
Report to Rutland County Council

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an Examiner appointed by the Council

Date: 22 October 2015

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE RUTLAND COUNTY COUNCIL COMMUNITY INFRASTRUCTURE LEVY DRAFT CHARGING SCHEDULE

Charging Schedule submitted for examination on 16 July 2015

File Ref: PINS/A2470/429/5

Abbreviations used in this report

CIL	Community Infrastructure Levy
CS	Core Strategy
DCS	Draft Charging Schedule
NPPF	National Planning Policy Framework
SA	Site Allocations & Policies Development Plan Document
SQM	Square metres
S106	Town and Country Planning Act 1990 S106

Non Technical Summary

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

I have recommended that the schedule should be approved in its published form, without changes.

Introduction

1. This report contains my assessment of the Rutland County Council Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS) 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 in Planning Practice Guidance¹.
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, which took place through written representations, is the submitted schedule of February 2015², which is effectively the same as the document published for public consultation initially from 13 February to 27 March 2015 and subsequently for an additional four week period from 4 June to 2 July 2015.
3. The Council propose the following CIL rates per square metre (sqm) for qualifying development throughout the County:

• Residential	£100
• Sheltered Housing and Extra Care Housing	£NIL
• Distribution	£10
• Food retail supermarkets	£150
• Retail warehouses	£75
4. No charge is proposed for any other category of development.

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

Infrastructure planning evidence

5. The Rutland Local Development Framework Core Strategy (CS) was adopted in 2011. The Rutland Local Plan Site Allocations & Policies Development Plan Document (SA) was adopted in 2014. Together these planning documents set out the main elements of growth that will need to be supported by further infrastructure in Rutland.
6. The CS and SA provide for, among other things, the development of at least an additional 3,000 homes, approximately 5ha of employment land, and some 900 – 1,300sqm of additional convenience retailing and between 2,300 and 3,500sqm comparison retailing floor space in the County between 2006 and

¹ ID 25-001-20140612 – ID 25-170-20140612, June 2014

² CIL/010

2026.

7. The Council intends that CIL will help to fund the infrastructure which will be necessary to meet the needs arising from the consequent population growth. In particular, the Council has identified the need for highways, transport and waste schemes, additional health and social care facilities, additional childcare and educational provision, enhanced policing and community facilities, improvements to the public realm, library provision, cultural and sports facilities.
8. The estimated cost of the Council's identified infrastructure requirement is set out at Appendix 1 of the Council's Background Paper, February 2015 (CIL/020). The list comprises essential infrastructure which is needed to meet the needs generated by the growth planned within Rutland. It derives from consultations with infrastructure providers. The estimated cost of this infrastructure amounts to around £24.8m, of which approximately £12.8m will be provided from committed or projected funding.
9. The committed or projected funding includes public sector capital funding, other private sector or agreed developer contributions and sources of external grant aid, where appropriate, as well as signed or agreed obligations under S106 of the Town and Country Planning Act 1990. It reduces the need for additional funding to fill the infrastructure gap to just under £12m. Nonetheless these figures demonstrate the need to levy CIL in Rutland.
10. In order for the developments which are necessary for the implementation of the development plan to be largely viable, the Council is not seeking to fill the entire remaining infrastructure funding gap through CIL. Additional financial contributions would be sought through S106 agreements for site specific infrastructure not covered by CIL.
11. The Council's intention is that CIL will collect, as a minimum, the amount which has been collected recently through S106 agreements.³ However, although the Council's adopted developer contribution policy aims to secure £140/sqm, or £12,000 on an average 85sqm home, an average of only £85/sqm was achieved over the period June 2010 to December 2012 due largely to difficult market conditions. For consistency, these figures do not take account of additional contributions towards the provision of affordable housing.
12. The proposed residential CIL charge would, therefore, be lower than the former S106 target, but slightly higher than the amounts achieved in recent years. The Council calculates that CIL receipts will amount to about £4m over the remaining plan period to 2026.⁴ This would be around one third of the identified infrastructure gap.

³ CIL/61, page 18

⁴ CIL/022 paragraph 2.9

13. I take this to be a cautious estimate since at least 603 new homes are required in the period 2014 – 2026 to meet the requirement identified in the CS⁵, potentially generating a greater sum.

Economic viability evidence

14. The Council, together with all the Councils in Leicester and Leicestershire, commissioned a CIL Viability Study, dated January 2013⁶. The assessment uses a residual valuation approach, using reasonable standard assumptions for a range of factors such as building costs, profit levels, fees etc. The model was adapted to take account of an assessment of the housing market including different types of housing, sizes and tenures. Similarly an assessment was made of the non-residential markets to establish the worth of different types of non-residential uses in the study area. A set of 16 residential and 13 non-residential development types were modelled to assess viability and the scope for the payment of CIL.
15. The residential appraisal results were tested for sensitivity to affordable housing provision, building standards and 5% increases and decreases in house prices.
16. The non-residential appraisals investigated the viability of both greenfield and brownfield sites for a range of commercial uses and for leisure. In either type of location only Distribution, Large Retail Supermarkets and Large Retail Warehouses were viable, with other shops only being found to be viable on greenfield sites.
17. The Study has been updated and supplemented by the Rutland CIL Viability Update, June 2014.⁷ This update was prepared on the same basis, but relates solely to the Rutland County Council area. It reflects the Council's decision to reduce the affordable housing target to 30% and to increase the threshold size for affordable housing to 10 units.⁸ For non-residential uses the update took account of increased construction costs, and introduced an additional typology of smaller supermarkets with a floor space of 1,700sqm.
18. Two further viability assessments were submitted by the Council during the Examination at my request to provide information relating to smaller supermarkets with floor areas of less than 1,700sqm⁹. These were based on the same assumptions as the Revised Retail Appraisals in Table 6.1 of the 2014 Update, but additionally provide viability assessments for small supermarkets with floor spaces of 1,200sqm and 800sqm.
19. The CIL Viability Update demonstrates at Table 4.4 that, across the residential

⁵ CIL/020 page 9

⁶ CI/031 and Appendices CIL/032

⁷ CIL/035

⁸ CIL/035 page 28

⁹ CIL/100/02, dated 9 September 2015 and CIL/100/03, dated 16 September 2015.

site typologies within Rutland, the proposed CIL rate would range from 3.0% - 4.3% of the Gross Development Value, and that the amount of CIL payable would amount to 3.2% - 4.6% of the total development costs.¹⁰

20. The relationship between CIL, Gross Development Values and total development costs for non-residential development types, including smaller supermarkets, is not set out in a comparable tabular form. However, Table 6.1 in the CIL Viability Study Update and the unnumbered table in the Council's response to my further retail questions¹¹ together show the anticipated 'additional profit' over and above the normal development profits, which would be potentially available for CIL. For each of the non-residential typologies tested, this would be comfortably greater than the proposed CIL rate, leaving a generous buffer for possible changes in costs or market conditions.
21. The Draft Charging Schedule¹² notes that S106 contributions can still be sought for infrastructure directly related to a development, including contributions towards off-site affordable housing provision. The impact of providing affordable housing in accordance with the CS has been considered by the Council throughout the preparation of its evidence base to support the CIL DCS. In particular, the Council introduced a 'cap' in April 2013 to reduce the maximum off-site contribution which it would require towards affordable housing for small sites of five or fewer dwellings. It confirms¹³ that it will amend its formal policy guidance on Affordable Housing and S106 to apply the 'capped' level to larger sites of 6 to 10 dwellings.

Conclusion on whether the charging schedule supported by background documents containing appropriate available evidence

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

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

CIL rates for residential development

Whether a matrix approach incorporating differential CIL rates is necessary:

23. It is submitted that differential rates are required to differentiate between the viability of development in Oakham and the smaller villages in Rutland. However, the Viability Study and its Update report each examine a range of typical residential development locations and types. In all relevant typologies, other than an ex-garage brownfield site, the assessments indicate that the

¹⁰ CIL/035 page 30

¹¹ CIL/100/02

¹² CIL/010 paragraph 7

¹³ CIL/20 page 17

proposed CIL charge would not undermine development viability. Although there is some variation in residual land values across Rutland, it has not been demonstrated that this, or any other relevant factor, is sufficient to outweigh the Council's viability evidence.

Whether rural exception sites for housing should be excluded from CIL:

24. Rural exception sites for affordable housing may be permitted under CS policy CS11, with an option of providing a small number of market housing units on affordable rural exception sites being supported by SA policy SP10. However, no such sites have come forward during the plan period. In the event that any future rural exception sites include a mix of the market and affordable housing, CIL would be applicable to the market housing with the statutory exemption applying for the element of affordable housing.
25. Rural exception sites would be limited to a maximum of 5 or 9 homes depending on their location. In the absence of detailed evidence to the contrary, I consider that the viability assessment for a small village scheme would indicate that the proposed level of CIL would not harm the delivery of rural exception sites.

Whether dwellings for agricultural and other rural workers should be excluded from CIL:

26. It is submitted that CIL could affect the development of homes for agricultural, forestry and rural enterprise workers. However, CIL would not apply to dwellings for agricultural, forestry or rural enterprise workers meeting the requirements to qualify as Affordable Housing. Similarly, self-build housing would not be liable for CIL.
27. Moreover, the Council does not require a commuted sum towards off-site affordable housing for the construction of a single agricultural dwelling¹⁴. Without detailed submissions relating to the viability of building homes for such rural workers, I therefore take this to be a generalised concern. It does not demonstrate CIL would jeopardise the delivery of the very limited number of dwellings which are essential for agricultural, forestry and rural enterprise workers.

Whether the development of single dwellings should be exempt from CIL:

28. It is submitted that CIL should not be charged on the development of single dwellings, particularly those within existing residential plots. However, no evidence has been provided to challenge the residual value indicated in Table 4.3 of the Viability Study Update. Moreover, the development of single village houses, which will include those within existing residential plots as well as infill and other plots, is expected to provide up to 22% of the dwellings to be built

¹⁴ CIL/100/01

in Rutland in the period to 2026¹⁵. This is an important proportion, which will both contribute towards meeting housing needs and generate the need for additional infrastructure.

29. The Council anticipates that a significant number of single village dwellings are likely to be 'self-build' homes, which would be exempt from CIL, but there is no compelling evidence before me for the removal of CIL from the construction of other single village dwellings.

Whether homes being constructed for letting should be exempt from CIL:

30. Consistent with the recognition in the National Planning Policy Framework (NPPF)¹⁶ that homes for private rent may contribute to inclusive and mixed communities, CS policy CS10 requires housing developments to provide a range of housing types, sizes and tenures. However, while it recognises that the Strategic Housing Market Assessment identifies a small shortfall of all sizes of private rented accommodation, the development plan does not allocate sites for this purpose.
31. Moreover, substantive evidence has not been submitted to demonstrate why properties for rent should be exempt from CIL or to show that the payment of CIL would make the development of buy-to-let properties unviable.

Whether account has been taken of the additional infrastructure costs associated with strategic housing sites:

32. It is submitted, and the Council concedes, that the evidence base for the DCS does not address the potential effect of CIL on the viability of large strategic residential sites, which may come forward at a future date. There are, however, no strategic housing sites within Rutland anticipated within the period to 2026. Furthermore, no detailed evidence has been submitted on this matter, and so it has not been shown that the DCS would harm the deliverability of development in Rutland.

CIL rate for Distribution

33. The Council has taken a cautious approach to setting the CIL rate of £10 for commercial distribution uses. It is informed by the CIL Viability Study, CIL/031, and consistent with the available evidence.

CIL rate for Food Retail Supermarkets

34. The CIL Viability Study (CIL/031) examined evidence from across Leicestershire and Rutland to establish the viability of large food retail supermarkets and smaller retail outlets on both greenfield and brownfield sites.

¹⁵ CIL/035 Paragraph 4.18

¹⁶ NPPF paragraph 50

35. In response to representations from smaller 'discount' supermarket operators to the consultation on the Preliminary DCS in 2013, the Viability Study Update (CIL/035) reconsidered the modelling of supermarkets. Its modelling reduced the size of supermarkets from 6,000sqm to 4,000sqm and introduced a smaller 'discount' supermarket with an area of 1,700sqm into the typology. Each was found to be viable, with the capability for paying CIL.¹⁷
36. Further representations contend that the proposed DCS could impact on the viability and deliverability of smaller supermarkets, and 'discount' stores of less than 1,700sqm, although no valuations or other detailed evidence has been provided.
37. There is considerable variation in the floor areas of the store sizes being sought by the various operators of smaller supermarkets, ranging from 510sqm up to 1,800sqm. The Council commissioned additional viability testing for smaller supermarkets with floor areas of 1,200sqm and 800sqm. This was based on wider experience across England in the absence of information on the sale or letting of smaller format stores in Rutland or nearby.¹⁸ The additional assessments confirm that the residual site values for each supermarket size tested would be sufficient to support the payment of CIL.
38. Furthermore, the CIL rate proposed by the Council for food retail supermarkets falls well within the additional profit identified in the Council's studies.¹⁹ There is, therefore, no evidence to support the introduction of differential charging rates for smaller supermarkets, or for reducing the proposed CIL charge.

Whether 'discount' stores are supermarkets

39. The matter of whether 'discount' stores fall within the Council's definition of supermarkets in the DCS is also the subject of submissions. The DCS takes its definition as 'shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit.' The definition, which derives from the Examination of the Wycombe District Council Charging Schedule in 2012, has wide acceptance. The absence of a specialist butcher, fishmonger, delicatessen and chemist at 'discount' stores does not preclude them from the above definition as it has not been demonstrated that these are essential for weekly food shopping.
40. At South Lakeland a supermarket definition adds that the majority of custom at supermarkets arrives by car, using the large adjacent car parks provided.²⁰

¹⁷ CIL/035 Table 6.1

¹⁸ CIL/100/02 and CIL/100/03

¹⁹ CIL/035, CIL/100/02 and CIL100/03

²⁰ CIL/100/01

The Council would accept a modification to the DCS to reflect this definition,²¹ but as weekly shopping at sustainable locations can be carried out by bus or taxi, and to avoid possible ambiguity, I do not consider that this change is necessary.

CIL rate for Retail Warehouses

41. The proposed CIL rate was reduced to £75/sqm following the preliminary draft consultation stage in 2013. The proposed rate in the DCS is now informed by and consistent with the evidence in the Viability Study.

Conclusion on CIL Charging Rates

42. For these reasons, I find that the Council's proposed charging rates for both residential and non-residential development are informed by and consistent with the evidence.

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

43. The Council's decision to set the overall rates set out in paragraph 3 , above, is based on reasonable assumptions about development values and likely costs. These have been considered in the context of the Council's recent experience in raising funds through S106 agreements, and the limited information available relating to CIL charging rates in neighbouring areas. The evidence shows that residential and commercial development will remain viable across most of the area if the charge is applied. Only where alternative land values exceed residential development values, such as at a former garage site identified in the submitted studies, would development be at risk due to CIL.
44. The delivery of the overall development within the area would not be put at serious risk by the viability of developing a single development type relating to small sites.

Other matters

45. Representors supporting the introduction of CIL in Rutland seek its implementation at an early date. This is not a matter for me, but for the Council as the Charging Authority. Similarly, representations seeking the inclusion of additional development uses or higher charging rates within the DCS do not go to the heart of the impact of the published schedule on the viability of development in Rutland. They are not, therefore, matters for this Examination.

²¹ CIL/100/02

Overall Conclusion

- 46. 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 Rutland. It has taken into consideration representations received during earlier consultations stages, albeit that these are not all reflected in the DCS. 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 authority area. It has not proposing to offer exemptions or relief beyond statutory requirements, but this is a matter which the Council will keep under review.
- 47. The Council has started the local plan review process to plan for development requirements in the period to 2036. It acknowledges that this will necessitate a complete review of infrastructure priorities.²² Given the limited extent of the development provision in the CS remaining to be carried out, I concur with the authority's view that a complete review of CIL will be necessary within three years.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted CS and the Draft Infrastructure Project List appended to the DCS Background Paper February 2015, and is supported by an adequate financial appraisal.

- 48. I conclude that the Rutland County Council Community Infrastructure Levy DCS 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 Draft Charging Schedule be approved.

CA Newmarch

Examiner

²² CIL/022 paragraph 4.4