
Report to Rother District Council

by Terrence Kemmann-Lane JP DipTP FRTPI MCMl

an Examiner appointed by the Council

Date: 1 September 2015

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

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

Charging Schedule submitted for examination on 5 May 2015

Examination hearings held on 14 July 2015

File Ref: PINS/U1430/429/5

Non Technical Summary

This report concludes that, subject to modifications, the Rother District Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the district. The Council has sufficient evidence to support the schedule and can show that the levy is set at a level that will not put the overall development of the area at risk.

A number of modifications are needed to meet the statutory requirements. These can be summarised as follows:

- Remove greenfield/brownfield differentiation in the CIL Rates;
- Add inset maps to show 'in-centre' locations;
- Modify the Map of Zones to show OS grid Lines and add an inset to show the detail of sub-zones of Zone 3;
- The Rate for Zone 3c should be modified to £75 per sq.m;
- The Rate for Sheltered/Retirement Homes in Zone 1 should be modified to £140 per sq.m;
- Modify the text of the Charging Schedule to improve brevity and clarity.

The specified modifications recommended in this report are based on matters discussed during the public hearing sessions and do not alter the basis of the Council's overall approach or the appropriate balance achieved.

Introduction

1. This report contains my assessment of the Rother 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 – February 2014).
2. To comply with the relevant legislation the local charging authority has to submit what it considers to be a charging schedule that 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 July 2015, is the submitted schedule of 5 May 2015, which was published for public consultation between 27 February and 27 March 2015.
3. The Council propose a matrix approach as set out in the following table 1:

Table 1: Proposed Residential CIL Charging Zones and Rates

Residential Zones	CIL Rate
Zone 1	
Battle, Rural North and West	£200
Zone 2	
Rye, Hastings Fringes and Rural East	£135
Zone 3	
a) Bexhill - Urban	£50
b) Bexhill - Greenfield	£170
c) Bexhill – Strategic urban extensions	£100
Extra Care Housing - greenfield	£45
Extra Care Housing - brownfield	£25
Retirement Housing - greenfield	(as dwellings in zone)
Retirement Housing - brownfield	(as dwellings in zone)
Non-Residential Development	
Retail – in centre convenience	£100 per sq.m
Retail – out of centre convenience	£120 per sq.m
Retail – out of centre comparison	£250 per sq.m
All other forms of Development	£0 per sq.m

Does the charging schedule meet the requirements of the Community Infrastructure Levy Regulations?

4. All the matters discussed in this section of my report were raised in correspondence between the Council and myself and were discussed at the hearing. In addition, following the hearing the Council sought legal opinion on the issues raised. That opinion has been copied to me and has been put on the CIL section of the Council's website.
5. The Community Infrastructure Levy Regulations allow charging authorities to set differential rates. This power derives from regulation 13, as follows:

“(1) A charging authority may set differential rates -

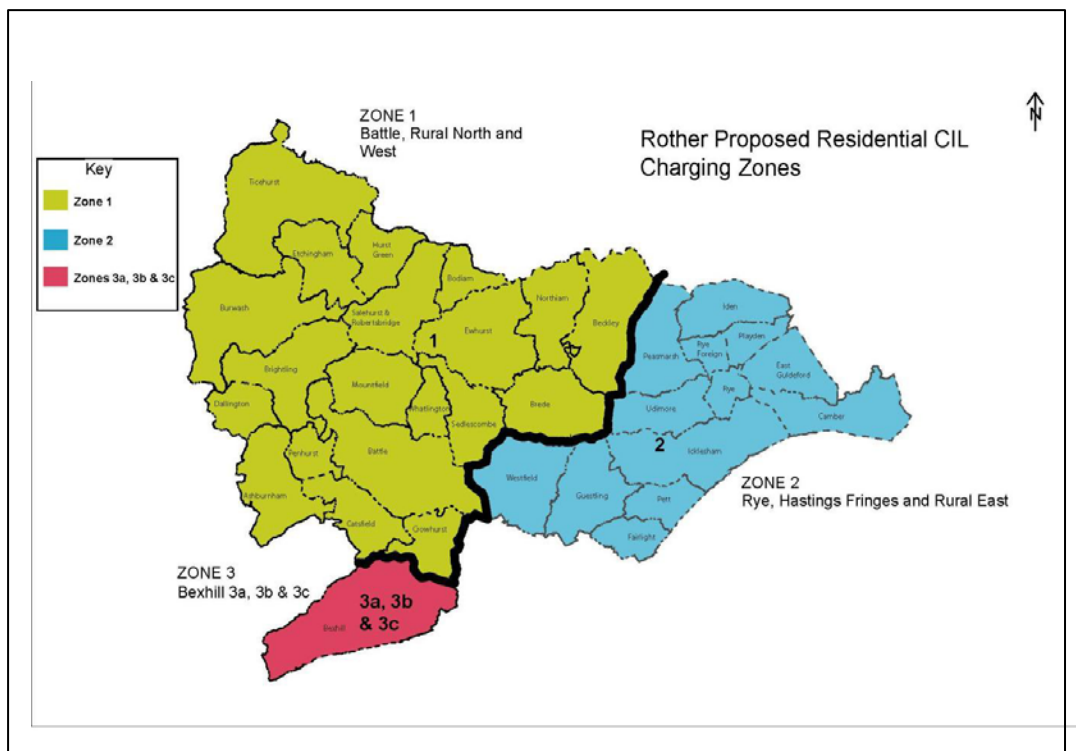
 - (a) for different zones in which development would be situated;
 - (b) by reference to intended uses of development;
 - (c) by reference to the intended gross internal floor area of development;
 - (d) by reference to the intended number of dwellings or units to be constructed or provided under a planning permission.”
6. Where charges are to be differentiated by zones, Regulation 12(2) has to be followed. This states:

“(2) A draft charging schedule submitted for examination in accordance with

section 212 of PA 2008 must contain—

- (a) Where a charging authority sets differential rates in accordance with regulation 13(1)(a), a map which—
 - (i) identifies the location and boundaries of the zones,
 - (ii) is reproduced from, or based on, an Ordnance Survey map,
 - (iii) shows National Grid lines and reference numbers, and
 - (iv) includes an explanation of any symbol or notation which it uses;
7. It will be seen from Table 1 that there is differentiation by zone, by whether the site is brownfield or greenfield, and whether it is 'in centre' or 'out of centre'. In addition, Zone 3 is broken down into sub-zones: a), b), and c).
8. Understanding of the following points is helped by seeing the Map of Zones:

CIL Charging Zones



Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office. (Crown Copyright). Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Rother District Council Licence No 100018643 2011. No further copies may be made.

Within Bexhill, the zones are defined as:

- 3a – non-greenfield sites within the extant 'development boundary' for the town
- 3b – all other sites in and around the town, except as covered by 3c below
- 3c – developments within (or mainly within) either the allocated sites BX2 and BX3 in the Local Plan 2006 or within the broad location for future growth to the north of the town, as identified in the SHLAA 2013

9. It can be seen that differentiation by brownfield and greenfield does not fall within regulation 13(1)(b), (c), or (d). The only basis on which the distinction could be made would be if brownfield and greenfield areas were able to be defined by zones. The Council has confirmed that it would be impractical to identify all the sites within the two descriptions by zonal mapping: it had been the Council's intention that individual sites would be identified by assessing which category the site fitted, at the time of imposing the Levy. Counsel's

Opinion noted that the word “must” in regulation 12(2) indicated that the requirement to identify zones on a map by which charges would be differentiated was mandatory, and confirmed that the Council’s approach does not fall within the scope of the regulations and therefore cannot be adopted.

10. As a result, the Council has reconsidered the intended differentiation of charge between brownfield and greenfield. The outcome of this reconsideration is that the distinction between brownfield and greenfield will be abandoned within the development boundary of Bexhill, and for Extra Care Housing throughout the District. The rationale for this within the Bexhill boundary is that there are relatively few greenfield sites available to come forward for residential development, and so the loss of CIL at the higher rate, and the loss of funds available for infrastructure as a result, will not be great. Certainly the alternative of making the greenfield rate apply to all residential development within the Bexhill boundary would not be supportable on viability grounds, and so could not be countenanced. The abandonment of the higher greenfield rate throughout the district for Extra Care Housing follows the logic of not being able to identify (and ‘zone’) where such development sites might occur, and the viability assessments would not support applying the higher rate to all such developments. Thus the rate for Extra Care Housing will be £25 per sq.m throughout the District.
11. As for the Retirement Housing rates, these were intended to be the same as the normal residential rates in Zones 1 and 2, but would follow the brownfield/greenfield distinction within Zone 3. For the reasons already given, the Zone 3 distinction cannot be upheld, and therefore Retirement Housing simply gets absorbed within the residential rates throughout the district, with an exception in Zone 1, which I deal with in paragraph 48 below.
12. These considerations naturally lead to a question about whether modifications can be made to implement the necessary changes, to bring the charges into line with the requirements of the regulations, without an additional period of public consultation. Counsel’s Opinion has given me some useful guidance on this matter to which I have given careful consideration.
13. There is nothing in the Act or regulations that imposes any requirement to re-consult on changes proposed by the Examiner. That said, there may be circumstances in which modifications that are being considered would be so far-reaching that natural justice would require further advertisement and consultation. Essentially it is necessary for me to consider whether anyone is likely to be prejudiced if there were no further consultation.
14. The first point to make in considering the question of possible prejudice is that the matter of compliance with the requirements of regulations 12 and 13 was raised by me in the first place and my questions and the Council’s answers have been placed on the CIL part of the Council’s website. It is also the case that the matter was on the hearing agenda, and there was extensive discussion about it. The whole point about keeping proceedings up-to-date on the website is to make sure that anyone with an interest in the Examination can keep abreast of developments. It is implicit in this practice that a party with an interest can raise a question with the Council, or me through the Programme Officer.

15. Since the modifications do not affect the 'development boundary' of Bexhill or the boundary of the 'strategic urban extensions' the liability of any development on brownfield land within the 'urban' area of Bexhill remains the same. As for greenfield sites within this urban area, the result of the modification is that the charge would be reduced to that proposed for brownfield sites. The 'Bexhill Greenfield' charge would remain for Zone 3 b) – the 'countryside' around Bexhill – as it has always been intended, and as supported by the viability evidence, in the Draft Charging Schedule (DCS). Thus it is only landowners of greenfield sites within the urban areas which would see their liability change, and this would be by a reduction. I therefore cannot see how such owners could be prejudiced.
16. If it should be that owners of brownfield development sites within the urban area feel that greenfield site owners are being given an advantage on the basis that it is generally cheaper to build on greenfield sites, I can only conclude that the evidence shows that there are few greenfield sites within the urban area and that, in any event, CIL is of necessity reliant on a 'broad brush' approach to determining development viability, and by nature there will always be some landowners who find themselves in a better financial position than others.
17. My consideration above about possible prejudice has primarily related to 'ordinary' residential development. In respect of the modifications of charges for Extra Care Housing and Retirement Housing, the outcome is that the only effect is that some greenfield sites will have the CIL liability reduced. Therefore the logic expressed above holds good for these forms of housing.
18. There is an additional point in respect of this issue of compliance with the regulations: the matter of the proposed Retail charges. These are differentiated by whether the development site is 'in-centre' or 'out of centre' – effectively further zoning. The Draft Charging Schedule did not have a map or maps which defined the boundaries of the centres. This can be rectified by the inclusion in the Schedule of additional inset maps for each centre, and the Council has supplied me with such maps to aid my recommended modifications.
19. Finally, two points with regard to the compliance of the Zones Map with the regulations:
 - i) It is important that the boundaries of zones are clear, so that landowners/developers can see clearly which zone a site is within. This cannot be said of Zone 3 in the submitted DCS. The Council has produced an inset map to clarify the boundaries of the sub-zones of Zone 3.
 - ii) Regulation 12(2)(iii) requires the map to show national grid lines and reference numbers. This point is easily answered by the addition of grid lines and numbers on the map.
20. The Council has asked me to deal with all these issues by stipulating modifications in my recommendations. I have done so, as can be seen in the Appendices to this report.

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

Infrastructure planning evidence

21. The Rother Local Plan Core Strategy (CS) was adopted in September 2014, covering the period to 2028. This sets out the main elements of growth that will need to be supported by further infrastructure during the plan period. The CS defines infrastructure as the basic requirements for the satisfactory development of an area and includes such things as roads, footpaths, sewers, schools, open spaces and other community facilities. An Infrastructure Delivery Plan (IDP) was published as a separate document to the CS.
22. The IDP is a 'live' corporate document which will be continually reviewed and updated. Its purpose is threefold: to provide evidence of the quality and capacity of infrastructure to meet forecast demand, to guide the Council's work with key external partners and stakeholders, and to identify shortfalls in funding and/or land. Appendix A to the IDP sets out in a schedule a summary of key information regarding the infrastructure required to support development proposed by the CS Spatial Strategy.
23. An Infrastructure Funding Gap Analysis (IFGA), first produced in August 2014, has been updated to February 2015. This update reflects greater certainty over funding streams such as the Local Growth Fund and streams relating to the High Speed Rail project. Following Examiner's questions seeking clarification of certain figures in IFGA I have been informed that when the document is next revised, the current position will be shown to be:

Total infrastructure costs	£255.547m
Identified Funding Sources	£205.760m
Aggregate funding gap	£49.787m

24. Within the 2015 IFGA there is a calculation of projected CIL income arrived at by applying the CIL rates in the submitted Draft Charging Schedule. The information for this figure comes from an analysis in the 'Addendum – Further viability advice and clarification [(AEVA) – an addendum to the Economic Viability Assessment (EVA) produced by the Council's viability consultants]. The estimated gross development contributions from CIL (i.e., including receipts which may be re-allocated to local councils) are shown to be of the order of £36.8m, equivalent to approximately £2.8m per year over a 13 year period to 2028. I consider that this figure is probably close to the maximum income likely. In the light of the information provided, the proposed charge would therefore make a reasonably significant contribution towards filling the likely funding gap. The figures demonstrate the need to levy CIL.

Economic viability evidence

25. The Council commissioned a CIL Economic Viability Assessment (EVA), dated July 2014. The EVA uses a residual valuation approach: using reasonable standard assumptions to ascertain a 'residual' value from gross development value of a scheme after all other costs are taken into account. The costs for

producing a scheme include building costs, fees, finance, profit levels, etc, and such matters as affordable housing, planning obligations, and other plan policy costs. Having allowed for all these costs, the resulting figure indicates the sum potentially available for the site purchase – the “residual land value” (RLV).

26. The EVA considers the type and likely locations for growth in the district. This ensures that any proposed CIL charge will be applied to those developments most likely to come forward, and that the main elements of Local Plan delivery are identified, so that any charge does not put delivery of the plan at risk. The study’s methodology compares the RLVs of a range of generic developments (typologies) to a range of benchmark land values as an indication of existing or alternative land use values relevant to site use and locality. In relation to locality the EVA identifies areas or zones where differential rates should be applied in respect of both residential development and commercial development. Thus for residential development three zones have been adopted. For commercial development the result is that only retail development has viability that justifies the setting of a charge, in this case differentiated by whether the development is in centre or out of centre and whether it is convenience or comparison goods being sold.
27. The Council commissioned an Addendum (AEVA) to the EVA that was published in January 2015. This was to present additional analysis arising from new government planning guidance and two further assessments requested by the Council covering scenarios at North Bexhill and Blackfriars. In addition, there were re-tests of a number of assumptions on retirement homes and extra care schemes. This part of the AEVA did not look afresh at care homes – where 24 hour personal care and/or nursing care are provided together with meals - as the original market assumptions were considered robust enough, and that this use type is still likely to be particularly unviable.

Conclusion

28. The draft Charging Schedule is supported by detailed evidence of community infrastructure needs and a funding gap is evident. I consider that the scope of the EVA and AEVA is appropriate to the level of detail required to establish suitable and robust evidence. I am satisfied that taken together they provide the viability evidence against which to judge the rate of charges proposed by the Council. An accepted valuation methodology has been used, informed by reasonable assumptions about development costs, and local sale prices, rents, yields, etc. On this basis, the evidence that has been used to inform the Charging Schedule is robust, proportionate and appropriate.

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

CIL rates for residential development generally

29. A number of matters were raised in representations which concern the rates for general residential development: i) is there an adequate plan basis for assessing infrastructure requirements upon which a CIL charging schedule could reasonably be approved in Rother District? ii) are the EVA input assumptions reasonable, particularly for Zones 1 and 3b, or are the resulting rates too high? iii) has adequate recognition been given to the importance of ‘West Bexhill Broad Location’ in the Local Plan Strategy and the higher costs

associated with its development? and iv) is the viability evidence lacking to support the rate east of Bexhill (within Zone 3b)? I will deal with each of these in turn.

The Plan basis

30. It is represented that until such time as there is an allocations plan in force, it is not possible to have a clear understanding of the infrastructure requirements for the district, and thus there is not a firm foundation to assess the economic effect on development arising from different levels of CIL charging. The situation in Rother District is that the adopted CS will be followed by a Development and Site Allocations Plan (DaSA). The Council is currently working to produce initial proposals for consultation. The period for initial public consultation is not yet fixed, but it is anticipated to commence in Autumn 2015. Therefore the DaSA has not yet begun to emerge in public.
31. Nevertheless, in my view the CS, adopted a bare twelve months ago, provides a framework of sufficient clarity, identifying the main types of development and their locations over the period to 2028. The only references in the regulations and guidance are to the "relevant plan" and "the local plan in England"; there is also reference elsewhere to an up-to-date plan. The emphasis in the regulations and guidance is on providing evidence of an aggregate funding gap that demonstrates the need to put in place the levy. Quite clearly the DaSA will fill in considerably more detail than the CS, but the policies of the CS have been sufficiently detailed to enable differentiation of charge by geographical area to be undertaken, reflecting the nature of development anticipated across the district. Many CIL examinations have led to the approval of CIL Charging Schedules on such a development plan basis, and indeed in some cases, on plans which are far less up-to-date. I see no reason to fault the Rother DCS on this basis.

EVA input assumptions

32. A number of matters are raised in representations about various inputs to the EVA and AEVA. In making these points, the under-delivery of housing in the district for some years is said to illustrate the importance of ensuring that development, particularly of large sites, remains clearly viable after the imposition of CIL by setting rates well below the margins of viability. The main points relate to Benchmark Land Values (BLVs), large strategic site typology assumptions, build cost inflation, developer's profit, and s106 costs.
33. I should start, in dealing with these points, by saying that I do not find helpful the graph and tables in the representations which compare Rother's proposed CIL rates with those of neighbouring authorities. It is the viability evidence for this district which must be used to set the local CIL rates. The graph, in particular, is not persuasive since it applies the wrong affordable housing percentage and the wrong sales values (subsequently corrected), and the detail of the underpinning methodology and assumptions are not clear, and remain so.
34. The Representor is unable to provide evidence of transactions to back the criticism of the BLVs of the EVA. In relation to build cost inflation, it accepts that these changes must be set alongside an increase in sales values, although

it questions the value evidence used in the EVA for some of the rural areas, taking Northiam in Zone 1 as an example. To make its point it commissioned a sales report for this area (document CIL/CD/051) although this study includes sales within Zone 2 and within Tunbridge Wells Borough. A further study for the Council (see table within paragraph 5.3, document RDC/11), focused on Northiam (all second hand properties) suggests that higher values could be used compared with the EVA values, allowing for a conservative 10% new build premium. I regard this latter study as convincing.

35. In relation to large strategic site typology assumptions, there is disagreement between the parties as to whether the figures suggested in the Harman Report for 'strategic infrastructure and utilities' are relevant to Rother, since the Council suggests that they apply to large sites in the context of the whole country and are not applicable to large sites in this district. I note that one of the largest items of strategic infrastructure in Rother is the new road scheme which has already been publicly funded. Having considered these points, I find the evidence of neither party conclusively convincing, but I am left in doubt about the degree to which development will remain viable, and I conclude that the 'buffer' which is applied must be sufficient to cover uncertainties: I return to this shortly at paragraph 39 below.
36. There is a debate over the percentage allowance which should be made for developer's profit, with the Representor arguing that there should be a minimum blended rate allowance of 20% on gross development value (GDV), the justification for which is set out in the submitted Savills report "Developer Profit – Competitive return to a willing Developer". Support for this is also claimed by way of a number of appeal decisions. I do not find these appeal decisions particularly helpful since they deal with specific cases, each with their own viability issues.
37. To counter this, the Council quote the 'Housebuilder Magazine' "Housing Market Intelligence Report" which reports that the developer operating margin among the top 25 of Britain's biggest housebuilders averaged 10.5% (subject to rounding) in 2013. Adding head office costs (Savills estimated 6% is accepted) brings the average operating margin of these 25 builders to 16.5%: at the lower end of the range used in the EVA where the blended rate comes within 16.5 to 20%. It is accepted that the two house builder's operating margins reported in the Savills document are higher than the overall average, but I agree with the Council that the average of 25 builders is more reliable, being based on an increased sample size.
38. The concern over residual s106 costs appears to have arisen because of a lack of clarity in the wording of the Regulation 123 List, with possible issues of 'double dipping'. The Council has responded with some revised wording to the Reg123 list which I consider effectively deals with the point.
39. In paragraph 35 above I referred to the need for a sufficient buffer in relation to the large strategic areas. The buffer allowed for in reaching the proposed CIL rate in Zone 3c – strategic urban extensions, at 36%, is the lowest allowed for in any of the Zones (see paragraph 10.1, document RDC/4). Since these strategic sites are of considerable importance in providing the ability of Rother to meet its housing targets, I consider that it would be prudent to increase the buffer to circa 50%, which in my judgement should bring the Zone 3c rate to

£75 per sq.m. I will recommend this as a modification.

The 'West Bexhill Broad Location'

40. The 'West Bexhill Broad Location' (WBBL), within the DCS, is located in Zone 3b, with the highest rate of the three Bexhill sub-zones. It is represented that the WBBL should be treated similarly to the North Bexhill Broad Location (NBBL), since both are equally important in the 'Strategy for Bexhill'. CS Policy BX1: Overall Strategy for Bexhill states in part (ix): "Provide for employment and housing growth, in accordance with Policy BX3, with particular regard to the needs of families...". The North and West Bexhill Broad Locations are referenced together in Part (iii) of Policy BX3 and are shown on Map 2: Bexhill Inset Diagram, as well as being referred to in CS paragraph 8.54. Part (ii) of Policy BX3 sets out an overall need for 3,100 dwellings in the plan period. It is thus argued that the "Strategy for Bexhill" is dependent on the substantial delivery of new housing from both North and West Bexhill Broad Locations and Zone 3c – Strategic urban extensions – with its CIL rate, should include the WBBL. The WBBL straddles the A259 road with some 275 dwellings on each side, making it quite comparable with the NBBL.
41. The Council considers that there are important differences; in particular the CS, in relation to further housing to the west of the town, notes "the key issue of the capacity of the A259 and local roads". This is in contrast to the north of the town that is seen as inextricably linked to the construction of a new local distributor around Sidley. Furthermore the Council considers that there are differences between the North and West locations in that there are higher s106 costs associated with the North, together with 'abnormal' development costs there that are not present in the West. This means that there is no justification for a lower rate in the West Location, and that development in that location will be viable with the proposed Zone 3b rate of £170 per sq.m.
42. Thus the Council contends that there is no evidence that the West Location has the same level of s106 and abnormal costs as the North Location. However, part of the West location includes a site referred to as 'Barnhorn Green'. The Representors with concerns about the West Location are owners of this site, and have commissioned a report (document CIL/CD/049) from the same consultants as those that Rother District Council have commissioned for the CIL EVA and AEVA. The report states that this site is of some 25.5 ha and benefits from a resolution to grant outline planning permission for 275 dwellings and 3500 sq.m of employment floorspace, community facilities, etc, subject to a s106 agreement being signed. This report has been commissioned as a supporting technical document to the land marketing and sale process. In view of its role in this process, it seems reasonable to assume that there has been no temptation to exaggerate technical difficulties and costs. The report is dated June 2014, close to the date of the EVA – July 2014.
43. The Representors suggest that this site is not untypical of the site type, of this scale, which will come forward over the plan period, and that site ID3 in the table of Residential Notional Sites for Viability Testing (EVA Table 4.1) is representative of it. Thus the infrastructure and site specific s106 costs can be modelled to identify an alternative impact on site ID3. The EVA identifies that ID3 has a CIL headroom of £610 (EVA table 4.6) which, against a proposed CIL charge of £170 per sq.m represents a 72% buffer. A range of sensitivity

tests have been used against this starting point to identify the impact of the following: a) BCIS uplifts based on representations made (referred to above, at paragraph 34); b) increase in site specific s106 from the EVA of £1k per unit to a level calculated from the North Barnhorn Road development s106, adjusted to reflect the post CIL situation of £2.5k per plot; c) infrastructure costs and abnormals informed by the Infrastructure Technical Report. (See document CIL/CD/046, paragraph 1.14 and Appendix A) The application of these sensitivities leads to the Representor's conclusion that a CIL rate of about £75 per sq.m would provide a degree of buffer against headroom for typical sites in the West of Bexhill area, among other things, enabling the affordable housing targets to be better safeguarded. I do not accept the BCIS uplift element in these sensitivity tests, but the other two sensitivities are worthy of further consideration (see paragraph 45 below).

44. I have already found that the Council is justified in basing its DCS on the adopted CS, since that plan "provides a framework of sufficient clarity, identifying the main types of development and their locations over the period to 2028". Reading the CS together with the Strategic Housing Land Availability Assessment (SHLAA) 2013 Review (documents CIL/CD/47 and 48), at this stage it is difficult to see how the DaSA will be able to deliver sufficient sites for the required housing numbers without including the West Bexhill Broad Location. Therefore I see merit in regarding the North and West Broad Locations as being equal in terms of their status in the CS. I regard the caveat about "the key issue of the capacity of the A259 and local roads" as being no more than a clear pointer to the need to deal with the particular access issue when the detail is considered.
45. Having arrived at the conclusion that the WBBL should be regarded in CS terms as being equal, it is necessary to understand the effects of allowing for a revised working of the headroom using those elements of the Representors increased costs that I have found worthy of further consideration; that is, excluding the BCIS uplift element. This has effectively been done in paragraphs 4.20 to 4.23 of Document RDC/10. This demonstrates through two sensitivity tests set out in Appendix 2 that the reduced headroom is £360 at worst, which still provides a greater than 50% buffer. This is an analysis that I prefer to that in Appendix A of Document CIL/CD/046.
46. Therefore, whilst WBBL is important in meeting the needs of the CS housing requirement, the CIL rate for Zone 3b should not put this development at risk on viability grounds. Thus I conclude that there is no justification for putting WBBL into Zone 3c.

Support for the rate east of Bexhill

47. There is criticism in representations about a lack of viability evidence to substantiate the rate to the east of Bexhill on the basis that no greenfield site was tested in the EVA for this part of Zone 3b. However, it is clear that to the east of Bexhill virtually all the land is countryside wherein there is little scope for residential development. The SHLAA revealed no sites in this area other than the large strategic site. I therefore find this criticism lacks merit.

CIL Rates for sheltered/retirement housing

48. It was argued in representations that the rates set for sheltered/retirement homes had not been tested appropriately in the EVA due to a lack of allowance for the extent of communal floorspace provision that is provided in this type of accommodation. I invited the Representor and the Council to meet in order to assess the matter technically whereby typical floor plans could be examined and measured: a more suitable method of dealing with the matter in contention than at a hearing. The result was a Statement of Common Ground in which it was agreed an acceptable 'buffer' for retirement development would be around 30%. Greenfield sites should be ignored because these are rarely suitable for specialist forms of older person accommodation. It was further agreed that the proposed CIL rates were acceptable within the zones apart from Battle, Rural North & West where there would be a negative buffer. It was mutually agreed that a modification would be put forward that the CIL rate within Zone 1 – Battle, Rural North & West should be reduced from £200 to £140 for Sheltered /Retirement Homes. Since this reduction is clearly supported by the additional viability testing, I will recommend the modification.

CIL Rates for Retail development

49. It is represented that the retail CIL rates generally, and for out-of-centre retail floorspace in particular, are unrealistic. It is suggested that a large convenience retail store of circa 5,000 sq.m should be tested. In response the Council points out that it is the planned floorspace of the CS which should be used to determine the appropriate typologies. The CS sets out the following targets for convenience floorspace in the main towns: Bexhill – 2,000 sq.m; Rye – 1,650 sq.m; Battle – 1,000 sq.m. Thus, if a single operator took all the floorspace in any of these locations, to meet policy objectives it would not exceed the typology tested of 2,500 sq.m. There appears to be no evidence of a larger store being promoted in Rother District, but in any event it would not put the delivery of the plan at risk if its viability proved to be problematical.
50. It is also represented that the EVA inputs for developer's profit, build costs and professional fees are not realistic, especially as the build costs in particular have increased since the time of the assessments. Assessments supporting proposed CIL rates have to be a snapshot in time, and it is unrealistic to suggest regular updates prior to examination, so long as the examination process is not too protracted. However, if updates at the point of examination were undertaken, all inputs would need to be included in the update and I have no evidence that the balance would be materially different to that of the EVA.
51. As far as developer's profit and professional fees are concerned, I am not persuaded that the rates used in the EVA are unrealistic or otherwise inappropriate for a 'broad brush' study appropriate to CIL, and my conclusion on this issue is reinforced by the 'buffer' which has been allowed in setting the rates. In the case of in-centre retail this is around 35%, and 25% for out-of-centre.
52. I have noted the appraisal sheets which have been submitted by the Council to correct errors in those in the AEVA and that the results are unchanged, and

that the CIL rates are shown not to need review.

Other Matters

- 53. In response to my questions raised early in the examination about clarity and concision/unnecessary text, the Council put forward a number of amendments to address my points. These did not in any way alter the substance of the DCS, or the rates proposed. The modified version of the DCS that I recommend takes account of these improvements to the clarity and brevity of the document.
- 54. A remaining point that has become evident, as the nature and rates for the Zone 3 sub-zones have evolved during my examination, is that the 'title' of sub-zone 3b as "Greenfield", put in place when it was meant to differentiate 'virtual' zones of greenfield from brownfield, is not now apt. I consider that sub-zone b) should be entitled 'Rural'.

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

- 55. The Council's decision to have a matrix approach is based on reasonable assumptions about development values and likely costs. The evidence suggests that residential and commercial development will remain viable across most of the area if the charges are applied.

Conclusion

- 56. 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 Rother District. The Council has tried to be realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a range of development remains viable across the authority's area.

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

- 57. I conclude that, subject to the Charging Schedule being modified as set out in

Appendix A together with the Zoning Maps set out in Appendix B, the Rother 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.

Terrence Kemmann-Lane

Examiner

This report is accompanied by: Appendices A and B (attached) – Modifications that the examiner specifies so that the Charging Schedule may be approved.

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

Modification number	Modification
EM1	Replace the existing Draft Charging Schedule with the modified Charging Schedule set out in Appendix A
EM2	Replace the existing Zoning Map in the Draft Charging Schedule with the Maps set out in Appendix B.