



The Planning Inspectorate

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# **Report to Malvern Hills District Council, Worcester City Council and Wychavon District Council**

**by Roger Clews BA MSc DipEd DipTP MRTPI**

**an Examiner appointed by the Councils**

**Date: 27 January 2017**

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Planning Act 2008 (as amended)

Section 212(2)

## **Report on the Examination of the Community Infrastructure Levy Draft Charging Schedules for Malvern Hills District Council, Worcester City Council and Wychavon District Council**

Draft Charging Schedules submitted for examination on 26 July 2016

Examination hearing held on 29 November 2016

File Ref: PINS/H1840/429/2

## Non-technical summary

This report concludes that, subject to modifications, the Community Infrastructure Levy Charging Schedules for Malvern Hills, Worcester City and Wychavon provide an appropriate basis for the collection of the levy in each Council's area. The Councils have sufficient evidence to support the schedules and can show that the levy is set at a level that will not put the overall development of the area at risk.

The modifications to the Draft Charging Schedules that are needed to meet the statutory requirements can be summarised as follows:

- Modifications to Tables 1 and 2 and the accompanying Glossary to remove ambiguities and ensure that it is clear which rate is meant to apply to each category of development;
- Application of a zero rate to site SWDP 51/1 and to extra-care / sheltered accommodation; and
- Replacement of the maps originally published as part of the Draft Charging Schedules with a corrected set of maps.

The modifications, which are recommended by the examiner, are based on matters discussed during the public hearing and do not substantially alter the basis of the Councils' overall approach or the appropriate balance achieved.

## Introduction

1. This report contains my assessment of the Community Infrastructure Levy [CIL] Charging Schedules for Malvern Hills District Council, Worcester City Council and Wychavon District Council as required by Section 212 of the Planning Act 2008. It considers whether the schedules are legally-compliant and whether they are economically viable as well as reasonable, realistic and consistent with national guidance.
2. The three Councils, known collectively as the South Worcestershire Councils [the Councils], adopted the joint South Worcestershire Development Plan [SWDP] in February 2016. They also worked jointly to prepare the draft CIL charging schedules [DCS] which were published for consultation in April 2016 under Regulation 16 of *The Community Infrastructure Levy Regulations 2010*, as amended [the 2010 Regulations].
3. Following that consultation, and in accordance with Regulation 19, the SWCs modified the DCS by means of Statements of Modifications [SoM] published in July 2016, and carried out consultation on the SoM. The basis for my examination is the DCS as modified by the SoM. For the avoidance of doubt I shall refer to this as "the modified DCS".
4. To comply with the relevant legislation, the local charging authorities have to set CIL rates in a charging schedule which strike an appropriate balance between, on the one hand, the desirability of funding from CIL for infrastructure required to support the development of their areas and, on the

other, the potential effects of the imposition of CIL on the economic viability of development across their areas.

5. In the modified DCS the Councils propose charges of £40 per square metre [£40/sqm] for residential development in Malvern Hills and Wychavon, outside the defined main urban areas and excluding a number of identified strategic sites. The same charge would apply to residential development on the strategic site at Cheltenham Road, Evesham, allocated in the SWDP as site SWDP 51/1. Within the main urban areas of Malvern Hills and Wychavon, in the whole of the Worcester City Council area and on all the strategic sites identified in the SWDP apart from SWDP 51/1, residential development would attract a zero charge.
6. The modified DCS also proposes CIL charges of £100/sqm for student accommodation, £60/sqm for food retail (supermarket) development and £60/sqm for retail warehouse development. No charge is proposed for any other category of development.
7. It is not unambiguously clear from the modified DCS that the rates for the strategic sites set out in Table 2 apply to residential development only, and that the charges for student accommodation, supermarket and retail warehouse development are intended to apply across the whole of the three Councils' areas. The Councils clarified that this is their intention in document CIL/EX/09. **Modifications 1, 2(a)&(b) and 3(a)** are required to ensure that this is made entirely clear, while **Modifications 3(b),(e)&(f)** are necessary to ensure consistency between Tables 1 and 2.
8. Where differential rates are set for different zones the 2010 Regulations require that a map identifying the location and boundaries of the zones should form part of the charging schedules. The maps published as part of the modified DCS failed to show Ordnance Survey lines and reference numbers as the Regulations require, and contained a number of anomalies and inconsistencies in the way that the boundaries of certain zones were shown. A set of revised maps has now been prepared that shows all those elements correctly. **Modification 5** is necessary to ensure that these corrected maps form part of the charging schedules.
9. Other material published alongside the modified DCS, including the Councils' instalments policy, their approach to exemptions and relief and their proposed Regulation 123 list, does not lie within the scope of my examination. It is for the Councils to consider the representations that were made on this material.
10. For the same reason, it would not be appropriate for me to make any recommendation on the way that Wychavon District Council should allocate any CIL revenue that may arise in future from development of the land outside Tewkesbury known as "the Mitton land". It is a matter that would need to be resolved by Wychavon and any other local authority or authorities concerned. The Mitton land is not currently allocated for development in any development plan.

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

### *Infrastructure planning evidence*

11. The SWDP sets out the main elements of growth in the plan area that will need to be supported by infrastructure provision in the period to 2030. Further information on infrastructure needs is set out in the *South Worcestershire Infrastructure Delivery Plan*, the latest version of which was published in July 2016. In examination document CIL/EX/02 the Councils provided further, updated evidence on necessary infrastructure costs and other sources of funding.
12. The key categories of infrastructure to which the Councils propose to direct CIL revenue are transport, education, and sport and recreation. Projected expenditure on these categories amounts to a total of some £399.4 million across the three Council areas. I am satisfied that the evidence shows that figure to be based on sound sources.
13. That figure includes infrastructure costs to support residential development on the strategic sites allocated in the SWDP and identified in the modified DCS. A significant proportion of those costs are expected to be met by the site promoters. The effect of this on development viability is considered further below.
14. Of the total requirement of £399.4 million, other funding obtained or identified for the key items of infrastructure amounts to some £191.9 million, leaving a key infrastructure funding gap of around £205.45 million. The Councils estimate that some £5.8 million would be raised through CIL in the period to 2030. That would make a small but appreciable contribution to filling the infrastructure funding gap. The figures therefore demonstrate the need to levy CIL.

### *Economic viability evidence*

15. The Councils commissioned a series of viability studies to support both the emerging SWDP and the emerging DCS, the most recent of which is the *CIL Viability Update* of January 2016 [document SD4]. The assessments followed a structured methodology, based on the Local Housing Delivery Group's 2012 report *Viability Testing Local Plans* (also known as "the Harman report"). This involves deriving a residual value for a development site by subtracting all the costs of development, including developer's profit, from the gross development value [GDV]. The residual value is then compared with a viability threshold in order to determine whether or not, at a given rate of CIL, the sale of the site would provide a competitive return to a willing landowner.
16. Assessments were carried out for 16 residential development types, ranging from an individual house to a development of 300 dwellings, on urban and rural and on brownfield and greenfield sites, together with separate assessments for extra-care / sheltered housing and student housing, larger and smaller supermarkets, and retail warehouses. Bespoke assessments were also undertaken for each of the strategic urban extension sites identified in the SWDP. Taken as a whole, I consider that the assessments are representative

of the types of chargeable development that are likely to come forward in south Worcestershire during the SWDP period.

17. GDV for residential development was derived from a range of sources on market housing values, including Land Registry "price paid" data for 2014-15, an October 2015 survey of asking prices, and various secondary data. To reflect reductions in rent levels announced in the 2015 Summer Budget, in document SD4 the assumed income from social and affordable rents was reduced, and capitalisation rates were increased, compared with the rates used in earlier studies. Values for extra-care / sheltered housing were derived from representations made by the Retirement Housing Group, and for student accommodation from information held by the University of Worcester. Supermarket and retail warehouse values were based on discussions with agents and professionals involved in the market.
18. Construction costs for each category of development were based on November 2015 Building Cost Information Service [BCIS] data, with adjustments made to reflect the higher per-unit costs involved in small residential schemes. A further adjustment of 5% over BCIS rates was made for brownfield development, where additional development costs including demolition and/or land reinstatement are likely to apply generally. However, no allowance was made for abnormal costs on greenfield sites. That is an appropriate approach in view of the advice at NPPF paragraph 174 that viability should be assessed on the basis of the normal cost of development and mitigation. It is reasonable to expect that any abnormal costs arising on individual greenfield sites (or indeed on brownfield sites where additional costs exceed the 5% adjustment factor) will be reflected in a lower sale value for the land.
19. Viability thresholds were calculated by taking existing land values (set at £25,000 per hectare (/ha) for agricultural land, £50,000/ha for paddock land, £350,000/ha for industrial land and £1 million/ha for residential land) and adding a 20% uplift as an incentive for the landowner to release the land for development. For greenfield and paddock land, an additional £300,000/ha was added to reflect the substantial premium that such sites generally attract.
20. Subject to my specific findings below, overall the methodology employed in the series of viability studies is logical and consistent and provides an appropriate basis for deriving the CIL charges. Criticisms of particular assumptions made in the assessments of some development types are considered in the following section.

### **Are the charging rates informed by and consistent with the evidence?**

#### *The proposed CIL rates for residential development*

21. As noted above, a significant proportion of the infrastructure costs to support residential development on the strategic sites allocated in the SWDP are expected to be met by the site promoters. For this reason, residential development at each of the strategic sites would not be viable if a CIL charge were made. This is demonstrated by the document SD4 viability assessments together with a May 2016 update to them. The update was carried out to take account of errors in the site areas used in the original modelling for some of the sites (see document CIL/EX/08).

22. On the basis of the evidence in document SD4, the DCS published in April 2016 correctly set the CIL rate at zero for all the strategic sites except two: the QinetiQ site in Malvern (SWDP 53) and the site at Cheltenham Road, Evesham (SWDP 51/1). The July 2016 SoM then proposed to amend the residential CIL rate for site SWDP 53 from £40/sqm to zero, reflecting the findings of the May 2016 update to document SD4. Unfortunately, however, the SoM incorrectly referred to Table 1 as the location of the rate that needs to be changed. It should refer to Table 2. To ensure that there is no possible room for doubt on this matter, it is necessary for me to recommend **Modification 3(d)** to confirm that the change should indeed be made.
23. Despite the evidence in the May 2016 update to document SD4 that residential development at strategic site SWDP 51/1 could not viably bear a CIL charge, the modified DCS retains a £40/sqm charge for the site. It is therefore necessary to amend the modified DCS so that a zero rate also applies there (**Modification 3(c)**). With these two modifications, a zero charge will apply to residential development on all the strategic sites, in line with the evidence.
24. The evidence also demonstrates that residential development on brownfield sites generally would not be viable if CIL were charged, and that the vast majority of brownfield development will take place in the main urban areas. For these reasons the residential CIL rate of £40/sqm applies only to development outside the main urban areas of Droitwich, Evesham, Malvern, Pershore, Tenbury Wells, Upton-upon-Severn and Worcester, and outside the strategic sites.
25. While part of the site at Abbey Road, Evesham [SWDP 50/7] is previously-developed, most of it constitutes greenfield land and indeed was in agricultural use at the time of my site visit. Its location very close to the centre of Evesham results from its historic association with the abbey and does not alter its primarily greenfield character. If there are abnormal development costs it may be appropriate for these to be reflected in the land value, but they have no bearing on its status as a greenfield site. I therefore find no grounds for including the site within the Evesham main urban area.
26. Criticisms were made of some of the assumptions used in the document SD4 assessment of the viability of the 200-dwelling "Greenfield 2" residential development type in Wychavon. Few actual sales figures for sites of this size are available for comparison, but the figures that are available tend to indicate that in this case the viability threshold of £330,000/ha may be rather low. But even if the alternative threshold of £432,000/ha put forward by a representor is adopted, the residual value of over £700,000/ha found in the document SD4 assessment still exceeds that threshold by a big margin.
27. When the sales value for market housing in Wychavon used in the document SD4 assessment was set, in the light of rising house prices it would not have been appropriate to rely solely on average sales figures from Land Registry figures, some of which predate the assessment by a year or more. Nor would it be appropriate, in arriving at a figure for Wychavon district as a whole, to take account only of asking prices for Evesham that were current at the time of the assessment, when the evidence tends to show that prices in other parts of the district are somewhat higher.

28. Thus, while it may be that the figure of £2,890/sqm used in the assessment is rather too high, the figure of £2,387/sqm recommended by a representor would be too low, even after allowing for a 5% discount on actual asking prices. Given the substantial margin between the residual value of the Wychavon "Greenfield 2" development type and even the alternative viability threshold proposed by the representor, I see no reason to consider that using a more realistic sales value would render development on this scale unviable.
29. The document SD4 assessments were based on sales values and build cost figures that were current at the time of the assessment. That is a consistent approach that accords with advice in the Harman report. It would be inappropriate to use build cost figures for a later date without also factoring in any uplift in sales values over the same period. Criticisms were made of certain other cost assumptions, but in my view there are no discrepancies that are so substantial as to have any significant impact on viability.
30. No substantial evidence was submitted to put other aspects of the residential development viability assessments into question. They demonstrate that most residential development in Malvern Hills and Wychavon districts, outside the main urban areas and strategic sites, would remain viable at the proposed CIL rate of £40/sqm.

*The proposed CIL rate for extra-care / sheltered housing*

31. The modified DCS and its accompanying Glossary has no separate category for extra-care / sheltered housing falling within Use Class C3. That would seem to imply that such housing is subject to the standard residential CIL rates. But the assessment in document SD4 demonstrates that extra-care / sheltered housing is generally unable to bear CIL. It is therefore necessary to amend the definition of residential development in the Glossary to make it clear that it excludes extra-care / sheltered housing, and to include a definition of the latter (**Modification 4(a)&(c)**). That will ensure that this type of housing falls into the "All Other Uses" category and thereby attracts no CIL charge.

*The proposed CIL rate for student accommodation*

32. Document SD4 assesses the viability of the proposed CIL rate for student accommodation using assumptions for rents, number of units in a block, room sizes, and communal space and facilities that are typical of commercial student residence developments. Those assumptions do not reflect the quality of the student accommodation that is commissioned for its students by the University of Worcester's wholly owned trading subsidiary, UW Developments Ltd, which returns any profits it makes to the University. But as the University is a charitable institution, any student accommodation provided by it or directly on its behalf will be exempt from paying CIL in any case. The evidence demonstrates that the kind of student accommodation typically built by other providers would be viable across the south Worcestershire area at the proposed CIL rate of £100/sqm.

*The proposed CIL rate for retail development*

33. The proposed rate of £60/sqm for supermarket and retail warehouse development is reduced from the £100/sqm rate proposed in the Preliminary

DCS. The reduction reflects updated viability evidence in document SD4, incorporating an allowance for S106 contributions in response to comments from industry representatives. At the proposed £60/sqm rate, the assessments show that the residual value of sites for smaller supermarkets and retail warehouses on greenfield sites would achieve a very substantial margin above the viability threshold. Even if the GDV assumptions used in the assessments are somewhat optimistic, as one representor suggests, the margin is more than sufficient to take account of this.

34. On the other hand, larger supermarkets on greenfield sites and all types of retail development on brownfield sites fall a long way short of achieving the viability threshold, according to the assessments in document SD4. Having said that, however, only limited food retail development is expected in south Worcestershire in the foreseeable future – the SWDP anticipates that only about 3,500sqm (excluding commitments) will come forward in the period to 2030, most of which will be on greenfield land at the urban extensions around Worcester. The likelihood is that these will be smaller-format stores catering to residents of the urban extensions.
35. While a great deal more comparison retail floorspace is expected to come forward during the SWDP period, the Councils' intention is that the vast majority of this will be built in Worcester city centre. Consequently a substantial increase in retail warehouse development, which tends to be built in edge-of-centre or out-of-centre locations, appears unlikely. Moreover, any development on brownfield land would only incur CIL on any net increase in usable floorspace, thereby substantially reducing its potential liability to CIL given that many brownfield sites contain existing buildings.
36. Because the modified DCS makes it clear that the retail CIL rates apply only to supermarkets and retail warehouses, I see no need for a minimum floorspace threshold to be set for retail development, below which CIL would not be charged. It is sufficiently clear that CIL will not apply to smaller shops that do not fall into either of these categories. However, the definition of supermarkets given in the Glossary needs to be amended to ensure that it only includes retail outlets that would generally be recognised as supermarkets (**Modification 4(b)**). With that amended definition in place, I am satisfied that a representative range of floorspace areas for supermarket developments has been assessed in document SD4.
37. Taking all these points into account, I find that the proposed CIL rates for supermarkets and retail warehouses would not pose a significant threat to retail development in south Worcestershire as a whole, or to the sequential approach to the location of retail development advocated in national policy.

#### *Other types of development*

38. The modified DCS sets a zero CIL rate for all other types of development, on the basis that they would not be viable if a CIL charge were applied. I am satisfied that this position is supported by the available evidence.



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

39. The Councils' proposals to set CIL rates on the basis described in paragraphs 5 and 6 above are based on reasonable assumptions about development values and likely costs. The evidence indicates that most residential, student accommodation, supermarket and retail warehouse development will remain viable across the south Worcestershire area if these charges are applied. The exceptions to this are the proposed £40/sqm charge for strategic site SWDP 51/1 and the implied application of residential charges to extra-care / sheltered housing in Use Class C3. The evidence shows that these developments could not support any CIL charge and so modifications are recommended to apply a zero rate to them.

**Overall conclusions**

40. In setting the CIL charging rates the Councils have had regard to detailed evidence on infrastructure planning and the property market in south Worcestershire, and have carried out robust viability appraisals based on sound assumptions. They have reviewed the evidence where necessary to ensure that there will be no serious risk to the viability of development. Subject to the modifications which I am recommending, the Councils' approach is realistic in achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that development remains generally viable across the south Worcestershire area.

<b>LEGAL REQUIREMENTS</b>	
National guidance	Subject to the recommended modifications, the Charging Schedules comply with national guidance.
2008 Act and 2010 Regulations (as amended)	Subject to the recommended modifications, the Charging Schedules comply with the 2008 Act and the 2010 Regulations, including in respect of the statutory processes, public consultation and consistency with the adopted South Worcestershire Development Plan and Infrastructure Delivery Plan, and they are supported by an adequate financial appraisal.

41. I conclude that, subject to the modifications set out in Appendix A, the Community Infrastructure Levy Charging Schedules for Malvern Hills, Worcester City and Wychavon satisfy the requirements of Section 212 of the 2008 Act and meet the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedules be approved.

*Roger Clews*

Examiner

## Appendix A

### **Modifications specified by the examiner so that the Charging Schedules may be approved**

*These modifications apply to the Draft Charging Schedules (SWCIL 01) as modified by the Statements of Modifications (SWCIL 04 & 05).*

#### **Modification 1**

Delete the whole of existing paragraph 8.2 and replace it with the following:

"8.2 The rates by reference to which CIL will be charged are set out in Tables 1 and 2 below."

#### **Modification 2**

Make the following changes to Table 1:

(a) Delete the whole of the title of Table 1 and replace it with:

"Table 1 – CIL Rates (£/m<sup>2</sup>) for each Charging Authority"

(b) In Table 1, column 1, line 3, after the words "Residential – all other Areas" insert the words "except for the Strategic Sites listed in Table 2"

#### **Modification 3**

Make the following changes to Table 2:

(a) Delete the whole of the title of Table 2 and replace it with:

"Table 2 – Residential CIL Rates (£/m<sup>2</sup>) for Strategic Sites"

(b) In Table 2, column 2, line 1, delete the word "Proposed"

(c) In Table 2, column 2, line 9, delete "£40m<sup>2</sup>" and replace with "£0" (so that the rate for SWDP 51/1 is set at zero)

(d) In Table 2, column 2, line 11, delete "£40m<sup>2</sup>" and replace with "£0" (so that the rate for SWDP 53 is set at zero)

(e) In Table 2, column 2, lines 2 to 8, 10 and 12, delete "m<sup>2</sup>" (so that all entries in this column read "£0")

(f) Delete the whole of Table 2, column 4 (the "Comments" column)

#### **Modification 4**

Make the following changes to the Glossary (Appendix D):

(a) At the end of the definition of "Residential", add the words "but excludes Extra Care / Sheltered Accommodation (see separate definition below)"

- (b) Delete the whole of the existing definition of "Food Retail (Supermarkets)" and replace it with the following:

"A supermarket is a retail shop selling food and household items on a self-service basis with the products usually, but not necessarily, arranged in aisles. It may also, but not necessarily, include a range of comparison goods in the overall retail mix. Customers may use a supermarket for their main weekly shop."

- (c) At the end of the Glossary, insert a new definition as follows:

**"Extra Care / Sheltered Accommodation**

Extra Care / Sheltered Accommodation consists of self-contained homes for older people, with access to on-site care and/or other on-site facilities."

**Modification 5**

Delete the map which forms Appendix B and replace it with the following maps (reference numbers are taken from the examination document list):

CIL/EX/09a	South Worcestershire Area Map
CIL/EX/09h	Community Infrastructure Levy Residential – Main Urban Area Worcester City
CIL/EX/15a	Revised - Community Infrastructure Levy Residential – Main Urban Area Wychavon District – Droitwich Spa
CIL/EX/15b	Revised - Community Infrastructure Levy Residential – Main Urban Area Wychavon District – Evesham
CIL/EX/15c	Revised - Community Infrastructure Levy Residential – Main Urban Area Malvern Hills District – Malvern
CIL/EX/15d	Revised - Community Infrastructure Levy Residential – Main Urban Area Wychavon District – Pershore
CIL/EX/15e	Revised - Community Infrastructure Levy Residential – Main Urban Area Malvern Hills District – Tenbury Wells
CIL/EX/15f	Revised - Community Infrastructure Levy Residential – Main Urban Area Malvern Hills District – Upton-upon-Severn