



# **Response on behalf of Burt Boulton Holdings to CILR2: NFDC Retail CIL**

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# Response to CILR2 on behalf of Burt Boulton Holdings

## 1.0 Introduction

1.1.1 This document responds to the Council's CILR2 document which, itself, responded to the Examiner's CIL Preliminary Conclusions on CIL Retail charge: ED/3 January 2013. The structure of this document follows the Council's CILR2 for ease of reference and does not introduce any new evidence for the Examiner to consider. A separate note from SNR Denton on procedural issues, and whether the background documents can be taken into account, is attached.

In Summary, BBH's response to CILR2 concludes the following:

- The documents to which the Council now refers do not provide evidence that superstores/supermarkets are a different use in New Forest District to smaller stores.
- Evidence to which the Council refers in CILR2 demonstrates that there is no locally relevant distinction, in policy or otherwise, between different sizes of food stores that would suggest larger stores are a different use to smaller stores.
- Regulation 13 does not permit a differential by size alone. In the absence of evidence to demonstrate that size of store defines a locally relevant difference in the 'use' of stores in New Forest, any CIL charge must apply to all sizes of retail.
- NFDC has not provided any evidence to demonstrate that retail stores selling different goods are different uses – retail is retail, and this view is reinforced by the Council's own policies. Differentiating by types of goods would be incompatible with the planning system and would be unworkable in practice.
- A zero CIL charge for all retail is the only outcome that is supported by the evidence presented and which would not jeopardise the objectives of NFDC's Core Strategy.

# Response to CILR2 on behalf of Burt Boulton Holdings

## 2.0 Detailed Response to CILR2

- 2.1.1 The Council’s justification for its approach to its now proposed CIL charge begins at paragraph 9. It sets out the Council’s viability evidence that was able to define different archetypes. It states that “These archetypes differentiated large (4,000sqm) and small (1,500) superstores / supermarkets as distinct uses from small comparison and convenience stores”. WYG contends that the identification of these archetypes identifies different *sizes* not different *uses*. Neither the DTZ Viability Report nor the Council’s original evidence or its subsequent response (CILR2) explain how these different sizes of store represent a different ‘use’.
- 2.1.2 Paragraph 11 notes that there has only been one new build retail store (Lidl) in the last seven years. However, this does not mean that nothing else is likely to come forward. Seven years is quite a long time in retail terms, and if anything this demonstrates that much of the New Forest District’s retail stock is therefore becoming dated. Retail is a fast evolving industry and it is not unusual for retail developments to have a shelf life of less than 20 years before they are redeveloped for larger buildings more suited to today’s requirements. Therefore, the fact that there have been few applications in the last seven years (five of which have seen the UK economy in recession) does not mean that this is a template for the future. On the contrary, the Government is promoting new development as one of the key areas to help the Country’s economy recover, and retail (as the Council’s viability study acknowledges) is one of the area’s most likely to deliver this growth.

## 2.2 NFDC’s Retail Study

- 2.2.1 At paragraph 12, The Council refers to its retail study which shows that most people shop at larger stores for their main food shopping. That fact is not disputed, and is what we would expect. However, this fact does not in any way demonstrate that larger stores in the Council area are different ‘uses’ to smaller shops. The fact is, shops are shops. People go there for the purpose of purchasing goods. The fact that people choose to shop at larger ones (presumably because they carry more ranges, offer more choice and have better shopping environments) and that these larger stores are usually operated by national chains does not make them a different use. They are still shops, and the Council’s retail study provides no evidence to suggest otherwise.
- 2.2.2 Paragraph 4.4 of Annex A of CILR2 would in fact appear to support WYG’s view in this respect. It states that “in Fordingbridge (Zone1) and Brockenhurst/Lyndhurst (Zone 4), where there is no large food store over 1,500sqm net in the zone, food shopping destinations were more varied”. This shows that people will carry out their main food shopping in a large store if there is one. But in the absence of one, they will carry out their main food shopping in smaller stores. Clearly, if those



## Response to CILR2 on behalf of Burt Boulton Holdings

smaller stores were a 'different use' they would not be able to carry out the same activity in them. The fact that people can carry out the same activity (i.e. use of the building) regardless of the size of it, would suggest most strongly that the use is the same no matter what size it is. It is merely the level of choice available to the customer that differs.

2.2.3 Other 'evidence' included in Annex A of CILR2 also reinforces WYG's case that, in the absence of local evidence demonstrating the contrary, 'retail is retail'. Under 'Mode of travel for main food and non-food shopping' it is clear that no distinction can be drawn on this being an indicator of use, since 91% use a car to travel for main food shopping, and broadly similar levels (87%) use a car for non-food shopping.

2.2.4 Paragraph 14 of the Council's response covers a number of areas, and we deal with each of these in turn below.

2.2.5 We would agree with the Council in their interpretation of their retail study that all the large stores in the catchment area are operated by national retailers, but we fail to see how this ties back to the Council's CIL case that these stores are a 'different use' to smaller stores. On the contrary, the table at paragraph 14 of the Council's evidence would appear to demonstrate the opposite. Whilst the large stores are operated by the likes of Tesco, Sainsbury's, Co-op and Waitrose, it is also clear that in each and every town listed there are also one or more small stores (150-600sqm) operated by these very same operators. Given that these operators, by and large, do not sell different types of goods in different stores (in New Forest District, at least) it follows that these stores must all be the same 'use', and therefore there is no evidence in this table to justify any differential within the retail use. It is a simple fact that pretty much all the items for sale in a small Tesco will also be for sale in a large Tesco.

### 2.3 History of planning applications for retail in New Forest

2.3.1 The Council then goes on, in paragraph 14, to seek to justify the 1,000sqm threshold. However, to do so is missing the point. Regulation 13 does not allow a differential by size of building. Size of building can only be a relevant factor if there is local evidence to demonstrate that the size is a proxy to a different 'use' resulting from the building. Whether or not planning applications for retail are significantly above, below or around the 1,000sqm mark is not relevant as this does not assist in demonstrating a differential in the use of the retail premises.

### 2.4 Impact Threshold - Local Plan Part 2 : Sites and Development Management



## Response to CILR2 on behalf of Burt Boulton Holdings

- 2.4.1 The Council continues by referring to two development plan documents that it considers helps its case. The first of these is the draft Local Plan Part 2: Sites and Development Management which sets 1,000sqm as determining whether an impact assessment is required. It does not, as the Council maintains, provide a differentiation between larger A1 convenience stores and smaller ones.
- 2.4.2 The 1,000sqm threshold was not set in any attempt to differentiate between different types of retail, rather it was set because NLP (the Council's retail planning advisors) considered that it was a more appropriate threshold than the standard 2,500sqm threshold set in PPS4 (current at the time the retail study was prepared) for the consideration of impact, given that the retail 'need' for some of the towns was low. NLP considered that in the context of small amounts of 'need', proposals of substantially less than 2,500sqm could have an impact. This is made clear in paragraphs 4.21-4.25 of the July 2010 retail study (extract included with this response).

### 2.5 Parking Standards SPD

- 2.5.1 The Council goes on to refer to their adopted car parking policy contained in the Parking Standards Supplementary Planning Document October 2012. The Council claims that this document requires a Transport Assessment and Travel Plan to be produced for "A1 food retail above 1,000sqm". This would appear to be a case of the Council bending the document to retro-fit a lack of evidence to support its case, because the SPD does not in fact say that at all. The parking standards are included in Annex A of that SPD and the relevant table is attached to this response. The table clearly shows that Transport Assessments and Travel Plans are required for **Retail** over 1,000sqm – not **A1 Food Retail**. This part of the SPD therefore makes no distinction between food retail or other types of retail. Were they genuinely a different use, one might assume that such a distinction would be made in the SPD.
- 2.5.2 Table 3 of the Parking Standards SPD does provide a breakdown between non-food retail and food retail. Here, it is clearly seen that there is no differential drawn between different sizes of retail units, regardless of whether they are food or non-food. One would assume that if larger superstores and supermarkets (over 1,000sqm, for example) were truly a different use in New Forest District then this fact would be reflected in these very recently adopted parking standards, as was the case in Plymouth City Council. The SPD clearly therefore supports the case being made by WYG that there is no difference in use for food retail units based on their size.

### 2.6 Alternative Approach – Convenience only CIL charge

- 2.6.1 The Council is suggesting that, if the Examiner is not convinced that 1,000sqm is an appropriate or compliant threshold, then a CIL charge could be applied to all convenience retail. However, this suggestion misses the key point that Regulation 13 does not permit a differential based on size.

## Response to CILR2 on behalf of Burt Boulton Holdings

For the Council's alternative approach to meet the requirements of Regulation 13, it would need to have provided evidence to show that convenience A1 is a different use to other types of A1 floorspace in New Forest District. In this respect, the Council points (at paragraph 21) to definitions set out in National Guidance and the Core Strategy.

- 2.6.2 By its own admission, this approach would apply a CIL charge to a size of retailing that is not capable of withstanding it, according to the Viability Assessment. Applying a CIL charge to all convenience retailing would introduce an unacceptable burden on smaller retailers looking to invest in New Forest District. We have looked for a Council committee report that indicates that members have accepted that they are willing to prejudice the delivery of small retail facilities. Given that this is a critical part of the Regulation 14 balancing exercise it would be normal to see authority for such a change in position.
- 2.6.3 Furthermore, this alternative approach is incompatible with the current planning system. CIL deliberately does not relate to the use classes set out in the Use Classes Order 1987 (as amended). An applicant seeking A1 floorspace applies for just that. In normal circumstances, particularly for smaller stores, there would be no justification for restricting that A1 floorspace to a particular type of good – convenience, comparison or other A1 use. As such, there would be no mechanism for NFDC to identify at the CIL liability notice stage what a retail store was intending to sell.
- 2.6.4 There may be cases, particularly for larger stores, where it might be necessary (for purposes of impact assessments at least) to identify the goods that can be sold from a particular store. However, this is unlikely to be the case with a small store in, or in close proximity to a town centre, for example. Any applicant could therefore easily avoid a CIL charge either by not declaring the type of goods it intends to sell at the planning application stage, or by declaring comparison goods and then, in the absence of a planning condition, selling convenience goods once the store is built.
- 2.6.5 The 'Alternative Approach' put forward by the Council is therefore not workable.

### 2.7 Alternative Approach – uniform rate for all retail

- 2.7.1 The Council has not proposed a uniform rate for all retail, although in the absence of evidence to justify a differential of any sort, this would appear to be the only option. For the reasons set out below, a zero rate is the only feasible option for the charging schedule.
- 2.7.2 The Council's 2010 retail study, prepared on their behalf by NLP, identifies a "significant outflow of comparison expenditure" (para 3.28). The study goes on to suggest that "Significant improvements to comparison retail provision within the District could help to claw back some additional expenditure leakage from parts of the study area." (para 3.46).

## Response to CILR2 on behalf of Burt Boulton Holdings

- 2.7.3 Paragraph 4.17 of the study concludes that “The quantitative capacity analysis indicates that in the short to medium term up to 2018 there could be scope for about 13,600 sq m gross of comparison floorspace in the District as a whole, based on constant market shares.”
- 2.7.4 The 2010 retail study identifies a demonstrable need for additional comparison goods retailing in the district. The tables in the study go into more detail about where this should be delivered, but for the purpose of the CIL charging schedule that is irrelevant as no zonal differential is proposed. The conclusions of the study make it clear that the delivery of new comparison retail floorspace is a priority (para 4.06), especially in the short term.
- 2.7.5 The Council’s Viability Assessment supporting the Draft Charging Schedule clearly shows in Figure 29 that certain forms of comparison retail development (archetype Q) would not be viable if subject to the proposed CIL charge of £200psqm. Even comparison retail backed by a national retailer does not show strong viability with a CIL charge in place.
- 2.7.6 To apply a CIL charge to comparison retail development would put in jeopardy the very kind of development that the Council’s own retail study has identified to be a ‘priority’. Given that there is an identified need for such retailing; applying a CIL charge that is shown to make such developments unviable would not, in our view, meet the balance required under Regulation 14. Furthermore, it would prejudice the ability to meet the development objectives of Core Strategy policy CS20(d) that seek to strengthen the vitality and viability and enhance consumer choice in town and district centres by making provision for additional floorspace.
- 2.7.7 In light of the above, we would contend that the only option open to the Council is to apply a zero charge across all types of retail development.

# Response to CILR2 on behalf of Burt Boulton Holdings

## 3.0 Conclusions

- 3.1.1 In summary, whilst the Council has referred to documents not previously referred to in its CIL schedule, this has added little if anything to its contention that superstores / supermarkets are different uses for the purpose of regulation 13. If anything, the 'evidence' it has referred to demonstrates the opposite.
- 3.1.2 We maintain our view that the viability evidence produced by the Council is not sufficiently fine grained to be able to draw conclusions on differentials. However, even if it were, the mere fact that one size of use shows different viability to another size is not sufficient to justify a differential by reference to Regulation 13. It is for the Council to demonstrate that this difference in size, that is allegedly creating the difference in viability, is because the intended use is different. The Council has not been able to demonstrate that larger premises are a different 'use'. Rather, all it has been able to show is (as one would expect) more people travel to larger stores for main food shopping – presumably because such stores have more choice. However, its evidence has also suggested that in the absence of such a choice, the same use takes place at smaller stores – again, this should not be surprising. If people need to buy food, they will buy it at the place most convenient to them. If that convenience centres around greater choice rather than proximity to home then it is a judgement call unrelated to the use of the building to be visited.
- 3.1.3 The Council has also provided evidence that the main food stores operate a food-shopping use at both large stores and small stores (well above and well below the 1,000sqm point). Furthermore, it has provided evidence that shows that its own policies (both retail impact and parking) treat retail either 'as retail' (with no distinction even between food and non-food in the case of the need for Transport Assessments and Travel Plans) or as the 'same use' regardless of size (parking numbers).
- 3.1.4 In light of the above, there is no justification for a differential rate for A1 retail premises. For the reasons set out in this response, the only rate that can therefore be applied to A1, which will not cause unacceptable damage to the Council's pressing need to deliver more comparison goods retailing in the District, is a zero rate for all retail.

