

---

Report to East Devon District Council

by Mr Anthony Thickett BA(Hons) BTP MRTPI Dip RSA

an Examiner appointed by the Council

Date: 15 January 2016

---

PLANNING ACT 2008 (AS AMENDED)  
SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT EAST DEVON DISTRICT COUNCIL  
COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 2 August 2013

Examination hearings held on 13 March 2014 and 9 July 2015

File Ref: PINS/U1105/429/6

## Non Technical Summary

This report concludes that the East Devon District 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.

Two modifications are needed to meet the statutory requirements. They can be summarised as follows:

- The rate for retail development within Cranbrook to be £0 psm<sup>1</sup>
- Include land to the south of the former A30 in the Cranbrook expansion charging zone.

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

### Introduction

1. This report contains my assessment of the East Devon District Council Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance.
2. 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 Draft Charging Schedule (DCS) of June 2013, which is effectively the same as the document published for public consultation in June 2013<sup>2</sup>. A hearing was held in March 2014 and another in July 2015 which, amongst other things considered a proposed revision to the DCS.
3. Following the hearing on 13 March 2014, I informed the Council that I had concerns regarding the proposed rate for retail development for Cranbrook town centre (£150 psm) and the proposed residential rate for the Cranbrook expansion area (£68 psm). The Council carried out further work and now propose a nil rate for retail development in Cranbrook town centre. The proposed residential rate for the allocated Cranbrook expansion areas remain at £68 psm. The proposed change to the DCS was subject to consultation from 16 April to 12 June 2015.

---

<sup>1</sup> Per square metre

<sup>2</sup> CIL07

## 4. The rates proposed in the revised DCS are as follows:

Development Type	Axminster, Cranbrook ("existing" town), Exmouth, Honiton, Ottery St Mary, Seaton and edge of Exeter allocation sites (defined by new Built up Area Boundaries and proposed Strategic Allocations)	Allocated Cranbrook expansion areas (as defined in the New Local Plan)	Sidmouth, Coast, and Rural (the rest of East Devon)
Residential	£80 psm	£68 psm	£125 psm
Development Type	Inside Town Centre Shopping Areas (as defined in the New Local Plan)	Cranbrook (as defined by the "existing town" plus allocated expansion areas)	Rest of East Devon
Retail	£0 psm	£0 psm	£150 psm
All other Non Residential uses	£0 psm	£0 psm	£0 psm

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

## Infrastructure

5. I am also appointed to examine the Council's New Local Plan. Subject to modification, I consider the Local Plan to be sound. The Council's Infrastructure Delivery Plan (IDP)<sup>3</sup> details the transport, education and social infrastructure required to enable and support the 17,100 new homes and other development planned to meet the District's needs.
6. The IDP ranks infrastructure into Priorities 1, 2 and 3. Priority 1 is defined as infrastructure that is fundamental to the delivery of the Plan's development strategy. As most of the new development in East Devon will take place at the West End<sup>4</sup> a large proportion of infrastructure listed in Priority 1 supports development there and includes, amongst other things, transport, education and Suitable Alternative Natural Greenspace (SANG). According to the March 2015 IDP the approximate cost of Priority 1 infrastructure is £44.8m and a funding gap of £14.2m is identified. The cost of Priority 2 infrastructure, defined as being necessary to meet the needs arising from new development,

---

<sup>3</sup> CIL16: Latest version March 2015

<sup>4</sup> That part of the district closest to Exeter which also includes Cranbrook

is estimated as £175.4m with a shortfall of £167.4m. Priority 3 infrastructure would secure higher sustainability standards and would cost around £30.9m with a funding gap of £28.8m. Overall the cost of infrastructure listed in the IDP runs to about £251.1m.

7. According to the Council the infrastructure that may be funded through CIL would cost around £176.2m. £12.62m has/will be secured through other sources (including planning obligations) leaving an aggregate funding gap of £163.6m. The Council anticipates receipts from CIL securing around £32.1m. These figures demonstrate the need to levy CIL.

#### Economic viability evidence

8. The Council commissioned a CIL Viability Assessment, which was published in January 2013 and updated in December 2014. The assessments use a residual valuation approach, using reasonable standard assumptions for a range of factors such as building costs, profit levels and fees etc. For non residential uses a range of 'typical' development typologies were generated informed by real examples of development in East Devon. For residential the study used a notional 1ha site in each market value area and tested viability at a range of densities and for different levels of affordable housing provision. Sensitivity testing involved assessing different market values and for residential, different tenures of affordable housing.

#### Conclusion

9. I consider a number of matters in greater detail below. However, I am satisfied that the draft Charging Schedule is supported by detailed evidence of the infrastructure needed to deliver the growth identified in the Local Plan and a robust analysis of viability.

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

##### Residential development

10. The assumptions underpinning the viability study are challenged and it is argued that it is now out of date. The Council acknowledge that, for example, build costs have risen since January 2013 but it also presents evidence to show that sales prices have also increased. The Council argue and I am content that the evidence shows, that the study used conservative estimates, including residual Section 106 costs. Further comfort is provided by the sensitivity tests referred to above. A buffer of around 20% has been applied in each charging zone. For the higher value areas (Sidmouth, Coast and Rural) a rate of £150 psm was demonstrated to be viable whereas £125 is proposed. Similarly, potential rates of £85 and £100 were identified for Cranbrook and the rest of the district (£68 and £80 proposed).
11. Turning to the charging zones, it is inevitable that values close to the boundaries will be similar. However, I am satisfied that the viability study justifies differential rates and that the built up area boundaries provide a sensible demarcation between the towns and the rural area charging zones.

12. I am satisfied that the evidence submitted to the examination justifies the principle of a separate charging zone for the Cranbrook expansion areas. The developers of Cranbrook are committed to providing the necessary infrastructure. What is at issue is the mechanism by which it is funded and, if it is to be through CIL, the rate to be charged. It is the developers view and Devon County Council's that Cranbrook's infrastructure should continue to be funded through Section 106. They argue that a nil rate be set and the Regulation 123 list be changed to allow schools etc in Cranbrook to be funded through Section 106 Agreements.
13. I acknowledge that, so far, securing infrastructure to support the growth of Cranbrook through Section 106 agreements has been successful. I also consider that the Council is right to be concerned about the impact of the 5 obligation limit (pooling) on the continued ability to fund infrastructure in this way. However, it is not the role of an examiner to determine whether infrastructure is best funded through CIL or Section 106. The Council has chosen to set a charging rate for Cranbrook and I must determine whether that rate is supported by evidence and strikes an appropriate balance between funding infrastructure and the viability of development in the charging zone.
14. Following the hearing in March 2014 I wrote to the Council stating that I was not satisfied with its evidence relating to opening up costs, residual Section 106 contributions and its assumptions regarding net developable areas. The consortium estimate opening up costs to be around £570,000 per net hectare which falls in the range suggested in the Harman report<sup>5</sup>. The Council submitted further evidence<sup>6</sup> and point out that some elements cited by the consortium are in place or paid for (the Clyst Honiton by pass and open space/landscaping) and that others would be funded through CIL (highway infrastructure). This supports the Council's position that opening up costs for later phases will be lower and I consider that the Council has now produced sufficient evidence to show that its estimate of £225,000 per net hectare is appropriate.
15. The Council's Regulation 123 list includes on<sup>7</sup> and off site infrastructure including education, SANGs and strategic transport infrastructure. Contributions to these items should not, therefore, be sought through planning obligations and it is reasonable not to include them in any residual Section 106 cost. The Council produced a table of infrastructure items and costs which produces a figure of £3,879.50 per dwelling to be sought through residual Section 106 contributions. On this basis the Council estimates that developments in the Cranbrook expansion area could support £97 psm and remain viable. I note the consortium's reservations but consider that the Council has now produced sufficient evidence to support its position with regard to residual Section 106 costs.

---

<sup>5</sup> Viability Testing Local Plans Advice for planning practitioners; Appendix B, paragraph 2

<sup>6</sup> East Devon Community Infrastructure Levy (CIL) additional report in response to Inspector's concerns – March 2015

<sup>7</sup> Excluding on site open space/recreation provision

16. The Council argues that it is reasonable to assume a net developable area of around 75%. However, the consortium has provided detailed and more persuasive evidence, based on the experience of developing the earlier phases, to support its contention that the net developable area should be assumed to be 50%. Whilst this has an impact on the Council's evidence relating to viability, the extent to which it reduces a viable rate below £97 psm is unknown. However, in addition to reduced Section 106 costs the Council point to improved sales values since the viability study was produced. The proposed rate, at £68 psm is significantly below what the Council's evidence suggests is viable (£97 psm) which, in my view, provides a reasonable buffer.
17. The expansion of Cranbrook is critical to meeting the housing needs of East Devon and the Local Plan strategy. The Council has committed to an early review of the Draft Charging Schedule alongside its production of the Cranbrook Development Plan Document (DPD). It is essential, in my view, in order to ensure that Cranbrook does deliver, to monitor viability and delivery constantly and very carefully.
18. The Council propose that the £68 psm rate apply to the east and west expansion areas shown on the Cranbrook charging zone map. The Local Plan makes provision for 1,550 new dwellings to be built within the Cranbrook DPD area. The consortium has submitted a planning application on land to the south of the former A30 but the Council argues that it is premature to apply the £68 psm charge (as opposed to £125 psm) ahead of the adoption of the Cranbrook DPD. These houses would make a significant contribution to meeting the District's housing needs.
19. As stated in the accompanying Local Plan report, I am not persuaded of the need for the Cranbrook DPD. The Council accepts that it makes sense to apply the £68 psm charge to any expansion of Cranbrook. The viability evidence does not support a £125 psm charge for strategic expansions to Cranbrook. Maintaining £125 psm would, therefore, put the delivery of development at serious risk. The £68 psm charging zone should, therefore, be expanded to include this land.

#### Retail

20. As submitted the Draft Charging Schedule proposed a rate for retail development of £0 psm in town centres and £150 psm elsewhere. The differential rates were justified in part on the costs associated with developing in town centres. The £150 psm is based on the costs of developing an out of town store or retail park and I questioned the applicability of such an approach in assessing the cost of developing a new town centre as proposed in Cranbrook.
21. The Council commissioned further evidence and propose to charge a nil rate for retail in Cranbrook. I am satisfied that this rate is consistent with the latest evidence.

#### All other Non Residential uses

22. The viability study recommends a nil rate be charged for all other uses. I have neither seen nor heard any evidence to lead me to question this view.

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

23. Subject to the changes set out in Appendix A, the rates in the revised Draft Charging Schedule are based on reasonable assumptions about development values and likely costs. The evidence suggests that residential and commercial development will remain viable across most of the area if the charge is applied.

Conclusion

24. 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 East Devon. The Council has sought 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 District. The New East Devon Local Plan has just been examined and the delivery planned at Cranbrook and the West End in particular is critical to meeting the District's housing needs. Given the amount of infrastructure necessary to support the Plan and the significant funding gap, I consider the Council's proposal to carry out an early review of the rates to be eminently sensible.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the New East Devon Local Plan and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

25. I conclude that subject to the modifications set out in the revised Draft Charging Schedule and at paragraph 23 above, the East Devon 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.

*A Thickett*

Examiner

Appendix A – Modification specified by the examiner required to enable the Charging Schedule to be approved.

<b>Modification</b>	Amend as follows:
Cranbrook town centre and Cranbrook expansion areas (as defined in the New Local Plan)	Modify the retail rate to £0 psm
Cranbrook Expansion Area Charging Zone map	Modify the Cranbrook expansion charging area to include the land to the south of the former A30 as shown edged red on the Cranbrook Composite Applications Boundaries submitted by David Lock Associates <sup>8</sup>

---

<sup>8</sup> Drawing number WCN053-05 Dated 11/06/15