

NEW FOREST DISTRICT COUNCIL – CIL EXAMINATION

INSPECTOR'S NOTE – DECEMBER 2013

RESUMPTION OF THE EXAMINATION – HEARING 23 JANUARY 2014

The CIL Examination was suspended in March 2013 because of the need to suspend the parallel Examination of the Local Plan Part 2. For that Plan I had asked the Council to undertake further work in relation to habitat mitigation and this further work was likely to result in revisions to the evidence relevant for the CIL Examination, such as the Infrastructure Delivery Plan (see ID9). I am conducting further hearings for the Local Plan Examination on 21 and 22 January. As previously notified, a further CIL hearing has been scheduled for **Thursday 23rd January**. This Note sets out questions in relation to outstanding matters for pre-hearing statements or other written submissions.

1. Hearing

1.1 The hearing will take place only if a party who previously made representations on the published CIL wishes to be heard on the outstanding matters. If no party wishes to be heard, I will complete the Examination on the basis of any further written statements submitted in response to the questions below.

1.2 Please let the Programme Officer know by noon on Friday 10th January 2014 if you wish to participate in a further hearing.

1.3 Whether or not a hearing takes place, the deadline to respond to the questions below is **noon Wednesday 15th January 2014**. There is no need to repeat previous submissions, but an appropriate specific cross reference should be made to them where appropriate. Please do not make submissions on other matters not directly related to the questions posed. Any statement should be submitted to the Programme Officer electronically. Any statements of more than 5 A4 pages should include a paper copy to be received by the same deadline.

1.4 The questions posed below will form the agenda for any hearing. No further agenda will be issued unless further matters requiring clarification arise.

2. Infrastructure Delivery Plan

2.1 The Council has published an updated *Infrastructure Delivery Plan* September 2013 (NFDC48 of the Documents for the Local Plan Examination). This is in the same format as the version previously before the Examination (April 2012 EVI02). In my view, it is the projects in Appendix A which are of particular relevance along with the Summary of Costs on page 23 (which can be compared with the summary of costs on page 22 of the previous IDP). A similar, but increased funding gap is identified. Appendix A now includes, as a first priority, the Council's specific projects for Habitat Mitigation.

Q2.2 Does the new IDP significantly change the justification for charging CIL. Is introducing CIL still justified?

3. Assumptions made in the Viability Assessment (VA)

3.1 The viability evidence remains as before (CIL Viability Assessment Final Report, December 2011 EVI03). One of the issues explored previously was

whether the VA's assumptions that residual S106 obligations would be zero is justified.

3.2 For residential development only, I need to take into account the Council's draft *SPD Mitigation Strategy for European Sites* September 2013 (NFDC 46). Chapter 7 sets out the anticipated funding mechanisms both before and after the commencement of CIL. On larger sites where on-site provision of SANGS is proposed to be a policy requirement, paragraph 7.18 indicates that the provision of such SANGS will be accepted as payment in kind for CIL. The overall menu of payments and provision in relation to Open Space and Habitat Mitigation with CIL is summarised in Table on p70 of the SPD.

Q3.3 Does the new evidence in relation to the delivery of SANGS and other mitigation significantly undermine the VA's assumption that residual section S106 contributions will be zero? If this assumption is not justified does it undermine the justification for the CIL residential charging rate? If it does, what adjustment to the rate should be made in relation to this issue alone?

3.4 In my note ED4 January 2013 I sought further clarification from the Council regarding the assumption about S106 requirements with CIL in place, particularly in relation to open space provision. The Council's response is in CILR3. In my note of 11 February 2013 (ED5) I sought further clarification about open space provision on large sites not being counted as a CIL payment in kind. The Council's response is in CILR4.

Q3.5 For the Council: Does the intention, as indicated, in the SPD, to treat the on-site provision of SANGS as a payment in kind for CIL alter the Council's previously expressed view that on-site provision of open space required by policy CS7 would not be treated as a payment in kind? It would be helpful to my understanding if the Council were able to indicate how open space provision and habitat mitigation would actually be described in the Regulation 123 list that the Council would need to publish, so that I can understand how the Council will reassure developers of the larger sites that they are not spending money twice on the same type of infrastructure.

4. Retail charge

4.1 In my note, ED3 I set out my preliminary conclusion in relation to the retail charge and sought the Council's views as to the appropriate way to amend the charging schedule. That prompted an unrequested, detailed further justification for the 1,000 sqm threshold for the retail charge (CILR2). I invited further comments from parties on this new evidence by ED5 and I have taken into account the submissions made. The representations included a challenge to the principle of accepting the new material because there was no evidence to indicate that it had actually been taken into account by the Council in preparing the draft charging schedule and even if it had been, the evidence had not been referred to in any way either in the documents explicitly supporting the CIL charge or listed as a directly supporting document for CIL.

Q4.2 Should I take into account the evidence referred to in CILR2?

Q4.3 Question for a hearing only, as the Council's position and others response is already clearly set out in the statements made and does not need repeating: If I did take it into account does it demonstrate that a threshold of 1,000 sqm is appropriate to differentiate between superstores/supermarkets typically used for weekly shopping and smaller convenience stores.

4.4 Notwithstanding either of the above questions, I had previously concluded in ED3 that the 6 retail archetypes in the VA did not provide sufficient fine grain testing to establish that the threshold of 1,000 sqm is appropriate. There is no reason for me to change that conclusion.

Q4.5 Question for a hearing only: If I were to subsequently confirm my overall preliminary conclusion in ED3, what is the appropriate recommendation in relation to the charging schedule. Parties have already set out their positions and these do not need to be repeated.

4.6 In this scenario the Council suggests that the charging schedule be amended to apply a charge to all A1 convenience stores. However, I could not make such a recommendation as it extends the charging schedule to development not previously captured by it. To do so would be unfair to parties who might have wanted to make representations on such a charge. Furthermore, the VA indicates that a charge on some smaller retail stores would make them unviable. It is not apparent that the Council has reconsidered the appropriate balance between raising CIL revenue and the adverse effect on the viability of smaller convenience stores.

4.7 Finally, in fairness to all parties, I should draw attention to the conclusion and recommendation I recently made following my Examination of the charging schedule of the London Borough of Merton. The adoption schedule and my report (16 October 2013, paragraphs 24 -31 concern retail use) are available here. <http://www.merton.gov.uk/environment/planning/cil.htm>

4.8 The LB Merton's adopted charging schedule includes a charge for retail warehouses and superstores. Superstores are defined as:
Superstores: are shopping destinations in their own right, selling mainly food or food and non-food goods, which must have a dedicated car park.
There is no floorspace threshold.

4.9 On 14 January 2013, the New Forest Council had 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.

Q4.10 Bearing all the above in mind (and on the assumption that I confirm my overall preliminary conclusion in ED3) does the available evidence for the New Forest justify a charge based on a specific description of a superstore only, without the need to justify a specific floorspace threshold? If it does, I consider that I could recommend such a change since it would be defining more narrowly developments subject to the draft retail charge rather than expanding the type of development captured.

Simon Emerson
Examiner
20 December 2013