
Report to Leeds City Council

by Mr A Thickett BA(HONS) BTP MRTPI Dip RSA

an Examiner appointed by the Council

Date: 5 September 2014

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF LEEDS CITY COUNCIL'S DRAFT COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 7 April 2014

Examination Hearing held on 3 June 2014

File Ref: PINS/N4720/429/11

Non Technical Summary

This report concludes that the Leeds City Council's Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. 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 to the proposed rates. However, the Council has suggested some changes to the Draft Charging Schedule which I agree will aid its operation and make it more effective.

Table 1: Proposed Rates

Development	Rate
Residential – City Centre	£5 psm ¹
Residential – Inner	£5 psm
Residential – Outer	£23 psm
Residential – South	£45
Residential – North	£90
Supermarkets ≥ 500 m ² in City Centre	£110
Supermarkets ≥ 500 m ² outside the City Centre	£175
Comparison Retail ≥ 1,000 m ² in the City Centre	£35
Comparison Retail ≥ 1,000 m ² outside the City Centre	£55
Offices in the City Centre	£35
Development by predominantly publicly funded or not for profit organisations, including sports and leisure centres, medical or health services, community facilities and education	£0
All other uses	£5

¹ Per square metre

Introduction

1. This report contains my assessment of Leeds City Council's Community Infrastructure Levy Charging Schedule (CIL) Draft Charging Schedule (DCS) 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 the National Planning Policy Guidance (NPPG)².
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 district. The basis for the examination is the submitted schedule of 7 April, which with the exception of the deletion of annexes setting out the Council's Instalments and Exceptional Circumstances policies³, is largely the same as the document published for public consultation on 29 October 2013.
3. The Council propose differential rates for residential, retail and office uses as set out in Table 1 above. The DCS is accompanied by an Ordnance Survey based plan showing the boundaries of the different charging areas. The plan is set at a small scale which, where a site is close to a boundary between charging zones, may make it difficult to ascertain which charge applies. To overcome this, the Council propose to insert additional text which will direct users to a copy of the plan on the Council's web site which will be navigable and able to be enlarged.

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

Infrastructure planning evidence

4. I am also appointed to examine the Leeds' Core Strategy which was submitted for examination in April 2013. The examination was ongoing when the DCS was submitted and my findings with regard to that examination accompany this report. Subject to modification, I consider the Core Strategy to be sound. The Council's Infrastructure Delivery Plan⁴ details the transport, education and social infrastructure required to enable and support the 70,000 new homes and other developments planned in the Core Strategy. Some argue that the Infrastructure Delivery Plan fails to identify all the new works and services that will be required and the Council accept that it will probably need to be reviewed as the Site Allocations Plan progresses. However, I am satisfied that it represents a robust assessment of the necessary infrastructure and possible sources of funding.
5. The Council estimate the cost of infrastructure necessary to deliver the development planned in the Core Strategy which could be funded through CIL to be around £1.53 billion of which £291,530,000 has been identified to date,

² The February 2014 CIL Guidance was in force at the time the hearing was held. I do not consider and the Council agree that the changes introduced by the incorporation of CIL guidance into the NPPG raised any matters which required further consultation.

³ These are now separate documents; Core Documents CD1-12 and CD1-13

⁴ Core Document CD1-16

leaving a funding gap of about £1.24 billion. The Draft Charging Schedule is accompanied by the Council's Regulation Draft 123 list and an indication of infrastructure which may be secured through section 106 agreements⁵. CD1-10a shows that the Council received an annual average of £3.5m in Section 106 contributions between 2007 and 2012. CIL is expected to raise at least £2m in the first year with Section 106 contributions amounting to around £1.05m. The Council estimate projected CIL income up to 2028 to be in the region of £122.58m⁶ leaving a residual funding gap of around £1.1 billion. The figures demonstrate the need to levy CIL.

Economic viability evidence

6. The Leeds Community Infrastructure Levy-Economic Viability Study, January 2013 (EVS)⁷ uses a residual valuation approach and tests the ability of a range of developments throughout the city and its environs to contribute to the provision of infrastructure through CIL. Levels of CIL were tested in combination with other planning requirements including affordable housing and meeting sustainable building standards. I am satisfied that the assessment used reasonable standard assumptions for factors such as building costs, profit levels, fees etc. Table 15 (Market Value Benchmarks) of the EVS was updated in May 2014, principally to support the introduction of thresholds and targets into Policy H5 of the Core Strategy⁸. However, it provides useful information for this examination and supports the Council's assertion that viability is improving.
7. The DCS is supported by evidence regarding community infrastructure needs and viability. On this basis, I consider the evidence which has been used to inform the Charging Schedule to be robust, proportionate and appropriate.

Is the charging rate informed by and consistent with the evidence?

Residential development

8. The EVS established average market values for a range of densities within each of the charging zones and over 140 different scenarios were modelled. These included greenfield and previously developed sites. The EVS concluded that development in the city centre and inner area was not viable. However, as indicated above, the update to Table 15 demonstrates that the market has improved since the EVS was produced in January 2013 and I am satisfied that a nominal £5 psm would not threaten the delivery of housing in these areas.
9. Representors argue that the 10% viability buffer built in to the rates in the other zones is not sufficient. However, as demonstrated in Table 1 of the Council's hearing statement, the EVS takes a cautious approach and uses conservative estimates which, in effect, have viability buffers built in. Consequently, although charges of £50 psm, £150 psm and £200 psm could be supported in the outer, south and north zones respectively, the proposed rates are £23 psm, £45 psm and £90 psm which represent viability buffers of between 54 and 70%.

⁵ CD1-14

⁶ CD1-23

⁷ CD1-9

⁸ CD1-21

10. The Council has operated differential affordable housing requirements for some time based on work which identified market housing areas across the administrative area of the city. This work was refined by the EVS and resulted in the identification of 5 charging zones (the 2005 Affordable Housing SPG⁹ had 4) and some changes to the boundaries of others. These zones are the same as those applied in Core Strategy Policy H5 as modified (Affordable Housing). The use of different zones for the purpose of the application of affordable housing policy is well established in Leeds and I am satisfied that the charging zones are based on sound viability evidence.
11. The EVS acknowledges that some brownfield sites and large sites may be challenging and certain sites in the same charging zone may be more viable than others. However, I am satisfied that the proposed rates are justified by the appropriate available evidence and further that the nominal charge in the inner urban areas and the generous viability buffers in the outer, south and north zones provide sufficient comfort that the rates will not prevent the housing needs of the city from being met.

Elderly/retirement accommodation

12. The EVS does not model specialist retirement accommodation. An assessment had been carried out by a provider of such accommodation and purports to show that such schemes could only support CIL in the northern zone and then at a rate of £45 psm. I acknowledge that the specialist housing provided by this supplier has particular characteristics but the Council's assertion that recent schemes have made Section 106 contributions above what would be expected under CIL (and provided the full amount of affordable housing) was not disputed at the hearing. Nor was the Council's statement that of the two schemes currently pending (one subject to appeal) one would pay more under CIL but another less.
13. Retirement housing is and will become an increasingly important element of overall provision but, in my view, the lack of an assessment in the EVS of specialist retirement accommodation is not a significant shortcoming. In the last 9 years only 6 applications have been made and if the two proposals currently in the pipeline are built, only 295 retirement flats will have been provided. The Council argue that the conservative assumptions used in the EVS and the generous buffers should ensure that the proposed rates will not threaten the viability of such accommodation. Having considered the evidence, I see no reason to take a different view.

Retail

14. The EVS modelled a range of retail uses including convenience stores, supermarkets, retail warehouses and comparison retail in the city centre and elsewhere. It is argued that the assessment fails to take into account the cost of site specific Section 106 requirements such as local highway improvements and that it ignores, for example, the cost of remediation. The EVS does consider constrained sites and one would expect the costs of demolition and remediation and any identified local infrastructure works to be taken into account in negotiating the price for the land. The regulation 123 list includes

⁹ Supplementary Planning Guidance

public transport schemes and off site public realm improvements and, consequently, some of the requirements cited by Asda Stores Ltd, would not have to be funded through Section 106. Further, the Council's October 2013 Further Justification Papers¹⁰ shows that supermarket schemes paid less in Section 106 contributions per square metre than they would have under CIL.

15. As stated above the EVS took a cautious approach and in addition the proposed rates include generous buffers. The EVS considers that city centre supermarkets larger than 500m² could support £175 psm whereas £110 psm is proposed (37% buffer). According to the EVS, outside the city centre a rate of £275 psm could be supported but the proposed rate is £175 psm. The rates for smaller supermarkets and for comparison goods stores are also significantly discounted.
16. The NPPG states that differential rates may be set with regard to the type of use and by scale. The Council has produced evidence in the EVS, the Justification Paper and in its hearing statement to show that the zones and the type and size thresholds are supported by appropriate available evidence. I agree that given the number of town centres in Leeds, setting rates for each would make the DCS unduly complex and cumbersome. I have no reason to doubt that discount retailers operate under a different business model to the large supermarkets but nor do I see a reason not to accept that the findings of the EVS generally align with the figures expected in the majority of developments. Further, it would not be good practice to base rates on one specific business model.

Offices

17. New office development in the city centre zone would be charged at £35 psm. The Council does not dispute that locations at the fringe of the city centre charging zone are not as attractive and so are less viable than those at its heart. A representor suggests that the current city centre zone be divided with what is described as the prime office quarter charged at £35 psm and the remainder at £5 psm. However, the EVS suggests that £35 psm will not stifle development at the fringes of the city centre charging zone. Further, the Council have produced information which shows that almost half the highest rental deals are in locations within what would be the £5 psm zone¹¹ should the alternative boundary suggested by the representor be accepted.
18. The available evidence indicates that the rate is set at a level which will not threaten the delivery of the Core Strategy's aims for the city centre. The evidence before me does not support a change to the charging zone but it would be open to the Council to reconsider the boundaries and the charge when it reviews the DCS (see paragraph 23 below).

All other uses

19. The EVS recommends a zero charge for all other uses but as stated above later evidence points to an improvement in viability. The Council's March 2013 Justification Papers¹² sets out historic Section 106 data which shows that uses

¹⁰ CD1-11

¹¹ CD1-24

¹² CD1-10

such as hotels, care homes and gyms contributed the equivalent of £5 to £23 psm through Section 106 contributions. The cautious approach to the EVS must also be considered and I have seen no evidence to counter the Council's assertion that the proposed nominal charge of £5 psm would not render such development unviable.

Does the evidence demonstrate that the proposed rates would not put the overall development of the area at serious risk?

20. The rates set out in the DCS are based on reasonable assumptions about development values and likely costs. The evidence suggests that residential and commercial development will remain viable across most of the area if the charge is applied.

Proposed modifications

21. As indicated in the introduction the Council propose to add text to the DCS to aid interpretation of the map showing the charging zones. The Council also agreed at the Hearing to clarify in the DCS the supplementary guidance documents (or parts of) which would be replaced by CIL. A change is also required to correct a typographical error which could mislead readers with regard to where to find the Council's exceptional circumstances policy. None of these changes are required to comply with the drafting requirements but, for the avoidance of doubt, are set out in the annex at the end of this report.

Conclusion

22. In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and the viability of development in Leeds and its administrative area. The Council has taken a cautious but realistic approach 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 city and district.
23. The recommendation by the authors of the EVS that charges are reviewed in 2016/17 is given weight by the updated evidence which indicates that viability has improved since the EVS was produced. The Council has committed itself to review the DCS in light of the outcome of the Site Allocations DPD process (which could include separate rates being set for strategic sites). Given the amount of infrastructure necessary to support the Core Strategy and the significant funding gap, I consider both these suggestions to be eminently sensible.

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

	Infrastructure Delivery Plan and is supported by an adequate financial appraisal.
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24. I conclude that Leeds City Council's 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.

Anthony Thickett

Examiner

Appendix A

Modifications suggested by the Council.

Page / paragraph	Modification
Paragraph 3.5	Amend as follows: The maps on the following pages show the charging zones. A <u>separate map is also provided on the Council's website in order to be able to print out or zoom in at a more detailed scale to identify a particular site or location.</u> They can also be downloaded separately, along with all the evidence base documents, from www.leeds.gov.uk/LDF
Pages 14 and 15	Add footnotes; This map can be viewed on the Council's website where you will be able to zoom in at a more detailed scale to identify a particular site or location; www.leeds.gov.uk/LDF
Annex 1, Page 17, third paragraph	Add the following to the end of the paragraph; On adoption of the CIL, the Council will no longer be able to collect pooled S106 contributions through its 'tariff style' supplementary planning documents/guidance (N.B. affordable housing pooled contributions are not affected by the CIL regime). The documents which will no longer be used for this purpose are; SPG11 'Section 106 Contributions for School Provision', SPG4 'Greenspace Relating to New Housing Development', 'Public Transport Improvements and Developer Contributions' SPD, and 'Holbeck Urban Village Revised Planning Framework' SPG. Please note that elements of these documents will still be extant under the CIL, i.e. sections relating to design guidance and broad planning principles. The Council's website will provide further detailed guidance on such matters on adoption of the CIL.
Annex 1, Page 18, second paragraph	Delete; (as set out in Annex 3)