The Planning Inspectorate

Report to Three Rivers District Council

by Mr Philip Staddon BSc, Dip, MBA, MRTPI

an Examiner appointed by the Council

Date: 16 December 2014

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT THREE RIVERS DISTRICT COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 3 October 2014

Examination hearings held on 1 December 2014

File Ref: PINS/LDF001591

Non Technical Summary

This report concludes that, subject to some modifications, the Three Rivers District Council Draft Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. The modifications required relate to the removal of CIL charges for hotel developments; the deletion of 'retirement housing' from the Schedule and the zero rating of the retail CIL charge in the South Oxhey area. Subject to these changes, the Council is able to demonstrate that it has sufficient evidence to support the Schedule and can show that the levy rates would be set at levels that will not put the overall development of the area, as set out in its Core Strategy, at risk.

Introduction

1. This report contains my assessment of the Three Rivers District Council Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008 (as amended). 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 set out in the National Planning Practice Guidance (NPPG – 2014).

2. To comply with the relevant legislation and guidance the local charging authority has to submit a charging schedule that should set an appropriate balance between helping to fund necessary new infrastructure and the potential effect of the proposed rates on the economic viability of development across its area.

3. The basis for the examination, on which Hearing sessions were held on 1 December 2014, is the submitted Draft Charging Schedule (DCS), which was published for public consultation between 4 July 2014 and 4 August 2014, along with the associated Statement of Modifications (SOM), which was published for public consultation between 3 October 2014 and 31 October 2014.

4. The Council's CIL proposals include charges for residential development and for certain specified types of commercial development.

5. The proposed CIL charges for most residential developments would be differentiated by geographical area. More than half of the district, including the main town of Rickmansworth, would fall within 'Area A' where the proposed CIL charge would be £180 per square metre (psm). The north eastern parts of the district would fall within 'Area B' where the proposed CIL charge would be £120 psm. The south eastern part of the district, which includes a proposed regeneration area at South Oxhey, would fall within 'Area C' where the Council proposes a zero rating for CIL i.e. £0 psm. In addition to these geographical differentiated charges, the Council's DCS proposes that 'retirement housing' would be subject to a £120 psm CIL charge in all locations i.e. borough wide.

6. The proposed CIL charges for commercial development relate to 'retail (use Class A1)' which would incur a £60 psm charge and 'hotels (Use Class C1)' which would incur a £120 psm CIL charge. 'Other non residential' developments would be zero rated. The commercial development CIL charges are not differentiated by area and would apply in all locations across the district.

Background evidence – the development plan, infrastructure needs and economic viability evidence

7. The Three Rivers district lies in the south of Hertfordshire and is predominantly rural in character, comprising an attractive blend of countryside, villages and small towns. The main town is Rickmansworth, with smaller settlements including Chorleywood, Maple Cross, South Oxhey and Croxley Green. Development in the district is heavily constrained by the Metropolitan Green Belt which covers over three quarters (77%) of the administrative area. It is a generally affluent district, although there are some areas of deprivation. Property prices are high and there is a significant need for affordable homes. Road and rail connectivity is good, with the M1 and M25 running through the district, along with the West Coast mainline rail route and the Metropolitan Line connection to the London Underground.

Core Strategy

8. The Council's Core Strategy (CS) was adopted in October 2011. It responds to the constraints and opportunities summarised above by defining a strategy for sustainable growth until 2026 that will need to be supported by further infrastructure. That strategy identifies a housing target of 4,500 in the period 2001 – 2026 i.e. 180 units p.a. with a strong spatial focus on existing towns and urban areas and on brownfield sites. However, the district can only meet about three quarters of its planned homes in such locations and the remaining quarter is planned on urban extensions within the Green Belt.

9. In terms of specific development locations, the CS anticipates that the majority of the new homes would be in principal town of Rickmansworth and the 'Key Centres' of South Oxhey, Croxley Green, Abbots Langley, Chorleywood, Leavesden and Garston and Mill End. South Oxhey is identified as a regeneration area, aimed at tackling local deprivation issues and improving the housing stock; a mixed use scheme of housing, retail and community buildings is proposed. The CS requires affordable housing at a proportion of 'around 45%' with a guide that the expected split between social rented / intermediate should be 70/30.

10. With regard to employment and retail development the CS approach is based on supporting and enhancing existing provision in sustainable locations. There is an identified oversupply of office space but a slight undersupply of industrial and warehousing space. The CS assesses that there is no need for additional convenience retail floor space although there is modest capacity for additional comparison retail floor space.

11. The CS is supported by two Local Development Documents (LDD) covering 'Development Management Policies' (adopted July 2013) and 'Sites Allocations'

(adopted November 2014). In terms of delivery, the first few years of the new CS have seen overall housing and employment provision to be on target. Affordable housing completions are still adjusting to the higher 45% requirement, but the Council reported that this level is now increasingly being achieved.

Infrastructure planning evidence

12. The CS was supported by an Infrastructure Delivery Plan (IDP) which was updated in March 2012. The IDP identifies infrastructure needs under chapters covering health, education and schools, emergency services, cultural services, waste, strategic transport, local transport, green infrastructure, water and energy. Under each category there is a helpful analysis of existing provision, identified gaps, planned provision and delivery potential. Where appropriate the proposed CIL regime is identified as a potential funding source. There are gaps across the spectrum. The IDP does make clear that whilst there are no CS critical infrastructure projects (i.e. the CS could not be delivered without particular projects being in place) there are still some significant gaps that need to be addressed in the coming years. The most pressing relates to primary and secondary school places.

13. The Council has undertaken an infrastructure funding gap assessment. This assessment was not based on the sum of all of the schemes identified in the IDP as many are required to address existing shortages and, for others, there are significant uncertainties over funding sources. Rather, the assessment is based on 'key' infrastructure projects, all of which are currently unfunded. These include two secondary schools, a primary school and four road schemes. The total funding gap assessed using this methodology is a range of £50.8 million - £74.8 million, the majority of which relates to school provision. The gap would clearly be larger if other infrastructure types were added to the assessment.

14. The Council estimates that its CIL receipts from residential development in the plan period (to 2026) would be circa £4.7 million. This will be supplemented by an unknown, but much smaller, amount from commercial development CIL charges. The CIL revenue would therefore make a relatively modest (less than 10%) contribution to filling the assessed funding gap. Nonetheless, the evidence provides a clear justification for introducing a CIL regime.

15. The Council has produced a Draft Regulation 123 list which sets out the infrastructure types that it intends to fund, partly or wholly, through CIL receipts. The list is drawn more widely than the school and road projects used for the funding gap assessment. In addition to 'education facilities' and 'strategic and local transport proposals' it includes facilities for leisure, open space and play, healthcare, community and youth, libraries and emergency services. The Regulation 123 list also includes a column of exclusions, identifying infrastructure that will be secured through S.106 Planning Agreements or other mechanisms. Most of these exclusions relate to the South Oxhey regeneration scheme.

16. I have considered views expressed that cycling infrastructure should have been more fully considered in the funding gap assessment and set out more explicitly in the Regulation 123 list. However, I find no weakness with the

Council's approach which, in focusing on major capital schemes for schools and roads, simply limits the funding gap calculation. Given that the gap is substantial I do not see that much would be gained by adding in all possible infrastructure types. This method of calculation does not preclude the Council using CIL funds on cycling related infrastructure as 'strategic and local transport proposals' are included on the regulation 123 list.

Economic viability evidence

17. In 2012, the Council entered a commissioning partnership with seven other Hertfordshire councils to produce a relatively broad brush 'Stage 1' Community Infrastructure Levy Economic Viability Assessment (EVA-1). Given that the eight councils were at different stages in terms of their respective CS and CIL proposals, EVA-1 was intended to be a platform for more detailed 'Stage 2' work. Three Rivers Council, which already had a CS in place, was able to commission the more detailed Stage 2 work (EVA-2) soon after the completion of EVA-1. This 'Stage 2' report was supplemented by a later 'May 2014 Update.'

18. The EVAs employed a residual valuation approach. In simple terms, this involves deducting the total costs of the development from its end value to calculate a residual land value (RLV) for a notional one hectare of land. That residual land value is then compared to assumed benchmark land values (BLV) to test viability. If the RLV is significantly above the BLV, the scheme would be judged viable and vice versa. The Council's consultants have developed a computer model to make this comparison and to test potential CIL levels against the land value benchmarks.

19. The testing in EVA-1 related to a range of ten notional schemes which included four residential development types ranging from low density rural greenfield sites to high density urban development, along with a 'mixed use residential' scheme and a range of commercial development types.

20. To undertake this analysis, the modelling on residential development entailed making assumptions about a range of factors such as build costs (including Code for Sustainable Homes requirements), fees, contingencies, sales values, profit levels etc. For the commercial development types, common assumptions were made across the eight authorities, with the exception of rental values and yields, which were tailored to the local markets. In the EVA-1 study, the assumptions were inescapably broad brush given the near county-wide study area.

21. The more detailed EVA-2 employed a much finer grain analysis looking in particular at the anticipated spatial distribution of planned development, localised sales values, housing mix, density and type. It also examined the viability issues specific to the South Oxhey regeneration scheme. The robustness of the assumptions used in the EVAs were tested through the examination and found to be largely sound.

22. For residential developments, sales values were drawn from Land Registry data and complemented by prices from the limited number of new build schemes. Although transactional evidence was thin, BLVs were well founded and quite sophisticated in employing a range of anticipated 'market' and 'alternative use' values, the lowest being £1.6 million / hectare for brownfield

land and £0.480 million / hectare for green field land. Build costs were based on Building Cost Information Service (BCIS) rates for the county and allowances made for Code for Sustainable Home requirements (Level 4). Fees, contingencies and financing all appeared to be well grounded and reasonable.

23. Affordable housing provision was assumed in line with the CS policy (45%). Residual S.106 allowances of £1,000 per plot were assumed for most developments but this was increased to £7,957 per plot on the South Oxhey strategic development, reflecting anticipated real world costs. Developer profit was assumed at 17% of Gross Development Value, which I consider to be reasonable for CIL testing purposes, particularly given the local market characteristics and past housing delivery rates, which all suggest that developers regard the area as commercially attractive and at the lower end of the risk spectrum.

24. For the commercial development appraisals, assumed rents, yields and land values were well founded and reasonable. With the exception of the specifics concerning hotel development, which I return to later, there were no substantive industry challenges to the modelling assumptions employed by the Council.

Conclusions on background evidence

25. The Three Rivers CS provides a recent and robust development plan framework for sustainable growth in the district, which, due to environmental constraints, has a very strong growth focus on brownfield sites in existing urban areas, along with a limited number of urban extensions. The IDP identifies the infrastructure required to support the CS planned growth in population and jobs. The evidence demonstrates a sizeable infrastructure funding gap that justifies the introduction of a CIL regime. CIL receipts will help to reduce that gap although a significant funding shortfall will remain.

26. The background economic viability evidence for both residential and commercial development that has been used is reasonable, robust, proportionate and appropriate. The interpretation and use of the economic viability evidence in defining the proposed CIL zones and rates is discussed more fully below.

Residential Development CIL – viability appraisal findings and proposed CIL charges

27. The broad brush EVA-1 only requires a brief reference here, as it is largely superseded by the more detailed EVA-2 and subsequent update. However, it concluded that, were the Council to propose a single CIL rate, its recommendation was £150 psm. Most tested development scenarios could sustain that level of charge, with an element of headroom, but it was clear that developments in some parts of the district would struggle to meet that charge under policy compliant scenarios.

28. The EVA-2 analysis is much finer grain and sophisticated. It assesses viability based on the actual geographical location of the dwellings anticipated in the

remaining plan period (to 2026). The modelling was further finessed to reflect localised sales values in the vicinity of allocated sites, along with the anticipated density and housing mix.

29. EVA-2 was supplemented by an 'update' in May 2014 which effectively repeated the exercise with more up to date geographical distributions and allowances for inflation in sales rates and build costs. This modelling also substantially increased the assumed BLVs (by 25 -30%) based on assumed higher sales values. For simplicity, I focus below on the most up to date appraisal findings.

Area A (CIL Charge £180 psm)

30. Area A covers the greater part of the district and includes the main town of Rickmansworth. This town, along with smaller settlements such as Eastbury, is expected to deliver over half of the anticipated dwellings in the remaining plan period to 2026 (902 out of 1694 homes or 53%). The modelling results indicated that all schemes would be viable and able to support CIL charges. The five modelled potential CIL rates were in a close range, with the lowest being £182 psm and the highest £207 psm.

31. Prior to the Hearing sessions, I had asked the Council to respond to the observation that its appraisal results looked rather close to the proposed CIL rates. There are three factors that appear to provide comfort on this point. First, the Council explained its approach of using the <u>lowest</u> result in each postcode to determine the charging band i.e. many tested scenarios would generate higher results. Second, it set out that its methodology involved quite precise testing with in-built 'buffers' throughout the modelling assumptions (rather than generating a maximum rate and discounting it with a 'buffer'). Third, and perhaps most significantly, its substantial inflation of BLVs in the most recent modelling seems unnecessary and the effect of this is to greatly suppress the modelled achievable CIL rates. There is no transactional evidence to suggest that underlying land values have increased in line with sales values and, locally, land values will still be adjusting to the increased affordable housing requirements and will need to further adjust to the introduction of any CIL regime. For all of these reasons, I consider that the Council's modelling includes a substantial degree of headroom and that the charge does not pose a threat to development viability.

Area B (CIL Charge £120 psm)

32. Area B lies in the northern part of the district, and included the housing sub-market areas of Kings Langley, Abbots Langley and Leavesden. About 20% of planned homes would fall in this area. The modelling results indicated that all schemes would be viable and able to support CIL charges. The five modelled potential CIL rates were, again, in a close range, with the lowest being £122 psm and the highest £144 psm.

33. For the same reasons explained above (paragraph 31) I have no concerns over the proximity of these results to the proposed CIL charge for this area. I do not consider that the charge poses a risk to development in this area.

Area C (CIL Charge £0 psm)

34. This zone covers the South Oxhey area including the strategic regeneration site. About 27% (463 units) of the district's proposed housing is anticipated in this zone, nearly all of it associated with the regeneration site. The modelling showed that CIL could not be supported in addition to the known S.106 burden and the on-site infrastructure costs associated with servicing the site. Only one of the four tested development scenarios generated a positive theoretical CIL value but this was only £17 psm. Development viability is clearly challenging in this area. The £0 psm CIL charge is justified.

Retirement housing development CIL – viability appraisal findings and proposed CIL charges

35. The modified DCS seeks to differentiate 'retirement housing (Use Class C3)' and to apply a district wide CIL charge of £120 psm. The schedule includes a footnote defining such development as *"…housing which is purpose built or converted for sale to elderly people with a package of estate management services and which consists of grouped, self-contained accommodation with communal facilities. These premises often have emergency alarm systems and / or wardens. These properties would not however be subject to significant levels of residential care as would be expected in care homes or extra care premises (C2). For the avoidance of doubt this excludes registered not for profit care homes."* In essence, the Council is seeking to differentiate the development models of a number of established private sector operators that build and sell such specialist Class C3 accommodation.

36. In effect, the Council's proposed £120 charge would amount to a one third discount in Area A (from conventional housing CIL charges of £180 psm), no difference in Zone B (as the conventional CIL rate is also £120) and a 'new' charge in Area C (where conventional housing is zero rated for CIL purposes).

37. I do not doubt that the development economics of such retirement housing schemes are different to conventional housing schemes, and representations were submitted to that effect. However, my difficulty is that the Council's proposals are not supported by its evidence base. The Council has not undertaken viability testing of this type of development. Its testing of older person's accommodation was limited to 'care homes', which would normally fall within a different Planning Use Class and is not a suitable proxy for retirement housing.

38. In the absence of clear evidence, I am unable to judge potential viability impacts on these types of development, although it does seem unlikely that such developments in Area C could support the £120 charge when more conventional housing development is judged to be unable to support any CIL charge. Accordingly, I am recommending that the 'retirement housing' charge be reduced to zero rate. This is not an entirely satisfactory conclusion as it arises solely from the lack of evidence, rather than any certainty that such developments could not support a CIL charge. Indeed, my conclusion on this matter should not be treated as such, and the Council may wish to revisit this issue at a later date by undertaking detailed viability testing on these specific

types of development (perhaps at its first CIL review).

Commercial CIL – viability appraisal evidence and proposed CIL charges

39. EVA-1 and EVA-2 tested a wide range of commercial development types. These included offices, industrial and warehousing, hotels and a range of retail schemes. For the most part, the evidence suggested that commercial developments were not viable, or not sufficiently viable, to support CIL charges. The exceptions related to retail, private care home and hotel developments which displayed positive viability when modelled.

40. For retail developments, EVA-2 assessed a range of potential CIL rates from £84 psm - £170 psm depending on size and operator covenant strength. This was supplemented in the May 2014 Update by some finer grain testing of small shop viability in a series of 'retail hubs' which showed all schemes were viable, although the South Oxhey location only generated a possible £30 psm CIL rate. Although it could be possible to differentiate by scale, there is little such development anticipated, and the Council has opted for a single rate of £60 psm for all retail development types. In the circumstances, this is sensible and avoids unnecessary over-complication of the schedule. However, some new retail development is anticipated as part of the South Oxhey regeneration scheme and clearly the test results suggest that in this location the £60 CIL charge cannot be sustained. The Council advised that, in fact, the scheme would involve a net reduction of retail space so that, although CIL would in theory be payable, the deduction of existing floor space would cancel out any CIL liability. It was agreed with the Council at the Hearing, that a simpler approach, and one more reflective of the evidence, would be to zero rate CIL for retail development in Area C. Accordingly, I have included an appropriate recommended modification.

41. Private care home development was modelled to produce a potential CIL of £165 psm but the Council has not included a CIL charge for these development types in its DCS.

42. Hotel development was modelled to produce a potential CIL of £145 psm. The Council proposes a £120 psm CIL charge. This was challenged by industry representors who considered that the modelling assumptions were flawed and that modelling one specific format of hotel development did not reflect the wide range of operations (with differing development economics). This raises some quite complicated issues that were explored through the Hearing sessions.

43. The Council's substantive evidence is found in the earliest viability study work (EVA-1) and confirmed in the later studies. It assessed that 'owner occupied' hotel developments would generate a potential CIL of up to £145 psm, although 'speculative' hotel developments could not sustain any CIL charge. This distinction is quite an important one, as viability is directly linked to the assumed hotel 'model'. In essence, the Council has modelled a new build 'budget' hotel. This represents the most dynamic part of the sector in the wider market and, nationally, there are a number of established operators with familiar brands. At the EVA-1 stage this was a reasonable assumption, given

that little hotel development was expected across the eight Hertfordshire councils, and that any such development would be most likely to come from the most dynamic sub-sector i.e. new build budget hotels.

44. The modelling assumptions employed by the Council are quite specific to this particular sub-sector. Most notably, they include a low developer profit rate of 6%, on the basis that the commercial return would accrue through operational activities (i.e. running the hotel) rather than through conventional 'developer profit'. The Council has also assumed low cost land (green field). These assumptions were challenged, with views expressed that developer profit and land prices should be higher. Assumed build costs were also contested.

45. My attention was drawn to the approaches of other charging authorities, including three within the Hertfordshire commissioning partnership for EVA-1. Two of these adopted the £120 psm rate, whereas a third adopted a higher profit level in its Stage 2 testing and decided to zero rate CIL for hotel development, as it was shown that otherwise it would be unviable. I undertook each of these examinations and found no flaw with either approach, particularly given the fact that little, if any, such development was anticipated in those areas.

46. However, it is clear that in the Three Rivers district some hotel development is anticipated but it is of a type that is very different to that modelled by the Council in its CIL evidence. The Council has prepared and adopted a Development Brief for 'Langleybury and The Grove' which comprise two former manor houses and their grounds. The Brief's objectives are also included in the recently adopted Sites Allocations LDD (November 2014).

47. The Grove opened as a hotel in 2003 and is branded as a luxury hotel, spa and golf resort. The Council acknowledges its success and that it has become a significant economic asset for the area, contributing to the CS objective of improving economic performance. The Langleybury site is just to the north of The Grove and includes the listed house (currently on the English Heritage 'at risk' register) and a former secondary school. The brief envisages and supports further hotel development on both sites along with other proposals, including the removal of the redundant school.

48. At the Hearing, I listened carefully to different views from representors and the Council, including a degree of debate about employing different modelling assumptions. On balance, I have concluded that the hotel CIL charge should be reduced to a zero rate. There are a number of reasons that lead me to this view. First, unlike other Hertfordshire EVA-1 authorities, Three Rivers <u>does</u> anticipate hotel development which is of a specific type and in a defined location (Langleybury and The Grove). Second, that anticipated development is supported and formalised in an adopted Development Brief and an adopted Sites Allocations LDD and it is also recognised that it will contribute to an important economic role. Third, the development context of those schemes is complex and includes a range of planning objectives (as set out in the Brief). Fourth, the Council has not modelled the type of hotel development anticipated but has modelled a type of hotel development which relies on different assumptions, and seems, perhaps, less likely to occur.

49. Taking all of these factors together, I cannot be certain that the Hotel CIL charge would not threaten the achievement of the planning objectives for

these sites. I conclude that the CIL charge would not serve a positive purpose and should be removed. In any event, the removal of the charge is unlikely to have any significant CIL revenue consequences for the Council. However, the Council may wish to consider whether to revisit this issue, perhaps at its first CIL review, as it may be possible to differentiate different types of hotel development, although this would need to be weighed against anticipated development volumes and the need to avoid undue complication.

Overall Conclusions

50. The evidence demonstrates that, subject to some modifications, the overall development of the area, as set out in the Three Rivers CS and the Sites Allocations LDD, will not be put at risk if the proposed CIL charges are applied. The modifications required relate to the reduction of CIL for retail development to £0 psm in Area C and the reduction of the CIL charges for hotel and retirement housing developments, in all charging areas, to £0 psm.

51. In setting the CIL charges, the Council has used appropriate and available evidence which has informed assumptions about land and development values and likely costs. The CIL proposals are anticipated to achieve an important income stream which will help to address a well evidenced infrastructure funding gap.

52. I conclude that, subject to my recommended modifications, the Three Rivers Draft Community Infrastructure Levy Charging Schedule, as modified by its Statement of Modifications, 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.

LEGAL REQUIREMENTS	
National Policy/Guidance	Subject to recommended modifications, the Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	Subject to recommended modifications, the Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Three Rivers Core Strategy (adopted 2011) and is supported by an adequate financial appraisal.

P.J. Staddon
Examiner

Attached: Appendix A – Recommended Modifications

Appendix A

Modifications that the Examiner specifies so that the Charging Schedule may be approved.

These modifications should be read in conjunction with Examination Document CIL 2 'Modified Draft Charging Schedule – October 2014'.

Modification No.	Modification
EM1	Page 1 – CIL Rates Table Delete row stating *Retail (Use Class A1) - £60* Replace with two rows: *Area A and Area B - Retail (Use Class A1) - £60* *Area C - Retail (Use Class A1) - £0*
EM2	Page 1 – CIL Rates Table *Retirement Housing* (Use Class C3) - Delete "£120" and insert "£0".*
EM3	Page 1 – CIL Rates Table *Hotels (Use Class C1) – Delete "£120" and insert "£0".*