

NEW FOREST DISTRICT COUNCIL CIL CHARGING SCHEDULE EXAMINATION

Post Hearing Note 2

Examiner's request for further clarification regarding the assumption about S106 requirements with CIL in place

The hearing on 16 January 2013, explored the justification for the Viability Assessment assuming that there would be no additional S106 requirements for residential sites once CIL is established. In seeking to draft some preliminary conclusions on the residential rate, I have found that I am unclear as to the Council's expectations of how S106 and CIL will work in practice in relation to open space provision. The purpose of this note is to seek clarification of the Council's position.

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

1.1 The *Community Infrastructure Levy Viability Assessment Final Report December 2011 – VA*, Core Document EV103) assumes in its viability modelling that there would be no additional S106 costs once CIL comes into effect (p32). The VA notes that, to date, S106 costs have been focused on open space and transport requirements. Most of the projects listed in Appendix A of the Infrastructure Delivery Plan (IDP) April 2012 relate to open space provision or small scale transport projects. The projects in Appendix A are, in fact, those projects already used to justify pooled S106 contributions and on which such contributions are to be spent. The VA assumption is thus internally logical – if CIL is primarily intended for open space provision and small transport works then once CIL it has come into effect S106 contributions would not be collected for such types of infrastructure. The VA acknowledges that there may still be some requirements for on-site S106 contributions depending on the circumstances of the site, but does not factor-in a cost.

1.2 Core Strategy policy CS7 set a new standard for public open space provision and requires all new residential development to provide for this standard either through on-site provision or a financial contribution to create or enhance off-site provision and for management. The policy also requires that on sites of 0.5ha or more, informal public open space should be on-site (including play space). That would leave provision for formal play space to be provided either on-site or off-site depending on the local circumstances and the size for the site. I also note the wider need (policy CS7i) for cross-border strategic open space provision as part of the overall strategy to mitigate potential impacts of new development on adjoining SPAs.

1.3 At the hearing, the Council indicated that it would still expect residential developers to provide the on-site requirements for open space on site, but that there would need to be negotiation in relation to any requirements not met on site. The opportunity for payments in kind was highlighted at the hearing. However, paragraph 7.10 of the Council's *Context and Rationale Document* (April 2012, EV101) indicates that where land is required within a development to provide built infrastructure and/or open space it will be expected that the land transfer will be at no cost to the Council and will not be accepted as a CIL payment in kind (my emphasis).

2. Questions for clarification by the Council

2.1 To ensure that I have properly understood the Council's position and can come to reasonable conclusions in relation to the assumption made in the VA and the wider justification for CIL in terms of necessary infrastructure, I would be grateful if the Council could answer the following questions. I have made the questions detailed and specific in the hope of avoiding any misunderstanding. I would expect that they can be answered briefly.

2.2 *Are the existing pooled S106 contributions sought in relation to open space calculated solely on a pro-rata basis of the extent to which the CS7 standard (in all respects) is not being provided on-site? If not, please explain how, broadly, they are calculated.*

2.3 *Does the list of open space projects in Appendix A of the IDP enable the policy CS7 standard to be met by a financial contribution for off-site provision in relation to both informal and formal open space in each settlement? If not, what are the implications?*

Once CIL came into effect:

2.4 *Would small residential development sites of less than 0.5ha, where policy CS7 does not require any on-site provision (but to which the overall open space standard still applies), have their open space requirements fully met solely by paying CIL? If not, please explain why not.*

2.5 *For larger residential development sites (0.5ha or more):*

(i) would the provision of the CS7(c) on-site requirement be required to be provided and funded by a S 106 in addition to the standard CIL charge or would it be treated as a payment in kind for CIL?

(ii) if offered by the developer or required by an allocation policy, would the provision on-site of the formal play element of the standard be required to be funded by a S106 in addition to the standard CIL charge or would it be treated as a payment in kind for CIL?

(iii) where the formal play element of the standard cannot be provided or is not required to be provided on-site and it is to be provided off-site, would this be required to be funded by a S106 in addition to the standard CIL?

(The above questions relate to typical residential development on greenfield or brownfield sites where there is no loss of any existing open space or recreational facility etc.)

2.6 *If the Council expects some or all of the open space standard to be funded by S106 financial contributions in addition to CIL, to what extent does that undermine the viability modelling in the VA?*

2.7 *Where there is any difference between the answers given and the statements made in the Context and Rational Document please briefly explain the reasons for the differences and to what answers/statements I am invited to give most weight.*

2.8 I appreciate that the Council is not bound to spend CIL on the projects listed in the current IDP and that, in the future, it can change the types of infrastructure to which CIL is to be spent. Nonetheless, at any one time there

should be clarity as to the types of infrastructure to which CIL is to be put. Developers should not be expected to pay twice for the same type of infrastructure. I am seeking to understand the evidence and practical effect of CIL as currently put forward by the Council.

2.9 I understand that mitigation of potential impacts on the SPAs may require the provision of additional strategic recreation open space on a cross-boundary basis and that CIL might make a contribution to any such provision. At present such projects are included in Appendix B of the IDP. I will be exploring at the Local Plan hearings the extent to which the Local Plan adequately sets out the required level of mitigation. I will also explore at those hearings the clarity and justification for some of the allocation policies requiring various bespoke provision of open space. But these issues do not directly affect the relevance of the questions posed above.

2.10 I also understand that particular sites might be required to enter into S106 obligations to secure various works in addition to open space provision, but I am exploring in this note only the consistency of the evidence in relation to open space since this is a major element of the IDP.

3. Response

3.1 I invite the Council to respond to the questions set out above by 15 February 2013. I have set this short timescale because I do not want the matter to become protracted. I am not inviting the Council to prepare any new evidence. The Council should already be clear as to its position on these various matters. Following the Council's response, I will invite comments from those who made representations on the draft charging schedule.

**Simon Emerson
Examiner
22 January 2013**