

NEW FOREST DISTRICT COUNCIL CIL CHARGING SCHEDULE EXAMINATION

Examiner's Post Hearing Note 3 - Response to CILR2 and CILR3

Following the CIL hearing on 16 January 2013, I issued 2 notes. The first made some preliminary conclusions on the retail charge and sought the Council's response as to how the charge schedule could be modified to overcome the shortcomings I had identified. The 2nd note sought clarification about the future relationship between S106 contributions and the CIL charge for open space. The Council responded in CIL2 and CILR3. I had previously indicated that all respondents would have the opportunity to comment on the Council's responses. This note provides that opportunity and also explains why I have accepted as evidence the matters set out in CILR2.

1. CILR2

1.1 My note on retail invited the Council to comment on how the charging schedule might be modified to overcome the shortcomings I had identified. It indicated that I was not inviting new evidence on the matter. The Council's response goes further than I had requested. It sets out evidence from the retail studies previously undertaken by the Council (Core Documents to the concurrent DPD Examination) which the Council indicates had informed its approach to identifying the 1,000 sq m threshold for the retail charge.

1.2 My preliminary conclusion was that:

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.

However, CILR2 makes clear that there is existing evidence on these matters in previously published retail studies. I accept that it is likely that this evidence had, in some way, informed in the approach of the Council to assessing the appropriate charge for retail development. The explanation of the use of this evidence by the Council in preparing its CIL is largely absent from the CIL *Viability Assessment* Final Report (EV103) or an other directly supporting document for CIL. It is also difficult to relate the sequence of considerations outlined in CILR2 to the process undertaken by the Viability Assessment, since the latter does not refer to any evidence about existing use or sizes (apart from Lidl).

1.3 Notwithstanding the above difficulties, CILR2 means that my preliminary conclusion about the lack of evidence was incorrect. There was and is existing evidence on the matter. It would be unsafe to adhere to this preliminary conclusion without taking into account CILR2. I am therefore intending to take this document, and the existing Core Documents to which it refers, into account in this Examination.

1.4 I fully recognise that CILR2 represents evidence on which all other parties need a full opportunity to comment. I am therefore providing a period of 3 weeks for this to be done. I also recognise that it may be necessary to reopen the hearing to debate the matter again. It would be helpful if parties could indicate whether they wish to be heard again on this matter or would wish to be a participant if a hearing was held. I apologise to all parties for the fact that the Examination will become more protracted.

1.5 I would emphasise that in accepting CILR2 as evidence to be taken into account does not mean that I accept that the 1,000 sq m threshold has been justified in terms of use. I need to decide this matter afresh in the light of all the evidence and representations that will be before me. My previous note also highlighted another concern about the justification for this threshold in any case.

2. CIL3

2.1 The Council's note provides, for the most part, straightforward answers to the specific questions I posed about the relationship between S106 contributions for open space and CIL. Respondents have 3 weeks on which to make any comment.

2.2 I would highlight to the Council at this stage however that I find the response to my question 2.5 confusing. It does not seem consistent or logical, given the Council's answers to the other questions. It appears to confuse CIL with a policy requirement rather than a means to an end.

2.3 I do not understand why a developer of a site of less than 0.5ha would be able to have all its open space requirement met by paying CIL, whereas a developer of a large site would have to provide space on site (as required by policy) and still pay the full CIL charge, without the on-site provision being treated as a payment in kind. The fact that on-site provision of informal open space in larger schemes is a policy requirement does not justify this double counting, since it is only an element of the overall open space policy standard (which the Council accepts smaller schemes will deliver by paying CIL alone). Also, the fact that the Viability Assessment rightly took into account the physical implication of having to provide informal open space on larger sites (thus lowering the density) does not mean that it should not be treated as a payment in kind if CIL is intended to provide the full open space requirement in smaller schemes.

2.4 I would ask the Council to reflect on whether CILR3 correctly states the Council's position on this matter and, if not, to respond as soon as possible so that any change can be highlighted to respondents.

3. Response

3.1 All respondents have the opportunity to comment on CILR2 and CILR3. Any responses should be sent to the Programme Officer by Monday 4 March 2013. In the meantime, I will identify a date for the hearing to resume if this is necessary. Any further hearing will not be before week commencing 25 March 2013.

**Simon Emerson
Examiner
11 February 2013**