

South Ribble

Community Infrastructure Levy Viability Evidence for Draft Consultation Stage

Addendum viability evidence report



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EXECUTIVE SUMMARY

1. This assessment is part of a joint commission by the three Central Lancashire authorities which include Preston, South Ribble and Chorley who are working towards a joint CIL charge examination stage.
2. This report sets out refined viability evidence to reflect comments received as a result of the preliminary draft consultation of the Community Infrastructure Levy (CIL) charge for the South Ribble charging authority. The report presents the proposed charges and charge variation zone for the draft consultation stage.
3. Guided by comments received as part of the preliminary draft consultation stage and feedback from the charging authority, the following revisions have been made for the draft CIL charge consultation stage:
 - Dwelling house charge has been reduced to £65 per sq.m from £70 per sq.m
 - All apartments to be charged £10 per sq.m and merged with the ‘all other category’.
 - A new retail use category for neighbourhood convenience store has been introduced to be charged at £40 per sq.m (note the other retail charges remain unchanged).
4. Table 1 summarises the charge variations by use being consulted on as part of the draft consultation stage.

Table 1 South Ribble CIL charges for draft consultation stage

Development (see use definitions below)	CIL charge per sq.m
Dwelling houses (excluding apartments)	£65 sq.m
Convenience retail (excluding neighbourhood convenience stores)	£160 sq.m
Retail warehouse, retail parks, & neighbourhood convenience stores	£40 sq.m
Community uses	£0 sq.m
All other uses (including apartments)	£10 sq.m

Definitions of development included in the Charging Schedule

5. **Dwelling house** is a house used for dwelling place. For avoidance of doubt, in this instance, the CIL charge will apply to the same definition as the use class order C3 a, b & c.
6. **Apartments** - due to a difference in viability, apartments are excluded from the dwelling house category and described as dwellings with shared access, and communal areas, on more than one floor. Apartments are excluded from the dwelling house use charge and will be charged the same as “all other uses” CIL category.

7. **Convenience retail** is described as any building selling mainly everyday essential items, including food, drinks, newspapers/magazines and confectionery. Some buildings will sell a mixture of convenience and comparison goods. In these instances, the CIL charge will be based on the main use of the building. (Note convenience stores in the Neighbourhood Convenience Store use category are excluded from the convenience retail charge).
8. **Neighbourhood Convenience Stores** due to a difference in viability have been excluded from the convenience retail category. These stores are described as selling convenience goods, but because they are eligible to trade for longer than six hours on a Sunday, limitations on size of development means they stock a restricted range of goods, and have a different customer spend profile as a consequence.
9. **Retail Warehouse and Retail Parks** are described as selling comparison goods, such as clothing, footwear, household and recreational goods, have an associated surface level car parking serving the units, and often operate in small clusters of single format shed like developments (with mezzanine floors).
10. **Community uses** for the purpose of CIL adopt a modified version of those uses included in the planning Use Class Order relating to non residential institutions (D1), assembly and leisure uses (D2) and residential institutions (C2) and assembly and leisure uses. This use charge category relates to those buildings included in these categories and provided by the public sector, not for profit and charitable sectors, and is extended to include infrastructure provided by the emergency services.

1 INTRODUCTION

Refining the viability evidence for draft consultation stage

- 1.1 Consultation on the Preliminary Draft CIL Charging Schedule was undertaken jointly by the three Charging Authorities of Preston, South Ribble and Chorley during February and March 2012. Roger Tym & Partners have been commissioned to support in refining the viability evidence as a result of consultation comments received.
- 1.2 This addendum report does not seek to repeat everything that was included in the preliminary draft stage report, but instead focuses on the key changes proposed to the viability assessments to inform the draft CIL charging schedule for South Ribble. In particular, the changes seek to address the following consultation comments:
- Different sizes, types and locations of site should be considered – this has been done and apartment rates separated out and a new retail threshold introduced.
 - That the assumed sales values did not take account of discounting by developers and as such were too high – this has now been factored in and revised appraisals undertaken.
 - That the land values assumed were too high and, erroneously, did not take account of the impact of policy requirements such as affordable housing – this has now been factored in, and policy level of affordable housing assumed throughout.
 - That the assumed benchmark profit levels for residential development are considered by some to be lower than being sought by developers and as such, the authorities have decided to draw further away from the theoretical ‘ceiling’ of viability in setting charge rates.
 - That retail viability of neighbourhood convenience stores needs to be reflected due to differences in rental and yields.
- 1.3 As a result a number of revised appraisals have been undertaken to reflect changes in the assumptions inputs stemming from the consultations and the charging authority. The key changes are summarised in the following paragraphs for each of the main uses assessed.
- 1.4 The detailed viability appraisals to accompany the draft charging schedule have been included as Appendix Three in the South Ribble Technical Note¹ document accompanying this report.

¹ This was produced for the original preliminary draft consultation and remains unchanged apart from the appendix containing the revised appraisals.

2 RESIDENTIAL REFINEMENTS

A new residential viability reference case has been prepared for the draft consultation stage

- 2.1 A new residential 'reference case' viability assessment has been produced for the draft charging stage. This relates to a hypothetical 1ha site and includes the following changes from the preliminary draft consultation stage:
- A lower land cost of £750,000per ha, (changed from £1.2m and £1.5m per ha previously). Erroneously, our previous assumption was based on site values before affordable housing had been taken into account. The figure now adopted is marginally above that stated by a housebuilder during the stakeholder consultation event hosted in February 2012.
 - A reduced value on the affordable housing from 50% of open market value to 40%, to take account of the Registered Social Landlord representations.
 - The average unit size has been increased from 90sq. m to 120sq. m, based on further research and analysis of our data.
 - The sales values have been reduced by £100 per sq. m (just under 5%) from £2,150 per sq.m to £2,050 per sq. m in order to take account of discounts offered by house builders from the asking price. This equates to a discount of £12,000 per unit on a unit of 120 sq.m. Whilst no evidence was produced to support comments made in representations, it is likely that some discounts will be given. It should also be noted that there is likely to be some uplift in values over the period of the charging schedule that will counterbalance this.
 - The density of residential development has been changed to 39 dwellings per hectare based on evidence provided by the charging authorities.
 - A reduction in the cost for on-site secondary infrastructure from £300,000 per gross ha to £250,000 per gross ha which is more realistic for a site of 1 hectare.
- 2.2 Assuming £2,000 per unit for S106 may be required to address on-site and development specific issues, the residual margin (before any CIL charge) is assessed to be 27.0% of total development costs. This suggests a maximum that is consistent with maintaining the residual margin at or above 20% is £105 per sq. m.

A new higher value residential assessment has been undertaken

- 2.3 A new assessment has been undertaken to reflect the higher value areas. This takes a 1 ha site, as with the reference case, but differs from the reference case above in the following ways:
- Higher land cost of £900,000 per ha (instead of £750,000 per ha).
 - Higher sales values of £2,150per sq.m (instead of £2,050 sq. m)
- 2.4 The residual margin for this scenario was assessed to be 28.5% of cost, before any CIL Charge. The maximum rate consistent with maintaining the margin at greater than 20% of cost in this scenario is £132 per sq. m.

A new lower value residential assessment has been undertaken

2.5 A new assessment has been undertaken to reflect potential lower value areas. This takes a 1 ha site, as with the reference case, but differs from the reference case above in the following ways:

- Lower land cost of £600,000 per ha (instead of £750,000 per ha).
- Lower sales values of £1,950 per sq.m (instead of £2,050 sq. m)

2.6 The residual margin for this scenario was assessed to be 25.5% of cost, before any CIL Charge. The maximum rate consistent with maintaining the margin at greater than 20% of cost in this scenario is £78 per sq. m.

A new large sites assessment has been undertaken

2.7 A new assessment of a large site has now been undertaken. It assesses the viability of a hypothetical 10ha site, providing 234 units. Other than the site size, it varies from the reference case in the following ways:

- A lower ratio of developable area – 60% developable, as opposed to 70%. This reflects higher land take of open space, green infrastructure and access infrastructure;
- A land cost of £525,000 per ha based on the fact that buying land in greater bulk is cheaper, reflecting the inherently higher risk involved in large sites;
- Reference case sales values of £2,050 per sq. m;
- A slightly lower build cost of £850 per sq. m rather than £900, based on economies of scale;
- Higher on-site secondary infrastructure costs of £350,000 per gross ha;
- A faster sales rate of 12 per quarter rather than 9, to reflect the greater range of product on offer.

2.8 The assessment of this scenario shows a residual margin of 27.3% of cost, before any CIL charge is factored in. The maximum potential CIL rate that maintains this margin at 20% is £102 per sq. m.

A strategic sites assessment has been undertaken

2.9 A new assessment of a very large 'strategic site' has also been undertaken, to examine how viability might be different on a site of 100ha, providing well over 2100 dwellings. This assessment has many similarities with the large site assessment above, with the following differences:

- A lower land cost of c£325,000 per ha reflecting bulk land purchase and risk, with the cost spread equally in over 10 annual payments;
- A higher figure for on-site secondary infrastructure of £450,000 per gross ha reflecting the inevitably higher costs for such works on a development of this scale;
- Higher assumed S106 costs of £8,000 per unit, taking into account the higher cost of addressing on-site and development specific issues that are more appropriately accounted for through S106;
- Sales rates of 36 per quarter based on 3 or 4 developers working actively on site.

- 2.10 A strategic site of this scale is likely to require significant on-site infrastructure including major access infrastructure as well as schools and the like. An infrastructure assessment of such sites will be undertaken to establish what is likely to be required through S106 and what will be provided as CIL funded infrastructure.
- 2.11 On the basis of the assumptions set out above, a residual margin of 26.9% of cost is shown, before any CIL charge. The maximum potential CIL charge rate that maintains a margin of 20% on cost is £103 per sq. m.

Summary of residential assessment

- 2.12 In setting charge rates, our approach has been to draw further away from the theoretical maximum charge rates set out above for each assessments in order to ensure that fewer developments would be put at risk from the introduction of the CIL charge. Several representations received suggested that higher levels of development margins were required than those previously assumed as a benchmark level of return. Whilst no evidence was provided to support these assertions, it was considered that the greater risk and cost of development in an economic climate where finance is expensive and demand is limited may be reflected in margin requirements. As such, in suggesting revised charges, we have sought to maintain margins at or close to 22.5% of cost, after the proposed CIL charge. It should also be noted that generous assumptions have been included for on site secondary infrastructure based on gross area.
- 2.13 Table 2.1 summarises² the main findings and informs the proposed refinements for the draft consultation stage for the charges proposed for residential development.

Table 2.1 Summary of residential appraisal findings

Scenario	Margin before CIL charge (% on cost)	Maximum CIL Charge (£ per sq. m)	Recommended CIL Charge (£ per sq. m)	Margin after CIL Charge (% on cost)
Reference case	27.0%	£105	£65	22.5%
High value	28.5%	£132	£65	24.2%
Lower value	25.5	£78	£65	20.9%
Large site	27.3%	£102	£65	22.6%
Strategic site (low value)	26.9%	£103	£65	22.5%

- 2.14 Based on the assessments described above, and acknowledging that the CIL charge is not required to mirror the evidence base, we now recommend the main dwellinghouse charge

² Appraisals accompanying the proposed refinements are included as appendix 3 to the Technical Note

rate as £65 per sq.m on all residential development, apartments which are to be charged £10 per sq.m

3 NON RESIDENTIAL REFINEMENTS

- 3.1 In respect of non-residential development, the principal proposed change relates to the convenience retail charge category. For the purpose of this assessment, our approach to retail has been to consider it as a broad use category, which is then broken down to 'CIL relevant retail use categories' that are appropriate to this area.
- 3.2 The issue of differential rates for retail developments has been grabbing the headlines. With this in mind, Roger Tym & Partners have set out a series of guiding principles for retail use charge variation. These are detailed in Appendix One and form the basis for refining the retail use categories for this draft consultation.
- 3.3 For the South Ribble evidence base, clarification is also included about the treatment of CIL within the Central Lancashire Advanced Engineering and Manufacturing Enterprise Zone at Samlesbury.

We have introduced a new neighbourhood convenience stores use category

- 3.4 Neighbourhood convenience stores form a CIL use category that is readily recognised by the general public as 'top up' shops found in busy city centres, small shopping precincts in residential neighbourhoods or petrol filling stations. A key differentiator from other convenience stores is that these stores are eligible to trade for longer than six hours on a Sunday. This does indirectly suggest a size threshold, but this also restricts the range of goods sold at the store which in turn shapes its role as a neighbourhood convenience store, which affects the range of goods stocked (a narrow range of convenience goods) and attracts a different customer spend profile to main convenience stores.
- 3.5 Representations received in response the preliminary draft consultation suggested that small convenience stores have materially different viability from larger convenience stores and serve a different retail purpose. Although the use of Sunday trading hours does imply a size threshold, for the purpose of CIL use charge variation here, we are simply using size as a proxy in describing this use and not as part of a threshold.
- 3.6 We are persuaded by the representation received in respect of this new CIL use category and have now undertaken a separate viability assessment of neighbourhood convenience stores, applying a lower rental level and a higher yield based on the nature of this type of use. Our research shows that rental levels are indeed lower for neighbourhood convenience stores, than other convenience developments.
- 3.7 Typically, rents for neighbourhood convenience stores are more likely to be in the range of £135 - £150 per sq. m, (as opposed to £190-200 per sq. m for supermarkets). In addition, because the covenant strength of the operators of neighbourhood convenience stores is lower, yields are likely to be materially higher than for supermarkets, reflecting the higher levels of risk involved. As such, a more appropriate yield assumption for this type of development is 7.5%, rather than the 5% assumed for supermarkets.

³ Note that apart from the clarification of Samlesbury Enterprise Zone, the approach to non residential use is the same for all three Central Lancashire charging authorities.

Viability assessment

3.8 Our viability assessment of neighbourhood convenience retail development is shown in table 3.1 below,

Table 3.1 Neighbourhood Convenience Retail viability assessment

	Neighbourhood Convenience Retail
Rent	140
Yield %	7.50
Minus inducements	187
VALUES	1,680
COSTS	
Land + Purchase Costs	150
Basic Build Cost	640
External Works	64
Fees	84
CIL @ £0/m ²	0
Section 106/m ²	0
Marketing & Sales	84
Contingencies	39
Interest	94
Margin	231
Total Cost Benchmark	1,387
Values - Costs	293
Residual margin (% cost)	21%

3.9 On the basis of the key value assumptions set out above, and assessment otherwise in line with those undertaken previously for other development types, a residual margin (after developers profit at 20% on cost) of a further 21% on cost is revealed.

3.10 In order to ensure an adequate buffer from the margins of viability, it is suggested that charges should be set such that the residual margin is not brought below 15% of cost. On this basis, we propose a charge of £40 per sq. m for neighbourhood convenience store developments. When this level of charge is factored to the assessment, the residual margin is 17% of costs.

Assessment of the local context in relation to this type of neighbourhood convenience store development

3.11 We are mindful, that this use is not critical to the delivery of the overall core strategy. An assessment of past neighbourhood convenience stores shows that most have been in existing buildings either as conversion or demolition or through the redevelopment of petrol forecourt shops. .

3.12 An assessment of applications submitted to one of the charging authorities over the 12 month period from January 2010 to January 2011 indicates that of the 830 applications received, only three related to the formation of neighbourhood retail space. Two of the three were 'Changes of Use' of existing premises, where there was no gain in floor space and would not be CIL liable. The third application involved new build, but as the existing building on site was demolished to facilitate the development the net gain in floor space was only in the order of 100sq.m. Hence it is clear that this is an area that is currently attracting only limited development, and of that development only a limited proportion of it would be liable to pay CIL.

We have clarified the definition of retail warehouse and retail park use

3.13 We have not made any further changes to the charge proposed for the retail warehouse and retail park uses introduced in the preliminary draft consultation Stage. No comments have been received, however, in line with our guiding principles set out in Appendix One we clarify the definition of Retail Warehouses and Retail Parks for the purpose of the CIL use category as being:

- Accompanied with surface level car parking serving the units.
- Selling comparison goods, and in some instances bulky goods dependent on easy car access.
- Often operating in small clusters of single format shed like developments (with mezzanine floors).

3.14 Both the concept of retail warehouses and retail parks is commonly understood as a distinct and different type of retail use with a separate and distinct viability, this evidence was provided as part of the preliminary draft consultation stage and so is not repeated.

Treatment of Enterprise Zone and base charge

3.15 A base charge of £10 sq.m was consulted on for all other uses (excluding certain community uses). Some concerns were raised about charging CIL in the Enterprise Zone. However, the general consensus from the consultees and the Charging Authority is that all other uses should pay a small base charge of £10 towards CIL pay for the cost of infrastructure.

3.16 Any development in the Central Lancashire Advanced Engineering and Manufacturing Enterprise Zone at Samlesbury will also be charged a £10 sq. m CIL charge for any development that takes place after April 2013 (and once the CIL charge is in place). The CIL regulations relating to this are summarised in the box below:

CIL Regulation relating to the treatment of Enterprise Zones

SI 2010, CIL Regulation 128 on Transitional provision:

(1) Subject to paragraph (2), liability to CIL does not arise in respect of development if, on the day planning permission is granted for that development, it is situated in an area in which no charging schedule is in effect.

(2) Where planning permission is granted for development by way of a relevant general consent, liability to CIL does not arise in respect of that development if—

- (a) it is commenced before 6th April 2013; or
- (b) on the day on which it is commenced it is situated in an area in which no charging schedule is in effect.
- (3) In paragraph (2) “relevant general consent” means—
 - (a) a development order made under section 59 of TCPA 1990;
 - (b) a local development order adopted under section 61A of TCPA 1990; or
 - (c) an enterprise zone scheme adopted under Schedule 32 to the Local Government, Planning and Land Act 1980.

4 REVISED CIL CHARGE FOR DRAFT CONSULTATION

4.1 This section outlines the recommended CIL charge levels to consult on as part of the draft consultation for the CIL charging schedule.

Draft consultation stage CIL charges

4.2 Guided by comments received as part of the preliminary draft consultation stage and feedback from the charging authority, the following revisions have been made for the draft CIL charge consultation stage:

- Dwellinghouse charge has been reduced to £65 per sq.m from £70 per sq.m
- All apartments to be charged £10 per sq.m and merged with the ‘all other category’.
- A lower charge of £40 per sq.m for neighbourhood convenience store has been introduced; however, the charge for all other retail development remains unchanged.

4.3 Table 4.1 summarises the charge variations by use being consulted on as part of the draft consultation stage.

Table 4.1 South Ribble CIL charges for draft consultation stage

Development (see use definitions below)	CIL charge per sq.m
Dwelling houses (excluding apartments)	£65 sq.m
Convenience retail (excluding neighbourhood convenience stores)	£160 sq.m
Retail warehouse, retail parks, & neighbourhood convenience stores	£40 sq.m
Community uses	£0 sq.m
All other uses (including apartments)	£10 sq.m

Definitions of development included in the Charging Schedule

4.4 **Dwelling house** is a house used for dwelling place. For avoidance of doubt, in this instance, the CIL charge will apply to the same definition as the use class order C3 a, b & c.

4.5 **Apartments** - due to a difference in viability, are excluded from the dwelling house category and described as “dwellings with shared access, and communal areas, on more than one floor”. They are excluded from the dwelling house use charge and will be charged the same as all other uses CIL category.

4.6 **Convenience retail** is described as any building selling mainly everyday essential items, including food, drinks, newspapers/magazines and confectionery. Some buildings will sell a mixture of convenience and comparison goods. In these instances, the CIL charge will be based on the main use of the building. (Note convenience stores in the Neighbourhood Convenience Store use category are excluded from the convenience retail charge).

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- 4.7 **Neighbourhood Convenience Stores** due to a difference in viability have been excluded from the convenience retail category. These stores are described as selling convenience goods, but because they are eligible to trade for longer than six hours on a Sunday, limitations on size of development means they stock a restricted range of goods, and have a different customer spend profile as a consequence.
- 4.8 **Retail Warehouse and Retail Parks** are described as selling comparison goods, such as clothing, footwear, household and recreational goods, have an associated surface level car parking serving the units, and often operate in small clusters of single format shed like developments (with mezzanine floors).
- 4.9 **Community uses** for the purpose of CIL adopt a modified version of those uses included in the planning Use Class Order relating to non residential institutions (D1), assembly and leisure uses (D2) and residential institutions (C2) and assembly and leisure uses. This use charge category relates to those buildings included in these categories and provided by the public sector, not for profit and charitable sectors, and is extended to include infrastructure provided by the emergency services.

Appendix 1

CIL Retail Use Guiding Principles by Roger Tym & Partners

Retail use charge variation guiding principles by Roger Tym & Partners

1. There are some simple but important lessons to learn from our assessment of recent CIL examinations and the treatment of charge variation for retail use. The key issues we identified relate to the following:
 - The description of intended retail use - is the meaning of 'use' in CIL the same as the meaning of use in planning terms (i.e. limited to the same Use Class)?
 - The arbitrary use of size thresholds – is it realistically possible to differentiate retail use by size or would other descriptors serve to differentiate better?
 - The danger of arbitrarily introducing size thresholds without accompanying viability evidence to justify this is in danger of infringing State Aid rules by favoring smaller retailers.
 - The use of CIL procedures and legislation to learn from how examiners respond.
2. Our response to these issues is to develop a series of guiding principles to inform the use of retail use charge variation. These principles are set out below.

Guiding Principle One - clearly describe the uses

The CIL Regulations treatment of use is different to the planning concept of use – it is not based simply on Use Class

3. The term 'use' is deliberately not defined within the CIL regulations. In particular the term does not relate to the Town and Country Planning Use Classes Order (as amended). There are no references to the Planning Use Classes Order in Part 11 of the Planning Act 2008 which relates to CIL or in the CIL Regulations. This is because the intention when drafting the CIL Regulations was to ensure that the term 'use' should take a normal broad meaning in English linked to viability rather than Planning use classification.
4. This deliberately gives Charging Authorities wide scope to consider any actual uses which can be shown to have different viability. An authority has discretion to differentiate between any uses that can be demonstrated to be different in the normal meaning of the word, as long as there is also evidence of different viability between those uses.
5. CIL legislation adopts a different, broader, approach to defining 'use' based on viability differentiation. So it is possible to differentiate between two retail uses, providing you demonstrate that the uses are different and you have sufficient fine grained viability evidence to support this.
6. It is important that the uses can be defined in the charging schedule in a way that is clear and unambiguous and should also be supported with a suitable description to ensure there is no ambiguity of what is meant. For instance look to distinguish between convenience and comparison, or retail parks and retail warehouses.

Guiding Principle Two – support with appropriate viability evidence

7. In all the case studies we assessed, there is reference to sufficient *fine grained* viability evidence to justify a use charge variation, and avoid the danger of falling into State Aid problems inadvertently. Developing a charge to suit a Local Plan policy in the absence of

viability evidence would risk State Aid problem. So it will be crucial if different types of retail uses are used then these are backed up with viability evidence.

Guiding Principle Three – avoid the danger of using unsubstantiated size thresholds

8. The cases studies we considered included an ‘arbitrary size’ developed on what seems to be a sensible cut-off point. However, all concede to the fact that the size threshold was arbitrarily chosen and nothing to say that some 1m above or below would perform any different.
9. While it is theoretically possible to use size as a proxy to delineate different uses, in practice the approach is risky and open to challenge at examination or later in the courts. As a principle, it is better to avoid use distinctions based on size thresholds, unless there’s clear evidence for it.

Guiding Principle Four – charge needs to reflect the development context

10. When deciding on the charge variation by use, it will be important to consider where and what type of development is likely to come forward (both planned and not), and ensure your charge reflects the bulk of this development scenario. The converse is also true, if that if your plan does not rely on the development of new-build small retail for instance, then it is fine to ignore the effect of the proposed charge on such development – the CIL regulations recognise that some development will be put at risk.
11. In the case of Mid Devon, the Charging Authority assessed where their likely retail growth would take place – i.e. their development context, and choose to not impose a retail charge as bulk of their planned retail development could be made unviable by the scale of the charge.

Guiding Principle Five – take timeout to deliberate

12. The Examiner in the case of Poole adjourned the examination proceedings to give the Charging Authority (CA) time to gather additional evidence. This was an opportunity to take time out and carefully consider a way forward that gave the CA an opportunity to re-shape their retail charge (if they considered this to be appropriate).
13. The use of adjournment is an important and practical tool to consider when faced with such a situation. Charging Authorities may sometimes need to request one (see freedoms outlined in guiding principle seven).

Guiding Principle Six - new freedoms introduced by the Localism Act

14. The Localism Act 2011 has changed the role of examiners as set out in the Planning Act 2008 and CIL Regulation. Now, the examiner’s main role is to check that the drafting requirements have been complied – if the examiner considers the drafting requirements have not been complied with, and that this non-compliance cannot be remedied by making modifications to the draft, the examiner must recommend that the draft be rejected.

15. If an Examiner considers the drafting requirements have not been met, but they could be complied with by making modifications, then, post the Localism Act 2011, the examiners role has been amended to one of requiring the non-compliance to be remedied, but not being able to require specific changes to do so. The examiner may only make recommendation⁴ to the CA about modifications that the examiners considers sufficient and necessary to remedy the non-compliance and recommend that the draft be approved with those modifications or *other modifications sufficient and necessary to remedy that non-compliance*⁵.
16. This last statement is important, as it now empowers the CA to determine what the charge should be (it is not dictated by the examiner) and in doing so, gives the CA greater control over their charge. It can now take time out after the examination to carefully consider the issue raised by the examiner without being forced to act hastily and simply make the changes suggested by the examiner. This is a very important new opportunity introduced by the 2011 Act and one that CA will need to appreciate.

Guiding Principle Seven – use physical zones to help vary retail charges

17. Where there is evidence of differing viability based on physical boundaries (as was the case in Poole and Mid Devon) then the combined use of physical zone variations based clear viability zones based around for instance town centres or district centre to exempt these zones from a charge may support the use of a use based charge variation for other areas. However this must be considered against the complexity being introduced and the scale of likely development to expect to contribute to the CIL charge.

⁴ As distinct from actually requiring

⁵ This was evident in the recent Wycombe examination.