The Planning Inspectorate

Report to Bristol City Council

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an Examiner appointed by the Council

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT BRISTOL CITY COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 18 April 2012

Examination hearings held on 20 and 21 June 2012

File Ref: PINS/20116/429/6

Non Technical Summary
This report concludes that the Bristol City Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the city. The Council has sufficient evidence to support the schedule and can show that the levy is set at levels 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 Bristol City 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 (Charge Setting and Charging Schedule Procedures – DCLG – March 2010).

2. To comply with the relevant legislation the 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 city. The basis for the examination, on which hearings sessions were held on 20 and 21 June 2012, is the submitted schedule of 18 April 2012, which is the same as the document published for public consultation on 2 March 2012.

3. The Council propose a matrix approach including differing CIL rates for new housing, retail, hotel, student accommodation and other development, with the former divided into two zones, Inner and Outer, based on viability alone and defined on an OS map base as required by the CIL Regulations.

Infrastructure planning evidence

4. The Bristol Core Strategy (CS) (ED/206) was adopted in June 2011 and sets out the main elements of growth that will need to be supported by further infrastructure. The accompanying Infrastructure Delivery Programme (ED/207) has been updated to February 2012. At current prices the Council estimates the infrastructure funding gap at approximately £276 million over the CS plan period to 2026.

5. CIL receipts are presently expected to raise about £13.5 million between January 2013 and March/April 2018 towards filling that gap, alongside other sources. In the light of the information provided, the proposed charges would therefore make only a modest contribution towards filling the likely funding gap. However, the figures clearly demonstrate the need to introduce the CIL as no one doubts the urgent need for new infrastructure across the city,

notably in relation to transport and primary schools, to help cope with growth.

Economic viability evidence

6. The Council commissioned a CIL Viability Study, updated to February 2012 (ED/209). The assessment essentially uses a residual valuation approach, utilising reasonable standard assumptions for the full range of factors, such as local building costs (including Code for Sustainable Homes Level 4 requirements), developer profit levels and professional fees. The model incorporates relevant and up to date local data on existing land values; likely sale prices based on a range of sites across the area; anticipated housing densities and gross to net ratios, as well as the impacts of the Council's relevant planning policies as set out in the adopted CS. Scenarios were also sensitivity tested with alternative affordable housing contributions, as well as potential later increases in local build costs and sales values over time.

Retail

7. Regarding the proposed CIL rate of £120 per square metre (psm) for new build retail floorspace, the Council's evidence is robust in concluding that it would be viable across the city. In the absence of any representations to the contrary, it is clear that it would not create a serious risk to the delivery of the new shopping provision envisaged in the CS and is endorsed accordingly.

8. Under the national CIL regulations the application of differential rates for different forms of retail, such as convenience and comparison shopping, and/or distinction by size of unit/floorspace, could only be justified by rigorously tested evidence related entirely to viability. No such local evidence exists.

Industrial/Commercial

9. The local industrial, office and storage/warehouse markets are depressed and the available evidence amply demonstrates that the imposition of the CIL on new business and related development across the city would not be economically viable or appropriate at the present time. The Council's judgement in this respect is almost universally endorsed by consultees and there is nothing to justify a different conclusion at present.

Residential

10. The residential market in the city remains challenging for developers but, importantly, average new housing completions in the city over the first few years of the plan period to 2026 have still exceeded the overall requirements of the adopted CS, despite the difficult economic circumstances. Accordingly, the suggestion that the CIL should be delayed to await a potential return to earlier, more favourable, market conditions is unnecessary and unrealistic. This is particularly so bearing in mind the funding gap identified and the long lead in times needed to bring forward elements of the new infrastructure required and which the CIL will help to fund.

Conclusion

11. The draft Charging Schedule is also supported by detailed evidence of the identified community infrastructure needs, including the Council's draft Regulation 123 list. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.

Main Issues

12. In addition to the above and taking into account all of the evidence, the representations and the discussions at the examination hearings, I have identified two other main issues upon which the viability of the CIL charging schedule depends.

Issue 1 – Hotel/Student Housing Levy Rate

a) - Are the local levy rates for new hotel and student residential accommodation justified by the appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in the relation to the Council's adopted Core Strategy ?

b) – Overall, do they strike an appropriate balance between helping to fund the new infrastructure required and the potential effect on the economic viability of new hotel and student residential development across the city ?

13. There is firm evidence of new hotel and student housing provision continuing to come forward in the city during the recent economic recession. Moreover, weekly rents for the latter are not only notably higher than in other university cities in the South West, such as Exeter and Plymouth, but are also continuing to rise in Bristol, particularly for newly created accommodation with the most modern facilities.

14. Current local demand is bolstered by the presence of around 50,000 adult students in the city, amounting to about 12.5% of the overall population, at the two universities and other local educational establishments. The recent sale of an existing property also supports the values assumed in the Council's study relating to hotels as generally appropriate in the present market, taking into account continuing local demand for additional provision.

15. Student accommodation built and operated directly by universities and similar education establishments, including schools, may be exempt from the CIL if they have charitable status. Nevertheless, the currently available evidence is clear that, on average and in most cases, such new housing provided by commercial operators is generally capable of absorbing the CIL rate proposed and remaining economically viable. This is partly, at least, because it is not required to make a contribution to affordable housing provision.

16. It is evident from the Council's study, albeit inevitably based on generic testing using the residual valuation method rather than actual, site specific, schemes, that the proposed CIL rates for both hotels and student housing would amount to less than 50% of the potential margin of viability in the city at present. Although some schemes may well pay more under the CIL than the Council's current, tariff based, system of contributions, which it would

replace, and others may well pay less, the changes will not be significant comparatively and thus not in overall economic viability terms either. Overall, viability would not be affected by the potential role to be played by such uses in particular mixed use re-development schemes in the city centre.

17. Regarding build costs, the Council's study already assumes that new student housing will be on previously developed (brownfield) land and includes demolition (@ £5 per square foot) and external works costs of 10% of the total. Moreover, it does not make any allowance for the fact that any existing floorspace on site (in lawful use) will be exempt from the CIL, thus building in a wider viability margin than is strictly necessary.

18. Even so, the proposed rate for new student housing equates to only around 45% of the potential viability margin for such schemes and about 3.2% of total development costs or about 2.8% of gross development value. For new hotels the equivalent figures are around 44% of the potential maximum, about 1.9% of total costs or about 1.8% of gross value. In these circumstances and allowing that the CIL rate will be known at the outset of a project, these limited effects should not normally risk such schemes becoming economically unviable, even in the present difficult market conditions.

19. Given that new schemes of this type do not contribute to affordable housing, there is no firm evidence to justify a blanket exemption, or even a significant reduction, from the CIL rate for new student accommodation in the city on viability grounds at present. Moreover, the fact that the Council seeks to generally encourage such provision, in suitable locations, to reduce pressure on the existing stock in established residential areas is a policy matter that cannot properly be taken into account in relation to the viability considerations alone on which the CIL rates must be based.

20. Similarly, the CIL is not based on any direct link between the impact of a particular scheme on services or facilities and mitigation contributions, but rather the overall needs of the wider area and, crucially, the ability to pay in viability terms. Therefore, arguments that the impact of new student housing on requirements for new infrastructure are different to other types of residential development are not directly relevant to the consideration of a reasonable and realistic rate of the CIL to be applied. Nor is it to be compared with rates applied or to be applied in other areas, but based only on viability in the locality concerned. Similar conclusions apply in respect of new hotels.

21. I therefore conclude on the first main issue that the local levy rates for new hotel and student housing are justified by the available evidence and strike an appropriate balance between helping to fund new infrastructure and their effect on the economic viability of these forms of development across the city.

Issue 2 – Residential Levy Rates – Inner and Outer Zones

a) – Are the two local levy rates for residential development in the city justified by appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the Council's adopted Core Strategy ?

b) – Are the two local levy rates for residential development in the city reasonable *and realistic in relation to an appropriate balance between helping to fund new infrastructure and the potential effects on economic viability, and is the boundary between them appropriate ?*

22. In relation to new housing, the various assumptions used in the Council's generic testing of different development scenarios have been criticised by some representors in a number of specific respects and also in terms of the overall cumulative effect of the two CIL rates to be applied. However, the Council's Viability Study (ED/209) has taken account of all the relevant policies of the adopted CS (ED/206), as required by national guidance, including the provision of 30/40% affordable housing, as appropriate, under policy BCS 17.

23. It has also included the additional build costs associated with the Code for Sustainable Homes (CSH) Level 4 and policies BCS 14/15 relating to sustainable design, construction and energy measures. Whilst the introduction date of CSH Level 5 is not yet certain, if and when it occurs residential build costs are likely to increase to a limited degree.

24. However, previous experience suggests that additional unit costs are likely to be mitigated as construction expertise develops and relevant technologies improve. Consequently, the viability margins identified in the Council's testing are more than sufficient to absorb a small percentage increase without serious difficulty. This conclusion is supported by the further "sensitivity" testing undertaken by the Council which essentially confirms that a 5% increase in build costs, with no equivalent rise in sales values, would not cause schemes that are viable on previous estimates to become unviable.

25. Outcomes would be more marginal in the unlikely event of a 10% increase, again with no uplift in sales income. However, given the present general lack of demand for new build construction, emphasised (as one representor pointed out at the hearings) by the completion of the Olympics project, it might be reasonably assumed that any such building price rises would be tempered through competitive tendering. This would be so even if basic raw materials become somewhat more expensive too, as predicted by some respondents.

26. By definition, the CIL cannot make allowance for abnormal, site specific, costs. The rates have to be based on a generic analysis of a variety of size and type of schemes across the area, taking into account average local build costs, not the individual circumstances of particular sites. The fact that a few specific schemes that are already marginal may become unviable in certain locations should not have a significant impact on the delivery of new housing across the city to meet the requirements of the adopted CS.

27. The Council's figures are based on a gross to net floorspace ratio of 85% for new flats and this may be somewhat over optimistic in certain circumstances, for example schemes with a higher number of storeys and therefore more circulation space. However, it is not unreasonable as a citywide average, given the inevitable variations between the particular design requirements appropriate for individual locations and sub-markets within the city. In any event, there is a more than satisfactory viability margin in the Council's overall analysis to mean that this factor, alone or cumulatively, should not have a significant effect on the overall economic viability of new build flats in the vast majority of schemes.

28. Respondents have also criticised the profit level assumed by the Council as too low, particularly in the present difficult market conditions that include bank lending restrictions. Obviously, such levels vary with each scheme, including as the market changes over time. Nevertheless, using an average figure of 20% across the city is not unreasonable or unrealistic in generic analyses, as distinct from the detailed costing of a fully designed project for a particular developer on a specific site.

29. Particularly in relation to large housing sites there is also a concern that an insufficient allowance (of £1k per unit) has been made for likely site specific infrastructure contributions. These would include for roads and public transport, with recent local examples referred to of contributions up to about £12k per dwelling. However, these arrangements are not directly comparable with the intended future operation of the CIL and the Council's accompanying revised SPD on Developer Contributions (ED/214), which will be used as the basis for new legal agreements for site specific infrastructure.

30. Coincidentally, the Council's figures indicate that, for the larger housing schemes providing affordable housing at least, the use of the CIL rates and the new SPD will actually lead to broadly equivalent total contributions as under the present, tariff based, S106 legal agreements system that it would replace. Of course, there may well be limited increases for some and slight reductions for others, depending on the exact nature of each scheme, but not, overall, a significant risk to the economic viability of new build development compared to the present position.

31. From all the available evidence it is clear that a realistic recent level for the average sales values for new housing in the district has been taken as an input to the viability testing undertaken. The figures used have also been checked against actual current asking prices in the Inner West area of the city and found to be consistent in CIL terms. This is on the basis that, whilst there may well be an element of negotiation to achieve sales, most of the 48 properties studied are re-sales that would not benefit from any new build premium and these factors broadly counterbalance one another.

32. The fact that certain recent schemes may not have proved viable had the CIL rates been in place at the time is an inevitable consequence of its imposition, in that the margins of viability will be affected. However, once established, the CIL will be taken into account early in the development process, including in relation to land and building values, with new project viability considered accordingly by landowners, developers, lenders and their advisors.

33. The CIL must be based solely on the economic viability of development across the city. There is no necessity or requirement to co-ordinate rates with those being introduced or contemplated by adjoining Councils as the "duty to co-operate", applicable to Local Plans, does not apply to the CIL. For the same reason, it would be inappropriate to make any exception or exemption from the CIL rates for any particular part of the city, such as South Bristol, for planning or other policy reasons, despite the need for regeneration in the area.

34. The effect of the CIL, on average, is likely to amount to only about 2.2% of total development costs or 1.9% of gross development value in the Inner Zone and about 1.6% and 1.5% respectively in the Outer Zone. At this level, with

the large viability margins or "buffers" identified in the Council's study, the imposition of the CIL rates should not of itself lead to a serious risk of non delivery of new housing schemes in Bristol over the next 5 years.

35. In practice, an increase of only about 2% in sales values over the build period would eliminate the effect of the CIL rates on overall viability in most new build housing schemes in the city, due to the relatively modest levels proposed. In this context, it is notable that respected market commentators have recently predicted average house price growth of about 10% in the period 2012-2016 in the South West of England (ED/304).

36. Importantly, the Council has also made it clear that the economic viability of any scheme, that is otherwise acceptable in all other respects, would be assessed for all other possible non CIL contributions on an overall basis. This would mean taking into account the fixed CIL liability first and then, if necessary, where the overall viability is in genuine doubt, any further infrastructure needs in a flexible and negotiated process. The Council can demonstrate a recent track record in this regard.

37. The evidence in the up to date study (ED/209) is clear that there are material differences in the current viability of new residential development across the city. These need to be reflected in the relevant CIL rates if a significant risk to the delivery of some types of new housing at least is to be avoided in the lower value areas, outside the central or Inner Zone.

38. In this context the Council responded appropriately to specific additional viability evidence, provided in response to the preliminary draft charging schedule (November 2011) (ED/212) and concerning parts of wards to the east of the city centre, by amending the boundary between the Inner and Outer Zones for new housing in the submission draft (ED/201). As a result, new housing in these particular localities would now be subject to the lower, Outer Zone, rate of £50 psm, compared to the higher, Inner Zone, rate of £70 psm, to more accurately reflect current sales values and overall viability.

39. As justified by all the available evidence, it is reasonable to conclude that the use of Inner and Outer Zones achieves a sensible and suitable distinction solely based on viability between the two new housing levy rates. This judgement is reinforced by the effective consensus among respondents that, as now amended from the preliminary draft charging schedule, the boundary dividing the two zones is both clear and logical.

40. I therefore conclude on the second main issue that the two local levy rates for new housing are justified by the available evidence and strike an appropriate balance between helping to fund new infrastructure and their effect on the economic viability of residential development across the city.

Overall Conclusions

41. The Council's decision to adopt a matrix approach is based on reasonable assumptions about development values and likely costs. The evidence indicates that most residential, retail, hotel and student housing development would remain viable across most of the city, together with other, less common, forms of new build schemes, if the charging schedule is applied as

proposed. Only if development sales values are at the lowest end of the predicted spectrum would a few development types in some parts of the city be at risk.

42. In setting the CIL charging rates the Council has had regard to detailed evidence on infrastructure planning and up to date economic viability evidence of the development market in Bristol. The Council has tried to be realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a wide range of development remains viable across the city.

43. Matters of implementation and governance, as referred to by various respondents, whilst not strictly within the remit of this examination, nevertheless have an impact on the smooth introduction and efficient administration of the CIL. By way of reassurance, the Council points out that their proposed phased payments policy will have a positive effect on cash flow and thus the overall economic viability of new development for larger projects.

44. In addition, the Council's emerging revised Supplementary Planning Document (SPD) on Developer Contributions (Draft SPD 4) (November 2011) (ED/214) should improve clarity for interested parties on the expected interaction between the CIL and S106 legal agreements for site specific infrastructure, where the latter would still be necessary.

45. In accord with the national CIL regulations "exceptional circumstances" are intended to be exactly that and therefore I fully endorse the Council's stance that it would be inappropriate and unhelpful to try to define those very rare circumstances in advance in some sort of policy statement alongside the introduction of the CIL. This is also consistent with the position adopted by the Mayor of London and other Councils.

46. Also taking into account the period of public notice available prior to the first introduction of the CIL, it is reasonable to conclude that, in general terms, the Council has found an appropriate balance in imposing the CIL. It will make a material contribution to funding new infrastructure across the city without a serious risk to the economic viability of new built development locally.

47. As the Council proposes, it will also be appropriate to consider any potential revisions to the charges so that they can be introduced after the CIL has been in place for no more than 5 years.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended 2011)	The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Core Strategy and the Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

48. I conclude that the Bristol City 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 2011). I therefore recommend that the Charging Schedule be approved.

Nigel Payne

Examiner