AN EXAMINATION UNDER SECTION 212

OF THE PLANNING ACT 2008 (AS AMENDED)

REPORT ON THE DRAFT RUGBY BOROUGH COUNCIL

COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Independent Examiner (appointed by the Council):

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Charging Schedule Submitted for Examination: **23 October 2023**

Date of Report: **4 January 2024**

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Main Findings - Executive Summary

In this report I have concluded that the draft Rugby Borough Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area.

The Council has provided sufficient evidence that shows the proposed rates would not threaten delivery of the Local Plan.

Introduction

1. I have been appointed by Rugby Borough Council, the charging authority, to examine the draft Community Infrastructure Levy (CIL) Charging Schedule. I am a chartered town planner and surveyor with more than 50 years' experience including 25 years' experience inspecting and examining development plans and CIL charging schedules as a Government Planning Inspector.

2. This report contains my assessment of the Charging Schedule in terms of compliance with the requirements in Part 11 of the Planning Act 2008 as amended ('the Act') and the Community Infrastructure Regulations 2010 as amended ('the Regulations')[1]. Section 212(4) of the Act terms these collectively as the "drafting requirements". I have also had regard to the National Planning Policy Framework (NPPF)[2] and the CIL section of the Planning Practice Guidance (PPG).[3]

3. To comply with the relevant legislation, the submitted Charging Schedule must strike what appears to the charging authority to be an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across their area. The PPG states[4] that the examiner should establish that:

    - the charging authority has complied with the legislative requirements set out in the Act and the Regulations;

    - the draft charging schedule is supported by background documents containing appropriate available evidence;

    - the charging authority has undertaken an appropriate level of consultation;

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[1] The Regulations have been updated through numerous statutory instruments since 2010, most notably through the Community Infrastructure Levy (Amendment) (England)(No. 2) Regulations 2019, which came into force on 1 September 2019.
[2] A revised NPPF was published during the examination on 19 December 2023, replacing the previous version published on 5 September 2023.
[3] The CIL section of the PPG was substantially updated on 1 September 2019 and last updated on 4 January 2023.
[4] See PPG Reference ID: 25-040-20190901.

- the proposed rate or rates are informed by, and consistent with, the evidence on viability across the charging authority's area; and

- evidence has been provided that shows the proposed rate or rates would not undermine the deliverability of the plan (see NPPF, Paragraph 34).

4. The basis for the examination, which took place through written representations, is the submitted schedule of 23 October 2023 which is effectively the same as the draft Schedule published for public consultation in August/September 2023

5. In summary, the Council propose variable charging rates per square metre (sq.m) for the urban and rural parts of the Borough as defined in the draft Charging Schedule document (figure 1). For the urban area, the rates are £60 for residential development involving 11 or more houses and £100 for up to 10 houses. For the rural area, the rates are £160 for 11 or more houses and £200 for up to 10 houses. The Charging Schedule explains that for charging purposes "residential" excludes student accommodation, houses in multiple occupation, care homes, extra care homes, nursing homes, retirement living and sheltered housing. For residential apartments with 10 or fewer units the proposed charge is nil in the urban area and £200 in the rural area. For 11 or more apartments, the charge would be nil in the urban area and £160 in the rural area. Strategic sites (Coton Park East, Rugby Radio Station (Houlton) and South West Rugby) are nil rated as infrastructure contributions for these sites will be secured through s106 agreements. For convenience retail the proposed charge is £100 in both areas. For industrial, light industrial, storage and distribution the charge would be £5 in both areas. All other uses involve a nil charge.

Has the charging authority complied with the legislative requirements set out in the Act and the Regulations, including undertaking an appropriate level of consultation?

6. There have been three main CIL consultation exercises carried out by the Council. The first ran from 7 October to 18 November 2022. Eleven responses were received. As a result of further viability work and the responses received, the Council introduced zero rating for apartments in the urban area of Rugby and zero rating for residential development within the Rugby Radio Station (Houlton) strategic site. The second consultation ran from 8 May to 16 June 2023 and prompted fourteen responses. Following further viability work the Council decided to propose a £5 charge for industrial, light industrial and storage/distribution uses. The third consultation that took place between 7 August and 4 September 2023 resulted in eighteen responses. Notification of the consultations involved using the Council's planning database and website, a notice in the Rugby Observer and placing the documents for inspection in the Borough Council offices and in libraries in Rugby, Dunchurch and Wolston.

7. As the viability evidence did not deal with the proposed rate for apartments in the rural area, clarification was sought from the Council regarding the justification for the proposed rate for this form of development. The relevant correspondence was placed on the examination website and those who had made representations were notified. A response period of two weeks from 30 November to 15 December 2023 was provided, reflecting the focused nature of the additional engagement. No representations were received.[5]

8. The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Local Plan and the Infrastructure Delivery Plan, and is supported by an adequate financial appraisal. I also consider it compliant with the national policy and guidance contained in the NPPF and PPG respectively.

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

Infrastructure planning evidence

9. The Rugby Local Plan 2011 – 2031 was adopted in 2019. This sets out the main elements of growth that will need to be supported by further infrastructure in Rugby Borough. In terms of housing, the Local Plan anticipates 12,400 new homes between 2011 and 2031. Completions between 2011 and 2023 amounted to 8,091 dwellings and there were outstanding planning permissions for 7,617 dwellings with a further 4,089 dwellings expected on allocated sites. Given these figures, it is clear that the Council has a good idea of how much development is expected and where it will be located. Accordingly, the Council is able to identify anticipated infrastructure costs with some accuracy although it is not possible to include all costs as some are presently uncertain and/or unknown. As at October 2023, the identified infrastructure costs are estimated at just under £176,500,000.

10. The Council has identified a number of funding sources for infrastructure including s106 agreements, National Highways, Warwickshire Country Council Highways and Network Rail. The current identified funding gap is over £33,500,000 but this is a significant under-estimate as some items have not yet been costed and others are being updated with the result that the total infrastructure costs are expected to be much higher than £176,500,000. The estimated CIL revenue to March 2031 from residential development is just over £8,000,000. Given that much of the anticipated commercial development is likely to be on sites with permission, the Council has not included CIL revenue from commercial development. This is a sensible approach. The figures therefore demonstrate the need to levy CIL.

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[5] View at: https://www.rugby.gov.uk/w/community-infrastructure-levy-examination#examination-library

Economic viability evidence

11. The Council commissioned BNP Paribas Real Estate (hereafter referred to as BNP) to undertake a CIL Viability Assessment (VA). The VA is based on development typologies expected to come forward in the area over the plan period. BNP's initial study produced in January 2022 was amended in February 2023 to include five additional typologies and then updated in July 2023. The 33 typologies now tested are mostly residential developments of various sizes/locations and include two large strategic sites and sites for commercial development including supermarkets and hotels.

12. Benchmark land values are a critical consideration in assessing viability for CIL purposes. BNP point out that research by the then Ministry of Housing, Communities and Local Government (MHCLG)[6] suggest that for residential development the benchmark values on green field sites are typically ten to fifteen times agricultural land value. This indicates a range of between £247,000 to £371,000 per gross hectare. BNP base their calculations on a green field benchmark land value of £250,000 per gross hectare. The Council anticipates that the majority of housing sites in the Borough will be green field sites.

13. For previously developed land, BNP assume a benchmark land value of £800,000 per gross hectare. This relies on MHCLG land value estimates of between £700,000 and £800,000 per gross hectare in 2017 for industrial sites in Coventry and Warwickshire. Given the wide range of existing use values for previously developed land, it is reasonable for BNP to make use of broadly based figures from the general locality.

14. The viability assessment undertaken by BNP involved 33 development typologies reflecting differing densities and types of development. Two specific strategic sites – South West Rugby extension and Cotton Park East were assessed. For each residential typology a range of sales values has been tested. The average sales value ranges from £3,708 per sq.m to £4,837, with the highest values achieved in the rural areas. Values per sq.m were calculated on the basis of data from Energy Performance Certificates. To take account of increases in values in new builds (20.8%) since the data was collected, the above figures reflect the upwards adjustment that was applied.

15. The VA evidence is based on all new build and second-hand sales transacted between January 2020 and October 2021. In total, over 2,000 transactions were recorded. All types of properties were taken into account and average prices for the various relevant post codes established. The updated BNP data shows that in July 2023 the average achieved sales value was just under £500,000 for new build properties and just over £280,000 for second hand dwellings.

[6] Now known as the Department for Levelling Up, Housing and Communities.

16. For build costs BNP has used the RICS Building Cost Information Service (BCIS) with the base costs adjusted for local circumstances. The base costs have been increased by 10% to cover external works, including parking spaces, and the residential costs have been increased by 3.6% to meet the cost of the current energy requirements in the Building Regulations. An additional 1.4% has been added to base build costs to achieve zero net carbon standards. For commercial developments, build costs have been increased by 2% to achieve the BREEAM excellent standard. Additional costs to meet accessibility standards have been taken into account. BNP include a range of standard costs such as professional fees, finance, marketing and sales legal fees. In relation to developers' profit, BNP use a figure of 17% of Gross Development Values (GDV) for private housing and 6% for affordable housing. For commercial development, the profit level assumption is 20% of development costs (15% of GDV). The assumptions used by BNP are broadly in line with industry standards and, in the case of residential profit levels, in accordance with the indicative figures in the PPG. Exceptional costs are site specific and unpredictable and BNP has logically not included them in their appraisals. As BNP point out, exceptional costs should be reflected in the land price and/or in site-specific viability work.

17. Residual s106 requirements are dealt with by an allowance of £20 per sq.m for non-residential development and £1,500 per unit for smaller residential schemes. To address some of the challenges to the evidence from representors, BNP has produced a supplementary note on CIL and s106. This shows the impact of s106 costs of £5,000, £10,000 and £15,000 per unit on residential development. For the strategic allocations, BNP has used the South West Rugby estimated infrastructure costs. The Council's South West Masterplan Supplementary Planning Document (June 2021) shows a required contribution of over £61million for housing development only and over £58 million for all development.

18. The work by BNP takes into account the cumulative policy requirements in the Local Plan including affordable housing policy H2 that, subject to a size qualification, seeks 30% affordable housing on green field sites and 20% on previously developed sites. In all cases, the assumption used is for 80% rent and 20% intermediate housing although it is noted that the current Local Plan does not require small schemes to make any contribution to affordable housing. As part of the sensitivity testing, each appraisal tests the provision of affordable housing from between 0% to 50%.

19. For commercial properties the market for industrial, offices and retail properties over the last two years was investigated by BNP on the basis of asking, achieved and effective prices. The highest identified rents were for retail development and the lowest for industrial and warehousing. Investment yields varied from 7.5% to 5% with the lowest being for industrial and warehouse development. The BNP appraisals assume a 12-month rent free period.

20. The draft Charging Schedule is supported by evidence of community infrastructure needs. In relation to residential and commercial property

values, research by BNP provides a comprehensive view of the market and values in Rugby Borough. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.

Are the proposed rates informed by and consistent with the evidence on viability across the charging authority's area?

Residential development

21. The variation in residential values across the Borough justifies the use of two different rates for development in the rural area and the urban area. The recommendations by BNP, accepted by the Council, also reasonably take into account the implications for possible CIL rates of the Council's affordable housing policies. Hence there is a higher rate proposed for schemes that would not be required by Policy H2 to provide on-site affordable housing. The appraisals are based on a sufficient range of typologies to reflect the types of development anticipated in the area under the Local Plan policies. Moreover, the appraisals include sensitivity testing to take into account variable factors such as sales values, residual s106 costs and affordable housing requirements where relevant.

22. In addition to detailed assessments of possible maximum CIL rates, BNP helpfully provides a summary of maximum CIL rates for a number of the residential typologies taking into account location and variable sales values. This work shows that almost all the residential typologies have scope for a CIL charge. In some cases, for example small schemes in the rural area, the scope is substantial. By way of contrast, the evidence is that flatted town centre schemes have little or no headroom to accommodate a CIL charge.

23. Evidence for the proposed rates for residential apartments in the rural area is not provided in the VA and there is no explanation for the rates recommended by BNP. Clarification was sought and BNP explained that their recommendation was based on extrapolation of the evidence for flatted development in the urban area (typologies 29 – 31), but taking a benchmark value of £247,000 rather than the urban benchmark value of £800,000. BNP in their clarification also pointed out that large flatted schemes are not likely to be found in rural areas and that sales values in rural areas would in all probability be higher in the rural area than in the urban area. BNP consider that the recommended rates could easily be absorbed if flatted development does occur in the rural parts of the Borough.

24. The VA shows that developments within the urban area involving housing for elderly people are unlikely to remain viable with a CIL. This type of housing in the rural areas could accommodate a CIL but this form of housing is not likely to be built in an out-of-town location. Hence the BNP recommendation that housing for elderly people should not be subject to a CIL

Commercial rate

25. For offices, the tested typologies included town centre, urban and edge of urban schemes. None of the schemes provided evidence that would justify a CIL charge on office development. The same locations were tested in relation to hotel development with the same result. For comparison retail the evidence is that residual land values are unlikely to exceed existing use values and thus a CIL would not be possible within the context of a viable development. BNP consider that a CIL charge may be possible for convenience retail development. The evidence in the VA is that a maximum charge of just under £500 per sq. m would not undermine the viability of convenience retail development. BNP note that the convenience retail market is not buoyant in the area and BNP therefore recommended a cautious approach. BNP also note, in the light of changes in the way the major supermarkets are now operating, that it is unlikely that major new supermarkets will be developed in the area in the short to medium term. The cautious rate recommended by BNP and accepted by the Council is justified by the evidence.

26. In relation to industrial and warehousing, the BNP evidence is that these forms of development could accommodate a maximum CIL of £11 per sq. m. BNP note that there is a considerable amount of industrial and warehousing development taking place in Rugby and that other sites with planning permission could add a significant amount of further floorspace for these uses. BNP provide an equivocal recommendation – either a nil rate or a "nominal" rate of £5 per sq. m.

Has evidence been provided that shows the proposed rate or rates would not undermine the deliverability of the plan (see National Planning Policy Framework, paragraph 34).

27. The Council's decision to use a matrix approach is based on reasonable assumptions about development values and likely costs.

28. In setting CIL rates, authorities are warned to provide an adequate viability buffer. CIL rates should not be set at the limits of viability as this would potentially threaten the delivery of the necessary development, particularly given the way property values and confidence in the market can change.

29. For the allocated strategic sites, the Council is proposing to meet all of the infrastructure costs through s106 and the zero CIL rate is therefore appropriate.

30. BNP has provided detailed residential appraisals showing the impact on possible CIL rates of variables such as the level of affordable housing required, sales values and benchmark land values. To assess what may be a reasonable viability buffer for residential schemes, BNP has calculated the maximum CIL rate that could be charged assuming 20% affordable housing in the urban area and 30% in the rural area. This approach is logical given

policy H2 of the Local Plan and the figures from 2020/21 showing that 28% of all net new dwellings provided in the area were affordable housing units.

31. The work by BNP shows a wide range of possible maximum CIL rates for standard housing schemes, ranging from £430 for a large scheme with a relatively low sales value in the urban area to £2,618 for a single unit scheme in a rural area with high sales values. On the basis of the appraisals, BNP recommended CIL rates for conventional housing of £100 (Rugby Town urban area) and £200 (rural area) for small schemes, and £60 (Rugby Town urban area) and £160 (rural area) for larger schemes. For flatted schemes in the town centre, the maximum CIL rate shown by BNP is £373 for a 10-unit scheme but the majority of the larger flatted town centre schemes tested do not show any scope of a CIL. Flatted development in the rural part of the Borough could accommodate a CIL because of the lower benchmark value and the higher prices likely to be achieved in the rural areas. Comparing the recommended rates, which have been accepted by the Council, with the possible maximum rates calculated by BNP shows clearly that a generous viability buffer has been provided for conventional residential development. For up to 10 units in the urban area, the actual proposed rate is only 10% of the maximum rate, the highest figure of 36% applies to 11 plus units in the rural area.

32. For specialised housing for elderly people, the BNP appraisals show that within the urban area schemes are unlikely to generate sufficient value to accommodate a CIL charge. Within the rural area elderly persons housing could pay a CIL. For obvious reasons, elderly persons housing is rarely provided in rural areas and BNP did not recommend a CIL charge for elderly persons housing. This understandable recommendation has been accepted by the Council.

33. There are few representations that challenge the proposed rates for housing. No substantive evidence has been produced showing that the proposed rates for residential development would be likely to undermine the delivery of housing of all types in Rugby Borough. Sensitivity testing by BNP has shown that even with residual s106 costs as high as £15,000, the proposed CIL rates would still allow for a viability buffer. As BNP points out, the proposed rates would typically represent less than 5% of overall development costs. In general terms it is considered that BNP are correct in saying that the impact of the proposed CIL on residential land values will be sufficiently modest for it to be absorbed by the land owners when sites are acquired for development.

34. As far as commercial development is concerned, BNP has shown that office development and comparison retail cannot support a CIL charge and hence no CIL is proposed for these types of development. No convincing evidence has been produced in the representations that would indicate that convenience retail cannot accommodate a CIL of £100.

35. The majority of the challenges to the proposed CIL relate to industrial and warehousing development. A number of the representations make the point

that the benefit of having a nominal charge for industrial and logistics developments is outweighed by the risk that the charge, albeit very small, will threaten the delivery of industrial and warehouse development. As regards the viability evidence, a number of points are raised in representations including the limited number of industrial/warehouse typologies, the danger of "double counting" CIL and s106/s278, and the assumptions regarding site coverage, yields, costs, sales values and developers' profit.

36. In considering viability the requirement is for the evidence base to be proportionate. In this case the typologies include both small stand-alone industrial/warehouse developments and large employment parcels as part of urban extensions. Developments on both brown field and green field sites are assessed. It is considered that the number of typologies tested is proportionate, particularly in the situation in Rugby where it is not expected that new large scale strategic employment sites will come forward under the terms of the current Local Plan. Costs and values were updated in the July 2023 VA to reflect the most recent figures and the site coverage figures in typologies 21 and 22 are in line with normal expectations. In relation to developers' profit, in a supplementary note BNP has tested the impact of reducing profit levels and extending rent free and void periods. It is considered that the challenges to the VA made in relation to industrial and warehouse development do not invalidate the BNP assumptions/evidence. The proposed rate would represent 0.36% of net development value or 0.41% of development costs and it cannot reasonably be argued that this level of charge would seriously threaten the delivery of industrial/warehouse development in Rugby.

37. Whether or not it is sensible to complicate the Charging Schedule by having the proposed small nominal charge is not an issue for this report – it is a matter for the Council. This report is concerned with whether the proposed charge would seriously threaten the delivery of industrial and warehouse development.

38. Some representations are concerned with matters such as the Council's approach to instalments and exceptional circumstances relief. These are matters for the Council and are not relevant to this assessment of the proposed CIL rates. There are some representations that express concern regarding the possibility of "double counting" involving CIL and s106/s278 charges. The Council has made it clear that infrastructure costs for the defined strategic sites will be fully funded through s106. For other sites which pay a CIL, s106 and s278 will be used for site specific mitigation. This is an uncontentious standard approach used by many authorities.

39. There is a request that the exclusions from the definition of residential development include on-site worker and trainee accommodation not for permanent occupation. As the Council point out, worker/trainee accommodation may in some circumstances be a C4 or sui generis house in multiple occupation – uses that are excluded in the definition. If this is not the case and the property is a dwelling house occupied by trainees/

employees of a company, there is no good reason why it should be excluded. There is also a request that any retail development within the South West Rugby urban extension should be nil rated. The Council reasonably rejects this on the grounds that the retail development is likely to be brought forward separately from residential development and is no different from retail development generally.

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 Rugby. 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 Borough area.

41. I consider the viability assessment to be robust and conclude that the rates proposed would not threaten delivery of the Local Plan. The proposed rates are therefore justified.

Overall Conclusion

42. I conclude that the draft Rugby Borough Community Infrastructure Levy Charging Schedule satisfies the drafting requirements and, accordingly, I recommend that the draft Charging Schedule be approved.

Keith Holland
Examiner