



The Planning
Inspectorate

Report to Portsmouth City Council

by David Hogger BA MSc MRTPI MCIHT

an Examiner appointed by the Council

Date 10th January 2012

PLANNING ACT 2008

SECTION 212

REPORT ON THE EXAMINATION INTO THE PORTSMOUTH COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Document submitted for examination on 15 August 2011.

No Examination hearings were held.

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Non-Technical Summary

This report concludes that the Portsmouth 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 infrastructure that it is intended to help fund has a reasonable chance of being delivered. I recommend that the Schedule should be approved in its published form, without changes.

Introduction

1. This report contains my assessment of the Portsmouth 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 guidance¹.
2. To comply with the relevant legislation the local charging authority (the City Council) has to submit what it considers to be a schedule of levy rates which establish 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 is the submitted schedule of August 2011, which is effectively the same as the document published for public consultation in March 2011.
3. The Portsmouth Core Strategy (The Portsmouth Plan) examination was run in parallel with the examination of the Charging Schedule and this Report has been prepared on the basis that it will be the Council's intention to implement the policies and proposals in the Portsmouth Plan (PP) as recommended.

Is the schedule justified by appropriate available evidence?

Infrastructure Planning Evidence

4. The PP sets out the main elements of growth that will need to be supported by additional infrastructure and the Council's Infrastructure Delivery Plan (February 2011) identifies a range of infrastructure items which are critical to the successful implementation of the PP policies. Among the most significant requirements are a new junction on the M275, a new bridge between Horsea Island and Tipner, park and ride provision, coastal defence improvements and green infrastructure provision.
5. The Council, in conjunction with the Partnership for Urban South Hampshire, is considering a number of funding sources including the Regional Infrastructure Fund (RIF), Tax Increment Finance (TIF) and Local Asset Backed Vehicles (LABV). The Government has recently announced that Department for

¹ Charge Setting and Charging Schedule Procedures – DCLG (March 2010)

Transport funding will be available for the M275 Tipner Interchange. It is calculated that over £207m will be needed to secure the required infrastructure (primarily to support housing growth) and of this it is estimated that nearly £86m will come from CIL. It is clear that there is a significant infrastructure funding gap and the need to levy CIL has been demonstrated.

Economic Viability Evidence

6. The Viability Assessment (VA), dated March 2011, uses well recognised residual valuation techniques. It is acknowledged that the VA can not reflect every variance or eventuality and that a number of assumptions have been made. However, those assumptions, for example in relation to: unit sizes; the value of affordable housing; building costs (including an allowance for sustainable construction costs); and fees, appear to be appropriately justified. Appraisals were carried out on a variety of different types of scheme for both residential and commercial proposals. Relevant local data on, for example land values, the local housing market and commercial rents and yields was used and in terms of affordable housing the Council's tiered approach (as set out in PP policy PCS18) was adopted.
7. The Council's VA has considered the impact of section 106 contributions including for affordable housing and the Council's approach is clear and justified.

Conclusion on the Available Evidence

8. The Schedule is supported by detailed evidence of community infrastructure needs, including information obtained during the preparation of the PP. A funding gap has been identified. On this basis the evidence which has been used to justify the need for a charging schedule, including the VA, is robust, proportionate and appropriate.

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

Residential

9. Residential development would be subject to the basic CIL rate of £105 per sqm. The only exception would be for residential institutions (care homes) for which a rate of £53 per sqm would be applied.
10. The Council did consider identifying different rates in different geographical areas of the city but concluded that in such a small and compact area, variations in terms of property values, cannot be clearly defined. This is a reasonable conclusion to draw and I have also taken into account the fact that the traditionally lower value areas could be the very locations to benefit from significant regeneration proposals. This approach is appropriate, especially as a more detailed definition of specific areas could lead to an overly complex charging schedule.
11. With regard to house prices the 2.5% fall in prices between April 2010 and January 2011 has been balanced by a rise of about 2.1% between January and July 2011² and there is no evidence to contradict the Council's conclusion that

² Land Registry information

changes of this scale do not significantly affect viability.

12. The assessments in relation to housing have allowed for 30% affordable housing, of which 60% would be Social Rented and 40% Intermediate, on the basis that Intermediate housing is worth 70% of open market value and Social Rented 40%. This information (which was based on the definitions of affordable housing as set out in PPS3: Housing at the time) derived directly from a number of local providers of affordable housing independent of the Council and was not challenged by any respondents during the examination process. They are reasonable figures to use in current local circumstances.

Retail

13. The VA concludes that for larger, usually out-of-centre retail schemes a CIL rate of £105 per sqm would be achievable. For smaller out-of-centre proposals (300 sqm) it advises that lower levels of CIL should be applied. The evidence satisfactorily demonstrates that the basic CIL rate for larger out-of-centre retail schemes would not significantly affect viability. In terms of smaller out-of-centre retail proposals the situation can be marginal in terms of viability. However, the Guidance³ advises that there is no requirement for a proposed rate to exactly mirror the evidence, for example if the evidence points to setting a charge at the margins of viability. I am satisfied that in these circumstances a reduced levy of £53 per sqm is appropriate. The Council has set the threshold for smaller proposals at 280 sqm. This reflects the advice in CS policy PCS17 regarding town centre uses in out-of-centre locations, the supporting text for which states that the slightly lower threshold of 280 sqm has been set because it is a reflection of the threshold for the Sunday trading laws.
14. With regard to in-centre retail development the VA concludes that a lower level of CIL would be appropriate. No evidence was submitted to suggest that a £53 rate for in-centre retail would put such development at risk. The VA does refer to the proposed redevelopment of the area known as the 'Northern Quarter' and the fact that it was not considered in detail as part of the assessment. Nevertheless the VA suggests that the starting point for such a scheme could be a rate not in excess of £105 per sqm. In fact the Council has decided that the £53 per sqm rate would be applied. In terms of this specific redevelopment there are several matters which in the current economic climate would require more detailed analysis, including land assembly costs, construction costs and financing requirements and at this stage it would not be possible to draw any firm conclusions.
15. Such a significant scheme would have implications for the infrastructure of the city and it is right that, provided the viability of the proposal is not put at risk, it should contribute to infrastructure improvements. There have been issues in the past regarding marginal viability on this site⁴ and therefore I agree that despite the suggestion in the VA that a levy of up to £105 may be appropriate, the levy should be set at the lower rate of £53 thus reducing the risk that the provision of this important element in the regeneration of the city may be jeopardised. Charging authorities are strongly encouraged to keep their

³ Charge Setting and Charging Schedule Procedures (March 2010)

⁴ Examination document P/CIL/1

charging schedules under review and this is one example of where changing economic circumstances may justify a re-assessment of the situation.

16. Regulation 13(1) states that differential rates may be set by reference to different intended *uses* of development. There is, however, no reference to use classes and the Council has confirmed that it considers that a 'small' retail use is different to a 'large' retail use because they display different characteristics and serve different markets and I agree. With regard to the boundaries of the retail centres (i.e. City Centre, Southsea Town Centre, District Centres and Local Centres) these are shown on the Council's Proposals Map, in the Portsmouth Plan, and in the Southsea Town Centre Area Action Plan. There is no requirement to identify these boundaries on a single plan but such an approach should be considered by the Council and plans could be included in the procedural guidance which the Council proposes to publish when the CIL comes into force.

Office and industrial

17. With regard to office and industrial development the VA⁵ shows that only with the most optimistic assumptions could viable outcomes occur and even then they would be extremely marginal. A zero rate should only be proposed if it can be demonstrated that this is justifiable in economic viability terms and I am satisfied that the evidence demonstrates that office and industrial development would not be viable if a levy was charged. In these circumstances it is appropriate for the Council to take a cautious approach to development risk in this sector.

Other land uses

18. The VA concludes that there may be potential for hotels supporting CIL contributions of up to £105 per sqm. Hotel provision is a key priority for the Council but there are several specific factors which mean that broad assumptions are difficult to make, in particular related to location, size and type. The Council is therefore proposing the lower rate of £53 per sqm in order that market sensitivities can be satisfactorily accommodated. A similar approach is being taken with regard to care homes.
19. Community uses, which usually generate low or sub-market level income streams, would not be subject to CIL. The levy would be a significant threat to viability and, although by itself not a decisive factor, such uses would by their very nature contribute to the social infrastructure of the city. I am satisfied that the Council's approach with regard to other land uses is appropriate.

Conclusion on the Relationship between the Charging Rate and the Evidence

20. Although the Council acknowledges that there are variables, for example future market prices, construction costs and land values, which cannot be precisely reflected in the Schedule, it has taken a pragmatic and balanced approach. The charging rates have been informed by and are consistent with the evidence.

⁵ Section 3.6

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

21. For residential development the levy would on average represent 3.9% of gross development value; for small retail: 2.9%; out-of-centre retail: 4.5%; and for hotels 2.1%. No evidence was submitted to demonstrate that such percentages would significantly put development at risk and it can be concluded that the proposed charges are realistic and proportionate.
22. Several respondents emphasised the need for greater flexibility in implementing CIL. However, one of the purposes of the charging schedule is to enable liable parties to anticipate how much they would be expected to pay. The introduction of greater flexibility would dilute certainty, reduce clarity and may result in inconsistencies of approach. Charging authorities are strongly encouraged to keep their schedules under review and the Council proposes to publish more detailed procedural guidance when the CIL comes into force. This could indicate when and under what circumstances the Council would intend to review the schedule. In this way changes in economic conditions can be properly reflected in the schedule and the charges levied.
23. The Council's proposed rates are based on reasonable assumptions about development values and likely costs. The evidence suggests that, overall, residential, retail and employment development will remain viable across the city, if the charges are applied.

Legal Requirements

24. I conclude that the Schedule meets all the legal requirements, as set out below.

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 Core Strategy (which I have examined) and the Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

Overall Conclusion

25. The Council has taken a pragmatic approach towards setting the charging rates and has had regard to detailed evidence on infrastructure planning and the economic viability evidence relating to the development market in Portsmouth. The Council has tried to be realistic in seeking an appropriate balance between identifying opportunities for CIL, whilst not risking the regeneration of the city.
26. I conclude that the Portsmouth 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.

David Hogger

Examiner