The Planning Inspectorate

# Report to Reigate and Banstead Borough Council


**by Louise Nurser BA (Hons) Dip UP, MRTPI**

**an Examiner appointed by the Council**


**Date: 2 December 2015**

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

**REPORT ON THE EXAMINATION OF THE DRAFT REIGATE AND BANSTEAD BOROUGH COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

Charging Schedule submitted for examination on 16 June 2015

Examination hearings held 8 September 2015

File Ref: PINS/L3625/429/8

## Non Technical Summary

This report concludes that with one modification the Reigate and Banstead 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.

One modification is needed to meet the statutory requirements. This can be summarised as follows:

- That the CIL charge for 'Residential development falling within Use Class C3 and situated within Charge Zone 1' is reduced from £20 to £0 per square metre (psm).

The specified modification recommended in this report is based on matters discussed during the public hearing sessions and does not alter the basis of the Council's overall approach or the appropriate balance achieved.

## Introduction

1. This report contains my assessment of the Reigate and Banstead Borough Council draft 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 borough. The basis for the examination, on which hearing sessions were held on the 8 September 2015 is the submitted schedule of June 2015, which is the same as the document published for public consultation on 13 April 2015.

3. The Council proposes CIL charges for residential development (including retirement housing), and convenience retailing.

4. The proposed CIL charges for 'residential' development relate to five residential market zones defined on a map in the Draft Charging Schedule.

These are based on a number of Value Levels derived from residential value points which have been tested[1]. Zone 1[2] relates to the low value market areas that include the town centres of Redhill and Horley; a CIL charge of £20 per sq metre (psm) is proposed in this zone. Zone 2[3] covers the high value northern and western urban areas of the Borough (including Banstead, Reigate and the smaller settlements to the north); a CIL charge of £140 psm is proposed in this zone. Zone 3[4] includes the remaining urban areas running from Merstham down to Horley; a CIL charge of £80 psm is proposed in this zone. Zone 4 relates to the Horley North West Sector, which is an area of major housing development for which there is an extant planning permission and whose infrastructure requirements have been agreed through a signed S106 obligation; a CIL charge of £180 psm is proposed in this zone. Zone 5 relates to the rest of the Borough outside of the urban areas. This includes the broad areas in which a number of Sustainable Urban Extensions (SUE's) are promoted through the Reigate and Banstead Local Plan: Core Strategy (CS) adopted in July 2014, and for which there is developer interest; a CIL charge of £200 psm is proposed in this zone.

5. Retail CIL charges would apply only to convenience stores, that is developments which are wholly or predominantly for the sale of convenience goods, including supermarkets and superstores; a charge of £120 psm is proposed throughout the borough.

6. For completeness, the Draft Charging Schedule lists zero rated CIL charges for 'all other development'.

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

*Infrastructure planning evidence*

7. The Reigate and Banstead Local Plan: Core Strategy (CS) was adopted in July 2014. This sets out the main elements of growth that will need to be supported by further infrastructure in the charging area. The CS is supported by an Infrastructure Delivery Plan (IDP). An Addendum to the IDP was produced which was updated in March 2015 to support the consultation relating to the Draft Charging Schedule. I appreciate that specific infrastructure[5] requirements may be refined in tandem with the emerging Development Management Plan which will set out allocations for development. However, there is no evidence before me to suggest that the projects contained within both documents do not represent an accurate, up to date assessment of the range of needs to support development across the Borough.

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[1] RBBC04 Community Infrastructure Levy Revised Viability Assessment Report Table 6
[2] RBBC05 Value Level 1
[3] RBBC05 Value Level 4
[4] RBBC05 Value Level 2 & 3
[5] RBBC07 IDP Addendum paragraph 1.4.

8. The housing strategy contained within the Core Strategy has two strands. Firstly, the CS directs development of around 5,800 homes into the urban areas. This includes the Horley North West Sector (HNWS) which has outline planning permission and a signed S106 agreement. Secondly, if adequate levels of housing are not built to provide a 5 year supply of deliverable housing, Sustainable Urban Extensions (SUEs) are to be developed to provide around 1100 dwellings, in as yet, undefined locations. In these circumstances, the SUEs would be critical to the delivery of the Council's five year housing supply through the life of the development plan. Therefore, it is vital that CIL rates are set at a rate so as not to prejudice their development, nor that of the housing planned to come forward as part of the urban first approach which makes up the biggest proportion of the Council's housing supply.

9. The costs of the key infrastructure requirements, estimated at over £200 million, along with expected sources of funding are set out in the appendices to the IDP and the recent Addendum. The proposed infrastructure includes: highways, transport and public realm; education; community facilities; flooding; green infrastructure and open space; health and public safety; and other miscellaneous requirements[6]. The Council has clearly set out in its appendices to the IDP, and its more recent Addendum, how the infrastructure is envisaged to be funded, and the priority it attaches to each element of infrastructure. The Council expects that funding from existing S106 agreements, grant funding, (including New Growth Points, Pinch Point and Local Sustainable Transport Fund, together with core funding such as Education Basic Needs, Integrated Transport Scheme), and other sources of private and public funding will contribute around £145 million over the plan period. This leaves a funding gap of around £55 million or around a 28% shortfall between the cost of forecast infrastructure required and income. The two costliest draws on funding are the requirements identified for highways, transport and public realm; and education, which together are forecast to cost over £134 million over the plan period. The funding gaps for these are 20% and 38% respectively.

10. At the CIL rates set within the Draft Charging Schedule, it is estimated by 2027 that CIL receipts would generate up to £24 million[7] towards the funding gap, or around 43%. However, this figure appears to be a conservative estimate given that elsewhere in the Council's evidence CIL receipts are forecast to raise between £2.3- 2.8 million per annum, over the life time of the Core Strategy[8]. These forecast receipts would be higher than that achieved at the peak of S106 receipts prior to the enactment of CIL regulations and before the economic down turn[9.] In the light of the information provided, the proposed charge would therefore make a significant contribution towards filling the likely funding gap. The figures demonstrate the need to levy CIL.

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[6] RBBC08 Community Infrastructure Levy- Explanatory Document page 5
[7] ibid
[8] RBBC09 Community Infrastructure Levy- Background evidence of recent section 106 contributions and affordable housing: paragraph 13.
[9] Ibid Table 2.

*Economic viability evidence*

11. The Council undertook its own CIL Viability Assessment to support the Council's Preliminary Draft Charging Schedule 2014, which was updated to accompany the Draft Charging Schedule. A number of notional residential and commercial developments were tested. As a result of my questions, prior to, during, and following, the hearings the Council made further amendments to the testing.

12. The assessment uses a standard residual valuation approach for the sites within the urban areas, but for the Strategic Urban Extensions, including North West Horley, a discounted cash flow model was used to enable the relatively long period between outgoings and receipts in large developments to be better reflected in the financial calculations.

13. Economic viability evidence requires broad assumptions to be made relating to appraisal inputs. Development scenarios require assumptions about land costs, construction costs, marketing fees, sales, profit levels, acquisition costs, finance, and specific assumptions relating to continuing financial obligations such as S106 or S278 agreements.

14. The Council has used reasonable standard assumptions for a range of factors such as building costs (including Code for Sustainable Homes requirements), profit levels, fees etc. The model for construction costs was adapted by tailoring the BCIS build costs to the Reigate and Banstead location and supplemented by specific further data where appropriate. The Government has removed the requirement for buildings to be built to the Code for Sustainable Homes standards. However, the Council has continued to provide an allowance against this within the development costs. This is partially to offset the costs associated with the more stringent building regulations and as a means of providing additional 'headroom' within the viability calculations.

15. Urban benchmark land values have been set using a 10% discount over market values. Greenfield land values have been based on a benchmark land value of £800,000 per net hectare. This is around 20 times the typical agricultural land values for the south east. I consider this, in common with the Council, to be at the 'life changing' [10] level which would encourage land to be sold. I note that anecdotal evidence has been submitted suggesting higher sales have been realised, however this evidence has not been tested. In addition, concerns have been raised that the implementation of CIL would result in a hangover of historic land values into future developments. However, this is unavoidable whenever CIL is brought into force. Nonetheless, this does not justify a 'do nothing' approach.

16. The profit assumptions used by the Council of 20% Gross Development Value (GDV) for open market housing, and 6% for affordable housing were

[10] RBBC04 Community Infrastructure Levy- Revised Viability Assessment Report March 2015 page 36

challenged by representors. However, I have concluded such profits reasonable for these types of development and nothing that I have read demonstrates that they are inappropriate in this case.

17. For retail uses, similar assumptions are made but rather than sales values determining possible levels of CIL, it is the assumed rents and yields that impact on viability.

18. The Council set proxy figures for site specific S106/ S278 costs based on historic contributions and in the case of the HNWS on the basis of the known site specific infrastructure costs. The Draft Charging Schedule is also supported by the Council's draft Regulation 123 list[11]. The list includes a wide variety of infrastructure types and makes clear within the Horley North West Sector (HNWS) that particular projects would be funded through S106 agreements. Concerns were raised at the hearings that in the other SUE's, these would be expected to fund primary school facilities via S106 agreements. The Council has since clarified that it intends to redraft the CIL list to exclude primary schools from S106 agreements other than those within the HNWS. Amending the Regulation 123 list to achieve this clarity is important and I urge the Council to do so. However, the Regulation 123 list is not part of the Charging Schedule and so is not before me.

19. The Council has explicitly stated that, where the provision of affordable housing would impact on the viability of development within Zones 1, and Zone 3 negotiations could take place to reduce the levels of affordable housing[12]. I note that Policy CS15 of the Core Strategy refers to the viability of developments when negotiating affordable housing. However, the Planning Practice Guidance is clear that development costs should include the financial implications of planning obligations set out in policies in the relevant Plan[13]. Therefore, there is no justification within the PPG to offset affordable housing provision against CIL revenues as promoted within the Council's Revised Viability Assessment Report and reiterated at the Hearing. This has particular relevance in Zone 1 and I will return to this later in my report.

*Conclusion*

20. The Draft Charging Schedule is supported by detailed evidence of community infrastructure needs. I consider following my examination that the inputs, detail, and geographical distribution of the sites which have been tested and used as comparator evidence are proportionate, broadly reasonable and robust subject to my conclusions relating to affordable housing within Zone 1.[14]

[11] RBBC02 Community Infrastructure Levy- Draft Infrastructure List 2015

[12] RBBC04 pages 41& 45

[13] Planning Practice Guidance ID 25-020-20140612

[14] RBBC05 Community Infrastructure Levy- Revised Viability Assessment Report- Appendices March 2015 and RBBC18 Council's Response to Examiner's Post hearing Information Requests.

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

*CIL rates for residential development*

*Zone 1- £20 psm*

21. In Zone 1, which equates to Redhill and Horley Town Centres, the Council anticipates that most new housing will be in the form of flats rather than houses. Accordingly it has tested the viability of this type of housing. This is reasonable.

22. These assessments show that flats would not be viable when the full affordable housing requirements sought by Policy CS15[15] are factored in. I appreciate that the Council considers that the levels of affordable housing that might be lost would not be significant. However, I have already concluded above that CIL should be based on an assessment of full policy costs. In this case it is clear that if such costs are included much housing development would not be capable of viably sustaining a charge of £20. Accordingly, setting a rate at this level would not be consistent with the viability evidence[16]. Furthermore, it is a strategic objective of the CS[17] to direct housing to this area and so it would not be appropriate to put development here at risk.

23. I therefore recommend that the rate should be reduced to nil **(EM1)**. According to the Council's estimates this would reduce CIL income by around £400,000. However, this would not fundamentally affect the overall balance referred to in para 2 of my report.

*Zone 2- £140 psm*

24. Zone 2[18] includes the most affluent areas of the Borough. The VA that has taken place demonstrates strong viability with a consistent cushion of over 50% on the CIL at £140 psm. Some objectors considered that the build costs based on the use of BCIS estate data, albeit with a 20% uplift for the smaller sites, did not accurately reflect the costs of high specification and low density housing typical of the area. However, I was not provided with detailed evidence. In any case, the values that are likely to be realised, which appear to be much higher[19] than the conservative figure of £4000 psm, demonstrate the limited risks involved in the construction and marketing of such housing. Therefore, I conclude that the viability of development is unlikely to be threatened by the proposed CIL rate.

[15] RBBC10 Reigate and Banstead Local Plan: Core Strategy Adopted July 2014
[16] Planning Practice Guidance ID 25-021-20140612
[17] RBBC10 Reigate and Banstead Local Plan: Core Strategy Adopted July 2014 CS5: Allocation of land for development and CS13: Housing Delivery
[18] RBBC05 Value Level 4
[19] RBBC05 Table A1-9 p 14

*Zone 3- £80 psm*

25. Zone 3 makes up the rest of the existing urban area and includes an amalgam of Value Areas 2 and 3. The sensitivity testing[20] evidence indicates that only schemes of 7 houses or more and developments of flats of 25 units or more would be viable.

26. However, developments of 1-3 houses[21] and flats[22] are likely to make only a negligible contribution to the supply of housing in the Zone. Consequently, the proposed rate would not significantly constrain housing development in the Zone and there would be no justification to reduce the levy. In addition, the PPG advises that there is no requirement for rates to directly mirror the evidence.

*Sustainable Urban Extensions*

27. Prior to the hearings the Council and a consortium representing a number of developers put together a Statement of Common Ground which provided a clear analysis of areas of continued disagreement. At the hearing participants representing other developers confirmed that they agreed in general to the position set out in the Statement of Common Ground.

28. Areas of continued disagreement included build costs. Developers suggested that these, together with sales values, should be tested using the most up to date values. However, I consider it reasonable that costs and sales values should be derived from a particular point in time. The level at which CIL rates are set, should be sufficiently robust so that changes in costs or sales values would not seriously undermine the viability of development. Consequently, I consider the Council's approach to be appropriate.

29. The use of the discounted cash flow model was criticised by the development industry as being opaque. However, as it is the same model that had been agreed for use by developers in negotiating the S106 which relates to the Horley North West Sector I see no reason to query its efficacy, albeit, not all the developers involved consider it to be an appropriate model. Moreover, in the interests of transparency the Council reran its figures using the residual land valuation model.

30. The Council has included abnormal costs within its appraisals. In addition, it included *opening up, external, commercial contingency, other contingency as well as residual site specific costs* (S106 and S278) within the SUEs of over 300 units. The rate at which CIL is set does not normally take into account the cost of abnormals as it is usual practice for this to be offset from the value of land when it is sold. The fact that the Council has made an allowance for abnormals when setting the CIL levy rate demonstrates a degree of caution in

[20] RBBC05 Table 16 p 40
[21] RBBC21 Letter to Examiner 17 November 2015
[22] RBBC04 page 45

establishing costs. Similarly, providing for a 7.5% contingency cost over and above that allowed within the profit margin demonstrates a cautious approach in establishing costs.

31. The Council has assessed developments of 300 and 500 units. Although, a site allocation development plan document has not been prepared the Council's SHLAA[23] evidence suggests that it would be unlikely that a larger site would come forward as a SUE. However, even if it did, from the evidence submitted by the Council in its VA at this quantum of development the overage available would still support a CIL rate at £200 psm[24].

32. The CIL rates of nearby Councils were used as a comparator to those within the Draft Charging Schedule. However, I have considered the Draft Charging Schedule on the basis of the viability evidence before me, and drawn my conclusions from this.

*Zone 4- £180 psm North West Horley Sector*

33. CIL is levied on the basis of a development's ability to absorb the charge taking into account relevant costs, including a reasonable developer's profit. The levy rate is not set as a means to contribute to the funding of the public infrastructure limited to the requirements of a particular scheme. The level at which the CIL rate is set is dependent solely on the viability evidence. I appreciate that in some charging areas, strategic sites have been nil rated where the viability evidence demonstrated that this was appropriate. Conversely, where the economic evidence demonstrates viability, strategic sites can sustain a charge.

34. It has been suggested that the CIL should be nil rated as the site has already been granted planning permission. The developers are concerned that they may be double charged through CIL and the planning obligation, were any future amendments to the scheme to take place. However, S128a of CIL Regulations sets out the transitional arrangements that prevent this from happening [25]. Conversely, if a nil charge CIL were to be fixed for the strategic site without compelling viability evidence, there could be a risk that it might confer a selective financial advantage to a particular developer or site[26].

35. I consider that the assumptions that the Council has made relating to the costs and returns for the site are reasonable and would result in a viable development. This is confirmed by a simple sense check where I have compared the cost of the extant S106 of £39 million to the figure of £43 million, which is the sum of the residual S106 costs for the site at £21.6 million and the cost of the CIL at £180 psm. Whilst the latter figure is marginally larger I conclude that it would be within the same broad range.

[23] RBBC14 Annex 4
[24] RBBC17 Appendix 2
[25] Planning Practice Guidance ID: 25-007-20140612
[26] Planning Practice Guidance ID: 25-021-20140612

36. Therefore given the viability cushion of around 30%, together with the generous head room inherent in the Council's assumptions I am confident that the evidence is clear that the CIL rate of £180 psm would be economically viable over the HNWS.

*Zone 5- £200 psm*

37. The exact geographical location and size of the SUEs have yet to be defined and there is disagreement between the Council and the developers as to the appropriate levels at which a notional S106 rate per dwelling should be set. Given the inclusion of abnormal costs within the VA together with a comprehensive list of development costs and a restricted list of infrastructure which is expected to be funded from S106/S278 as set out in the Reg 123 list, I consider that a £10,000 per dwelling as promoted by the Council is a reasonable working figure. This conclusion is supported by the evidence set out demonstrating that on average large scale residential developments have been required to provide £9000 of financial contributions relating to site specific S106/S278 infrastructure.[27]

38. Even were the £15,000 input for the residual S106 obligations to be correct, this would still result from my calculations in a viability cushion of between 22% - 30% dependent on the numbers of units proposed. This is in contrast to the viability cushions ranging from 50%- 60% derived from the rerun of the viability assessments undertaken by the Council prior to the hearings[28].

39. Consequently, I consider that the CIL rate of £200 psm is appropriate.

*Specialist retirement housing*

40. The Council considers that specialist retirement housing that falls within Use Class C3 is sufficiently viable to be able to absorb the CIL rate appropriate to the zone in which the development takes place. Following criticism of the limited initial viability testing, the Council undertook further viability testing. The size of the units were reduced, the marketing and sales costs increased, and the allowance for the time period for sales to take place was extended reflecting the particular circumstances of the sector. Where possible, data was cross checked with real cases.

41. I conclude, given the comfortable viability margin of between 31%- 40%[29] , that the proposal to mirror conventional housing levy rates would be appropriate and would not impact adversely on this specialist sector of housing development.

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[27] RBBC14 Statement in Response to Matter 3: Residential Levy Rates- Annex 1: Cost of S196/S278 Contributions on Large Residential Sites.
[28] RBBC 17 Appendix 2
[29] RBBC14 Table 4

*Commercial rate*

*Zero-Rated commercial development*

42. The VA testing of industrial/ warehouse, office, leisure and hotel developments demonstrated that currently there would be negative residual land values. From the limited evidence before me I conclude that none of the development types would be able to support any form of CIL.

*Retail development*

*Comparison retailing*

43. The VA tested a range of town centre comparison retail developments. Whilst the smaller unit showed limited viability for CIL once a viability cushion of a 5% fall in rental levels or 5% increase in build costs was factored in this resulted in a negative value. Consequently, given the testing that was undertaken, I conclude that currently the comparison retailing sector would be unable to support any form of CIL.

*Convenience Retailing*

44. The Council tested a number of scenarios ranging from an 'Express' store to a large supermarket of up to 4500 sqm net floorspace. Each VA testing demonstrated viability, even in the context of sensitivity testing, with the medium store being the healthiest[30]. An objector representing a Limited Assortment Discounter (LAD) contested the Council's approach of not differentiating CIL rates by size and suggested that the 2500 sqm threshold set out in the National Planning Policy Framework[31] be used to set different rates. Each of the scenarios tested demonstrated viability at different sizes. Therefore, in the absence of alternative VA's, I conclude that the figure set at £120 psm which includes a viability cushion of 50% is appropriate and would not create a serious risk to the delivery of the retail strategy set out in the Core Strategy.

*All other uses*

45. In order to achieve clarity and to avoid undue complexity the Council has not tested or considered further uses. Moreover, there is no evidence that such uses would make up a significant component of planned development. I conclude that this is the appropriate approach.

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

46. The Council's decision to set the rates set out within the Draft Charging

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[30] RBBC04 Community Infrastructure Levy (CIL) Revised Viability Assessment Report Table 23

[31] Paragraph 26 of the National Planning Policy Framework

Schedule is broadly based on reasonable assumptions about development values and likely costs, subject to making the modification set out in Appendix A.

47. The evidence suggests that residential and commercial development will remain viable across most of the area if the charge is applied subject to the proposed modification.

**Conclusion**

48. 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 Reigate and Banstead. 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. It may be an appropriate time to consider any revision to the charge once the emerging Development Management Plan has been adopted.

| **LEGAL REQUIREMENTS** | |
|---|---|
| National Policy/Guidance | The Charging Schedule subject to the recommended modification complies with national policy/guidance. |
| 2008 Planning Act and 2010 Regulations (as amended) | The Charging Schedule subject to the recommended modification complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal. |

49. I conclude that subject to the modification set out in Appendix A the Reigate and Banstead Borough Council 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.

*Louise Nurser*

Examiner

This report is accompanied by:

Appendix A (attached) – Modification that the examiner specifies so that the Charging Schedule may be approved.

**Appendix A**

Modification recommended by the examiner so that the charging schedule may be approved.

| Examiner Modification (EM) Number | Reference | Modification |
|---|---|---|
| EM1 | Draft Charging Schedule Proposed CIL Charging Zone 1 | Amend from £20 to £0 and make consequential changes to the key. |