
Report to Worthing Borough Council

by Jameson Bridgwater PGDipTP MRTPI

an Examiner appointed by the Council

Date: 27 May 2021

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT WORTHING BOROUGH COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on October 2020

Examination hearings held on 28 January 2021

File Ref: PINS/M3835/429/8

Non-Technical Summary

This report concludes that the Worthing Borough Council 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.

Introduction

1. This report contains my assessment of the Worthing 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.
2. The proposed CIL Charging Schedule seeks to revise and replace the extant Worthing Borough Council Community Infrastructure Levy Charging Schedule February 2015. The Council confirmed that the purpose of the proposed revision is to reflect the more recent economic conditions in Worthing along with changes in national policy and guidance in relation to Community Infrastructure Levy.
3. 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 sessions were held on 28 January 2021 is the schedule of October 2020, which is effectively the same as the document published for public consultation between 30 June and 25 August 2020.
4. The submitted charging schedule from Worthing Borough Council [the Council] proposed the following CIL rates:

Residential Including retirement/sheltered housing

- 10 dwellings or less (all dwelling types) - £125sqm
- More than 10 dwellings (excluding Flatted development) - £125sqm
- Flatted development of more than 10 dwellings - £25sqm
- Extra Care Housing - £0sqm
- Greenfield housing development (greenfield land zone shown on map in Appendix 1) - £200sqm

Retail

- Foodstore/Supermarket/Retail Warehousing development (greater than 280 sq.m.) - £150sqm
- Other forms of retail - £0sqm

All other development

- Borough Wide - £0sqm

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

Infrastructure planning evidence

5. The Worthing Borough Core Strategy 2011 (WBCS) was adopted in April 2011. This sets out the strategy for future growth and development in the Borough to 2026. It sets out policies for issues such as the strategic development at West Durrington and 12 areas of change identified as major regeneration opportunities. It also outlines how development needs will be met with a series of policies on key issues such as housing, employment, retail, and environmental protection.
6. The Council are in the process of preparing a new development plan, the Worthing Local Plan. At the time of the hearing the Submission Draft Worthing Local Plan Consultation (January 2021) was underway. Therefore, the Worthing Borough Infrastructure Delivery Plan October 2018 (IDP) outlines the new/improved infrastructure required to facilitate planned growth within the borough to the end of the WBCS plan period (2026) and beyond. The IDP indicates that spending will be directed towards social, physical, and environmental infrastructure. These amongst other things include education, libraries, sport, cultural, health and social care, energy, transport, flood risk management, green corridors, and waterways projects, all of which will contribute towards

implementing the objectives of the WBCS.

7. Considering other likely funding sources, including direct from government, the Council currently estimates an infrastructure funding shortfall of around £46.6m. The IDP, demonstrates a clear funding gap between the provision of infrastructure required to support development required by the WBCS, and funds available to provide this infrastructure. Since coming into force the amount raised by the Council from their existing CIL levy rates is approximately £1.19m, with Section 106 raising £2.46m in the same time period. It is anticipated that the revised CIL charges, as proposed, would raise about £2m on an annual basis and around £10.69m in total up to 2026 towards infrastructure needs. In the light of this evidence, the proposed CIL charges would make a significant contribution towards meeting the likely funding gap. The figures demonstrate the need to levy CIL in Worthing Borough.

Economic viability evidence

8. The Council commissioned a CIL Viability Assessment dated March 2020 (VA). The typologies selected for testing were not intended to represent specific development proposals, but to reflect typical forms of development that are likely to come forward in Worthing over the plan period. The assessments use a residual valuation approach, using reasonable standard assumptions for a range of factors such as building costs, profit levels, fees, and changes in relation to national policy.
9. The model was adapted with relevant local data on existing land values; including MHCLG data and a range of other indications, taking into account that there are variations in average land values across Worthing. In general, the benchmark land values used are sufficiently realistic for comparison purposes in a generic study of this type.
10. The charging schedule has been informed by discussions with stakeholders and consideration of the representations made on the series of consultations carried out by the Council. The Revised Draft Charging Schedule Statement of Consultation October 2020 demonstrates that an adequate and proportionate approach in relation to local stakeholder participation was taken by the Council. This was further reinforced by local developers being represented at the Examination Hearings.
11. The VA seeks to establish a residual value by subtracting all costs (except for land purchase) from the value of the completed development (the Gross Development Value). This is tested across a wide range of 'trial CIL rates' – i.e. with increasing CIL cost included.

The price at which a typical willing landowner would be prepared to sell the land (the Benchmark Land Value) is then compared with the residual value to arrive at the 'theoretical maximum charge' that may be supportable. This informs the scope from which the CIL charge can be taken provided that there is a sufficient viability buffer or margin.

12. The Guidance states that it would be appropriate to include a buffer or margin so that the levy rates are not set at the margins of viability and are able to support development when economic circumstances adjust. This can also provide some degree of safeguard in the event that gross development values have been over-estimated or costs under-estimated and to allow for variations in costs and values between sites. As discussed below, the Council have apart from Flatted development of more than 10 dwellings proposed CIL charges that provide a reasonable viability margin or buffer commensurate with the type of development being brought forward.
13. In conclusion the draft Charging Schedule is supported by documentation demonstrating detailed evidence of community infrastructure needs and economic viability testing. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate, and appropriate.

Are the charging rates informed by and consistent with the evidence?

CIL rates for residential including retirement/sheltered housing

14. WBCS Policy 7 – Meeting Housing Needs sets out the requirement of 4,000 net additional dwellings in Worthing up to 2026. The Council's VA examined a comprehensive range of residential typologies/scenarios, including amongst other things houses/flats sheltered/flats extra care/flats town centre and mixed schemes. Analysis was also undertaken for typologies aligned to sites across the borough, these included previously developed land (PDL), residential infill on PDL, greenfield sites and a combination of PDL/greenfield.
15. The viability testing applied reasonable assumptions in terms of a representative selection of dwelling sizes including considering the likely differences in gross internal area between affordable and private market housing. Therefore, the testing considered a full range of values and costs data that are suitably reflective of the new residential projects likely to come forward across the borough in the WBCS plan period.
16. The viability testing in relation to residential development has factored in assumptions to reflect policy requirements in the WBCS. These

include affordable housing requirements, along with a contingency for planning obligations (s106). Finally, except for Flatted development of more than 10 dwellings (this is discussed in detail below) the assessments apply a viability buffer of approximately 50% that produces a theoretical CIL charging range. As such, the viability testing has properly examined the most likely scenarios although clearly cannot address all possible eventualities surrounding new development projects.

17. Whilst overall there is an underlying strength and viability in the Worthing property market, the Council's analysis also demonstrates the difference in the ability of types and scales of residential development in different parts of Worthing to viably support a CIL charge, therefore, justifying the use of differential residential rates and two charging zones for residential development in the borough illustrated as Appendix 1 to the charging schedule.

10 dwellings or less (all dwelling types) - £125sqm

18. Based on viability testing set out above, the Council have proposed a CIL charging rate of £125sqm for 10 dwellings or less (all dwelling types). The viability testing demonstrated that the proposed CIL rate in the range of £100sqm to £150sqm would maintain a viability buffer of around 50%. This buffer would ensure that the vast majority of new housing development of 10 dwellings or less (all dwelling types) could be delivered in accordance with the WBCS. I am therefore satisfied the proposed rate of £125sqm for 10 dwellings or less (all dwelling types) is justified on viability grounds and would strike an appropriate balance.

More than 10 dwellings (excluding Flatted development) - £125sqm

19. In relation to larger residential schemes the VA assessed a variety of scenarios that were reflective of larger scale development in Worthing. The results from the testing demonstrated that a CIL rate in the range of £100sqm to £150sqm for more than 10 dwellings (excluding Flatted development) would ensure a viability buffer of around 50%. Based on this evidence the Council have proposed to set a rate of CIL rate of £125sqm. This buffer would ensure that the vast majority of new housing development of more than 10 dwellings (excluding Flatted development) could be delivered in accordance with the WBCS.
20. Therefore, with no substantive detailed evidence presented to indicate otherwise, I am satisfied that the proposed rate of £125sqm for More than 10 dwellings (excluding Flatted development) is justified on viability grounds and will support the aims and objectives of the WBCS.

Flatted development of more than 10 dwellings - £25sqm

21. Worthing has locational advantages that make it attractive to larger scale flatted development. These include being directly situated on the south coast and adjacent to the South Downs National Park. Allied to this are good transport connections to the rest of the south coast including Brighton, Portsmouth, and Southampton, with a direct rail link to London.
22. The Council have proposed to set a CIL rate of £25sqm for flatted development of more than 10 dwellings. This differs from the extant Worthing Borough Council Community Infrastructure Levy Charging Schedule February 2015 which does not apply a differential residential levy rate for flatted development. Therefore, except for 4 wards (Seldon, Castle, Gaisford and Broadwater located within the existing Nil Charge Zone) the proposed rate would be significantly lower than the 2021 indexed levy rate of £128.57sqm which is currently applied to flatted development within the existing residential rate.
23. Although there is some disagreement with regard representative selection and costings associated with flatted developments used for viability testing, ultimately the Council and interested parties are in general agreement that the proposed rate of £25sqm could still contribute to or result in viability challenges for bringing forward flatted schemes on previously developed land (PDL) and town centre schemes. Moreover, the general nature of the viability results are acknowledged as mixed and often relatively poor, meaning that there is limited scope for the provision of a viability buffer at a CIL rate of £25sqm or indeed at a rate of £0sqm in the case of some types of flatted development in the borough.
24. This is particularly relevant in that the residential growth planned to come forward in the borough over the remaining plan period is predominantly higher density flatted development within the main urban areas and town centre. Furthermore, given the projected level of growth it will be necessary to support flatted developments in Worthing with an appropriate level of infrastructure. As such, the projected £750,000 expected to be raised from the proposed flatted development CIL charge would make a meaningful contribution towards meeting those costs.
25. Based on the available evidence I accept that there are potential viability implications of a CIL rate of £25sqm for some flatted development. However, I consider that these are likely to be relatively limited in number and site specific rather than across the board. Whilst my attention was drawn to a number of schemes in Worthing as

examples, the viability issues including the impact on the delivery of affordable housing did not directly relate to the imposition of the existing higher residential CIL charge. Moreover, the proposed CIL rate of £25sqm would only be a very small proportion of overall development costs and significantly less than the existing CIL charge for the majority of the borough. It is therefore unlikely that the imposition of the proposed nominal charge of £25sqm would materially impact on the delivery of most larger scale flatted schemes coming forward within the plan period and beyond. I therefore consider that the proposed rate is reasonable and pragmatic, given the available evidence, accepting there is no requirement for a proposed rate to exactly mirror the evidence.

26. Having reached the conclusions above, adequate evidence has been provided that gives reasonable assurance that whilst challenging for some specific schemes the proposed rate of £25sqm for flatted development of more than 10 dwellings would not undermine the deliverability of the WBCS. It would therefore strike an appropriate balance between securing additional investment to support development and the potential effect on the viability of this specific type of development.

Extra Care Housing - £0sqm

27. To meet the demographic needs of Worthing WBCS Policy 8 seeks amongst other things to ensure the provision of extra-care housing as an alternative to residential care. The modelling within the VA demonstrates that viability may be more difficult for extra care housing with the evidence showing that development of this type is unlikely to be able to consistently sustain the imposition of a levy. The Council's proposed levy of £0sqm for extra care housing takes into account the more challenging viability issues of this type of development in the Borough. Therefore, based on the evidence submitted, I am satisfied that setting a rate of £0sqm for Extra Care Housing in Worthing is justified by the available evidence and would strike an appropriate balance between helping to fund new infrastructure supporting the aims and objectives of the WBCS whilst ensuring viability in the extra care sector.

Greenfield housing development (greenfield land shown on map in Appendix 1) - £200sqm

28. The Council acknowledged that there are no greenfield sites forming part of the remaining WBCS housing site supply. However, as set out above the Council are in the process of preparing the Worthing Local Plan. Although the process is not yet completed the development strategy across the plan area is already clear, with the relevant up to

date and extensive supporting evidence in place, including infrastructure requirements and a viability assessment. As such, limited greenfield housing development on identified sites is likely to be relevant moving forward.

29. Therefore, in this specific local circumstance I conclude that there is no reason why the CIL charging schedule including greenfield housing development cannot be submitted, examined, and adopted, if viable and appropriate. I am satisfied that this accords with the national Planning Policy Guidance (PPG), which states that "information on the charging authority's infrastructure needs should be drawn from the infrastructure assessment that was undertaken as part of preparing the relevant plan".
30. This conclusion is reinforced by the decision of the Court of Appeal in the *Oxted Residential Ltd v Tandridge DC* case on 29 April 2016 (EWCA Civ 414), which effectively confirmed, amongst other things, that there is no statutory obstacle to adoption of a CIL charging schedule in advance of a new Local Plan if this is justified in all of the relevant local circumstances. However, in the event of a significant change to the development strategy as a result of the Worthing Local Plan examination, it would be appropriate for the Council to consider whether a review of the CIL charging schedule is needed at that stage.
31. The proposed levy rate of £200/sqm for greenfield housing development in Worthing has been informed by the Council's viability testing. The viability findings demonstrate that the lower land values for the identified greenfield area of the Borough support greater headroom for CIL. Moreover, the assessment of 100 and 450-unit mixed residential sites in this area suggests that a levy of £200/sqm would in the majority of circumstances allow for a 50% viability buffer when compared to the maximum theoretical levy that could be charged.
32. I therefore conclude that in setting the levy at £200/sqm the Council have adopted a balanced approach which is likely to ensure that limited housing on greenfield land shown on map in Appendix 1 can be delivered in accordance with the emerging Worthing Local Plan. As such, proposed CIL rate of £200/sqm is consistent with the evidence and would help to support the delivery of infrastructure in the Borough.

Retail

33. The strategy and projected requirement for future retail provision in Worthing is set out in Policy 6 of the WBCS. The Council's VA considers a sufficient range and number of size and type of retail development schemes to be suitably reflective of retail projects likely to come

forward in Worthing and provide the necessary information against which to assess viability. The assessments make clear that that viability in the retail market is sensitive to specific location/setting, type, and investment models. Taking this into account the Council have proposed differential rates for retail development, proposing a charge of £150sqm for foodstore/supermarket/retail warehousing development (greater than 280 sq.m.) and £0sqm charge for other forms of retail development.

Foodstore/Supermarket/Retail Warehousing development (greater than 280 sq.m.) - £150sqm

34. The appraisals in the VA suggest that that a theoretical maximum CIL of up to £200sqm would be viable on the majority of foodstore/supermarket/retail warehousing development (greater than 280 sq.m.) proposals within Worthing. The viability assessment tested a variety of scenarios across low, medium, and high rental values and applied a range of investment yield tests of between 5.0% and 6.0%, which are representative of larger format retail developments taking a prudent view.
35. Taking into account the degree of sensitivity in the retail market a CIL rate of £150sqm for retail warehousing/supermarkets would allow a reasonable viability buffer of around 50% and this represents a balanced and prudent approach that would ensure that the vast majority of foodstore/supermarket/retail warehousing development could be delivered in accordance with the WBCS. Therefore, given that no substantive viability evidence has been presented to indicate otherwise, I am satisfied the proposed rate of £150sqm for Foodstore/Supermarket/Retail Warehousing development (greater than 280 sq.m.) development is justified on viability grounds.

Other forms of retail - £0sqm

36. The Council's decision to set a nil rate for other forms of retail is consistent with the evidence in the VA. The viability testing demonstrates that current market values for other forms of retail are too low to reliably absorb CIL, with a nil rate consistent with the evidence. Therefore, I am satisfied that for the reasons given setting a rate of £0sqm for other forms of retail is evidence based and appropriate.

All other development

37. In relation to all other development, business (offices, industrial, warehousing), hotel, leisure and community uses the Council have

decided not to charge a levy. This is consistent with the evidence in the VA. This demonstrates that viability for these uses is challenging and with these types of development having limited scope to absorb any material level of CIL. I am satisfied that for the reasons given in the VA, dated March 2020 setting a rate of £0sqm for these uses is evidence based and appropriate.

Other matters

38. I have carefully considered the representations regarding the inclusion of an exceptional circumstances relief policy within the charging schedule. This is generally although not exclusively related to impact of Covid-19 on the retail market. However, although I have a great deal of sympathy regarding the difficulties the retail sector is facing, whether the Council decides to introduce an Exceptional Circumstances Relief policy is primarily not a matter for consideration in the Examination.

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

39. The Council's decision to set rates for the following development:

- Residential - 10 dwellings or less (all dwelling types)
- Residential - More than 10 dwellings (excluding Flatted development)
- Residential - Flatted development of more than 10 dwellings
- Residential - Greenfield housing development
- Retail - Foodstore/Supermarket/Retail Warehousing development (greater than 280 sq.m.)

is 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 charges are applied. Only if development sales values are at the lowest end of the predicted spectrum would development in some parts of the Borough be at risk, however, I consider this situation to be unlikely.

Conclusion

40. 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 in Worthing. 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 range of development remains viable across the authority 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 Worthing Borough Plan and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

41. I conclude that the Worthing Borough Council Draft 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.

Jameson Bridgwater

Examiner