The Planning Inspectorate

Report to the Greater Norwich Development Partnership – for Broadland District Council, Norwich City Council and South Norfolk Council.

by Keith Holland BA (Hons) Dip TP, MRTPI ARICS

an Examiner appointed by the Councils

Date: 4 December 2012

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULES FOR BROADLAND DISRICT COUNCIL, NORWICH CITY COUNCIL AND SOUTH NORFOLK COUNCIL

Charging Schedules submitted for examination on 10 August 2012

Examination hearings held on 16 and 17 October 2012

File Ref: PINS/G2625/429/6

Non Technical Summary

This report concludes that the Community Infrastructure Levy Charging Schedules proposed by Broadland District Council, Norwich City Council and South Norfolk Council do not provide an appropriate basis for the collection of the levy in the Greater Norwich area as drafted. The evidence shows that the rates proposed for residential development are too high and would pose a significant threat to the viability of housing development in the area. However, I consider that such non-compliance with the drafting requirements can be remedied by the making of modifications which I recommend. Such modifications are specified at Appendix A to this report and are designed to reduce the residential rates by around 35%. Subject to such modifications the draft is approved.

Introduction

1. This report contains my assessment of the Community Infrastructure Levy (CIL) Charging Schedules for three councils – Broadland District Council, Norwich City Council and South Norfolk Council, hereafter referred to as the Councils. The basis for this assessment is 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 (Charge Setting and Charging Schedule Procedures – DCLG – March 2010).

2. To comply with the relevant legislation a local charging authority has to submit what it considers to be 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 area. In this instance the three authorities are proposing identical charging schedules save for Norwich City which has a separate rate for flats in blocks of 5 storeys and above, and is entirely within zone A. The basis for the examination is the written material and representations submitted, the material presented to the hearings held on 16 and 17 October 2012 together with the further written submissions in response to matters raised at the hearing sessions. The three draft charging schedules were submitted for examination on 10 August 2012 together with Statements of Modifications. The Modifications relate to changes to the Draft Charging Schedules published in February 2012 and have been consulted on for a period of four weeks in accordance with the requirements of the Community Infrastructure Levy Regulations 2010 (as amended).

3. The Councils propose two charging zones described as Zone A and Zone B. The Zones are only relevant to residential development. The proposed charges in £ per sq. m. are: Residential Development (Use Classes C3 and C4 excluding affordable housing) including domestic garages, but excluding

shared-user/decked garages Zone A £115, Zone B £75; Flats in blocks of 5 storeys and above £100 (Norwich City only); Development resulting in large convenience goods based stores of 2000 sq.m. and above £135; All other retail, assembly and leisure development, sui generis akin to retail and sui generis akin to assembly and leisure £25; Uses falling within Use Classes C2,C2A and D1 Nil; All other types of development covered by the CIL regulations (including shared-user/decked garages and B1,B2,B8 and C1 uses) £5

The evidence - is it appropriate and does it support the proposed charging schedules?

Infrastructure planning evidence

4. The basis for the infrastructure needs is provided by the Joint Core Strategy (JCS) for the three authorities adopted in March 2011. Following a partially successful legal challenge the JCS is now adopted with the exception of the policies relating to the distribution of housing growth in the Norwich Policy Area part of Broadland District. The implications of the remittal of some policies for part of the area do not materially affect the justification for a CIL because the overall scale of growth is not affected. The JCS sets out the main elements of growth that will need to be supported by further infrastructure. An unchallenged infrastructure schedule submitted by the Councils with identified funding from other sources shows that some 54% of the infrastructure needs of the area remain unfunded at present. This amounts to £378 million and hence a basic requirement for the imposition of a CIL charging regime is in place.

Residential viability evidence

5. In relation to the Councils' evidence, CIL viability assessment work was undertaken by GVA Grimley Ltd (GVA) and, in relation to the impact of garages on residential sale prices, by Mott MacDonald. The Councils also produced supplementary evidence on residential viability, the viability of flats in Norwich City and the viability of large scale convenience goods based retail development. Norfolk Property Services provided evidence on the build cost of flats in Norwich City. I have considered all this evidence and all the representations made as well as the additional viability evidence submitted to the examination by the Councils following advice from the Homes and Communities Agency (HCA).

6. A "final" report from GVA was published in December 2010 and an errata was added in June 2011. The errata dealt with current market values based on discussions with local agents and available sales information for land with planning permission (or resolutions to grant permission) with circa 25% affordable housing provision. In August 2011 a further piece of work was done by GVA relating to the proposed charging zone boundaries.

7. The initial work done by GVA identified four residential market areas – Central (focussed on Norwich), Inner (settlements close to Norwich), Outer (the rural areas) and the A11 Corridor. Subsequent work by GVA, based on market evidence including Land Registry data, resulted in a simplification of the four zones into two charging zones by combining the Central, Inner and

A11 market areas into a single zone A. Inevitably there are some anomalies in the delineation of the two zones and it is understandable that some of those making representations consider that, for example, the villages of Thurton, Loddon and Hales should be in Zone A and not Zone B. However the Councils, in accordance with Government guidance which warns against over complicating charging zones, have devised a relatively simple and logical approach based on general property values. This provides a sound basis for a two tier charging system for residential development.

8. A fundamental element of the work done by GVA deals with benchmark land values in 4 areas originally identified. Central £500,000 per acre, Inner and A11 corridor £210,000 – £250,000 per acre and Outer £200,000 per acre. These benchmark values represent the existing use value of land plus an element of hope value assuming planning permission for residential development and a requirement for 25% to 35% affordable housing but with no allowance for CIL.

9. Bearing in mind that the cost of CIL needs to largely come out of the land value, it is necessary to establish a threshold land value i.e. the value at which a typical willing landowner is likely to release land for development. Based on market experience in the Norwich area the Councils' viability work assumed that a landowner would expect to receive at least 75% of the benchmark value. Obviously what individual land owners will accept for their land is very variable and often depends on their financial circumstances. However in the absence of any contrary evidence it is reasonable to see a 25% reduction in benchmark values as the maximum that should be used in calculating a threshold land value.

10. In addition to the advice from GVA, the Councils produced their own viability work described as Supplementary Evidence on Residential Viability (Document EV6) based on a model provided by Norfolk Homes and using advice from the Homes and Communities Agency. This supplementary assessment provides a series of calculations based on the residual valuation approach and includes for comparison purposes valuations using "developer assumptions". This material provides a range of valuations based on 2 types of hypothetical scheme – a 250 dwelling scheme in charging zones A and B and a 25 dwelling scheme in Zone A. The range is derived from changing inputs such as the level of affordable housing, costs, gross development value and level of S106 contributions. Private sector developers challenge this material on several grounds. In this instance significant differences between the Councils and the developer assumptions relate to contingencies and overhead costs.

11. One of the characteristics of the residual valuation approach is that the results are very sensitive to the assumptions made in the calculation. Taking as an example hypothetical Scheme 1, 250 dwellings in Zone A.

	Councils	**Developer Assumptions**
Contingency	2.5% of build costs	5.0% of build costs

	£553, 748	£1,107,496
Overheads	11% of build costs	11% of GDV
	£2,436,491	£4,821,876
Totals	£2,990,239	£5,929,372

These differences obviously have significant consequences for other costs such as finance with the result that the Councils residual land valuation is £6,815,497 whereas the developer assumptions residual is £2,941,895. Significantly this very large difference takes no account of different views about how the profit margin should be calculated. The private sector argues that the profit should be calculated on Gross Development Value (GDV) at a rate of 20 -25% for open market units and 6% for social housing rather than the 20% of build/site/overhead costs favoured by the Councils. The difference amounts to over £2.4 million pounds. At the hearing session GVA accepted that basing profit on GDV is the usual approach in this area because of the risks involved and the cost of capital in the current market. However GVA conceded that using a percentage on costs approach is sometimes adopted. The Broadland District Council representative concurred with the view that using profit on GDV is the usual approach in the Norwich area.

12. Furthermore the private sector argues that the Councils' approach to the cost of finance is flawed as it is based on a fixed % build cost and takes no account of the cash flow of a scheme over its lifetime. The private sector also contends that the Councils' general approach to values is flawed as it takes no account of how far cost inflation would erode the benefit of any increase in property prices.

13. The Councils sought to counter the private sector arguments by producing a revised residual valuation for Scheme 1 using a 5% contingency and the 20% on GDV approach to profit favoured by the private sector. This third residual valuation produced yet another view about the residual land value - £3,929.234 - for Scheme 1. In response Savills say that this valuation underestimates the cost of finance by £2,200 per unit and continues to underestimate the cost of overheads by £9,500 per unit. In addition Savills, quoting the guidance issued by the Local Housing Delivery Group, (Viability Testing Local Plans June 2012 – hereafter described as "Harman Guidance") say that the cost of servicing large green field sites is underestimated by at least £10,000 per unit. Savills point out that around 50% of the future housing in the area is expected to be built on large green field sites.

14. The Councils obtained agreement from HCA to publish information supplied in November 2011. Not unexpectedly the HCA seeks to justify its approach by, for example, arguing that the profit margin suggested by the developer is too high assuming involvement by a registered affordable housing provider thereby reducing the risk.

15. The difficulty is that there is seldom, if ever, only one correct approach to assumptions in residual valuations and indeed at the hearings GVA accepted that the residual method is open to what they described as "manipulation". The discrepancies in the figures illustrate the difficulty of reaching a properly informed view based on the residual valuation approach where there is disagreement about the inputs.

16. The supplementary valuation material in EV6 demonstrates what the Councils describe as a "high degree of variability in assessing viability using a residual land value model". The Councils note that using developer cost assumptions and applying the proposed CIL charges means that less than the full affordable housing requirement would be met but that with a relatively small increase in house prices schemes "will be significantly more viable and able to deliver appropriate levels of affordable housing". In essence looking at affordable housing and the property market the approach taken by the Councils is that the market will recover to some extent relatively soon and that an improved market would enable the full level of affordable housing to be provided on many more sites than at present.

17. The private sector view is different. While supporting the concept of a CIL charge and acknowledging the need for substantial infrastructure improvements, the consensus view of the private sector representatives is that the housing market in the area is weak and relatively fragile. Savills contends that housing delivery in the area is 54% below target in the 3 years to March 2011 demonstrating the weakness of the market. The private sector view is that the proposed rates for residential development would seriously inhibit development and significantly undermine the delivery of the housing growth sought in the JCS.

18. The Councils counter this by pointing out that developers continue to discuss major schemes with local planning authorities in the area and that large scale housing applications are anticipated in the short term.

19. Clearly the evidence presented to the examination contains some important elements where there is a significant amount of disagreement between the private sector view and the Councils. For the following reasons it is considered that the fears of the private sector about the negative impact of the proposed residential charge are well founded.

20. First, based on the views of the private sector and recent delivery rates, it is evident that the housing market in the area is not robust. In this context it is noted that the National Planning Policy Framework (NPPF) expects the CIL to incentivise new development. I fully appreciate the Councils are keen to promote growth and see the delivery of infrastructure as important to the creation of sustainable well planned communities. In this context I acknowledge that the Councils have sought to take into account the impact of the recession. This was one of the considerations in its decision to propose a much lower rate than that originally recommended by its professional advisors. The original rate was recommended on assumptions about a return to what was described as a "normal market" based on mid 2007 conditions. However the evidence indicates that the reduction proposed by the Councils is not large enough.

21. Secondly, the Councils are relying to some extent on an improvement in the market. Thus for example the conclusion in the supplementary evidence (EV6) refers to "relatively small increases in house prices" and the fourth scenario for scheme A Zone 1 is described as viable "if house prices increase in real terms by just 7%". Bearing in mind the uncertainty about the future of the property market the advice in the Harman guidance is that plan policies for the first five years should work on the basis of current values and costs. While aimed at local plan policies this advice is logically also applicable to CIL charges. In any event the Councils did not adequately counter the argument that if increases in house prices are taken into account it is also necessary to have regard to the impact of cost inflation.

22. Thirdly the work done by the Councils to demonstrate what funds are likely to be available for CIL (Appendix 1 of the Note following Day 1) relies on the full 25% of the benchmark land value being available for the CIL "pot". While this may sometimes be the case it is unlikely that it will always apply. Even if some landowners may be prepared to accept less than 75% of the benchmark value, the 25% figure should be treated as a maximum and not an average. Using 25% to try to establish what the theoretical maximum amount in a CIL "pot" may be is reasonable, but when thinking about setting a CIL charge in the real world it would be prudent to treat it as a maximum that will only apply on some occasions in some circumstances.

23. Fourthly the JCS seeks affordable housing at a rate of 20% for sites of 5 – 9 dwellings, 30% for 10 – 15 dwelling sites and 33% for sites of 16 or more dwellings. The Councils believe that the CIL charge would allow at least 20% affordable housing to be delivered in all locations and its approach is that where viability is an issue the percentage of affordable housing will need to be negotiated in accordance with policy 4 in the JCS. Whatever the merits of this approach in terms of pragmatism, it seems clear that in setting its CIL rate the Councils are prepared to compromise on their affordable housing policies, whereas they should have taken all of their policy requirements, including affordable housing, into account when setting the CIL rate.

24. Fifthly in its viability work the Councils have been unduly optimistic about the likely costs of development. Of particular concern is an over-simplistic approach to finance and cash flow considerations, a likely under-estimation of the cost of servicing large green field sites (taking as a guide the Harman estimates) and the use of build costs rather than GDV as a basis for calculating overheads and profit margins.

25. Finally the statutory CIL guidance and the Harman guidance make clear that it is important to avoid assuming that land will come forward at the margins of viability. Thus the use of what is termed a "viability cushion" is recommended. No doubt the Councils are aware of this and believe that they have allowed an adequate viability cushion, but, even assuming that their basic figures are correct, the "cushion" allowed for is inadequate. The need for a substantial "cushion" is particularly important on green field sites where, as the Harman advice notes, prospective sellers are often making a once in a lifetime decision and are rarely distressed or forced sellers. A large proportion of the anticipated development in the area will be on large green field sites.

26. The combined impact of these factors leads to the conclusion that the rate for residential development should be reduced. The extent of the reduction is open to question. Using the residual valuations only to answer this question is unreliable because of the wildly different results in them. Accordingly the issue has also been looked at in terms of the anticipated CIL "pot" by taking into account the estimated contribution from the land price and the anticipated consequence of substituting a CIL charge for most of what were previously infrastructure funds raised through S106 agreements. Following the discussion on day one of the hearings the Councils helpfully provided a supplementary "Note" providing their assessments of what the "pot" might be.

27. At the hearings Savills suggested that within strategic housing areas and assuming affordable housing at 18%, either a S106 charge or a CIL charge (but not both) of about £30 per m. sq. would be acceptable. Some of the other private sector representatives at the hearing sessions considered that this would be too low given the infrastructure needs of the area. At the earlier Preliminary Draft Charging Schedule stage Ptarmigan Land Ltd (later Hethersett Land Ltd) suggested a rate of around £100 for residential development in Zone A. At the hearing this suggestion was confirmed as being the position taken by Ptarmigan although it was not repeated in the written representations made by Hethersett Land Ltd. In response to the Councils' Note, Savills have refined their suggestions and now propose a rate of £60 – £65 with 18% affordable housing in Zone A and between £35 and £46 per sq m in Zone B. Morston Assets response to the Note is that within the inner city locations the threshold land value will need to be within 10% of the benchmark value because land owners are likely to require greater incentives to bring forward land that is already in commercial use. On this basis there would be less available for the CIL "pot" and Morston Assets argues for a maximum charge of £55 per sq. m. in central areas.

28. Whichever way it is looked at it is not possible to arrive at a definitive answer that is indisputably correct. I consider that the calculations in Appendix 1 of the Councils' Note are a reasonable starting point subject to the following considerations. First the land price per acre should be at the lower end of the range suggested. Secondly, the difference between the benchmark value and the threshold value should be regarded as 15%. Thirdly the assessment should assume 33% affordable housing in accordance with the target for sites of 16 or more dwellings in the JCS. Although not precise such an approach seeks to take into account the higher development costs suggested by the private sector and provides for a viability cushion. On this basis it can be broadly concluded that the rate within the City should be reduced by a minimum of around 35% and by a similar figure in the South Norfolk/Broadland fringe of Norwich area. Having regard to the probability of high servicing costs of large green field sites it is reasonable to argue that the reduction in the latter area should be increased. There is no reason why the same logic should not apply to the parts of the area subject to the Zone B charge. The overall conclusion is therefore that the residential rate in both Zone A and Zone B should be reduced by around 35% or more.

Non Residential viability Evidence

29. In relation to non-residential development the proposal involves a charge of

£5.00 per square metre for office and industrial development. This very low charge reflects the weak market for office and industrial development. At the hearings the option of a nil charge for these types of development was discussed. A consensus view emerged that this nominal charge, which would represent only about 0.5% of average build costs, would not threaten the overall viability of these forms of development. On this basis this level of charge for office and industrial development is acceptable.

30. Retail development, where the proposals involve a charge of £135 for developments of over 2000 sq m and £25 for other retail development is contentious. Three major supermarket operators objected to the proposals. One disputed area is the validity of having different rates for different sized retail outlets given that Regulation 13 of The Community Infrastructure Regulations 2010 provides for different rates by zone or by intended uses of development but does not make reference to size. However the Regulations do not prohibit different charges within the same use class provided that the difference is based on viability evidence and the way the premises are used.

31. In this instance the Councils distinguish between large retail stores traditionally used for major weekly or less frequent convenience shopping and other retailers, including convenience stores used primarily for irregular "top up" shopping. This distinction in the way the stores are generally used is backed up by viability evidence produced by GVA showing that large scale food-based stores are able to support a very high charge and remain viable. The hypothetical example tested by GVA for a 75,000 sq. ft. convenience store with 400 parking spaces showed that depending on whether the store was developed by an operator or a developer the residual land value would be in the order of £10 - £14 million pounds compared to a residential benchmark of £1.5 - £3.5 million. On this basis large convenience stores are judged to be capable of easily meeting a CIL charge of £135 per sq.m.

32. The Councils have also produced convincing evidence showing that convenience stores above 2000 sq. m. are operated almost exclusively by major national retailers and are aimed at providing what is described as a "main food shopping function". Stores below this largely perform a local top up function. This use distinction is reinforced by viability evidence (albeit dated at 2007) showing that a major national retailer such as Sainsbury has average sales per sq. m. of over £10,000 whereas the comparable figure for smaller convenience retailers is less than £3,500.

33. In relation to other retailers GVA produced satisfactory evidence showing that the viability of such stores is relatively weak with for example town centre vacancy rates increasing steadily since 2008.

34. WM Morrison Supermarkets PLC, Sainsbury's Supermarkets Ltd and Asda Stores Ltd contend that the rate for large stores is too onerous. Based on the written submission by Indigo Planning Limited on behalf of Sainsbury's Supermarkets Ltd it is not clear whether Sainsbury's appreciate that the intention of the Councils is to largely replace S106 agreements with the CIL charge but in any event none of these organisations produced any quantitative evidence to support their assertions. In view of the lack of supporting evidence little weight can be given to the representations made by these supermarket operators.

35. My conclusion regarding the proposed retail rates is that the Councils have provided satisfactory evidence justifying the proposed charges.

Other Matters

36. All the written representations have been considered. A number of these relate to matters that are not within the scope of this examination. For example whether or not CIL is a justified tax, how the CIL money is spent and what discretionary relief is made available are not matters for this examination.

37. McCarthy and Stone Retirement Lifestyles Ltd argue for a rate based on net saleable area for their type of specialist type of accommodation. However they do not provide any convincing viability evidence and in any event it is completely unrealistic to expect charging schedules to be made flexible and varied enough to cater for a variety of considerations particular to different types of residential accommodation providers.

Conclusion

38. The Councils have 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 area. For non-residential development this objective has been met. However for residential development the rates in both Zone A and Zone B pose a significant threat to the viability of schemes. Within the Greater Norwich area the residential market is not robust and the rates suggested would not meet the NPPF requirement that they "support and incentivise new development". I recommend that the rates for residential development are modified to reduce them by around 35% (EM1) as specified at Appendix A.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedules do not comply with the National Policy/Guidance as drafted, unless modification EM1 (or other sufficient modification) is made.
2008 Planning Act and 2010 Regulations (as amended 2011)	The Charging Schedules comply with the Act and the Regulations, in respect of the statutory processes and public consultation.

39. I conclude that the three Councils' Community Infrastructure Levy Charging Schedules do not satisfy the requirements of Section 212 of the 2008 Act in respect of the viability of residential development. In accordance with Section 212A of the 2008 Act (as amended) and the 2010 Regulations (as amended 2011) I therefore recommend that the Charging Schedules be modified to address the rates for residential development. With

recommendation for modification **EM1 in Appendix A**, I recommend that the drafts are approved.

Keith Holland

Examiner

This report is accompanied by:

Appendix A (attached) – Modification that the examiner specifies so that the Charging Schedules may be approved.

Appendix A

Modification EM1, recommended by the Examiner to allow the Charging Schedules to be approved.

Broadland District Council

1.

Charging Schedule (£ per m2)

Use Class	Zone A	Zone B
Residential development (Use classes C3 and C4 excluding affordable housing) including domestic garages, but excluding shared-user/ decked garages.	£75	£50

Norwich City Council

2.

Charging Schedule (£ per m2)

Use Class	Zone A	Zone B
Residential development (Use classes C3 and C4 excluding affordable housing) including domestic garages, but excluding shared-user/ decked garages.	£75	Not applicable
Flats in blocks of 5 storeys and above	£65	Not applicable

South Norfolk Council

3.

Charging Schedule (£ per m2)

Use Class	Zone A	Zone B
Residential development (Use classes C3 and C4 excluding affordable housing) including domestic garages, but excluding shared-user/ decked garages.	£75	£50