

Report to Bassetlaw District Council

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an Examiner appointed by the Council

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Planning Act 2008 (as amended)

Section 212(2)

Report on the Examination of the Bassetlaw Community Infrastructure Levy Draft Charging Schedule

Charging Schedule submitted for examination on 18 July 2022

The examination hearing was held on 7th September 2023

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Abbreviations used in this report

BDLP	Bassetlaw District Local Plan
BLV	Benchmark Land Value
CIL	Community Infrastructure Levy
CS	Charging Schedule
DCS	Draft Charging Schedule
EUV+	Existing Use Value +
GDV	Gross Development Value
IDP	Infrastructure Delivery Plan
LP	Local Plan
PPG	Planning Practice Guidance
UCO	Use Classes Order
VA	Viability Assessment

Non-Technical Summary

This report concludes that the Bassetlaw Community Infrastructure Levy Draft Charging Schedule provides an appropriate basis for the collection of the levy in the District. The Council has sufficient evidence to support the schedule and can show that the levy is set at a level that will not put the overall development of the area at risk.

Two modifications are needed to meet the statutory requirements. These can be summarised as follows:

- Change the description for A1 Retail Convenience to E(a) Food Supermarket (Convenience Retail) to reflect the 2020 changes to the Use Classes Order and the viability evidence.
- State within that this CIL Charging Schedule replaces the Schedule of September 2013.

The specified modifications recommended in this report are based on matters discussed during the public hearing sessions.

Introduction

1. This report contains my assessment of the Bassetlaw Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS) in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance. The Council previously adopted a CIL in September 2013 and has reviewed the Charging Schedule to support the delivery of its new Local Plan. This DCS is therefore intended to replace the 2013 CS.
2. To comply with the relevant legislation the local charging authority has to submit a charging schedule which sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the District. The basis for the examination, on which hearing sessions were held on the 7th of September 2023, is the submitted schedule of August 2021, which was subject to public consultation between 2 September 2021 and 21 October 2021, as amended by the Statement of Modifications [CIL-004], which was submitted with the DCS.
3. The Council proposes a rate of £20 per sq m for residential C3 and C4 use classes, a rate of £0 on Local Plan residential site allocations of 50 or more units, and £100 per sqm for A1 Retail convenience. All other uses within the whole district would be subject to a rate of £0 per sqm.

Is the charging schedule supported by background documents containing appropriate available evidence?

Infrastructure planning evidence

4. The Bassetlaw Local Plan 2020-2038 (LP) has been examined alongside the DCS. The Plan aims to facilitate over 11,000 new homes over the Plan period, of which over 8,500 have yet to be provided. It also proposes an additional 163 hectares of general employment development and approximately 118 hectares of logistics development to meet sub-regional employment needs. These main elements of growth will need to be supported by further infrastructure in the District.
5. Supporting the LP is the Bassetlaw Infrastructure Delivery Plan (May 2023) (IDP). This identifies the necessary infrastructure to support the development proposed in the LP in terms of education, transport, green infrastructure and health provision. It also indicates (where known) the cost and potential sources of funding for the necessary infrastructure. The IDP identifies that the total cost of infrastructure from the site allocations is circa £46.2m. The estimated contributions associated with developer contributions is expected to provide around circa £36.7m leaving a residual funding gap of around £9.5m. The

estimated CIL receipt from development in the Plan is estimated to be around £10.89m. Whilst this exceeds the estimated residual funding gap, there are a number of infrastructure items that are not costed, so the overall cost of infrastructure and the funding gap is likely to be larger than this.

6. In the light of the information provided, the proposed charge would therefore make a significant contribution towards filling the likely funding gap and the figures demonstrate the need to levy CIL.

Economic viability evidence

7. The Council commissioned a CIL Viability Assessment (VA), dated October 2019, which was subsequently updated in August 2021. This was informed by the "Gleeds Construction Cost Study" and "heb Property Value Study" which are both appended to the report. The assessment uses a residual appraisal approach to assess a range of typologies for commercial and residential development likely to come forward during the Plan period.
8. The VA takes account of relevant local data on existing land values. This included Land Registry data of recent residential sales transactions, for the main settlements within Bassetlaw District which take account of variations between settlements. For commercial development the VA did not contain any transactional evidence to support assumptions, for example in relation to rents. These were provided after the hearing [CIL BDC 09a]. Whilst these examples are nationwide and show a range of values, they nonetheless show that the assumptions for the development value of commercial floorspace in the VA are in most cases relatively conservative.
9. The Benchmark Land Value (BLV) has been established as the Existing Use Value of the land plus 50% of the increase in its value resulting from the planning permission for its development, sometimes referred to as EUV+. In effect, the increase in the value of the land resulting from permission for development is shared equally between the landowner and the local authority/community, in the form of CIL and other developer contributions. This is in line with guidance in Planning Practice Guidance (PPG¹) which puts forward EUV+ as an appropriate means of establishing BLV. I have been presented with no cogent evidence that the 50% share is not soundly based and I conclude that it represents an appropriate balance between the desirability of funding infrastructure through CIL and the potential impact on the viability of development. In general, I consider that the benchmark land values used are sufficiently realistic for comparison purposes in a generic study of this type.
10. The VA appraised five typologies for residential development (Apartments, Rural 15 dwellings, Urban 30 dwellings, Urban 100 dwellings and Urban 250

¹ PPG on Viability (Paragraph: 016 Reference ID: 10-016-20190509)

dwelling). It looked at both greenfield and brownfield development and, as the document also informed the preparation of the Local Plan it looked at three different levels of affordable housing provision (10%, 20% and 30%). The appraisal uses standard house types that meet minimum internal space standards as set out in national guidance. These are broadly in accordance with new build house types that have recently sold in the District, as confirmed by Land Registry data. The assumed housing mix also takes account of local plan policy requirements in the emerging Bassetlaw Local Plan. Whilst the viability testing cannot address every eventuality, the VA nonetheless assesses the residential development scenarios most likely to arise in the district.

11. The VA does not make specific provision for abnormal costs. There is nothing before me to indicate that development in the District would be disproportionately impacted by abnormal costs and I am mindful that abnormal cost issues, like site contamination, will be reflected in reductions to land values. In this regard Planning Practice Guidance² is clear that BLV should reflect the implications of abnormal costs. Furthermore, within the appraisals the potential burden of abnormal costs is accounted for as part of the risk premium within the profit margin. In the absence of any compelling evidence to indicate otherwise, I am satisfied that no additional allowance need be made for abnormal costs within the VA.
12. The residential appraisals allow for 20% developer profit for market housing and 6% for affordable housing. Although the figure for market housing is at the top end of the range advised within the PPG (Paragraph: 018 Reference ID: 10-018-20190509), for the purposes of CIL assessment it represents an appropriately precautionary approach.
13. The appraisals used construction costs based on BCIS data which was up to date at the point of submission. Whilst there will have likely been changes to construction costs over the period of the examination, I've been provided with no cogent evidence that in relation to the residential appraisals, any such changes would be so significant as to require alteration of the assumptions made within the VA.
14. The appraisals reflect the impact of relevant development plan policy in the emerging Bassetlaw Local Plan and the residual use of planning obligations for site specific mitigation on development costs. I am advised that CIL has been in operation in the District since 2013 and during that period an average of £1249 per dwelling has been collected through S106 contributions. To account for the potential impact of S106 requirements on new development and to assess the potential balance between affordable housing delivery and infrastructure contributions, the VA undertook a series of tests for residual S106 costs at £1750 per dwelling, £3000 per dwelling, £4500 per dwelling and £6000 per

² PPG on Viability (Paragraph: 014 Reference ID: 10-014-20190509)

dwelling. This testing included assumptions as to the likely cost of delivering Biodiversity Net Gain (BNG), tree planting requirements, accessibility standards, water conservation standards, and national space standards and in the case of commercial development, BREEAM standards.

15. The lowest level of S106 tested - £1750 represents an increase in 40% above the previous average per dwelling for S106. Although as set out below, this would not be reflective of the infrastructure costs for development on strategic sites, for most smaller scale development, and for the purposes of testing viability, this allowance is a reasonable approximation for S106 costs for most smaller scale development sites in the District.
16. The emerging Local Plan has a differential affordable housing policy which seeks 20% affordable housing on brownfield sites and 25% on greenfield sites. The VA appropriately takes account of the impacts of affordable housing provision, including the requirement to provide a minimum of 10% low-cost home ownership. Taken together with the policy obligations set out above, I am satisfied that the residential appraisals adequately reflect the costs associated with meeting the policy requirements of the emerging Local Plan.
17. With regard to retail uses, the VA assessed small scale retail development up to 300sqm, referred to as roadside retail, and larger scale retail of 3000 sqm for convenience goods, such as supermarket. The appraisals indicate that only retail development at a larger scale, for convenience goods, generates sufficient return to bear a CIL charge. For "supermarket" retail uses the appraisal uses an assumed plot ratio of 33% site coverage. It was put to me that supermarkets generally require a more spacious environment to facilitate parking, circulation and servicing requirements and that an appraisal based on 20% site coverage is more appropriate. Of the examples put to me to support this I note that a number of these relate to mixed use developments which include large areas of shared landscaping and parking provision which also serve adjoining uses. Furthermore, I'm not aware that any of the examples put forward have been built out.
18. The Council provided a number of alternative examples of built out development where the plot ratio was in most cases significantly higher than the 1:3 or 33% assumed in the typologies. In this regard, I am satisfied that the ratio used by the Council is reasonably reflective of supermarket retail development likely to come forward in the district and does not underestimate the site areas necessary to facilitate this type of development.
19. Some retail floorplates for food stores may in the event be smaller than this, and I note that ALDI and Lidl stores tend to be smaller than the floorplate used for food retail in the appraisal within the VA. Discount food operators have a growing share of the retail market and so it is appropriate that this scale of

development is appropriately assessed. At the hearing the Council provided an additional appraisal that used an 1,800 sqm floorplate. I am satisfied that as well as exploring a number of other factors, it provides a reasonable model for testing the viability of a range of potential supermarket development in the District.

20. Due to a lack of previous commercial transactions, the Council had limited evidence on which to base their assumptions on likely S106 contributions for commercial development, to cover necessary infrastructure costs. The £11 per sq m is derived from the CIL charges in comparable developments in other districts. I recognise that in some site-specific cases the cost of off-site highways works may be significantly greater than the value of contributions identified in the VA, particularly in larger scale developments where retail may form part of a wider development mix. However, I have nothing before me to indicate that significantly higher S106 contributions are the norm. As such, I am satisfied that in the normal course of events the S106 assumptions used in the appraisals for commercial development are a reasonable benchmark. Whilst the £11 per sq m would not be sufficient to cover substantial off-site highways works it is not intended to. In the case of very significant works being necessary to access a development, these costs would be "abnormal" and so be reflected in the land value.
21. The appraisals in the VA rely on a 7% allowance for professional fees. They also provide for 0.5% legal fees, 0.6% statutory fees, 1.0% sales and marketing costs. Stamp Duty is accounted for as part of development costs. At the hearing it was put to me that in the case of retail development, these fee allowances were insufficient and did not account for a range of items including purchaser's costs, stamp duty and agents fees and that an 8-12% allowance for such costs would be appropriate.
22. I note that the VA makes no specific allowance for letting or purchase fees. However, once all fees are accounted for, including an allowance for stamp duty, they are within the range of 8-12%, albeit towards the lower end.
23. It was put to me that the commercial development valuations make no allowance for tenant incentives and do not adequately account for void costs. The VA allows for a 3-month void period. I have no persuasive evidence that void periods for development in the District would, as a whole, be longer than this. The VA also makes a significant allowance for contingencies. Furthermore, in relation to convenience retail floorspace in the District, which is the only commercial use that the Council intend to levy a charge on, it appears to me to be unlikely that such developments would come forward in the form of speculative development. This is because, in reality, for most food retail developments, operators in this sector either build their own unit, or the developer builds a shell to order for the operator to carry out the internal fit themselves. I also take into account that the appraisals allow for a 17.5% profit

for the developer, which in the case of "in-house" development with a much lower level of risk is relatively generous. I therefore see no reason to make additional allowance for these factors.

24. The commercial appraisals have also been criticised for making no allowance for cashflows. Whilst this may be a factor in large scale retail developments built and let over an extended period, I've been provided with no persuasive evidence that this is a significant factor for the types of retail development for which a CIL charge is proposed in the District.
25. It has been argued that the construction costs for food retail developments used by the Council are artificially low and do not reflect the BCIS median cost for supermarkets. Supermarket build out costs will depend on a number of factors subject to the specification of the occupier. The retail appraisals in the VA were based on the developer providing a shell build for lease and fit out by retail operators. The shell build cost for supermarkets in the BCIS data provided at the hearing (CIL BDC 11) is £998sqm. Therefore, the £1250sqm figure provided by Gleeds (which includes the standard additional allowance for external works) remains robust.
26. The debt interest rate of 5% which the appraisals in the VA rely on is below the Bank of England lending rate. At the time of the hearing this lay at 5.25%. Due to inflation, construction costs will also have increased since the VA was carried out. I have considered whether these factors might significantly alter the conclusions reached in the range of residential and commercial typologies put to me. However, I am also conscious that the typologies can only provide a snapshot in time. Future interest rates over the life of the CIL schedule are not known or fixed and property values will also have altered since the appraisals were completed. In this regard I do not consider that the assumed finance interest rate undermines the appraisal conclusions.
27. Nevertheless, as a sense check and to respond to the points raised above in relation to retail development in particular, the Council provided an additional set of appraisals (CIL BDC 05). These made a number of adjustments. They used a smaller unit size of 1800 sq m which is around the size of a smaller food retail store favoured by discount operators. The professional fees allowance was increased to 8%, whilst other allowances were retained increasing the overall allowance for these group of costs. The interest rate was increased to 8% to allow for increases in the base rate. Construction costs were increased from 1329 per sq m to 1450 per sq m to account for inflation. The assessment also substantially increased the amount allocated to deal with S106 contributions from £10 per sq m to £25 per sq m. The allowance for contingencies was reduced but remained adequate at 3%. I am satisfied that this additional work provided an appropriate sensitivity test for the viability of retail floorspace to support the proposed CIL rate, at higher development costs.

28. The DCS has been informed by discussions with stakeholders and through public consultation documented within the Statement of Consultation July 2022 [CIL-001]. This sets out the consultation that took place with a range of public and private sector stakeholders. The Council have also provided the Schedule of Representations Nov 2020 [CIL-005], the Regulation 16 CIL Responses - Aug 2021-Oct 2021 [CIL-002] the Copies of Representations made under Regulation 19 [CIL-003] and a Statement of Modifications July 2022 [CIL-004]. These demonstrate that an adequate and proportionate approach in relation to local stakeholder participation was taken by the Council.

Conclusion

29. The draft Charging Schedule is supported by detailed evidence of community infrastructure needs and economic viability. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.

Is the charging rate informed by and consistent with the evidence?

CIL rates for residential development

30. The VA shows that alongside the £1750 for S106 obligations most residential development types in the District would comfortably be able to support a CIL charge of £20 per sq m.
31. For apartment developments on both greenfield and brownfield sites the VA shows a negative return. However, apartment development does not make up a significant proportion of recent development in the District and is not anticipated to contribute a significant proportion in the future. I am therefore satisfied that notwithstanding the indicative lack of a surplus from which to fund CIL for apartment schemes, in reality, the proposed residential levy would not have a material effect on the delivery of planned residential development in the District.
32. For brownfield sites of between 30 and 100 dwellings or more the VA shows a surplus below the level proposed to accommodate CIL. I am satisfied that the other variables in the appraisal all take a precautionary approach and so in light of this, and given the marginal extent to which this category of development would fall below the indicative level at which CIL can be levied, I am satisfied that it is unlikely the proposed CIL rate would have a material impact on the deliverability of development of this type.
33. A significant proportion of development coming forward in the Local Plan will be derived from large strategic sites. These will require considerable investment in on and off-site infrastructure which it is anticipated will be above the historic average. In view of the on-site infrastructure requirements proposed to be

funded by S106 contributions, as part of the VA, site specific viability assessments for each of the strategic sites proposed in the Local Plan were carried out. This showed considerable variation but that in general the strategic sites within the Local Plan demonstrate no additional viability margin to accommodate a CIL charge.

34. I note the concerns of the County Council which relate to the exclusion of strategic sites from the CIL. Whilst I appreciate that CIL may be used to fund off-site works which may be needed to address the cumulative effects of development, it is the likely viability of the development which determines whether it is appropriate to set a CIL levy. The County Council advocate reducing the S106 contributions for strategic sites and extending the CIL to strategic sites within the Local Plan. However, the District Council have assisted in identifying the likely extent of S106 requirements to mitigate the effects of development and in taking account of the likely impacts of S106 obligations on a site-by-site basis in relation to strategic sites. I therefore consider their conclusions to be reasonable and I am satisfied that setting a zero CIL rate for residential development on the strategic sites is justified and consistent with the available evidence.
35. The VA considered evidence of residential land and property values and concluded that there were no significant variations between sales prices across the District. Accordingly, a single zone approach was taken to CIL charging. Based on the evidence put to me I consider this to be a reasonable approach.
36. Overall, I am satisfied the proposed rate of £20 per sq m for residential development in Use Classes C3 and C4, except for strategic sites allocated in the Local Plan, is justified on viability grounds and would not put at risk the delivery of this type of development in the current market conditions.

CIL Rates for Commercial Development

Retail Uses

37. Taking into account the cumulative effect of all the increases in costs set out in my assessment of viability above, the appraisals for supermarket retail demonstrate that convenience retail development at this scale would be viably able to support the proposed CIL rate of £100 per sq m. Whilst the appraisals represent a snapshot in time, the CIL rate has not been set at the margins of viability, and there is a sufficient buffer within the appraisals to accommodate variations in any of the assumptions for development costs and values.
38. Furthermore, when considered as a whole, I am conscious that with all the matters explored above, typologies of the type used in valuation assessment are aimed at providing middle of the range scenarios using general

assumptions. They are not intended to cover all potential scenarios, and neither could they. In this regard, the work carried out by the Council is robust and a sufficiently wide range of development scenarios are accounted for within it. The work demonstrates that supermarket retail development would be viable.

39. The VA considered evidence of commercial land and property values and concluded that there were no significant variations between sales prices for convenience retail floorspace across the District. Accordingly, a single zone approach for the proposed CIL charge for this type of development is reasonable.
40. The Use Classes Order 2020 introduced new Use Classes E and F which combine some elements of the previous A, B, C and D Use Classes. As a consequence, Use Class A1 has been replaced by Class E(a) which relates to "display or retail sale of goods, other than hot food".
41. The charging schedule refers to A1 convenience retail. In light of the changes to the UCO it is appropriate that this be amended to reflect the more recent terminology for the use. The VA tested only food retail and provided no assessment of non-food retail at larger scales. The modifications made by the Council to the CIL charging schedule referred instead to Class E(a) retail convenience store. However, in the interests of clarity I recommend that this be amended to refer to Class E(a) Food Supermarket (retail convenience) to reflect the typologies that were tested in the VA and found to viably support the proposed CIL with a comfortable margin for viability.

All other development uses

42. The Council's decision not to charge CIL on Industrial³ (B2 and B8), Office (B1), Hotel (C1), Residential Institutions (C2), Community (D1) and Leisure (D2) is consistent with the evidence in the CIL Viability Assessment. This demonstrates that current market returns for these uses are too low to absorb any level of CIL.

Does the evidence demonstrate that the proposed charge rate would not put the overall development of the area at serious risk?

43. In line with the guidance in the PPG⁴ the Council have proposed CIL charges that provide a reasonable viability margin commensurate with the type of development being brought forward. This is an appropriately precautionary

³ The Use Classes Order 2020 changed the previous use classes referred to here to introduce Use Classes E and F. Although I have altered the reference in the CIL from A1 to E(a), as no CIL is proposed for the other uses I have not sought to align the former references with those in the Use Classes Order 2020.

⁴ PPG on Viability (Paragraph: 018 Reference ID: 10-018-20190509)

approach which will provide a degree of safeguarding to allow for variations in costs and values for individual developments.

44. The Council's decision to set a rate of £20 per sq m for residential development in Use Classes C3 and C4, a rate of £0 on Local Plan residential site allocations of 50 or more units, and £100 per sqm for retail convenience development is based on reasonable assumptions about development values and likely costs. The evidence suggests that residential and commercial development will remain viable across most of the area if these charges are applied. Conclusion and Legal Requirements
45. In setting the CIL charging rate, the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in Bassetlaw. In this regard the Council has been pragmatic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a range of development remains viable across the District.
46. The Charging Schedule complies with national policy/guidance with the inclusion of the changes in the Statement of Modifications.
47. The Charging Schedule complies with the 2008 Act and the 2010 Regulations (as amended), including in respect of the statutory processes and public consultation, consistency with the Bassetlaw Local Plan (2022) and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.
48. I conclude that, subject to the Modifications set out in the Appendix to this report, the Bassetlaw Community Infrastructure Levy Draft Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Draft Charging Schedule be approved with the inclusion of the Modifications.

Anne Jordan

EXAMINER

Appendix – Modifications

The Council should modify the Bassetlaw District Council Community Infrastructure Levy Draft Charging Schedule (Draft for Submission, August 2021) as follows:

1. Change the reference in page 9 from A1 Convenience Retail to:

E(a) food supermarket (convenience retail) whole District £100
2. State within that this CIL Charging Schedule replaces the Schedule of September 2013.
3. Any consequent changes to the DCS to reflect the above modifications.