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# **Report to Chorley Borough Council, Preston City Council and South Ribble Borough Council**

**by Simon Berkeley BA MA MRTPI**

**an Examiner appointed by the three Councils**

**Date: 24 June 2013**

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

## **REPORT ON THE EXAMINATION OF THE DRAFT COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULES OF CHORLEY BOROUGH COUNCIL, PRESTON CITY COUNCIL AND SOUTH RIBBLE BOROUGH COUNCIL**

Charging Schedules submitted for examination on 1 February 2013

Examination hearings held on 23 and 24 April 2013

File Ref: PINS/D2320/429/9

## Non Technical Summary

This report concludes that the Community Infrastructure Levy Charging Schedules proposed by Chorley Borough Council, Preston City Council and South Ribble Borough Council do not provide an appropriate basis for the collection of the levy in the three areas as drafted. The rates proposed for apartments and the uses falling within the 'all other uses' category do not reflect the evidence and would threaten the viability of those uses in the three areas concerned. The delineation of the Inner Preston Zone does not adequately reflect the evidence and the convenience and comparison retail definitions are not sufficiently specific to differentiate between the two uses.

However, I consider that such non-compliance with the drafting requirements can be remedied by the making of modifications which I recommend. Such modifications are specified in Appendix A to this report and are designed to set the rates for apartments and 'all other uses' to zero, alter the delineation of the Inner Preston Zone and amend the retail definitions. Subject to such modifications the draft schedules are approved.

## Introduction

1. This report contains my assessment of the Community Infrastructure Levy (CIL) Charging Schedules for three Councils – Chorley Borough Council, Preston City Council and South Ribble Borough Council, hereafter referred to as 'the Councils'. The basis for this assessment is Section 212 of the Planning Act 2008. It considers whether the schedules are compliant in legal terms and whether they are economically viable as well as reasonable, realistic and consistent with national guidance set out in *Community Infrastructure Levy: Guidance* (April 2013).
2. To comply with the relevant legislation a 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 area.
3. The basis for the examination is the draft charging schedules submitted on 1 February 2013, which are effectively the same as the documents published for public consultation on 19 October 2012, the written material and representations submitted, and the representations made at the hearings held on 23 and 24 April 2013. Through the examination process and in response to questioning, the Councils suggested some changes to the schedules. These are considered in the relevant sections of this report.
4. The charges proposed by the Councils, in £ per square metre (psm), are: dwelling houses (excluding apartments) £65; apartments £10; convenience retail (excluding neighbourhood convenience stores) £160; retail warehouses, retail parks and neighbourhood convenience stores £40; and all other uses £10. Preston City Council proposes a separate charging zone, the 'Inner Preston Zone', for which a charge of £35 is proposed for dwelling houses.

5. A nil rate is proposed for community uses. The definitions included in the schedules confirm that this includes uses falling within Classes C2 and D1 (residential and non-residential institutions) and Class D2 (assembly and leisure uses) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order) where these buildings are provided by the public, not-for-profit and charitable sectors. They also clarify that this category includes infrastructure provided by the emergency services. On the basis of the evidence produced, this is reasonable.
6. At the hearing, the Councils put forward a change to the definition of community uses, to include infrastructure provided by not for profit infrastructure providers. The purpose of this change is to avoid confusion, as some had thought that such development would be liable to the charge for 'all other uses'. However, given my conclusion and recommendation in relation to 'all other uses', the modification suggested by the Councils is unnecessary.

#### *Infrastructure planning evidence*

7. The Central Lancashire Core Strategy (CS) was adopted in July 2012. This sets out the main elements of growth that will need to be supported by further infrastructure in the three charging areas. The Infrastructure Delivery Plan (IDP) underpinning the CS has been updated and was published in January 2012. Infrastructure Delivery Schedules (IDS), which itemise the essential strategic infrastructure necessary for the delivery of the CS on a local authority basis, were published alongside the IDP.
8. The IDS document estimates a total funding gap for Chorley of around £32 million, with funding gaps for Preston and South Ribble put, respectively, at around £97 million and between £92 million and £100 million. Infrastructure projects involving more than one of the three local authority areas are listed as 'pan-central Lancashire'. A further funding gap of circa £55 million is identified for these, resulting in a grand total of £276 to £284 million. While the updated figures given at the hearing were slightly different to this, it is clear that the funding shortfall both within each of the three Council areas individually, and overall, is significant.
9. Residential development will be the main source of CIL receipts. Taking account of the level of new homes sought by the CS, CIL receipts from new housing are expected to raise approximately £95 million. Although the level of receipts from the retail rates are less certain, the Councils estimate that the introduction of the charges proposed overall will generate approximately £114 million.
10. It is apparent that the proposed charges would not make a full contribution towards the likely funding gap. Nevertheless, the figures clearly demonstrate the need to introduce the CIL to help deliver the infrastructure needed to support the planned growth of the three local authority areas.

#### *Economic viability evidence*

11. The Councils commissioned CIL Viability Assessments to inform the formulation of the charging schedules. The assessments use a residual valuation approach taking standard assumptions for a range of factors such as land costs, building costs and profit levels. Both the model and the assumption inputs were

discussed at workshops and meetings with developers and others. I note that there is disagreement about the views expressed at these events. The robustness of the assessments, including the key variables and assumptions made, and the degree to which the appraisals justify the CIL levy rates proposed in viability terms, are central to this examination and are explored below.

### **Whether the residential economic viability evidence is appropriate and justifies the proposed charging schedules**

#### *The levy rate for dwelling houses (excluding apartments)*

12. For residential developments, the viability assessments examine a range of development type scenarios in terms of site size and value levels. To reflect the general spectrum of residential development likely, the selection considered is influenced by an analysis of schemes coming forward at the time of the assessments and by the CS.
13. The appraisals assume land costs in the range of £450,000 to £900,000 per hectare (net). A reference case scenario is used, with a land value of £750,000. Valuation Office Agency (VOA) Property Market Reports have been drawn on to inform these assumptions. I am told that the last VOA report specifically relating to Central Lancashire was that from 2009 and that the geographically closest areas covered by the VOA's 2011 report are Greater Manchester and Liverpool. The Councils do not dispute that the latter report indicates a residential land value of £1.35 million per hectare. This is clearly rather higher than the range assumed.
14. However, the difference between the land cost for Central Lancashire and that for Greater Manchester and Liverpool in 2009 has been considered in effectively arriving at a differential to apply to the 2011 figures. While it is not clear whether any alteration in the degree of divergence between Greater Manchester/Liverpool and Central Lancashire has been reflected, this is a broadly appropriate approach.
15. I note the points about whether or not the VOA reports take into account the cost of meeting local policy requirements, such as the provision of affordable housing. I recognise that if they are solely based on transactions, such costs will effectively be reflected in the figures, indicating a lower base land cost than that considered in the Councils' analysis. Conversely, as the Councils point out, the land prices in the VOA reports may well also reflect other factors which have the opposite effect, such as affordable housing grants.
16. The VOA reports are not the only sources of information informing the land value assumptions. An analysis of comparative transactions current at the time the appraisal work was undertaken has also been used. The Councils concede that the number of sites examined is limited to 'less than a handful', apparently because these were the only current transactions at the time of the evidence gathering exercise. While not ideal in scope, this evidence nonetheless introduces an element of wholly local information with a firm basis in reality. Whether it is entirely representative is questionable, given the sample size. Nevertheless, it lends a reasonable, local reality check to the more theoretically derived understanding of land costs in Central Lancashire reached through scrutiny of the VOA reports.

17. It may be that the land costs appraised do not reflect the full range of prices paid in individual land deals. But this will vary considerably from one project to the next, and the amount a developer is prepared to pay will depend on a wide spectrum of factors. Furthermore, it is expected that the cost of meeting a CIL charge will ultimately come from the price of land. With this in mind, it is not unreasonable for the appraisals to consider lower land costs than may have been previously experienced. Overall, in the context of the assessments' high level, inevitably broad brush consideration of the variables affecting viability, and in the light of the Regulations and the national guidance, the evidence on land costs is sufficiently robust and appropriate.
18. In relation to build costs, information has been drawn from the RICS Building Costs Information Service (BCIS) database. Allowances of 10% for external works and 5% for contingencies have been added to base build costs. A further allowance has been made for Section 106 (S106) legal agreements, ranging from £1,000 to £8,000 per dwelling depending on the type of site involved.
19. Policy 27 of the CS requires all new dwellings to meet Level 4 of the Code for Sustainable Homes from January 2013. The appraisals are based on the assumption that the BCIS data includes schemes built to Code Level 4. The appraisals also add a little over £150 psm to the BCIS derived base build costs. This lends confidence that the costs of meeting CS Policy 27 have been adequately accounted for. The degree to which the appraisals reflect this policy requirement should be regarded as appropriate, for the time being at least.
20. From January 2016, CS Policy 27 will demand that all new dwellings meet Code Level 6. This has not been included in the viability assessments, and the Councils intend to review the CIL charge in 2015, ahead of this requirement 'kicking in'. It is clear to me that a review will be essential at that time. If it is not, the Councils will risk either development not being delivered or the Code Levels sought by CS Policy 27 not being met. While it is beyond the scope of this examination and the recommendations I am able to make, there is no reason to suppose that the Councils, as responsible public authorities, will not undertake such a review in a timely fashion.
21. CS Policy 7 seeks to achieve a contribution to affordable housing of 30% in the urban parts of Preston, Chorley and South Ribble, and 35% in rural areas on sites in or adjoining villages. It sets a minimum site size threshold of 15 dwellings, with a lower threshold of 5 dwellings in rural areas. The viability assessments' generic testing clearly incorporates the 30% requirement. The Councils anticipate that the 35% requirement will apply to only a very small number of rural developments. I agree that this is likely. The CS focuses house building in urban and suburban areas rather than rural locations. Additionally, the Councils expect most rural housing schemes to be below the 5 dwelling threshold. I have been given no compelling reason to suppose otherwise. Overall, the requirements of CS Policy 7 have been sufficiently incorporated into the appraisals.
22. Other costs have also been included in the appraisal inputs. A figure of 12% on construction costs has been used for professional fees, 3% of development value for sales and marketing, stamp duty at 4% of the land cost and a land purchase fee at 2% of the land cost have been added. Broadly speaking, these are generally appropriate values.

23. The dwelling size and density assumptions made have been criticised. An average house size of 120 square metres has been assumed. The Councils agree that this is roughly the area of a typical four bedroom house. That being so, it seems improbable that this is representative of the residential development likely to be delivered. The Strategic Housing Market Assessment 2009, which underpins the CS, points to a preference/demand for two, three and four bedroom market housing.
24. That being said, the Councils say that this does reflect the average size of the homes that were being marketed at the time of the evidence gathering exercise. In this context, while this sample amounts to only 56 dwellings, it does represent appropriate, available evidence. Even if it is the case that a more comprehensive survey could have been possible, this does not render the Councils' data invalid. In any event, the viability appraisals have analysed sales values for each scenario on a psm basis. In isolation, therefore, the unit size considered has little effect on the amount of CIL payable, or viability.
25. At the hearing, the Councils clarified that the 39 dwellings per hectare density figure used is gross, and that the net figure used, which takes into account the provision of open space and other non-developable areas on sites, is 31 dwellings per hectare. On the face of it, as a discreet factor, this seems appropriate.
26. In effect, the various scenarios appraised all assume that an average of 31 dwellings (net) per hectare of 120 square metres each on average will be delivered. Some suggest that this combination is not feasible or realistic in the present market. It may be that it is not representative of what is reasonably likely to be delivered across the three local authority areas. But if it is an overestimation of the level of residential floor space, and hence sales value, it is equally an overestimation of the cost of meeting the CIL. In the context of the appraisals' methodology, particularly the use of a flat psm sales value for each scenario irrespective of unit size, these are directly proportionate factors. Consequently, the degree to which the combination of the dwelling size and density assumptions reflects the kinds of developments one could expect to take place over the CS plan period has little or no effect on the assessment of viability. Given the generic nature of viability appraisals of this kind, this should not be regarded as inappropriate.
27. It has been assumed that all schemes will be debt funded through finance. That is not always the case. This aspect is one which suggests that the viability margins for each of the scenarios considered are not presented as 'best case' illustrations.
28. Sales values have been reduced by £100 psm in the appraisals to take account of discounts offered by house builders from asking prices. This is an assumption, and I have been given no clear evidence to suggest that house builders in the area offer a discount or, if so, what level of discount might be typical. In this context, the figure used seems appropriate, if not generous.
29. The adequacy of the residual margin has been questioned. But the Councils' evidence indicates that even after the proposed CIL charge has been taken, the margin for the various scenarios ranges from 22.5% to 24.2% on cost. This strikes me as reasonably healthy, and a level at which many developers could

realistically be expected to proceed.

30. Moreover, it is clear that in setting the levy rate for dwelling houses, the Councils have not sought to 'push the boundaries' or levy the maximum level of CIL that the appraisals show to be theoretically possible. Indeed, according to the Councils, the theoretical maximum charge for the applicable scenarios analysed range from £102 to £132 psm. In striking the balance between the need to fund new infrastructure and the effects on economic viability, the approach taken is appropriately measured. Given the nature of the appraisal work undertaken, dealing as it must with a range of variables and unknown factors, and making numerous assumptions, this is a commendable path. It significantly bolsters confidence that the rate proposed will not put at serious risk the overall development of dwelling houses across the three local authority areas envisaged in the CS.
31. I conclude that the levy rate for new dwelling houses (excluding apartments) is justified by appropriate available evidence and strikes an appropriate balance between helping to fund new infrastructure and its effect on the economic viability of dwelling houses (excluding apartments) across the three local authority areas.

*The levy rate for apartments*

32. A differential rate of £10 is proposed for apartments on the basis that the evidence shows them to have materially different viability levels to dwelling houses. Indeed it does. It shows apartments, with a nil CIL charge, to have a residual margin of only 15% on cost. This is a level at which the Councils fully concede developers are unlikely to proceed.
33. The Councils put forward several points to justify this levy rate. However, while the degree to which it would affect viability may be limited, an appraisal detailing its effect has not been produced. In any case, it is obvious that introducing the £10 rate would worsen an already untenable viability position, to a greater or lesser extent. Even if there may be some circumstances where apartments might be viable with the levy, for example as part of mixed use schemes, this would amount to a cross-subsidy. There is no evidence to support the proposition that other uses could bear this cost, and I see no reason why they should. The Councils' suggestion that there may be more positive market conditions over the lifetime of the schedules is founded on hope rather than any evidential basis. In any event, CIL schedules must be founded on present economic circumstances.
34. Overall, I do not accept these arguments. This is not, as the Councils suggest, a matter of the appropriate balance. Rather, it is one of consistency with the evidence. While there is no requirement for levy rates to exactly mirror the evidence, they must be reasonable given the evidence available. The rate for apartments is wholly inconsistent with the viability evidence produced. That is not reasonable.
35. The Councils asked that if this levy requires modification, then it should be removed from the schedule rather than set at a nil rate. I understand this to be a request to, in effect, apply the dwelling houses rate to apartments. But, for the same reasons that I have given above, this would be even more

inappropriate than the £10 levy proposed.

36. Consequently, I conclude that the levy rate for apartments does not meet the drafting requirements. To ensure compliance, I recommend a modification (**EM1**) reducing the rate to nil.

*The levy rate for dwelling houses in the Inner Preston Zone*

37. The differential rate for dwelling houses in the Inner Preston Zone is based on the divergence between house sales prices in central Preston and elsewhere across the three local authority areas. Land Registry data on sales prices has been analysed on the basis of Census Standard Table (CST) wards, and a 'heat map' showing the average house sale prices in each ward has been produced. This reveals lower sales values around central Preston than other areas beyond. Informed by this evidence, the Inner Preston Zone has been delineated on a map.
38. A viability appraisal has also been undertaken which follows the methodology for dwelling houses in general and is based on the 1 hectare reference case scenario. Some assumptions differ from those in the general appraisals. Clearly, the lower sales values identified in Inner Preston have been reflected. Also, lower land and S106 costs have been used, and an additional flat figure of £100,000 for demolition and site remediation has been included. On the face of it, all of this is appropriate.
39. The appraisal work concludes that to maintain a residual margin of 20%, the theoretical maximum levy rate is £73 psm. This is more than the rate for dwelling houses in general, and gives rise to the question of whether a differential rate is justified in viability terms. I am of the firm view that it is. As I note above, viability appraisals of this sort rely on assumptions about a wide range of variables. Because of this, they are sensitive and small changes can have significant effects on their outcomes. In this context, the level of 'buffer' or 'cushion' between the theoretical maximum and proposed CIL rates can be a critical factor. Such is the case here. The theoretical maximum charge is significantly less than that elsewhere. Preston City Council's approach to setting the Inner Preston rate reflects that taken to the rate for dwelling houses elsewhere, and does not seek to 'push the boundaries'. This is not only reasonable, but in my view is necessary to retain a satisfactory viability cushion. This justifies the lower CIL charge proposed in financial viability terms.
40. Following the submission of the draft schedule, during the examination process, the City Council suggested that the boundary of the Inner Preston Zone should be altered to that shown in Appendix B of this report. Parts of two wards with average sales values of around £100,000 to £130,000 were included, whereas values in most of the Inner Preston Zone are around £70,000 to £90,000.
41. The revised boundary of the Inner Preston Zone suggested by the City Council, like that shown on the map originally submitted, does not rigidly follow the CST ward boundaries. In places, it follows physical features including roads and railway lines, with the effect that some streets which might otherwise have been within the zone are not. Consequently, it does not entirely mirror the viability evidence.



42. However, the extent to which the zone's boundaries divert from those of the CST wards is limited. Only very small areas are affected. In addition, the City Council says that where this deviation does occur, it reflects their local knowledge of the housing market and the way the neighbourhoods involved are perceived by those who live there. In the context of these factors, I take a pragmatic approach. As I see it, the degree of inconsistency with the evidence is not of such significance that it renders the delineation of the Inner Preston Zone inappropriate.
43. To conclude, I agree that the amendment proposed by the City Council is necessary to ensure that the Inner Preston Zone is properly defined by reference to the economic viability evidence, and that the zone boundary shown on the revised map produced is satisfactory in this regard. I therefore recommend a modification (**EM2**) accordingly. With this modification, I conclude that the levy for dwelling houses in the Inner Preston Zone meets the drafting requirements.

### **Whether the non-residential economic viability evidence is appropriate and justifies the proposed charging schedules**

#### *The non-residential viability evidence in general*

44. The non-residential viability assessments consider rents and yields in relation to a range of different uses, including various types of retailing, industrial uses and offices. They draw on a range of data sources. As for residential developments, the aforementioned 2009 and 2011 VOA Property Market Reports have been used to inform the assumptions about land values, and the BCIS database has been used in relation to build costs, indexed for Central Lancashire. Other sources include the Focus/Co Star database of transactional information, and the CBRE Prime Rent and Yield Monitor publication, with adjustments made to reflect local circumstances. Information provided by the three local authorities has also been used. On the whole, all of this evidence should be regarded as appropriate.
45. I note the dispute about the land value assumptions and that Jones Lang LaSalle is quoted as giving a higher figure than that used in the appraisals. Notwithstanding the degree of difference, it is clear to me that the Councils' information sources should be regarded as reasonably reliable and appropriate. Furthermore, as with residential development, it should be borne in mind that the cost of meeting the levy is expected to come largely at least from the land value. Consequently, while it may be that the assumptions made are lower than some present transactions might suggest, that does not necessarily mean that they are inappropriate.
46. Generic assumptions about a range of costs have been made and built in to the assessments. These include external works at 10% to 12% and professional fees at 8% to 10% of build costs, marketing and sales at 5% of development value, and contingencies at 5% of development cost. Interest on finance has been factored in at 7% on all costs, including land and purchase costs, and a developer's margin of 20% on cost has been included. Inducements or incentives have been added, which the Councils confirm includes the cost of 'fitting out' and providing a rent free period. The cost of S106 agreements has been taken into account for offices, industrial and retail uses. These are appropriate factors to take into account and, in general terms, the assumptions

made appear reasonable.

*The retail levy rates: convenience retail (excluding neighbourhood convenience stores)*

47. Criticisms have been made of both the rental levels and yields assumed in the appraisals. However, there is little in the way of compelling evidence to suggest that £190 psm is not an appropriate rental assumption. Given the evidence sources and as local adjustments have been made, there are good grounds for supposing this is a reasonable level.
48. A yield of around 5% has been used for convenience retail units. It may be that many convenience retailers are pulling back from the market, or at least curtailing previously more expansionist activities, and now seek leases for 10 years rather than 25. It is likely that this has some impact on yields, and I note the suggestion that the yield for a store such as a Tesco Express is more like 6.75%. However, it seems to me that the information sources in relation to yields are fairly up to date, and as such reflect the present market as well as can reasonably be expected. Moreover, the charging schedules do reflect the difference between larger and smaller formats. Many smaller shops, possibly including Tesco Express stores, will fall within the definition of 'neighbourhood convenience stores', for which a yield of 7.5% has been assumed.
49. Design is a factor which is capable of having an impact on costs. I note the policy requirements in this regard, particularly those set out in the CS, including in Policies 17 and 27. But I can see nothing particularly unusual in these demands. Seeking well designed and sustainable buildings is among the aims of the National Planning Policy Framework (NPPF), and this is reflected through development plans across the country. It therefore seems highly probable to me that any costs associated with meeting the local requirements in these respects are at least largely reflected in the BCIS and other transactional data drawn upon. I acknowledge that some convenience retailers such as Booths may exceed design policy requirements. This is commendable and to be unequivocally supported. Nevertheless, it is unrealistic to expect generic viability appraisals to take into account the particular models and standards of individual businesses.
50. I note the suggestion that convenience retailing falling within this category should be sub-divided into 'supermarkets' and 'superstores'. However, even if it is possible to discern a difference in the use of larger format convenience stores, there is no compelling financial viability justification for differentiating between them in this case.

*The retail levy rates: neighbourhood convenience stores*

51. Two strands form the basis for differentiating neighbourhood convenience stores from other convenience retail. The first relates to their function. The definition in the submitted schedules refers to their eligibility to trade for longer than six hours on Sundays, the restricted range of goods stocked and the different customer spend profile, based on top up shopping.
52. I am firmly of the view that there is a perceptible difference in use between larger convenience stores and smaller neighbourhood stores of this kind. The

former are shopping destinations in their own right, where weekly food shopping needs can be met and where non-food floor space can form part of the overall mix within the unit. In essence, the latter are stores where 'top up' food shopping needs are typically met. The range of goods is often more limited, and they often trade for longer than six hours on Sundays, as they are eligible to do under the Sunday Trading Act. The differing characteristics of each type would be readily perceived by the ordinary shopper and the public in general.

53. In addition, the Councils' viability assessments have tested both categories of convenience store. As mentioned above, the yields for smaller neighbourhood format stores are shown to be higher, and the rents lower, at around £135 to £150 psm. From the Councils' appraisal, if the £160 psm rate were applied, the residual margin would be in the region of 8.6% on cost. This is in contrast to the significantly more positive residual margin and viability of the larger convenience stores. Indeed, it is a level at which the delivery of neighbourhood convenience stores would be threatened.
54. However, the appraisals indicate that the proposed £40 psm levy would leave a residual margin of roughly 17%. This takes account of a developer's profit at 20% on cost and, overall, is a reasonable viability buffer.

*The retail levy rates: retail warehouses/retail parks*

55. Retail warehouses/parks are also differentiated from convenience retail by use and viability. In terms of the former, the key factor is that they sell predominantly comparison goods. The schedules' definition also refers to the provision of associated car parking and mezzanine floors. Again, this difference in use would be clearly recognised by most people, particularly those undertaking shopping activities with any degree of regularity.
56. Turning to viability issues, the appraisals draw on the CBRE Prime Rent and Yield Monitor (second quarter, 2011) with a downward adjustment to reflect the Central Lancashire market. The Councils' evidence suggests that retail warehouses have a rental value of around £150 psm and a yield in the region of 6.75%. This is rather different to the rental and yield values for convenience retail. While the capital value of retail warehouses is consequently lower, the evidence shows that build costs are also lower. The Councils' analysis of the BCIS data puts build costs at £680 psm, compared to £1,200 psm for a convenience retail store. In the light of these factors, it is quite clear that the viability of retail warehouses is considerably different to that of convenience retailing. In my view, combined with the discernible difference in use, setting a differential rate as proposed is justified.
57. I accept that retail warehouses vary greatly in type and design standards. Some do have extensive glazing and higher quality external works. However, the BCIS data is founded on real projects. It is likely that this includes a range of unit types. Consequently, it should be regarded as appropriate evidence in this respect.
58. At the hearing, there was some discussion about mezzanine floors. To clarify one issue, the Regulations give an exemption from CIL liability for some minor developments where the gross internal area of new build is less than 100 square metres. As such, when installed into an existing building, some mezzanines will

not be liable to the CIL charge. Mezzanines which form part and parcel of a new building, however, will be liable.

59. As I understand it, no specific allowance has been made for mezzanine floors. I note the comments that in the current market, these are demanded by comparison retailers and that they are effectively provided without value to the developer. That may be so. Nonetheless, it seems probable to me that the information from BCIS reflects all this, to some degree at least.

*The retail levy rates: overall*

60. I recognise that the viability assessments are sensitive to many of the key assumptions. The actual costs, including land acquisition, yields and rental levels will vary from one scheme to another, and may be significantly different to the assumptions made by the Councils. But in the overall context of the unavoidably 'broad brush' appraisal methodology and the drafting requirements, I regard the appraisals to be based on appropriate evidence and adequate for the purpose of supporting the schedules.
61. In addition, the Councils' evidence indicates that the proposed retail levy rates are set some way below the maximum that could theoretically be levied, being £331, £125 and £119 psm for convenience retail, neighbourhood convenience stores and retail warehouses/park respectively. In my view, this is a reasonable cushion which counters the sensitivities inherent in the appraisals' assumptions. It adds significantly to the degree of confidence that the proposed rates will not threaten the viability of retail development or the delivery of the CS as a whole.
62. The Councils put forward changes to the definitions of the three retailing types covered by the retail levy rates. I agree that the changes to the convenience retail and neighbourhood convenience stores are necessary, as they properly reflect the different functions of the two store types in the way I have described them in this report. The suggested revision to the retail warehouse/parks definition is needed, particularly as it clarifies that a store will be a convenience retail store if the net trading floor area dedicated to comparison goods is below 50%. I recommend these modifications accordingly (**EM3**). However, in my view, while it may be desirable to replace the term 'convenience retail stores' with 'supermarkets', it cannot be said to be necessary in order to meet the drafting requirements.
63. Overall, with the necessary modifications suggested by the Councils, I conclude that there is satisfactory evidence justifying the retail rates and the differential charges proposed, and that the drafting requirements have been met.

*The rate for all other uses*

64. A £10 psm levy rate is proposed for all buildings that people normally go in to, save for those subject to one of the other charge rates and those defined as 'community uses' in the schedules. In summary, and with reference to the Use Classes Order, it includes shops (Class A1) that do not fall within the retail levy definitions, financial and professional services (Class A2), restaurants and cafés (Class A3), drinking establishments (Class A4), hot food takeaways (Class A5), business and light industry (Class B1), general industry (Class B2), storage and distribution (Class B8), hotels (Class C1), and the range of other uses to be

regarded as sui generis. This is a wide spectrum.

65. For many of these uses, no viability appraisals have been undertaken. I recognise the difficulties in terms of the availability of evidence and the range of uses concerned. Nevertheless, it remains the case that, in relation to these uses, the schedules are not informed by adequate evidence.
66. A number of uses have been subject to viability testing which reveals that they are not viable even without a levy charge. This is the case for both town centre and business park offices, warehousing and industrial uses, where the costs exceed the values by some margin and give rise to quite significant negative residual values.
67. The appraisals show town and city centre retail uses to have a value which exceeds the costs. The difference, though, is narrow. According to the assessments, these uses are at the margins, but are viable. However, at the hearing, the Councils said that the appraisals indicate these uses to be unviable both without and with the CIL. While a developer's profit has already been taken from the calculations, given the degree of sensitivity inherent in appraisals of this kind and the slender margins involved, I agree that the latter position is the most appropriate to take.
68. The Councils' evidence considers a number of sui generis uses to be similar to general industry uses or town and city centre retail in terms of the types of premises involved and their purchase or rental costs, and that these uses are therefore covered by the appraisal assessments. This includes scrap yards, car showrooms, nightclubs, laundrettes, taxi businesses and amusement centres. Like the tested uses with which they are compared, such uses should also be regarded as unviable.
69. The Councils make a number of arguments to justify imposing the levy on the unviable uses in this category. I note that the yield and rent assumptions are based on speculative development, and that most development of this sort is anticipated to not be speculative. I accept that this is likely to mean that the yields and values will, in reality, be different to the assumptions. But I can only guess at the degree to which all of this will ultimately affect the viability of these uses across the three local authority areas. This is not a sound basis for supporting the CIL charge.
70. Given the low levy rate proposed, I acknowledge that, for many developments, it will represent a very small proportion of the overall development costs. It is possible that for some schemes it may not be a determining factor in relation to viability, and I note that some of the uses in this category are presently being delivered 'on the ground'. Even so, levying the proposed charge would be wholly inconsistent with the viability evidence. It would worsen the financial position of developments that are already unviable or only marginally viable. While it may do so only slightly, it would represent a threat to their viability and delivery. This should not be regarded as appropriate.
71. Some of these uses, notably industrial and warehousing development, are critical elements of the CS. Even if the levy rate would have only a limited effect on the viability of these, it would nonetheless increase the threat to their delivery and consequently that of the CS as a whole.

72. I note that paragraph 39 of the national guidance does not explicitly state that if there is zero viability then a zero rate should be set. But that paragraph is clear that the rate should be consistent with the evidence. That is not the case here.
73. The Councils point to the examiner's report into the CIL charging schedules for Broadland District Council, Norwich City Council and South Norfolk Council as a precedent. I understand the point to be that the examiner, Mr Holland, accepted a £5 psm charge for office and industrial development. However, Mr Holland's report describes the market as 'weak', and his view is influenced in part on a consensus that the charge would not threaten the overall viability of these forms of development. That is rather different to the situation here. In my opinion, 'weak' would be an overly generous characterisation of the market for many types of business and industrial uses. No apparent accord has been reached between the Councils and those against this aspect of the schedules. Indeed, even the County Council and the Local Enterprise Partnership are opposed to it.
74. As with the issue of apartments, the Councils suggest that future economic conditions may be more favourable. While I might wish to share their optimism, CIL schedules must be based on current economic conditions. It would be neither reasonable nor appropriate to support the levy on these grounds.
75. I am mindful that, according to the Councils' figures, this element of the schedules would raise around £20 million over the CS plan period for infrastructure that is sorely needed. I note the Councils' view that its inclusion in the schedules would add some certainty to the CIL revenue likely and that this would help in terms of infrastructure planning. Given my conclusion about the effect of this charge on viability, I consider that it would more likely result in unrealistic expectations of the amount of CIL likely to be collected. In any case, important though these factors are, they do not obviate the need for the levy to be informed by evidence, to be at least broadly consistent with that evidence and, in the light of it, to be reasonable.
76. Overall, on the evidence produced, I conclude that the imposition of the rate for 'all other uses' would threaten the viability of the development to which it applies and as such does not meet the drafting requirements. To ensure compliance, I recommend a modification (**EM4**) reducing this rate to nil.

### **Other matters**

77. A number of other issues have been raised and I have taken account of all the evidence. A number of these relate to matters beyond the scope of this examination. For example, the principle of introducing a development tax of this nature, the possibility of 'land in lieu' of CIL, the operation and phasing of any instalments policy, the circumstances in which relief from the levy will be available, and where and how CIL revenue is spent are not matters for my consideration.

### **Conclusion**

78. The Councils have tried 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 three local

authority areas. This objective has been met for dwelling houses (excluding apartments), subject to the modification I recommend in relation to the delineation of the Inner Preston Zone. It has also been met in relation to the convenience and comparison retail developments covered under the three retail levies, subject to the recommended modifications to their definitions.

79. However, for apartments and the range of uses in the 'all other uses' category, the rates pose a threat to the viability of schemes. Imposing these rates would not meet the NPPF requirement that they support and incentivise new development. I consequently recommend that the rates for apartments and 'all other uses' are reduced to nil as specified at Appendix A.

<b>LEGAL REQUIREMENTS</b>	
National Policy/Guidance	The Charging Schedules do not comply with national policy/guidance as drafted, unless modifications EM1, EM2, EM3 and EM4 (or other sufficient modifications) are made.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedules comply with the Act and the Regulations (as amended) in respect of the statutory processes and public consultation.

80. I conclude that subject to the modifications set out in Appendix A the three Councils' Community Infrastructure Levy Charging Schedules satisfy the requirements of Section 212 of the 2008 Act and meet the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that, with these modifications or other sufficient modifications, the Charging Schedules be approved.

*Simon Berkeley*

Examiner

This report is accompanied by:

Appendix A (attached) – Modifications that the examiner specifies so that the Charging Schedules may be approved.

Appendix B (appended as a separate document) – Map showing the delineation of the Inner Preston Zone as modified by Modification EM2.

## Appendix A

Modifications recommended by the examiner to allow the charging schedules to be approved.

### Modification EM1 (applies to all three charging schedules)

Development	CIL charge
Apartments	£0 per square metre

### Modification EM2 (applies to the charging schedule of Preston City Council only)

Replace Map 1 of Appendix One of the submitted schedule with the map attached as Appendix B to this report.

### Modification EM3 (applies to all three charging schedules)

Replace the retail definitions in the appendix of the submitted charging schedules with the following.

**Convenience retail stores** are shopping destinations in their own right, where weekly food shopping needs can be met and which can also include non-food floor space as a part of the overall mix within the store.

**Neighbourhood convenience stores** are stores where 'top up' food shopping needs can be met. These stores are not subject to restricted opening hours under the Sunday Trading Act (and so by virtue of this they will have an internal trading floor area of 280 square metres or less).

**Retail warehouses and retail parks** are stores selling comparison goods such as bulky goods, furniture, other household and gardening products, clothing, footwear and recreational goods. These stores are of a single storey format, often with flexibility to include an internal mezzanine floor, and usually have dedicated free car parking to serve the unit or cluster of units in the case of a retail park. To avoid any confusion with convenience retail stores, a store will be considered to be a retail warehouse if 50% or more of the net trading floor area is dedicated to comparison goods.

### Modification EM4 (applies to all three charging schedules)

Development	CIL charge
All other uses	£0 per square metre