



The Planning Inspectorate

Report to Solihull Metropolitan Borough Council

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an Examiner appointed by the Council

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT SOLIHULL METROPOLITAN BOROUGH COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 27 June 2014

Examination hearings held on 2 June 2015

File Ref: PINS/Q4625/429/3

Non Technical Summary

This report concludes that, as modified by the Council in October 2015, including the introduction of a nil rate for C2 and C3 housing at Blythe Valley Park, the Solihull Metropolitan Borough Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area.

The Council has provided sufficient evidence to support the schedule and show that the levy is set at levels that will not put the overall development of the area at risk.

Introduction

1. This report contains my assessment of the Solihull Metropolitan 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 (Community Infrastructure Levy Guidance –June 2014).
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 hearings sessions were held on 2 June 2015, is the submitted schedule of 27 June 2014, plus the proposed modifications and additional supporting documents published by the Council for public consultation in October 2015.
3. Following the modifications, the Council now propose four separate charging zones for residential development. These are £150 per square metre (psm) in the Rural Area, mainly in the east of the borough, £75 psm in the Mature Suburbs, which are in three parts, and separate nil rates for Blythe Valley Park and the North Solihull Regeneration Area. In the latter the rate for all forms of new built development would also be nil for overall viability reasons. Elsewhere across the borough, C1 (hotels), C2 (residential institutions, except hospitals, training centres and at Blythe Valley Park), as well as A2 (financial and professional services) uses would all be subject to a £25 psm rate.
4. A3 – A5 uses (cafes, restaurants, public houses and takeaways) would be charged at £100 psm, with car dealers (sui generis) at a rate of £75 psm. All other uses, including offices and industrial (B class uses), would be nil rated, except retail. Apart from in North Solihull (see above), the rate for supermarkets of over 550 sq m would be £300 psm, with £150 psm for stores below that and £50 psm for other retail formats, save for the latter in separate Solihull and Shirley town centre zones, where £25 psm would apply. Following the published modifications of October 2015, suitably clear OS based maps would accompany the charging schedule to define the relevant zones.

Preliminary matters

5. The Solihull Local Plan (LP) was adopted in December 2013 but subsequently challenged and partly quashed in May 2014 as regards total new housing numbers, the annual delivery rate thereof and the proposed addition of two sites into the Green Belt. As discussed and agreed at the June 2015 hearings, it is reasonable to assume for the purposes of assessing the viability of all the proposed CIL rates, that the forthcoming joint review of requirements in the housing market area will result in Solihull having to meet at least its own objectively assessed needs; at a minimum of 600 new dwellings a year. This amounts to an approximate 20% increase compared to the adopted plan.
6. I have taken this into account in my consideration of all the evidence submitted regarding the CIL and in writing this report. I have concluded on a pragmatic basis that it is reasonable to do so to enable a CIL to be introduced in Solihull without having to wait for the joint review of housing requirements to be completed in this specific instance and in all the relevant local circumstances. This includes particularly that the vast majority of the LP policies and proposals remain in place and that the nature of the additional new housing is unlikely to be materially different from the types assessed in the Council's evidence supporting the proposed rates.
7. Any local "distortion" of the market as a result of the adoption of the CIL in advance of the LP review is likely to prove a very transient factor for developers, even if it occurs at all, given the long gestation period of this particular charging schedule. This has provided extended public notice of the Council's intentions, including of the likely zones and rates that would apply. I am satisfied that an appropriate balance may be assessed on the presently available evidence for the reasons given above.

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

Infrastructure planning evidence

8. Those parts of the LP that remain in place set out the main elements of growth that will need to be accompanied by further infrastructure in the district, including on strategic sites. It is supported by an Infrastructure Delivery Plan (IDP) of September 2012. The total estimated cost of infrastructure to implement the LP is estimated by the Council to be in the region of £100 million (m).
9. The Council's latest (October 2015) estimates, excluding Blythe Valley Park, are that CIL revenues may amount to around £26.5m, the majority of which would be raised from residential development, over the plan period (MM 6). Over the last few years the average annual amount raised by the Council from S106 legal agreements in the areas that would be subject to the CIL rates is approximately £1.5m, again mainly from new housing.
10. The Council also calculates that the proposed CIL rates would not result in significantly higher overall charges for each new house, once account is taken of the revised approach to S106 (and S278 highways) agreements that will apply once the CIL is adopted. The evidence to support this is included in the

additional documents published with the proposed modifications in October 2015 (MM 3/MM 5). In the light of the above, the proposed charge would make only a modest contribution towards filling the likely funding gap, even with the higher new housing numbers to be expected in the reviewed plan. Nevertheless, the figures clearly demonstrate the need to introduce the levy.

11. Whilst there will always be other projects with which CIL revenues might assist, it is not the role of this examination to question the Council's specific spending proposals on either a geographical or a priority basis, beyond confirming that, in general terms, the projects in the Council's revised Regulation 123 list (MM 4) (October 2015) should clearly assist the delivery of the LP, as a whole. Nor is there any material inconsistency between the list and the policies and proposals in the LP and/or the intended CIL rates.

Economic viability evidence

12. The Council commissioned a CIL Viability Study (VS) (revised August 2013). This used a standard residual valuation approach, with reasonable assumptions for a range of factors, such as building costs based on BCIS local figures and Level 4 of the Code for Sustainable Homes (CSH) requirements (£8k per unit) for all new housing. It also took into account relevant current land values, including local data and some recent actual transactions. In general, the benchmark local land values used are sufficiently realistic for comparison purposes in a generic study of this type.
13. The VS also included current sale values based on a variety of local types; as well as suitable housing densities/mixes and gross to net ratios, and reasonable developer profit levels, amongst other factors. It sensitivity tested alternative affordable housing targets and tenure splits, as well as higher and lower sales values and build costs, thereby enhancing the robustness of its conclusions. The allowances for professional fees might well have been somewhat higher, but those used are not so low as to have any material effect on the overall viability outcomes assessed. Other specific criticisms are considered further below. Overall, I am satisfied that the study's methodology is suitable for the purpose and in line with the guidance in the Harman Report (June 2012) (Viability Testing for Local Plans).

Zones

14. The Council's evidence, supported by almost all representors in principle, is clear that the North Solihull Regeneration Area has significantly lower house prices and land values, and therefore a materially lower level of viability for new development, in comparison with the other proposed charging zones. This significant difference in viability clearly justifies its identification as a nil rate charging zone for residential and all other forms of new built development.
15. I deal with the Blythe Valley Park zone separately below.

Conclusion

16. The draft charging schedule is also supported by evidence of community infrastructure needs, including in the IDP and the revised Regulation 123 list

(MM 4). On this basis, the evidence which has been used to inform the charging schedule is robust, proportionate and appropriate.

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

Residential rates

17. In relation to new housing, the various assumptions used in the Council's generic testing of different development scenarios have been criticised by some representors in a number of specific respects and also in terms of the overall cumulative effect of the CIL rates to be applied. However, the Council's VS has taken account of the relevant policies of the LP, as required by national guidance, including the provision of 40% affordable housing, as appropriate. It is also generally consistent with the advice in the Harman Report (see above).
18. The construction costs have included additional build costs associated with the Code for Sustainable Homes (CSH) Level 4 and policies relating to sustainable design, construction and energy measures, as well as a 5% general contingency allowance. By definition, the CIL cannot make an allowance for "abnormal", site specific, costs. The rates have to be based on a generic analysis of a variety of size and type of schemes across the area, taking into account local build costs, not the individual circumstances of particular sites. The fact that a few specific smaller schemes that are already marginal may become unviable in certain locations should not have a significant impact on the delivery of new housing across the area to meet the requirements of the adopted LP and its future review.
19. Respondents have also criticised the profit level assumed by the Council as too low in some instances. Obviously, these vary with each scheme, including as the market changes over time. Nevertheless, using an average figure of 20% on gross development value, with 6% for the affordable housing element for which there is usually little risk element for the builder, is not unreasonable or unrealistic in generic analyses, as distinct from the detailed costing of a fully designed project for a particular developer on a specific site.
20. Particularly in relation to large housing sites there is also a concern that an insufficient allowance (around £1k per unit) has been made for likely site specific infrastructure contributions. However, previous local arrangements are not directly comparable with the proposed operation of residual S106 legal agreements once the CIL is adopted, as the Council's evidence makes clear (MM 3/MM 5). In future these would only involve contributions for requirements clearly linked to the site and needed to make the development acceptable and not projects or types of infrastructure listed in the revised Reg. 123 list that are to be wholly or partly funded by CIL (MM 4).
21. Consequently, on an average per dwelling basis for the future, the allowance is reasonable, particularly given that considerable margins of at least 45% between the actual rates and the maximum potential charges before viability is harmed have been allowed for in the proposed zonal rates. Overall and taken together, the introduction of the levy and the Council's revised S106 legal agreement arrangements should not lead to a significant increase in the average level of infrastructure contributions expected from each new dwelling

that would alone render new housing schemes unviable. Although there are suggestions that larger sites and a greater range of site types should have been tested, the Council's evidence looked at various different scenarios in each zone. As such, the level and scope of the assessment was suitable and sufficient in this local context to provide adequate guidance for rate setting.

22. The fact that local house prices and land values have increased overall (by at least 10% according to some sources) since the data for the VS was collected reinforces the conclusion that the residential rates would not give rise to a harmful impact on the viability of new housing schemes across the area, despite a similar increase in the costs of labour and building materials, as the relevant margins will have increased slightly and remain considerable. Similarly, the increase in new housing delivery in the reviewed LP, compared to the adopted version, is unlikely to prove significant in CIL viability terms, taking into account the relative strength of the local housing market and the likely absence of any essential additional major infrastructure requirements.
23. Differences in elements of construction costs and related matters between sheltered schemes and other market housing types have been considered and tested in the VS. The report is clear that overall, under current conditions, the outcomes are not sufficiently divergent to justify separate or different rates being applied to C3 use schemes in this locality at present. I therefore conclude that the local levy rates for new housing are justified by the available evidence and strike an appropriate balance between helping to fund new infrastructure and their effect on the economic viability of residential development across the area.

Blythe Valley Park

24. At the examination hearings in June 2015 the Council acknowledged that, at that time, their evidence was insufficient to clearly demonstrate that the development of the single largest strategic housing scheme allocated in the LP, at Blythe Valley Park for around 600 units plus a care home, would be viable if subject to the CIL rates proposed. Subsequently, evidence produced by the prospective developers of the site was agreed by suitably qualified independent consultants acting for the Council to show that the likely build costs for the expected "exemplar" quality project would be materially greater than the average/normal local costs included in the original VS work.
25. Moreover, also taking into account the mix of dwellings sought, with a significant proportion of smaller homes, policy compliant affordable housing provision at 40% (including 65% affordable/social rent and 35% shared ownership), the likely on site and directly related infrastructure costs, particularly relating to highways and services but also necessary contributions to education, public transport, cycling/walking links and biodiversity, would render the scheme essentially unviable if any CIL rate were to be imposed.
26. Any failure to bring forward the housing on this site, which represents a significant percentage of the total new provision allocated in the adopted LP, would mean that the Council had not drawn an appropriate balance between the CIL rates proposed and their likely impacts on the viability and thus the delivery of the necessary new dwellings in the borough over the plan period.

27. Taking account of this new evidence the Council proposed a series of five modifications to the submitted schedule to address this issue in October 2015, including that Blythe Valley Park should be identified as a separate charging zone and that new C3 (residential) and C2 (residential institutions) uses within the zone should be nil rated so that the overall scheme is viable under current circumstances. In the light of this clear and compelling evidence, I am satisfied that these modifications are suitable and appropriate to ensure that the charging schedule sets an appropriate balance between helping to fund new infrastructure and the likely effects on the viability of new residential development in the borough.
28. I recognise that these modifications will result in a material reduction in the potential CIL income for the Council, including for the relevant Parish Council concerned, in terms of helping to fund desirable elements of local infrastructure. However, there would be no CIL income anyway if the scheme does not proceed for viability reasons. Moreover, the essential elements of facilities and services necessary to enable the development to take place can still be expected to be provided through a S106 legal agreement specific to this site and directly related to its local on and off site requirements. In addition, it would still be possible for the Council to spend CIL income in this locality should they choose to do so. Consequently, I endorse the Council's modifications and recommend that the submitted charging schedule be amended so that the Blythe Valley Park scheme is not rendered unviable.

Retail rate

29. The level and extent of testing in the VS follows national guidance and is sufficient to clearly demonstrate that new retail development, including both food and general retail (A1 – A5 uses), would be viable across the district, apart from in North Solihull. It assesses a suitable range of new retail scenarios, using reasonable assumptions that reflect the local economic context and adopted planning policies. Other than in North Solihull, the available evidence also shows that there are no relevant local market conditions or variations that are sufficient to justify different charging zones for retail schemes, including in respect of both brownfield and greenfield sites, except in respect of Shirley and Solihull town centres for general retail uses.
30. Moreover, the retail rates to be imposed essentially reflect the evidence in terms of the potential maximums that could be imposed, whilst retaining sufficient margins of at least 33% to ensure viability for all retail types. The fact that, for all retail scenarios, the margins assessed take no account of the discount to be applied for any existing floorspace on the site, adds to this conclusion, even though they are relatively low in comparison to other forms of development. The Council's evidence also confirms that the viability implications of the CIL rate would not be greatly different from the alternative of local S106 legal agreement expectations in respect of larger new retail schemes, in general terms.
31. The liability for CIL should be readily apparent for prospective developers once the schedule is adopted and requires no further clarification or qualification in respect of the differing formats and business models of various retail operators, large or small, national or local. The available evidence is sufficient to show that it is appropriate in principle in Solihull to impose a CIL rate for all

new retail developments above the minimum size of 100 sq. m. At the levels set, it would not give rise to a significant threat to the future delivery of new retail development in the borough over the plan period, including where it forms part of a larger, mixed use, scheme.

Other rates

32. The Council's VS work shows that the proposed rates for C1, C2 and A2 uses would not pose a significant risk to their viability over the plan period at the relatively low rate of £25 psm proposed to be levied, bearing in mind that it amounts to only around 3% of the overall scheme cost on average. There is no relevant evidence to the contrary. As I understand it, a town centre budget hotel scheme (C1) has recently come forward to reinforce this assessment.
33. Similar conclusions apply in respect of A3 – A5 uses, albeit at a higher rate of £100 psm, where the CIL rate would equate to about 5% of total development costs, and car dealerships at a rate of £75 psm; also around 5% of total costs. The fact that margins of at least 33% would remain between the theoretical maximum that could be charged before viability is threatened and the actual rates sought, for all types of commercial uses, provides some further reassurance in respect of these conclusions.

Nil rates

34. The Council's evidence clearly shows that, in current market conditions locally, all forms of new employment development are not conventionally viable at present. Similar conclusions apply in respect of some other types of commercial development locally, including leisure and recreation, on a standard valuation basis. Accordingly, nil rates for such uses are appropriate in the borough, for the time being at least.

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

35. The Council's decisions to charge differential residential rates in the Rural Area and Mature Suburbs, together with differing retail rates, including in Solihull and Shirley town centres, are based on reasonable assumptions about development values and likely costs. All the available evidence indicates that, subject to the recommended modifications, both residential and retail development will remain viable across the area if the charges are applied.

Other Matters

36. The Council has published a separate Instalments Policy (October 2015) (MM 7) to explain how the CIL will be payable in respect of larger schemes, which will assist their overall viability. The Council has also helpfully clarified in their revised S106 Policy Statement (October 2015) (MM 3) that, once the CIL is adopted, such legal agreement contributions will be sought only for site specific mitigation measures directly linked to the development, excluding projects on their revised Reg. 123 list (October 2015) (MM 4).
37. The Council is also committed by legislation to publishing an Annual CIL Report, to include details of income and spending, with suitable monitoring

arrangements, and by choice to considering a review of the charging schedule once the review of the LP is completed, unless other changes require one beforehand. All of the above should materially assist with the appropriate implementation of a CIL charging regime in the borough.

Conclusion

38. 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 across the borough. It has been realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a wide range of development remains viable across the area.

LEGAL REQUIREMENTS	
National Policy/Guidance	The modified Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	The modified Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Solihull Local Plan and the Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

39. I conclude that, with the October 2015 modifications, the Solihull Metropolitan Borough 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). I therefore recommend that the modified Charging Schedule be approved.

Nigel Payne

Examiner