



The Planning Inspectorate

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## **Report to South Oxfordshire District Council**

**by Katie Child BSc (Hons) MA MRTPI**

**an Examiner appointed by the Council**

**Date: 17 December 2015**

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

### **REPORT ON THE EXAMINATION OF THE DRAFT SOUTH OXFORDSHIRE COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

Charging Schedule submitted for examination on 8 May 2015

Examination hearing held on 29 July 2015

File Ref: PINS/Q3115/429/5

### **Non-Technical Summary**

This report concludes that the South Oxfordshire Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. 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.

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

- Amend the Charging Schedule to specifically exclude student halls of residence from the CIL residential charge.
- Amend the proposed rate for 'offices (incl. research and development)' from £35 per square metre (psm) to £0 psm.
- Amend the definition of 'small centre retail' development to 'other retail development' for clarification purposes.

The specified modifications recommended in this report 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 South Oxfordshire Community Infrastructure Levy (CIL) 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 guidance (Community Infrastructure Levy Guidance - June 2014).
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.
3. Consultation on the Draft Charging Schedule (DCS) took place between 26 February and 26 March 2015 (Examination Document SUB/6), and on a Statement of Modifications between 8 May and 5 June 2015 (SUB/1). Following the hearing session on 29 July 2015, the Council published a further

Statement of Modifications<sup>1</sup> (October 2015) (SUB/17) setting out a proposed boundary change to zones 1 and 2 in the vicinity of Didcot.

4. Consequently, the basis for the examination is the DCS (February 2015) as amended by the two Statements of Modifications. For the avoidance of doubt, any references in this report to the 'DCS as modified' relates to the DCS as amended by both Statements of Modification.
5. Following the hearing, additional evidence and information was produced by the Council and was published for consultation in September 2015 in the 'Response to examiner's letter of 19 August 2015' (SODC/CIL/10) ('the Council's post-hearing work'). I have taken the representations received on both Statements of Modification and the post-hearing work into account in writing this report.
6. The Council proposes three different geographical charging zones for residential development. The DCS as modified includes plans on an Ordnance Survey base which show the proposed charging zones. In summary the proposed residential rates are:
  - Zone 1 District - £150 per square metre (psm)
  - Zone 2 Didcot and Berinsfield - £85 psm
  - Strategic sites (Didcot North-East, Ladygrove East site and Wallingford site B) - £0 psm
7. As an exception to the residential charges in zones 1 and 2, the DCS as modified proposes that retirement housing including extra care incorporating independent living (C3), care homes (C2) and residential development on rural exception sites, will be subject to a nil CIL charge.
8. The Council also proposes a rate of £35 psm for offices (including research and development) and £70 psm for supermarkets, superstores and retail warehouses. Both of these rates would apply across the district.
9. All other uses, including hotels, industrial development and other forms of retail development, would be subject to a nil charge.

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

*The development plan*

10. The South Oxfordshire Core Strategy (the 'Core Strategy') was adopted in December 2012 (SUB/14). It sets out the main elements of growth that will need to be supported by further infrastructure in the district in the period up to 2027. The Core Strategy makes provision for a minimum of 11,487 new dwellings between 2006 and 2027 and at least 20 hectares of additional

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<sup>1</sup> Statement of Modifications (SUB/17) published for consultation between 23 October and 20 November 2015.

employment land. It includes strategic housing allocations of 2,030 dwellings at Didcot North-East and 555 dwellings at Wallingford site B.

11. The Council is currently preparing a new Local Plan for the district, and exploring options for new housing sites. The Council has signalled its commitment to an early review of the Charging Schedule alongside adoption of the new Local Plan, which is currently anticipated in 2017. This approach should ensure that any new strategic sites can be adequately tested for viability, and any necessary revisions proposed to the Charging Schedule. Nevertheless, in the interim the Council has decided that the Core Strategy is sufficiently up to date and provides an appropriate basis to implement CIL, and I agree with this position.
12. A number of representors expressed concern that new strategic sites may be developed in advance of Local Plan adoption and the Charging Schedule revision, and therefore be subject to the charges in the DCS which could render them unviable. This issue is explored further in the section below on CIL rates for residential development.

#### *Infrastructure planning evidence*

13. The Council has prepared an Infrastructure Delivery Plan (IDP) (February 2015) (SUB/11) which identifies key infrastructure likely to be required over the Plan period up to 2027. The IDP takes account of the broad framework for growth in the Core Strategy, and outlines local community requirements and infrastructure needs totalling over £329 million (m). Having regard to current known funding sources, the IDP indicates that a funding gap of about £234m will remain. However, the Council confirms in the Infrastructure Planning and Funding Gap document (SUB/7) that this funding gap can be reduced to about £116.5m, once account is taken of education contributions secured on the three strategic sites, and costs which can be apportioned to the neighbouring district of the Vale of White Horse, for example those relating to strategic transport infrastructure in the Science Vale area.
14. The Council acknowledges that some additional funding may be secured in the future, from infrastructure providers, via Section 106 agreements provided by developers, or from other sources such as business rate retention and grant funding from government. However, there is no evidence to indicate that this additional funding would be anywhere near adequate to deliver the necessary infrastructure over the Plan period.
15. The Council estimates that dwellings liable for CIL could generate about £32 m up to the year 2027<sup>2</sup>. In addition, the Council estimates that the proposed CIL charges on office and retail development could generate some £346,500 and £660,800 respectively<sup>3</sup>. As such, CIL could make a useful contribution to the

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<sup>2</sup> As set out in the Infrastructure Planning and Funding Gap document (February 2015) (SUB/7) and updated in the Council's Response to Examiner's Main Issues and Questions (Question 2d) (July 2015) (ED/3).

<sup>3</sup> As established in the Council's Response to Examiner's Main Issues and Questions (Question 2d) (July 2015) (ED/3).

funding gap for infrastructure. The Council's evidence on infrastructure requirements and funding demonstrates the need to levy CIL in order to help deliver the Core Strategy.

16. The Council's Draft Regulation 123 list (May 2015) (SUB/5) identifies the types of infrastructure to which CIL funds would contribute. These include education, strategic highway/transport improvements, strategic green infrastructure and sports facilities, libraries, recycling facilities and strategic flood protection. Site related provision associated with the three strategic sites of Didcot North-East, Ladygrove East and Wallingford site B is excluded.
17. I consider the Draft Regulation 123 list to be clear with regards to the type of infrastructure that would be supported by CIL, and the Council's proposed use of planning obligations for the three strategic sites. The Council has provided transparency, and the items in the list should clearly assist the delivery of the adopted Core Strategy, as a whole. Additional information on the operation of Section 106 and CIL is included in the Council's draft Supplementary Planning Document on Planning Obligations (September 2015).
18. At this stage the Draft Regulation 123 list is generic rather than scheme specific, but there is no evidence that this would hinder infrastructure delivery. The legislative requirements on the use of planning obligations would, in themselves, help to ensure that planning obligations are appropriately applied and that no 'double-dipping' occurs (e.g. paying for the same infrastructure twice under a Section 106 obligation and CIL).
19. In summary, I conclude that the DCS as modified is supported by detailed evidence of infrastructure needs, which provides a robust and proportionate basis to inform the Charging Schedule.

#### *Economic viability evidence*

20. The Council commissioned a CIL Viability Study (VS) (SUB/16), dated October 2014, to inform production of the Preliminary Draft Charging Schedule (SUB/13). The VS was updated in February 2015 (the 'VS update') (SUB/10) to incorporate additional testing of retirement housing schemes, and to accompany publication of the DCS.
21. Prior to the hearing the Council also published new appendices 3 and 4 to the VS update. Appendix 3 (SODC/ADI/3) sets out full details of residential appraisal workings, whilst Appendix 4 (SODC/ADI/4) provides the commercial appraisal results in metric form. They both form an integral part of the VS update. In addition, the Council published further viability testing relating to student accommodation (SODC/ADI/5) and the impact of CIL instalments (as set out on page 12 of the Council's Response to Examiner's Main Issues and Questions (SODC/CIL/3)).
22. The Council's post-hearing work also includes additional sensitivity testing relating to alternative residential densities for sites of 50 to 500 units, and further viability evidence relating to the three strategic sites of Didcot North-East, Ladygrove East and Wallingford site B.

23. The Council's viability work uses a residual valuation approach. This approach involves estimating the value of a completed development and subtracting development costs (with the exception of land purchase) to obtain a residual value. The price which a landowner would be prepared to sell the land (the 'benchmark land value') is then subtracted from the residual value to obtain an 'overage' figure or theoretical maximum CIL charge. The CIL charge may be taken from this figure providing there is an adequate viability buffer.
24. The viability work incorporates modelling of residential development, including specialist housing such as retirement housing<sup>4</sup> and care homes, as well as student accommodation. Commercial development is also modelled, including offices, retail development, hotels and industrial/warehouse development.

#### Residential viability evidence

25. The VS update includes modelling of nine hypothetical residential sites, ranging between 1 and 500 units and reflecting different densities and mix of house types. These typologies are tested in six different sub-areas within the district and against four land value benchmarks capturing brownfield as well as greenfield land. Further sensitivity testing on densities is also set out in the Council's post-hearing work.
26. A number of representors queried whether this range of testing was sufficient, particularly in relation to densities, gross to net ratios and schemes involving regeneration. However, the Council's evidence on historical densities in the post-hearing work indicates that the range of density testing undertaken is broadly appropriate, whilst the sensitivity testing adds to the evidence base. I also note that different gross to net ratios have been applied according to scheme size, and appears to be reasonable in this regard. Furthermore, in relation to regeneration schemes I note that typology testing incorporates a wide range of Benchmark Land Values (BLVs) and a reasonable contingency rate of 10%. Overall I therefore find that the Council has tested an appropriate range of residential typologies, which relate to the majority of development likely to come forward in the charging area.
27. Representations in response to the DCS and the first Statement of Modifications raised particular concerns regarding a number of other assumptions in the residential appraisals, including sales values; build costs; Section 106 costs; profit levels; phasing of CIL payments; and benchmark land values. These are addressed in turn below.
28. Sales values are based on an assessment of Land Registry data relating to completed sales in 2014 in the district. The assessment took account of prices actually achieved. There is no clear evidence before me to indicate that the sales values in the VS update are inappropriate or that alternative figures

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<sup>4</sup> Defined in the footnote in the DCS as modified, as 'all types of housing designed for older people which provides for continued independent living which is self-contained such as, but not limited to, Extra Care Housing, Enhanced Sheltered Housing in independent living within a Care Village.'

should apply.

29. Residential build costs are based on RICS<sup>5</sup> Building Cost Information Service localised figures, derived from 2014. Evidence indicates that build costs have risen since the viability work was carried out. However, I consider this is also likely to be the case for other variables, including house prices. It would skew the findings of the viability work if certain data only were to be updated, and it therefore makes sense to have a common base date for all assumptions made.
30. The build costs used in the VS update vary between houses and flats, but do not differentiate in terms of scheme size, or between private and affordable housing. However, I consider that the Council's approach of using average build costs in this regard to be proportionate and pragmatic. The average figures have been informed by local evidence on build costs in the district. The VS update is also, by necessity, a high level assessment and cannot capture all eventualities.
31. The build costs do not appear to include the cost of constructing garages. Nonetheless, the evidence in the Council's post-hearing work indicates that off-street parking is often provided in the form of spaces rather than garages. Taking account of this, and the high level nature of the assessment, I am satisfied that the average build cost figures in the viability assessment are appropriate.
32. The VS update includes a Section 106/Section 278 assumption of £1,000 per dwelling for typologies numbers 1 to 8. This rate has been informed by evidence on historical Section 106 agreements for sites less than 200 dwellings, taking account of the fact that some aspects normally subject to contributions under the Section 106 regime would no longer be relevant if CIL is adopted<sup>6</sup>. The Council also indicated at the hearing that commuted maintenance payments for public open space should be markedly lower in the future as they now negotiate with developers for open space to be taken on by management companies and funded through householder payments. On the basis of the evidence before me, the £1,000 Section 106/Section 278 assumption appears to be reasonable.
33. An allowance of £10,000 is included for the 500 unit scheme under typology number 9, with an additional costing of £15,000 for on-site infrastructure such as roads. Strategic schemes are likely, by their very nature, to exhibit markedly different infrastructure requirements and costs between sites. However, based on the evidence submitted by the Council on the three strategic sites<sup>7</sup>, I consider that the Council's estimated costs of £10,000 plus £15,000 to be broadly reasonable. No substantive evidence was submitted by other parties to demonstrate that different average rates should apply. The Section 106/Section 278 assumption for strategic schemes therefore appears

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<sup>5</sup> Royal Institution of Chartered Surveyors

<sup>6</sup> As set out in Appendix 2 in the Council's Response to Boyer Planning Representation REP-847154-001 (SODC/CIL/7).

<sup>7</sup> As set out in Appendix 2 of the Council's Response to Examiners Main Issues and Questions (SODC/CIL/5).

to be reasonable.

34. The Council's viability work incorporates the provision of 40% affordable housing on sites of three or more dwellings, in line with Policy CSH3 in the Core Strategy. Representors queried whether this approach, and the Council's uniform CIL charge for all scheme sizes, accorded with Government policy on planning obligations. Government policy at the time of submission, as set out in the Planning Practice Guidance (PPG), was that affordable housing should only be sought from schemes of 11 or more units<sup>8</sup>. However, following the High Court judgement of 31 July 2015<sup>9</sup> the Council's viability work remains in line with current Government guidance on planning obligations, as set out in the PPG.
35. The VS update includes cost allowances for other elements, including professional fees, Code Level 4<sup>10</sup>, external works and contingencies. The applied rates accord with industry norms, and no substantive evidence has been submitted to justify alternative figures or lead me to conclude that the average figures used are unreasonable. Furthermore, although the Code for Sustainable Homes has now been withdrawn<sup>11</sup>, the Government has indicated that increased building standards will apply in the future under the Building Regulations and be broadly similar to Code Level 4.
36. The VS update assumes a 20% profit on Gross Development Value (GDV) for private housing and 6% profit on GDV for affordable housing. These rates have been disputed as being too low by some representors. However, the profit figures in the VS update conform with industry standards, and no substantive evidence has been submitted to demonstrate that alternative figures should apply.
37. The viability modelling was undertaken with an instalments policy, whereby the payment of CIL takes place in phases. This approach was questioned by one representor on the basis that an instalment policy could be withdrawn or varied by the Council at any time. However, the Council has submitted evidence which demonstrates that, if no instalments policy is adopted, the impact on residual land value would be minimal, ranging from 0.39% to 2.29% decrease<sup>12</sup> for the different typologies. Accordingly I consider that the Council's viability work provides a reasonable basis for assessing viability.
38. The VS update uses BLVs which range from £500,000 to £750,000 per hectare (gross) for previously developed land, and £325,000 to £375,000 per hectare (gross) for greenfield sites. The two figures for each type reflect the different

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<sup>8</sup> Paragraphs 012-030 in the planning obligations section of the Planning Policy Guidance, following the publication of a Written Ministerial Statement dated 28 November 2014.

<sup>9</sup> Following the High Court judgement of 31 July 2015: *West Berkshire District Council and Reading Borough Council v Secretary of State of Communities and Local Government* [2015] EWHC 2222.

<sup>10</sup> Level 4 of the Code for Sustainable Homes.

<sup>11</sup> As set out in the Written Ministerial Statement on Planning Update, dated 25 March 2015 (DCLG).

<sup>12</sup> As set out on page 12 of the Council's Response to the Examiner's Main Issues and Questions (SODC/CIL/3).



land values within the district. One representor has suggested that these figures are too low. However, the figures have been derived from limited transactional information from South Oxfordshire and the surrounding area, and represent averages. I consider that the Council's approach has been proportionate in this regard, and accords with guidance in the Harman Report<sup>13</sup>. Furthermore, no substantive evidence has been submitted to justify the use of alternative values.

39. The viability work also includes modelling of retirement housing, care homes and student accommodation. The modelling assumptions used appear to be reasonable, and have not been significantly challenged.
40. Separate viability testing of the three strategic sites is set out in the Council's post-hearing work. This work sets out a high level assessment of broad viability, taking account of the estimated Section 106 costs to provide necessary infrastructure associated with each site, and appears to be an appropriate approach.
41. Viability testing of specific sites is limited to the three strategic sites, and does not include other large sites which may come forward, including those proposed by representors. However, whilst this may have been desirable in order to provide a cross-check with the results in the VS update, I consider that its absence is not critical in the context of the reasonable assumptions and sound methodology adopted in the Council's viability work.
42. In summary, for residential development I conclude that the DCS as modified is supported by viability studies of an appropriate range of development typologies and applying reasonable assumptions. On this basis the viability evidence used to inform the Charging Schedule is reasonable, proportionate and appropriate.

#### Office viability evidence

43. The VS update includes a commercial development appraisal based on a 30,000 square foot (sqf) generic office scheme (B1) in a non-specific location in the district. Although only one scale of scheme has been tested, the Council indicated at the hearing that the viability results would be broadly similar for larger and smaller schemes, with assumptions scaled up and down. No alternative evidence has been submitted to dispute this position. The testing also incorporates sensitivity analyses which model rents above and below the base level, and against three different current use values. This approach should capture a wide range of office development in the district, including different forms of B1 development or locations which may attract lower rental values. Overall I therefore consider that the range of testing is appropriate and represents a proportionate approach.
44. One representor has queried whether the base rental level of £20 per square foot (psf) is too high. However, the VS update and evidence in the Council's

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<sup>13</sup> Harman Report (June 2012) – Viability Testing Local Plans: Advice for planning practitioners

post-hearing work indicates that a wide range of rental rates are achieved across the district, with some lower and some higher than the selected base rate. These variations are reflected in the sensitivity testing which is an integral part of the Council's viability work, and there is no substantive evidence before me to indicate that an alternative base level should apply.

45. The appraisals include refurbishment costs of £30 psf subject to fees of 7%, applied to an assumed existing floorspace of 9,000 sqf. This rate has been questioned by one representor on the basis that the typology building would already be in use and that existing use values would be reflected in the rental levels. However, at the hearing the Council highlighted the need for new office development to be attractive to the market and that refurbishment is a key part of this. No substantive evidence has been submitted to demonstrate that the Council's assumptions are unreasonable or should be altered.
46. A rent free period of two years has been applied within the viability testing. This is a commercial matter for negotiation between the parties and may therefore vary between individual cases. However, there is no substantive evidence before me to demonstrate that a significantly lower rent free period would be the norm or that the Council's selected rate should be altered accordingly.
47. Other inputs in the office viability work have not been significantly questioned, including construction costs, purchaser costs, Section 106 assumptions, fees and profit rates. These are generally based on industry standards, and there is no substantive evidence before me that would lead me to conclude that the inputs are unreasonable.
48. Overall, in relation to office development, I conclude that the DCS as modified is supported by viability work of an appropriate range of typology and sensitivity testing and applying reasonable assumptions. On this basis, the viability evidence used to inform the Charging Schedule is reasonable, proportionate and appropriate.

#### Retail and other commercial viability evidence

49. Viability appraisal work has also been undertaken for supermarket, retail warehouse, town centre retail, hotel and industrial development. As with offices, only one scale of each typology was tested. However, the work incorporates extensive sensitivity analyses which models rents above and below a base level, and against three different current use values. Overall I therefore consider that the range of testing is proportionate.
50. The assumptions used in the modelling have not been significantly questioned and appear to be reasonable, including the assumed rents, yields, build costs and profit levels. One representor raised concerns regarding the Section 106/Section 278 assumptions in relation to retailing development. I consider that the assumptions are reasonable given that the Council proposes to limit the use of Section 106 to focus on site-specific infrastructure requirements. No overriding evidence has been submitted to indicate that the costings should be increased.

**Are the charging rates informed by and consistent with the evidence?  
Would they put the overall development of the area at serious risk?**

*CIL rates for residential development*

51. The VS update recommends that three residential charging rates (high, medium and low) should apply in the district, differentiated in terms of geographical zones. In addition, a nil CIL charge should be applied to the three strategic sites. However, the Council has proposed that the high and medium value charging zones should be amalgamated, and that the medium rate should apply to this conjoined area. The DCS therefore includes two residential rates, with charges of £150 psm proposed for zone 1, £85 psm in zone 2, and a nil CIL rate applying on the strategic sites. Nil CIL rates are also specifically proposed for retirement housing, care homes and rural exception sites.

Definition of residential development

52. The DCS as modified does not explicitly define 'residential development'. Nonetheless, it specifically proposes that a nil CIL charge would apply to retirement housing, care homes and rural exception sites. Therefore, by definition 'residential development' would exclude these forms of accommodation.

53. The DCS as modified does not specifically exclude student halls from a residential CIL charge. However, work carried out by the Council prior to the hearing session<sup>14</sup> indicates that student halls of residence are only marginally viable if the proposed CIL charges are applied. Evidence submitted by Oxford Brookes University indicates that such development may take place in the district. Accordingly, in line with the Council's proposals<sup>15</sup>, I recommend that the DCS is modified to specifically exclude this form of development from a residential CIL charge **(EM1)**.

Zone boundaries

54. The VS update shows that differential rates by area are justified. Data on sales prices vary across the district. The proposed boundaries in the DCS as modified are based on a wide ranging analysis of sales prices, supplemented by consultation with developers and agents.

55. Representors have suggested that the number of zone boundaries should be increased to more closely reflect the different sale prices in the district. However, I deem the Council's proposed approach, which is based on extensive evidence and purports a fairly simple pattern of charging zones, to be suitable and proportionate, and to avoid undue complexity. On this basis it

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<sup>14</sup> Viability Testing of Student Housing Development (July 2015) (SODC/ADI/5).

<sup>15</sup> As agreed with Oxford Brookes University, as set out in SODC Response to examiner's letter of 19 August 2015 (September 2015) (SODC/CIL/10).

also accords with Government guidance to avoid complex rates<sup>16</sup>.

56. Linked to this, there was some challenge to the Council's amalgamation of three residential charging zones into two, on the grounds that it could result in a potential loss in CIL income arising from the higher value area. The Council recognises this risk, but in their view this loss would be minimal and would be outweighed by the benefits of administering a simplified Charging Schedule. In the context that lower levels of development are anticipated in the higher value area outside the strategic sites (as established in the Council's housing trajectory<sup>17</sup>), I consider it is unlikely the approach would have a material impact on infrastructure delivery. Also, critically, I note that by adopting the lower rate of the two, development in both areas would still be viable.
57. The Council has proposed an amendment to the boundaries of zones 1 and 2 in the vicinity of Didcot, as shown in the further Statement of Modifications (October 2015) (SUB/17). The Council has indicated that the changes are necessary to correct a drafting error in the maps in the DCS<sup>18</sup>. The change would involve adjusting the boundaries to follow those of Didcot parish, thereby moving land south of Didcot (in the vicinity of East Hagbourne) into the higher charge zone 1 and incorporating a small area of land to the west of the town into zone 2 (Didcot).
58. The proposed boundary change to the south of Didcot appears to be reasonable and proportionate, on the basis of evidence which shows that the average price paid for properties in East Hagbourne is significantly higher than Didcot, and broadly similar to West Hagbourne which is located in zone 1<sup>19</sup>. The VS update also indicates that sales prices in East Hagbourne are slightly higher than those in Didcot. The proposed boundary on the western side of Didcot, as amended, would not adversely affect the viability or delivery of housing schemes, as it would involve adopting the lower charge.
59. One representor has questioned the inclusion of Berinsfield within zone 2. However, the viability testing supports its zone 2 allocation, and no substantive alternative evidence has been submitted to the contrary.

#### Strategic schemes

60. Evidence in the VS update demonstrates that schemes of 500 dwellings in the district would be unlikely to be viable if both Section 106 costs and CIL costs are incorporated. The DCS accordingly identifies three strategic sites where a nil CIL charge would apply. Two of these sites are allocated in the adopted Core Strategy (Didcot North-East and Wallingford Site B). The third site is allocated in the South Oxfordshire Local Plan adopted in 2006, but a revised

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<sup>16</sup> Paragraph 25-021-20140612 in the Planning Practice Guidance.

<sup>17</sup> As set out in the Council's Response to Examiner's Main Issues and Questions (July 2015) (SODC/CIL/3).

<sup>18</sup> As set out in the Council's 'Representations to Statement of Modifications' document (December 2015) (SUB/18).

<sup>19</sup> As above.

planning application is anticipated (Ladygrove East).

61. The Council has identified that these three sites will play a critical role in delivering the Core Strategy housing requirements. Further viability workings on the three specific sites themselves<sup>20</sup> shows that the high anticipated Section 106 costs would render a negative residual land value for two of the schemes (Didcot North-East and Ladygrove East), whilst the Wallingford B site workings show a residual land value that is significantly lower than the base levels in the VS update<sup>21</sup>. Accordingly, the proposed nil CIL charge for the 3 strategic sites is supported by the evidence.
62. A number of representors have proposed that the nil CIL rate should be widened to apply to other specific strategic sites (with associated viability testing undertaken), or alternatively, should apply to all strategic sites of 500+ dwellings that come forward.
63. I recognise that the Council is preparing an emerging Local Plan, and that a number of new strategic sites are being promoted by developers through that process. However, the Council's plan is at an early stage of preparation, and preferred specific site options have yet to be identified. Furthermore, no compelling evidence is before me to indicate that any potential new strategic sites are likely to come forward straightaway. Strategic sites tend to have a considerable lead-in time, and often take a number of years to progress from initial pre-application discussions to housing completions. As set out above, the Council is committed to a review of the Charging Schedule within a couple of years, once the new Local Plan is adopted. I consider that this should provide an opportunity to assess the impact of CIL on any new strategic sites, and adjust the Charging Schedule as necessary at that stage. For the above reasons I therefore conclude that the proposed nil CIL charge, as applied to the three specific strategic sites, is appropriate.

#### Overall viability and deliverability

64. The VS update shows sizeable buffers above the proposed CIL rates for most non-strategic typologies (1 to 250 units), predominantly ranging from 25% to 57%. In some cases viability may be challenging on brownfield sites in the lower value areas of the district. The appraisal evidence also shows that some flatted schemes of 25 units (typology 5) may not be viable. However, the majority of modelled schemes show reasonable viability buffers. In addition, the Council expects the majority of development to come forward on greenfield sites, and to involve the provision of houses rather than flats. On this basis I am therefore satisfied that the proposed £85/£150 psm charge would be justified, and would not significantly affect overall housing supply in the district as a whole.
65. In reaching this conclusion I have had regard to the sensitivity testing

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<sup>20</sup> As set out in SODC Response to examiner's letter of 19 August 2015 (September 2015) (SODC/CIL/10).

<sup>21</sup> Rate of £325,000 to £375,000 per gross hectare, as set out in paragraph 4.48 of the VS update.

undertaken by the Council in the post-hearing work in respect of lower densities. The testing shows that whilst the viability of larger typologies (250+ units) would be affected, most modelled schemes of 50 and 125 units would be able to sustain the CIL charge at a density of 21 dwellings per hectare (dph), albeit the buffer would be less. However, evidence on historical densities in the post-hearing work indicates that many large schemes are likely to come forward with significantly higher densities than 21 dph, and therefore would be able to demonstrate greater viability. In addition, there is some evidence, as set out in the post-hearing work, that large scale schemes of 21 dph have been achieved with 40% affordable housing and sizeable Section 106 contributions. It has therefore not led me to alter my conclusions on the suitability of the residential CIL charges, as set out above.

66. Concerns were raised by representors relating to the impact of CIL charges on the delivery of general market and affordable housing in the district, on the basis that low proportions of affordable housing have been secured on recent schemes. I consider that little weight should be applied to this argument as the viability appraisals incorporated 40% affordable housing on schemes of three or more dwellings, as set out in the Council's Core Strategy. Furthermore, at the hearing the Council confirmed that recent housing schemes have delivered 40% affordable housing, except two sites where infrastructure costs were abnormally high.
67. The VS update indicates that large strategic schemes of 500 units would not be viable in most parts of the district, in the context of both CIL and Section 106 costs being applied. In addition, the post-hearing work indicates that development on the Council's specific strategic sites would be either not viable or marginal. Therefore the proposed nil CIL charge is justified on the 3 strategic sites.
68. The Council's viability work also shows that retirement housing, care homes and student halls of residence would be unable to support CIL charges. Rural exception schemes have not been separately modelled. However, as set out in Saved Policy H10 in the South Oxfordshire Local Plan (2006), such schemes focus on the provision of affordable housing rather than general market housing. On this basis it is a reasonable assumption that additional charges could not be supported. The proposed nil CIL charges for these development types is therefore supported by the evidence and is, accordingly, justified.
69. In summary I conclude that the proposed CIL rates, when applied to much of the qualifying residential development that is likely to come forward, incorporate a significant margin or viability buffer. This would allow for potential variations in the costs and value of particular developments, or changes in the market over time, whilst making a valuable contribution towards infrastructure needed to support development. I am therefore satisfied that the proposed residential CIL rates would not threaten the delivery of housing or put the overall development of the area at serious risk.

*CIL rate for office development*

70. The Council's viability testing shows that most office development with rental values above the base level (£20 psf) could support a CIL charge of £35 psm. However, at the base level, only schemes commanding a low current use value

would be viable with a CIL charge. Schemes with a rental value below £20 psf would also be unable to support a CIL charge.

71. At the hearing the Council indicated that some office development was anticipated in the Henley area where evidence shows that higher rental values could be supported, above the base level<sup>22</sup>. However, no evidence was provided of the estimated geographical distribution of future office development across the district. Furthermore I note that the Core Strategy identifies a number of employment sites for B1/B2/B8 use in other parts of the district, including at Thame, Wallingford and Didcot. The Science Vale site, incorporating Culham Science Centre is highlighted as a particular location for employment growth. Whilst these areas may deliver development across the B use classes, it is reasonable to assume that at least some of the schemes may include B1 uses, particularly R&D in association with the research based parks.
72. Evidence provided by the Council indicates that, outside the Henley area, office rental values achieved over the last few years have fallen short of the base level of £20 psf. In the context of the viability work, the evidence therefore suggests that office development in many parts of the district where growth is planned would not be viable with a CIL charge. Indeed, the VS update report concludes that offices and science park development is only marginally viable across the district.
73. In light of this evidence I recommend that a zero rate be applied for office development, in order to ensure that the viability of schemes is not compromised and delivery affected (**EM2**). This recommendation would address the concerns of a number of representors, and is one that the Council has stated it would not raise an objection to '*due to the limited locations in the district that can viably absorb the CIL rate.*'<sup>23</sup>

*CIL rates for retail development*

74. The Council's viability work shows that supermarket and retail warehousing development is viable, with slightly higher levels of viability for the retail warehousing. A single flat rate of £70 psm is proposed for these uses, in order to avoid complexity.
75. The VS update shows sizable buffers above the proposed £70 psm rate, of at least 30%. This indicates that the proposed CIL rate incorporates a reasonable viability buffer to allow for uncertainties relating to development costs and values and variations associated with specific schemes. Accordingly, the proposed charge of £70 psm appears to be reasonable and would not put such development at risk across the district.
76. The DCS as modified indicates that a nil CIL charge would apply to 'small

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<sup>22</sup> As set out in Appendix 4 of the SODC Response to examiner's letter of 19 August 2015 (September 2015) (SODC/CIL/10).

<sup>23</sup> Paragraph 9.2 in the SODC Response to examiner's letter of 19 August 2015 (September 2015) (SODC/CIL/10).

centre retail' development. At the hearing the Council confirmed that this definition includes all other forms of retail development, e.g. those not captured within the £70 psm charge. The nil charge is supported by evidence in the VS update which shows that other forms of retail development, termed as 'town centre', 'high street' or 'local centre' retailing (and including uses A1 to A5) has marginal viability in many cases, and would be unable to support a CIL charge. On this basis I consider that the proposed nil CIL charge for other retail development is justified. However, in order to clarify that the rate applies to all other forms retail development I recommend that the definition in the DCS is altered to read 'Other retail development' **(EM3)**.

#### *Other development*

77. The VS testing of hotel and industrial/warehousing development demonstrated that these uses would be unable to support CIL charges. The proposed nil CIL charges for these development types is therefore supported by the evidence and is, accordingly, justified.

#### **Other Matters**

78. A number of representations were made on the Council's draft instalments policy, the Council's position on discretionary exemptions, the use of CIL for administrative purposes, and how the spending of CIL monies will be prioritised between different projects or localities. However, these matters are within the Council's discretion, and it is not the role of the examination to appraise them.
79. A number of representors raised concerns about different CIL rates in other adjoining or nearby authorities. However, in terms of the residential rates, I am satisfied that these are justified by the viability evidence, as it applies to South Oxfordshire. In relation to office development I have recommended that the charge of £35 psm is reduced to a nil CIL rate. However, although this would bring it in line with the Charging Schedule in the neighbouring district of the Vale of White Horse, the recommended modification has been informed by the viability evidence, as it applies to this district.
80. The CIL Regulations are clear that differential CIL rates can be applied, providing that differences are based on robust and credible viability evidence. I am satisfied that these requirements have been met, and that, accordingly, the application of differential CIL rates for supermarket and other convenience retail development would not raise issues regarding state aid.

#### **Conclusion**

81. In setting the CIL charging rates the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in South Oxfordshire. Subject to the proposed modifications, I consider the charging rates are based on reasonable assumptions about development values and likely costs, and would not put the overall development of the area at risk.
82. The Council has sought to be realistic 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. I conclude that, subject to the recommended modifications, an appropriate balance will be achieved between the desirability of funding the costs of new infrastructure and the potential effect on the economic viability of development across the district.

83. Nevertheless it would be prudent for the Council to review the schedule within 2 or 3 years of adoption as the Local Plan is prepared and to ensure that overall approaches taken remain valid, that development remains viable, and that an appropriate balance is being struck.

<b>LEGAL REQUIREMENTS</b>	
National Policy/Guidance	Subject to the recommended modifications the Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the South Oxfordshire Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

84. I conclude that, subject to the modifications set out in Appendix A, the South Oxfordshire 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 Charging Schedule be approved.

*Katie Child*

Examiner

Appendix A (attached) – Examiner’s Recommended Modifications

**Appendix A – Examiner’s Recommended Modifications**

These are the modifications recommended by the Examiner so that the Charging Schedule may be approved. Where relevant, additional text is shown in bold, and deleted text is shown using strikethrough.

**EM1** Amend the fifth row in table 1 in the Charging Schedule and insert a new footnote as set out below, in order to specifically exclude student halls of residence from the CIL residential charge. Alter subsequent footnote numbers in table 1 accordingly.

Care home <b>and residential institutions</b> (C2) <sup>2</sup>	Nil
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<sup>2</sup> **Student accommodation: where some of the living accommodation is of communal nature e.g. shared living areas and/or kitchens. Student accommodation which is self-contained (e.g. studio flats) will be charged CIL at the relevant residential rate, for example, where such accommodation is provided to meet the University’s disability requirement. Where schemes are mixed and include both types of accommodation the nil CIL charge applies only to the floorspace of the units with communal accommodation including associated communal areas. Floorspace of self contained units including associated communal areas will be charged CIL.**

**EM2** Amend the proposed rate for ‘offices (incl. research and development)’ from £35 psm to £0 psm. Delete row 7 from table 1 in the Charging Schedule, as follows.

<del>Offices (incl. research and development)</del>	<del>£35</del>
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**EM3** Amend the definition of ‘small retail development’ in table 1 of the Charging Schedule as follows, to make it clear it relates to all forms of retail development not included within the £70 psm retail charge.

<del>Small centre retail</del> <b>Other retail development</b>	Nil
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