

PINS Frontloading Visit – Greater Norwich Development Partnership

Feedback Report – December 2011

Introduction

1. The purpose of this advisory visit was to consider what has been done so far in the preparation of a Community Infrastructure Levy [CIL] Charging Schedule and to identify those questions that, at this stage, appear potentially problematic. It did not seek to test material, confirm the adequacy of the documents available so far or endorse any part thereof as sound. These notes should not therefore be taken as pre-judging the outcome of the examination but set out specific advice for this partnership of authorities based on the particular circumstances and questions raised.
2. Although it contains general guidance and good practice advice, it should not be assumed that this is necessarily applicable to other authorities and other circumstances. This report briefly addresses the main points arising from the meeting on 14 December 2011. On present information, in general terms, the Partnership appears to be moving in the right direction regarding the CIL.

General

3. The Examiner should not question the Charging Authority's (CA) choice in terms of "appropriate balance", unless the evidence available shows that the proposed rate or rates would put the overall development of the area at serious risk. The evidence should focus on viability, the aggregate funding gap requiring CIL and any effects taken as a whole across the area. Affordable Housing Viability Studies are useful examples of the type of evidence needed, related to such matters as land values, sale values and build costs.
4. The CA should not need a host of new evidence but the Examiner will have to look at evidence from representors too and conclusions need to be informed by and consistent with all the relevant evidence. The Examiner will not reopen CS or DPD infrastructure planning or reconsider adopted DPD policies but may have to look at the current realism of previous funding assumptions and the need for any update of the Infrastructure Delivery Plan.
5. In relation to the "appropriate balance", the ideal is to set a CIL to achieve most of the income needed but with all development still viable to come forward. The Examiner will only judge the balance "wrong" if there is a serious risk to overall delivery, as per the adopted development plan, in accord with para 10 of the CIL guidance¹. The Examiner should not interfere unless the evidence

¹ Community Infrastructure Levy Guidance: Charge setting and charging schedule procedures (March 2010), DCLG

is clearly incapable of being used in the way the CA has used it or it is demonstrably not fit for purpose. The evidence must be based on economic viability and infrastructure planning (not policy), with the rate(s) informed by and consistent with that evidence to show that the overall development of the area is not at serious risk.

6. In general, the CA can decide what to spend the CIL on and will have greater flexibility now that the Localism Act has been passed. The associated Regulations are currently expected to come into effect in April 2012. However, the CIL should not be used as a mechanism for delivering policy; the justification for the rate(s) must be based on the viability evidence alone. Thus, a low rate for all commercial development because there is a policy to promote jobs is not good enough. There is also a need for some narrative with the evidence to describe how it has been assessed and applied to inform the charge setting. In effect, an "audit trail" of how the CIL has been set. This should include viability evidence to justify why any nil rate is set for any development type(s).
7. New evidence should not be submitted post publication; it is not fair to representors or the Examiner. Such material either has to be available on publication or may be provided in response to a request from the Examiner or possibly as a clarification/expansion in response to evidence from a representor, if appropriate.
8. Contact should be made as early as possible with the PINS Development Plan Admin team at TOH regarding potential dates for the Examination Hearings, so that an Examiner with the appropriate experience and training can be assigned. The Hearing sessions (if needed) would be expected to follow the same format as for a development plan and to last for one or two days and certainly no more than a week, including time for any essential site/area visits. A Pre Hearing Meeting is not likely to be needed.
9. PINS charging rate is currently £993 plus 20% VAT per day and reasonable expenses (for the Examiner). This is the same as for Local Plans except that VAT has to be charged on CIL Examinations (as PINS is not the sole provider of Examiners). A PO would also need to be appointed by the CA, albeit the work required will probably be less than for a LDF Exam. The need for an Expert Assessor to assist the Examiner (at further cost to the CA) can only be properly considered once all representations have been seen.

Questions

1. *Each of the 3 districts will have a separate charging schedule but rely on a shared evidence base. What issues will this raise with the Examiner and how can an exploratory meeting be avoided?*

There is no problem in principle with a shared evidence base for all 3 schedules and in fact it is to be welcomed, given that the charging zones overlap the district boundaries and the two rural schedules are

essentially the same. One set of hearings and one report could deal with all 3 schedules, albeit they would still have to be adopted separately. The hearings could be divided up by zone or type of use(s) to consider the detailed issues. The final choice would be for the Examiner but the Partnership could put forward specific suggestions via the PO on the programme if they wish. There has been no need for a PHM for the schedules examined so far and, at this stage, no reason to think that one would be necessary here, unless the evidence base (which I have not had time to study) is manifestly deficient.

2. The Partnership has been gathering further evidence to support the Charging Schedules in parallel with the regulation 15 consultation. How can this work be integrated into the evidence base published as part of the consultation and what will be the requirements at examination for the 'audit trail'?

The Partnership should publish all supporting evidence and background information, including that recently obtained, at the time of or before the public consultation so that it can be considered by representors and the Examiner as soon as possible (also see para 7 above). An "audit trail" essentially means a clear and open declaration of where relevant evidence comes from, who produced it and when, with direct links available via the website to all original documents, if possible, and clarity on what stages of the process were influenced thereby.

3. How would the Examiner be likely to view a proposal to discount residential CIL by an appropriate amount for discounted purchase?

Under the CIL regulations "exceptional circumstances should mean exactly that, with occurrences very rare indeed. There should be no "special treatment" as such, if only because it could be considered to be "State Aid" and fall foul of EU regulations accordingly. Therefore, no such policy should be proposed, with any really genuine "exceptional circumstances" for individual schemes considered on a "one off" basis, albeit with full public disclosure of what is being considered and why.

4. What is PINS attitude to zero charging?

Any nil rates have to be justified by viability evidence (not policy) and would be examined in exactly the same way as any rate that is to be charged. Nevertheless, in terms of the evidence base, it can also sometimes be fairly obvious from observation "on the ground" that a particular form or type of development is not currently viable in the area as there is no activity in that sector at present.

5. What degree of evidence is needed to differentiate within a use class, for example large shops compared with small shops?

There is a real risk of differential rates based just on scale not being state aid compliant. Any differential rates may amount to preferential treatment and thus distort the free market, contrary to EU legislation. Therefore, any division based on size alone, given that the CIL is based on a sliding scale anyway with an exception for new development below 100 sq. m, will have to be fully and very carefully justified in economic viability terms alone. There should be no reference to

support for, or even coincidence with, policy objectives, such as support for local shops/smaller specialist retailers. Similarly, a division based on type of retail within a particular use class also has potential difficulties for implementation/enforcement. Geographical distinctions are rather different and one between town centres and out of centre might be more straightforward to justify in viability terms, albeit each boundary has to be clearly defined on an OS based plan.

6. What is the process and necessary evidence for the first review (i.e. is there a shortcut?) if a relatively low CIL is set now and reviewed as soon as there is any sign of sustained growth in values?

In the current economic circumstances it seems appropriate to review the schedule in around 3 years or so. Any less and there is not likely to be sufficient evidence to properly judge the effects of the CIL. Any more means an opportunity to revise the schedule's rates and coverage, hopefully upwards as the general economy gradually improves, might be missed. As to process, following public consultation about the review in accord with each Council's SCI, the same level and detail of viability evidence would be needed to justify any significant change to a rate, the introduction of a new one and/or the deletion of an existing one as part of any review.

7. To what extent will the examination test the impact on viability of proposed local policies on discretionary relief and payment staging policies?

As set out under 3 above, any policy on "discretionary relief" should be avoided. On the other hand, it would be entirely relevant to take into account in any viability assessment(s) the effects, on such factors as the developer's cashflow, of proposed interim or staged payments. It would therefore be relevant to the Examiner in this context but it would not be subject to testing in itself and remains a matter for the Partnership to consider in detail and implement in practice.

8. As there will be a need for a Programme Officer (PO), are we able to appoint internally to this post?

Yes, but as with all Exams these days, it needs someone with good administrative skills and who fully understands that for these purposes they are not a Council employee but working entirely with the Inspector on a confidential basis at his/her direction. To maintain this impartiality, the person must not be directly involved in the preparation of the CIL schedule. If possible, previous experience of planning and/or DPD Exams would also be desirable, although CIL Exams are expected to be relatively short so it should not prove to be a major task. The Partnership will also need a separate and regularly updated CIL website, with the PO having direct access to it.

9. Should we set out the Reg. 123 list and the mechanism for revising it prior to submission?

It would be helpful for all concerned to set out the list as soon as possible, albeit this is not legally required, and also how and when it may be revised, perhaps annually only for example. It should all be part of the Council being totally open about CIL rates, receipts, implementation and payments to others to achieve delivery in practice.

10. What have been the key points pursued by representors in examinations elsewhere?

In addition to representations about the rate levels being too high (or too low) there have been some about boundaries that are drawn between zones. Any divisions have to be based on economic viability evidence alone and the Partnership needs to be entirely open about how it has reached the relevant judgements made in these respects. There have been arguments that some schemes would no longer be viable once a CIL is introduced. This does not necessarily matter, unless it relates to a major strategic site on which delivery of the CS relies, as it is overall viability across the district or zone that is relevant. The non-delivery of any one particular site/scheme may well not be relevant in that context.

Nigel Payne, Inspector

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