
Report to West Dorset District Council and Weymouth and Portland Borough Council

by Paul Crysell BSc MSc MRTPI

an Examiner appointed by the Councils

Date: 14th August 2015

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT WEST DORSET AND WEYMOUTH AND PORTLAND COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULES

Charging Schedules submitted for examination on 24 June 2013

File Ref: PINS/F1230/429/6

Non-Technical Summary

This report concludes that, subject to modification, the West Dorset Weymouth and Portland Community Infrastructure Levy Charging Schedules provide an appropriate basis for the collection of the levy in the District and Borough. The Councils have sufficient evidence to support the schedules and can show that the levy is set at a level that will not put the overall development of the respective local authority areas at risk.

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

- Revisions to the definition of holiday accommodation;
- The inclusion of 'second homes' in the definition of dwellings;
- Amendments to the Charging Schedules to identify the strategic sites to which CIL will not apply;
- Inclusion of additional OS maps defining the charging zones.

The specified modifications recommended in this report do not alter the basis of the Councils' overall approach or the appropriate balance achieved.

Introduction

1. This report contains my assessment of the West Dorset, Weymouth and Portland Community Infrastructure Levy (CIL) Charging Schedules in terms of Section 212 of the Planning Act 2008. It considers whether the schedules are compliant in legal terms and whether they are economically viable as well as reasonable, realistic and consistent with national guidance (Community Infrastructure Levy Guidance¹).
2. To comply with the legislation the local charging authorities have to submit what they consider to be charging schedules which set an appropriate balance between supporting the funding of new infrastructure and the potential effects on the economic viability of development across their areas. The basis for my assessment which took place through written representations are the submitted schedules of 24 June 2013 [CD/CIL6 and CD/CIL7]².
3. With the exception of revised residential charging rates for West Dorset (WD) these are the same as the document published for public consultation between 20 November and 22 December 2012 [CD/CIL2]. Notice of the intention to change the published draft charging schedule for

¹ N.B. The Community Infrastructure Levy Guidance introduced on 24 February 2014 and in turn replaced by Planning Practice Guidance on 12 June 2014 is not relevant to CILs submitted prior to these dates.

² CD/CIL6 for West Dorset and CD/CIL7 for Weymouth and Portland.

WD was advertised in June 2013 and those wishing to do so were invited to comment [CD/CIL16]. I have taken into account submissions made in relation to the Schedules including changes to residential rates and the introduction of an instalment policy [CD/CIL14].

4. The Councils propose charges for residential development which includes holiday accommodation. Differential rates have been planned for Weymouth and Portland (WP); £93 per square metre (sqm) at Weymouth and £80 sqm at Portland. Rates were initially set [CD/CIL2] at £80sqm for Chickerell and Crossways and £100 sqm elsewhere in WD in response to viability issues. A rate for holiday uses was also set at £80 sqm. Subsequently, a single rate of £100 sqm was recommended for residential development in WD [CD/CIL16]. The same rates would apply to dwellings with restricted holiday use. No charges were proposed for other uses. The charging zones were shown on plans which form part of the charging schedules.
5. An examination session to consider representations to the CIL proposals was arranged for 12 December 2014 but the prospective participants withdrew prior to the hearings. I was concerned, however, that in neither the modifications to the WD Charging Schedule [CD/CIL6] nor in the formal Statement of Modifications [CD/CIL16] was it made clear that the changes involved removing five strategic sites from the charging regime. These sites had been shown as zero-rated on the plan accompanying the revised Schedule but no specific reference was made to this elsewhere in either document.
6. In the interests of transparency, I asked the Councils to set out the various stages of the CIL preparation process and to consolidate all changes to the charging schedules into a further document [CD/CILMOD 1] and invite comment. This included changes to two definitions I asked the Councils to consider. I have had regard to the representations made to this document as well as those made at all previous stages of the process.

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

Infrastructure planning evidence

7. The West Dorset, Weymouth and Portland Local Plan (LP) has been examined alongside the charging schedules. This sets out the strategic areas for growth to enable the provision of 15,500 dwellings in the period to 2031 and some 13,000 jobs. Policy SUS 2 identifies broad locations for growth in the main settlements of WD and the urban areas of WP.
8. Infrastructure is acknowledged as being critical to the success of the strategy with known projects identified in the Councils' Infrastructure Delivery Plan, June 2013 (IDP) [CD/CIL1] and subsequently updated in October 2014 [CD/CIL18]. The latest iteration of the IDP indicates those schemes which are anticipated during the plan period and these are set out in two appendices. Appendix 1 identifies those in WP while appendix 2 provides the corresponding information for WD.

9. Both appendices are subdivided into three schedules and most detail is provided for the initial part of the plan period (2014 – 2017 - Schedule 1A and Schedule 2A) while projects to be delivered after 2017 are listed in Schedule 1B and Schedule 2B. The appendices contain a further schedule (1C and 2C) which identifies larger more complex sites. The intention is that these will be excluded from CIL charges and the infrastructure required for these sites will be secured through S106 agreements with the developers.
10. The IDP provides information regarding likely costs, existing and potential funding, timescales and the agencies involved in project delivery. The Councils accept that funding streams, programmes and costs will vary over time making it necessary to undertake regular reviews of the document. Draft Regulation 123 lists [CD/CIL15] identified the types of infrastructure to which CIL funds would contribute. Following the review of the IDP in 2014 the Regulation 123 lists were amended [MS/CIL1] to improve consistency with the IDP and to include further detail on projects.
11. Amongst other items, these identify priority projects for delivery between 2014 – 2017 and cover schemes involving flood defence works, access and leisure projects, education and healthcare facilities and transport improvements to be funded either in whole or part by CIL. It has been suggested that other items should be included but it is not for me to advise on the contents of the lists.
12. The estimated cost of infrastructure needs in WD amount to approximately £133.5m; the corresponding figure for WP is £75.3m [MS/CIL1]. While it may be difficult to quantify financial requirements for the full plan period it is clear that there are significant funding gaps towards which the introduction of CIL would make modest contributions. Based on current estimates of funding from CIL (£14.1m for WP and £3.1m for WD), a substantial shortfall will remain. The figures clearly justify the need to introduce the CIL.

Economic viability evidence

13. The Councils commissioned CIL Viability Appraisals³ (VA) using a residual valuation method incorporating standard assumptions for variables such as market values, build costs, profit levels and fees. The model was adapted to accommodate local land values, sale prices, housing densities and gross to net cost ratios. Building costs were based on the industry standard RICS Building Cost Information Service (BCIS), indexed to allow for differences across typologies.
14. The residual method is one of a number of ways to assess viability and shows whether the value of a scheme will generate a sufficient return over its existing value to make it worthwhile once relevant costs have been deducted. No preference is provided in CIL guidance on techniques for assessing viability and the Councils' approach was criticised because of its

³ CIL Viability Appraisals –BNP Paribas Real Estate. See CD/CIL8, March 2012 for Weymouth and Portland & CD/CIL9, February 2012 for West Dorset

dependence on assumptions used in the analysis. This is a potential weakness of the process because differences may occur across a market area while small changes in values and costs can have significant effects on valuations. If the estimates are realistic, however, the methodology is capable of providing a broad assessment of development viability.

15. The Councils' viability evidence demonstrates whether different types of residential and commercial development are able to contribute to infrastructure requirements in WD and WP by means of CIL payments. Account has been taken of how land values influence viability including the different costs involved in developing brownfield and greenfield sites. Consideration has been given to how costs can affect basic assumptions and contingencies have been incorporated to provide flexibility because a broad analysis of this type cannot make allowances for site-specific factors which may, for instance, result in abnormal costs being incurred.
16. A range of residential developments, representative of the schemes which are expected to come forward, were assessed. The findings of the VAs show that CIL charges are capable of being absorbed providing they are not set close to the limits of viability. In contrast, the studies found that a majority of retailing, office and industrial schemes are not viable and would require significant improvements in market conditions before the imposition of CIL charges could be contemplated.
17. The cyclical nature of the property market reinforces the need for sensitivity testing to examine the effects of CIL rates if sale values were to increase and inflation add to build costs. It was argued that the work undertaken for this purpose was flawed because it failed to have regard to poor market conditions. Sensitivity testing is meant to be a guide to the robustness of the process rather than a reflection of viability, but testing did allow for a 5% reduction in values. The Councils pointed out that Land Registry analysis shows increases in sales values (11.45%) since the VAs were undertaken have exceeded the allowance (10%) used in testing.
18. Respondents highlighted issues with residential charges and matters of more general concern. The Councils' response is set out in CD/CIL10 which refutes these criticisms. Further VAs were undertaken following tenure changes to affordable housing [CD/CIL11], a proposal by WD to adopt a single residential rate [CD/CIL12] and to test the impact of affordable housing policy on small sites [CD/CIL13]. The latter is particularly relevant following a legal judgement against the Secretary of State for Communities and Local Government where the intention had been to introduce a site threshold beneath which affordable housing contributions would not be sought⁴. Viability testing was also carried out on 16 sites identified in the Councils' SHLAA⁵. These examined sites of varying size and type to illustrate the likely effects of CIL charges [CD/CIL17].
19. The additional appraisals demonstrate that none of the revisions to CIL

⁴ West Berkshire District Council and Reading Borough Council v SSCLG, 31 July 2015

⁵ Strategic Housing Land Availability Assessment

rates would have an adverse impact on the viability of schemes for the majority of scenarios tested. Small variations in benchmark land values, for instance, make a significant difference to the level of charges which could be levied meaning that higher CIL rates would be feasible in many cases. Further testing found that implementing policy HOUS 1 of the LP would be unlikely to have a significant impact on the viability of smaller developments in either WD or WP. Detailed assessments of selected SHLAA sites also shows most are viable with only one of 16 sites likely to remain unviable if modest improvements are seen in sales values.

Conclusion

20. The Draft Charging Schedules are supported by detailed evidence of community infrastructure needs and the economic viability of different types of development. This includes larger developments equivalent to the strategic urban extensions and major sites which are critical for the successful implementation of the LP. The factors taken into account are broadly consistent with the guidance in the Harman Report⁶. On this basis, I find the evidence which has been used to inform the Charging Schedules is robust, proportionate and appropriate.

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

Residential rates

22. The main objective of the LP is to ensure that the majority of development will be directed to the larger settlements. Five strategic site allocations have been proposed in sustainable locations. Other sites are expected to come forward in the main towns and villages but relatively little housing is anticipated in rural areas.

23. Seven forms of residential schemes were assessed using densities, build types and dwelling mixes typical of the area. Adjustments were made to accommodate variations in costs including, for example, the higher costs involved in small site developments (Types 1 and 2), additional costs associated with major on-site infrastructure and works on larger/strategic sites (Types 6 and 7⁷). Allowance was also made for construction to Level 4 standards of the Code for Sustainable Homes (CfSH)⁸. There was little criticism of the chosen typologies.

24. Four benchmark land values were adopted to cover the range of land values likely to be achieved across the local authority areas. These varied from £250,000 for large greenfield sites to £800,000 for residential land, the latter being adjusted to reflect 'planning risk' and reduced grant availability.

25. Variations in residual land values in both WD and WP demonstrate that it would be possible to set different residential rates for CIL purposes

⁶ Viability Testing Local Plans, Local Housing Delivery Group, June 2012 (The Harman Report)

⁷ Types 5, 6 & 7 differ for WD and WP reflecting the scale and type of dwellings expected in each area.

⁸ The Government is consolidating housing standards including elements of the Code for Sustainable Homes through the Deregulation Act 2015

dependent on location and site characteristics. Rates which are set closer to viability margins could provide better returns for the Councils but would result in more complex charging regimes and potentially jeopardise some schemes were market conditions to deteriorate.

26. A wide variety of sales values were recorded in WD with high value areas such as Beaminster, Dorchester, Lyme Regis and Sherborne capable of supporting rates well in excess of £100 according to the VA [CD/CIL9]. Imposing a similar level of CIL in areas such as Chickerell and Crossways would leave schemes closer to the margins of viability. For this reason, the Council chose to set different rates in its earlier draft charging schedule [CD/CIL2]; £100 for the majority of the District with a reduced charge of £80 for Chickerell and Crossways.
27. The VA [CD/CIL8] found that parts of WP would be capable of accommodating a residential charge of £100 although lower sales values at Portland meant schemes would be put at greater risk. Where affordable housing was required the threat to viability was increased. For this reason it was suggested a uniform charge of £100 would oblige the Council to adopt a more flexible stance on its affordable housing target.
28. It is clear that changes in sales values, land and build costs are more important factors than CIL rates in determining whether a scheme is viable but the possibility that CIL charges would reduce residual margins and threaten viability led to the Council to set a reduced rate. A two-tier charge was therefore proposed of £93 at Weymouth and £80 at Portland.
29. Identical rates for dwellings with restricted holiday uses are to be applied in both authorities, including the reduced rate at Portland. A modification is necessary to clarify the meaning of this term (**EM1**) but further wording to cover temporary accommodation is not necessary, contrary to what has been suggested. I also endorse an additional modification (**EM2**) to confirm that second homes will be subject to CIL charges.
30. A 15% allowance for external works was regarded as insufficient by one respondent who had had experience of costs exceeding 25%. There is no supporting evidence to suggest external costs regularly approach this level rather than more typical rates of 10 - 15% commonly adopted in charging schedules. As the Harman Report says, costs generally should be based on average costs for each site type unless specific information is available to suggest otherwise.
31. It was claimed the VAs also failed to take account of the higher building standards expected by 2016 with the impending move to Level 6 of the CfSH. For this reason it was felt that a 46% uplift to cover the increase should be tested. I disagree because it is inappropriate to consider standards that have not been introduced. Furthermore, the Government is in the process of introducing a new system to rationalise housing standards and complement the existing Building Regulations.
32. These and other changes have been initiated through the Deregulation Act 2015. The Government remains committed to implementing the zero

carbon homes standard but are exempting small sites of ten or less dwellings. Recent research⁹ shows the costs involved in achieving zero carbon homes would largely be covered by the 6% allowance over and above that included for base costs in the VAs. In these circumstances, I consider there is little justification for concluding that current energy and housing standards would undermine the viability of most development.

33. It was claimed that CIL proposals would have a disproportionate effect on the viability of retirement housing because development economics are markedly different when compared to traditional house building. A paper produced by two of the main providers of specialist retirement homes¹⁰ explains that higher build and marketing costs are typical features of these schemes. Factors such as the provision of communal space and extended sales periods add to financial pressures which are not experienced by mainstream housebuilders.
34. The Councils' view is that higher densities and prices help to offset higher costs but it was decided to undertake a further assessment of retirement housing [MS/CIL1]. This used sales values from a local scheme in combination with an extended sales period, higher densities and costs associated with flatted and sheltered developments. Residual land values were found to be acceptable even when affordable housing provision was included while it was suggested that even a modest improvement in gross to net ratios would significantly improve residual values.
35. On this basis I consider there is no justification for recommending different rates are employed for retirement housing especially as schemes offering extra care facilities would be zero-rated under the charging schedules¹¹. Nevertheless, the Councils should monitor the situation and review their charging schedules if new evidence shows the levy is compromising the delivery of retirement housing.
36. The levy is a fixed tariff so there is no flexibility to vary requirements which is possible with S106 agreements. Consequently, it is important that rates are not set close to the limits of viability which might otherwise frustrate objectives to secure affordable housing, a matter of concern to some respondents. The VAs demonstrated that affordable housing policy requirements were unlikely to inhibit development in most locations although the results justify the decision to set percentage targets for Portland at 25%. Elsewhere the requirement would remain at 35% although in both cases the Councils decided to delete reference in the Local Plan to these as 'minimum' targets.
37. Initial viability testing was based on a tenure mix delivering 70% of housing for social and affordable rents. A change to the 'affordable rent' model allows providers to increase rents on new lettings to a maximum of 80% of market rents. This has implications for the 'affordability' of

⁹ Zero Carbon Hub (Cost Analysis: meeting the zero carbon standard), February 2014

¹⁰ Retirement Housing and the Community Infrastructure Levy, June 2013 (Churchill Retirement Living and McCarthy & Stone)

¹¹ Extra Care Facilities are classified as C2 uses under the Uses Classes Order which are zero-rated for CIL purposes

housing although it would, in principle, improve viability because providers will be able to pay more for this element of a scheme.

38. Further VA testing showed residual land values would exceed benchmark values on the majority of small sites (one and two unit schemes) where financial contributions towards affordable housing were required [CD/CIL13]. However, recent changes to thresholds limit the size of sites for which affordable housing can be sought. Generally this excludes sites of 10 or fewer dwellings although a lower threshold of 5 or less applies in areas designated as AONB. The Councils have modified policy HOUS 1 of the LP to accommodate these changes meaning that sites 1 – 3 in the VA typology located in the AONB would not be affected and types 1 – 4 would not be subject to CIL charges elsewhere.

Strategic sites

39. The viability evidence shows that a majority of residential development should be able to absorb the CIL rates proposed in West Dorset and Weymouth and Portland with sufficient 'headroom' to allow for local factors which might otherwise compromise viability. For larger schemes (Types 6 and 7) an additional allowance was included in the appraisals for major on-site infrastructure and associated costs. Despite this the evidence suggests that in some locations larger developments could be under pressure if higher rates of CIL were imposed. To eliminate this risk and avoid charging twice (through CIL and S106 payments) the Councils decided to exclude five strategic local plan sites from the charging regime. These sites are therefore identified as zero-rated for the purposes of CIL in the Charging Schedules (**EM3**).
40. The five strategic sites are identified in the Local Plan¹² which explains that both Councils will fund infrastructure requirements on more complex sites through planning obligations (S106 Agreements). The infrastructure requirements associated with these schemes are set out in the most recent iteration of the IDP. I appreciate there are advantages in adopting this approach because it would give the Councils more flexibility when prioritising infrastructure provision and negotiating affordable housing provision.
41. It will be important that the Councils avoid applying charges on amended schemes where the levy is applicable if contributions have been agreed previously outside CIL arrangements. This has been identified as a potential issue for a large housing development being built at Putton Lane, Chickerell. I do not consider this is a reason for treating the development as a strategic site or that some of the key sites in Weymouth Town Centre should be exempt from CIL charges.

Other uses

42. A range of commercial developments were examined assuming rent levels

¹² Chapter 5, paragraph 6.2.3 of the West Dorset Weymouth and Portland Local Plan, June 2013

achieved in actual schemes and using appropriate yields as a guide to the likely capital values of commercial space. Lower rents and higher yields were adopted for assessing returns likely to be achieved on existing rather than new commercial floorspace.

43. According to the VAs, retail warehouse units and major supermarkets generate high capital values and are capable of producing sufficient residual values to support a CIL of up to £200 psm. but neither Council expects this type of development to come forward. As a result there is little reason to levy retail charges although some local respondents disagreed. Values achieved for the remainder of the retail sector vary according to type and location but at best are only at the margins of viability. Consequently, the imposition of a CIL charge is inappropriate at present although the Councils may wish to review their position in due course.
44. Similarly, hotel, office and other industrial and commercial floorspace is unlikely to generate values which are capable of supporting CIL charges. A zero rate is therefore justified for all other uses.

Other matters

45. An instalment policy does not form part of the charging schedule but the Councils intend to introduce one for schemes exceeding £60,000 [CD/CIL14]. A number of respondents felt it would be better if payments were based on occupation rather than time because of variation which occur in build rates. I accept this would be advantageous for developers but would make it more difficult and expensive for the Councils to administer and could reduce the incentive to complete developments in reasonable timescales. The proposed scheme benefits from its simplicity while making reasonable allowance for variations in building and sales rates to reduce cash flow problems for developers.
46. I consider a further modification (**EM4**) is necessary to show in detail the boundaries of the charging zones for Portland, Weymouth and West Dorset. These should be provided at a suitable scale on an OS base similar to those for the strategic sites. The boundaries between Portland and Weymouth were previously included in CD/CIL2 (page 6) and should be retained in the final Charging Schedules together with the other boundaries mentioned above rather than relying on the small scale map covering the Plan area.
47. Most of the modifications referred to are set out in the Councils' Community Infrastructure Levy (CIL) Modifications, March 2015 [CIL MOD 1] or signalled in earlier changes. For the avoidance of doubt I have identified the more recent modifications that are necessary for the Charging Schedules to be approved in Appendix A to this report.

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

48. The Councils' decision to set rates at £80, £93 and £100 sqm. depending on use and location, is based on reasonable assumptions about

development values and likely costs. The overall level of CIL charges would amount to 3.3% of total residential costs in WP and 4% in WD, the evidence suggesting that residential development will remain viable across most of the area. Schemes which may be marginal at present should become viable as market conditions improve values although it is important that the Councils keep CIL rates under review. However, I am satisfied that the evidence demonstrates the overall development of the area will not be put at risk.

Conclusion

49. In setting the CIL charging rate the Councils have had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in West Dorset, Weymouth and Portland. They have endeavoured to be realistic in seeking a reasonable level of income through CIL charges in order to address an acknowledged gap in infrastructure funding while ensuring a range of development will remain viable if the charge is applied. The West Dorset Weymouth and Portland Local Plan has just been examined and it may be appropriate to consider an early review of the charges once it has been in place long enough to understand the full effects of the CIL regime.

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 Local Plan I have examined and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

50. I conclude that subject to the modifications set out in Appendix A the West Dorset, Weymouth and Portland Community Infrastructure Levy Charging Schedules satisfy the requirements of Section 212 of the 2008 Act and meet the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedules be approved.

P R Crysell

Examiner

This report is accompanied by:

Appendix A – Modifications that the examiner specifies so that the Charging Schedules may be approved.

Appendix A

Modifications recommended by the Examiner to allow the charging schedules to be approved.

Modification No.	Modification
EM1	<p>Amend the definition of " dwellings with restricted holiday use" in the Charging Schedules to read as follows:</p> <p>'Dwellings with restricted holiday use include holiday lets i.e. residential houses which are restricted to holiday use. The definition excludes second homes, hotels, guesthouses and some B&Bs, and more temporary tourist accommodation such as caravans and tents'.</p>
EM2	<p>Amend the definition of "dwellings" in the footnotes to the Charging Schedules to read as follows:</p> <p>'Dwellings include houses and flats and dwellings used as second homes but exclude affordable housing'.</p>
EM3	<p>Amend the Charging Schedules identifying the strategic sites in West Dorset and Weymouth and Portland which will not be subject to a CIL charge (as set out in Appendix A to CIL MOD1).</p>
EM4	<p>Insert OS based maps at a suitable scale to show in detail the boundaries between charging zones at Portland, Weymouth and West Dorset to supplement the tariff map of the Plan area.</p>