
Report to South Somerset District Council

by Mike Fox

an Examiner appointed by the Council

Date: 19 October 2016

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT SOUTH SOMERSET DISTRICT COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 27 May 2016

Examination Hearings held on 9 August 2016

File Ref: PINS/R3225/429/2

Non-Technical Summary

This report concludes that the South Somerset District Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the District. 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 South Somerset District Council Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance (Community Infrastructure Levy Planning Practice Guidance).
2. To comply with the relevant legislation the local charging authority has to submit a charging schedule which sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the district. The basis for the Examination, on which Hearings were held on 9 August 2016, is the submitted schedule of May 2015, which is the same as the document published for public consultation in February 2016 with the exception of two modifications, which I cover in more detail below.
3. The Council proposes a rate of £40 per square metre (psm), applied to all qualifying residential development throughout the District, with the exception of the Yeovil Sustainable Urban Extensions (SUEs) and the Chard Eastern Development Area where a £ zero CIL rate psm is proposed. A CIL rate of £100 psm is proposed for convenience-based supermarkets and superstores, and retail warehouse parks (outside defined town centres and primary shopping centres). A £ zero CIL rate psm is proposed for other uses throughout the District.
4. Following representations and consideration of further viability evidence, the Council has changed C2 uses from a charging rate of £40 psm to £0 psm (Modification M1). It has also removed reference to retail (A1-A5 Use Class) in town centres and/or primary shopping areas in order to avoid confusion and any unintended consequences in relation to the retail charging proposal (Modification M2). Consultation took place on these modifications. Analysis of the need for additional cemetery infrastructure in Yeovil has been undertaken to support this item being added to the Regulation 123 List.

Issue 1 - Is the charging schedule supported by background documents containing appropriate available evidence?

Infrastructure planning evidence

5. The South Somerset Local Plan was adopted in March 2015. This sets out the main elements of growth that will need to be supported by further infrastructure in the District, including the SUEs in Yeovil and Chard. The latest infrastructure evidence to support the delivery of the Local Plan is set out by an Infrastructure Delivery Plan (IDP) dated January 2016¹. The total estimated cost of infrastructure to implement the Local Plan (including the provision of the 'residual' figure of 10,292 dwellings from 2015 to 2028 to meet the total dwelling figure in the Local Plan of 15,950 dwellings) is estimated by the Council to be in the region of £214 million, of which £89.8 million has been identified, leaving a funding gap of £124.2 million.
6. The Council's latest estimates (July 2016) are that CIL revenues may amount to around £13 million, the majority of which would be raised from residential development, over the plan period². In response to my question as to how this compares with the amounts raised from S 106 (and S 278 highways) agreements over the last five years, the Council has submitted a written response summarising viability information on six housing developments in the District which were thoroughly scrutinised by the independent District Valuer³.
7. Two of the schemes included in this document are large scale developments at Yeovil (696 units at Lufton Key Site, and 846 units at Wyndham Park). The Council's document shows that the amount raised by the Council from S 106 (and S 278 highways) agreements in relation to these housing schemes are comparable with likely CIL receipts, whilst the submitted viability information also indicates that the development of large scale urban extensions within South Somerset is challenging in terms of viability.
8. The Council also does not expect the proposed CIL rates to result in a significantly higher overall charge for each new house, even after taking into account the revised approach to S106 (and S 278 highways) agreements that would apply once CIL is adopted. In the light of the above information, the proposed CIL charge would make only a small contribution towards filling the likely funding gap. However, the vast majority of infrastructure projects in the IDP that are deemed priority 1 or 'critical' already have funding obtained, committed or anticipated, with an identified shortfall of £10 million.
9. The Council also points to a range of other potential funding sources. These include:
 - (a) New Homes Bonus (£11.8 million over the last 5 years, some of which has been used for infrastructure projects);
 - (b) An 'investment in infrastructure programme', which seeks suitable development sites through investment in land and infrastructure to create economic development opportunities (£8 million currently allocated to the programme);
 - (c) The Heart of the South West

¹ South Somerset Infrastructure Delivery Plan (IDP): Update 2015/16: Part 1 – Spatial Summary; January 2016 [Examination Document ED11].

² SSSC Hearing Statement – Issue 1, paragraphs 1.17f; July 2016.

³ SSSC: CIL – Examination Hearing: Additional Document 3: Section 106 Update [Examination Document AD3].

Local Enterprise Partnership (LEP) which is committed to a number of infrastructure schemes, including town centre and 'gateway' improvements in Yeovil; (d) Funding for local transport schemes, which has obtained funding for improvements along the Yeovil Western Corridor; (e) Builders' Finance Fund to help unlock housing sites of around 15-20 dwellings; (f) Sustainable Access Travel Fund to help Councils to offer sustainable transport initiatives to improve access to jobs, skills, training and education; (g) Homes and Communities Agency (HCA) to deliver new homes and business space (£10 million to help deliver the Wyndham Park key site); (h) Several statutory infrastructure providers, including water, sewerage, gas, electricity, telecommunications; (i) Government funding for flood defence; and also for (j) education provision.

10. Although this list is impressive, the figures still demonstrate the need to levy CIL. It will always be the case that some CIL revenue may assist other projects but it is not part of my Examination remit to question the Council's specific spending proposals either geographically or on a sector/priority basis, beyond confirming that in general terms the projects in the Council's Regulation 123 List should clearly assist the delivery of the Local Plan as a whole. Nor is there any material inconsistency between the list and the policies in the Local Plan and/or the intended CIL rates.

Economic viability evidence

11. The Council commissioned four CIL Viability Assessments over the period 2012-2016. The first was carried out by Roger Tym and Partners in January 2012⁴. Following consultation, including a developers' workshop in November 2012, the Council commissioned BNP Paribas Real Estate (BNP), who produced a CIL Viability Study (VS) in May 2013⁵, an update in July 2015⁶, and finally an Appraisal Summary, covering the Keyford SUE, in March 2016⁷.
12. The VS and its updates use a residual valuation approach, covering a range of hypothetical developments, including a sample of four strategic sites, three previously developed windfall sites, and six greenfield sites. The assessments are based on assumptions that reflect local market and planning policy circumstances and are therefore specific to South Somerset District. They use reasonable standard assumptions for a range of factors such as land values, development costs (including construction, fees, finance and CIL) as well as profit levels.
13. Based on the recently adopted Local Plan, a tenure split of 35% affordable housing (AH) was assumed on all developments of six dwellings or more, 67% of which would be for social rented housing, with the remainder for other forms of AH provision, including intermediate housing. Recent changes, such as the Government's prioritisation of starter homes over other forms of AH and the changed AH threshold to 10 dwellings following a recent High Court

⁴ Roger Tym and Partners: South Somerset District Council – Community Infrastructure Levy Evidence Base: Final Report; January 2012 [Examination Document ED6].

⁵ BNP Paribas Real Estate: Community Infrastructure Levy: Viability Study – South Somerset District Council; May 2013 [Examination Document ED7].

⁶ BNP: Community Infrastructure Levy-Viability Assessment-Update Addendum Report for South Somerset District Council; July 2015 [Examination Document ED9].

⁷ BNP: Appraisal Summary – South Somerset District Council; March 2016 [Examination Document ED10].

Judgment⁸, are not expected to adversely affect the VS equation in relation to the impact of CIL on development viability.

14. Specific criticisms of the methodology and key assumptions are considered later in my report. I am satisfied, however, that the methodology is in line with the guidance in the Harman Report⁹.

Zones

15. The Council considers that the CIL charging zones reflect the evidence contained in the VS. The exclusion of the Yeovil and Chard urban extensions (UEs) from the £40 per square metre (psm) CIL levy for residential development elsewhere in the District is based on the Council's conclusion, based on the VS, that a levy charge cannot be accommodated in these locations, due to the heavy on-site infrastructure costs that these strategic sites will incur. Both the opposing and supporting views expressed in evidence and at the Hearings are considered later in my report.
16. The point was also made by representors that there are some anomalies in the proposed zoning boundaries as well as a perception of unfairness between the treatment of urban and rural areas. In a District as extensive as South Somerset, it is not surprising that some anomalies are bound to arise, and there is a market difference between the main urban areas and the remaining rural areas of the District; in the main urban areas, average dwelling costs are generally less than the house prices in the more rural parts of the District. However, the advice in the Government CIL guidance is that charging authorities should seek to avoid undue levels of complexity¹⁰, whilst the same guidance states that in some cases, charging authorities could treat a major strategic site as a separate geographical zone where it is supported by robust evidence on economic viability¹¹.
17. In my view, the inclusion of most of the District, both urban and rural, within one charging zone, whilst making an exception for the UEs, is in line with the above-mentioned Government guidance.
18. I therefore conclude that the draft Charging Schedule is supported by detailed evidence of community infrastructure needs, including the IDP. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.

Issue 2 - Is the charging rate informed by and consistent with the evidence?

CIL rates for residential development

19. In relation to new housing, the assumptions used by the Council have been criticised by some representors in a number of specific respects, as well as in relation to the overall cumulative effect of the CIL rates to be applied.

⁸ Court of Appeal Judgment re AH - Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council: Ref. [EWHC] 2222 (Admin; 11 May 2016).

⁹ Viability Testing Local Plans: Advice for planning practitioners (the Harman Report); June 2012.

¹⁰ Planning Practice Guidance Reference ID: 25-02-20140612, paragraph 021[3].

¹¹ Ibid, paragraph 021[4].

However, I consider that the Council's VS (and updates) has taken account of the relevant policies in the Local Plan, which is a requirement of national guidance. This includes the provision of 35% AH, where appropriate, as set out in Local Plan policy HG3.

20. The residential build costs were updated to reflect the increase in the Royal Institute of Chartered Surveyors (RICS) Building Cost Information Service (BCIS) mean average costs between 2013 and 2015. They include an allowance for external works (15%) and for including sustainable design, such as a low carbon requirement (equivalent to achieving Code for Sustainable Housing (CSH) Level 4), which amounts to a further 4%. The reference to CSH was criticised by some representors as being no longer appropriate. However, there are still Building Regulations commitments which have an equivalent cost implication, and the reflection of these costs in the overall viability equation is therefore justified.
21. The VS has taken the 'high level' generic approach, acknowledging that some sites might incur exceptional costs, and that current use values will inevitably vary. Taking into account the marginal decline in viability resulting primarily from build costs exceeding the increases in the sales value over the two year period, the Council has reduced the initial suggested CIL rate of £50 psm to £40 psm, to ensure that the imposition of CIL is not detrimental to residential development coming forward over the plan period.
22. What the VS and consequently the determination of CIL rates cannot do, however, is take account of abnormal, site specific costs. The VS acknowledges that a few sites are already marginal and schemes on these sites may become unviable, but it is clear that these sites will not have a significant impact on Local Plan delivery. It also needs to be recognised, as the VS states, that the imposition of CIL is almost never the critical factor in determining whether a scheme is viable or not. In fact the viability evidence points to the proposed CIL levy representing an average cost of 1.27% to overall scheme costs (with a range of 1.02%-1.43%). This is a modest proportion, and as the Council points out: "*This is well within the 5% of costs that other examiners have considered as a cap in the broad 'test of reasonableness'*"¹².
23. Some respondents have criticised the level of profit assumed by the Council as being unreasonably high, with no allowance for finance costs. Conversely, other respondents have argued for the opposite conclusion, stating that the VS appraisals are based on profit levels that are unrealistically low. Clearly, profit levels are going to vary with each scheme, both over time and geographically.
24. The average figures for profit levels used in the VS – 20% of gross development value (GDV) applied to open market housing and 6% to AH – are recognised 'industry standard' figures used across the UK. They also correspond to the profit levels included in the Council's S106 Update document referred to above¹³, which showed a range of 17.5%-20% profit for open market and 6% for AH. The significantly lower profit level for AH reflects the fact that there is usually little risk element for the builder, and this reduced

¹² SSDC Hearing Statement - Issue 4, paragraph 4.3; July 2016.

¹³ Examination Document AD3.

level is therefore not considered to be unreasonable.

25. I also note that the Council held a number of informal consultations with locally based developers, including a workshop in November 2012, to discuss the draft inputs to the VS, and these discussions helped inform the final inputs. The 20% profit which represents the average figure for open market housing was also confirmed by local house builders at this workshop to be a reasonable average.
26. There are suggestions that a greater range of site types should have been tested in the VS. In my view, the Council's evidence covered a reasonable range of typologies, together with various scenarios in each zone. As such, I am satisfied that the level and scope of the overall assessment, including the additional update to include the delivery of the 800 dwellings at the Keyford SUE¹⁴, was suitable and sufficient in this local context to provide adequate guidance for rate setting.
27. I therefore conclude that the local levy rates for new housing are justified by the available evidence and strike the appropriate balance between helping to fund new infrastructure and their effect on the economic viability of residential development across the area.

The major urban extensions

28. The issue of whether or not to set a positive or zero CIL charge for residential development in the major urban extensions attracted the greatest number of representations and led to the most discussion at the Hearing. For these reasons I have dealt with this issue in some depth.
29. The proposed CIL charge is £0 psm for the two sustainable urban extensions (SUEs) at Keyford (800 dwellings) and Upper Mudford (765 dwellings) in Yeovil and in the Chard Eastern Development Area (2,716 dwellings, to be delivered within and beyond the plan period). The Council, supported by some developers, stated that the development of these three urban extensions (UEs), should have a zero CIL £ psm rate attached to them, with the significant infrastructure requirements being satisfied through the continuing use of S 106 (and S 278 covering highways) agreements.
30. The Council, in response to my request, reworked its Appraisal Summary for 800 dwellings, approximating to the Keyford SUE in an Additional Document¹⁵. This document corrected its marketing costs, following valid criticism made at the Hearings which the Council accepted, but also included two scenarios, showing the impact of levying a CIL rate of £40 psm and also showing a zero £ psm impact. The revised figures show that, with the application of a £40 psm levy, the SUE would not be able to sustain 35% affordable housing (AH) and the expected levels of S 106/S 278 contributions; the agent for the scheme developers at Keyford also supported these conclusions in some detail at the Hearing.

¹⁴ Examination Document ED 10.

¹⁵ SDDC: CIL-Examination Hearing Additional Document 1: 800 Dwelling Appraisal [Examination Document AD1].

31. This Additional Document also responds to issues raised at the Hearing by one of the principal respondents both verbally at the Hearing and in his Hearing Statement, who advocated the imposition of a positive CIL at the UEs¹⁶. In summary, the document establishes that the revised appraisal incorporates 35% AH; it uses a blended profit margin of 17% (based upon 20% for open market housing and 6% for AH) which is a target input into the model; it clarifies that the combined residual value (relating to private housing and AH) is then compared to the benchmark land value to determine whether each scenario was viable or unviable; the heading which originally encompassed all of the CSH requirements at 6% has been subsequently reduced to 4% to reflect the government changes and allow for the remaining enhanced Part L building regulations on energy requirements; and the marketing budget now equates to 3% of the GDV of private housing.
32. Finally, the Additional Document states that the revised 800 dwelling UE appraisal provides an up-to-date assessment of viability matters for this site typology. It is my view that this document, supported by a number of summary tables, demonstrates compelling evidence that with 35% AH, the imposition of CIL would turn a positive residential land value of £12,467 per ha into a negative residential land value, even at a CIL charge of £15 psm.
33. A key consideration concerns the reduction of the two Yeovil SUEs from their original combined size of 2,500 dwellings in the Draft Local Plan to schemes of 765 dwellings at Upper Mudford and 800 dwellings at Keyford in the Adopted Local Plan. It was argued by some representors that the smaller schemes would not require the same amount of enabling or abnormal works as the original scheme, and that the scheme costs should be revised down accordingly, thus enabling the economic imposition of the same rate of CIL as elsewhere in the District. The Council explained that the requirements for substantial amounts of infrastructure in matters such as education, green space and transport, still mean that there is a significant financial on-cost in relation to the development of the UEs.
34. Furthermore, the UEs, albeit reduced in size, are still large enough for them to take several years to build out, making a significant cash flow difference in relation to the typical smaller housing sites within the District.
35. It is also noteworthy that a recent survey of HBF member developers¹⁷ includes sites from 200 units upwards within its definition of strategic sites. Contrary perhaps to expectations, the survey shows that the principal variation in the average cost per unit attributable to scheme enabling increases significantly between the 200-500 units schemes (average cost per unit £20,441) to the middle layer of 501-1,000 units (average costs £38,058 per unit), whilst the average cost for largest schemes (1,001 units plus) dips slightly to £37,288.
36. I am persuaded from considering the above evidence that the reduction in size of the Keyford SUE does not equate to a significant proportionate reduction in

¹⁶ Hearing Statement by Andrew Burrows [Examination Document Ref 4223329].

¹⁷ Survey of 26 schemes, collated by Savills from HBF member developers over the period 2014-2016, showing scheme enabling and abnormal works for strategic sites (over 200 units) [Examination Document AD8].

the necessary on-costs for the provision of scheme enabling and mitigation infrastructure.

37. Some representors question the realism of the Council's VS figures on the basis of an alternative survey, which challenges the Council's appraisal of the Keyford UE with reference to two nearby recently completed housing sites at Agusta Park and Brimsmore. This survey includes an alternative updated development appraisal for the 800 dwelling SUE; it incorporates increased average values for new dwellings (£2,400 psm) and lower building costs than those that were used in the Council's VS update, concluding that a CIL charge of £40 psm is viable in the UEs (although the above-mentioned calculations are based on a CIL charge of £32 psm).
38. The above alternative survey was robustly challenged by both the Council and the Brimsmore scheme developer, the latter pointing out that the average sales valuation for these sites came to £2,293 psm, i.e. a remarkably close figure to the Council's sales valuation figure of £2,296.38 psm. The Council also pointed out that the sales valuation data for 18 properties at Brimsmore in the alternative survey have an average property size of 139 sm, and therefore should not be used as an indicative, comparative average to the 85 sm average used in the VS Keyford Appraisal.
39. The Council's Appraisal and proposed CIL charge for the UEs was also questioned by some representors who stated that the Council's original VS (by Roger Tym in 2012) proposed a CIL rate of £32 psm at the Keyford SUE, and that it was subsequently reduced to zero only 15 months later.
40. The Council explained the context for this change. It pointed out that the original valuation assumptions were challenged in the CIL consultation exercise with stakeholders, including at the developers' workshop. The Council, in the light of this feedback, in the words of the Council's lead witness, "*did not proceed regardless*", but decided to commission additional VS work carried out by new independent consultants. The subsequent VS reduced the proposed residential CIL charge from £150 psm firstly to £50 psm, and then to £40 psm, and the charge for the UEs from £32 psm to zero.
41. I am satisfied with this explanation, which shows that the Council, in the light of appropriate professional advice, was willing to listen to its stakeholders and the broader community and to understand the sensitivities of the building industry, especially in a period of uncertainty. Furthermore, I am not persuaded that making a change some 15 months later is in any way significant or a factor to which I should adduce weight.
42. A number of other considerations were put forward at the Examination Hearing. They were not in my view central to the valuation consideration of the CIL, although I deal with them briefly below.
43. Firstly, it was stated that UE delivery is a complicated process. There are substantial on-site and off-site infrastructure requirements, including access and highways improvements, and the UEs are expected to fund their own social, environmental and physical infrastructure. It has been drawn to my attention, however, that the Keyford SUE Statement of Common Ground

(SCG)¹⁸ alluded to few ownership, access or ground condition problems. In response, the Council pointed out that the above factors, whilst important, do not paint the whole picture at Keyford and the other UEs, which it regards as challenging.

44. Also responding to this point, the scheme developers for the Keyford SUE explained that the anticipated costs to enable scheme delivery and mitigation cover a range of provisions, including (i) a school site (the education contribution was stated to be about £4 million on its own), (ii) roundabout connection, (iii) community hall, (iv) surgery, (v) play areas, (vi) allotments, (vii) bridleways, (viii) balancing pond, (ix) sewage pumping station, (x) off-site electricity, gas and water connections, (xi) archaeological and ecological surveys and (xii) bus service contributions/travel plan.
45. It seems to me that the same arguments would apply to a greater or lesser degree in relation to the Upper Mudford SUE at Yeovil and the Chard Eastern Development Area, and nothing I read in evidence or heard at the Hearings robustly challenged these findings. The Council and several developers and their agents considered that in all these urban extensions, therefore, the imposition of a CIL charge would be 'double dipping', and I see no reason to disagree.
46. Secondly, consideration was given to the maximum 'pooling' limit of five S 106 Agreements per development¹⁹. This, however, is not seen by the Council as an insurmountable hurdle to cross, as each of the UEs is expected to be covered by a single planning application.
47. Several successful examples of this approach were drawn to my attention, including the following extract from the Birmingham CIL Examiner's Report (June 2015): "*The Council envisages that the SUE will come forward through a comprehensive outline planning application. Its preferred approach is to deal with the SUE's substantial and specific infrastructure requirements in a self-contained manner through a S.106 planning agreement. This approach is reflected in its proposed CIL zone, defined around the site boundaries of the SUE, and its proposed £0 CIL charge. The evidence confirms that the development is unable to sustain CIL charges on top of the heavy burden of anticipated site enabling costs and S.106 obligations*"²⁰. I agree with the reasoning of the Birmingham CIL Report and I see no reason why the same approach could not ensure the satisfactory implementation of the UEs in South Somerset.
48. Thirdly, concerns were raised regarding the practicalities of delivering on-site infrastructure to serve the UEs in relation to successful scheme delivery. The particular example raised by the Council concerns school provision; the Council stated could take many years through the application of CIL, whereas opting for the S 106 route would enable the Council and the developer to agree a timetable for delivery, so that the school is in place where and when the demand arises. Again, I have no reason to disagree with the Council over its view of the practicalities of successful scheme delivery.

¹⁸ Statement of Common Ground between South Somerset DC and Pegasus Planning Group on behalf of Noel Property LLP, Charles Bishop Ltd and Wessex Farms Trust; May 2014.

¹⁹ CIL Regulations 2010: Regulation 123 (3).

²⁰ Birmingham CIL Examiner's Report, paragraph 61.

49. Fourthly, some of the parish councils (PCs) argued against a zero CIL charge in relation to the development of the PCs in the UEs. They point out that this deprives the very communities which are most directly affected by significant new development in the UEs on their doorstep the opportunity of funding to help them adapt to the changes ahead. These PCs also argue that segregating the District into PCs that are eligible for 15% of the total CIL receipt (increasing to 25% upon a neighbourhood plan being made) from those that are not eligible through lack of a positive CIL charge, is unfair and causes resentment.
50. I have some sympathy with the PCs which find themselves excluded from the benefits of potential CIL receipts. However, I agree with the Council when it states that charging a positive CIL levy on development in the UEs runs the risk of compromising their delivery, and also that the benefits argument cuts both ways - those communities in close proximity to the UEs stand to especially benefit from both new community facilities and also from environmental mitigation measures funded through S106.
51. Fifthly, some of the PCs argue that there is no guarantee that S106 Agreements will secure the desired social, economic and environmental provision and mitigation to make these new developments sustainable. The argument is also made that even if a S 106 Agreement is signed, there is nothing to stop a developer challenging it in future.
52. The Council made it clear that a S 106 Agreement carries legal weight, which has to satisfy the tests set out in paragraph 204 of *the Framework*²¹, i.e. that they have to be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
53. In terms of the second argument, the Council pointed out at the Hearing that any renegotiations of S 106 Agreements must be based on evidence. In the same way, a CIL charge could conceivably be reduced or dropped based on appropriate evidence. I therefore consider that the S106 route is therefore not an option which would be likely to undermine successful scheme implementation.

Major urban extensions - conclusion

54. I have considered in detail the different sets of valuation assumptions submitted in relation to the Yeovil SUE at Keyford, and by extension the Upper Mudford SUE and the Chard Eastern Development Area. I find the Council's revised Appraisal is the closest approximation to the reality on the ground, and I find this evidence more compelling than the alternative arguments put forward in favour of a positive CIL charge in the UEs. I am therefore not persuaded that any of the arguments put forward against the S106 route amount to a compelling case to change the proposed CIL rate for the UEs to £40 psm or to any positive rate.
55. I am led to the view that the imposition of a CIL charge of £40 psm would therefore be likely to lead to loss of viability; or the significant scaling back of

²¹ DCLG: National Planning Policy Framework (*the Framework*); March 2012.

important community facilities, contrary to Local Plan policy YV1; or a significant reduction in the proportion of AH on the site, contrary to Local Plan policy HG3. None of these scenarios would be acceptable or sustainable in terms of national housing policy or the Local Plan.

Retail development

56. The level and extent of testing in the Council's 2012 VS follows national guidance. It is sufficient to clearly demonstrate that new retail development across the District, including both convenience-based supermarkets and superstores and retail warehouse parks (outside defined town centres and primary shopping areas), generates sufficient surpluses above benchmark land values to provide a viable CIL contribution of £100 psm, leaving a sufficient buffer to account for site-specific variations. These conclusions are reaffirmed in the more recent VS work, even after taking account of the softening of investment yields following the difficult trading conditions reported by the major supermarket operators.
57. Concern was raised over the issue of adverse impact which the proposed rate of CIL charging could cause on local centres and district centres which are not identified as shopping centres but serve a great need within the local population and are generally sustainable. The Council explained that it had modified the Draft Schedule²² - Modification M2 - to provide clarity that the local and district centres would not be caught up in the Charging Schedule, and footnotes 8 and 9 at the foot of Table 4.1 in the Schedule²³ provide a comprehensive definition of supermarkets, retail warehouses and town centres. It is also the case that retail developments of less than 100 sm would be exempt from CIL (Regulation 42), whilst the definition of supermarkets, superstores and retail warehouse parks means that smaller scale convenience stores would be unlikely to be liable for CIL.
58. Taking account of the above considerations, I am satisfied that the available evidence is sufficient to demonstrate that it is appropriate in principle, subject to the detailed guidance notes referred to above, for South Somerset District Council to impose a CIL rate for all new retail developments in the form of superstores or retail warehouses outside recognised town and district centres. At the level set, I am satisfied that it would not give rise to a significant threat to the future delivery of new retail development in the District over the plan period.

Older peoples' housing

59. The initial version of the draft CIL charging schedule included a proposed rate of £40 psm for older peoples' housing (including Use Class C2). Following representations and having re-examined the evidence base, the Council has concluded that a positive CIL levy rate cannot be supported by developments within Use Class C2, and a Modification – M1 – was included in the CIL

²² South Somerset: CIL Statement of Modifications, Modification M2, page 2; May 2016 [Examination Document ED4].

²³ South Somerset: CIL Draft Charging Schedule-Submission Version; page 11; May 2016 [Examination Document ED5].

Statement of Modifications to this effect²⁴. This modification has not attracted any further representations.

60. There are several reasons why the Council decided to exclude Use Class C2 from attracting a positive CIL levy; firstly, there are design/marketing factors such as higher amounts of communal open space, which contribute to higher construction costs per habitable unit, longer sales periods and a higher level of empty properties than is the case with Use Class C3 housing. Secondly, there is general market uncertainty, resulting partly from changes in funding towards specialised housing.
61. There is further evidence to support the Council's position, based on the four planning applications for Use Class C2 schemes which were approved in the past three years. Only one of them (at Westbourne, Yeovil) has been completed, whilst two (dated 2012 and 2014) have not commenced and the final scheme, at the business park, Wincanton, although development commenced, has now ceased construction. This lack of delivery reinforces the Council's contention that there is insufficient evidence to justify imposing a levy charge on Use Class C2 schemes, which are geared to meeting particular needs.
62. Based on the above considerations, I agree with the Council that it would not be appropriate, based on the available evidence, to include Use Class C2 schemes in the CIL Charging Schedule as liable for a positive charging rate for CIL.

Other uses

63. The Council's evidence base from 2012-2015 shows that other economic development related uses, such as offices, research and development and light industry (Use Classes B1a, b and c); general industry (Use Class B2); storage and distribution (Use Class B8); and hotels and guest houses (Use Class C1) are not capable of tolerating a levy charge²⁵. These conclusions were not robustly challenged either in written evidence or at the Hearing, and I see no reason to disagree with the Council's finding in relation to these uses. In fact no evidence has been submitted in support of a positive CIL charge on any other uses apart from those set out in the submitted CIL Schedule, and again I can find no reason to come to any other conclusion.

Issue 3 - Does the evidence demonstrate that the proposed charge rate would not put the overall development of the area at serious risk?

64. The Council's decision to set an overall rate of £40 psm for residential development outside the three UEs, and a rate of £100 psm for convenience-based supermarkets and superstores and retail warehouse parks (outside defined town centres and primary shopping areas) is based on reasonable assumptions about development values and likely costs. The evidence indicates that residential and the above-mentioned forms of retail development will remain viable across most of the area if the charge is

²⁴ South Somerset: CIL Statement of Modifications, Modification M1, page 2; May 2016 [Examination Document ED4].

²⁵ South Somerset: CIL Draft Charging Schedule-Submission Version; Section 5- Non Residential Viability; May 2016 [Examination Document ED5].

applied. Only if development sales values are at the lowest end of the predicted spectrum would development in some parts of the District be at risk.

Other matters

65. The Council has published an instalment policy to assist in managing the flow of payments, in four categories ranging from amounts of less than £16,000 or amount due in respect of a single dwelling, which is payable as one instalment, up to amounts over £750,000, which are payable as four instalments, with the relevant payment periods.
66. The Council is also committed by legislation to publishing an annual CIL Report, to include details of income and spending, with suitable monitoring arrangements. The Council stated at the Hearing that it is committed to a review after two years, which I consider to be a reasonable time to consider the charging schedule afresh in the light of two years' monitoring.
67. It is my view that all of the above provisions should materially assist with the appropriate implementation of a CIL charging regime in the District.
68. Some representors argue that the Council should clarify its intentions for allowing discretionary relief from CIL, or even address this in a specific policy. In accordance with the Regulations (paragraph 55), 'exceptional circumstances' are intended to be exactly that, and in my view it would be inappropriate and unhelpful to try and define those rare circumstances in advance in a policy statement alongside the CIL Charging Schedule. Some representors who refer to exceptional circumstances appear in reality to be seeking a zero charging rate. In any event it is for the charging authority to decide whether or not to grant relief.

Conclusion

69. 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 across the District. The Council has aimed 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.

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

70. I conclude that the South Somerset District Council Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

Mike Fox

Examiner