



Appendix A

AN EXAMINATION UNDER SECTION 212
OF THE PLANNING ACT 2008 (AS AMENDED)

**REPORT ON THE DRAFT FAREHAM BOROUGH COUNCIL
COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE REVIEW**

Independent Examiner (appointed by the Council): Keith Holland
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Charging Schedule Submitted for Examination: 24 August 2020

Date of Report: 4 May 2021

Main Findings - Executive Summary

In this report I have concluded that the submitted draft Fareham Borough Council Community Infrastructure Levy Charging Schedule Review and Statement of Modifications provide an appropriate basis for the collection of the levy in the area.

The Council has provided sufficient evidence that shows the proposed rates would not threaten delivery of the Local Plan.

Introduction

1. I have been appointed by Fareham Borough Council, the charging authority, to examine the draft Community Infrastructure Levy (CIL) Charging Schedule Review. I am a chartered town planner and chartered surveyor with more than 20 years of experience inspecting and examining development plans and CIL Charging Schedules as a Government Planning Inspector.
2. This report contains my assessment of the Charging Schedule in terms of compliance with the requirements in Part 11 of the Planning Act 2008 as amended ('the Act') and the Community Infrastructure Regulations 2010 as amended ('the Regulations'). Section 212(4) of the Act terms these collectively as the "drafting requirements". I have also had regard to the National Planning Policy Framework (NPPF) and the CIL section of the Planning Practice Guidance (PPG).
3. To comply with the relevant legislation, the submitted Charging Schedule must strike what appears to the charging authority to be an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development. The PPG states¹ that the examiner should establish that:
 - the charging authority has complied with the legislative requirements set out in the Act and the Regulations;
 - the draft charging schedule is supported by background documents containing appropriate available evidence;
 - the charging authority has undertaken an appropriate level of consultation;
 - the proposed rate or rates are informed by, and consistent with, the evidence on viability across the charging authority's area; and

¹ See PPG Reference ID: 25-040-20190901.

- evidence has been provided that shows the proposed rate or rates would not undermine the deliverability of the plan (see NPPF paragraph 34).
4. The basis for the examination is the version of the draft Charging Schedule consulted on under Regulation 16², combined with the Statement of Modifications³ submitted with the draft Schedule on 24 August 2020. The Regulation 16 consultation took place from 19 June to 31 July 2020 and a total of 11 representations were made from organisations and individuals. Because of the Covid 19 restrictions, the consultation was undertaken using electronic and written notifications which were sent to statutory consultees and every organization and individual on the Council's Planning Strategy consultation data base. Social media were also used and the documents were available for inspection at the offices of the Council on an appointment basis. Representations on the Statement of Modifications, which included minor modifications relating to the explanatory notes to the charging table, were invited between 24 August 2020 and 18 September 2020 albeit no further representations were submitted. No requests to be heard were received and therefore this examination has proceeded solely by way of written representations.
 5. In summary, the Council propose to revise the existing CIL Charging Schedule by reducing the rate to £nil per sq. m. for all qualifying development within the area defined as Welborne Plan Part 3 of the Fareham Borough Local Plan. All other charging rates in the existing CIL would remain unaltered and are therefore not subject to this examination.
 6. 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 the Infrastructure Delivery Plan, and is supported by an adequate financial appraisal. I also consider it compliant with the national policy and guidance contained in the NPPF and PPG respectively.

Planning context

7. The Fareham Local Plan Part 3 - The Welborne Plan - follows on from the Fareham Borough Local Plan Part 1 (Core Strategy) which was adopted in 2011. The Welborne Plan was examined in 2014/2015 and adopted in June 2015 and forms part of Development Plan for the Borough. The Welborne Plan proposes a large and complex new development involving some 6000 new homes and almost 83,400 net sq.m. of employment development phased over at least 20 years. The Welborne Infrastructure Delivery Plan was produced with involvement from a wide range of interested parties,

² View at:

<http://www.fareham.gov.uk/PDF/planning/CIL/RevisedDraftChargingSchedule.pdf>

³ View at:

<http://www.fareham.gov.uk/PDF/planning/CIL/RepresentationandModificationStatement.pdf>

including the site promoters, infrastructure providers and statutory agencies.⁴ The proposed supporting infrastructure includes access from the A32 and Knowle Road as well as improvements to junction 10 on the M27, new primary and secondary schools, primary health care centres, district and local centres, a central park and a district community centre. The anticipated cost of providing the infrastructure is estimated at over £308,000,000 with 34% of this required to deliver the first 1000 housing units. The August viability supplementary statement describes this as a significant and disproportionately high sum.⁵

8. Not surprisingly, given the very substantial infrastructure requirements, there are a variety of sources of funding for the proposed infrastructure. These include, for example, a contribution towards the junction 10 improvements from the Solent Local Enterprise Partnership (LEP) and funding from the Housing Investment Fund operated by Homes England. It is noted that the LEP contribution has recently been scaled back substantially but there is now agreement for an additional £20,000,000 from the developer Buckland Development Limited.
9. The Council has decided that the developer contribution towards infrastructure costs is best secured through the mechanism of direct financial contributions via a Section 106 legal agreement rather than through the payment of the adopted CIL charges. This approach is accepted in Government guidance regarding CIL payments for strategic sites. The guidance states that "low or zero rates may be appropriate where plan policies require significant contributions towards housing or infrastructure through planning obligations and this is evidenced by an assessment of viability".⁶ The approach is also in line with the Welborne Plan which noted that "in introducing CIL the Council committed to an early review of CIL in line with the preparation of the Welborne Plan. This review will ensure that the rate(s) at which Welborne development will need to pay CIL will be consistent with the infrastructure planning and development viability evidence that supports the adopted Welborne Plan. It will also provide clarity about the roles of Section 106 Planning Obligations and CIL in terms of what each mechanism is intended to fund in connection with the Welborne development".⁷
10. Contrary to the view of some representors who fear that proposed approach is unfair and inequitable, the proposed approach by the Council can represent an appropriate way of securing the timely and effective delivery of infrastructure on what is clearly a strategic site within the Borough. The critical question is whether the viability evidence supports a zero charge or whether the evidence points to the developers being able to pay a proportion of the Council's standard CIL charge. At present the current Section 106 legal agreement, secures over £300 million of infrastructure funding from the

⁴ Welborne Infrastructure Delivery Plan 2014 (Stage 2 Update Report), AECOM.

⁵ Site Wide Viability Report Supplementary Statement August 2019. Intelligent Land. [Note: 'Intelligent Land' is in no way whatsoever associated with 'Intelligent Plans'].

⁶ PPG Reference ID: 25-026-20190901.

⁷ The Welborne Plan, paragraphs 10.50 & 10.51.

developer and other organisations responsible for delivery.⁸

Economic viability evidence

11. The Council commissioned Three Dragons to undertake a review of the CIL rate for Welborne in the light of the commitment in the Welborne Plan to review the rate once more was known about the infrastructure delivery options for this strategic site. The Three Dragons report was delivered in April 2020 and thus represents a reasonably up-to-date assessment of the current viability position. Three Dragons had the benefit of an extensive body of viability evidence that was advanced as part of the planning application process for the development at Welborne. This viability evidence was produced for the developer by Intelligent Land and checked for the Council by CBRE. A resolution to grant planning permission for the development at Welborne was taken in October 2019 by the Council.
12. The viability assessment by Three Dragons does not seek to retest the broad viability evidence and underlying assumptions provided by Intelligent Land. This is reasonable given that the evidence has been independently reviewed for the Council by CBRE and agreed by the Council for the purposes of assessing the planning application.
13. As Three Dragons point out, Welborne is being delivered through a different model to most developments. Buckland Development Limited is the main landowner who will bring forward all the supporting infrastructure and then sell serviced plots to housebuilders. Accordingly, the standard CIL testing approach is not appropriate. The two stage approach used by Three Dragons involves establishing first, a reasoned per hectare serviced land value, followed by residual value for a parcel of land for 150 dwellings that will be sold to a housebuilder. Like the conventional CIL testing approach this two stage assessment, based on a 150 dwelling serviced parcel, tests whether there is sufficient value in the scheme for its delivery, including taking into account policy and infrastructure costs and the need to secure acceptable returns for the land owner and developer.
14. Stage one requires consideration of the threshold land value and the cost of providing the required infrastructure. The threshold land value is based on work by Intelligent Land that took into account agricultural values, values used in local plan work and option agreement prices. Account has also been taken of the Homes and Communities Agency guidance regarding threshold value of greenfield/agricultural land. Taking a mid-point of agricultural land values in Hampshire of £15,000 per gross acre and the concept of EUV+ (accepted in Government Guidance) as well as other evidence including option agreements, Intelligent Land concludes that a value of £200,000 per gross acre is a reasonable amount to justify the release of agricultural land in Hampshire⁹

⁸ Fareham Borough Council Regulation 19 Representation Statement.

⁹ Site Wide Viability Addendum March 2019, paragraph 4.35.

15. A threshold land value of £100,000 per gross acre (£110,000 if adjusted for RPI increases 2014 – 2018) was agreed by the developer with the Borough Council for the purposes of viability testing. In the case of Welborne the price paid for the land was around £110,000 per gross acre. Clearly this amount is well below the figure that Intelligent Land believes is justified in Hampshire and shows that this is not a case of a developer seeking to use an argument about threshold values to overcome planning policy requirements.
16. Turning to the cost of providing the necessary infrastructure, the Infrastructure Delivery Plan identifies the need for around £308,000,000 for infrastructure including £19.3 million for site preparation, £64.4 million for transport, £43.3 million for utilities and £110.0 million for social and green infrastructure. The Council and the developer are agreed that for the master developer stage to be viable, serviced parcel sales to a house builder need to achieve a purchase price of £1,388,241.86 per acre assuming a medium density site. Given that this figure has been agreed with the Council after very extensive work associated with the planning application and there is no convincing contradictory evidence, it is considered that this figure can reasonably be used to test stage two of the viability assessment.
17. Stage two involved using this land cost figure to test the residual value of a 150 unit parcel of serviced land developed over a 4 year construction/sales period. The basis for using this approach is the proposal to sell parcels of land for 150 units to housebuilders. Once again, this testing was undertaken as part of the planning application process and an agreed position has been reached between the developer and the Council. Significantly, the viability work undertaken shows that in the early phases of the development flexibility in terms of planning policy requirements is needed to allow the project to proceed.¹⁰ This is not surprising because of the high proportion of the infrastructure costs that will be incurred in the initial stages of the development. The policy concessions relate to lifetime homes, affordable housing and Passivhaus technology. Given the concessions, there is provision for viability reviews at regular intervals.
18. As regards affordable housing, the report on Affordable Housing Provision notes that while the intention is to deliver 30% affordable housing, in accordance with the Welborne Plan policy, some phases of the development may involve under or over delivery of affordable housing.¹¹ In fact the Council has agreed with the developer that affordable housing will be limited to 10% in the first 3000 unit phase of the development with the intention of making up the deficit in later phases – hence the regular viability reviews.
19. The stage two residual testing undertaken by Three Dragons involves two different levels of affordable housing – 10% and 30%. The 10% level testing is based on work done by the applicant for the planning application. In both instances the assumptions made follow standard practice in relation to inputs such as construction costs, professional fees, disposal fees and finance. The profit on Net Development Value is shown as 19.32% blended for both

¹⁰ Ibid. paragraph 6.4.

¹¹ Affordable Housing Provision David Lock Associates, December 2018.

affordable housing and market housing. As Three Dragons note, this may be relatively generous to the house builders given that the risk related to the provision of up-front infrastructure is being carried by the developer rather than the house builders. Three Dragons notes that with 10% affordable housing the viability of the development is marginal and with 30% affordable housing it is clearly unviable.

20. Marginal viability is not sufficient to justify a CIL charge given the need for a viability buffer and the policy requirement that CIL should not threaten the viability of the development.¹² Even if the viability is improved through, for example, a smaller profit margin for the house builder, it would not be appropriate for any extra funds to be devoted to a CIL charge for Welborne. Rather, any improved viability should contribute to increasing the affordable housing offer. In setting a CIL local authorities are required to take all policy requirements into account and generally affordable housing should not be compromised because of CIL. In this instance, the affordable housing policy is being compromised in the initial phase of the development. However this is justified given the exceptionally high infrastructure costs in the early stages of the overall development and the intention to make up the deficit in later stages. Consequently, it is considered that Three Dragons correctly conclude that any improvements in viability should contribute to increasing the affordable housing provision rather than being directed towards a CIL charge for Welborne
21. The Draft Charging Schedule is supported by detailed evidence of the infrastructure needs of the Welborne development. Furthermore, the viability of the development has been extensively tested as part of the planning application for this strategic site. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.
22. The Council's decision to set a rate of £0 per sq.m. for development at Welborne is based on reasonable assumptions about development values and likely costs. The decision by the Council is reinforced by the recent commitment from the developer to increase its share of the cost of the transport infrastructure.
23. Welborne is a strategic site and delivering the Welborne development is critical to meeting the needs of the Borough. The Borough Council has reasonably concluded that the most effective way of delivering the required infrastructure for Welborne is through planning obligations rather than through the CIL. Viability evidence that is convincing and comprehensive has been produced in relation to both the planning application for the Welborne development and the proposed revision to the existing CIL charging schedule. The intentions for the Welborne development, as reflected in the adopted Development Plan for Fareham, would be respected by the Council's proposed review of its adopted CIL

¹² PPG Reference ID: 25-020-20190901.

Overall Conclusion

24. I conclude that the submitted draft Review of the Fareham Borough Council Community Infrastructure Levy Charging Schedule with the amendments made in the Statement of Modifications satisfies the drafting requirements. I therefore recommend that the draft Charging Schedule be approved.

Keith Holland

Examiner