# DOCUMENT CILR2

New Forest District Council Local Development Framework

Community Infrastructure Levy

**New Forest District outside the National Park**
**January 2013**

## NFDC Response to Examiner's CIL Preliminary Conclusions on CIL retail charge: ED/3

### Introduction

1. This note is prepared by NFDC in response to the issues raised by the Examiner in 'Examiner's CIL Preliminary Conclusions on CIL retail charge: ED/3 January 2013

2. The Examiner's note comments that he is not inviting the Council to prepare any new evidence. This note aims to assist the Examiner by responding to the specific comments he made at the Hearing session on 16th January 2013 and the subsequent note ED/3. This response draws on evidence that is already included in Background Documents submitted to the joint CIL/Local Plan Part 2: Sites and Development Management Examination and that which is on the joint Examination Documents List. It highlights the way in which evidence has fed into the Council's thinking in setting the proposed retail CIL Charging Schedule.

3. Prior to the CIL Hearing session, the Council had submitted a proposed change to Charging Schedule:

> *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 also include non-food floorspace as part of the overall mix of the unit.*

4. The Council's view remains that, with this change, the proposed retail CIL is both justified by evidence and complies with the CIL Regulations. If, however, the Examiner is not convinced with regard to the 1,000 sqm threshold for charging CIL, then the Council would invite the Examiner to recommend that the charge is applied to all convenience retail development to which CIL is applicable (for the reason set out in paragraphs 19-22 below).

### Evidence requirements

5. Section 212(4)(b) of the Planning Act 2008[1] requires:

> " that the charging authority has used <u>appropriate available evidence</u> to inform the draft charging schedule" (emphasis added).

[1] Document POL1: Planning Act 2008, page 123

6. The Community Infrastructure Levy Regulations (2010) refers in various places to "relevant evidence" which it defines as:

> *Regulation 11(f)[2] - emphasis added):*
>
> "Evidence which is readily available and which, in the opinion of the charging authority, has informed its preparation of the draft charging schedule"

7. Similarly, the 2010 Community Infrastructure Levy Guidance on "Charge setting and charging schedule procedures" (the relevant guidance for this Examination) states that:

> *Paragraph 27[3] – (emphasis added).*
>
> The legislation (section 212 (4) (b)) only requires a charging authority to use appropriate available evidence to 'inform the draft charging schedule'. A charging authority's proposed CIL rate (or rates) should appear reasonable given the available evidence, but there is no requirement for a proposed rate to exactly mirror the evidence, for example, if the evidence pointed to setting a charge right at the margins of viability. There is room for some pragmatism."

8. Because the Council considered that there was inadequate available evidence regarding viability, the Council went beyond these basic requirements by commissioning new evidence regarding viability. However, with regard to the types of retail development within the District and the way in which this is used, the Council relied on existing evidence as set out below.

**Justification for identifying superstores/supermarkets as a separate use for CIL charging.**

9. While CIL Regulation 13 refers separately to "use" and "viability", these two matters are inter-related. The Council's viability study was able to define, without any major problems, the retail archetypes (set out in Figure 11 of the viability study[4]) whose viability as distinct uses could successfully be tested. These archetypes differentiated large (4,000 sqm) and small (1,500 sqm) superstores / supermarkets as distinct uses from small comparison and convenience stores.

10. These archetypes were defined in discussions between the viability consultants (DTZ) and the Council's Planning Officers. These discussions were informed by the background knowledge and experience of Council officers who have been engaged in retail studies and planning for New Forest District for well over 20 years. This experience and knowledge included the evidence gathering for the Council's Core Strategy[5] and progression of the Core Strategy through Examination to adoption as well as the evidence gathering for the Local Plan Part 2: Sites and Development Management[6]. At the Hearing session on 16 January 2013 the Council's representative referred to the Town Centre studies that have been carried out in preparing the Council's Plans, originally in 2006 and updated in 2010. These studies informed the retail policy in the both parts of the Local Plan. They are available to view on

[2] Documents POL2: Community Infrastructure Levy Regulations 2010, page 11
[3] Document POL7: Community Infrastructure Levy Guidance on "Charge setting and charging schedule procedures, paragraph 27, page 10
[4] Document EVI3 (Community Infrastructure Levy Viability Assessment New Forest District Council and New Forest National Park Authority December 2011) figure 11, page 23
[5] Document S14: Core Strategy 2009
[6] Document S1: New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management January 2012

the joint Examination Documents and the Examination website (Documents BP12, BP12a, BP12b, BP12c and BP12d and S18[7]).

11. Having regard to government advice regarding "proportionality" of evidence (see paragraph 158 of the NPPF[8]), the set of archetypes defined for testing in the viability study was limited because there have been very few new retail development within the District in recent years. The Lidl example is specifically referenced in the viability study[9] as this is the only example of a new build supermarket in the District in the last seven years. There have only been 2 other food retail developments greater than 200 sqm during the past 7 years. Both of these have been retail developments at service stations in the Ringwood area, with net floorspace increases of 97 sqm and 337 sqm respectively. The Council has, however, been in discussions with national superstore occupiers with regards to potential new stores. The possibility of significant new convenience retail developments was therefore included in the viability modelling[10].

12. The shopping studies referred to in paragraph 10 above included a survey of local residents which asked a number of questions including 'where do the respondents carry out their weekly food shop?'. The full results from the study can be seen at Appendix F to the Strategy[11]. The Council has analysed the results from Q01 of the study, "Which store or shop did you do your household's last main food and grocery shopping?". By cross-referencing the responses to the information held on store size it can be concluded that approximately 85% of the residents used a large national chain supermarket above the identified 1,000sqm threshold for their weekly shopping. The majority of these stores were located within the New Forest District itself. Further analysis indicates that only 6% of the respondents carried out their weekly shopping at a small local shop within the District. This clearly supports the view, as expressed by the Council's witness at the CIL Hearing session on 16th January, that the shopping tendencies of residents of the New Forest are no different to those elsewhere in the Country in that superstores / supermarkets are the main destination for food shopping trips with smaller retail units used for 'top-up' shopping. This evidence supports the Council's position that supermarkets/superstores are a clear and definable different use. Annex A to this statement contains an extract from the Town Centre Strategy highlighting these conclusions.

13. The definition and testing of superstores/supermarkets as a separate use was further justified by Planning Policy Statement 4: *Planning for Sustainable Growth,* which was in force at the time of the preparation of the viability study and preliminary draft charging schedule in 2011. This PPS contained definitions of all different types of retail development including convenience, comparison, supermarkets and superstores[12] thereby acknowledging that each of these different types exhibits different characteristics and therefore can be considered a different 'use'. The archetypes chosen in the Council's viability report[13] are in the accordance with the definitions set out in the PPS which was then in force.

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7 Document BP12: New Forest District Town Centre Strategy – Strategic Assessment July 2006; Document BP12a: Lymington Town Centre Strategy July 2006; Document BP12b: New Milton Town Centre Strategy July 2006; Document BP12c: Ringwood Town Centre Strategy 2006; Document BP12d: Totton Town Centre Strategy July 2006; Document S18 Retail Study Update 2010

8 National Planning Policy Framework March 2012, paragraph 158, page 38

9 Document EVI3 (Community Infrastructure Levy Viability Assessment New Forest District Council and New Forest National Park Authority December 2011) paragraph 2, page 23

10 Document EVI3 (Community Infrastructure Levy Viability Assessment New Forest District Council and New Forest National Park Authority December 2011) paragraph 1, page 23

11 Document BP12: New Forest District Town Centre Strategy – Strategic Assessment July 2006; Document BP12a: Lymington Town Centre Strategy July 2006, Appendix F

12 Planning Policy Statement 4: Planning for Sustainable Growth 2009, Annex B, page 27

13 Document EVI3 (Community Infrastructure Levy Viability Assessment New Forest District Council and New Forest National Park Authority December 2011) paragraph 2 and figure 11, page 23

14. The specific threshold of 1,000 sqm was, as required by the Regulations, informed by the evidence and is also taking a pragmatic approach. Various considerations had fed into this threshold:

- **The Council's awareness that superstores/supermarkets are generally above this threshold.**

  An update of the Town Centre Strategy was carried out in 2010[14] and this listed the convenience floorspace of the stores within the District. The figures gathered were net floorspace figures but using a low multiplier of 20% to give an approximate gross floorspace figure, it is clear (see Table 1 below) that all convenience stores in the plan area above the 1,000 sqm threshold are national chain superstores/supermarkets.

**Table 1: Floorspace of convenience shops within the New Forest**

| | Store/Town | Indicative gross floorspace m2** |
|---|---|---|
| **Lymington** | Waitrose, Standford Road | 3,000 |
| | Tesco Metro, High St | 1,400 |
| | Marks & Spencer Simply Food, Thomas's St | 1,100 |
| | Somerfield, Ampress Park | 250 |
| **Milford on Sea** | Coop, High St, Milford on Sea, Lymington | 150 |
| **Ringwood** | Sainsbury, Ringwood | 2,000 |
| | Waitrose, The Furlong | 2,900 |
| | Tesco Exp, Butlers Lane, Poulner | 200 |
| **Totton** | Asda, Maynard Road | 4,100 |
| | Coop, Salisbury Road | 300 |
| | Lidl, Commercial Road | 1,100 |
| | Coop, Rumbridge Street | 200 |
| | Morrisons, Spruce Drive | 3,300 |
| | Tesco Exp, Watson Walk, West Totton | 200 |
| | Tesco Exp, Nutshalling Close, Calmore | 150 |
| **New Milton** | Coop, Station Road | 1,300 |
| | Morrisons, Station Road | 1,200 |
| | Lidl, Barton Court | 1,400 |
| | Tesco Exp, Old Milton Road | 250 |
| | Coop (Balfour), Avenue Road | 200 |
| | Tesco, Caird Ave | 4,000 |
| | Coop, Stopples Lane, Hordle | 150 |
| **Hythe** | Waitrose, High St. | 1,100 |
| | Tesco, Sizer Way, Dibden | 3,100 |
| | Tesco Exp, Beaulieu Road, Hythe | 250 |
| | Tesco Exp, Hampton Lane, Blackfield | 300 |
| | Coop, Long Lane, Holbury | 1,200 |
| **Fordingbridge** | Coop, High St. | 1,300 |
| | Tesco Exp, Salisbury St. | 200 |
| **Lyndhurst/ Brockenhurst** | Budgens, High St, Lyndhurst | 600 |
| | Tesco Exp, Brookley Road, Brockenhurst | 200 |

*** Figures taken from S18 Retail Study Update 2010 Appendix 2, table 1 which uses 2008 figures**

**** Calculated using net figures multiplied by 20% and rounded**

- **Retail developments in the plan area have been significantly greater than, or smaller than the 1,000 sqm threshold.**

  As set out in paragraph 11 above, the small number of new retail developments in the plan area in the past 7 years have been significantly smaller or larger than the proposed 1,000 sqm threshold. Looking back over the past 7 years, arguments about the precision of the threshold and the precise relationship of the 1,000 sqm threshold to

[14] Document S18 Retail Study Update 2010, Appendix 2, Table 1, page 30

evidence would have been spurious. The Council does not see any significant change likely in this situation in the future.

- **The use of a 1,000 sqm threshold in the Council's policies.**

  In the Council's Local Plan Part 2: Sites and Development Management[15] (prepared in parallel with the CIL Charging Schedule), 1,000 sqm is used as a basis for differentiating between the larger A1 convenience stores and smaller ones. 1,000 sqm is set as the threshold at which the Council requires an impact study of proposed retail developments outside of town centres (see Local Plan Part 2 - Policy DM14[16]). Similarly, the Council's adopted car parking policy[17] requires both a Transport Assessment and Travel Plan to be produced for A1 food retail above 1,000 sqm.

- **The recommendations arising from the viability assessment.**

  The conclusion of the viability study[18] states:

  > *A cut-off figure of 1,000 sqm could be used as smaller convenience stores are typically around 500 sqm, and smaller supermarkets usually a minimum of 1,500 sqm. Therefore a figure of 1,000 sq m would ensure flexibility for both slightly larger convenience stores and smaller supermarkets to be developed (depending on local circumstances) without crossing the CIL charging thresholds.*

15. Paragraph 21 of the 2010 CIL Charge Setting Guidance[19] emphasises that charging authorities should take a strategic view in setting CIL charges. Within this context, the Council believes that there is a clear difference in use between national superstores / supermarkets and small local shops. Clearly the viability evidence backs this up. In fact, the viability evidence has shown that supermarkets / superstores create a higher value than any other form of development and can bear a significantly higher CIL charge. Conversely small, local, convenience stores cannot generally bear any CIL charge. The conclusions of the Council's viability assessment[20] clearly recommend that supermarkets / superstores can sustain a significantly larger CIL than smaller stores. The Council has a duty to set an appropriate balance between "the desirability of funding infrastructure from CIL and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area"[21]. The Council's evidence has demonstrated a substantial funding gap to which CIL will need to contribute. In setting the "appropriate balance" for CIL charging, the Council considers that it would be perverse to exclude high value supermarkets / superstores (which the viability evidence shows can afford to pay a substantial charge) because small local shops cannot afford to pay.

16. All of this evidence indicates, in the Council's view, that, for the purposes of Regulation 13(i)(b) of the CIL Regulations 2010[22], supermarkets / superstores can and should be

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15 Document S1: New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management January 2012

16 Document S1: New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management January 2012 page 28

17 Parking Standards Supplementary Planning Document (SPD) October 2012, Annex, Table A, page 11 http://www.newforest.gov.uk/media/adobe/k/p/Parking_Standards_SPD_FINAL.pdf

18 Document EVI3 (Community Infrastructure Levy Viability Assessment New Forest District Council and New Forest National Park Authority December 2011) page 59

19 Document POL7: Community Infrastructure Levy Guidance on "Charge setting and charging schedule procedures, paragraph 21, page 8

20 Document EVI3 (Community Infrastructure Levy Viability Assessment New Forest District Council and New Forest National Park Authority December 2011) page 59

21 Document POL7: Community Infrastructure Levy Guidance on "Charge setting and charging schedule procedures, paragraph 6, bullet point 1, page 4

22 Documents POL2: Community Infrastructure Levy Regulations 2010, page 12

considered a separate and distinct use and that 1,000 sqm is a reasonable and pragmatic threshold informed by the evidence. Whilst the Council independently believes it has sufficient evidence to justify this in its plan area, regard should also be had to the fact that the adopted Wycombe and Plymouth CIL Charging Schedules have superstores / supermarkets charged independently of other A1 uses.

17. To summarise the Council's position as set out in this statement:

- The Council believes that the retail charges proposed in the submitted charging schedule comply with Regulation 13 of the CIL Regulations;

- The Council's Town Centre Studies clearly show a difference in how superstores / supermarkets are used and small local shops are used. The study showed that approximately 85% of people within the New Forest District use supermarkets for a weekly shop as opposed to only 6% who carry out their weekly shop at a small local shop.

- Definitions for superstores and supermarkets as separate retail types were contained in PPS4[23] which was in force when the Council prepared its CIL Charging Schedule.

- An analysis of the existing A1 convenience retailers currently within the New Forest District shows that the national retailer supermarkets/superstores are generally well above 1,000 sqm.

- The very few new A1 convenience developments that have been built in the plan area in the last 7 years are all significantly either side of the proposed 1,000 sqm threshold.

- The viability evidence shows a clear difference in viability between superstores / supermarkets and small local shops. Superstores / supermarkets were defined as a separate use for assessment in this work which showed that they are the most viable types of development. Given the duty to strike an "appropriate balance" in the Charging Schedule, it would be wrong to exclude superstores / supermarkets from CIL charges on the basis that generally small local shops cannot afford to pay CIL.

- By far the majority of retail floorspace growth in the plan area is likely to be in superstores / supermarkets rather than small local shops. There have been very few new developments of small shops in the last 7 years in the plan area and this is unlikely to change.

- In Charging Schedules adopted elsewhere (see Wycombe and Plymouth's adopted Charging Schedules) it has been accepted that superstores / supermarkets can be treated as a separate use for CIL charging.

18. In view of all these considerations, the Council considers that it is appropriate to apply the proposed CIL charge 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 – with 1,000 sqm being an appropriate and pragmatic strategic threshold informed by the evidence.

[23] Planning Policy Statement 4: Planning for Sustainable Growth 2009

**Alternative Approach for consideration by the Examiner**

19. Although the Council believes that the Council's proposed clarification (see paragraph 3 above) is sufficient to enable the charging schedule to fully meet the Regulations, the Council is prepared to offer an alternative suggestion to the Examiner on how the charging schedule could be modified (and still comply with the CIL Regulations) if he does not accept the appropriateness of the 1,000 sqm threshold.

20. In these circumstances, the Council's view is that a charge of £200 per sqm should be levied against all convenience A1 retail units to which CIL applies. All other forms of A1 retail would be levied at £0 per sqm. Whilst the viability evidence has shown that smaller local retail units without a national chain operator would generally be unable to be able to support a CIL charge, it is unlikely that any significant number of these types of units will come forward in any case. Small local shops in the plan area are likely to continue to be accommodated within vacancies in existing shop units, conversions and redevelopments without incurring a CIL payment. As set out above (paragraph 11), only 2 retail development under the proposed 1,000 sqm threshold have come forward in the last 7 years (over 200 sqm - the level at which the County Council monitors retail development). Both of these were redevelopments of petrol station forecourts in Ringwood.

21. This approach would leave CIL as applying to all new convenience store developments. The distinction in use between a convenience store and a comparison store has been set out in National Guidance and also at a local level in the Core Strategy 2009 which distinctly splits the likely levels of retail between 'convenience, comparison and large format'. However, should the Examiner be minded to take this route an alternative clarification is proposed to add definitions to A1 convenience based on the PPS4 definitions for convenience stores, supermarkets and superstores.

22. If the Examiner is minded to take this alternative approach the Council proposes the following modification to the charging schedule as a replacement to Table 1 of the Draft Charging Schedule[24]. This modification would replace the one presented previously (as set out in paragraph 3 above):

| | CIL Charge per sqm |
|---|---|
| Dwelling Houses (C3): | £80 |
| ***A1 convenience retail **** | ***£200*** |
| ***All other retail not covered by A1 convenience **** | ***£0*** |
| Industry and offices (B1, B2 and B8): | £0 |
| Hotels (C1): | £0 |
| Residential Institutions (C2): | £0 |
| Any Other uses | £0 |
| * *For the purposes of this charging schedule A1 convenience includes Superstores / supermarkets which are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit, and all other convenience retail developments.* | |

[24] Document CIL1: Draft Charging Schedule April 2012, Table 1, page 3

4.2 A list of the postcodes contained in each zone is shown in Appendix A.

4.3 The number of interviews undertaken in each zone reflects the population in each respective zone in order to provide statistically reliable sub-samples. The main aims of the survey were to establish patterns for the following:

- Main food and grocery shopping;
- Top-up food and grocery shopping;
- Non-food shopping, including:
  - clothing and footwear;
  - domestic electrical appliances;
  - other electrical goods (TV, Hi-Fi and computers);
  - furniture, soft furnishing or carpets;
  - DIY/garden items and hardware;
  - health, beauty and chemist goods; and
  - Other non-food items; and
- Leisure activities, including:
  - cinema;
  - theatre;
  - pub/bar;
  - restaurant;
  - nightclub;
  - bingo;
  - health club; and
  - ten-pin bowling.

**Food and Grocery Shopping**

*Main Food Shopping*

4.4 Large food stores are the main destinations for respondents' main food shopping trips across the study area. Households tend to visit large food stores in their nearest town. In Fordingbridge (Zone 1) and Brockenhurst/Lyndhurst (Zone 4), where there is no large food store over 1,500 sq m net in the zone, food shopping destinations were more varied. The Asda superstore in Totton draws a significant amount of shoppers from the Hythe zone in addition to the Totton Zone.

*Top-Up Food Shopping*

4.5 Top-up food shopping trips are usually made in addition to main weekly (or less frequent) shopping trips, and these top-up trips are usually made on a more regular basis, day to day, particularly for perishable items such as bread and milk. Over 81% of households across the catchment indicated that they undertake small-scale or top-up shopping trips in addition to their main food shopping trips. The proportion of households undertaking top-up shopping trips was lowest in Zone 3, 76.1% (New Milton), and highest in Zone 2, 88.4% (Ringwood). Residents use both large food stores and local shops for this type of shopping.

*Mode of Travel for Main Food and Non-Food Shopping*

4.6 Over 91.6% of respondents indicated that the travel to do their main food shopping by car, which is greater than NLP's average derived from similar surveys across the Country (84.2%). A relatively low proportion of households travel by bus (1.9%) or walk (3.7%), which is significantly lower than NLP averages derived from other surveys of 6.0% and 7.9% respectively. This may be a reflection of the rural nature of the District and dispersed population. Only 0.3% of respondents used taxis to travel to their main food shopping location which is much lower than NLP's average of 6.9%.

4.7 Over 87% of respondents travel to their non-food shopping destination by car, which is slightly less than the proportion for main food shopping. The proportion of respondents travelling by bus for non-food shopping was highest in the Brockenhurst/Lyndhurst zone (6.7%), whilst the Lymington zone had the highest proportion of visitors walking to do their non-food shopping (16.8%).

**Non-Food Shopping**

4.8 Households were asked in which town or centre they spend most money on their household's non-food shopping. With the exception of the Lymington zone, where over half of the respondents shop in Lymington (56.6%), the main destination for non-food shopping is located outside of the respective zone. Over a third of respondents in the Fordingbridge zone buy non-food goods in Salisbury (34%). Bournemouth is the main non-food destination for respondents in the Ringwood zone (29.6%) whilst Christchurch is the main destination in the New Milton (23.7%). Southampton is the