



The Planning Inspectorate

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# Report to East Devon District Council

by Jameson Bridgwater DipTP MRTPI

an Examiner appointed by the Council

Date: 4 June 2020

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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 29 October 2019

Examination hearing held 18 February 2020

File Ref: PINS/U1105/429/8

## **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.

I have recommended that the schedule should be approved in its published form, without changes.

### **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. The proposed CIL Charging Schedule seeks to revise and replace the extant East Devon District Council Community Infrastructure Levy Charging Schedule, adopted in April 2016, which came into force on 1 September 2016. The Council have explained that the proposed revisions are to reflect amended legislation, updated national policy and guidance, latest evidence on development costs and values in the district, and to align with development being proposed in the emerging Cranbrook Plan.
3. 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, on which hearing sessions were held on 18 February 2020 is the submitted draft charging schedule of August 2019, which is effectively the same as the document published for public consultation between 21 August and 2 October 2019.
4. The submitted charging schedule from East Devon District Council [the Council] proposed the following CIL rates:
  - All development at Cranbrook - £0 per square metre (£0psm)
  - General residential development in Sidmouth and Budleigh Salterton - £200psm
  - General residential development in the rest of East Devon - £150psm
  - Sheltered housing, extra care housing and care homes - £0psm
  - Rural Exception Sites - £0psm

- Residential development on Strategic sites - £100psm
- Retail (out of town centre) - £84psm
- All other non-residential uses - £0psm

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

*Infrastructure planning evidence*

5. The East Devon Local Plan 2013 to 2031 (EDLP) was adopted on 28 January 2016, it seeks to deliver a minimum of 17,100 new homes along with development on around 150 hectares of land for employment purposes within the Plan period. The spatial strategy directs major development towards East Devon's West End although growth is also planned for the towns of East Devon. Villages and rural areas will see lower growth levels with development primarily focused on meeting local needs.
6. To deliver the Plan's strategy a significant proportion of development will be focused on Cranbrook. Therefore, the Council has prepared and submitted the Cranbrook Plan 2013-2031 for examination, although the process is not yet completed. The Cranbrook Plan (CP) will form part of the overall development plan for East Devon and seeks to integrate with but expand upon the EDLP that covers the whole of the District. Consequently, the development strategy across the plan area is already clear, with the relevant up to date and extensive supporting evidence in place, including infrastructure requirements and a viability assessment.
7. Therefore, 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 accords with the national Planning Policy Guidance (PPG), 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".
8. 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 Local Plan if this is justified in all of the relevant local circumstances. However, in the event of a significant change to the development strategy as a result of the CP examination, it would be appropriate for the Council to consider whether a review of the CIL charging schedule is needed at that stage.
9. The East Devon Infrastructure Delivery Plan Review (November 2017) and the Cranbrook Infrastructure Delivery Plan 2013-2031 (February 2019, updated January 2020) outlines the new/improved infrastructure required to facilitate planned growth within the District to the end of the plan period (2031). Taking into account other likely funding sources, including direct from government, the Council currently estimates a shortfall of around £161.75m, based on total infrastructure costs of about £371m. Since coming into force (1

September 2016) the amount raised by the Council from their existing CIL levy rates is approximately £4.2m. It is anticipated that the revised CIL charges, as proposed, would raise about £2.43m on an annual basis and around £26.8m in total up to 2031 towards infrastructure needs. In the light of this evidence, the proposed CIL charges would make a significant contribution towards meeting the likely funding gap. The figures demonstrate the need to continue to levy CIL in East Devon.

#### *Economic viability evidence*

10. The Council commissioned a CIL Viability Assessment (CIL Review and Cranbrook Plan DPD Viability Study), dated January 2019. The case studies selected for testing were not intended to represent specific development proposals, but to reflect typical forms of development that are likely to come forward over the plan period. With the exception being Cranbrook, where the development proposed in the emerging Cranbrook Plan was specifically tested.
11. The viability assessment seeks to establish a residual value by subtracting all costs (except for land purchase) from the value of the completed development (the Gross Development Value). The price at which a typical willing landowner would be prepared to sell the land (the Benchmark Land Value) is then subtracted from the residual value to arrive at the overage or 'theoretical maximum charge'. This is the sum from which the CIL charge can be taken provided that there is a sufficient viability buffer or margin.
12. The assessment uses a residual valuation approach, using reasonable standard assumptions for a range of factors such as building costs, profit levels, fees and changes in relation to national policy. The model was adapted by relevant local data on existing land values; including Land Registry data and some recent transactions, taking into account that there are variations in average land values across East Devon. Therefore, in general, the benchmark land values used are sufficiently realistic for comparison purposes in a generic study of this type.
13. The charging schedule has been informed by discussions with stakeholders and consideration of the representations made on the series of consultations carried out by the Council. The Draft Charging Schedule Consultation Statement – Submission version (October 2019) demonstrates that an adequate and proportionate approach in relation to local stakeholder participation was taken by the Council. This was further reinforced by developers being represented at the examination hearing.
14. The PPG states that it would be appropriate to include a buffer or margin so that the levy rates are not set at the margins of viability and are able to support development when economic circumstances adjust. This can also provide some degree of safeguard in the event that gross development values have been over-estimated or costs under-estimated and to allow for variations in costs and values between sites. As discussed below, the Council have proposed CIL charges that provide a reasonable viability margin or buffer commensurate with the type of development being brought forward.

### *Conclusion*

15. The draft Charging Schedule is supported by documentation demonstrating detailed evidence of community infrastructure needs and economic viability testing. 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?**

#### *All development at Cranbrook - £0psm*

16. Cranbrook is identified within the EDLP (Policies Strategy 9 and Strategy 12) to be developed as a modern market town with around 7,500 new homes and up to 18.4 hectares of employment land. Cranbrook will have a town centre to provide a focal point for retail, business and leisure activities and will be complemented by a series of smaller neighbourhood centres. To support this level of growth the EDLP identifies the need for the provision of social, leisure, health, community and education facilities (including new schools). The plan also identifies other infrastructure requirements that include amongst other things combined heat and power, high speed broadband, improved transport links and road improvements. The Cranbrook Infrastructure Delivery Plan 2013-2031 (February 2019, updated January 2020) suggests that the infrastructure cost is likely to be in the region of £113.2m, however, this has been increased to around £116m as a result of minor updates to the Cranbrook IDP through the ongoing Cranbrook Plan Examination.
17. The Council's proposed levy of £0psm for all development at Cranbrook is based on the evidence contained within the CIL Viability Assessment. This confirms that new infrastructure for Cranbrook is being funded by a combination of identified public funding, s106 and s278 planning obligations. Cranbrook's funding model is already established with development ongoing and has provided certainty in terms of how and when the necessary infrastructure is to be delivered. The viability evidence demonstrates that taking into account the required s106 and s278 planning obligations new development in Cranbrook cannot sustain the imposition of a levy. Moreover, this conclusion is consistent and supported by the representations of developers/stakeholders involved in the development of Cranbrook.
18. Therefore, the Council's proposed levy rate of £0psm for all development at Cranbrook is justified by the available evidence and would strike an appropriate balance between helping to fund new infrastructure supporting the aims and objectives of the EDLP whilst ensuring viability.

#### *CIL rates for residential development*

19. Policy Strategy 2 of the EDLP sets out the scale and distribution of residential development in East Devon up to 2031. The Council's CIL Viability Assessment examined a comprehensive range of residential typologies/scenarios, including amongst other things dwellings/flat schemes/care homes/sheltered and extra care. The viability testing utilised a variety of housing mixes and tenures that ranged between 2 bed flats to 5 bed detached houses across various densities from 30dph to 80dph. Testing was also carried out to take into account additional floor space requirements

associated with new Sheltered/Extra Care housing. The testing considered a full range of values and costs data that are suitably reflective of the new residential projects likely to come forward across the district within the plan period.

20. The viability testing has factored in assumptions to reflect policy requirements in the EDLP and the emerging CP. These include amongst other things affordable housing requirements, transport/infrastructure provision, decentralised energy networks, green infrastructure and open space that have implications for planning obligations (s106). As such, the viability testing has properly examined the most likely scenarios although clearly cannot address all possible eventualities surrounding new development projects.
21. Whilst overall there is an underlying strength and viability in the East Devon property market, the Council's analysis also demonstrates the difference in the ability of residential development in different parts of East Devon to viably support a CIL charge, therefore, justifying the use of zoned and differential charging rates consistent with the PPG.

*General residential development in Sidmouth and Budleigh Salterton - £200psm*

22. The EDLP (Strategy 26 and Strategy 21) seeks amongst other things to ensure that new residential development in Sidmouth and Budleigh Salterton is limited/modest in scale. The sales values evidence shows that new build dwellings in Sidmouth and Budleigh Salterton have the highest market values in East Devon.
23. The Council's viability testing demonstrates that the proposed CIL rate of £200psm for general residential development in Sidmouth and Budleigh Salterton would on the whole maintain a viability buffer of around 50%. The buffer is sufficient to demonstrate that general residential development in accordance with the EDLP within Sidmouth and Budleigh Salterton could viably support the proposed rate. I am therefore satisfied the proposed rate of £200psm for general residential development in Sidmouth and Budleigh Salterton has been informed by and is consistent with the viability evidence and strikes an appropriate balance.

*General residential development in the rest of East Devon - £150psm*

24. The proposed levy rate of £150psm for general residential development in the rest of East Devon has been informed the Council's viability testing. The findings demonstrate that market values for the Exmouth, Ottery, Honiton, Axminster and Seaton and Rural areas are generally comparable. Moreover, the assessment of small, medium and large residential sites in this area suggests that a levy of £150psm would in the majority of circumstances allow for a 50% viability buffer when compared to the maximum theoretical levy that could be charged.
25. I therefore conclude that in setting the levy at £150psm the Council have adopted a balanced approach which is likely to ensure that the majority of new general residential development in the rest of East Devon can be delivered in accordance with the EDLP. As such, proposed CIL rate of £150psm is

consistent with the evidence and would help to support the delivery of infrastructure in the district.

*Sheltered housing, extra care housing and care homes - £0psm*

26. EDLP policy Strategy 36 seeks amongst other things to provide 150 care and extra care home spaces at Exmouth; and 50 spaces at Axminster, Honiton, Sidmouth, Seaton, and Ottery St Mary. The viability evidence demonstrates that sheltered and extra care housing could theoretically support a small levy including a 50% viability buffer in the combined East of Exeter, Exmouth, Honiton, Axminster, Seaton and Ottery value area. However, elsewhere, and for care homes across the district, the evidence shows that development of this type cannot sustain the imposition of a levy. The Council's proposed levy of £0psm for sheltered housing, extra care housing and care homes therefore takes into account the challenging viability issues of this type of development in East Devon. Therefore, based on the evidence submitted, I am satisfied that setting a rate of £0psm for sheltered housing, extra care housing and care homes in East Devon is justified by the available evidence and appropriate.

*Rural Exception Sites - £0psm*

27. The Council's policy for delivering rural exception sites is set out in Strategy 35 of the EDLP. The policy suggests that the size of these sites should be up to or around 15 dwellings, with at least 66% affordable housing, to meet a proven local need. The viability testing demonstrates that a levy on rural exception sites would be likely to have the unintended consequence of requiring an increase in open market housing to enable the delivery of affordable housing. Any value that is generated from the market housing is intended to subsidise the delivery of affordable housing and, on this basis, form an integral part of the viability calculations. The implication of this is that policy compliant rural exception sites cannot practically absorb any level of CIL. Given this, a rate of £0psm is justified by the available evidence and strikes an appropriate balance between helping to fund new infrastructure and economic viability.

*Residential development on Strategic sites - £100psm*

28. EDLP Policies Strategy 13, 14, 20, 22, 23 and 26B identify residential-led strategic allocations (outside Cranbrook). The Council has proposed a levy rate of £100psm for residential development on strategic sites. The proposed levy has been informed through the viability testing of 3 large sites that are generally representative of the strategic sites proposed in the EDLP. The testing factored in economies of scale particularly with regard to the purchase of materials and labour, which generally can be achieved by volume and regional housebuilders. Because of this the testing uses lower quartile build cost figures from the Building Cost Information Service (BCIS). Furthermore, the land values (greenfield) used in the testing reflect the lower agricultural values as well as the reduced proportion of developable land and the policy requirements that are generally associated with larger developments.
29. The initial testing demonstrated that a theoretical levy for strategic sites of £150psm was appropriate in the rest of East Devon, with £200psm in Sidmouth and Budleigh Salterton factoring in a viability buffer. However, this

was subsequently adjusted after sensitivity testing applied an additional £20,000 per dwelling cost to take into account the extra s106 costs of strategic sites following the removal of pooling restrictions. I consider that the approach taken by the Council in relation to strategic sites is a balanced one which takes into account market conditions. This is reflected in the viability buffer of around 50% which would provide some degree of safeguard for variations in the market. Therefore, taking all of the evidence into account the Council's proposed levy rate of £100psm for residential development on strategic sites is consistent with the available evidence and appropriate.

30. In reaching this conclusion I have carefully considered the representations of developers both at the hearing and in writing; who argued for a districtwide rate excluding Cranbrook of £100psm for sites of 100 dwellings or more. However, whilst I accept that there are potentially other approaches to applying CIL in East Devon, there was no substantive or technical evidence that demonstrated that the Council's zoned approach to the strategic sites would place residential development of 100 dwellings or more at risk.

*Retail (out of town centre) - £84psm*

31. The appraisals in the CIL Viability Assessment suggest that a theoretical maximum levy in the range of £167 to £169 would be viable on Retail (out of town centre) development. The testing demonstrates that the retail market has weakened in East Devon since the extant CIL was adopted in April 2016. Consequently, the Council's proposed revised rate of £84psm is a significant reduction on the Council's existing retail levy rate (£173.89psm). The proposed levy rate of £84psm would allow for a generous buffer of around 50% which, would represent a balanced approach ensuring that the vast majority of Retail (out of town centre) development could be delivered in accordance with the EDLP. Consequently, given that no substantive viability evidence has been presented to indicate otherwise, I am satisfied the proposed rate of £84psm for Retail (out of town centre) is informed by and consistent with the evidence.

*All other non-residential uses*

32. The Council's decision not to charge a levy on uses such as Town Centre Retail, Industrial, Office, Hotel, Community, Motor Vehicle Sales and Leisure including Holiday Parks is consistent with the evidence in the viability testing. This demonstrates that current market rents for these uses are too low to absorb any level of CIL. I am satisfied that for the reasons given in the CIL Review and Cranbrook Plan DPD Viability Study, dated January 2019 setting a rate of £0psm for these uses is evidence based and appropriate.

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

33. The Council's decision to set rates for the following development:

- All development at Cranbrook
- General residential development in Sidmouth and Budleigh Salterton
- General residential development in the rest of East Devon
- Sheltered housing, extra care housing and care homes

- Rural Exception Sites
- Residential development on Strategic sites
- Retail (out of town centre)
- All other non-residential uses

is 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 charges are applied. Only if development sales values are at the lowest end of the predicted spectrum would development in some parts of the District be at risk, however, I consider this situation to be unlikely.

**Conclusion**

34. 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 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.

<b>LEGAL REQUIREMENTS</b>	
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 East Devon Local Plan 2013 to 2031 and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

35. I conclude that the East Devon District Council Draft 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.

*Jameson Bridgwater*

Examiner