



The Planning Inspectorate

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## Report to Leicester City Council

by William Fieldhouse BA (Hons) MA MRTPI

an Examiner appointed by the Council

Date: 16 December 2015

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

### **REPORT ON THE EXAMINATION OF THE DRAFT LEICESTER CITY COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

Draft Charging Schedule submitted for Examination on 8 May 2015

Examination Hearing Sessions held on 19 August and 6 November 2015

File Ref: PINS/W2465/429/5

## Non Technical Summary

This report concludes that, as submitted, the *Leicester City Council Community Infrastructure Levy Charging Schedule* does not provide an appropriate basis for the collection of the levy in the City.

This is primarily because the schedule is not supported by appropriate available evidence about the economic viability of student accommodation development and it has not been demonstrated that such development, which represents an important component of the overall development of the area, would not be put at risk by the proposed charge rate or the reduced rate suggested by the Council during the Examination. There is also a discrepancy between the charging schedule and the accompanying map showing residential charge zones.

However, these deficiencies can be overcome by two modifications which can be summarised as follows:

- Amend the rate for student accommodation development from £100 per m<sup>2</sup> to zero.
- Amend the residential charge zones map to make it clear that development at Ashton Green is not exempt from CIL.

These modifications are based on matters discussed during the public hearing sessions and do not significantly alter the basis of the Council's overall approach or the appropriate balance achieved.

## Introduction

1. This report contains my assessment of the *Leicester City Council Community Infrastructure Levy (CIL) Draft Charging Schedule* 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 policy and guidance<sup>1</sup>.
2. To comply with the relevant legislation the local charging authority has to submit a draft charging schedule that sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the area. The basis for the examination, on which hearing sessions were held on 19 August and 6 November 2015, is the submitted schedule dated February 2015 which is the same as the document published for public consultation during February and March 2015.
3. The Council's draft charging schedule sets out differential rates for certain types of development and, in the case of residential development, for two different parts of the City. Within the Strategic Regeneration Area the proposed

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<sup>1</sup> *The National Planning Policy Framework (NPPF)* and *Planning Practice Guidance (PPG)* ID-10 and ID-25.

residential rate is zero whereas elsewhere it is £25 per m<sup>2</sup>; the rates for distribution, supermarket, retail warehouse and student accommodation developments are £10, £150, £150 and £100 per m<sup>2</sup> respectively; and all other development would be subject to a zero rate.

4. However during the Examination, in response to representations and further appraisal work, the Council suggested that the proposed £100 charge for student accommodation development be reduced to £30 per m<sup>2</sup>. I have assessed the schedule accordingly.

### **Is the Charging Schedule Supported by Background Documents Containing Appropriate Available Evidence?**

#### *Infrastructure Planning Evidence*

5. Statutory planning policies relating to the development of the area are set out in the *Leicester City Local Development Framework Core Strategy* (originally adopted in 2010 and partially updated in 2014) and the *City of Leicester Local Plan Saved Policies Version* (adopted 2006). Work has started on the preparation of a new local plan, which will replace the existing core strategy and local plan policies, although this is at an early stage and is not expected to be adopted until late 2017.
6. The core strategy covers most, but not all, of the Leicester Principal Urban Area, parts of which are in the adjoining districts of Oadby and Wigston; Blaby; Charnwood; and Harborough. The City, which is undergoing major regeneration, has a population of around 290,000 and provides employment, shopping, public administration, health care, and further and higher education facilities for some 600,000 people<sup>2</sup>.
7. The Strategic Regeneration Area defined in the core strategy covers the city centre and beyond, and is a focus for a mix of uses. This will require the provision of transport, education, health care and public realm infrastructure to enable sites to be accessed and to serve the resulting communities. The Strategic Regeneration Area is the focus of major housing development and physical change, and new development is expected to be comprehensive and co-ordinated<sup>3</sup>.
8. 25,600 new homes are to be built in the City between 2006 and 2026. 54% (11,854 dwellings) are expected to take place in the Strategic Regeneration Area; 21% in sustainable urban extensions at Ashton Green (3,500) and Hamilton (1,011); and the remaining 25% on smaller non-strategic sites elsewhere in the City (around 2,000 in inner areas, 1,100 on outer estates, and 2,300 in the suburbs)<sup>4</sup>. Saved local plan policy HO1 allocates a number of housing sites, some of which I am advised remain undeveloped, and policy HO3 sets out minimum densities for different types of sites in different locations.
9. On sites of 15 dwellings or more, or 0.5 hectares or over, the following percentages of the total number of dwellings are required to be affordable to

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<sup>2</sup> Core strategy section 2.1.

<sup>3</sup> Core strategy key diagram; diagram 7; appendix 3; paragraph 4.4.7; and policy 4.

<sup>4</sup> Core strategy policy 1 and table 1: *Future Housing Requirements and Supply at 31 March 2010*.

meet local needs: 15% in the Strategic Regeneration Area; 30% in the south east of the City and Ashton Green; and 20% elsewhere in the City<sup>5</sup>.

10. There are two universities in the City which have a combined total of around 25,500 full time students<sup>6</sup>. The core strategy supports university related developments where they are in the interests of education, skills, enterprise or economic growth<sup>7</sup>. There has been a substantial increase in purpose built student housing in recent years reflecting both university led initiatives and a growing market provision for students. Although future growth in student numbers is not expected to be as significant as in the recent past, there is a continuing need to plan for additional purpose built student housing. Proposals for such development will normally be accepted by the Council if they meet identified needs, are well designed and managed, and can be well integrated with local built form and existing communities within walking distance of the main campuses<sup>8</sup>. Further guidance is provided in the *Student Housing Supplementary Planning Document* adopted in 2012.
11. The City Centre is expected to be the focus for new retailing, leisure and cultural development<sup>9</sup>. A retail hierarchy, comprising the City Centre, Beaumont Leys towncentre, and identified district and local centres, is supported<sup>10</sup>.
12. The core strategy states that significant infrastructure is needed to deliver the planned development, and that the costs are expected to significantly exceed the mainstream and private funding likely to be available. Appendix 7 includes a list of essential infrastructure, this being based on the *Leicester and Leicestershire Growth Infrastructure Assessment (2009)* and the *Leicester Supplement (2010)*.
13. The *CIL Infrastructure Project List (CIPL)* used to inform the draft charging schedule is based on the core strategy and the infrastructure assessments carried out in 2009 and 2010. The CIPL identifies infrastructure requirements, including a number of specific projects, relating to transport, education, strategic green infrastructure, parks and open space, and police infrastructure. In total this infrastructure is estimated to cost around £125 million, whereas currently identified funding amounts to just over £30 million. Whilst these estimates can at best be broad brush, it is clear that a significant funding gap exists.
14. In the context of the Council's draft Regulation 123 list, financial contributions through planning obligations are expected to continue to fund some types of infrastructure. Given that financial contributions from planning obligations in recent times have averaged slightly under £500,000 per year, and that the CIL Regulations mean that certain types of infrastructure will no longer be funded by such means, this source of funding is highly unlikely to go anywhere near bridging the funding gap of around £95 million.
15. CIL is a recently introduced tool intended to help deliver infrastructure to

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<sup>5</sup> Core strategy policy 7.

<sup>6</sup> Core strategy paragraphs 2.1.1 and 2.1.2.

<sup>7</sup> Core strategy policy 1.

<sup>8</sup> Core strategy policy 6.

<sup>9</sup> Core strategy policies 1 and 12.

<sup>10</sup> Core strategy policy 11.

support the development of an area<sup>11</sup> and it would be unreasonable to prevent a charging authority from utilising it unless there was a clear and convincing reason why it would not be appropriate. Whilst the National Planning Policy Framework (NPPF) advises that, where practical, CIL charges should be worked up and tested alongside the local plan<sup>12</sup>, this is not an absolute or legal requirement. I have been provided with no substantive evidence to lead me to conclude that current development plan policies relating to the types of development, including student accommodation, that would be subject to CIL are out of date, or that the infrastructure identified in the core strategy is no longer required.

16. Therefore, notwithstanding the fact that the Council has not demonstrated which particular infrastructure projects may be jeopardized if CIL were not to be introduced, I cannot see any good reason why it is necessary to delay the introduction of CIL for a number of years to allow it to be coordinated with the preparation of the new local plan. On the other hand, subject to the potential effect on viability which I consider in detail later in this report, the introduction of CIL would be likely to have a positive impact by providing additional funds for infrastructure that is required to support the development of the area. The Council has advised that the operation of CIL will be monitored and expects that the charging rates will be reviewed in the context of the new local plan around the end of 2017. This is a pragmatic way forward, and one that should allow additional funding to be raised to deliver much needed infrastructure in a timely manner.

#### *Conclusion about the Infrastructure Planning Evidence*

17. Having regard to other potential funding sources, including planning obligations, it is clear that a significant funding gap of around £95 million remains. The proposed CIL charging rate for residential developments are estimated to generate a total of around £4.4 million to £6.6 million with the rates for other forms of development expected to raise some additional funds. This would make a modest, but material, contribution to filling the anticipated funding gap and, subject to viability considerations which I will deal with in the remainder of this report, there are no overriding reasons why CIL should not be introduced at this time.

#### *Economic Viability Evidence – Development other than Student Accommodation*

18. The *Leicester, Leicestershire and Rutland CIL Viability Study* dated January 2013 ("VS") formed the basis of the *Preliminary Draft Charging Schedule* published for consultation in May 2014. In response to representations made about that preliminary draft, a *CIL Viability Study Update* was published in December 2014 ("VSU"). Together, the VS and VSU informed the *Draft Charging Schedule* published in February 2015.
19. The VS and VSU adopt a residual appraisal approach whereby the residual land value (the gross development value minus all of the costs associated with development including a profit for the developer) is compared with a threshold

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<sup>11</sup> PPG ID-25-001.

<sup>12</sup> NPPF paragraph 175.

value representing the competitive return that a willing landowner would expect in order to sell their land. If the residual land value exceeds the threshold value then there is an "additional profit" meaning that there is the potential to charge CIL whilst maintaining the viability of the development. The maximum potential for CIL depends on the extent of the difference between the residual and threshold values<sup>13</sup>. On the other hand, if the residual value is below the threshold value the development is not viable and there is no potential for CIL. Figures for the maximum potential for CIL for different types of development are included in the viability evidence<sup>14</sup>.

20. Various forms of residential<sup>15</sup> and non-residential development were appraised in the VS and VSU, with additional types added in response to representations made where deemed appropriate. Overall, I am satisfied that the range of development types appraised is representative of the main forms of development that are likely to take place in the City over the coming years.
21. The methodology used in the VS and VSU has not been seriously questioned, and it accords with the principles set out in national Planning Practice Guidance (PPG)<sup>16</sup> and well-established good practice<sup>17</sup>. However, as with any viability model, the outputs (including the potential CIL rates) are a direct result of the inputs, some of which have been questioned by representors. I deal with these issues below.

#### *Viability Assumptions – Residential Development*

22. The viability assumptions used in the VS and VSU relating to residential development were subject to discussion and consultation with interested parties during the preparation of the preliminary draft and draft charging schedules. Whilst I am advised that there was a good deal of consensus, it is clear from the representations made and discussions that took place at the hearing that there are a number of significant outstanding concerns relating to certain assumptions, particularly in relation to large greenfield sites.
23. Threshold land values are assumed in the VS and VSU to be the existing use value of the land plus 20% and, in the case of greenfield sites, an additional £250,000 per hectare. For "greenfield1" sites (3.75 hectares), this formula generates a threshold land value of £280,000 per hectare. However, the medium to large greenfield sites that exist in Leicester are within the urban area and not in agricultural use meaning that landowners' expectations are likely to be greater in relation to the price they may get for selling their land compared to greenfield sites in the countryside. Information provided by Savills indicates that greenfield sites in the area have been sold for around £500,000 per hectare or more, and the Council's consultant agreed at the hearing that such a figure is likely to be closer to that which would be expected by landowners in the City. I have no reason to come to a different view. Whilst this figure is significantly

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<sup>13</sup> Hereafter in this report, in the interests of clarity and consistency, I use the phrase "maximum potential for CIL" rather than "additional profit".

<sup>14</sup> VS Table S.1 and 12.1 for residential development and VS table 11.3 for non residential uses.

<sup>15</sup> For residential development, thirteen typologies, which varied in terms of type, scale and location of site and number and mix of dwellings, were appraised in the VSU.

<sup>16</sup> PPG ID-25.

<sup>17</sup> *Viability Testing Local Plans: Advice for Planning Practitioners* (Local Housing Delivery Group chaired by Sir John Harman, June 2012).

below the residual land value for such sites set out in the VSU, the calculation of that depends on the assumptions made, matters to which I now turn.

24. The VSU used the latest relevant information from the Building Cost Information Service (BCIS) that was available at the time. This is widely accepted as an appropriate basis for estimating average build costs across an area, and there is no particular reason that I have been given why it should not be applicable to Leicester. Whilst costs may have risen somewhat since the time of the VSU, it would not be appropriate to update just that particular input to the model whilst leaving all others unchanged, as to do so would skew the results. Furthermore, it is not practical to attempt to continually update the model, and work carried out late in 2014 is sufficiently up to date to inform a high level and forward looking viability assessment such as this.
25. The introduction of CIL is intended to partially replace financial contributions from planning obligations, but some such costs are likely to continue to be significant for some residential developments. The Council advises that the average contribution over the last five years has been £555 per dwelling. Whilst the sums paid will no doubt have varied significantly between different developments, with some making much higher contributions and others making none at all, there is no evidence before me to indicate that this average figure is wide of the mark. Given the legal restrictions on the use of contributions that now exist, and the content of the Regulation 123 list, the assumption made in the VSU of an average of £500 per dwelling for financial contributions by way of planning obligations is, if anything, on the high side.
26. At the time that the VSU was carried out, sales price information from the Land Registry was not sufficiently detailed to rely on as the sole basis for calculating the value of all types of residential development used in the model meaning that additional data was used, including that relating to asking prices. Such an approach was agreed with interested parties at the time. Whilst this could have had the effect of inflating development values somewhat, the Council's consultant advised at the hearing that a comprehensive check undertaken more recently against the more detailed information now available from the Land Registry confirms that the development values used in the VSU are appropriate. Thus, whilst evidence provided by Savills shows that some residential developments have not generated the values assumed, I am not persuaded that the average houses prices used in the VSU are inappropriate when applied to development across the area as a whole.
27. Another matter that potentially affects the development values used in the VSU was raised at the hearing; these are the assumptions made about the net and gross areas of development. This is because the overall value of any particular development will depend on the number of units produced, and this of course is heavily influenced by how much of the site can be developed with housing.
28. The VSU gross and net dwelling figures are the same, an approach which appears to make no allowance for the provision of on-site infrastructure such as roads, public open space, landscaping, and drainage facilities. The Council's representatives explained at the hearing that this was due to the fact that much of the residential development in the City will be on small to medium sized sites in the urban area, many of which will not require significant amounts of on-site infrastructure. Furthermore, it was suggested that the assumed density of 37

dwellings per hectare is below the minimum of 40 dwellings per hectare required by saved local plan policy HO3 meaning that in effect there is an allowance that, on average, 11% of the site area would not be developed.

29. Whilst it may be the case that some larger sites, including "greenfield1" types, will be likely to require on-site infrastructure that would take up more than 11% of the gross area, I have been provided with no substantive evidence to demonstrate that the gross area should be reduced by 20% to 30% as suggested by Savills at the hearing. Thus, whilst I agree that the number of dwellings that could be developed on some sites may be less than assumed in the VSU, I am not persuaded that the figures used by the Council are inappropriate for most types of residential development.
30. Overall, therefore, I have found that the assumptions made in the VSU about the various costs associated with residential development are broadly appropriate and if anything may be slightly on the high side due to the figure used for planning obligations. Furthermore, whilst the estimates of the value of development may be somewhat optimistic for large greenfield developments, they are likely to be broadly appropriate for most of the site typologies. Finally, I agree that a more realistic threshold land value for large greenfield sites is £500,000 per hectare, rather than £280,000 per hectare.

#### *Viability Assumptions – Non-Residential Development*

31. As with residential development, the viability assumptions for distribution, supermarket and retail warehouse developments used in the VS were subject to consultation and discussion with interested parties, and certain amendments were made in the VSU. There is no substantive evidence before me to indicate that the assumptions used are inappropriate, and I am satisfied that they form a reasonable basis for assessing the viability of the various forms of development considered.

#### *Conclusion about the Economic Viability Evidence for Development other than Student Accommodation*

32. Testing the viability of development across an area is not an exact science<sup>18</sup>. The VS and VSU adopt a reasonable and proportionate approach, and clearly have regard to good practice derived from experience gained elsewhere as well as relevant sources of data and local information. There is no definitive information to lead me to conclude that the viability evidence in most respects is anything other than appropriate, although for the reasons set out above I consider that the estimates of development value may be somewhat on the high side for some specific forms of residential development that are likely to take place in the City outside of the Strategic Regeneration Area. I return to the implications of these findings later in this report.
33. Furthermore, given the inevitable uncertainties that surround the assumptions, and because the values of some developments may be less than assumed, it is important that residual land values remain well above threshold land values after the proposed charging rates have been factored in to ensure that the

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<sup>18</sup> *Viability Testing Local Plans: Advice for Planning Practitioners* (Local Housing Delivery Group chaired by Sir John Harman, June 2012) page 18.



viability of most development is not compromised.

*Economic Viability Evidence – Student Accommodation Development*

34. The significant amount of purpose built student accommodation development described in the core strategy has continued to take place in recent years, notably in the city centre, and there is nothing to suggest that this trend is likely to change in the foreseeable future if CIL were not to be charged. As such development is important to the delivery of the core strategy it is critical that the introduction of CIL does not threaten its continued delivery.
35. In response to representations about the VS and VSU, and to my request for additional information, the Council commissioned revised appraisals of student accommodation developments ("RASA") during the examination and published the results on 17 August 2015 at which time it advised that it considered that the proposed charge rate of £100 per m<sup>2</sup> ought to be replaced by a £30 per m<sup>2</sup> charge.
36. The RASA assessed two types of student accommodation developments ("clusters" and "studios"), both at three different scales (60, 175 and 500 units). Whilst it is difficult to predict the precise nature of student accommodation developments in the future, there is no evidence that I have seen to suggest that these typologies are anything other than a reasonable representation of what is likely to take place in the City over the coming years.
37. However, it became apparent at the hearing on 19 August that there were some errors in the RASA and also that a number of the assumptions used were considered to be inappropriate by interested parties. In response, and as agreed at the hearing, the Council carried out further appraisal work relating to student accommodation developments and in so doing consulted with interested parties.
38. This additional work culminated in further revised appraisals of student accommodation development ("FRASA") being published on 2 October 2015<sup>19</sup>; these supersede all of the earlier appraisal work relating to student accommodation development. The same six types/scales of developments were appraised in the FRASA as in the RASA. In publishing the FRASA, the Council confirmed that it remained of the view that a charge rate of £30 per m<sup>2</sup> was appropriate for all forms of student accommodation developments. The FRASA was subject to further consultation with representors and discussed at a hearing session on 6 November 2015.
39. Shortly before this hearing session, in response to my published issues and questions, the Council advised that, as it had not been possible to reach agreement on assumptions to be used in the FRASA that produced a credible result (ie one that reflected current activity in the market), the proposed charge rate of £30 per m<sup>2</sup> should be considered in the context of the existing use value and the typical value of land for student accommodation development<sup>20</sup>.
40. Representatives of the Council confirmed at the hearing session that it did not

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<sup>19</sup> Leicester City Council CIL Student Accommodation – Adjournment Note (Simon Drummond-Hay, 2 October 2015).

<sup>20</sup> Leicester City Council's Response to the Examiner's Questions, answer to Q46 (3 November 2015).

wish to rely on the FRASA as the main source of evidence, but rather the simple fact that developers of student accommodation are paying in the region of £7.5 million to £11.5 million per hectare whereas the existing use value of such sites is around £2 million per hectare. In other words, the Council considers that landowners receive between £5.5 million to £9.5 million per hectare more for their land if they sell it for student accommodation development than its existing use value.

41. I agree with the Council that the introduction of CIL should lead to a reduction in the price that landowners expect to receive for selling their land for development, and that inevitable consequence of the regime cannot in itself be regarded as a reason for not introducing a charge. Furthermore, any assessment should be based on a judgment about whether the proposed charging rate would still allow a price to be paid that would encourage a reasonable landowner to sell their land for development<sup>21</sup>.
42. The Council estimates that the proposed £30 per m<sup>2</sup> charge would represent an additional development cost of between £0.46 million and £1.1 million per hectare, depending on the type and scale of the student accommodation development<sup>22</sup>. Given that landowners appear to be receiving between £5.5 million and £9.5 million per hectare more for their land than its existing use value, coupled with the fact that student accommodation development currently seems to be the most viable form of development in and around the city centre, it is understandable that the Council remains of the view that such development should be liable for CIL.
43. However, the fact that student accommodation development is currently viable does not, of course, mean that it would continue to be if CIL were to be introduced. Whilst the PPG does not prescribe any single approach to assessing viability, it does require robust evidence and a realistic understanding of the costs and value of development and the operation of the market<sup>23</sup>. I am not persuaded that simply comparing the proposed CIL charge with land prices is a robust means of assessing whether viability would be retained as it does not properly take into account the costs and value of such development. The Council itself accepts that some of the variables that determine costs and value are uncertain, and the evidence before me is inconclusive in a number of regards.
44. Moreover, the Council's evidence of the price paid for student accommodation development sites is based on a limited number of transactions<sup>24</sup>, and it is not clear that those schemes are representative of all of the types of development that are likely to come forward. In addition, the effects of the high prices paid on the costs of development, or its viability in the future, have not been assessed.
45. It is clear from the representations made about the Council's appraisal work,

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<sup>21</sup> PPG ID-10-015.

<sup>22</sup> *Leicester City Council CIL Student Accommodation – Adjournment Note* (Simon Drummond-Hay, 2 October 2015), page 37.

<sup>23</sup> PPG ID-25-015 and ID-10-004.

<sup>24</sup> *Leicester City Council CIL Student Accommodation – Adjournment Note* (Simon Drummond-Hay, 2 October 2015) page 25-26 refer to two transactions, and two others were referred to at the hearing session on 6 November 2015.

and the discussions at the hearing sessions in August and November, that there are outstanding concerns about the assumptions made for a number of key inputs to the model. However, given that the Council is no longer relying on the FRASA to justify its proposed charging rate, and because of my findings above, it is not necessary for me to consider these matters further.

*Conclusion about the Economic Viability Evidence for Student Accommodation Development*

46. For the reasons set out above, I am not persuaded that the draft charging schedule is supported by appropriate evidence about the economic viability of student accommodation development.

*Overall Conclusion*

47. The draft charging schedule is supported by detailed evidence of infrastructure needs and the financial viability of development. Other than in respect of the viability of student accommodation development, the evidence that has been used to inform the draft charging schedule is robust, proportionate and appropriate.

**Are the Charging Rates Informed by and Consistent with the Evidence?**

48. More than half of all housing development is expected to take place in the Strategic Regeneration Area, with a further 20% at the already permitted Ashton Green and Hamilton urban extensions. This means that only around one quarter of the residential development planned in the core strategy is likely to be subject to CIL.

*Proposed Zero Charging Rate for Residential Development in the Strategic Regeneration Area*

49. The viability evidence shows that the types of residential development likely to take place in the Strategic Regeneration Area<sup>25</sup> would not be viable if CIL were to be charged and there is no available evidence before me that indicates otherwise. Thus, whilst exempting all residential development in this area would mean that over half of all new housing units would not contribute towards CIL, such an approach is necessary to ensure the economic viability of a highly significant proportion of the planned development of the area.

*Proposed Charging Rate for Residential Developments Everywhere Else in the City*

50. Undisputed evidence from the Council<sup>26</sup> shows that most housing development in the City outside the Strategic Regeneration Area that is likely to be subject to CIL (in other words, excluding the already committed urban extensions at Ashton Green and Hamilton) is expected to take place on medium to large greenfield sites, and medium-sized brownfield sites<sup>27</sup>.
51. The viability evidence indicates that, subject to a £25 per m<sup>2</sup> CIL charge, the

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<sup>25</sup> VSU typologies: brownfield redev (1.4ha) and urban flats (0.6ha).

<sup>26</sup> *Leicester City Council's Response to Questions for the Examination* (July 2015), answer to Q13.

<sup>27</sup> VSU typologies: greenfield1 (3.75ha); medium greenfield (0.6ha); urban edge (0.3ha paddock); medium brownfield (0.4ha); and brownfield redev M2 (0.4)

residual land value for large greenfield sites would be around £760,000 per hectare<sup>28</sup>. Even if development values were reduced by 5% (to reflect a reduced net developable area), the residual land value would be around £540,000 per hectare<sup>29</sup>. These figures exceed the threshold land value of £500,000 per hectare that I have found to be appropriate for larger greenfield sites. Clearly, if development values were reduced by much more than 5%, the viability of such developments could be threatened. However, as the CIL charge would represent only around 1% of total development costs, less than that allowed for contingencies, it seems improbable to me that this would occur.

52. The residual land value for medium-sized greenfield sites is around £435,000 per hectare, and for smaller greenfield sites and medium-sized brownfield sites over £1 million per hectare<sup>30</sup>. These figures are well in excess of the threshold land value of £280,000 meaning that there is a considerable buffer to allow for inevitable uncertainties that exist in an exercise such as this.
53. The above findings indicate that the proposed rate of £25 per m<sup>2</sup> is unlikely to cause most forms of residential development outside the Strategic Regeneration Area to become unviable. Even if large greenfield sites were to be made unviable (which I have not found to be shown likely), the overall development of the area would not be put at risk as only around 8% of all new housing is expected to be built on such land<sup>31</sup>.

#### *Proposed Charging Rate for Student Accommodation*

54. As I have found that the draft charging schedule is not supported by appropriate viability evidence relating to student accommodation development, it is not necessary for me to consider whether the rate of £100 per m<sup>2</sup> originally proposed, or the Council's revised rate of £30, are informed by and consistent with the evidence.
55. However, I have concerns about the effects that the proposed charge could have on the viability of cluster developments even on the basis of the Council's own viability evidence. This is because that evidence indicates that cluster schemes would be unviable if the proposed £30 per m<sup>2</sup> charge were introduced<sup>32</sup>. In recent years, over 90% of student accommodation development in the City has been in the form of studios. Whilst there is no specific evidence to indicate that this trend will change in the near future, there is likely to remain a need for cluster-type accommodation for a significant proportion of the student population. According to oral evidence given at the hearing session on 6 November, a typical split of student accommodation in university towns and cities is around 70% clusters and 30% studios<sup>33</sup>. The proposed rate of £30 for all forms of student accommodation development is not, therefore, consistent with the Council's own evidence as it would make it less likely that cluster student accommodation developments, which are likely to be required, will take place in the City.

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<sup>28</sup> VSU Table 4.3, "greenfield1" sites.

<sup>29</sup> Leicester City Council's Response to Questions for the Examination (July 2015), answer to Q27.

<sup>30</sup> VSU Table 4.3.

<sup>31</sup> Leicester City Council's Response to Questions for the Examination (July 2015), answer to Q13.

<sup>32</sup> Leicester City Council CIL Student Accommodation – Adjournment Note (Simon Drummond-Hay, 2 October 2015) table 12; and Leicester City Council's Response to the Examiner's Questions, answer to Q77 (3 November 2015).

<sup>33</sup> Derek Nesbitt (Cushman and Wakefield) on behalf of the University of Leicester.

### *Proposed Charging Rate for Supermarkets*

56. The viability evidence indicates that, even with a CIL charge of £150 per m<sup>2</sup>, supermarket developments would continue to be viable. The proposed rate would represent 24% of the maximum potential for CIL for greenfield development and 63% for brownfield development<sup>34</sup>. I am satisfied that this provides for a reasonable degree of flexibility.

### *Proposed Charging Rate for Retail Warehouses*

57. The viability evidence indicates that, even with a CIL charge of £150 per m<sup>2</sup>, retail warehouse developments would continue to be viable. The proposed rate would represent 25% of the maximum potential for CIL for greenfield development and 45% for brownfield development. These considerable buffers should ensure that any such developments remain viable.

### *Proposed Charging Rate for Distribution Uses*

58. The viability evidence indicates that, even with a CIL charge of £10 per m<sup>2</sup>, distribution use developments would continue to be viable. The proposed rate would represent only 6% of the maximum potential for CIL for greenfield development and 12% for brownfield development. These considerable buffers should ensure that any such developments remain viable.

### *Proposed Nil Rate for All Other Development*

59. The viability evidence indicates that all of the other forms of development assessed could not viably contribute towards CIL. This has not been challenged by representors, and I have seen no evidence to lead me to a different conclusion. Accordingly, the nil charge for all other types of development is justified.

### *Conclusion on Whether the Proposed Charging Rates are Informed by and Consistent with the Evidence*

60. For the reasons given above, and with the exception of student accommodation developments, the proposed charging rates are clearly informed by, and consistent with, the evidence relating to infrastructure needs and the viability of development across the City as set out in the development plan.

### **Does the Evidence Demonstrate that the Proposed Charge Rate would not put the Overall Development of the Area at Serious Risk?**

61. The Council's decision to set differential rates is based on reasonable assumptions about development values and likely costs, other than with regard to student accommodation developments. The evidence suggests that other forms of development will remain viable across the City if the charges are applied. Only if the assumptions used in the VS and VSU for these types of development prove to be significantly wide of the mark, an eventuality which has not been shown to be likely by the evidence before me, would development

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<sup>34</sup> This figure, and those others referred to in paragraphs 56-58, are taken from *Leicester City Council's Response to Questions for the Examination (July 2015)*, answers to Q37 and Q38.

across the City be made unviable by the proposed charging rates.

62. However, for the reasons that I have given, I am not satisfied that student accommodation developments would be viable if subject to a charge of £100 per m<sup>2</sup>, or indeed £30 per m<sup>2</sup>. Given the importance of student accommodation development continuing to take place in the City, as reflected in the core strategy, to levy such a charge would put an important component of the overall development of the area at serious risk.
63. I therefore recommend that the draft charging schedule be amended to delete reference to student accommodation development and the proposed rate of £100 **[MM1]**; this would have the effect of including such development amongst the uses not subject to CIL. According to the Council's evidence, the proposed charge of £30 per m<sup>2</sup> would have generated at least £194,000 of infrastructure funding each year<sup>35</sup>, but as I have found that this levy would have rendered such developments to be unviable this is not income that is likely to have been realised.

### Other Matters

64. The map included in the draft charging schedule indicates a hatched area in the north of the City which the notation panel refers to as "Ashton Green not CIL chargeable". However, this is not consistent with the schedule of CIL rates which states that everywhere in the City outside the Strategic Regeneration Area (which is defined on the map) will be subject to a £25 per m<sup>2</sup> charge. The Council has explained that the map is incorrect and should be amended. Whilst the urban extension at Ashton Green, which was identified in the local plan and core strategy, has planning permission, if further developments were to be allowed in that area they would be liable for CIL. There is no viability evidence that I have seen that indicates that this should not be so, and therefore I recommend that the map and notation key be amended accordingly **[MM2]**.
65. Leicestershire Police is concerned that in the past developers have made inadequate contributions towards providing the additional police infrastructure that is required as a result of growth in certain parts of the City, and that the introduction of CIL in the manner proposed may not rectify this. Specific infrastructure requirements have been identified by the Police that are estimated to cost around £1.9 million, and it is suggested that the residential charging rate be increased to £25.37 per m<sup>2</sup> to ensure that the necessary funds are available.
66. However, whilst I agree that the provision of police infrastructure will need to be coordinated with development in the City, and understand that such infrastructure could legitimately be funded by CIL, it is not my role to advise on how the Council should utilise any CIL receipts it receives or indeed what financial contributions should be sought from developers by way of planning obligations. I note that the Regulation 123 list includes a police infrastructure project, and would expect the Council to give due consideration to funding that alongside other projects on the list. The Council may also wish to give further consideration to amending the Regulation 123 list to allow other police

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<sup>35</sup> Leicester City Council's Response to the Examiner's Questions, answer to Q81 (3 November 2015).

infrastructure projects to be funded if that is deemed necessary. However, CIL charging rates are set with reference to viability rather than on the basis of the estimated cost of identified infrastructure needs and therefore it would not be appropriate to increase the residential charging rate for the reason suggested by the Police.

67. Finally, it is important to bear in mind that the Council is committed to monitor the effects of introducing CIL, and intends to carry out a review of the charging rates in the context of the new local plan that is expected to replace the core strategy towards the end of 2017. As this is only around two years away, the current charging schedule can be regarded as an interim measure. This is not to diminish its importance in terms of introducing a mechanism to help deliver much needed infrastructure in the short term, but it does mean that the rates can be revisited in the not too distant future, including the modified zero rate for student accommodation developments if this is deemed appropriate by the Council.
68. No other matters raised in the representations affect my overall assessment or conclusion.

### **Legal Requirements**

69. The requirements of the 2008 Planning Act and 2010 CIL Regulations (as amended), including in respect of the statutory processes and public consultation, financial appraisal, and consistency with the adopted development plan and CIPL, have been complied with.

### **Conclusion**

70. All procedural requirements have been complied with during the preparation and examination of the draft charging schedule.
71. In setting the proposed charge rates the Council has had regard to detailed evidence on infrastructure planning and economic viability. The Council has tried to be realistic in terms of achieving a reasonable level of income to address an identified gap in infrastructure funding, while ensuring that a range of development remains viable across the area.
72. However, I have found that the submitted draft charging schedule does not provide an appropriate basis for the collection of the levy in the City. This is primarily because the schedule is not supported by appropriate available evidence about the economic viability of student accommodation development and it has not been demonstrated that such development, which represents an important component of the overall development of the area, would not be put at risk by the proposed charge rate or the reduced rate suggested by the Council during the Examination. There is also a discrepancy between the charging schedule and the accompanying map showing residential charge zones.
73. These deficiencies can be overcome by two modifications. Subject to these changes, the schedule will comply with all legal requirements; only development that has been shown to be viable will be charged; and the rates will ensure that residual land values remain well above threshold land values such that viability

is unlikely to be compromised.

74. The modified charging schedule will generate infrastructure funding that will make a material, albeit modest, contribution towards closing the identified funding gap and thereby help to deliver the planned development of the area as identified in the statutory development plan.
75. Therefore, my conclusion is that, subject to two modifications, an appropriate balance has been struck between the desirability of CIL helping to fund the infrastructure needed to support the development of the City and the potential effects (taken as a whole) on the economic viability of that development.
76. I conclude that, subject to the modifications set out in Appendix A, the Leicester Community Infrastructure Levy 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 subject to two modifications.

***William Fieldhouse***

Examiner

*This report is accompanied by Appendix A – modifications that the examiner recommends so that the charging schedule may be approved.*



## APPENDIX A

### Recommended Modifications to the Draft Charging Schedule

**R1.** Delete the reference to student accommodation and the proposed rate of £100 from the charging schedule.

**R2.** Delete the reference to "Ashton Green not CIL chargeable" and the hatched notation from the charging zone map and notation panel.

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*End of list of recommended modifications.*