



The Planning
Inspectorate

Report to Plymouth City Council

by Wendy Burden BA (Hons), Dip TP, MRTPI

an Examiner appointed by the Council

Date: 12 December 2012

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE REVISED DRAFT PLYMOUTH CITY COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 5 October 2012

Examination hearings held on 21 and 22 November 2012

File Ref: PINS/N1160/429/15

Non Technical Summary

This report concludes that the Plymouth City Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the city.

The Council has sufficient evidence to support the schedule and can show that the levy is set at levels that will not put the overall development of the area at risk.

I have recommended that the schedule should be approved in its published form.

Introduction

1. This report contains my assessment of the Plymouth City Council Community Infrastructure Levy (CIL) Revised Draft Charging Schedule (RDCCS) 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 (Charge Setting and Charging Schedule Procedures – DCLG – March 2010).
2. To comply with the relevant legislation the local charging authority has to submit what it considers to be 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 City. The basis for the examination, on which hearings sessions were held on 21 and 22 November 2012, is the schedule submitted on the 5 October 2012, which is the same as the document published for public consultation on 25 June 2012.
3. The Council propose differing CIL rates for a restricted range of new development comprising new housing, some retail development, and purpose built student accommodation. A separate zone is identified in which there will be nil rates for new housing and purpose built student accommodation. The geographical differentiation is based on viability alone and defined on an OS map base as required by the Community Infrastructure Levy Regulations 2010.

Infrastructure planning evidence

4. The Plymouth Core Strategy (PCS) (ED/211) was adopted in April 2007 and sets out the main elements of growth that will need to be supported by further

infrastructure. PCC has produced an Infrastructure Needs Assessment, July 2011, (INA, ED/303) which it intends to update on an annual basis. This assesses the strategic infrastructure needed to facilitate the proposals set out in the PCS and will inform the expenditure of CIL receipts. A Funding Gap Analysis (ED206) has been submitted as part of the evidence to support the RDCS. This provides information on what funding is required and committed to delivering the infrastructure which is identified as 'critical' or 'becoming critical' to the accommodation of growth in Plymouth in the INA. At current prices the Council estimates the funding gap for critical infrastructure to be approximately £246.5 million for about the next 5-10 years.

5. The charges proposed in the RDCS would make only a modest contribution towards filling the likely funding gap. However, the figures clearly demonstrate the need to introduce the CIL as there is no doubt that new infrastructure is required across the city, in order to support the growth identified in the PCS.

Economic viability evidence

6. The Council produced the Plymouth CIL Viability Evidence Report, updated to June 2012 (ED/204) which is supported by the GVA Assumptions Report of October 2011(ED/205). The assessment essentially uses a residual valuation approach, utilising reasonable standard assumptions for the full range of factors, such as local building costs (including Code for Sustainable Homes Level 3 and 4 requirements), developer profit levels and professional fees. The assumptions used in the model include baseline development viability scenarios and sensitivity analysis which reflect the Council's own intelligence about Plymouth's development environment; the views of local partners such as the Plymouth Regeneration Forum and Plymouth Housing Development Partnership; property development cost and revenue data from recognised sources such as the Land Registry and the Valuations Office Agency; and data and advice from the Council's consultants GVA based on GVA's knowledge of the property market in Plymouth and corroborated through discussions with local agents.
7. As a result the model incorporates relevant and up to date local data on benchmark land values; likely sale prices based on a range of scenarios across the area; anticipated housing densities and gross to net ratios, as well as the impacts of the Council's relevant planning policies as set out in the adopted PCS. Scenarios were also sensitivity tested with alternative affordable housing contributions, as well as potential later increases in local build costs and sales values over time.
8. Criticisms have been made of the viability assessments carried out by the

Council. In relation to retail development there is a question raised as to whether the evidence base used to support the adoption of a differential rate of CIL for retail uses is accurate. For residential development the implications for the achievement of PCS Policy CS15 of adopting an assumption of a provision of 15% affordable housing have been raised. I deal with these matters within each of the relevant main issues.

Main Issues

9. Taking into account all of the evidence, the representations and the discussions at the examination hearings, there are six Issues for consideration in the examination of the CIL. I deal with these in the order in which they were considered in the Hearings.

Issue 6: Whether there is adequate justification to limit the payment of CIL to retail developments which comprise supermarkets and superstores of 1000sm gross internal floor area or more, and whether such development can be adequately defined to enable the distinction to be made.

10. The only type of retail development for which a CIL rate is proposed, is 'superstores/supermarkets' of 1000sm gross internal floor area or more, including all extensions to such stores. The proposed CIL rate would be £100 per square metre (psm) for this type of new build retail floorspace, and the RDCS defines superstores/supermarkets as shopping destinations in their own right, where weekly food shopping needs can be met and which can also include non-food floor space as part of the overall mix of the unit. This is the definition recommended for use by the Inspector following the examination into the Wycombe District Council CIL CS.
11. Regulation 13 allows for differential rates to be set where viability differs by reference to Zones where buildings could be situated, or by reference to different "intended uses" of development. There is nothing in the Regulations to indicate, and it was agreed on behalf of Sainsbury's, that different "intended uses" could not fall within the same use class under the Town and Country Planning (Use Classes) Order 1987. However, there would need to be a clear and actual difference in the uses that can be unambiguously described, if a differential CIL is to be charged. Furthermore, whilst size in itself cannot be used as a basis for differentiation, it could provide a proxy for a use where it can be shown to reliably delineate an actual difference in use.
12. Thus the application of differential rates for different forms of retail, such as convenience rather than comparison shopping, and/or distinction by size of unit/floorspace, could only be justified where a distinct delineation can be made between different intended retail uses, and where the different uses

thus identified have demonstrably different viability characteristics. For the Plymouth CIL retail charge to accord with the CIL Regulations, the evidence needs to demonstrate a difference in viability which mirrors a clearly identifiable difference in the intended use of retail development.

13. In terms of the viability evidence, amended assessment tables (ED/515a) were produced for the hearing which reflected more accurately the GVA Assumptions Report (ED/205). The amended tables show a worse case in viability terms for the larger superstores and supermarkets than the CIL Viability Evidence Report (ED/204) which was submitted with the RDCS at Reg 19 stage. However, some 64 scenarios were considered in the course of the investigation of viability and whilst some scenarios for superstores and supermarkets showed no capacity for CIL, and some were marginal, taken as a whole PCC is satisfied that that sector of retail uses demonstrated itself to be robust.
14. In any event, the Guidance indicates at para 27 that proposed CIL rates should appear reasonable, given the available evidence, but there is no requirement for a proposed rate to exactly mirror the evidence. There is room for pragmatism. The models used in the appraisals assumed that the development was developer led, and included the assumptions as to developers' costs and profits. In practice the purchase of the land and the development is generally led by the retail operator which takes a lower level of profit in anticipation of the return which would arise from the operation of the new store. The viability appraisals do not therefore fully reflect the reality in Plymouth. Even in the City Centre, smaller retailers are struggling, with an increasing level of vacant stores and the performance of rental returns in sharp decline. As a result many town centre schemes have stalled, and it is unlikely that any new schemes would come forward in the current economic conditions. A similar picture is apparent in respect of retail warehouse type development. In contrast, the Council has before it schemes for some 55,000sm of new superstore/supermarket floor space, and GVA indicates that there is strong support from investors for this form of retail development.
15. Thus although Sainsbury's cast doubt on the accuracy of the assessments which informed the decisions taken on the CS in relation to the retail levy, the Council were likely to have been fully aware of the strengths and weaknesses of the retail market in Plymouth. Furthermore the corrections made to the assessments produced in response to Sainsbury's request for more detailed information do not change the overall conclusions which are drawn by the Council and its professional advisors. In these circumstances the accuracy of the assessments submitted at Reg 19 stage has no material effect on the appropriateness or otherwise of the proposed levy.

16. The large convenience operators such as Sainsbury's may be building stores below 1000sm which are delivering higher sales densities than a supermarket/superstore (as defined by PCC) and which would potentially have the capacity to support a CIL charge. PCC has not tested the performance of one or more actual convenience stores just below 1000sm and compared that with the performance of convenience stores just above that threshold, since the Council was not able to identify any purpose built convenience retail floorspace at less than 1000sm. Retail floorspace of less than this size has only been developed as generic Class A retail floorspace, in effect a vacant space with a retail use permitted which is then adapted to operator requirements. This finding is reflected in the CIL Economic Viability Study (ED/204) which found that in residual valuation terms there was no general distinction between food and non food stores of less than 1000sm.
17. Whilst a more fine grained approach is appropriate to support a differential rate of CIL, the legislation [Planning Act 2008 S212(4)(b)] requires a CA to use "appropriate available evidence" to inform the DCS. It is unlikely that available data would ever be fully comprehensive or exhaustive, and the regulations require the consideration of "potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area". PCC has produced clear evidence for Plymouth as a whole of a strong, viable market in Plymouth for superstores and supermarkets of 1000sm and above as opposed to the poor economic conditions for generic retail development below 1000sm, and non food retail development above that threshold. On the basis of that evidence, I consider that in terms of economic viability, the case for setting a CIL charge for new superstore and supermarket development of 1000sm and above and for no other retail development is demonstrated.
18. The differential rates are proposed on the basis of a difference in the use of superstores and supermarkets from other retail uses. PCC produced evidence of survey work carried out to demonstrate the differences in the uses of convenience stores on either side of the 1000sm threshold (ED/515 App 1). This considered existing stores within Plymouth and generally demonstrated that convenience stores in excess of 1000sm had a particular style of layout, with more spaces for car parking and a sufficient range of goods to provide for a weekly shopping trip. In recognition of the different function performed by convenience stores of 1000sm and above, PCC's car parking standards allow for a higher level of parking provision for large food and convenience shops of more than 999sm. These standards were reviewed for the Development Guidelines Supplementary Planning Document adopted in April 2010 so are reasonably up to date. Furthermore within the convenience based sector of retailing, it is most likely that any regular shopper would be able to distinguish those stores which cater for a range of goods which could provide for the

requirements of a household for a week or more. Thus I consider that the terms used by PCC to describe a superstore/supermarket development in Plymouth do provide an adequate definition within their normal broad meaning.

19. Whether or not non-food retail warehouse development may have similar characteristics to larger convenience stores, the purpose they serve is different. The purchase of the goods sold is generally discretionary, and is unlikely to be undertaken on the regular basis of a convenience goods shop which every household is obliged to do. That difference in the function of retail warehouse development is reflected in the different car parking standards set by PCC. To any member of the public, the intended use of the retail warehouse development would be clearly distinguished from the intended use of a superstore/supermarket development.
20. It was suggested for Sainsbury's that shopping patterns were changing as more food operators built smaller stores in town centres. Shoppers used these for shopping on a more regular basis and the trip in which the boot of the car was filled up on a weekly basis was in decline. However, no evidence was produced to support the contention that this was occurring in Plymouth. Sainsbury's also argued that if a differential rate was acceptable based on PCC's definition, then it should be at a higher level of floorspace. This was because the large food operators were generally moving to a format where large stores with high levels of car parking are in excess of at least 2000sm, whereas a store of, for example, 1,050sm may be developed within a town centre without its own large scale parking provision.
21. Clearly retailing is a dynamic activity and trends are likely to change over time. The definition used by PCC in its charging schedule reflects established shopping habits whereby operators have produced larger stores with their own parking and shoppers have used these stores to undertake a comprehensive convenience goods shop. That definition is supported by the Council's survey of existing stores in Plymouth. Clearly it is important that the proposed CIL charging rates are robust over time, but no evidence has been submitted to support the contention that the changes which are occurring at a national level have yet influenced the development of convenience shopping in the City. PCC intend to review the CIL CS in three years time, and that would provide an opportunity to assess whether changes in convenience retailing are such that the definition of a distinct "superstore/supermarket" use of 1000sm and above used to differentiate rates in the RDCS is no longer appropriate. However, in the current RDCS the definition is sufficient to enable the authority to identify those developments for which the CIL charge of £100psm would be levied.

22. In conclusion therefore, there is a distinct use which can be clearly identified in terms of the normal broad meaning of the definition used in the RDCS, and there is evidence of differing levels of viability between that use and others within the retail use class. In addition, the survey evidence indicates that the size threshold of 1,000sm generally marks the difference in use for Plymouth. In these circumstances the differential rate proposed by PCC for supermarkets and superstores is justified by the evidence.

Issue 1: Whether there is adequate economic justification for one zone in which there is a £0sm rate for Residential and Purpose Built Student Accommodation; whether it has been appropriately defined; and whether there is any economic justification for the introduction of further zero rated zones within the City.

23. The zero rated zone is comprised of the City Centre and some adjacent areas, and has been determined with reference to where tall buildings for residential and student accommodation are most likely to be built. Tall buildings were defined as over 6 storeys in height for the purpose of viability testing. This is the Building Costs Information Service's (BCIS) proxy for tall buildings. The viability evidence indicates that tall buildings have higher build costs, whilst the return on the investment is not realised until the completion of construction. This is distinct from traditional residential development where a builder would normally generate revenue throughout the construction period. There are a number of unimplemented planning permissions for tall buildings in the zone which provide a clear indicator of the lack of economic viability in current market conditions.
24. PCC pointed out that the zero rated zone broadly reflects the "Zone of Opportunity for Tall Buildings" in the Council's Design Supplementary Planning Guidance (SPD). In the SPD, the Zone has undefined edges whereas the CIL zero rated zone is clearly defined and any uncertainty would therefore be avoided.
25. Plymouth University has sought the inclusion of the whole of the University within the zero rated zone. However, that part of the University which lies outside the zero rated zone is within an area where there are a number of listed buildings and where tall buildings are unlikely to be built. There is no evidence that any further zero rated zones are justified, but in any event the Council would review this position in the next iteration of the Charging Schedule. I therefore find no reason to recommend any change to the zone as proposed.

Issue 2 Are each of the cost and value development assumptions used in the development appraisals to test the viability of the CIL Charging Schedule reasonable and realistic having regard to national guidance, local economic context

and infrastructure needs, including in relation to the Council's adopted Core Strategy? If not, what alternative assumptions should be used, what evidence is there to support such alternatives, and what would be the implications of changing the assumptions for the CIL rates in Plymouth?

26. In generating the cost and value development assumptions for the development appraisals PCC has used recognised sources of data such as the Land Registry and the Valuations Office Agency, together with data and advice from locally active property agents GVA. The assumptions have been agreed with representatives from the Plymouth Regeneration Forum and Plymouth's Housing Development Partnership. Whilst there is some criticism of a number of the assumptions adopted, no alternative assumptions have been put forward based on the depth of evidence produced and width of consultation carried out by PCC. Furthermore, PCC is actively seeking to encourage development within the City, and the Council's Market Recovery Scheme (ED/310) sets out three different types of incentive to help bring forward viable development in difficult market conditions. As a result the rates proposed for CIL are cautious and conservative. For residential development they provide a discount of at least 40% of the average capacity to pay the CIL charges; with a discount of greater than 50% of the theoretic capacity to pay a CIL for purpose built student accommodation and superstores/supermarkets.
27. The requirements for a S106 contribution will remain for a number of developments, and Tetlow King dispute the level of £500 per unit as an assumption for S106 contributions. However, the CIL charge will be the first cut and PCC point out that liability to pay the levy will be taken into account in negotiating S106 payments. Furthermore, with CIL in place, many of the costs for which cover had been sought through S106 contributions will be caught by the CIL, and in any event there are stringent constraints on the use of S106 under Reg 123 which will reduce the works which can be covered by means of a S106 covenant.
28. The viability appraisals for the CIL also include a number of construction costs which have previously been included in S106 covenants, including infrastructure such as roads and enabling works. These contingency costs have already been allowed for in the appraisals in addition to the £500 for S106 costs. Thus even if the S106 costs were more than £500 there is a significant ceiling within the construction costs in addition to the 40% or greater discount on the capacity to pay CIL.
29. The 40% or greater discount and the inclusion of contingency costs within the viability appraisals provide a buffer against any changes in the costs of meeting new or emerging policy requirements such as higher environmental

standards. This buffer also provides for any actual variations in costs over and above those used in other assumptions adopted in the appraisals, such as sales rates and developer's margin. Whilst there is an issue in some regeneration projects where demolition is required in advance of planning permission being granted, PCC has indicated that it would take a sympathetic approach to regeneration in recognition of the fact that the pot of money available to meet developer's liabilities has not grown any bigger.

30. I deal with the assumption in relation to affordable housing separately, but in relation to the other cost and value development assumptions used in the development appraisals to test the viability of the CIL Charging Schedule, I conclude that they are reasonable and realistic having regard to national guidance, local economic context and infrastructure needs, including in relation to the Council's adopted Core Strategy.

Issue 5 Having regard to Policy CS15 of the Plymouth Core Strategy, do the assumptions in the calculations of viability for residential development put the delivery of affordable housing in accordance with the development plan at risk?

31. Policy CS15 of the Plymouth Core Strategy (PCS) requires at least 30% of the total number of dwellings in private sector developments in excess of 15 units to be affordable homes. In the calculations of viability for residential development appraisals were carried out using assumptions of 0%, 15% and 30% affordable housing provision. The evidence base shows that in most cases, the delivery of 30% affordable housing in the current market, would make residential development unviable.
32. The Policy seeks 30% affordable housing "subject to viability", and in PCC's negotiations across the City in recent years, an average of 15% affordable homes, based on viability assessments, has been achieved. Whilst there are some schemes which continue to deliver 30% affordable housing, it has been demonstrated in the majority of cases that this level of affordable housing is not viable in the current market prior to any introduction of CIL. Since this is the reality of what is being achieved, PCC has given greater weight to scenarios with a 15% level of affordable housing in setting the CIL charges.
33. A number of representations have been made to the effect that by adopting an assumption of 15% of affordable housing in setting the CIL, PCC will undermine the achievement of 30% affordable housing provision. It would in effect be inviting developers to seek to provide 15% affordable housing instead of 30%. However, Policy CS15 remains a part of the statutory development plan, and would carry a significantly higher status in any negotiations than the assumptions used in setting the CIL. PCC would

therefore continue to seek 30% as a starting point in negotiations, and developers seeking to make a lower provision would be required to justify a reduction through an assessment of viability on an "open book" basis, as they are already required to do.

34. The question then arises as to whether by setting the CIL on the basis of 15% affordable housing, it would make a material or significant difference to the level of risk to the development plan target of 30% by making residential development less viable where a CIL payment is to be made. Although developments in higher value areas are delivering 30% affordable housing, Plymouth is already in the situation where over the past 2 years developers are negotiating 15% affordable housing on viability grounds. The CIL charge for residential development equates to between 1-2% of development costs and is therefore well within the 5% contingency set aside by developers. It will also replace some of the costs which would normally be met under a S106 covenant, such that there will be no significant change in the costs to the developer with a CIL. With the low rate of CIL which is proposed, it will make no difference to residual land value (RLV). As PCC points out, a change of 5% in the proportion of affordable housing has a far greater impact on RLV than a CIL charge of £30 per unit which will be largely replacing charges otherwise made through a S106 covenant.
35. Having regard to the low rate of CIL proposed for residential units, and to the discount of 40% or greater on the theoretical capacity of residential development to pay CIL, I conclude that the viability of housing development is unlikely to be materially affected by the CIL charge. In particular, the introduction of CIL for new housing will not make a material difference to the already existing level of risk to the achievement of the target of 30% affordable housing delivery, whereas a reduction in the proposed rate would be likely to undermine the Council's ability to provide finance for critical strategic infrastructure in the City.
36. South West HARP Planning Consortium (SW HARP) considers that if the affordable housing target in the PCS is not capable of being achieved, then the PCS, which was adopted in 2007, may be out of date. The Council should defer setting the CIL until there is an up to date PCS in place. However, the PCS covers the long term period of 2006 to 2021 and looks beyond to 2026 for some matters. As PCC argue, there will always be ebbs and flows in the delivery of the policies and targets in the PCS. For example, prior to 2009, Plymouth was exceeding the Regional Spatial Strategy target for the delivery of new housing. With the collapse of the housing market in 2008, revised targets for the City were agreed with Government Office South West (ED/311).

37. These revised and lower targets have been met, but as a result it is clear that there is likely to be a deferral of some years in reaching the PCS housing targets which will depend to a large extent on the recovery of the housing market. In the meantime, Plymouth has a funding gap of £246.5m for critical infrastructure. The CIL will not plug that gap, but it will make an important contribution. Furthermore, the CIL will be reviewed in 2-3 years so that adjustments can be made to reflect any changes in circumstances and in economic conditions. In these circumstances I see no reason to defer the introduction of the CIL.

Issue 3: Is there adequate evidence to support differential rates for student accommodation and other residential development? How would purpose built student accommodation be distinguished in practice from other residential development which may or may not be used for student accommodation?

38. The individual appraisals undertaken for the Council's viability appraisal provide clear evidence to support differential rates between student accommodation and other residential development. Whilst residential development is generally built to be sold off, student accommodation is built to be let on short term leases. In the current market, the performance of house prices remains low, whereas the rental stream from student accommodation is relatively secure. As a result the investment markets value student accommodation very highly and I agree with PCC that there is a significantly greater capacity to pay a CIL charge than there is for other residential development.
39. Student accommodation is generally distinguishable from other residential development by the type and standard of the accommodation, in terms of the unit size and size of communal areas, and the low level of car parking provision which is required. Furthermore, PCC imposes conditions on permissions for purpose built student accommodation which limits it to the accommodation of students. As a result I find that there is a clear distinction between purpose built student accommodation and other residential development to enable a differential rate of CIL to be charged.

Issue 4: Is there any economic justification for differential rates for purpose built housing for the elderly outside the zero rated zone?

40. The National Planning Policy Framework identifies the need to provide for housing suitable for older people, such that McCarthy and Stone and SW HARP argue that it should be considered as a policy priority. Differences between specialist retirement housing and other forms of housing are identified, in

particular the devotion of large amounts of internal floor area to communal areas and facilities in specialist retirement homes. Furthermore, specialist retirement housing usually has higher abnormal and build costs, and with slower sales rates than open market housing, it has higher finance, sales and marketing costs.

41. The Council has considered specialist retirement provision in its viability testing, but the level of consideration reflects the most likely low proportion of this form of housing expected to be provided in the future in Plymouth. Any specialist retirement housing which is defined as social housing or which falls into use class C2 as a "residential institution" would not be liable for a CIL charge in any event. The types of housing which are restricted to occupancy by the elderly and which do not fall within those categories include a number of different types, including sheltered housing, extra care housing and purpose built open market housing.
42. PCC agrees that retirement housing schemes may have different viability characteristics to other forms of housing. However, the availability of communal areas and other facilities within retirement schemes is likely to be reflected in the purchase price of the individual units. Thus the amenity afforded by such areas contributes towards higher development values which provide the capacity to meet the proposed CIL charge. Furthermore, where there are abnormal and higher build costs because of, for example, location on brown field sites, the developers of housing for the elderly are no different from those of other market housing. Such costs would not necessarily translate into a reduced capacity to pay CIL, since developers can be expected to take full account of such costs in the price they pay for the land.
43. Even where abnormal costs have not been taken into account in the price paid for the land, PCC's proposed CIL rates for residential development have been set taking account of viability in the lower value areas of the City, and are based on a substantial discount on the theoretical capacity of residential development to pay CIL. In these circumstances I find that any difference in viability between other forms of open market residential development and retirement housing is unlikely to be such as to justify a lower or zero rate for open market retirement housing.

Overall Conclusions

44. The Council's RDCS is based on reasonable assumptions about development values and likely costs. A viability assessment is not an exact science, but the Council has used a recognised methodology to produce their evidence on the economic viability of development across their area, and the assumptions are based on locally gathered knowledge. In setting the CIL charging rates the

Council has had regard to detailed evidence on infrastructure planning and up to date economic viability evidence of the development market in Plymouth. The Council has tried to be realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, whilst ensuring that the introduction of the CIL does not undermine the viability of development across the City.

45. The only categories of development for which a CIL charge is set are Residential and Purpose Built Student Accommodation outside a zero rated zone, and superstores/supermarkets of 1000sm gross internal floor area or more. The proposed level of CIL charges is relatively conservative, and a discount of 40% or greater of the theoretical capacity of development to pay the charge has been incorporated into the calculation of the levy. In these circumstances there is sufficient margin to allow for some variation in the level of costs incurred by developers, or the amounts payable under s106 obligations, and it is unlikely that the proposed charges would undermine the viability of those categories of development to which CIL is proposed to apply.
46. Matters of implementation and governance, as referred to by various respondents, are not strictly within the remit of this examination, but they may have an impact on the smooth introduction and efficient administration of the CIL. Whilst the CIL Regulations do not provide for the Council to apply CIL charges on the basis of timings of the occupation of dwellings, any phasing of payments must relate to the commencement of construction, as PCC has proposed to do. Such a phased payments policy should have a positive effect on cash flow and thus the overall economic viability of new development for larger projects.
47. It is not within the remit of this examination to consider the relationship between the CIL and S106 contributions. However, the Council's adopted revised Planning Obligations and Affordable Housing SPD (ED/304) should improve clarity for interested parties on the expected interaction between the CIL and S106 legal agreements for site specific infrastructure, where the latter would still be necessary.
48. Furthermore, it is for the Council to decide how the income from CIL should be spent. Development by Network Rail could be a form of infrastructure to be funded by CIL, but that is for the Council to negotiate if it so chooses. Natural England has sought contributions from CIL to meet responsibilities under the Habitats Regulations. Whilst such payments could well be covered by CIL, there is no power to require the Council to include such a provision.
49. In accord with the national CIL regulations, "exceptional circumstances" are intended to be exactly that. PCC indicates that it will clarify its intentions in

relation to discretionary relief once the CIL CS is adopted. As the Council proposes, it will also be appropriate to consider any potential revisions to the charges in the 2-3 years following the implementation of the CIL.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended 2011)	The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Core Strategy and the Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

50. I conclude that the Plymouth City Council Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the Community Infrastructure Levy Regulations 2010. I therefore recommend that the Charging Schedule be approved.

Wendy Burden

Examiner