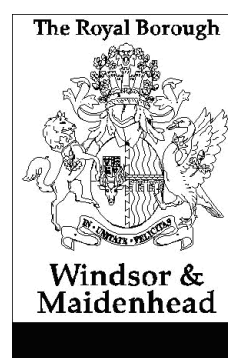


Report for: ACTION



Contains Confidential or Exempt Information	NO - Part I
Title	Community Infrastructure Levy (CIL) – Adoption of the Charging Schedule and associated documents
Responsible Officer(s)	Russell O’Keefe – Strategic Director of Corporate & Community Services – 01628 796521
Contact officer, job title and phone number	Chris Hilton – Director of Planning, Development & Regeneration – 01628 683811
Member reporting	Cllr. D Wilson – Lead Member for Planning
For Consideration By	Full Council
Date to be Considered	10 August 2016
Implementation Date if Not Called In	1 September 2016
Affected Wards	All

REPORT SUMMARY

1. The purpose of this report is to highlight the findings of the Examiner’s report (Appendix A) of the Draft Community Infrastructure Levy (CIL) Charging Schedule and supporting documents.
2. To gain approval of Full Council to the adoption of the Community Infrastructure Levy and associated documents with implementation of the Levy from 1 September 2016.

If recommendations are adopted, how will residents benefit?

Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
1. Funds can be collected to help provide the infrastructure required to support new development in the area.	From 1 September onwards

1. DETAILS OF RECOMMENDATIONS

RECOMMENDATION: That Full Council:

- i. **Agree the modification recommended by the Inspector and delete the charge for large offices and set a zero rate (Appendix A)**

- ii. **Approve the adoption of The Royal Borough of Windsor & Maidenhead's CIL Charging Schedule (Appendix B)**
- iii. **Approve the CIL Charging Schedule to take effect from 1 September 2016**
- iv. **Approve the adoption of the Regulation 123 List (Appendix C)**
- v. **Approve the Instalments Policy (Appendix D)**
- vi. **Approve the Exceptions Policy (Appendix E)**
- vii. **Agree an implementation date of 1 September 2016**
- viii. **Delegate authority to the Monitoring Officer to amend the Constitution of the Royal Borough of Maidenhead to the make provisions for officers to have delegated powers to take enforcement action under the Community Infrastructure Levy Regulations (2010) as amended.**

2. REASON FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 2.1 The Community Infrastructure Levy (CIL) Regulations came into force in 2010 and enables Councils to collect funds for the provision of infrastructure required to support growth in their boroughs. It is a tariff style system applied to the area of the development as a cost per square metre on net increase in floor space. The regulations brought in restrictions in the use of S106 Legal agreements and therefore it is essential that the Council adopts the levy to ensure that it has effective methods to collect funds to mitigate the effect of new development on infrastructure.
- 2.2 In December 2014 Cabinet agreed to progress with the preparation of CIL ahead of the adoption of the Borough Local Plan. This decision followed correspondence in August and October 2014 between the Council and Mr Brandon Lewis, the then Minister of State for Housing and Planning. The Mr Lewis' letter stated that whilst the NPPF guidance says that "Where practical levy charging schedules should be worked up and tested alongside the Local Plan" , overall it is robust evidence that is essential, and provided this is in place then CIL can be progressed ahead of the Local Plan. At the time this principle had not been tested at examination for any other Council and RBWM was a forerunner in progressing CIL on this basis.
- 2.3 The procedure for setting a CIL is set out in the Planning Act 2008 (as amended) and the Community Infrastructure Levy Regulations 2010 (as amended). This entails two sets of public consultation, the first on the Preliminary Draft Charging Schedule (PDCS) and the second on the Draft Charging Schedule (DCS). These were undertaken during 2015. Once all the comments had been analysed from each round of consultation and responses prepared the final DCS and supporting documents were submitted to an Independent Examiner.
- 2.4 Under Section 213 of the Planning Act 2008 (as amended), a charging authority (in this case the Royal Borough of Windsor & Maidenhead) can only approve a charging schedule if the appointed examiner has recommended approval and subject to any modifications the examiner recommends.
- 2.5 The examiner considers whether the charging authority has followed the CIL legislation and national guidance and whether it has struck an appropriate balance between the desirability of funding from CIL (in whole or part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding, and

the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

2.6 The Council appointed Mr Terrence Kemmann-Lane JP DipTP FRTPI MCMI as Inspector and he held a public examination on 3 March 2016.

2.7 Mr Kemmann-Lane's reports:

"I conclude that, subject to the modification set out in Appendix A the Royal Borough of Windsor and Maidenhead Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved."

Appendix A of his report is as follows:

"Appendix A

Modifications recommended by the Examiner to allow the Charging Schedule to be approved.

Modification Number	Modification
EM1	Delete the "Offices" development type so that there is no charge for offices"

2.8 The modification recommended by the Examiner requires that the council amend the Draft Charging Schedule to set a zero rate for all types of offices. The evidence that was submitted for examination was challenged and the Inspector did not consider that the Council had provided sufficient evidence to substantiate this charge.

2.9 In order that the Council can implement a charging schedule this modification needs to be accepted. If not the Council cannot adopt and would need to undertake the whole rate setting process again. The modified Draft Charging Schedule is attached (Appendix B).

2.10 With the acceptance of the modification the Council is in a position to adopt its CIL Charging Schedule and in doing so set the date at which CIL charging will start. It is proposed that this will be 1 September 2016.

2.11 Once adopted the CIL Charging Schedule will be in place until the Council formally decides that it should cease to have effect. The intention will be that the CIL Charging Schedule will be reviewed at the adoption of the emerging Borough Local Plan.

2.12 There are a number of supporting documents that are required to be approved in order to implement CIL Charging Schedule.

- Regulation 123 List. The CIL regulations encourage authorities to identify the infrastructure it intends to fund through CIL and publish a list. The Regulation 123 List that was submitted in support of the CIL examination is

shown at Appendix C and approval is sought to use this on adoption. The Regulation 123 List will be kept under constant review and can be amended to reflect updated needs or as projects are complete. The process for this is a consultation and updating on the website.

- Instalments Policy. The process for collecting CIL is set out in the CIL regulations and funds are due on commencement unless an Instalments Policy is adopted. It is considered essential for larger schemes to be delivered that developers can have a phased payment schedule. The proposed Instalments Policy is attached as Appendix D. The Council can amend this instalments policy by publishing the new policy on the Council's website.
- Discretionary Reliefs. During the CIL setting process the Council has indicated that it will make available a number of discretionary reliefs from the need to pay CIL. These are optional under the CIL Regulations and can be made available or withdraw at any stage. The Discretionary Reliefs proposed are attached as Appendix D.

2.13 Governance of CIL spending – the CIL legislation requires that funds collected must be spent on supporting development by funding the provision, improvement, replacement or maintenance of infrastructure. A report will be taken to a future Cabinet Meeting with options and recommendations on a Governance Policy.

2.14 The CIL regulations sets out that a proportion of CIL receipts will be passed to Parishes (where one exists) or spent in consultation with neighbourhood groups where they do not. The proportion is as follows:

Parish Council Neighbourhood plan	Yes Yes	Parish Council Neighbourhood Plan	Yes No
= 25% uncapped paid to Parish		= 15% capped at £100 / dwelling paid to Parish	
Parish Council Neighbourhood Plan	No Yes	Parish Council Neighbourhood Plan	No No
= 25% uncapped, local authority consults with community		= 15% capped at £100 / dwelling local authority consults with community	

2.15 It is proposed to follow the CIL regulations payment schedule of twice yearly payments to Parishes as follows:

- Receipts received 1 April-30 September to be passed over by 28 October
- Receipts received 1 October -31 March to be passed over by 28 April

2.16 The Council is able to retain 5% of the CIL receipts to be applied to administration expenses and for the first three years of implementation may apply this to any expenses incurred before the CIL was adopted.

2.17 The CIL regulations allow for surcharges, late payment interest and direct enforcement action to be taken against developers who do not submit the correct forms and make payments at the due stage. Delegation is sought for Officers to

use these methods to ensure that payment is received. A CIL Enforcement Policy will be prepared and presented to Cabinet for approval.

Option	Comments
Adopt the Draft Charging Schedule with amendment and associated documents	Adopting the CIL Draft Charging Schedule will allow the council to ensure funds can be collected to help fund the infrastructure needed to support development in the area
Recommended Option	
Don't adopt the Draft Charging Schedule	Without the mechanism of CIL it will be difficult for the Council to collect funds.
Not recommended	

3 KEY IMPLICATIONS

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
Funds collected to provide the infrastructure required to support development	£0	£500K	£100K	£1M	31/03/2018

These figures are estimates only as the funds to be collected are based on the type of applications received and the number of variables that have to be taken into account in calculating CIL. The figures are suggested in light of the experience of nearby authorities in the first years of adopting their CIL.

4. FINANCIAL DETAILS

4.1 Financial impact on the budget

	2016/17	2017/18	2018/19
	Capital £'000	Capital £'000	Capital £'000
Addition	£0	£0	£0

5. LEGAL IMPLICATIONS

- 5.1 The Planning Act 2008 (as amended) and CIL Regulations 2010 (as amended) set out the requirements for adopting a Community Infrastructure Levy. At the date of implementation of the Levy any planning applications which are undetermined in the system will become CIL liable. This will include any applications on which a resolution has been taken to grant subject to contributions through Section 106

agreements and these applications will have to be returned to a planning panel for a decision under CIL. CIL is a material planning consideration.

6. VALUE FOR MONEY

6.1 The levy will provide funds to support the provision of infrastructure in the Borough which is required to support new development.

7. SUSTAINABILITY IMPACT APPRAISAL

7.1 None

8. RISK MANAGEMENT

8.1

Risks	Uncontrolled Risk	Controls	Controlled Risk
Legal Challenge to the decision	Medium	None	

9. LINKS TO STRATEGIC OBJECTIVES

9.1 Supporting Children and Young People
Encouraging healthy People and Lifestyles
Improving the environment, economy and transport
Investing in the future

10. EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION

10.1 The introduction of CIL and the Draft Charging Schedule will have no major change or specific negative effect.

11. STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS

11.1 Staff within Development Management will require training on the CIL Regulations and implementation which will be delivered within existing budgets.

12. PROPERTY AND ASSETS

12.1 None

13. ANY OTHER IMPLICATIONS

13.1 None

14. CONSULTATION

14.1 The CIL Regulations set out the consultation required. Public consultation was undertaken on the Preliminary Draft Charging Schedule between 19 June 2015- 20 July 2015 and on the Draft Charging Schedule between 23 October 2015 and 23 November 2015.

15. TIMETABLE FOR IMPLEMENTATION

15.1

Date	Details
01/09/2016	Implement the CIL Charging Schedule

16. APPENDICES

- Appendix A –Examiner’s Report
- Appendix B – the CIL Charging Schedule
- Appendix C – Regulation 123 List
- Appendix D – Instalments Policy
- Appendix E – Exceptions Policy

17. BACKGROUND INFORMATION

- The Planning Act 2008 (as amended)
- The Community Infrastructure Levy Regulations 2010 (as amended)
- Infrastructure Delivery Plan
- RBWM Local Plan

18. CONSULTATION (MANDATORY)

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
Internal				
Cllr Dudley	Leader of the Council			
Cllr Wilson	Lead Member			
Russell O’Keefe	Strategic Director Corporate and Community Services	16.6.16		None
Alison Alexander	Managing Director/ Strategic Director Adults, Children and Health			
Simon Fletcher	Strategic Director Operations and Customer Services			
Mark Lampard	Finance Partner			
Christopher Targowski	Cabinet Policy Officer			

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
Jenifer Jackson	Borough Planning Manager	16.6.16	30.6.16	Incorporated throughout



Report to the Council of the Royal Borough of Windsor and Maidenhead

by Terrence Kemmann-Lane JP DipTP FRTPI MCI

an Examiner appointed by the Council

Date: 13 June 2016

PLANNING ACT 2008 (AS AMENDED)
SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 17 December 2015

Examination Hearing held on 03 March 2016

File Ref: PINS/T0355/429/8

Non Technical Summary

This report concludes that, as submitted, the Royal Borough of Windsor and Maidenhead Community Infrastructure Levy Charging Schedule does not fully provide an appropriate basis for the collection of the levy in the district. The evidence provided during the examination does not support the proposed rate for large office development. But with the appropriate modification, the charges will not put developments at risk, and it can be recommended for approval.

One modification is needed to meet the statutory requirements. This can be summarised as follows:

- Modify the draft Charging Schedule by deleting the charge for large office development

The specified modification recommended in this report is based on matters discussed during the public hearing sessions and does not significantly alter the basis of the Council's overall approach or the appropriate balance achieved.

Introduction

1. This report contains my assessment of the Royal Borough of Windsor and Maidenhead Community Infrastructure Levy (CIL) draft Charging Schedule (DCS) 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 (DCLG Guidance on the Community Infrastructure Levy).
2. To comply with the relevant legislation the local charging authority has to submit a charging schedule that sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the district. The basis for the examination, on which hearings sessions were held on 3 March 2016, is the schedule submitted on 17 December 2015.

3. The Council proposes the following rates:

Development Type	CIL Charging Zone	Rate (per square metre)
Residential including retirement (C3) and extra care homes (including C2)	Maidenhead Town Centre (AAP area)	£0
	Maidenhead urban area	£100
	Rest of borough	£240
Retail	Borough wide retail warehouses	£100
	Borough wide other retail	£0
Offices	Borough wide – 2,000 m ² or larger	£150
	Borough wide – less than 2,000 m ²	£0
All other uses		£0

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

Does the Infrastructure Delivery Plan support the introduction of CIL?

4. The Royal Borough of Windsor and Maidenhead Borough Local Plan (Incorporating Alterations) (LP) was adopted in June 2003. There is a Schedule of local plan policies saved from the development plan after 27 September 2007. The LP provides detailed policies and proposals covering the period 1991 to 2006. As well as the LP, the Council adopted the Maidenhead Town Centre Area Action Plan (MTCAAP) in September 2011. This sets out a vision and strategy for the period up to 2026.
5. The LP included an appendix containing a Schedule of Infrastructure, Facilities and Other Works Required in Association with Development under the Local Plan. Similarly, the MTCAAP incorporated an appendix of Infrastructure Projects. However, for the purposes of the CIL submission, an Infrastructure Delivery Plan (IDP) covering the period 2013 to 2030 has been prepared, dated October 2015. As the IDP was prepared to support the draft Charging Schedule and has not been tested at another examination, it comes within the ambit of this examination.

6. Since there is no development plan for the whole borough covering the period 2013 to 2030 (the MTCAAP only covering a period to 2026) the IDS aims to provide an updated position on infrastructure need. It is unusual, to say the least, for a DCS to be submitted with the infrastructure requirements, the costs of which justify a CIL charge, based on future infrastructure requirements needed to support various growth scenarios for development between 2013 and 2030 leading to an as yet to emerge local plan. I therefore set out below the way that this is explained in the IDP:

"1.2 Aims and Scope

The aim of this assessment is to provide an updated position on infrastructure need in RBWM. Given that the preparation of the Borough Local Plan is on going, this study seeks to test the future infrastructure requirements needed to support various growth scenarios over the period 2013– 2030. The assessment forecasts any potential additional demand for infrastructure arising from new homes and growth in the borough's employment base. The study considers the current supply of infrastructure and all planned infrastructure investment projects. It considers these alongside bespoke work to forecast any additional infrastructure that may be required. The work also encompasses the likely cost of additional infrastructure, when it will be required and how it could be funded and delivered."

7. The scope of the study encompassed a growth trajectory by assessing infrastructure requirements arising as a result of anticipated housing growth as determined by four potential developments scenarios. The assessment covers the needs arising from the remainder of the new Borough Local Plan period (very recently agreed as running from 2013/14 to 2031/32), with current planning for infrastructure provision taking account of needs arising from housing developments completed between 2013 and 2015. The council has identified urban allocated sites that could support growth, with information on the potential supply of housing at these sites informing the potential demand for infrastructure. The assessment considers the following types of infrastructure: social, transport, and utilities infrastructure. The estimated funding gap has been collected by a desk-based review of available information, supplemented by consultation with RBWM council officers and infrastructure providers.
8. In response to my further questioning on the detail of how the growth scenarios had been used I was told that the IDP considers infrastructure and funding requirements for a baseline growth scenario and three additional scenarios with total housing units planned for of between 8,061 and 11,050 dwellings. It demonstrates an infrastructure funding gap requirement of between £155 million and £175 million (see Table E4, page ix and Table 7-1, page 67). The baseline housing trajectory figure used in the IDP provides for delivery of 474 units per annum and is reflective of the existing Local Plan's development framework; the emerging Local Plan policies and evidence base documents; and sites identified through the Council's development management and monitoring process.

9. With regard to the IDP's housing trajectory assumptions on small sites, the Council's historic record of delivery, which was analysed in the Housing Small Site Analysis (2013), was the basis for the rate and quantum of delivery. For larger sites the Council used both the Strategic Housing Land Availability Assessment and the range of other sources enumerated in the previous paragraph and listed on page 9 of the IDP.
10. The IDP total development scenarios are greater than the Local Plan Preferred Options Consultation figure of 7,415 dwellings to 2030 and more than average historic completions. Historic completions represent between 52% and 72% of the IDP growth scenarios. Infrastructure costs and associated funding gap are largely proportionate to the scale of development. As outlined in Section 8.5 and Table 8-5 of the IDP, projected CIL revenue under the Baseline scenario just covers the acknowledged under-estimate of the infrastructure funding requirement. Even if total infrastructure funding gap costs were assumed to reduce by these percentages they would largely remain proportionate to total development and are likely to be more than the estimated CIL revenues at the rates proposed.
11. The NPPG states "Information on the charging authority area's infrastructure needs should be drawn from the infrastructure assessment that was undertaken as part of preparing the relevant plan ..." It goes on to state "a Charging Authority may undertake additional infrastructure planning to identify its infrastructure funding gap if it considers the infrastructure planning underpinning its relevant plan ... is weak or does not reflect the latest priorities. This work may be limited to those projects requiring funding from the levy." (Reference ID: 25-015 & 16-20140612, revision date 12 06 2014).
12. The Council has acknowledged that the information used in the IDP primarily relates to the emerging Local Plan rather than the adopted Local Plan. I have no doubt that although the Local Plan period 'stopped' at 2006, development will not have stopped, and that, in due course, there will be an up-to-date Local Plan that will provide for a considerable amount of new development. The submitted IDP goes some way to show that substantial amounts of infrastructure will be needed to support further development at a considerable cost.
13. Given the context of the adopted Local Plan, the emerging Local Plan, and the pressing need to secure CIL to fund infrastructure requirements, I consider that there are good reasons in this case why it is appropriate to make an exception to the guidance given in NPPG. My reasoning is reinforced by the fact that, at present, the Council has little ability to raise funding to support development in the Borough due to the limitations on S106 agreements imposed by CIL regulation 123 (3)(b) and the generally small size of development sites. This makes it difficult to identify site-specific infrastructure for S106 contributions. It seems inevitable to me that, if the Council does not have the tool of CIL available, then less development than otherwise would come forward. This is because more of the development would become unacceptable in planning terms due to deficits in infrastructure and funding which the Council is unable to mitigate appropriately. Alternatively

development will take place without the necessary infrastructure to support it.

14. In respect of the infrastructure funding gap, the IDP shows total infrastructure costs relating to the four growth scenarios. These are: Baseline £155m; Scenario 1 £167.4m; Scenario 2 £175.4m; and Scenario 3 £174.9m. In making a judgment about the justification for levying CIL in the borough, I consider that it is prudent to take the Baseline figure as the infrastructure funding requirement over the local plan period since this is the lowest of the projected figures. Turning to sources of funding other than CIL, the council has estimated revenue from section 106 agreements that vary between £17.2m for the baseline and £24.7m as the highest income from the alternative scenarios. In addition, the council has secured or expects to secure approximately £45.8m between fiscal years 2010/11 and 2015/16 in grant funding derived from a range of different programs run by central government departments. Taking the baseline figures provided the resulting Infrastructure Funding Gap is £62.8m.
15. In conclusion I accept that there is a pressing need to secure infrastructure to support current and proposed development and there is a minimum identified funding gap of £62.8m that validates the implementation of CIL in the Borough.
16. The IDP also reports a modelling of the amount likely to be raised through the proposed CIL charges – set out in IDP section 8.5. Table 8-5 in this section sets out the total forecast infrastructure funding from CIL and the Infrastructure Funding Gap taking that into account. The Baseline Scenario and Scenario 2 show modest gaps of £0.1m and £0.7m respectively. The other two Scenarios show possible surpluses. These figures have to be treated with considerable caution because they are predicated on a continuation of the same level of grant that has historically been collected. Given that there have been clear signals from Government that a reduction in such grants is likely, the extrapolation of these figures is questionable. In addition, the recommendation I make in relation to the charge on large offices will result in less CIL being collected than the Council anticipates in the IDP. Nevertheless the collection of CIL will make a significant contribution to the cost of infrastructure in the borough.

In the absence of an up-to-date development plan, can the introduction of CIL be supported?

17. In addition to the matters dealt with in paragraphs 4 - 16 above, unsurprisingly, representations submitted that the Council's development plan is out of date/non-existent and it does not comply with the National Planning Policy Framework (NPPF) that CIL should be based on an up-to-date development plan or be developed alongside an emerging plan, coupled with the argument that future infrastructure based on a plan yet to be prepared could not be assessed. The introduction of CIL should await the adoption of the local plan that is now in course of preparation.

18. This type of argument is not new. A similar argument was put in the examination of the draft CIL Charging Schedule for Tandridge District Council. In that case I found that there was a continuing need to provide infrastructure for development based on provisions in the extant development plan for the district, and that the imposition of CIL was justified. The Tandridge District Council accepted the recommendation, adopted the charging schedule, and in due course this adoption was challenged by judicial review in the High Court. The High Court judge (Dove J) found in favour of the council and the complainant then took the matter to the Court of Appeal. Whilst this present case is not on all fours with the Tandridge situation, the decision of the Court of Appeal is very helpful in pointing to how the matter should be dealt with in the case of the DCS submitted by the Royal Borough of Windsor and Maidenhead. I set out below the salient points in the decision of the Court of Appeal.
19. The Court of Appeal issued its decision in the case of *Oxted Residential Ltd v Tandridge District Council* [2016] EWCA Civ 414 on 29 April 2016. The leading judgement was given by Lindblom LJ, which was agreed by Jackson LJ and Patten LJ. The appeal was dismissed. The following are extracts from the judgement.
- Firstly, a claimant may not argue afresh a case presented and rejected at the CIL examination, or invite the court to interfere with the examiner's judgment on matters of valuation or planning merit. The challenge may only be made on public law grounds.
 - Secondly, there is no statutory obstacle to the adoption of a CIL charging schedule when a relevant development plan document is, or may be considered, out of date in the light of subsequently issued national policy or guidance. An argument to the contrary was presented to the examiner, and he rejected it. Lindblom LJ quoted a section from the Examiner's Report headed "Is the charging schedule supported by background documents containing appropriate available evidence?" and said that he saw nothing legally wrong with those conclusions. It was not unreasonable for the examiner to accept the council's argument that, although a review of the core strategy was now in prospect, it would be logical and sensible in the meantime to have a CIL charging schedule in place to deal with the development planned in the core strategy as adopted, and to revise the CIL charging schedule in the light of the review, or sooner, under the statutory power to do so in section 211(9) of the 2008 Act.
 - Thirdly, there is no force in the submission that the examiner, and the council, failed to heed the Government's guidance on CIL, including the guidance indicating at the beginning of his report, in paragraph 1 in the "Introduction", the examiner expressly acknowledged the guidance. The examiner's reasons in paragraphs 11 and 37, read with the rest of the careful analysis to which I (Lindblom LJ) have referred, show very clearly why (the examiner) did not think the guidance on achieving consistency with, and support for, "up-to-date relevant plans" should stand in the way of the council's CIL charging schedule being adopted. If this was a departure from

the guidance, it was neither unexplained nor unlawful – nor even surprising.

- Fourthly, Dove J. rightly rejected the argument that the examiner failed properly to strike the "appropriate balance" under regulation 14 of the CIL regulations. In fact, the examiner did this with conspicuous care.
20. Taking the guidance provided by the judgement of the Court of Appeal, I consider that, in this case, there are sound reasons for departing from the CIL guidance that CIL charging schedules "should be consistent with and support the implementation of up-to-date relevant plans". Whilst for most of the district the adopted development plan only covered a period that ran up to 2006, the council is working on a new borough wide local plan. This has now reached a point where a preferred strategy has been produced, and further work has continued since then. Quite clearly, no plan has as yet emerged, but I consider that there is a difference between examining a DCS proposal and considering development management issues where specific development proposals have come forward. Development pressures will not cease just because a development plan is out of date or non-existent, and the fact that there are no allocations does not necessarily mean that a clear idea cannot be gained of the levels of development that will be needed.
21. The council has been able to demonstrate a range of likely development scenarios, has been able to indicate the cost of providing necessary infrastructure, and the amount of funding from non-CIL sources, and has shown that there is highly likely to be a funding gap and its probable size. In my view, it would be counter-productive to deny the council the opportunity of obtaining funding for infrastructure through the community infrastructure levy until such time as the local plan under preparation becomes formally adopted. To allow that situation to obtain would either mean drastically limiting the amount of development that can be permitted, or allowing development that is not properly supported by infrastructure.
22. I therefore conclude that the council is justified in bringing forward its DCS, and that I am justified in finding that the submission is supported by appropriate background documentation containing appropriate available evidence.

Is there economic viability evidence to justify the proposed CIL charges?

23. The Council commissioned a CIL Viability Study (VS), dated April 2015 to support its Preliminary Draft Charging Schedule (PDCS). A post PDCS update (VSU) of the VS was produced in September 2015. The VS and VSU use a methodology comparing the Residual Value generated by a development scheme with the Existing Use Value or an Alternative Use Value plus and appropriate uplift to incentivise a landowner to sell. This approach is in line with the Harman Guidance (Viability Testing in Local Plans, June 2012). There were representations that criticised some of the detail of the inputs to the VS, the material ones of which I deal with below under the appropriate headings. However, I am satisfied that, subject to the modification that I recommend

and the reasons leading to it, the economic viability evidence put forward by the Council justifies the proposed CIL charges.

Conclusion

24. The draft Charging Schedule is supported by evidence of community infrastructure needs and a funding gap has been identified. Accepted valuation methodology has been used which was informed by reasonable assumptions, except as dealt with below, about local sale values, rents and yields

Are the charging rates informed by and consistent with the evidence?

Are the levels of CIL proposed for residential development justified?

25. Representations include that there are shortcomings in the viability appraisals. In particular the build costs and benchmark land values are questioned. The build costs in the VSU, September 2015, have not been adjusted from the March 2015 figures. It is said that the BCIS are generic costs typically based on source data from affordable housing developments: the VS adopted build costs are too low.
26. In respect of Benchmark Land Values (BLV) it is represented that the majority of sites tested have been assessed against value for industrial land plus a 20% premium. This is not appropriate because matters such as market value based on having regard to what development plan policies will allow is more realistic and in line with guidance in 'Financial Viability in Planning' (RICS August 2012) and NPPF (paragraph 173). Particular criticism is made of the assumed value for industrial land in the VS, which is based on the Valuation Office Agency (VOA) Property Market Report 2011 for Reading and Hammersmith, but the VS value is well below those provided by VOA and no methodology has been provided to show how this value has been arrived at. Criticism is also made about the values used for retail land, and agricultural/paddocks/urban fringe land, for which no methodology has been provided. The VS is also criticised for not including 'strategic greenfield sites' in the residential typologies tested.
27. My questions of the Council elicited that the BCIS cost used in the VS is adjusted for Royal Borough of Windsor and Maidenhead costs. The BCIS costs only cover the cost of building and make no allowance for site costs, fees or anything else. VSU of September 2015 use the same costs used in the VS of March 2015. Revised BCIS costs were not used because the BCIS costs have fallen since the earlier work, and the consultants had some concerns about this and therefore did not make a downward adjustment. As far as the BLVs are concerned, the Council points out that these were tested through the consultation process. The Representor puts forward a different method from that recommended in the Harman guidance. The RICS Guidance quoted by the Representor does not provide the appropriate definition, which is to be found in Box 8: Site Value – area-wide assessments, but this must be read with Box 7: Site Value Definition. Whilst reference is made to market value, it is not

saying market value should be used as the reference. Instead reference is made to an 'adjusted' market value. The Representor does not make this adjustment. In addition all the values used were since checked against confidential development appraisals submitted through the development management process.

28. I am satisfied that the rate for residential development has been established by the Council on the basis of a Viability Study using methodology consistent with CIL Guidance. The Local Housing Delivery Group (Harman) guidance, which has found general acceptance in CIL examinations, sets out a detailed methodology for conducting area-based assessments, and this is the approach that has been adopted by the consultants on behalf of the Council. I consider that the input assumptions that have been made in testing residential developments and the range of benchmark land values are appropriate and reasonable.
29. I dismiss the Greenfield Strategic Sites point since the Local Plan that was adopted with minor alterations in 2003 had no sites of this nature included within it, and there is so far no emerged plan that indicates that such sites will be acceptable. It is unlikely that such sites will obtain planning permission during the likely lifetime of this charging schedule.

Conclusion

30. In conclusion, the evidence before me is a clear indication that general residential development will remain viable across most of the District if the proposed CIL rate is applied.

CIL rates for Commercial Development

Is the CIL rate for office development of 2,000 m² or larger justified by the Viability Assessment?

31. Office development of less than 2,000 m² is proposed to be zero rated, whilst developments above that size are to be charged £150 per m². Comparison is made in representations with office rates in nearby charging authorities and some of those within inner London, whereby it is suggested that these areas are some of the most expensive office locations in the country, but the CIL rates adopted are either nil rates or a much lower rate than proposed in the Royal Borough. Criticism is made of the VS on the basis that there is no clear evidence to support the cut-off point between developments of less than 2,000 m² and those at or above that figure. Furthermore, the development scenarios set out in Appendix 5 of VSU do not include a scenario for a development of an office of 2,000 m²: the only scenarios tested are 2,500 m² and 150 m².
32. For the Council, any comparison with other charging authority areas was thought spurious as it was the viability of development within its own area that was the compelling factor. As for the scenarios tested, the Council contends that it has tested an area/size that is representative of large offices, and its

consultants have made a professional judgement based on a considerable number of transactions.

33. Concern was also raised that both costs of construction and values in VS and VSU are based on Gross Internal Area, whereas it was suggested, value should be based on Net Internal Area. This became clearer at the hearing when it was confirmed that the viability work on offices used the gross area for both costs and value. At the hearing the issue of whether the Existing Use Value used for residential schemes in the Maidenhead Town Centre AAP (AAP) area should be used for offices was explored further. I asked for additional modelling and written responses to the both hearing discussions to be provided.
34. In the post-hearing documentation, the Council contend that in high-level appraisals for CIL and Local Plan viability assessments, normal practice is to take a conservative and cautious view of rental values and work to the whole building area. To use a net area for values would introduce the impression of a spurious level of accuracy. Nevertheless, the council has run a further set of appraisals assuming 10% circulation space. The results are set out in Table B of the Council's Post Hearing Additional Note (document POST-1). On this basis it is revealed that the proposed rate of £150 m² for large offices is not sustainable. On Brownfield sites, at a rate of £60 m² there is a 'cushion' by which the Residual Value exceeds the Viability Threshold.
35. Table C in document POST-1 uses the Representors assumption regarding BLVs, with the other assumptions as in Table B. For this scenario the Residual Value does not exceed the Viability Threshold. Whilst the Council does not believe that the value used for residential schemes should be applied in relation to the offices, it states that if it were applied then it might support the view that a Zero rate for large offices in the AAP area is appropriate.
36. An exercise was also done in document POST-1 on the basis that some office developments may come forward on sites that are already in office use so that development at the site may be intensified. I do not find this exercise adds significantly to the evidence of what are the appropriate CIL rates and I will not deal with it further.
37. Representors respond to the Council's argument by saying that Gross to Net ratios are standard practice in conducting viability appraisals. For high-level assessments, such as for CIL rate setting purposes, guidance on generally accepted gross to net ratios is outlined in numerous publications. For instance the RICS Guidance Note: Code for Measuring Practice 6th Edition¹ clearly

¹ This Guidance Note appears to have been superseded by the RICS Professional Statement 'RICS Property Measurement, Part 1: Office Measurement' which only applies to office development and is part of a move to introduce international standards in surveying and valuation practice. However, with regard to the arguments that I am dealing with here, there appears to be no change of significance.

states at page 6 that building cost estimation for non-residential buildings (including offices) is based on GIA while estate agency and valuation is based on NIA. And on page 17 (APP 9) it is confirmed that NIA is the basis not only for valuation but also for marketing. Furthermore, for instance, the Homes and Community Agency Employment Density Guidance at paragraph 2.11 states "As a general benchmark, 15-20% acts as a suitable assumption for converting gross to net areas in non-industrial properties." This brings into question the councils use of the 10% Gross to Net ratio.

38. Taking these matters in turn, in my view the fact that many other charging authorities, where the viability of office development is likely to be at least as strong as within RBWM, have nil or considerably lower charging rates for offices is valuable only in so far as it suggests the possible need to carefully review the proposed rates and the evidence which underlies them. I also find that the viability evidence which only tabulates developments of 150 m² and 2,500 m² is less convincing than it might be when considering the justification between a nil rate and a rate of £150 m².
39. In relation to the argument about Gross and Net ratios, I cannot see that using NIA for values would produce "the impression of a spurious level of accuracy". If values for non-residential buildings are normally based on NIA, to use GIA – ie a higher floorspace in m² which is then valued at £x m² - a higher value will result as compared with the use of NIA: in a situation where it is necessary to avoid setting CIL levels near the margin of viability this has to be undesirable. It is not 'measurement precision', but merely taking the hypothetical gross size of a building in a particular scenario and applying a reduction of 10% or 15% - whatever is taken to be a nominal average. The evidence before me is that the RICS Guidance Note: Code for Measuring Practice 6th Edition provides guidance on 'best practice' - procedures which in the opinion of the RICS meet a high standard of professional competence. This Guidance clearly refers to the use of NIA for arriving at values.
40. On this basis I consider that the Representors approach of using NIA as the basis for calculating the value of an office development is more appropriate. When using this approach in the appraisal in Table B (document POST-01) the result was that the proposed rate of £150 m² for large offices is not sustainable. This table also shows that on brownfield sites, a £60 m² CIL charge provides a 'cushion' by which the Residual Value exceeds the Viability Threshold. However this assessment uses a 10% reduction from GIA to NIA, when the Homes And Community Agency Employment Density Guidance at paragraph 2.11 states "As a general benchmark, 15-20% acts as a suitable assumption for converting gross to net areas in non-industrial properties." Therefore I am not satisfied that even a reduction from £150 m² to 60 m² for brownfield sites strikes the appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of office development. In addition, any differentiation between brownfield sites and other would bring problems of mapping. On the basis of the evidence before me, I conclude that all office development should be subject to a Nil rate. I will recommend accordingly.

41. I am not convinced of the soundness of the Council's argument that BLVs in Maidenhead Town Centre should not be increased to reflect the higher costs associated with the development of offices in this centre. In this context it is not a matter of the increased costs arising from contamination or other exceptional costs, which should indeed be reflected in the price paid for the land. In this case it is the value placed on land in a competitive situation that may well affect the price that has to be paid for a development site. Nevertheless I do not consider that I have sufficiently clear evidence one way or the other for it to be a decisive factor. In view of my conclusion in the paragraph above, the question does not need to be pursued further.

Is the CIL rate for Retail Warehouses justified by the Viability Assessment?

42. It has been suggested that there is insufficient testing in the VS to demonstrate that retail warehouses specialising in the sale of bulky goods would remain viable at the proposed rate. However, little in the way of evidence is provided to support the assertion that there is a very real risk that such units could be rendered unviable. I am not satisfied that there is a sound basis for a recommendation to modify this rate as I have no persuasive evidence to contradict the conclusion of the VS on this point.

Conclusion

43. I am satisfied that the VS follows good and accepted practice. Furthermore, there is evidence for the various inputs used in the VS and, save for the matter of large office development dealt with in paragraphs 31 to 41, I have heard and read nothing that persuades me that the rate for commercial development (in this case Retail Warehouses) is misjudged or unsupported.

A further matter

44. In my note to the Council, document ED-4, I pointed out that the DCS included text that would not be required at the point of approval, and that the document could be made considerably more concise. There is also an omission of a requirement of CIL Regulation 12(2)(d) to contain an explanation of how the chargeable amount will be calculated. In response, document RBWM-CIL-05, the Council appended a revised text which meets the points that I made and which it intends to use in the document at the time of approval. I do not consider that I need make a formal recommendation on this since it is a matter that I can leave to the Council.

Overall Conclusion

45. In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in the Royal Borough of Windsor and Maidenhead. The Council has tried to be realistic in terms of achieving a reasonable level of

income to address a gap in infrastructure funding, while ensuring that a range of development remains viable across the authority's area. With the modification that I recommend, this outcome should be achieved.

46. The Royal Borough of Windsor and Maidenhead has embarked on the preparation of a new Local Plan that is unlikely to be adopted for some time. I consider that it will be appropriate to review the effect and effectiveness of the Charging Schedule during the final preparation stages of the Plan.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended 2011)	With the modification that I recommend 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 Infrastructure Delivery Schedule and is supported by an adequate financial appraisal.

47. I conclude that, subject to the modification set out in Appendix A the Royal Borough of Windsor and Maidenhead Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

Terrence Kemmann-Lane
Examiner

This report is accompanied by Appendix A (below) – Modification that the examiner specifies so that the Charging Schedule may be approved.

Appendix A

Modifications recommended by the Examiner to allow the Charging Schedule to be approved.

Modification Number	Modification
EM1	Delete the "Offices" development type so that there is no charge for offices



THE ROYAL BOROUGH OF
**WINDSOR AND
MAIDENHEAD**

Royal Borough of Windsor & Maidenhead

Community Infrastructure Levy

Charging Schedule

Planning Policy Unit
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1. The Charging Authority

The Royal Borough of Windsor & Maidenhead is a charging authority as defined in Part 11 of the Planning Act 2008 (as amended). This charging schedule has been issued, approved and published by the Royal Borough of Windsor & Maidenhead in accordance with the CIL Regulations 2010 (as amended) and Part 11 of the Planning Act 2008 (as amended).

2. Date of Approval

This Charging Schedule was approved by the Council on (to be inserted).

3. Date of Effect

This Charging Schedule will come into effect on (to be inserted).

4. Calculation of Chargeable Amount

- 4.1. The Community Infrastructure Levy regulations 2010 (as amended) specify that CIL will be charged on gross internal floorspace in new development. CIL will be calculated as set out in Part 5 of the CIL Regulations. The rates shall be updated annually for inflation in accordance with the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors' All In Tender Price Index.
- 4.2. Parts 2 and 6 of the Community infrastructure Levy Regulations 2010 (as amended) state that the following development will be exempt from CIL charges:
 - Development where the gross internal area of new build is less than 100 square metres, although this does not apply where the chargeable development will comprise one of more dwellings;
 - Buildings into which people do not normally go;
 - Buildings into which people go only intermittently for the purpose of inspecting or maintain fixed plant or machinery; and
 - Development where the owner of a material interest in the relevant land is a charitable institution, and the development will be used wholly (or mainly) for charitable purposes.
- 4.3. In addition, the CIL Regulations also allow exemptions to be claimed for self-build housing, and residential annexes and extensions over 100 square metres (regulation 42A and 42B). Affordable housing will be eligible for Social Housing relief from CIL (regulation 49).

5. CIL Rates

- 5.1. The table below contains the Council's CIL rates. The maps showing the three residential CIL charging zones are included in Appendix A.

Development Type	CIL Charging Zone	Rate (per square metre)
Residential including retirement (C3) and extra care homes (including C2)*	Maidenhead town centre (AAP area)	£0
	Maidenhead urban area	£100
	Rest of the borough	£240
Retail	Borough Wide Retail Warehouses ^{1**}	£100
	Borough Wide Other Retail ¹	£0
Offices	Borough Wide ¹	£0
All other uses		£0

** For the avoidance of doubt this development type includes sheltered housing, retirement housing, extra care homes and residential care accommodation*

*** Retail warehouses are large stores specialising in the sale of comparison goods, DIY items and other ranges of goods catering mainly for car borne customers.*

6. Payment by Instalments

- 6.1. In accordance with the CIL Regulations, the Royal Borough will allow the payment of CIL by instalments. For further information on the Instalments Policy refer to the Council's website.

7. Monitoring CIL and the Regulation 123 List

- 7.1. The CIL Charging Schedule will be reviewed periodically to take account of the changes to the viability of development in the Royal Borough.
- 7.2. The Regulation 123 List sets out the infrastructure projects that the Royal Borough, as the CIL Charging Authority, may wholly or partly fund by the CIL. The List is available on the Council's website. This too will be reviewed periodically.

¹ Applicable within the Maidenhead town centre (AAP area), the Maidenhead urban area and the Rest of the borough charging zones.



Community Infrastructure Levy (CIL) Regulation 123 List

The list below sets out the infrastructure projects that the Royal Borough of Windsor and Maidenhead Borough Council, as the CIL Charging Authority, may wholly or partly fund by the CIL.

The inclusion of a project or type of infrastructure on this list does not signify a commitment from the Borough Council to fund (either in whole or in part) the listed project or type of infrastructure through CIL. Nor does the order of infrastructure items within the list imply or signify any order of preference or priority for CIL funding.

S106 will still be used for mitigation of development impacts but will always comply with the three statutory tests and negotiated on a case by case basis.

Strategic Highways / Transport	<ul style="list-style-type: none"> • Strategic road network improvements • Public rights of way and cycle network improvements • Car park additions and improvements except for those located within the Maidenhead Town Centre Area Action Plan
Education	<ul style="list-style-type: none"> • Provision of additional primary and secondary schools • Enhancements to existing schools to enable the provision of additional school places • Provision of special education needs
Health	<ul style="list-style-type: none"> • Improvements to existing healthcare
Social and Community Facilities	<ul style="list-style-type: none"> • Provision of additional facilities at existing community halls and new community facilities
Sport and Recreation	<ul style="list-style-type: none"> • Provision of new facilities and enhancements to existing facilities
Green Infrastructure	<ul style="list-style-type: none"> • Improvements, maintenance and management of all strategic and neighbourhood parks, green spaces, play area and kickabouts • Provision of allotments • Strategic biodiversity projects
Libraries	<ul style="list-style-type: none"> • Provision of new static libraries and enhancements to existing facilities and increased provision of mobile units
Public Realm Improvements	<ul style="list-style-type: none"> • Public art & heritage projects
Flood Defence	<ul style="list-style-type: none"> • Contribution to the Lower Thames Flood Relief Strategy
Maidenhead Waterways Project	



Community Infrastructure Levy Instalments Policy

The Council is able to accept payment of the Community Infrastructure Levy (CIL) in instalments under Regulation 69B of the CIL Regulations 2010 (as amended). In order to assist developers in financing development in the Borough, the Council proposes to allow payment of CIL by instalments, depending on the total amount of the liability, as set out in table below:

Amount Due	Installments	Schedule
Any amount less than £50,000	1	Full amount payable within 60 days of commencement.
Amounts equal to or more than £50,000 but less than £150,000	2	25% payable within 60 days of commencement 75% payable within 120 days of commencement.
Amounts equal to or more than £150,000 but less than £500,000	3	25% payable within 60 days of commencement 25% payable within 120 days of commencement 50% payable within 180 days of commencement.
Amounts equal to or more than £500,000 but less than £1,000,000	4	25% payable within 60 days of commencement 25% payable within 180 days of commencement 25% payable within 240 days of commencement 25% payable within 360 days of commencement.
Amounts equal to or more than £1,000,000	4	25% payable within 90 days of commencement 25% payable within 240 days of commencement 25% payable within 450 days of commencement 25% payable within 720 days of commencement



THE ROYAL BOROUGH OF
WINDSOR AND
MAIDENHEAD

COMMUNITY INFRASTRUCTURE LEVY (CIL)

Discretionary charitable relief – Regulation 44 and 45

The Royal Borough of Windsor & Maidenhead (RBWM) hereby gives notice that discretionary charitable relief in line with Regulation 44 and Regulation 45 of the Community Infrastructure Levy Regulations 2010 (as amended) is available from the RBWM Community Infrastructure Levy.

This relief from the levy may apply where:

- The exemption of a charitable institution from liability to pay CIL in respect of a chargeable development would constitute a State aid and
- The charitable institution would otherwise be exempt from liability in respect of that development under Regulation 43 (Exemption for charities)
- RBWM is satisfied that the aid in question does not need to be notified to and approved by the European Commission

Notes:

Regulation 43 states that an owner (C) of a material interest in the relevant land is exempt from liability to pay CIL in respect of a chargeable development if:

C is a charitable institution; and the chargeable development will be used wholly or mainly for charitable purposes

But the relief does not apply if it would constitute a state aid.

Four criteria must be satisfied for aid to constitute state aid:

- It is granted by the state or through state resources
- It favours certain undertakings or production of certain goods. In other it provides a selective aid to certain entities engaged in an economic activity (an “undertaking”). Economic activity is the putting of goods or services on a given market.
- It distorts or threatens to distort competition
- It affects trade between Member States. This includes potential effects

Discretionary charitable relief can only be given where relief would not need to be notified to, and approved by the European Commission. State aid in these situations is not notifiable because it uses the de minimis block exemption. De minimis funding is exempt from notification requirements because the European Commission considers that such a small amount of aid will have a negligible impact on trade and competition. The current de minimis threshold is set at €200,000 over a rolling three year fiscal year period. The threshold applies cumulatively to all public assistance received from all sources and not to individual schemes or projects.

This means that the Council cannot offer relief from CIL of over €200,000 to any charitable institution whose activities would constitute a State aid.

Discretionary Social Housing Relief Regulation 49A

RBWM hereby gives notice that discretionary social housing relief in line with Regulation 49A of the Community Infrastructure Levy Regulations 2010 (as amended) is available from the RBWM Community Infrastructure Levy.

Relief may be applied for qualifying dwellings that meet all of the following criteria:

- The dwelling is sold for no more than 80% of its market value (where the market value at any time is the price which the dwelling might reasonably be expected to fetch if sold at that time on the open market).
- The liability to pay CIL in relation to the dwelling remains with the person granted discretionary social housing relief.
- Only discounted housing that is accepted in an associated Section 106 Agreement as affordable housing will be eligible as a qualifying dwelling for relief from CIL.

Note: Any claims for social housing relief must be made prior to development commencing

Relief for Exceptional Circumstances Regulation 55

The Council does not intend to introduce a policy for CIL relief under exceptional circumstances at the time of commencing CIL charging. The Council does have the power to introduce such a policy if it is considered appropriate.