CABINET - 2 APRIL 2014 **PORTFOLIO: PLANNING AND TRANSPORTATION**

B

COMMUNITY INFRASTRUCTURE LEVY – ADOPTION AND IMPLEMENTATION OF CHARGING SCHEDULE

1.0 PURPOSE OF THIS REPORT

1.1 The purpose of the report is to recommend a way forwards on the Community Infrastructure Levy for New Forest District Council following the recent receipt of the Examiner's Report of the Examination. Cabinet is recommended to recommend the Council to approve the Charging Schedule (as amended following the Examination) and to agree that the Charging Schedule will come into effect on 6 April 2015.

2.0 BACKGROUND

2.1 Community Infrastructure Levy (CIL) is the new approach to securing developer contributions through the planning process, largely replacing the current S106 process.

2.2 The Cabinet on 4 April 2012 and the Council on 18 June 2012 approved a CIL draft charging schedule to be submitted for Examination by an Independent Examiner. This was submitted to the Planning Inspectorate alongside the Local Plan Part 2: Sites and Development Management DPD on 18 July 2012. The same Inspector was appointed for both the Local Plan Part 2 and the CIL draft charging schedule Examinations.

2.3 While it is not compulsory for Local Authorities to adopt a CIL Charging Schedule, the CIL Regulations 2010 (as amended) contain reforms which limit the use of S106 planning obligations. The Regulations contained a 'cut-off' date when the limitations came into force of 6 April 2014. However, CIL Amendment Regulations which came into force in February 2014, delay the date limiting the pooling of S106 contributions until 6 April 2015.

3.0 CIL EXAMINATION

3.1 As Members will be aware, during the course of the Examination of the Local Plan Part 2, the Examiner raised some concerns regarding Habitat Mitigation and therefore adjourned the Hearings being held as part of that Examination while further work was carried out by the Council to develop a Habitats Mitigation Strategy. As the Inspector considered that issues relating to Habitat Mitigation were closely linked to how the Council will spend future CIL receipts, the Examination of the CIL charging schedule was also delayed by the Inspector.

3.2 A Hearing session on the CIL charging schedule took place on 16 January 2013. The Examiner invited all parties who participated to a further Hearing session in January 2014. However, no parties thought this was necessary. The Examiner therefore drew his conclusions based on all the written representations received.

3.3 The Examiner's report has recently been received. It is attached at Appendix 1.

3.4 In his Report, the Examiner concluded that the Council has sufficient evidence to support the proposed CIL charge of £80 per sq. m. on residential development. However, the Examiner did not support the proposed CIL charge on retail development. The Council's submitted CIL Charging Schedule had proposed a charge of £200 per sq. m. on large retail development (more than 1,000 sq. m). The Examiner recommends that this charge be reduced to zero.

3.6 This is set out in the Non Technical Summary of the Examiner's report which states:

> "This report concludes that the New Forest Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in respect of residential development. The Council has sufficient evidence to support the charge for such development and the levy is set at a level that will not put the overall development of the area at risk.
>
> However, the proposed charge of £200 for large A1 retail of 1,000 square metres or more has not been justified in terms of the floorspace threshold. As a result, the charging schedule needs to be modified to meet the statutory requirements. The charge of £200 for large A1 retail is deleted and all retail development will have a nil charge."

3.4 Regulation 13 of the 2010 Regulations (under which NFDC's Charging Schedule was considered), allowed for different rates to be set where viability differs by reference to geographic zones, or by reference to different intended uses of development. The Examiner concluded there was insufficient evidence to demonstrate that large superstores/supermarkets constituted a different "use" in New Forest District from smaller shops.

3.5 During the Examination, the Council proposed deleting the size threshold and charging a flat £200 for all supermarkets and proposed a wording similar to that used by Merton Council (which the same Examiner had found to be acceptable). However, the Examiner stated on this point that "to do so would be unfair to parties who might have wanted to make representations on such a charge. Furthermore, the VA *(Viability Assessment)* indicates that a charge on some smaller convenience stores would make them unviable."

3.6 Section 212A of the Localism Act 2011 requires the Charging Authority (The Council) to ensure that they have had regard to the Examiner's recommendations when adopting the Charging Schedule. Accordingly, officers recommend that the Council follows the Examiner's recommendation and deletes the proposed retail superstore rate of £200 for A1 retail over 1,000 sqm. In practice, this is unlikely to result in a major problem, given the very few proposals that we actually receive for major supermarkets/superstores and the continuing ability to request S106 contributions provided we are within the CIL pooling limits.

3.7 The revised Charging Schedule is attached to this report at Appendix 2. This proposes the following charges:

	CIL Charge per sqm
Dwelling Houses (C3):	**£80**
Large A1, (≥1000sqm)	**£0**
Small A1, (< 1000sqm)	**£0**
Industry and offices (B1, B2 and B8):	**£0**
Hotels (C1):	**£0**
Residential Institutions (C2):	**£0**
Any Other uses	**£0**

4.0 THE NEXT STEPS TO INTRODUCE CIL

4.1 Members are asked to approve the Charging Schedule set out in Appendix 2, as recommended by the Examiner in his report.

4.2 Officers recommend that the CIL Charging Schedule should come into effect on 6th April 2015. This is the date on which the restrictions on the use of S106 agreements come into force (unless a CIL Charging Schedule has already been brought into effect at an earlier date, in which case the restriction on pooling S106 contributions would already apply from that earlier date). The reasons for this implementation date are as follows:

- Officers are still in the process of finalising the Mitigation Strategy Supplementary Planning Document. This will have significant implications for the spending of CIL and for the documentation that needs to be in place when CIL comes into effect (as set out in Section 5.0 below). It is therefore recommended not to implement CIL until this strategy is in place and the process for allocating and implementing projects has been agreed.
- The time between adoption and implementation will assist officers in ensuring that the Council has the necessary procedures and processes in place for CIL and that adequate notice of the new levy is given to developers and the public.
- Members' attention is also drawn to the "Financial Implications" as set out in Section 6.0 below.

4.3 The drawbacks on not implementing CIL sooner than 6th April 2015 are set out in Section 7 below.

5.0 USE OF CIL RECEIPTS

5.1 The governance – the allocation and spend of CIL - will be the subject of a separate report to the Council in due course. As part of this separate report a Regulation 123 list will be attached.

5.2 The Regulation 123 list will be a key document and sets out the infrastructure to be funded from CIL, and details where S106 Agreements may still be used (subject to the pooling restrictions).

5.3 As part of the Local Plan Part 2: Sites and Development Management DPD a revised Infrastructure Delivery Plan was submitted alongside a draft Mitigation Strategy SPD. These documents set out priorities for spending developer contributions/CIL and explained that, in order to meet the requirements of the Habitats Regulations, habitat mitigation must be the Council's priority for spending future contributions/CIL.

6.0 FINANCIAL IMPLICATIONS

6.1 It is anticipated that the level of income from CIL will be less than currently received under the S106 regime. It is therefore considered financially prudent to keep the S106 regime in place for as long as is reasonable while the details of implementation of CIL and the related Mitigation Strategy are finalised.

6.2 As highlighted in the 4th January 2012 Cabinet paper on CIL, the receipts collected via CIL will help to fund a significant amount of infrastructure required to mitigate new development within the District. Further funding will be required up to 2026 to fully meet the currently identified priority projects which are wider than just NFDC projects. These will be dependent on further funding programmes becoming available during this time.

6.3 The CIL Regulations require a 'significant proportion' of CIL receipts to be passed to the local neighbourhoods. In the CIL Regulations 2013 this proportion was determined to be 15%, unless the Town/Parish has a neighbourhood plan. If the Town/Parish has a neighbourhood plan in place this percentage rises to 25%. At the time of writing no Town or Parish in the District has a neighbourhood plan in place.

7.0 RISK ASSESSMENT CONSIDERATIONS

Risks

7.1 The scope to achieve funding through the Section 106 process will be very limited after April 2015 (or when CIL is introduced). Without the financial provision of a CIL Charging Schedule, after April 2015 the Council will have increasing difficulties in meeting the infrastructure needs of the Council unless Government policy on the pooling of S106 contributions changes again. Even with CIL, difficult decisions on priorities will need to be made.

Options

7.2 The alternatives are that the Council either does not pursue the introduction of a CIL Charging Schedule or brings it into effect sooner than April 2015. The outcome of the first of these would result in the Council failing to capture a significant funding source for the delivery of infrastructure to support the district's future growth needs, given the limitations that will apply from April 2015 on S106 contributions. The latter alternative is not recommended for the reasons summarised in paragraph 4.2 above.

8.0 CRIME AND DISORDER / EQUALITY AND DIVERSITY/ENVIRONMENTAL IMPLICATIONS

8.1 There are no Crime & Disorder or Equality & Diversity implications arising directly from this report. The receipt of CIL funding should allow the Council to continue, after April 2015, to maintain a high quality environment for its residents .

9.0 COMMENTS OF PLANNING AND TRANSPORTATION PORTFOLIO HOLDER

9.1 The Public Examination into the CIL proposal took place in conjunction with Part 2 of our Plan. Over this period there have been changes in the Government's position on CIL and in particular potential regulations regarding the pooling arrangements for existing S106 monies. Given the degree of uncertainty, I agree that we should delay implementation until 6 April 2015, pending further clarification.

10.0 RECOMMENDATIONS

Cabinet is recommended to recommend to Council that:

i. the Examiner's recommendations are accepted and the Charging Schedule, as attached at Appendix 2, is approved.

ii. the Charging Schedule shall take effect from 6 April 2015, unless further amendments are made to the CIL Regulations, in which case the Council may reconsider this date.

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Background Papers:
These are all available on the Council's Community Infrastructure Levy section of the website:
http://www.newforest.gov.uk/index.cfm?articleid=14186

Appendices
Appendix 1 – CIL Examiners Report
Appendix 2 – CIL Charging Schedule as proposed

The Planning Inspectorate

Report to New Forest District Council

by Simon Emerson BSc DipTP MRTPI

an Examiner appointed by the Council

Date: 13 March 2014

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT NEW FOREST DISTRICT COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 12 July 2012

Examination hearing held 16 January 2013

File Ref: PINS/B1740/429/7

Non Technical Summary

This report concludes that the New Forest Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in respect of residential development. The Council has sufficient evidence to support the charge for such development and the levy is set at a level that will not put the overall development of the area at risk.

However, the proposed charge of £200 for large A1 retail of 1,000 square metres (sm) or more has not been justified in terms of the floorspace threshold. As a result,
the charging schedule needs to be modified to meet the statutory requirements. The charge of £200 for large A1 retail is deleted and all retail development will have a nil charge.

Introduction

1. This report contains my assessment of the New Forest District 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. (As this CIL was submitted for Examination in 2012 the most recent DCLG advice *Community Infrastructure Levy Guidance*, April 2013 is not applicable. The relevant guidance is that published by DCLG in 2010.)

2. To comply with the relevant legislation, the local charging authority has to submit what it considers to be 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 a hearing was held on 16 January 2013, is the submitted schedule of 12 July 2012 which is effectively the same as the document published for public consultation in April 2012.

3. The draft CIL had been submitted alongside the Council's Sites and Development Management Development Plan Document (renamed by the Council *Local Plan Part II*). The Examination of that Plan was suspended during 2013 because of the need for further work on measures to mitigate the potential effects of residential development on various European level nature conservation sites. Because that further work was likely to result in changes to the Infrastructure Delivery Plan (IDP) submitted in support of the draft CIL, I also suspended the Examination of the CIL. Subject to modifications which I am recommending in my report on that Plan, I have found that it can be made sound.

4. The draft CIL proposes a rate of £80 per square metre (psm) for dwelling houses (Use Class C3) and £200 psm for retail (Use Class A1) of 1,000 sm

or more, but a nil charge for any retail below 1,000 sm. On 14 January 2013, the Council indicated that:

> *for the purpose of this charging schedule A1 retail only applies to superstores/supermarkets which are shopping destinations in their own right where weekly food shopping needs are met and which can only include non-food floorspace as part of the overall mix of the unit.*

5. This requested change was confirmed by the Council at the hearing. Accordingly, the Council did not seek to justify the charging schedule as submitted, accepting that the evidence on viability justified a charge only in relation to superstores/supermarkets of 1,000 sq m or more.

Is the charging schedule supported by appropriate available evidence on infrastructure planning?

6. The New Forest Core Strategy (CS) was adopted in October 2009. That Plan sets out the main elements of growth that will need to be supported by further infrastructure. A Draft IDP was published alongside the submission version of the CS (BP34b of the background documents to the submitted Core Strategy). Appendix 1 of that Draft IDP lists a very wide range of infrastructure proposals, but the supporting text acknowledges that: *a significant amount of new investment is proposed which does not directly relate to the needs of new development, but is planned to support existing communities and development* (paragraph 3.1). Many of the transport matters in this IDP are listed as generic/pooled projects such as *walking and cycling measures* (p23), *minor schemes* and implementing the *Ringwood Town Access Plan* (p24) – individual, site specific proposals in these categories are not identified.

7. The submitted CIL is accompanied by an updated IDP, April 2012 (Core Document - EVI02). Appendix A of this IDP lists a large number of infrastructure proposals. It differs from the draft IDP by focussing on specific schemes and covers a much narrower range of types of infrastructure. Most of the listed items are small scale transport proposals (including lengths of new footway, cycle paths and improved bus stops) and new or improved open space. All the projects listed in Appendix A are cross-referenced to a CS policy. Appendix B of this IDP lists additional infrastructure projects which do not have a specific budget or timeframe. The Council does not rely on these projects to justify CIL.

8. A further updated IDP was published in September 2013 (NFDC48 of the Local Plan Examination documents) to support the new habitat mitigation strategy proposed for the Local Plan. Two corrections to projects in Appendix A of the IDP are shown in NFDC52. Appendix A of this IDP now includes a new category of infrastructure, *Habitat Mitigation,* under which is listed the specific projects which flow from the strategy and proposals to be inserted in the Plan. These projects are set out in the draft Supplementary Planning Document (SPD) *Mitigation Strategy for European Sites* September 2013 (NFDC46) and in the Council's pre-hearing statement for the Local Plan Examination (NFDC53, particularly Appendix 3). The IDP states (4.2.3) that a high priority will be given to the allocation of funds to the habitat

mitigation projects. Most of the other projects in Appendix A of the new IDP are highway and other open space projects, similar to the previous version.

9. Many of the transport items in the IDP are very small and many are not close to where sites are allocated in the Plan. However, infrastructure to be supported by CIL does not have to be directly related to a site-specific development as would be the case to justify a S106 contribution. In addition, small scale developments not allocated in the Plan are likely to occur throughout many of the settlements and infrastructure is needed to mitigate the cumulative effect of such developments. Improving walking and cycling and assisting public transport are among the aims of policy CS24. Greater use of non-car modes would slow the growth in traffic and consequential congestion that would otherwise occur. Accordingly, the transport schemes in Appendix A are, in broad terms, sufficiently aligned to accommodating new development to be included in the financial justification for CIL.

10. The IDP provides a summary of the costs of projects in the different categories of infrastructure and of any existing committed funding for them (NFDC48, Table p23). The total cost of the projects listed in Appendix A comes to about £34.5m. Identified funding amounts to about £5m, resulting in a shortfall of nearly £29.5m (Table 1 p22 EVI02). The total cost of projects in Appendix A has increased by about £2.2m compared with the IDP accompanying the submission of the draft CIL. The projects for habitat mitigation total nearly £3.9m, but the overall scale of the infrastructure deficit is similar to the position at submission.

11. At submission, the Council calculated that annual receipts from CIL would amount to about £0.89m each year for the first 6 years. In NFDC53 (25.2-3) the Council estimates that CIL receipts between 2014-2019 would be £3.7m (equating to about £0.74m per year for 5 years). CIL funds would make a material contribution to infrastructure although there would still be a substantial funding gap in relation to all the projects in Appendix A.

12. The infrastructure evidence overall and particularly the need to fund essential habitat mitigation measures justifies the introduction of the CIL.

Has the Council identified a sufficient distinction in retail uses to justify different retail rates?

13. Regulation 13 allows for different rates to be set where viability differs by reference to geographic zones, or by reference to different intended uses of development. Where a charge is proposed on some uses within a Use Class, but not on other uses in that Class, a 2 stage process is necessary to ensure that such a difference is justified. Firstly, a difference in <u>use</u> must be clearly identified and described. Size alone cannot be the reason for charging different rates for development within the same Use Class, although size may be a proxy, reflecting underlying other differences. The Government has recently announced changes to the Regulations which would explicitly allow size/scale to be used in justifying different rates, which further emphasises that under the current Regulations applicable to this Examination, size cannot be the primary factor.

14. In my Post Hearing Note *Preliminary conclusion on retail charge* (21 January 2013, ED3) I made the following 2 points about the lack of evidence in relation to differences in retail uses. Firstly, the VA does not seek to identify any local, specific differences in the nature of the retail uses either side of the 1,000 sm threshold. It is concerned solely with the viability aspect of the issue. There is no evidence submitted in support of the CIL charging schedule which seeks to demonstrate that in the context of New Forest District there is a clear difference in use between superstores and supermarkets of 1,000 sm or more and all other A1 uses of less than 1,000 sm. Secondly, there is no evidence to indicate what is the current range of sizes and types of shops in the New Forest or whether there is a clear difference in the way that larger convenience stores are used in comparison to smaller stores.

15. My preliminary conclusion at that time was that different CIL rates for retail uses had not been justified by appropriate evidence and thus the draft charging schedule in relation to the retail charge did not meet the requirement of Regulation 13. ED3 invited comment on the appropriate response to my preliminary conclusions, but the Council submitted additional evidence to support the 1,000 sm threshold (CILR2). This evidence was drawn from retail studies previously published as background documents supporting the CS and included in the documents list for the Local Plan Part II Examination. CILR2, paragraph 10 states that this background retail evidence, as well as professional local knowledge and the recent history of planning applications for retail development in the district informed the VA's approach to retail archetypes and the chosen threshold.

16. In my Post Hearing Note 3 (ED5) I accepted that it was likely that this evidence had, in some way, informed the approach of the Council in assessing the appropriate charge for retail development. I noted that the explanation of the use of this evidence by the Council in preparing its CIL is largely absent from the VA and it is difficult to relate the sequence of considerations outlined in CILR2 to the process undertaken by the VA. Nevertheless, my preliminary conclusion about the lack of evidence was not subsequently confirmed and it would be unsafe to adhere to it without taking into account CILR2. I therefore provided the opportunity for all those who made representations on the CIL to comment on this evidence. When I resumed the Examination in December 2013 I provided the opportunity for a further hearing on this and related new matters if any party wished to be heard further (ED7). No party considered that a further hearing was necessary. I have taken into account the written responses made in February/March 2013 and January 2014 on this material.

17. A legal submission included in representation DCS16 contends that taking this material into account would be wrong as it was not published or referred to in the supporting documents accompanying the submitted CIL and therefore interested parties were unaware that it was part of the "relevant evidence" referred to in the Regulations on which the Council rely. It would have been far better if the Council had been much clearer at the outset about reliance on this material, but the evidence had been published in support of the Council's development plan prior to the consultation on the charging schedule and is not new evidence post-submission. There has now

been the opportunity to comment on it and I have taken it into account.

18. The Council refers to survey evidence which it contends indicates that 85% of local residents used a large chain national supermarket above the 1,000 sm threshold for their weekly shopping and that the majority of such stores were in New Forest District. Only 6% carried out their weekly shopping in smaller convenience stores. However, the Council did not provide the full evidence of the survey on which it draws it conclusion. (It refers to Appendix F of the New Forest District Town Centre Strategy but this Appendix is not attached to the relevant document accessible from the Core Documents list for the Local Plan Examination - BP12 and Annexes). The only extract provided with CILR2 (Annex A paragraph 4.4) includes the following comment. *In Fordingbridge (Zone 1) and Brockenhurst/Lyndhurst (Zone 4) where there is no large foodstore over 1,500 sq m in the zone, food shopping destinations were more varied.* This suggests that 1,500 sm was regarded by the study as an important threshold, not 1,000 sm.

19. The Council contend that the 1,000 sm threshold was informed by a 2010 survey of the sizes of convenience stores in the District (Table 1, CILR2). This shows that all the convenience stores above 1,000 sm are national chain supermarkets. However, several stores are clustered only just above the threshold (eg stores of 1,100 and 1,200). I do not consider that other factors referred to by the Council, such as the threshold of 1,000 sm for retail assessment of out of centre schemes is particularly useful or relevant in seeking to identify any differences in retail uses.

20. These 2 strands of evidence provide some support for a distinction to be made in terms of use between national chain superstores/supermarkets and smaller convenience stores in the New Forest context. But on the evidence presented, I am not satisfied that 1,000 sm is the threshold at which this difference is most clear cut.

Is the charging schedule supported by appropriate available evidence on economic viability?

21. The Council commissioned a CIL Viability Assessment (VA, Final Report December 2011 EVI03). The VA has been undertaken by experienced consultants in this field. Because the Examination of this CIL has become protracted (because of the suspension of the Local Plan Examination) the report is becoming a little dated. However, in as much as some costs might have increased in the intervening 2 years, it is also likely that residential sales values have increased compared with the evidence relied on in this study. Accordingly, it remains a valid document for the purposes of this Examination.

22. The VA (p56) recommends a zero charge for commercial uses (offices, industrial and warehouses); for hotels; and for care homes, because the evidence indicates that such developments are either not viable or at the margin of viability without CIL. These recommendations are reflected in the nil rates for these uses in the draft charging schedule. Unsurprisingly, there is no significant evidence or criticism to undermine the VA's assumptions and assessment of these land uses and I do not consider them further in

this report. Representations relating to the retail rate focus on the justification for identifying different uses within the retail class and the justification for the chosen threshold.

Residential

23. The VA adopts a residual valuation approach, using reasonable standard assumptions for a range of factors such as building costs, profit, fees etc. The VA used developer's profit at 15%, 17.5% and 20% but the final results and conclusions are drawn on the basis of 20% profit. In the current economic climate this is the most appropriate figure of the 3 and generally reflects profit level assumptions used in other similar studies. I accept that for certain types of development profit levels may need to be higher to reflect risk, but it is impractical for general VA of this kind to reflect all the particular circumstances of specialist developments. The study uses available information to inform its various assumptions. For some data it has sourced information from neighbouring areas in the absence of specific local data. This is reasonable.

24. The assessment of residual land values are based on 7 residential development archetypes assessed for each of the 3 spatial areas of New Forest District used in the CS namely: eastern, southern and western sub-areas. In the Local Plan Part II these areas are termed: Totton and Waterside; The Coastal Towns and Villages; and Ringwood, Fordingbridge, the Avon Valley and Downlands.

25. Of the 7 archetypes, 4 are greenfield sites of different sizes and policy circumstances and 3 are relatively small brownfield sites. The Local Plan Part II does allocate several brownfield sites for residential development such as TOT6, 7, 8, and 9. These are larger than the brownfield archetypes in the VA, but other brownfield sites are likely to arise, not just those in the Plan.

26. The largest brownfield site in the Plan is Eling Wharf, Totton (TOT11) proposed for employment-led, mixed-use redevelopment, including residential. This site has particular viability considerations arising from significant contamination. TOT11 is a bespoke policy to enable a viable redevelopment. Such unusual sites cannot be reflected in a generalised archetype. In my view, the limitations of the scope of the archetypes used do not undermine the general applicability of the VA for the range of most types of development proposed or expected in the Plan area.

27. The archetypes encompass relevant scenarios to cover the different affordable housing requirements set out in the CS. The VA modelling assumes that the policy target for affordable housing applicable to the size of site and location will be provided. If a site is not currently viable, development would only come forward if below target provision of affordable housing is negotiated with the Council. In such circumstances there would be a higher proportion of dwellings having to pay the CIL charge (as affordable units are exempt) and thus the inputs into any viability assessment would be different to those used in the VA model. However, the VA has taken the appropriate approach of assuming that the

requirements of the development plan are fully met.

28. The VA included 2 archetypes (H and J) for sheltered housing schemes with a 40% increase assumed for communal areas compared with conventional flatted schemes (VA p20). There may be other differences in the development costs of a sheltered housing scheme compared with a similar-sized development of flats because, for example, sales are slower and the developer is paying the service charge for unsold flats from when the first occupier moves in. However, I would expect that the more a development includes additional features which distinguish it from a conventional block of flats, the more likely that development is able to attract a premium on sale prices offsetting, to some extent, these additional costs. Extra Care schemes may have even higher costs than sheltered housing. But schemes with particularly high costs are likely to be those of a specialist nature and may well come within Use Class C2 (residential care homes) rather than the Class C3 (dwellings) to which the CIL rate is being applied.

29. Residential sales values vary quite widely across the study area. In broad terms, the eastern area has the lowest values, but there are considerable variations in value within each of the 3 areas. Accordingly, the VA has identified typical high and low sales values for each of the 3 areas to be used in the modelling. The approach and values used are reasonable.

30. As the VA is based on residual values, a critical assumption is the value that landowners want in order to sell their land for development. The VA assumes benchmark land values of £2m per hectare for the eastern area and £2.25m for the southern and western areas (p34). These values are evidence based, but I consider they are likely to be on the high side as, over time, landowner expectations may be moderated to take into account costs, such as the introduction of CIL. For those greenfield sites allocated in the Local Plan for 70% affordable housing and which are being removed from the Green Belt (as an exception to the general policy of restraint) realistic expectations of land value may well be below £2m as there would still be scope for a substantial uplift compared with agricultural values of about £20,000 per hectare.

31. The VA assumes that there would be no residual S106 costs once CIL is introduced. To date, S106 costs have been focused on open space and transport requirements. Most of the projects listed in Appendix A of the IDP at submission related to open space provision or small scale transport projects. These projects are those already used to justify pooled S106 contributions and on which such contributions are to be spent. The VA acknowledges that there may still be some requirements for on-site S106 contributions depending on the circumstances of the site, but does not include a cost for those.

32. I therefore need to consider whether S106 costs would be significant. I deal firstly with general open space provision and then with the implications of the habitat mitigation strategy, as set out in the updated IDP. Policy CS7 sets the public open space standard for all new residential development either through on-site provision or a financial contribution to create or enhance off-site provision and for management. The policy also requires

that on sites of 0.5ha or more, informal public open space should be on-site. Formal play space is to be provided either on-site or off-site depending on the local circumstances and the size of the site.

33. Paragraph 7.10 of the Council's *Context and Rationale Document* (April 2012, EVI01) indicates that where land is required within a development to provide open space it will be expected that the land transfer of such land to the Council will be at no cost to the Council and will not be accepted as a CIL payment in kind. I explored the implications of the Council's approach in Post Hearing Notes (ED3 and ED4). The Council's responses are in CILR3 and 4.

34. Once CIL is introduced, residential sites of less than 0.5ha would have their CS7 open space requirements fully met though the payment of CIL. For sites of 0.5ha or more developers would be expected to provide the on-site open space and pay the CIL charge, without the on-site provision being regarded as a payment in kind. As I indicated in ED4, the Council's intention in this regard does not seem fair or logical. I do not understand why a developer of a site of less than 0.5ha would have all its open space requirement met by paying CIL, whereas a developer of a large site would have to provide space on site (as required by policy) and still pay the full CIL charge. The developers of larger sites would be paying twice for the same type of infrastructure. The fact that on-site provision of informal open space in larger schemes is a policy requirement does not justify this approach, since it is only an element of the overall open space policy standard which the Council accepts smaller schemes will deliver by paying CIL alone.

35. The fact that the VA rightly took into account the physical implications of having to provide open space on larger sites (thus lowering the density applicable on those sites) does not mean that it should not be treated as a payment in kind. Nor does it recognise the full consequences of the Council's approach. On-site provision is still a cost to the developer to create the open space to an acceptable standard and to make the commuted payment for future maintenance.

36. If the Council adheres to its current approach, residential development on sites of over 0.5ha would have S106 costs for open space provision, which have not been included in the modelling. However, because I consider that the Council's stated approach is illogical and inconsistent with its approach to habitat mitigation (see below) it may well have to change as and when CIL is actually implemented and the Council has to make clear in its Regulation 123 statement what is intended to be covered by CIL.

37. The VA was undertaken before the detailed habitat mitigation strategy was devised. The implementation of the strategy for residential developments is explained in the draft SPD (NFDC46) and the key policy requirements are included in the Local Plan. Chapter 7 of the SPD sets out the anticipated funding mechanisms both before and after the commencement of CIL. Larger sites of over 50 dwellings will be required to provide the equivalent of 8 hectares per 1,000 people of suitable alternative natural green space (SANGS) either on or close to the site. Where this requirement is fully met,

such provision will be accepted as payment in kind for CIL (SPD, paragraph 7.18).

38. The overall menu of payments and provision in relation to open space and habitat mitigation with CIL is summarised in the SPD (Table, p70). There would still be a commuted payment for maintenance (£56,000 per hectare). Other than the larger sites where full mitigation is provided by SANGS there would be an additional charge of £500 per dwelling for access management measures (to pay for new wardens, which do not come within the definition of infrastructure). For all residential development, there would be a further charge of £50 per dwelling for monitoring the mitigation strategy.

39. The VA did not factor-in the implications of providing SANGS on site. The policy would allow suitably designed open space provided under policy CS7 to be counted as part of the SANGS provision, resulting in the net additional space to be provided as 6 hectares per 1,000. Clearly, provision on site would reduce the land available for housing and the density that could be achieved. However, the policy also allows SANGS provision close to residential sites which would avoid this loss of development value from the housing site. As I note in my report on the Local Plan, several owners of land allocated for housing own adjoining land which might be able to be used as SANGS.

40. Given all the above, the VA's modelling assumptions are not consistent with the Council's stated intentions regarding: policy CS7 provision; the requirement to provide SANGS (in terms of loss of land for housing); commuted maintenance payments; and the access and monitoring charges. However, there is uncertainty as to how these factors would actually be implemented once CIL is introduced. I do not have the evidence to substitute an alternative assumption regarding S106 costs. I will therefore need to take account of this issue in my assessment of whether residential development in the plan area would be put at significant risk overall.

41. The results of the modelling for residential development are summarised in section 7 of the VA. In broad terms, many of the development scenarios in lower value areas in the eastern area fall below the £2m benchmark value as do some in the higher value parts of this area as well. Some scenarios based on low values in the southern area would also be below this threshold, but most scenarios in the south and west are above £2.25m. What is also clear is that CIL at £80 is not critical to the viability outcome and does not generally change whether or not a development should be considered viable, since a number of scenarios in the east are below £2m without CIL. Where scenarios show residual values above £2m/£2.25m with a £80 CIL charge, a number show considerable headroom above the benchmark and an ability to accommodate a CIL charge of £100 psm.

42. Given the generally favourable outcomes for most scenarios in the south and west and bearing in mind that the £2m/£2.25m benchmark is not an absolute threshold that has to be met, the VA recommends a single charge of £80 psm across the district. In relation to residential development, I consider that the VA provides credible evidence to inform the charging schedule, but there will be some additional costs relating to residual S106

obligations that need to be taken into account.

Retail

43. The general assumptions used in the retail modelling are reasonable whilst recognising that individual schemes may vary widely in costs. It is again assumed that S106 costs are zero because they are likely to vary so much between sites as to make unrealistic any value chosen for such costs. The VA recognises that in assessing viability, allowance has to be made for both CIL and some S106 costs.

44. The VA modelled 6 retail scenarios: large superstore (4,000 sm); small superstore (1,500 sm); small comparison store (500 sm) with both a national and a local occupier; and small convenience store (300 sm) with both a national and a local occupier. The VA concludes (Fig 29, p50) that large and small superstores and small convenience stores with a national occupier could all sustain a CIL charge of £200 psm. A small comparison store with a national occupier could sustain a charge of about £80 psm, but the 2 types of smaller store with local operators could not sustain any charge.

45. The VA suggests 2 alternatives for the retail charge (p59), but on balance recommends a single charge of £200m psm for large foodstores and supermarkets. It suggests a floorspace threshold of 1,000 sm, as smaller convenience stores are typically around 500 sm and smaller supermarkets are typically a minimum of 1,500 sm. It also notes that there may be little new retail floorspace created in the short term. Most change is likely to occur from the occupation of vacant units or redevelopment of existing floorspace, where no CIL would apply.

46. In Post Hearing Note ED3 I indicated that the 6 archetypes used in the VA did not provide sufficient *fine-grain* testing to establish that the threshold of 1,000 sm is appropriate. There is a very wide band of potential sizes of convenience stores either side of the threshold which have not been tested. Such fine-grain testing is referred to in DCLG Guidance (2010, paragraph 25). In ED7, I highlighted this previous conclusion and indicated that there was no reason for me to change it. That remains the case.

47. Accordingly, whilst I consider that the VA provides credible evidence to inform the charging schedule in relation to retail for the specific types and sizes of store that it modelled, there is insufficient evidence to justify on viability grounds alone the threshold of 1,000 sm.

Are the proposed rates justified by the evidence? Would they put the overall development of the area at serious risk?

48. For residential development, the Council has selected the rate recommended in the report of £80 psm. For the following reasons, this rate is justified and would not put at serious risk residential development overall in the area.

49. Firstly, the rate of housing development that has already occurred in New Forest District is well ahead of that required to achieve the target for the CS

period (2006-2026). The VA (p13) refers to development averaging about 354 dwellings for the 4 years 2007-2011 compared with a required annual average rate of 196. The draft SPD (NFDC46, paragraph 7.8) states that of the 4,575 dwellings to be provided during the plan period about half (2,310) have been built. Accordingly, even if the imposition of CIL were to make some potential developments unviable or slow down the rate at which sites came forward then, in the short term at least, there would be no danger of the overall requirements of the CS being undermined. The CIL will need to be reviewed in any case after a few years. The Council also intend to prepare a review of the Local Plan over the next 2 years.

50. Secondly, a CIL at £80 psm is not the critical factor in determining whether different types of residential development are viable. Whether or not a development scenario modelled in the VA is considered viable does not generally change with the introduction of a CIL charge of £80. Many of those developments considered unviable with CIL might well not proceed in the current market even without CIL.

51. Thirdly, in view of the need for affordable housing, the most important element to be achieved by the adoption of the Local Plan Part II is the allocation and subsequent progression of greenfield sites for 70% affordable housing. Because these are special allocations made by taking land out of the Green Belt, it is likely that landowners would be willing to accept less than the £2m/£2.25m per hectare benchmark land value assumed in the VA. Most development scenarios showed a substantial residual land value compared with agricultural land so as to provide an incentive for sites to come forward.

52. Fourthly, many scenarios particularly in the south and west sub-areas were able to accommodate a CIL of £100 psm and still achieve the benchmark values. For such schemes the £80 rate provides some headroom to absorb the additional S106 costs that have not been included in the modelling.

53. Fifthly, although for many schemes, there would be S106 costs not included in the VA modelling, these may not be substantial or make a material difference to viability. The charge of £550 per dwelling for access management and monitoring would not be a significant factor in viability. There may be more substantial S106 costs arising from the provision of open space on site, but the Council may reassess its current view that such provision will not be treated as a payment in kind. The policy approach for SANGS allows for the provision off-site and so not every large housing scheme would have to reduce its density to accommodate SANGS on site.

54. In relation to retail development the VA demonstrates that the proposed CIL charge is unlikely to put at risk the development of large convenience stores. However, I have already concluded that the threshold of 1,000 sm has not been justified.

Conclusions

55. In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and economic viability evidence. 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.

56. The proposed charge of £80 psm for dwelling houses (C3) is justified. The proposed charge of £200 for large A1 retail (amended by the Council to cover only *superstores/supermarkets which are shopping destinations in their own right*) of 1,000 sm or more has not been justified in terms of the floorspace threshold. I consider below how I should amend the schedule.

57. If I could not support the schedule as submitted, the Council suggested in CILR2 that it be amended to apply a charge of £200 psm to all A1 convenience stores. However, I could not make such a recommendation as it would extend the charge to development not previously captured by it. To do so would be unfair to parties who might have wanted to make representations on such a charge. Furthermore, the VA indicates that a charge on some smaller convenience stores would make them unviable. It is not apparent that the Council has re-considered the appropriate balance between raising CIL revenue and the adverse effect on the viability of some smaller convenience stores.

58. If I removed the floorspace threshold the charge would apply to all *superstores/supermarkets which are shopping destinations in their own right.* However, I would be concerned as to the clarity of such a definition particularly in relation to whether smaller supermarkets are captured by it.

59. In ED7, I highlighted the conclusion and recommendation I made following my Examination of the charging schedule for the London Borough of Merton (Report dated 16 October 2013, paragraphs 24 -31). As amended by me, with the agreement of Merton Council, a charge is applied to retail warehouses and superstores, but no other retail types. Superstores are defined as: *shopping destinations in their own right, selling mainly food or food and non-food goods, which must have a dedicated car park*.

60. I was satisfied on the evidence before me in that Examination that such stores are a distinct retail use in Merton. New Forest Council indicates (CILR5) that if I cannot support the schedule as submitted, it would not object to the threshold being removed and the wording used at Merton substituted. However, as highlighted in other representations, the Council has not submitted any relevant evidence to demonstrate that superstores (as defined in the Merton CIL) are a distinct use here. It would be arbitrary to substitute the definition used at Merton into the New Forest schedule.

61. Accordingly, I can recommend only that the charging schedule be amended by the removal of the charge of £200 psm for A1 retail of 1,000 sm or more, so that all retail is treated the same with a nil rate.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.

2008 Planning Act and 2010 Regulations (as amended 2011)	Subject to the recommended modification, the Charging Schedule 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 projects list and is supported by an adequate financial appraisal.

62. I conclude that, subject to the modification set out in the Appendix below, the New Forest District 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 as modified.

Simon Emerson

Examiner

Appendix

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

In the charging schedule delete £200 and substitute £0 as shown below:

Large A1 (1,000 sqm) ~~£200~~ £0

Appendix 2

New Forest District Council Local Development Framework

Community Infrastructure Levy

Draft Charging Schedule

New Forest District outside the National Park

April 2015

Draft Charging Schedule

This Schedule has been issued, approved and published in accordance with Part 11 of the Planning Act 2008 and the Community Infrastructure Regulations 2010 (as amended).

The Charging Authority	The Charging Authority is the New Forest District Council
Date of Approval	This Charging Schedule was approved by New Forest District Council on 14 April 2014
Date of Effect	This Charging Schedule will become effective on 6 April 2015

Scope of CIL

New Forest District Council is a charging authority for the purposes of Part 11 of the Planning Act 2008 and may therefore charge the Community Infrastructure Levy in respect of development within the New Forest (outside the National Park).

CIL will be applicable on the net additional floorspace of all new development apart from those exempt under Part 2 and Part 6 of the Community Infrastructure Levy Regulations 2010 (as amended by the Community Infrastructure Levy Regulations 2011). Those exempt from the charge are as follows:

- Buildings, or extensions to buildings, with less than 100 square metres gross internal floor space;
- Buildings into which people do not normally go, or go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery;
- Affordable housing;
- Buildings owned by charities used for a charitable purpose.

After producing viability evidence for the CIL, NFDC has identified a number of uses for which CIL will be chargeable.

The amount to be charged for each development will be calculated in accordance with Regulation 40 of the Community Infrastructure Levy Regulations 2010.

$$\frac{R \times A \times I_P}{I_C}$$

Where:
A = the deemed net area chargeable at rate R;
I_P = the index figure for the year in which planning permission was granted; and
I_C = the index figure for the year in which the charging schedule containing rate R took effect

For the purposes of the formulae in paragraph 5 of Regulation 40, the relevant rate (R) is the Rate for each land use shown in the table below.

The Council will charge the Community Infrastructure Levy at the following rates (expressed as pounds per square metre):

	CIL Charge per sqm
Dwelling Houses (C3):	**£80**
Retail (A1):	**£0**
Industry and offices (B1, B2 and B8):	**£0**
Hotels (C1):	**£0**
Residential Institutions (C2):	**£0**
Any Other uses	**£0**

Table 1 Council CIL charge

This Charging Schedule should be read alongside the Council's Community Infrastructure levy Draft Charging Schedule Context and Rationale Document April 2012. This is available to view on the Council's website.

Please contact the Council's Policy and Plans Team on 023 8028 5345 for further information.