

WORTHING BOROUGH COUNCIL COMMUNITY INFRASTRUCTURE LEVY SCHEDULE EXAMINATION

GENERAL – QUESTIONS 1 to 3

1. Does the Draft Charging Schedule accord with amended Regulation 14(1) (2014 Regulations (SI 2014 No. 385)) in terms of “striking an appropriate balance”?
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Response (See also the Council’s response to question A-C)

As outlined in the Council’s Statement of Compliance (CD02-2), in setting its levy rates, Worthing Borough Council complied with Regulation 14 (1), which requires that CIL.....must strike as appropriate balance between:

- a) The desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
- b) The potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

In summary, the evidence has identified an Infrastructure Funding Gap of £83.6m (based on the Infrastructure Funding Gap Review May 2013). The charging rates proposed of £100 for residential development and £150 for retail development would not threaten the economic viability of development in the plan period based on the viability study that has been undertaken. It is anticipated that CIL revenue of £16.9m will be raised over the plan period based on current development projections which is not in excess of the Infrastructure Funding Deficit.

Therefore, it can be shown that the proposed charging schedule strikes an appropriate balance between delivering essential infrastructure to support growth and maintaining the overall economic viability of development as required by the Regulations. The Council is satisfied that the proposed rates will not have an adverse impact on deliverability and that evidence shows that the rates are realistic and reasonable as the viability work took account of the CIL regulations 2010 (as amended) and guidance in not setting rates at the margins of viability and ensuring that the rates are set at an achievable level to the majority of future development in the Borough.

The appraisals that have been undertaken incorporate robust and up-to-date information and reflect developments that are likely to come forward in Worthing.

However, the appraisals are necessarily generic tests which do not make allowance for site specific abnormal costs. As such, in general, the recommended CIL rates are set within the identified viability margins to take account of these unknown factors whilst also setting the appropriate balance within the context of Worthing where there is a clear and over-arching aim to deliver regeneration across the Borough.

Taken in the context of all development costs, the charge for CIL is relatively small and is unlikely to be a major influence on viability. As illustrated in the example set out in the Viability Assessment the proposed CIL rate for residential development will (for a 3 bed house) account for around 3.9% of development costs. Having the rates set out in a charging schedule will provide certainty to developers in that they will be aware of their CIL liability well in advance of submitting a planning application, and can take this into account in future purchases of land.

In summary, it is considered that the proposed rates strike the appropriate balance for Worthing between securing additional investment for infrastructure to support development and the potential economic effect of imposing CIL upon retail and residential development across the Borough. The evidence demonstrates that the charges are reasonable and it has been shown that they are not at a level that would impact on the viability of the majority of future development in the borough.

2. Noting that in an earlier appraisal a 60% figure was used, is the assumption that landowners should receive a 50% share in the uplift in the value of land appropriate?

Response

The methodology employed in the appraisals uses uplift in value between existing use value and value with planning permission to determine the land value allowance that reflected a 'reasonable return to the landowner' as required by the NPPF and best practice guidance. In the original methodology it was considered that landowners would feel that they should obtain a greater share of the uplift than the Local Authority in order to release sites (rather than potentially wait for a change in policy). As such, a 60:40 split was adopted in favour of the landowner.

Subsequently, this issue was considered in some detail by the Inspector in the Shinfield Appeal Decision (Wokingham DC, APP/X0360/A/12/2179141) in January 2013. The case revolved around the level of affordable housing and developer contributions that could be reasonably required. In turn, the decision hinged on the land value allowed to the applicant as a 'reasonable return' to incentivise release of the site. The Inspector held that the appropriate approach to establishing the benchmark or threshold land value would be to split the uplift in value resulting from planning permission for the alternative use (50:50 between landowner and the community). As such, in subsequent appraisals the Council's consultants adopted

this approach and it is noted this has since been accepted in other cases (e.g. Preston City Council APP/N2345/A/13/2200445).

In reducing the land value allowance to the landowner the viability margin beyond reasonable return to the landowner and developer has necessarily increased along with the potential to charge CIL.

3. Are the NCS Assessment's assumptions regarding ongoing s106 costs realistic? Is the first Draft Regulation 123 List consistent with the examples of site specific infrastructure which maybe the subject of an obligation listed on page 16 of the Developer Contributions Draft SPD (March 2014)?

Response

S106 Assumptions

In March 2014 the Council published a Developer Contributions Draft Supplementary Planning Document (SPD) (CD03-5). The purpose of this document is to provide guidance to all interested parties about the types of contributions that will be sought when CIL is in place and the basis for the charges. It will enable a developer to work out at an early stage in the development process what contributions will be required in association with their development. It is intended that this SPD will be adopted at the same time that the Council's CIL Charging Schedule takes effect.

The Draft SPD explains that for Worthing, CIL is being designed to be the principle mechanism for collecting infrastructure contributions. However, it is also explained that there will still be a role to play for Obligations in relation to affordable housing and some site specific infrastructure needs.

In this regard, the Draft SPD explains that other than for affordable housing, Planning Obligations will only be used to mitigate against any impact on the environment or local services that arise directly as a result of any particular developments. These will be cases where the development proposed results in a specific and significant need for infrastructure (or access to a service) that is not currently available and has not been identified for investment through CIL or any other investment programme.

Overall, the principle is that all eligible developments must pay towards CIL and, in addition, affordable housing and any (identified) site specific requirements (usually for the more significant development sites) will be secured through Planning Obligations where they are necessary to make the development acceptable in planning terms.

When setting the CIL charging rates it is important to understand the dynamics of CIL and Planning Obligations and how they may be utilised once CIL has been introduced. To help achieve this, when calculating the appropriate CIL rate for the

Borough the envisaged and forecast requirements for infrastructure through Planning Obligations have been considered and factored into the viability testing model.

The following steps were taken in order to calculate the historic S106 contributions (set out in CD03-4):

- All S106 agreements from planning applications were considered dating back to 2005. (Note – the year was determined by the year the planning application had been submitted not necessarily the year the S106 agreement was signed).
- Agreements were then excluded if no financial contributions had been received (i.e. development had not commenced)
- For applications concerning residential development, the number of units were determined. A breakdown of dwellings was then provided (i.e. house/flat and no. bedrooms and floor space if known). If floorspace was not stated within the records, it was estimated using minimum space standards (square metres of dwelling types and bedroom no.) set out within the Worthing Space Standards SPD. The total sqm of residential development for each application was then calculated.
- For commercial applications the sqm of development was obtained from the original planning application. Commercial sites were subdivided into:
 - A1/A3/A5
 - B1b/B1c/B2/B8
 - C2
 - D2
- Financial contributions were also subdivided based on the details set out in the original agreement about how the monies should be spent (i.e. whether the monies were for improvements to Transport, Open Space, Education or Fire Services)
- The contributions were then divided by the sqm of development to get the amount of contribution (£) per dwelling or per sqm commercial floorspace
- This was then totalled to get the total amount of contributions (£) per dwelling or per sqm commercial floorspace for each type of contribution (Transport, Open Space, Education or Fire Services).

This historical evidence demonstrates that where planning obligations have been charged this equates to an average of £1,596 per dwelling and £17 per sqm for commercial development. As emphasised above, it is likely that CIL will replace a significant part of this funding requirement when it is in place so the viability assessment makes, what the Council considers to be, a reasonable future allowance of £500 per dwelling and £5 per sqm of commercial/non-residential space (also reflecting the fact that the historic figures only relate to development where S106 contributions were relevant and not to an average contribution covering all residential development).

In addition, it is considered that this allowance reflects the current development strategy for the Borough (see Core Strategy CD03-1 and the Council's response to questions 4-6). It is clear that the current strategy is not one that is dependent on the delivery of large strategic sites – the type of which may require significant levels of S106 contribution to mitigate against expected impacts on the environment or

local services. As such, there is no reason to suggest that the current level of S106 collected from new development will not go down significantly when CIL is in place and for many smaller developments there may be no requirement for any S106 contributions alongside CIL. Should the Council's approach to development change significantly in the future (following a Local Plan review) then the Council's CIL, and the assumptions used within the model (including the allowance for S106), will be reviewed.

Overall, this significant scaling back of Planning Obligations will simplify the development management process giving more certainty to applicants and result in fewer protracted negotiations around S106. More importantly, it will allow the council to take a strategic approach to delivering infrastructure and greater fairness in capturing contributions from small developments for shared infrastructure.

Regulation 123 list

In order to clarify what types of infrastructure will be funded by each mechanism once CIL is in place the Council will publish a Regulation 123 list. This list will set out the infrastructure projects and types that the Council intends will be, or may be, wholly or partly funded through CIL (and therefore not through Planning Obligations). Although CIL will be the principle mechanism for collecting developer contributions, the reality is that some developments in Worthing will be liable to pay both CIL ('general infrastructure') and Planning Obligations (site specific measures / affordable housing). However, in these instances the contributions will cover different infrastructure projects and developments will not be charged for the same infrastructure through each mechanism.

The Council considers that, in general, there is a close relationship between the approach to S106 and CIL set out in the Council's Draft Developer Contributions SPD and the Draft Regulation 123 list (CD05-3). However, the Council also acknowledges that there is a minor discrepancy that would benefit from clarification. The Draft Developer Contributions SPD provides examples of site specific infrastructure that may be required through Planning Obligations if present facilities were not able to accommodate the additional needs generated by the development. This list includes 'health facilities' and 'education'. However, contributions for these elements through Planning Obligations are only likely to be required on larger strategic sites which, as explained above, are not a key component of the current development strategy. For this reason, and until such time that the development strategy changes, the Draft Regulation 123 list does not allow for any exclusion from CIL that would allow for contributions from these elements to be sought through Planning Obligations. In summary, the proposed position is one that would use CIL to help fund health infrastructure (subject to prioritisation) rather than S106. To clarify this position the Council proposes to amend the Draft Developer Contributions SPD to explain this approach and address this discrepancy.
