NEW FOREST DISTRICT COUNCIL
CIL CHARGING SCHEDULE EXAMINATION

Examiner's preliminary conclusion in relation to the retail charge

At the hearing on 16 January 2013, I stated that on the evidence available I could not see how the retail charge met the requirement of Regulation 13. I indicated that I would issue a short note to confirm my view and to provide the opportunity for the Council to consider how it would invite me rectify such a failing. This is the purpose of this note. The note has been circulated to participants at the hearing and will be placed on the CIL Examination webpage. The Council's response will be circulated to all those who commented on the draft charging schedule.

1. Background

The Council's Draft Charging Schedule specifies a rate of £200 per sq m for large A1 retail of 1,000 sq m or more and a nil charge for A1 retail of less than 1,000 sq m. On 14 January 2013, the Council indicated that:

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

This requested change to the charging schedule was confirmed by the Council at the hearing. Accordingly, the Council did not seek to justify the charging schedule as submitted, accepting that the evidence on viability (*Community Infrastructure Levy Viability Assessment Final Report December 2011* – Core Document EV103) justified a charge only in relation to superstores/supermarkets of 1,000 sq m or more. Accordingly, even if I were not to find any other shortcomings, the charging schedule would need to be modified to reflect what the Council intended and its understanding of the available evidence. However, I have more fundamental concerns.

Regulation 13 allows for differential rates to be set where viability differs by reference to *zones* where buildings could be situated, or by reference to different intended *uses* of development. There is nothing in the Regulations to indicate, that different intended uses have to be in different use class under the Town and Country Planning (Use Classes) Order 1987. However, there needs to be a clear and actual difference in the *uses* if a differential CIL is to be charged. Size alone cannot be the basis for differentiation, but it can be a proxy for a use where size can be shown to reliably delineate an actual difference in use and where the different uses thus identified have demonstrably different viability outcomes. For the New Forest CIL retail charge to accord with the CIL Regulations, the evidence needs to demonstrate a difference in viability which corresponds with a clearly definable difference in the intended uses of retail developments.

2. Preliminary conclusion on the retail rates

The Viability Assessment identified 6 retail archetypes and tested these for viability. These are: a large and a small superstore (4,000 and 1,500 sq m respectively); comparison stores of 500 sq m with either a national or a local occupier; and small convenience stores of 300 sq m also with a national or a local occupier. So the 6 archetypes are seeking to cover a wide range of permutations: size, convenience/comparison, and national/local occupiers.

Apart from a reference to the Lidl in New Milton being of about 1,500 sq m, the Viability Assessment does not seek to identify any local specific differences in the nature of the retail *uses* either side of the 1,000 sq m threshold. It is concerned solely with the viability aspect of the issue. There is no evidence submitted in the support of the CIL charging schedule which seeks to demonstrate that in the context of New Forest District (outside the National Park) there is a clear difference in use between superstores/supermarkets of 1,000 sq m or more and all other A1 uses of less than 1,000 sq m.

There is no evidence to indicate what is the current range of sizes and types of shops in New Forest or whether there is a clear difference in the way that larger convenience stores are used in comparison to smaller stores. Given the various sizes of settlements within New Forest District, their geographic spread and varying relationship to larger settlements outside the district it cannot be assumed that the thresholds which have been used in other CIL charging schedules reflect clear differences in use in the local context.

Furthermore, even if there was a clear local difference in use between large superstores and smaller convenience stores, the 6 archetypes used in the viability study do not provide sufficient fine-grain testing to establish that the threshold of 1,000 sq m is appropriate. There is a very wide band of potential sizes of convenience stores either side of the threshold which have not been tested.

Given the above, different CIL rates for retail uses have not been justified by appropriate evidence and thus the draft charging schedule in relation to the retail charge does not meet the requirement of Regulation 13.

3. Modifying the charging schedule

I need to consider how, on the available evidence, the drafting schedule can be modified to meet the Regulations. Given the absence of any evidence to demonstrate a clear difference in use in the New Forest between different sizes of convenience stores, the same charge or a nil charge would have to apply to all types of retail development. At the hearing, I was invited by a participant to conclude that only a nil charge could be justified given the evidence in the Viability Assessment (Figure 29) that certain sizes and types of retail store would not be viable with any CIL charge. It may well be that this is the only practical modification available to me.

I invite the Council to comment on how it considers I could modify the charging schedule to ensure that it complies with the Regulations. The Council should respond by 15 February 2013. I have set this short timescale because I do not want the matter to become protracted. This opportunity to comment is intended simply as a limited extension of a discussion that could have been pursued at the hearing, but is intended to provide some additional thinking time. I am not inviting the Council to prepare any new evidence. The CIL charging schedule should be justified by the evidence at submission. In recommending any modification, I will also need to be mindful of whether the modification would be fair to all parties.

Simon Emerson
Examiner
21 January 2013