond viability considerations alone and conflicts with national guidance accordingly. It would also be more complicated to implement given the existing exemptions for small proposals in the national CIL Regulations and that all CIL rates are on a sliding scale according to size alone in any event. The Council has effectively acknowledged these points in responding to those seeking a differential rate to favour small housing.
22. Consequently, separate rates for new retail development based on a size division at 500 sq. m. is neither reasonable nor properly justified by the available evidence. The schedule needs to be modified accordingly to avoid potentially conferring selective advantage within the retail development sector. Based on the maximum economic viability margins in the Council's evidence and the estimated £2m or so to be raised from the retail CIL rate in the NGP alone over the CS plan period, the higher rate should be applied over the whole area and for all A class uses for clarity and consistency. It would still be well within the maximum economic viability margins in the Council's evidence.
23. Therefore, the following specified modification change is recommended: delete the separate rate for "Small Retail (< 500 sq m)" and revert to a single rate for all retail development; also delete "Large (500 sq m +)" from the adjacent column in the Commercial Charging Schedule [**EM 1**]. With this modification all non residential rates in the charging schedule would be clear, consistent, reasonable and realistic in relation to an appropriate balance between funding new infrastructure and not materially risking development viability.

Issue 3 – Residential Rates

Are the rates/zones for residential development reasonable and realistic in relation to an appropriate balance between helping to fund new infrastructure and the potential effects on economic viability ?

24. There is no doubt that residential land and house sale values differ greatly across the district. For example, in the westernmost zones of Ollerton and the Mansfield Fringe the imposition of even a low CIL rate would have a materially harmful effect on the economic viability of new housing (and most other forms of) development. Consequently, a nil rate in those areas is appropriate at the present time. For all other parts of the district the VAs show that most typical schemes would be able to accept reasonable CIL rates without prejudice to their overall viability and allowing for 30% affordable housing as required by the CS. Therefore, a standard CIL rate for new housing across the district would not be appropriate at present.
25. It is also clear from the available evidence that the average potential margin of viability for new housing is greatest in Southwell and the central district villages compared to other parts/zones, including the NGP. Similar conclusions apply in respect of the Nottingham Fringe, albeit as mostly Green Belt it is unlikely to have very much new housing in any event.
26. In the absence of any firm evidence indicating otherwise it may be concluded that the Council's definition of zones and the principle of differential CIL rates

for new housing in those zones is satisfactory and suitable for implementation in practice. It needs to be borne in mind that the residential rates are based on the economic viability of development and not necessarily where the income would be spent. No exemptions or reductions for self builders or locally based developers are permitted under the national CIL Regulations.

27. All the new housing VAs undertaken for the Council have allowed for 30% affordable housing, of which 60% would be Social Rented and 40% Intermediate, on the basis that Intermediate housing is worth 70% of open market value and Social Rented 40%. This information derives directly from a number of local providers of affordable housing independent of the Council and was not challenged by any respondents during the examination process. They are therefore reasonable figures to use in current local circumstances.
28. In relation to residential build costs, the Construction Costs Study (DCS 6A) has taken into account compliance with Level 3 of the Code for Sustainable Homes. Moreover, there is nothing in the CS or other Council policy that seeks compliance with any level higher than that specified in the national Building Regulations. Thus, whilst construction costs are expected to rise somewhat to comply with the higher levels of the Code as they are introduced over time under national legislation, the wide margins of viability allowed for in the Council's setting of CIL rates for new housing should ensure that this does not have a material impact on delivery.
29. The initial residential VAs indicated that the building of new flats would be uneconomic at present across the whole district. However, this was based on the construction costs for a large block of apartments, such as those often found in city centres that require lifts and include steel frames. In this area new flats are more likely to be provided through conversions and as part of a mix of size and type of new housing on major development sites. In the latter case at least the use of more traditional building methods and materials would enable provision at similar construction costs to more typical new 2 and 3 storey housing, as the Council's revised figures show. Therefore, there is no need to make any special provision for flats/apartments in the CIL schedule.
30. Nor would it be realistic to include a differential rate according to new house size, even if the objective to encourage smaller units is a desirable one in higher cost areas, as the CIL is not intended to be a planning policy tool as such. Any division of this nature would also introduce an unnecessary complication into the charging schedule matrix, when it should be as simple as possible to understand and straightforward to implement (see also Issue 2).
31. The only alternative evidence submitted suggests that for new housing on larger schemes the sales figures used in the VAs may be around 10-15% too high, compared to current purchase prices in the open market. However, closer analysis confirms that the two sets of figures have not been calculated on a directly comparable basis, including in terms of house types and sizes.
32. The data available to the Council, based on a 2010 valuation date, also takes into account actual sales since 2007 on one of the largest new housing sites in the district at Fernwood on the edge of Newark as the "base" site, given its mid range market position. In such circumstances and allowing for the wide margin of viability that would remain according to the VAs, it is therefore

reasonable to conclude that the residential CIL rates are realistic and the differences set out between the various zones also reasonable. In short they strike an appropriate balance between funding infrastructure and not putting the planned development of the district at material risk.

Issue 4 – Delivery/Implementation

Is the overall CIL strategy operable as envisaged and in the form proposed, including in respect of the various zones/rates and funding new infrastructure, and can its effectiveness and local economic impacts be adequately monitored and reviewed over time ?

33. Strictly speaking, the matters dealt with under this issue are not directly related to the setting of the charging schedule. However, these matters were clearly of great interest to those making representations and were raised in discussions at the hearing sessions. Given that the CIL process is at an early stage in its implementation the following comments may prove helpful to the Council and others.
34. Unless and until the CIL Regulations are altered by the Localism Bill or otherwise, it is necessary for the Council to specifically identify the new infrastructure that they intend should be funded (or part funded) by the CIL when setting the charging schedule rates in line with Part 7 of the CIL Regulations. Moreover, as the margin of economic viability for the types and locations of new development to which the CIL would apply is not excessively eroded by the rates charged, it should still be possible for other appropriate contributions to local infrastructure needs, such as primary school places, to come forward from most, if not all, significant schemes.
35. The Council's evidence of the maximum CIL rates that could potentially apply (DCS 4) provides the justification for this conclusion and confirms that the CIL would not operate to prejudice such provisions being negotiated in most relevant instances. This is the case even though the CIL is likely to be applied as the "first fix" in such situations, given that it would be a known quantity from the outset and could only be set aside in exceptional circumstances. Whether or not further infrastructure types or projects should be included within the scope of CIL funding in the future is for the Council to assess in due course in the light of the legal position at that time. A similar conclusion applies to varying the list of new infrastructure to be delivered with CIL funding, in whole or in part, including on the timing of implementation.
36. The Council's up to date Infrastructure Delivery Schedule (DCS 5) makes no reference to the proposed Newark Sports Hub, costing an estimated £10 million, being funded wholly or partly by the CIL. Therefore, it cannot be the reason for the £5 per sq. m. increase in the CIL rate for new housing brought in between the preliminary and the submitted draft schedules. Instead this relates to the Council's most recent assumption that the Newark Southern Link Road (SLR) would probably not be funded, wholly or partly, by the CIL, with consequent recalculations elsewhere.
37. It is effectively common ground that, as this CIL schedule is likely to be one of the first in the country to be approved, the comprehensive monitoring of its implementation and impacts on new development in the district, if any, is not

only of local importance but also of much wider interest. In this light the Council's intention to conduct a full review 3 years hence, in addition to the annual financial reports required by the CIL Regulations (Reg. 62), is endorsed as entirely appropriate.

38. Notwithstanding the above, the Council has confirmed their commitment to proper consultation with infrastructure providers, such as the County Council and Highways Agency, plus all others directly involved, prior to any material changes being made to their CIL infrastructure list. This would include in respect of implementation timings and accords with current national advice, such as paras 64 - 66 of the CIL Overview document (May 2011).
39. In terms of delivery, it is necessary to confirm that the schedule is based on the presumption that the major development scheme to the south of Newark (known as Land South or Newark Future), including the construction of the SLR between the A1 and the A46, would not be subject to the CIL. This is due to the expected timing of the local introduction of the CIL in Autumn 2011. To comply with 12 (3) b of the CIL Regulations the Council must include a specific commencement date in the final approved version of the charging schedule.
40. How and when CIL contributions collected would be passed on to those bodies to be responsible for delivering the necessary new infrastructure, whilst important, does not directly affect the suitability or otherwise of the actual rates to be charged or the zones in which they will apply. In the absence of any national regulations, such matters need to be negotiated between all relevant parties so as to facilitate delivery as and when needed and on a co-ordinated basis in line with the Infrastructure Delivery Schedule.
41. Although not part of the formal remit of the examination, the Council's supplementary proposal for an Instalments policy for CIL payments was briefly discussed at the hearings. It is relevant to record that there was universal approval amongst those present that such a policy was both desirable in principle and workable in practice.

Legal Requirements

42. The examination of the compliance of the Charging Schedule with the legal requirements is summarised in the table below. I conclude that it meets all.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance, except where indicated and one modification is specified.
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 Core Strategy (March 2011) and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

Overall Conclusion and Recommendation

43. I conclude that with the modification specified in Appendix A the Newark and Sherwood 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). Therefore I recommend that the schedule be approved accordingly.

Nigel Payne

Examiner

This report is accompanied by:

Appendix A (attached) - Modification that the Examiner specifies so that the Charging Schedule may be approved.

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

Examiner Mod. No.	Rate/Figure/Column	Modification
EM 1	Small Retail (< 500 sq m)	Omit "Small Retail" column and revert to one CIL Rate for all Retail (i.e. delete "Large - (500 sq m +" leaving just "Retail").