

**Agenda Item No:** 9.4 **Report No:** 119/15

**Report Title:** Adoption of the Community Infrastructure Levy (CIL) – Charging Schedule

**Report To:** Cabinet **Date:** 24<sup>th</sup>September 2015

**Cabinet Member:** Cllr Tom Jones – Lead Member for Strategy and Development

**Ward(s) Affected:** All areas of the District not lying within the South Downs National Park boundary

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**Purpose of Report:** To seek an endorsement from Cabinet to recommend to Full Council the adoption and implementation of the Community Infrastructure Levy (CIL) Charging Schedule for Lewes District Council Charging Area.

**Officers Recommendation(s):**

- 1 To approve the CIL Charging Schedule (Appendix 1) in line with the recommendation of the Examiner’s Final Report and recommend to Full Council it is adopted to come into force from 1<sup>st</sup> December 2015.
- 2 To approve and recommend to Full Council for publication the Regulation 123 List (Appendix 2), Instalments Policy and Infrastructure Payments Policy (Appendix 3) that support the implementation of the Community Infrastructure Levy.
- 3 To note the withdrawal, from 1<sup>st</sup> December 2015, of the Supplementary Planning Guidance (SPG) “*The Provision of Outdoor Playing Space as Part of New Residential Development*” – approved by Cabinet on 30<sup>th</sup> January 2002.
- 4 To note the withdrawal, from 1<sup>st</sup> December 2015, of the Lewes District Council Schedule of Developer Contributions 2014/2015.

**Reasons for Recommendations**

- 1 It is a legal requirement, set out in the CIL Regulations 2010 (as amended) to refer the decision relating to the adoption of a CIL Charging Schedule to Full Council.

- 2 The adoption of a CIL Charging Schedule will allow the Council to secure funding to help deliver the level of infrastructure necessary to support development, in light of the recent change to the S106 mechanism:
  - Since the 6<sup>th</sup> April 2015 the Council has been unable to pool more than 5 contributions (from agreements entered into since 6<sup>th</sup> April 2010) from new development to fund infrastructure projects. This has made it difficult to use S106 to secure appropriate funding.
- 3 The Playing Space SPG and the Schedule of Developer Contributions should be considered as effectively redundant from 1<sup>st</sup> December 2015 when CIL is implemented as the full restrictions over the use of S106 agreements contained within the CIL Regulations 2010 (as amended) come into force once CIL is operational. Once the CIL Charging Schedule takes effect, the Council cannot seek planning obligations towards infrastructure projects or types of infrastructure listed on the Regulation 123 List.

## Report

### 1 Background

- 1.1 The Community Infrastructure Levy (CIL) is a mechanism, introduced by Government in 2010, to allow local planning authorities to raise funds from some forms of development in order to pay for the infrastructure that is, or will be, needed as a result of that new development.
- 1.2 The levy is applied on a £'s per square metre basis. It replaces the existing tariff-based approach for collecting planning infrastructure contributions<sup>1</sup>. From April 2015, CIL will be the only significant means by which local authorities will be able to collect and 'pool' developer contributions to deliver infrastructure improvements<sup>2</sup>. Alongside CIL, S106 obligations will still exist, but generally as one-off agreements to mitigate the impacts of larger developments and to secure on-site developer requirements, such as the provision of affordable housing.
- 1.3 CIL has a number of significant advantages over the current system of Section 106 agreements, including:
  - Payment is non-negotiable, which helps speed up the planning process
  - The CIL charge is transparent and predictable, meaning that applicants will know their CIL liability prior to submitting a planning application
  - All liable developments will contribute to the cost of infrastructure provision, not just large scale development
- 1.4 The money raised from CIL will be used to pay for infrastructure to support development, ensuring that new development bears a proportion of the cost of delivering the new infrastructure required. CIL can be spent on any community infrastructure required to support growth, provided the infrastructure is

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<sup>1</sup> Affordable housing will continue to be collected separately through Section 106 provisions

<sup>2</sup> It will still be legally possible to pool up to 5 S106 agreements for any 1 item of infrastructure

contained within the Council's published Regulation 123 list. The Regulation 123 list (Appendix 2) is provided alongside the Council's CIL Charging Schedule.

- 1.5 It is estimated that total CIL receipts for Lewes District Council for CIL liable planned residential development up to 2030 is in the region of £17m. CIL is just one funding stream that can be used in conjunction with others to fund infrastructure projects.
- 1.6 The Lewes District Council CIL Charging Schedule only applies to the areas outside of the South Downs National Park. The National Park Authority is in the process of introducing its own CIL Charging Schedule, which is due for implementation in 2016.

## **2 The Charging Schedule**

- 2.1 The Council submitted its Draft Charging Schedule to the Planning Inspectorate for independent examination on 16<sup>th</sup> September 2014. The examination was held on 14<sup>th</sup> April 2015 and we received the Examiner's Final Report (Appendix 4) on 17<sup>th</sup> July 2015.
- 2.2 The Examiner's report concludes that the Lewes District Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. The Council has sufficient evidence to support the schedule and can show that the levy is set at levels that will not put the overall development of the area at risk. The Examiner recommends that the schedule should be approved in its published form, without changes.
- 2.3 The Charging Schedule identifies the types of development that will be liable for a CIL charge and the relevant charge (£) per sq m. floor space of development. It is supported by a comprehensive evidence base, which includes a detailed viability assessment. The viability assessment examines the levels of CIL that can be achieved without affecting the overall viability of development identified in the Core Strategy. Only development types shown to be viable have been charged CIL, therefore the charges are fully justified by the evidence.
- 2.4 The Charging Schedule is also supported by an up to date Infrastructure Delivery Plan and a Funding Gap Analysis document, to demonstrate that there is a funding deficit between the total cost of required infrastructure and the infrastructure already agreed for delivery and to be financed by the Council, external partners and agencies. The funding gap analysis justifies the position of the Council to move forward with CIL as an appropriate tool for collecting developer contributions.

## **3 The CIL Charges and Implementation Policies**

- 3.1 The Charging Schedule (Appendix 1) outlines that only dwellings (C3 Use Class) and retail (A1-A5 Planning Use Class) are liable for a CIL charge at the following rates:

Development Type		CIL charge (£/m <sup>2</sup> )
Residential	Low Zone (South of SDNP, i.e. the coastal towns)	£90
	High Zone (North of SDNP)	£150
Residential Institution		£0
Industrial		£0
Office		£0
Retail		£100
Hotel		£0
Standard Charge <sup>3</sup>		£0

- 3.2 **Phasing** - We consider that if a planning application is large enough to be delivered through appropriate phases, then CIL payments should be linked to these phases to ensure that development remains viable overall. We will negotiate relevant phasing on large scale applications during the determination of the planning application. Set phases and their relevant land use descriptions will need to be confirmed in an accompanying Section 106 agreement and these phasing stages will be linked to CIL liability. Therefore, the CIL charge will be calculated at each phase of the development, and will be liable for payment on commencement of each relevant phase.
- 3.3 **Instalments** – The Charging Schedule is accompanied by an Instalments Policy (Appendix 3), which was widely consulted upon as part of the Draft Charging Schedule Consultation. The Instalments Policy would be applicable at each phase of a development that is large enough to be delivered through appropriate phases.
- 3.4 **Infrastructure Payments** – The Infrastructure Payments Policy (Appendix 3) accompanying the Schedule, provides the mechanism for receiving infrastructure payments in lieu of CIL payments for children’s formal and casual play space on strategic and other sizeable sites.
- 3.5 No other discretionary CIL administration policies are proposed at this time; such policies as those identified above and, for example, exceptional circumstances relief or discretionary charitable relief policies may be introduced and revoked at any time (subject to meeting relevant requirements on publication periods prior to commencement). Therefore we will keep under review and consider the discretionary implementation policies and make recommendations to Council where such arrangements should be amended.

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<sup>3</sup> The Standard Charge applies to all other types of chargeable development not otherwise specified in the Table. These types of development may be liable for on-site improvements through S106 or S278 off-site highway improvements, even though the Standard Charge for CIL is proposed to be zero.

## **4 Adoption of the Charging Schedule**

- 4.1 The Charging Schedule was examined using up to date evidence provided by the Council, some of which had been prepared specifically for the purposes of CIL and some which had been generated in the production of the Core Strategy and which is directly relevant to the preparation of the Charging Schedule. The Examiner in paragraph 12 of his report states that “*the evidence used to inform the Charging Schedule is robust, proportionate and appropriate*”. In paragraph 21 the Examiner concludes that the two local levy rates for new housing are “*justified by the available evidence and strike an appropriate balance between helping to fund new infrastructure and their effect on the economic viability of residential development across the area*”. These conclusions demonstrate that we, as the Charging Authority, have met the requirements of the relevant legislation (Section 211 of the Planning Act 2008 and The CIL Regulations 2010 as Amended) and can duly adopt the Schedule on that basis.
- 4.2 As it is customary and in line with Government guidance, to which we must have regard, to adopt a charging schedule once an up-to-date Local Plan is in place, we have sought advice from our Legal Services Department regarding the adoption of the Charging Schedule ahead of the adoption of the Local Plan (in our case the Joint Core Strategy, which is currently at Examination). The legal implications are presented in Section 6 of this report. The benefits to the Council of adopting the Charging Schedule at the earliest opportunity are clear in that CIL currently presents the most effective lawful mechanism to collect developer contributions towards meeting our infrastructure requirements. To delay its adoption would risk losing out on vital financial contributions from development in the Charging Area, due to the limitations now in place on the use of S106 legal agreements.
- 4.3 Implementation of CIL will commence on the 1<sup>st</sup> December 2015. Hence, any CIL liable applications determined from this date will have a CIL Charge applied to them. The Council will widely publicise its intention to start applying CIL, in particular with agents and developers, in order to ensure that any required CIL charges do not come as a surprise. The actual implementation of CIL, in terms of the collecting and spending of the monies received, will be undertaken in accordance with the governance and implementation arrangements that were agreed by Cabinet on 20<sup>th</sup> November 2014.

## **5 Financial Appraisal**

- 5.1 The financial implications of the recommendation to adopt the Charging Schedule are beneficial. Through the adoption of the Charging Schedule we will be able to secure financial contributions from a wider range of development than is currently possible and pool those contributions to deliver the strategic infrastructure required to support new development. We will have greater financial freedom to govern these funds than we do under the S106 legal agreement mechanism, where the spending of individual financial contributions can be limited by bespoke legal clauses.
- 5.2 Using the Community Infrastructure Levy as a means to secure financial contributions will also be beneficial in delivering local infrastructure. The CIL mechanism clearly apportions up to 25% for spending on community

infrastructure and it elevates the role of local town and parish councils in spending this neighbourhood portion. This should allow us to act as advisors and facilitators to the town and parish councils rather than carrying the burden of delivery ourselves, unless we agree to do so by arrangement with the towns and parishes.

- 5.3 There will be a cost to the Council in implementing and administering CIL. Primarily this will be the cost of officers' time in implementing the governance arrangements, which were set through the agreed recommendations from Cabinet on the 20<sup>th</sup> November 2014. However, the Council will retain up to 5% of CIL monies received in order to cover such costs.
- 5.4 The Council will publish an annual report, which will set out clearly how much CIL money has been received and the infrastructure to which that money has been applied.

## **6 Legal Implications**

- 6.1 The Legal Services Department has made the following comments:
- 6.2 The main legal implications are set out in the body of this report. In addition legal advice has been sought in respect of the legal implications of the Council adopting the Charging Schedule in advance of the Local Plan and I provide the following comments:
- 6.3 The Government Guidance, which the Council must have regard to, requires that CIL Charging Schedules are consistent with, and support the implementation of, up-to-date relevant Plans. However, this guidance does not impose a legal duty on the Council to ensure that it has adopted the Core Strategy in advance of the Charging Schedule.
- 6.4 Recent case law has confirmed that:
- There is no requirement in the legislative framework which requires a recently adopted local plan to be in place before a Charging Schedule can be adopted; and
  - The Council can depart from the Government Guidance as long as clear and adequate reasons are provided.
- 6.5 It is not strictly considered that the Council is departing from the Government Guidance. However, it would be prudent to ensure that clear and adequate reasons are given to justify the adoption of the Charging Schedule prior to the adoption of the Core Strategy as stated in this report.

## **7 Risk Management Implications**

- 7.1 The risk assessment checklist has been completed; no new risks will arise if the recommendation is implemented.

## **8 Equality Screening**

8.1 No significant negative or positive outcomes have been identified. The EA demonstrates the decision, there is little potential for discrimination or adverse outcomes, and opportunities to promote equality have been taken.

## **9 Background Papers**

9.1 The following documents provide background to this report.

- CIL Background Paper September 2014  
[http://www.lewes.gov.uk/Files/plan\\_CIL\\_Background\\_Paper.pdf](http://www.lewes.gov.uk/Files/plan_CIL_Background_Paper.pdf)
- CIL Governance Cabinet Report 20<sup>th</sup> November 2014  
[http://www.lewes.gov.uk/Files/plan\\_CIL\\_Governance\\_Cabinet\\_Report\\_Final.pdf](http://www.lewes.gov.uk/Files/plan_CIL_Governance_Cabinet_Report_Final.pdf)
- CIL Viability Assessment February 2014  
[http://www.lewes.gov.uk/Files/plan\\_CIL\\_Viability\\_Assessment\\_2014.pdf](http://www.lewes.gov.uk/Files/plan_CIL_Viability_Assessment_2014.pdf)
- Infrastructure Funding Gap Analysis September 2014  
[http://www.lewes.gov.uk/Files/plan\\_Infrastructure\\_Funding\\_Gap\\_Analysis.pdf](http://www.lewes.gov.uk/Files/plan_Infrastructure_Funding_Gap_Analysis.pdf)

## **10 Appendices**

Appendix 1 – The Lewes District Council Charging Schedule

Appendix 2 – Regulation 123 List

Appendix 3 – CIL Implementation Policies

Appendix 4 – CIL Examiner's Report, July 2015

Appendix 5 – Equality Analysis Report

# Appendix 1

## The Lewes District Council Charging Schedule

### Contents

**1 Introduction**

**2 Statutory Compliance**

**3 Proposed CIL rate and charging area**

- a) CIL Charging Schedule
- b) CIL charging area map

**4 Other Matters**

- a) CIL Implementation
- b) Monitoring and Review
- c) Ashdown Forest (7km protection zone)

**5 Next steps**

**APPENDIX A Calculating the chargeable amount**



## **1 INTRODUCTION**

- 1.1 The Community Infrastructure Levy (CIL) is a tariff-based approach to funding infrastructure that allows local authorities to raise funds from developers undertaking new building projects. Its purpose is to help fund the provision of infrastructure needed to support development and help implement the growth identified in the Lewes District Local Plan Part 1 – The Core Strategy.
- 1.2 In order to charge CIL local authorities must produce a Charging Schedule, which identifies the detail of who will pay CIL and at what rate. This is the purpose of this document.
- 1.3 The production of a CIL Charging Schedule is subject to considerable regulation and guidance, which has been carefully followed. For further introductory details regarding CIL, including what it is, why we are producing one and how it will work, please see the accompanying document to this Schedule called “Background Paper – Producing a CIL Charging Schedule”.
- 1.4 This Draft Charging Schedule applies to areas of the district that lie outside the South Downs National Park boundary only, as these are the areas for which Lewes District Council is the charging authority (and local planning authority). The South Downs National Park Authority (SDNPA) is the charging authority (and local planning authority) for the whole of the area within the national park boundary.

## **2 STATUTORY COMPLIANCE**

- 2.1 Lewes District Council is a Charging Authority for the purposes of Part 11 of the Planning Act 2008 and may therefore charge CIL in respect of development in its administrative area. The Council is both the CIL Charging and Collecting Authority for its administrative area.
- 2.2 In preparing this Draft Charging Schedule, Lewes District Council has complied with the requirements set out in Part 11 of the Planning Act (as amended) and the CIL Regulations 2010 (as amended).
- 2.3 In setting the CIL rates, the Council has used appropriate available evidence to inform the Draft Charging Schedule and struck an appropriate balance between:
- The desirability of funding from CIL, in whole or in part, the estimated cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding, and
  - The potential effects, taken as a whole, of the imposition of CIL on the economic viability of development across its area.
- 2.4 This Charging Schedule was approved by the Council on (*date to be inserted following examination in public*).
- 2.5 This Charging Schedule will come into effect on (*date to be inserted following examination and approval*).

### 3 DRAFT CIL CHARGING SCHEDULE AND CHARGING AREA

#### a) CIL Draft Charging Schedule

3.1 The CIL rates for Lewes District (all areas outside the South Downs National Park) are shown in the table below.

**Table 2 CIL Charging Rates for Lewes District Council charging area**

Development Type		CIL charge (£/m <sup>2</sup> )
Residential	Low Zone (South of SDNP, i.e. the coastal towns)	£90
	High Zone (North of SDNP)	£150
Residential Institution		£0
Industrial		£0
Office		£0
Retail		£100
Hotel		£0
Standard Charge <sup>4</sup>		£0

#### b) CIL charging area map

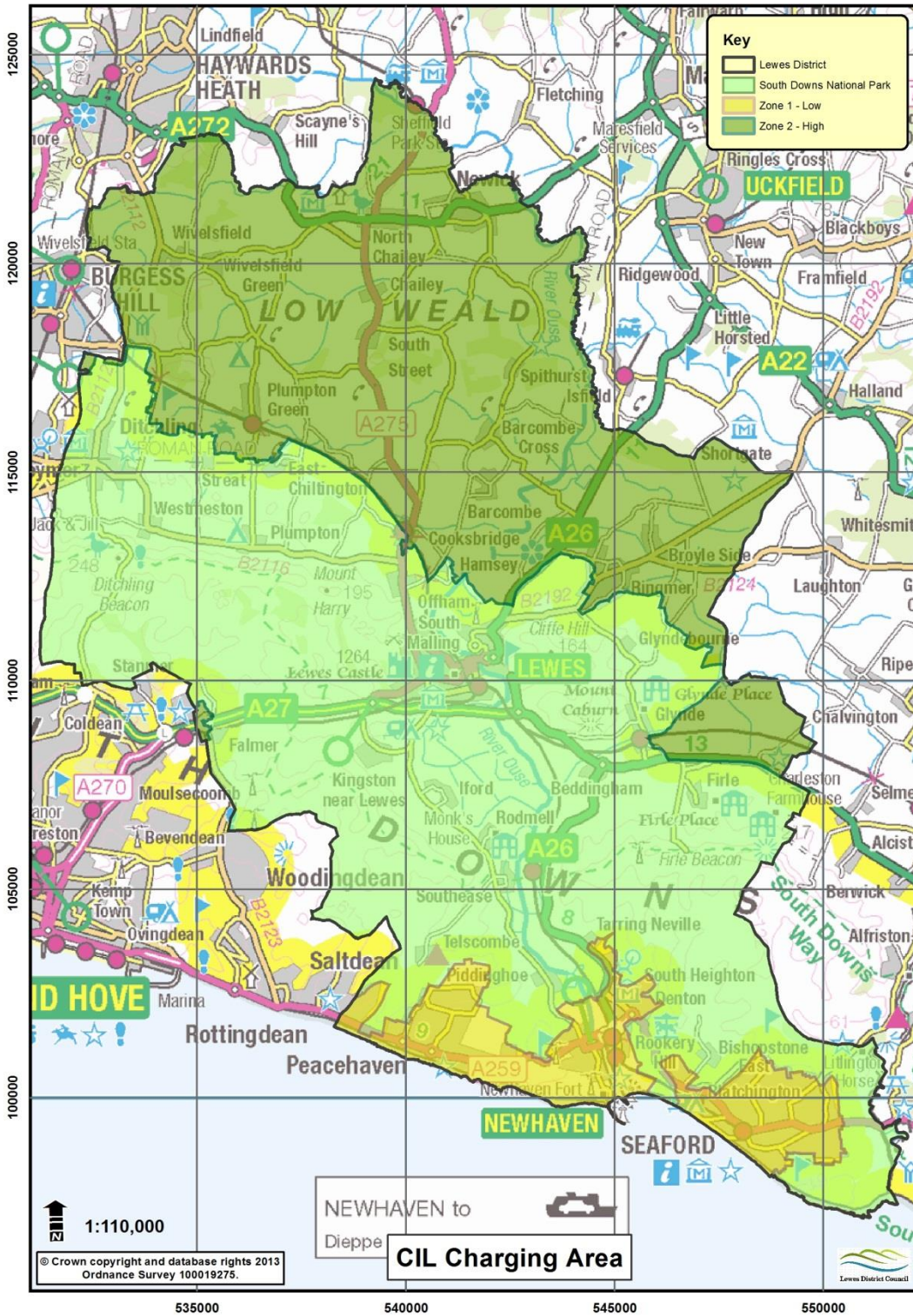
3.2 The CIL charging area will be all areas of Lewes District that lie outside the South Downs National Park boundary as shown in Map 1 (page 16). It is worth noting that the small area at Falmer and the area of Glynde Parish that lie outside the National Park are within the High Zone for the CIL charge.

3.3 In calculating individual charges for the levy, the Council will be required by the Regulations to apply an annually updated index of inflation to keep the levy responsive to market conditions. The index will be the national All-In Tender Price Index of construction costs published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors.

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<sup>4</sup> The Standard Charge applies to all other types of chargeable development not otherwise specified in Table 1. These types of development may be liable for on-site improvements through S106 or S278 off-site highway improvements, even though the Standard Charge for CIL is proposed to be zero.

Map 1 Lewes District Council CIL Charging Area



## **4 OTHER MATTERS**

### **a) CIL Implementation**

- 4.1 It is proposed to use a proportion of CIL funds to cover CIL administration expenses, in accordance with the Regulations. Further details will be established once the CIL administration procedures are developed.
- 4.2 An Instalments Policy has been published separately to accompany this Charging Schedule.
- 4.3 The Council will keep under review and consideration the implementation of the following discretionary CIL administration policies. Such policies do not require formal consultation or examination and may be introduced and revoked at any time (subject to meeting relevant requirements on publication periods prior to commencement).
- Exceptional circumstances relief<sup>5</sup>
  - Discretionary charitable relief<sup>6</sup>
  - Payment in kind<sup>7</sup>

### **b) Monitoring and Review**

- 4.4 Lewes District Council is committed to ensuring the use of CIL is open and transparent and will publish an annual report, which will set out clearly how much CIL money has been received and the infrastructure to which that money has been applied.
- 4.5 We recognise that regulatory and economic circumstances change and propose that a review of the CIL Charging Schedule be triggered if either of the following conditions is met:
- Changes are made to the CIL Regulations such that it would be necessary or of benefit for the Council to review its Schedule
  - A period of three years has passed since the implementation of the Schedule
- 4.5The Council will also consider the need for review if monitoring of CIL performance and/or local conditions indicates that either development is being constrained by CIL rate(s) or that development viability may have increased such that CIL receipts are being persistently constrained by the prevailing CIL rate(s).

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<sup>5</sup> Regulations 55-58 allows for discretionary relief in exceptional circumstances

<sup>6</sup> This is in addition to the mandatory charitable relief where the chargeable development is to be used wholly or mainly for charitable purposes.

<sup>7</sup> Regulation 73 in the CIL (Amendment) Regulations 2014 allows for a charging authority to make infrastructure payments available in its area and accept one or more infrastructure payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development.

**c) Ashdown Forest**

- 4.7 The Ashdown Forest, located in neighbouring Wealden District, is covered by Special Protection Area (SPA) and Special Area of Conservation (SAC) European designation. A 7km protection zone has been established around the Forest within which new residential development requires mitigation so that the pressures of usage experienced by the Forest are not worsened as a result of the development. The 7km protection zone partly extends into Lewes District covering much of Newick parish, including the village itself. Mitigation required for residential development in this area is in the form of financial contributions to the Strategic Access Management and Monitoring Strategy (SAMMS) and the delivery and ongoing management of Suitable Accessible Natural Green Space (SANGS).
- 4.8 It is proposed that financial or other contributions required for the mitigation of residential development will be collected using planning obligations and CIL monies will not be used towards this mitigation.

## APPENDIX A

### Calculating the chargeable amount

- i) CIL charges will be calculated in accordance with CIL Regulation 40 (as amended). The chargeable amount will be an amount equal to the aggregate of the amounts of CIL chargeable at each of the relevant rates as set out in the charging schedule.
- ii) The chargeable amount will be index linked using the Royal Institution of Chartered Surveyors' All-in Tender Price Index figures for the year in which the planning permission was granted and the year in which the charging schedule took effect.
- iii) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula:

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

Where:

- A = the deemed net area chargeable at rate R;
- I<sub>P</sub> = the index figure for the year in which planning permission was granted; and
- I<sub>C</sub> = the index figure for the year in which the charging schedule containing rate R took effect.

The value of A must be calculated by applying the following formula:

$$G_R - K_R - \left( \frac{G_R \times E}{G} \right)$$

Where:

- G = the gross internal area of the chargeable development;
- G<sub>R</sub> = the gross internal area of the part of the development chargeable at rate R;
- E = the aggregate of the following -
  - (i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development, and
  - (ii) for the second and subsequent phases of a phased planning permission, the value E<sub>x</sub>, unless E<sub>x</sub> is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.
- K<sub>R</sub> = the aggregate of the gross internal areas of the following -
  - (i) retained parts of in-use buildings, and
  - (ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development.

The value E<sub>x</sub> must be calculated by applying the following formula -

$$E_P - (G_P - K_{PR})$$

Where:

- E<sub>P</sub> = the value of E for the previously commenced phase of the planning permission;
- G<sub>P</sub> = the value of G for the previously commenced phase of the planning permission; and
- K<sub>PR</sub> = the total of the values of K<sub>R</sub> for the previously commenced phase of the planning permission.

## Appendix 2

### Regulation 123 List

#### Community Infrastructure Levy

Following CIL coming into force in Lewes District Charging Area, the following types of infrastructure will be funded through CIL receipts:

- Education facilities projects
- Transport schemes other than site-specific access improvements
- Police and emergency services facilities
- Community facilities projects
- Green infrastructure other than site-specific improvements or mitigation measures

Table 1 outlines the projects identified in the Infrastructure Delivery Plan that may be prioritised for CIL funding. The inclusion of a project or infrastructure type in this table does not signify a commitment from Lewes District Council to fully or partially fund all the projects listed. Allocation of Community Infrastructure Levy income will be agreed through the Council's Capital Programme. Further the order in the table does not imply any order of preference for spend and Lewes District Council will review this list at least once a year as part of its monitoring of CIL collection and expenditure.

#### Planning Obligations

Lewes District Council proposes to use planning obligations for site-specific infrastructure such as:

- Site-specific access (vehicular, pedestrian, cycle and public transport) improvements (these could be secured through s278 of the Highways Act 1980 in some circumstances)
- Site-specific green infrastructure, including biodiversity mitigation and improvement
- Site-specific Public Rights of Way diversions or mitigation
- Mitigation for residential development within the Ashdown Forest 7km protection zone<sup>8</sup>

In addition, affordable housing provision and contributions will continue to be secured through planning obligations.

#### Non-Strategic Infrastructure

Non-strategic infrastructure, identified at a local level, will be expected to be funded through the 'meaningful proportion' of CIL revenue that is passed to the Town and

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<sup>8</sup> Mitigation is in the form of Strategic Access Management and Monitoring Strategy (SAMMS) and Suitable Accessible Natural Green Space (SANGS).



Parish Councils. This will either be 15%<sup>9</sup> or 25% if there is a neighbourhood plan in place.

<b>Infrastructure projects that may be partly or wholly funded by CIL</b>
<p><b>Junction Improvement Projects</b></p> <ul style="list-style-type: none"> <li>• A26 Church Lane/Malling Hill*</li> <li>• A259 including town centre ring road and A26 junction (Newhaven)</li> <li>• A259 / Telscombe Cliffs Way (Peacehaven)</li> <li>• A259 / Sutton Avenue (Peacehaven)</li> </ul>
<p><b>New Road and Road Improvement Projects</b></p> <ul style="list-style-type: none"> <li>• Newhaven Port Access Road, new road from Eastside to A259 (phase 2)</li> </ul>
<p><b>Pedestrian and Cycle Improvement Projects</b></p> <ul style="list-style-type: none"> <li>• Provision of footpath and cycle routes providing links from new developments to facilities</li> </ul>
<p><b>Public Transport Improvement Projects</b></p> <ul style="list-style-type: none"> <li>• New public transport interchange Newhaven Town railway station</li> <li>• Demand management measures and Phase 2 of bus corridor on A259</li> <li>• Increased frequency of bus services on A259 to residential areas of Peacehaven and Newhaven</li> <li>• New and improved off-site bus services and facilities serving new development</li> <li>• DDA compliant bus infrastructure on A259</li> <li>• Station accessibility improvements Newhaven, Seaford and rural stations</li> <li>• Community transport</li> </ul>
<p><b>Education Facilities Projects</b></p> <p>Early Years Places in:</p> <ul style="list-style-type: none"> <li>• Newhaven</li> <li>• Seaford</li> <li>• Peacehaven</li> <li>• Wivelsfield</li> <li>• Newick</li> <li>• Plumpton</li> </ul> <p>Primary School</p> <ul style="list-style-type: none"> <li>• One form of entry - new school or expansions Newhaven</li> <li>• One forms- of entry - new school or expansions Peacehaven</li> <li>• Additional places - expansion Telscombe Cliffs</li> <li>• One form of entry - expansion Seaford</li> <li>• Additional places - expansion Wivelsfield</li> </ul> <p>Secondary School</p> <ul style="list-style-type: none"> <li>• Three forms of entry - expansion Newhaven / Peacehaven</li> <li>• One form of entry – expansion Seaford</li> </ul> <p>FE College Provision</p> <ul style="list-style-type: none"> <li>• Additional Places Sussex Downs College Lewes Campus</li> <li>• Additional Places Plumpton College</li> </ul>

<sup>9</sup> 15% capped at £100 per existing dwelling

<b>Infrastructure projects that may be partly or wholly funded by CIL</b>
<b>Healthcare Facilities Projects</b> <ul style="list-style-type: none"> <li>• Capital improvements in healthcare facilities</li> </ul>
<b>Green Infrastructure Projects</b> <ul style="list-style-type: none"> <li>• Outdoor sports facilities for youth and adult; Newhaven, Seaford, Newick, Ringmer, Peacehaven and Wivelsfield</li> <li>• Equipped children’s play space all new development (except Strategic Sites**)</li> <li>• Children’s casual play space (except Strategic Sites**)</li> </ul>
<b>Community Infrastructure Projects</b> <ul style="list-style-type: none"> <li>• Expansion of Ringmer library</li> </ul>
<b>Emergency Services Infrastructure Requirements</b> <ul style="list-style-type: none"> <li>• ESFRS – relocation of Newhaven Community Fire Station</li> </ul>
<b>Community Safety Projects</b> <ul style="list-style-type: none"> <li>• Capital costs associated with policing facilities</li> </ul>

\* This item of infrastructure may need to also be funded through CIL raised within the South Downs National Park Authority

\*\*Strategic Sites as allocated in the Core Strategy Local Plan Part 1 and other sizeable sites as defined by Local Plan Part 2

## Appendix 3

### Implementation policies

#### CIL Instalments Policy

The CIL instalments policy will only apply where conditions of Regulation 70 (CIL 2010) are met:

- Council received Assumption of Liability prior to commencement
- Council received CIL Commencement Notice prior to commencement

The Community Infrastructure Levy for residential development will be payable by instalments as follows:

- Where the chargeable amount is less than £50,000 (up to 6 dwellings approximately)
  - Full payment will be required within 60 days of the commencement date
- Where the chargeable amount is £50,000 - £250,000 (6-31 dwellings approximately)
  - First instalment representing 25% of the chargeable amount will be required within 60 days of commencement date; and
  - Second instalment representing 25% of chargeable amount will be required on completion of 50% of the dwellings; and
  - Third and final instalment representing 50% of the chargeable amount will be required on completion of 75% of the dwellings.
- Where the chargeable amount is over £250,000 (more than 31 units approximately)
  - First instalment representing 25% of the chargeable amount will be required within 60 days of commencement date; and
  - Second instalment representing 25% of the chargeable amount will be required on completion of 25% of the dwellings; and
  - Third instalment representing 25% of the chargeable amount will be required on completion of 50% of the dwellings; and
  - Fourth instalment representing 25% of the chargeable amount will be required on completion of 75% of the total number of dwellings

Note: the percentage of dwellings will be rounded up where exact dwelling numbers are not possible

Commercial developments by their nature do not lend themselves to the same approach used for residential development. Therefore it is proposed that phasing will be based on timescales and still related to the size of the development. The charge will be payable by instalments as follows.

- Where the chargeable amount is less than £50,000;
  - Full payment will be required within 60 days of the commencement date
- Where the chargeable amount is £50,000 - £250,000;

- First instalment representing 50% of the chargeable amount will be required within 60 days of the commencement date; and
- Second instalment representing 50% of the chargeable amount will be required prior to completion/opening of any part of the development
- Where the chargeable amount is over £250,000;
  - First instalment representing 25% of the chargeable amount will be required within 60 days of the commencement date; and
  - Second instalment representing 25% of the chargeable amount will be required within 120 days of the commencement date; and
  - Third and final instalment representing 50% of the chargeable amount will be required within 360 days of the commencement date or prior to completion/opening of any part of the development, whichever is sooner.

In calculating individual charges for the levy, the Council will be required by the Regulations to apply an annually updated index of inflation to keep the levy responsive to market conditions. The index will be the national All-In Tender Price Index of construction costs published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors.

## **CIL Infrastructure Payments Policy -**

### **For the provision of on-site children's play space**

Regulation 73A (as amended 2014) of the CIL Regulations allows a Charging Authority to make infrastructure payments available in its area and to accept one or more infrastructure payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development.

Where CIL is paid by way of an infrastructure payment the amount of CIL paid is an amount equal to the value of the infrastructure provided. An agreement to provide the infrastructure must be entered into before the chargeable development is commenced. Such an agreement must be in accordance with the provisions in Regulation 73A (as amended 2014) of the CIL Regulations.

Regulation 73B (as amended 2014) enables a Charging Authority that wishes to allow infrastructure payments in its area to stipulate the specific infrastructure projects or types, which it will consider accepting the provision of as infrastructure payments.

This document complies with the requirements of Regulation 73B in specifying that:

- i) The Council hereby gives notice that it is willing to accept infrastructure payments for on-site children's outdoor playing space;
- ii) We will accept such infrastructure payments from the day that CIL comes into force, which is scheduled to be \*\*/\*\*/\*\*\*\*;

- iii) This policy statement sets out the specific infrastructure projects that we will consider accepting infrastructure payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development.

**Qualifying Infrastructure Projects:**

**Strategic and other sizeable Sites<sup>10</sup> - Children's outdoor equipped and informal playing space at the following standard<sup>11</sup>:**

***0.7 ha per 1000 population for children's play, of which about 0.25 ha will comprise equipped areas and 0.55 ha will be of a more casual or informal nature.***

**Playing space must be safe and accessible. To help ensure this is the case, the provision of these spaces must be considered as an integral part of the design, layout and maintenance of a residential scheme.**

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<sup>10</sup> Strategic as allocated in the Lewes District Council Core Strategy Local Plan Part 1; Sizeable as determined by the relevant policy in the Core Strategy Local Plan Part 2

<sup>11</sup> The standards used by the Council are based upon those currently recommended by the Fields in Trust Planning and Design for Outdoor Sport and Play (2008)

**Appendix 4**

CIL Examiner's Report July 2015

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## **Report to Lewes District Council**

**by Nigel Payne BSc (Hons) Dip TP MRTPI MCMi**

**an Examiner appointed by the Council**

**Date: 17 July 2015**

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

### **REPORT ON THE EXAMINATION OF THE DRAFT LEWES DISTRICT COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

Charging Schedule submitted for examination on 16 September 2014

Examination hearings held on 14 April 2015

File Ref: PINS/LDF/001605

## **Non Technical Summary**

This report concludes that the Lewes District Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. The Council has sufficient evidence to support the schedule and can show that the levy is set at levels that will not put the overall development of the area at risk. I recommend that the schedule should be approved in its published form, without changes.

### **Introduction**

1. This report contains my assessment of the Lewes District Council Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance (Community Infrastructure Levy Guidance –June 2014).
2. To comply with the relevant legislation the local charging authority has to submit a charging schedule which sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the district. The basis for the examination, on which hearings sessions were held on 14 April 2015, is the submitted schedule of 16 September 2014, which is essentially the same as the document published for public consultation in April/May 2014.
3. The charging schedule is to apply only in those parts of Lewes district that lie outside the South Downs National Park (SDNP), as that authority will be producing their own separate schedule in due course. Taking this into account, the Council propose two separate charging zones for residential development – a Low Zone for the area south of the SDNP, i.e. mainly the coastal towns, with a rate of £90 per square metre (psm) and a High Zone north of the SDNP, where the rate would be £150 psm. All other uses, including sui generis ones, would be nil rated, except retail where the proposed charge is £100 psm.

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

#### *Infrastructure planning evidence*

4. The Lewes Local Plan Part 1 – Joint Core Strategy (LP) is being examined alongside the charging schedule. This sets out the main elements of growth that will need to be supported by further infrastructure in the district, including the SDNP. It is supported by an Infrastructure Delivery Plan (IDP). The total estimated cost of infrastructure to implement the LP is in the region of £100 million (m). Taking into account other actual and expected sources of funding, the Council estimates in their Infrastructure Funding Gap Report (September 2014) that there is a gap of approximately £65m at present.



5. Based on the new housing numbers in the submitted plan, albeit these will now be somewhat higher as a result of the main modifications, the two residential CIL rates are anticipated to raise around £12m over the plan period (equivalent to around £800k annually), of which about £8m would come from the Low Zone to the south and £4m from the High Zone to the north. No assumptions are made regarding income from retail development as no significant schemes are presently planned in the district.
6. Over the last three years the average amount raised by the Council from S106 legal agreements in the areas that would be subject to the CIL rates is approximately £660k, mainly from new housing, with an average value of roughly £7k per new market dwelling. The Council calculates that the proposed CIL rates would result in equivalent charges of just over £8k in the lower South zone and about £13.5 k in the higher North zone for each additional house.
7. In the light of this evidence, the proposed charge would make only a modest contribution towards filling the likely funding gap, even with the higher new housing numbers in the modified plan. The Council estimates that this might provide an extra £10m of CIL receipts over the plan period, with the revised total equivalent to around a third of the presently identified funding gap. Overall, the figures clearly demonstrate the need to introduce the levy.
8. Whilst there will always be other projects with which CIL revenues might assist, it is not the role of this examination to question the Council's specific spending proposals on either a geographical or a priority basis, beyond confirming that, in general terms, the projects in the Council's current draft Regulation 123 list should clearly assist the delivery of the LP, as a whole. Nor is there any material inconsistency between the list and the policies and proposals in the LP and/or the intended CIL rates.

#### *Economic viability evidence*

9. The Council commissioned a CIL Viability Assessment (VA) (published February 2014). This used a standard residual valuation approach, with reasonable assumptions for a range of factors, such as building costs, including a bespoke local construction costs study (December 2013) and Level 4 of the Code for Sustainable Homes (CSH) requirements for all new housing. It also took into account relevant current land values, including local data and some recent actual transactions. In general, the benchmark local land values used are sufficiently realistic for comparison purposes in a generic study of this type.
10. The VA also included current sale values based on a variety of local types; as well as suitable housing densities/mixes and gross to net ratios, and reasonable developer profit levels, amongst other factors. Alternative affordable housing targets and tenure splits, as well as higher and lower sales values and build costs, having been tested in an earlier study, the robustness of its conclusions is clear. The allowances for professional fees might well have been somewhat higher, but those used are not so low as to have any material effect on the overall viability outcomes assessed. Other specific criticisms are considered further below. Overall, I am satisfied that the study's methodology is in line with the guidance in the Harman Report (June 2012) (Viability Testing for Local Plans).

## *Zones*

11. The Council's evidence, supported by almost all representors in principle, is clear that the northernmost part of the district has significantly higher house prices and land values, and therefore a materially higher level of viability for new development, in comparison with the proposed southern charging zone across the coastal belt. This difference between the physically separate parts of the district that lie outside the SDNP clearly justifies the identification of two charging zones for residential development.

## *Conclusion*

12. The draft Charging Schedule is also supported by detailed evidence of community infrastructure needs, including in the IDP and the draft Regulation 123 list. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.

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

### *Residential rates*

13. In relation to new housing, the various assumptions used in the Council's generic testing of different development scenarios have been criticised by some representors in a number of specific respects and also in terms of the overall cumulative effect of the two CIL rates to be applied. However, the Council's VA has taken account of all the relevant policies of the emerging LP, as required by national guidance, including the provision of 40% affordable housing, as appropriate. It is also generally consistent with the advice in the Harman Report (see above).
14. The bespoke construction costs study has also included additional build costs associated with the Code for Sustainable Homes (CSH) Level 4 and policies relating to sustainable design, construction and energy measures, as well as a 5% general contingency allowance. By definition, the CIL cannot make an allowance for abnormal, site specific, costs. The rates have to be based on a generic analysis of a variety of size and type of schemes across the area, taking into account average local build costs, not the individual circumstances of particular sites. The fact that a few specific smaller schemes that are already marginal may become unviable in certain locations should not have a significant impact on the delivery of new housing across the area to meet the requirements of the modified LP.
15. Respondents have also criticised the profit level assumed by the Council as too low in some instances. Obviously, these vary with each scheme, including as the market changes over time. Nevertheless, using an average figure of 20% on gross development value, with 6% for the affordable housing element for which there is usually little or no risk element for the builder, is not unreasonable or unrealistic in generic analyses, as distinct from the detailed costing of a fully designed project for a particular developer on a specific site.
16. Particularly in relation to large housing sites there is also a concern that an insufficient allowance (£1,130k per unit) has been made for likely site specific infrastructure contributions. However, previous local arrangements

are not directly comparable with the proposed operation of residual S106 legal agreements once the CIL is adopted, as the Council's evidence makes clear. In future these would involve contributions for site related access improvements, including roads and public transport, plus on site green infrastructure and environmental mitigation.

17. Consequently, on an average per dwelling basis, the allowance is reasonable given that considerable margins, with a minimum of 20% for brownfield sites in the Low zone, have been allowed for in both proposed zonal rates. This is particularly so in comparison to the potential maximums relating to the thresholds of viability analysed in the VA. Overall, the levy should not lead to an increase in the average level of infrastructure contributions expected from each new dwelling that would render new housing schemes unviable.
18. Although there are suggestions that larger sites and a greater range of site types should have been tested, the Council's evidence not only looked at 5 different scenarios in each zone but also separately tested strategic sites in the emerging LP, with known costs added to inputs in those instances. As such, the level and scope of the assessment was suitable and sufficient in this local context to provide adequate guidance for rate setting and did not demonstrate the need for any separate treatment for strategic sites in this area.
19. Affordable housing delivery in Lewes district has been meeting current local expectations over the last 3 years or so, including from rural exception sites. Moreover, the recent national policy change, whereby sites of 10 units or less are no longer required to contribute, can only assist viability on smaller sites. Their continuing contribution to local housing needs will therefore not be materially harmed by the introduction of this CIL regime.
20. The fact that local house prices and land values have increased overall (by at least 10% according to some sources) since the data for the VA was collected reinforces the conclusion that the residential rates would not give rise to a harmful impact on the viability of new housing schemes across the area, despite a similar increase in the costs of labour and building materials, as the relevant margins will remain considerable. Similarly, the just less than 20% increase in new housing delivery in the modified LP up to 2031, compared to the submitted version, is unlikely to prove significant in CIL viability terms, taking into account the relative strength of the local housing market and the fact that even this higher figure will not be meeting the agreed objectively assessed needs of the district.
21. Differences in elements of construction costs and related matters between sheltered schemes and other market housing types have been considered and tested in the VA. The report is clear that overall, under current conditions, the outcomes are not sufficiently divergent to justify separate or different rates being applied to C3 use schemes in this locality at present. I therefore conclude that the two local levy rates for new housing are justified by the available evidence and strike an appropriate balance between helping to fund new infrastructure and their effect on the economic viability of residential development across the area.

### *Retail rate*

22. The level and extent of testing in the 2014 VA follows national guidance and is sufficient to clearly demonstrate that new retail development, including both food and general retail (A1 – A5 uses), would be viable across the Lewes district charging area. It assesses a suitable range of new retail scenarios using reasonable assumptions that reflect the local economic context and existing and emerging planning policies, including in the LP. The available evidence also shows that, despite the generally lower land values in the south compared to the north, there are no relevant local market conditions or variations that are sufficient to justify different charging zones being identified for retail schemes, including in respect of both brownfield and greenfield sites.
23. Moreover, the CIL retail rate to be imposed essentially reflects the evidence in terms of the potential maximum that could be imposed, whilst retaining sufficiently generous margins to ensure viability for all retail types. These range from 30% for general retail on brownfield land to 82% for food retail on a greenfield site. It is reinforced by the various allowances made in the VA, including an allowance of £20 psm for on-going site specific mitigation measures under S106. This is based on recent examples of retail only schemes, as distinct from mixed uses, which are robust and locally realistic.
24. The fact that, for all retail scenarios, the likely total CIL liability would amount to less than 6% of likely overall development costs, without taking any account of the discount to be applied for any existing floorspace on the site, adds to this conclusion, even though it is a relatively high figure in comparison to other forms of development. The Council's evidence also confirms that the viability implications of the CIL rate would not be greatly different from the alternative of S106 legal agreement expectations in respect of new retail schemes, in general terms.
25. The liability for CIL should be readily apparent for prospective developers once the schedule is adopted and requires no further clarification or qualification in respect of the differing formats and business models of various retail operators, large or small, national or local. Therefore, the available evidence is sufficient to show that it is appropriate in principle in the Lewes district charging area to impose a CIL rate for all new retail developments above the minimum size of 100 sq. m. At the level set (£100 psm), it would not give rise to a significant threat to the future delivery of new retail development in the district over the plan period, including where it forms part of a larger, mixed use, scheme. This is particularly so in the present local context, whereby there are no new retail site allocations in the LP and no significant need for new retail development in the area over the plan period.

### *Nil rates*

26. The Council's evidence shows that, in current market conditions locally, all forms of new employment development in the district charging area are not conventionally viable at present. Similar conclusions apply in respect of other types of commercial development, including hotels and residential institutions, on a standard valuation basis. Accordingly, nil rates for all such uses are appropriate in the area, for the time being at least.

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

27. The Council's decisions to charge differential residential rates north and south of the SDNP, together with a consistent retail rate, are based on reasonable assumptions about development values and likely costs. All the available evidence indicates that both residential and retail development will remain viable across the area if the charges are applied.

**Other Matters**

28. The Council has published a separate Instalments Policy (September 2014) to explain how the CIL will be payable in respect of larger schemes, which will assist their overall viability. It has also clarified that CIL receipts will not be used for the provision of mitigation measures relating to developments affecting the Ashdown Forest SPA/SAC in neighbouring Wealden District. This is likely to affect development in much of Newick parish, including the village itself, in the northern High zone. Moreover, the viability assessment of the proposed residential rate for the north zone has taken this factor fully into account, with a very generous margin applied as a result in comparison to the potential maximum rates set out in the VA.
29. The Council has helpfully clarified in their Future Use of S106 and S278 Planning Obligations document (September 2014) that, once the CIL is adopted, such legal agreement contributions will be sought only for site specific mitigation measures, excluding projects on the Reg. 123 list. Existing guidance on Education and Outdoor Play Space requirements will also be cancelled at that time, in order to help avoid any possibility of "double dipping" in respect of developer contributions.
30. The Council is also committed to publishing an Annual Report, to include details of CIL income and spending, with suitable monitoring arrangements, and to a review of the charging schedule after 3 years of operation, unless other changes require one beforehand.

**Conclusion**

31. In setting the CIL charging rates the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in Lewes district. It has been realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a wide range of development remains viable across the area. The Lewes Local Plan Part 1 – Joint Core Strategy is being examined and is presently subject to proposed main modifications. Provided that the LP is adopted in the modified form proposed it will provide an appropriate basis for the concurrent adoption of the CIL charging schedule.

<b>LEGAL REQUIREMENTS</b>	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the Local Plan Part 1 – JCS, as proposed to be modified, that is being examined and the Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

32. I conclude that the Lewes District 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.

*Nigel Payne*

Examiner