



The Planning Inspectorate

Report to South Downs National Park Authority

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an Examiner appointed by the Authority

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT SOUTH DOWNS NATIONAL PARK AUTHORITY COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 9 February 2016

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Non Technical Summary

This report concludes that the South Downs National Park Authority Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. The Authority has sufficient evidence to support the schedule and can show that the levy is set at levels that will not put the overall development of the area at risk. I recommend that the schedule should be approved in its modified form, without changes.

Introduction

1. This report contains my assessment of the South Downs National Park Authority 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 (Community Infrastructure Levy Guidance –June 2014).
2. 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 is the submitted schedule of 9 February 2016, which includes a Statement of Modifications relating to the document published for public consultation in September 2015.
3. The charging schedule is to apply across all of the extensive area of the South Downs National Park (SDNP). Taking this into account, the Authority propose two separate charging zones for residential development – Zone 1 for the main towns of Lewes, Liss, Midhurst, Petersfield and Petworth, with a rate of £150 per square metre (psm) and Zone 2 for the rest of the SDNP, where the rate would be £200 psm. All other uses, including sui generis ones, would be nil rated, except for large format retail (defined as over 280 sq m), where the proposed charge is £120 psm. The schedule is accompanied by 5 inset maps and one larger one suitably defining the residential zones.

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

Infrastructure planning evidence

4. The preparation of the South Downs National Park Local Plan (SDNPLP) for the period 2014 -2032 has reached the stage of Preferred Options. The LP process is not yet completed let alone reached adoption but, bearing in mind that it is a National Park, with the relevant constraints that designation applies, the development strategy across the plan area is already sufficiently clear, with the relevant up to date and extensive supporting evidence in place, including in relation to viability.

5. Moreover, the area also benefits from existing recently adopted/up to date plan coverage over large parts of the area, prepared jointly by the relevant Councils and the Authority. These include post 2010 Joint Core Strategies for Lewes, East Hampshire, Wealden, Winchester and Worthing, as well as a "made" Neighbourhood Plan for Petersfield, for example.
6. In these specific local circumstances I conclude that there is no reason why the CIL charging schedule cannot be submitted, examined and adopted, if viable and appropriate. I am satisfied that this is in accord with the National Planning Policy Guidance, 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", as has been done in this instance.
7. 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 LP if this is justified in all the relevant local circumstances, including the above, as I have found to be the case here.
8. The emerging SDNPLP sets out the main elements of growth that will need to be supported by further infrastructure in the SDNP, including about 4,600 net new homes between 2014 and 2032. It is supported by a 2016 Infrastructure Delivery Plan (IDP) (CIL/05) structured around 7 categories, including transport, education, health and utility services. The Authority's latest estimate (May 2016) is that, after taking into account other actual and expected sources of funding, a total of around £83m is likely to be needed to deliver all the necessary requirements alongside the development proposed over the plan period. Based on the new housing numbers in the emerging plan the two residential CIL rates are anticipated to raise around £26m over the plan period (equivalent to around £1.5m annually). No assumptions are made regarding income from retail development as no significant schemes are presently planned in the NP.
9. Over the last four years the average amount raised by the Authority from S106 legal agreements in the area that would be subject to the CIL rates is approximately £670k, mainly from new housing, with an average value of roughly £6.5k per new market dwelling. The Council calculates that the proposed CIL rates would result in equivalent charges of just over £18k in the higher rural zone and about £13.5k in the towns for each additional house. In the light of this evidence, whilst significantly higher, the proposed charges would make only a modest contribution towards filling the likely funding gap. Nevertheless, the figures clearly demonstrate the need to introduce the levy.
10. Whilst there will always be other projects with which CIL revenues might assist, it is not the role of this examination to question the Authority's specific spending proposals on either a geographical or a priority basis, beyond confirming that, in general terms, the projects in the Authority's current draft Regulation 123 list should clearly assist the delivery of the LP, as a whole. Nor is there any material inconsistency between the list and the policies and proposals in the emerging LP and/or the intended CIL rates.

Economic viability evidence

11. The Authority commissioned a CIL Viability Assessment (VA) (CIL/06) (published January 2014). This used a standard residual valuation approach, with reasonable assumptions for a range of factors, such as building costs based on "blended" data from the BCIS median figures for Hampshire, West and East Sussex to reflect the extensive geographical spread of the national park, and Level 4 of the Code for Sustainable Homes (CSH) requirements for all new housing. It also took into account relevant current land values, including local data. In general, the benchmark local land values used are sufficiently realistic for comparison purposes in a generic study of this type.
12. The VA also included current sale values based on a variety of local house types; as well as suitable housing densities/mixes and gross to net ratios, and reasonable developer profit levels, amongst other factors. Alternative affordable housing targets (0 – 50%), as well as higher and lower sales values and build costs having also been tested, the robustness of its conclusions is clear. The allowances for professional fees might have been somewhat higher, but those used are not so low as to have any material effect on the overall viability outcomes assessed. Overall, I am satisfied that the study's methodology is in line with the guidance in the Harman Report (June 2012) (Viability Testing for Local Plans).

Zones

13. The Authority's evidence, supported by almost all representors in principle, is clear that the more rural parts of the area have higher house prices and land values, and therefore a higher level of viability for new development, in comparison with the five main towns. This difference between the principal settlements and the rest of the area clearly justifies the identification of two charging zones for residential development. No further differentiation is necessary, particularly in circumstances where no parts of the NP have low house prices, even in a South East of England context.

Conclusion

14. The draft Charging Schedule is also supported by detailed evidence of community infrastructure needs, including in the IDP and the draft Regulation 123 list. 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?

Residential rates

15. In relation to new housing, the various assumptions used in the Council's generic testing of different development scenarios have been criticised by a few representors. However, the VA/VR has taken account of all the relevant policies of the emerging LP, as required by national guidance, including the provision of 40% affordable housing, as appropriate. It is also generally consistent with the advice in the Harman Report (see above).
16. The "blended" construction costs data has also included additional build costs

associated with the Code for Sustainable Homes (CSH) Level 4 and policies relating to sustainable design, construction and energy measures, as well as a 5% general contingency allowance. By definition, the CIL cannot make an allowance for abnormal, site specific, costs. The rates have to be based on a generic analysis of a variety of size and type of schemes across the area, taking into account average local build costs, not the individual circumstances of particular sites. The fact that a few specific smaller schemes that are already marginal may become unviable in certain locations should not have a significant impact on the delivery of new housing across the area to meet the requirements of the draft LP.

17. Respondents have also criticised the profit levels assumed by the Authority as too low in some instances. Obviously, these vary with each scheme, including as the market changes over time. Nevertheless, using an average figure of 20% on gross development value, with 6% for the affordable housing element for which there is usually little or no risk element for the builder, is not unreasonable or unrealistic in generic analyses, as distinct from the detailed costing of a fully designed project for a particular developer on a specific site.
18. Particularly in relation to large housing sites there is also a concern that an insufficient allowance (£3k per unit) has been made for likely site specific infrastructure contributions. However, previous local arrangements are not directly comparable with the proposed operation of residual S106 legal agreements once the CIL is adopted, as the Authority's evidence makes clear.
19. Consequently, on an average per dwelling basis, the allowance is reasonable given that considerable margins have been allowed for in both proposed zonal rates. This is particularly so in comparison to the potential maximums relating to the thresholds of viability analysed in the VA/VR. Overall, the levy should not lead to an increase in the average level of infrastructure contributions expected from each new dwelling that would normally render new housing schemes unviable.
20. Although there are suggestions that larger sites and a greater range of site types should have been tested, the Authority's evidence looked at various different scenarios in each zone, including flats and sheltered housing schemes, as well as sites for 1 – 250 units. This relates closely to the size and types of new housing expected to help meet local needs in the emerging SDNPLP. As such, the level and scope of the assessment was suitable and sufficient in this local context to provide adequate guidance for rate setting and did not demonstrate the need for any separate treatment for strategic sites in this area.
21. The fact that local house prices and land values have increased overall (by up to 18% according to some sources) since the data for the VA/VR was first collected (August 2013) reinforces the conclusion that the residential rates would not give rise to a harmful impact on the viability of new housing schemes across the area. This is so despite a larger percentage increase in the costs of labour and building materials, as the net result is that they effectively balance out and the relevant margins will remain considerable.
22. The 2014 VA pointed to a lower CIL rate for Liss than the other towns, based on local market values at the time, but this is no longer considered necessary

as the town's economy is relatively strong, house prices are growing and only around 3% of the new housing in the draft LP up to 2032 is expected to be provided there. In accord with national guidance, it will, of course, also be simpler for all concerned if there is a consistent rate for all the main towns in the SDNP in terms of CIL implementation and I note the Liss Parish Council support the Authority's decision in this respect. Nor is the change likely to prove significant in CIL viability terms, taking into account the relative strength of the local housing market overall. Accordingly, I endorse the Authority's modification to the published draft CS in this respect.

23. Differences in elements of construction costs and related matters between sheltered schemes and other market housing types have been considered and tested in the VA and VR. It is clear that overall, under current conditions, the outcomes are not sufficiently divergent to justify separate or different rates being applied to C3 use schemes in this locality at present.
24. Agricultural dwellings do not normally qualify as "affordable housing" under the CIL regulations but would be exempt in any event if classed as "self-build". The same applies to converted /re-used farm buildings, whether for permanent occupation or holiday lets. Otherwise there is no material evidence that they would not still be viable and there is no difference between such units and other new housing in terms of demands placed on local infrastructure. In any event they do not form a significant part of planned development in the area.
25. Overall, I conclude that the two local levy rates for new housing are justified by the available evidence and strike an appropriate balance between helping to fund new infrastructure and their effect on the economic viability of residential development across the area.

Retail rate

26. The level and extent of testing in the VA and VR follows national guidance and is sufficient to clearly demonstrate that large format new retail development, including both food and general retail (A1 – A5 uses), would be viable across the charging area. A suitable range of new retail scenarios has been assessed (from 200 to 2k sq m) using reasonable assumptions that reflect the local economic context and existing and emerging planning policies, including in the draft LP.
27. The available evidence also shows that, despite the generally lower land values in the main towns, there are no relevant local market conditions or variations that are sufficient to justify different charging zones being identified for retail schemes, including in respect of both brownfield and greenfield sites. Moreover, the CIL retail rate to be imposed essentially reflects the evidence in terms of the potential maximum that could be imposed, whilst retaining sufficiently generous margins to ensure viability for all retail types and is reinforced by the various allowances made in the VA, which are robust and locally realistic.
28. The fact that, for all large format retail scenarios, the likely total CIL liability would amount to only about 3% of likely overall development costs, without taking any account of the discount to be applied for any existing floorspace on

the site, adds to this conclusion. The Authority's evidence also confirms that the viability implications of the CIL rate would not be greatly different from the alternative of S106 legal agreement expectations in respect of larger new retail schemes, in general terms. Whilst not strictly relevant to the assessment of viability, the Authority also points out that the large format retail rate would be the same or very similar to that already adopted in adjacent areas, such as Winchester and Chichester.

29. The liability for CIL should be readily apparent for prospective developers once the schedule is adopted and requires no further clarification or qualification in respect of the differing formats and business models of various retail operators, large or small, national or local. Therefore, the available evidence is sufficient to show that it is appropriate in principle to impose a CIL rate for all new retail developments above 280 sq. m. The threshold itself relates to and would be consistent with the Sunday Trading laws and has been used in a number of areas as a suitable proxy definition of the division between smaller and larger retail schemes. It is also appropriate and reasonable here.
30. Regarding garden centres, in the event that an unrestricted retail development was sought and permitted there is no reason why such a scheme should not be liable for the CIL in the normal way as it would not be distinguishable from all other forms of retail development in terms of its impact on infrastructure. Nor is there any firm evidence to indicate that they would no longer be viable.
31. At the level set (£120 psm), the CIL rate would not give rise to a significant threat to the future delivery of new retail development over the plan period, including where it forms part of a larger, mixed use, scheme. This is particularly so in the present local context, whereby there are no major new retail site allocations in the draft LP and no significant need for new retail development in the area over the plan period has been identified to help fulfil the plan's strategy.

Nil rates

32. The Authority's evidence shows that, in current market conditions locally, all forms of new employment development in the national park are not conventionally viable at present. Similar conclusions apply in respect of other types of commercial development, including hotels and residential institutions, on a standard valuation basis. Accordingly, nil rates for all such uses are appropriate in the area, for the time being at least.

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

33. The Authority's decisions to charge differential residential rates in the principal towns and the rest of the SDNP, together with a consistent (larger format) retail rate, are based on reasonable assumptions about development values and likely costs. All the available evidence indicates that both residential and retail development will remain viable across the NP if the charges are applied.

Other Matters

34. The Authority has helpfully clarified in their draft Reg 123 list (CIL/04) which

types of on and off site infrastructure associated with new development will be provided through the CIL and which will still be subject to legal agreements funded directly by developers, once the CIL is adopted. It also usefully identifies the specific infrastructure requirements in relation to each of the three strategic development sites allocated in the emerging LP, for the avoidance of doubt and the potential for any possibility of "double dipping" in respect of developer contributions.

35. The Authority is also committed to publishing an instalments policy, alongside the adopted charging schedule, that should assist with the viability of larger development schemes by delaying the need for some payments. It would also be wise for the Authority to conduct a review of the charging schedule and its operation to date on adoption of the National Park Local Plan in due course, unless other changes require one beforehand.

Conclusion

36. In setting the CIL charging rates the Authority has had regard to detailed evidence on infrastructure planning and economic viability evidence of the development market across the national park. It has been realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a wide range of development remains viable in the 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 and consistency with the National Park Local Plan Preferred Options, as well as with other existing adopted plans in the area, and the Infrastructure Delivery Plan. It is also supported by an adequate financial appraisal.

37. I conclude that the South Downs National Park Authority 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.

Nigel Payne

Examiner