

REPORT TO CABINET

Open/Exempt		Would any decisions proposed :		
Any especially affected Wards All	Mandatory/	Be entirely within Cabinet's powers to decide	YES/NO	
	Discretionary /	Need to be recommendations to Council	YES/NO	
	Operational	Is it a Key Decision	YES/NO	
Lead Member: Cllr R Blunt E-mail: cllr.richard.blunt@west-norfolk.gov.uk		Other Cabinet Members consulted: All		
		Other Members consulted: None specifically		
Lead Officer: Alan Gomm E-mail: alan.gomm@west-norfolk.gov.uk Direct Dial:01553 616237		Other Officers consulted: Management Team		
Financial Implications YES/NO	Policy/Personnel Implications YES/NO	Statutory Implications YES/NO	Equal Impact Assessment YES/NO If YES: Pre-screening/ Full Assessment	Risk Management Implications YES/NO

Date of meeting: **6 December 2016**

Community Infrastructure Levy (CIL) – Examiner’s Report, Charging Schedule, operational arrangements and governance

Summary

- The report covers three subjects:
 - The CIL Examination in September and the outcomes
 - The implementation of CIL
 - Possible mechanisms for deciding how to allocate funds raised from CIL
- The CIL Examiner has reported and concludes that with specified modifications the Borough Council can implement a CIL Charging Schedule.
- His modifications includes the requirement that the proposed CIL of £10m2 in King’s Lynn be reduced to £0m2 having regard to the values found in the town.
- Progress on the operation of a CIL is outlined showing the process of integrating CIL into our current systems to ensure liability to pay and the mechanisms to collect CIL are adequate. A start date for liability to pay CIL is proposed as 15 February 2017.
- Discussion is given about how the Borough Council might wish to consider projects to be supported out of CIL.
- A preferred mechanism of a new Task Group recommending to Cabinet is proposed. Discussions and consideration of the requirements and requests of other bodies are built in to the process.
- Monitoring and accounting for CIL (income and expenditure) is a very important part of the process, and this includes the shares appropriate for parish and town councils.

Recommendation

1. That the Borough Council adopts a CIL Charging Schedule as amended by the Examiner.
2. A formal start date for CIL is set as 15 February 2017
3. The Borough Council agrees to have a policy which allows for payment in kind to be accepted.
4. The provisions for the collection and operation of CIL are noted.
5. The Borough Council works towards a method of CIL governance as outlined in Appendix 4 to this report.
6. Delegated authority is given to the Executive Director - Planning and Environment in consultation with the Portfolio Holder for Development to set up arrangements for CIL governance having regard to the Preferred Option.

Reason for Decision

In order to implement CIL in the Borough

1. Background

1.1 The Examiner who conducted the Borough Council's CIL Examination has now reported and has found that a CIL could be introduced in the Borough. In view of this there is a need to formally adopt the CIL and outline for Members the practical steps to implement it. Additionally consideration is given about how the Borough Council could bring forward a process for spending CIL receipts. A preferred option is suggested.

1.2 This report therefore addresses a number of matters in the following sections:

1. Receipt of the Examiner's Report and recommendation to adopt CIL
2. An overview of the operation of CIL – how liabilities are established and collection of money is effected
3. CIL Governance – How will CIL be utilised and accounted for?

2. Receipt of the Examiner's Report and adoption of CIL

2.1 The Examiner's Report was received on 21 November. (A copy of his report is attached as Appendix1). In summary his report concludes that, subject to some recommended modifications, the King's Lynn and West Norfolk Borough Council's draft Community Infrastructure Levy (CIL) Charging Schedule provides an appropriate basis for the collection of the levy in the area. It meets the requirements of Section 212 of the Planning Act 2008 and will meet the criteria for viability in the 2010 Regulations (as amended).

2.2 Three modifications to the Draft Charging Schedule are required.

- The reduction of the residential development CIL to £0 per square metres in the 'King Lynn unparished area', as development viability on brownfield sites is not sufficient in this area to support a CIL.
- The inclusion of a more detailed map to define the charging zone boundaries of the 'King's Lynn unparished area'.
- The inclusion of descriptions of commercial development types for clarity.

2.3 The full technical description of these modifications and the Charging Schedule is outlined at p18 of the Examiner's Report (attached here as Appendix 1).

2.4 In the opinion of the Examiner, subject to these modifications, the Council is able to demonstrate that it has sufficient evidence to support the Schedule and can show that the levy rates would be set at levels that will not put the overall development of the area, as set out in the Development Plan for the area, at risk. The proposals will secure an important funding stream for infrastructure necessary to support planned growth in the Borough.

2.5 It is clearly disappointing that we are not able to make a charge in the King's Lynn un-parished area to support infrastructure provision in the Borough, albeit a modest charge in relation to other parts of the Borough. However the Examiner has heard the evidence and has made a recommendation in the light of that evidence. The other issues are clarifications and cause no particular difficulty.

2.6 Amongst his other discussion points in his Report the Examiner reminds the Council that it needs to be satisfied it complies with the requirements about 'State Aid'. 'State Aid', in whatever form, which could distort competition and affect trade by favouring certain parties or the production of certain goods, is not allowed. We have followed the processes and methodologies for calculating the levels of CIL, and taken into account costs of development and potential values in setting the rates. The work has been undertaken by a well-respected specialist consultant in the field. There has been no attempt to bring in special terms for sites or bodies involved. The basis of any calculations, and assumptions made have been tested publically at Examination.

2.7 The Council's Solicitor has reviewed the position in relation to 'State Aid' issues as the Examiner notes and is satisfied that the Borough Council has acted appropriately. In the light of the above we consider we have carried out the CIL Viability Study correctly (the Examiner notes that we have). It is a consistent methodology across the whole Borough. We have applied it in a consistent way, allowing for a cushion against the absolute maximum CIL we could charge across the Borough. The infrastructure costs do vary, but again we gave further evidence about this and the Examiner considered it before allowing us to have a CIL. We believe the viability / infrastructure evidence is sound; the modelling is robust and has been applied consistently; and our cushion is not unreasonable (it has been tested as part of the viability). We do not consider that state aid rules are compromised. Additionally we are often at the lower end of the viability spectrum therefore zero rating is a possibility, and is played out on sites in the Borough.

2.8 The Examiner notes that:

- Subject to recommended modifications, the Charging Schedule complies with national policy / guidance.
- Subject to recommended modifications, the Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, and consistency with the Development Plan and is supported by an adequate financial appraisal.

2.9 The charging schedule must now be formally approved by a resolution of the full Council of the charging authority. The recommendation needs to include an appropriate commencement date, following or on approval.

2.10 In terms of commencement dates it is appropriate to give some notice of the imposition of the CIL charges. The proposed timetable consists of:

- 28 Nov – Dispatch of papers for Cabinet
- 6 Dec – Cabinet
- Following Cabinet – initial publicity
- 19 January – Council meeting
- 15 February – Formal commencement of CIL charging regime. (From this date all permissions issued will be liable for a CIL).

3. An overview of the operation of CIL – how liabilities are established and collection of money takes place

3.1 Attached at Appendix 2 is a process chart giving the various stages in establishing liability for CIL and eventual payment when development commences. It is a complex process but is carefully prescribed by Regulations and a series of letters and forms are set down to be used. Given this complexity it has been necessary to commence work on the process of implementing CIL in advance of adoption.

3.2 We have appointed a CIL Officer to oversee the operation of this side of the project and this is paid for by a charge against the CIL collected. Preparations are well advanced to start the process on 15 February as stated above, assuming that Council agrees the adoption and start date.

3.3 In undertaking this preparation we have identified that a Charging Authority can have the ability to accept 'payment in kind' by way of land or infrastructure. It could be applied to projects including additional burial land, allotments, village hall improvements and footpath changes in towns across the county.

3.4 In order to do so the Borough Council must give notice that it wishes to do this should the potential arise. It is recommended that we follow this course.

3.5 A formal notice stating the wish to do this is attached at Appendix 3.

4. CIL Governance – How will CIL be utilised and accounted for?

4.1 The rates and applicability are clearly laid out and the mechanisms for establishing liability and how payment is made are carefully explained and controlled

by Regulations. The CIL Regulations do not cover governance arrangements how for the Borough Council as Charging Authority approaches spending – there is complete discretion to the Borough Council to put in place whatever structures and procedures as are seen to be appropriate. Recent changes to the regulations do outline how the proportions due to Town and Parish Councils are calculated and their reporting arrangements. There is no specific involvement by the County Council although it is important to remember that the Borough Council has a duty to co-operate with the County Council.

4.2 In terms of Parishes and Towns 15% of CIL revenues go direct to the Parish/Town Council in whose area the development occurs, subject to a cap of £100 per existing dwelling in the Parish. This increases up to 25% with no cap where there is a neighbourhood plan in place.

4.3 In the Borough we have the area of King's Lynn where there are no parish or town councils, so the automatic delegation of spending to those bodies cannot take place. We have had approaches about setting up Neighbourhood Forums for the purposes of preparing a Neighbourhood Plan, but these have not yet been formally put forward. In this case

4.4 Communities without a Parish, Town or Community Council will still benefit from the 15% neighbourhood portion (or 25% portion, if a neighbourhood plan or neighbourhood development order has been made). If there is no Parish, Town or Community Council, the charging authority will retain the levy receipts but should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding. Charging authorities should set out clearly and transparently their approach to engaging with neighbourhoods using their regular communication tools e.g. website, newsletters, etc. The use of neighbourhood funds should therefore match priorities expressed by local communities, including priorities set out formally in neighbourhood plans.

4.5 The Government does not prescribe a specific process for agreeing how the neighbourhood portion should be spent. Charging authorities should use existing community consultation and engagement processes. This should include working with any designated neighbourhood forums preparing neighbourhood plans that exist in the area, theme specific neighbourhood groups, local businesses (particularly those working on business led neighbourhood plans), and using networks that ward councillors use. Crucially this consultation should be at the neighbourhood level. It should be proportionate to the level of levy receipts and the scale of the proposed development to which the neighbourhood funding relates.

4.6 It would be relevant in reporting the spending of CIL (or monitoring potential CIL liabilities) to have regard to the mechanisms that the Borough might use for these un-parished areas.

5. Principles to guide CIL spending

5.1 Given that there are no specific requirements for governance it would be helpful to outline a list of principles that would help to underpin governance arrangements. These are set out below;

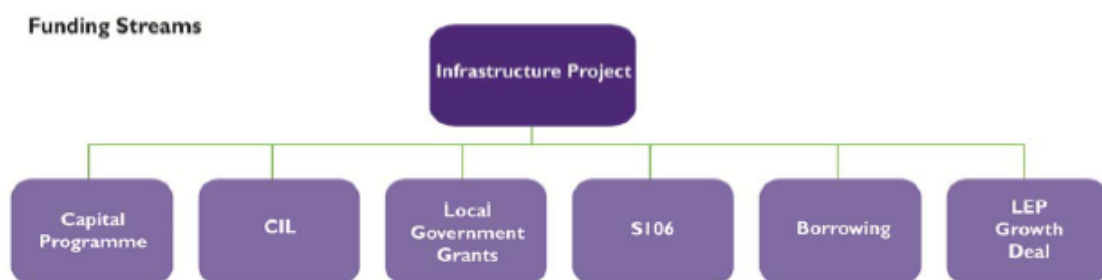
- Plan-led - utilising the Infrastructure Delivery Plan and other programmes aimed at making the Borough's infrastructure fit for increased growth, as a framework for investment
- Priority driven - ensuring an appropriate balance between more strategic (e.g. area wide improvements to roads) and more localised items to cover community aspirations.
- Time focused – ensuring that the right infrastructure can be provided at the right time and that the necessary design work is undertaken and other barriers to delivery are addressed.
- Forward looking - providing a clear mechanism for saving up or contributing a share to more significant infrastructure items.
- Cost effective – challenging procurement processes to ensure that the most cost effective solutions are found.
- Leverage – influencing the deployment of other capital programmes so as to maximise overall investment.
- Additionality – ensuring that funding from CIL does not simply become a substitute for a different source of funding.

6. How governance has been approached elsewhere

6.1 Officers have considered CIL governance structures that have been introduced in other Local Authority areas. This included Plymouth, Taunton Deane, Bristol, Huntingdonshire, Colchester and East Cambridgeshire. These had varying degrees of engagement with Members and other key stakeholders.

6.2 One choice that falls to be made is whether to have a formalised arrangement with the County Council as has been introduced in some places including Huntingdonshire. Another area to be clarified is whether certain types of infrastructure should be encouraged to be delivered through the proportion received by Parish and Town Councils. Items such as open space may appropriately be delivered with Parish support and may help ensure delivery.

6.3 The introduction of the CIL represents an opportunity for the Borough Council to direct funding towards the delivery of critical infrastructure in the area. However we have clearly taken that key role in provision in the recent past. As Charging Authority we will be directly collecting and controlling funds to spend. We have our own capital budgets and successfully work with others to deliver projects. CIL is potentially one more stream of funding.



6.4 A key issue is how investment decisions will be taken. This will necessarily involve a process of prioritisation set out against the framework provided by the Local Plan and any accompanying Infrastructure Delivery documents, and current Borough Council priorities.

6.5 Different potential structures exist with varying degree of engagement with Members and stakeholders outside of the Council. The precise structure will need to fit the Borough and be sufficiently robust to manage significant competing priorities.

Potential options are discussed below.

1. A stand-alone Group or a joint board with the County Council and other infrastructure partners which has responsibility to define and propose CIL spending, but which has to be agreed by the Borough Council.
2. A more informal group consisting of representatives from Borough, County and Parish Councils which assesses projects and advises the full Borough Council.
3. A mixture, whereby a set of principles or priorities is worked up with a set of organisations but the assessments are done by a Borough Council Task Group and agreed by the Borough Council Cabinet

7. Administration and monitoring

7.1 Under the Regulations, the Council is permitted to allocate up to 5% of all CIL receipts to assist in the costs of administering CIL. The Council will deduct these and the costs of monitoring CIL from the 5%. The appointment of a CIL Office is noted above.

7.2 The Borough Council must account for receipts and any spending occurring. The Borough Council must publish, on an annual basis, the amount of CIL money it has received, spent, brought forward from previous years, intends to carry forward to the following year and where money has been spent. 15% / 25% of all CIL receipts (as explained above), under the Regulations, must be transferred to the Parish or Town Council (where development has occurred in their area). In a Regulation 62A report, the Parish/Town needs to cover the position as well.

8. Process for requesting CIL contributions to be allocated to a project

8.1 A broad list of suitable / necessary infrastructure projects (the 'Regulation 123' list) is included with the CIL documents on our website. However this is neither detailed or project specific. Potential projects are outlined in various documents such as the Borough Infrastructure Study, the Local Plan and our capital programme. These are clearly candidate projects, as would be proposals from the County Council to invest in new schools for example. However there should be a transparent process where bids are made and projects analysed and prioritised. A stakeholder should be able to apply for a project that is included on the R123 List, to be funded, in whole or in part, by CIL contributions. The stakeholder should write to the Council requesting allocation of CIL funds to their project.

8.2 A project being included on the R123 List does not signify a guarantee of CIL funding. Whether a project successfully receives CIL funding will depend on the

Borough Council's priorities at the time of the application for funding being made, and the amount of CIL funding available.

8.3 Any request should include the following information:

- Details of the scheme
- Timetable for delivery (indicative will suffice)
- Why the scheme should benefit from CIL funding
- Where CIL is only intended to fund part of the project, provide details/evidence of other sources of secured funding

8.4 Once the request has been received, a group will discuss and assess the application and a recommendation will be made an appropriate body.

9. How to spend the money

9.1 The Planning Advisory Service carried out research and found that many of the case study authorities said that their spending priorities were shaped by their own corporate (or capital) programmes. This provides a ready-made system for justifying spending on potentially 'oven-ready' infrastructure projects. However there a likely to be schemes necessary to accommodate growth that requires investment from other organisations e.g. schools, health, transport etc. The Borough Council may feel that it has an overall co-ordinating role to fulfil for the Borough area and promote directly a set of localised priority projects.

9.2 Good practice suggests that an annual funding programme should be prepared, offering transparency as to project choices etc. As noted above bids can be invited to inform priorities. Some authorities offer a consultation on spending priorities for the coming year.

9.3 A series of options could be put forward, ranging from strategic to local, as below.

- Prioritise a strategic project
- Prioritise several smaller projects
- A combination of both
- Save CIL receipts for future years

9.4 There are clearly potential projects which overlap with spending from the County Council. Traditionally spending via S106 has been applied to education improvements and new buildings. This could still be an option. However as part of any spending programme it may be helpful to have some form of memorandum of understanding with the County Council and other strategic organisations. Although not legally binding, it could represent "a set of shared principles".

9.5 In terms of priorities there will be aspirations to cover a number of types of schemes: (perhaps from)

- Capital programme
- Joint schemes
- **Local** schemes to support parish and towns
- **Strategic** long term schemes

9.6 Without absolute understanding of receipts and projects at the moment some form of dedicated group to assess matters would be helpful, and some form of Task Group could be instigated.

10. A draft Governance Structure – Preferred Option

10.1 The attached diagram (Appendix 4) gives an option for handling CIL receipts and assessing potential spending. It makes use of existing structures in the Borough Council. It also tries to be straightforward without unnecessary processes. The rationale is that whilst CIL is a new and welcome source of funding, it is only one stream which we work with. Existing processes handle those sources of investment and there seems no reason to invent a vastly different structure for CIL.

11. Overall conclusion

- We now have the Examiners' Report which allows for the Borough Council to adopt the CIL Charging Schedule.
- Members need to consider whether in the light of the Examiner's Report and recommended modifications, they still wish to proceed and if so agree the recommendation to ask Council to adopt CIL.
- In order to give time for the Borough Council to announce the adoption of CIL and for landowners and developers to make adequate preparations it is proposed that the formal introduction of CIL will be 15 February 2017.
- Members are asked to note the arrangements made for collecting and advising on CIL.
- A specific policy relating to 'payment in kind' is recommended.
- A preferred option for assessing, deciding and monitoring CIL spending is proposed.
- If Members agree this is appropriate we can design the process in more detail and start operating it.

12. Options Considered

12.1 Individual options are described above. In general terms the Borough Council does have the opportunity to decline to have a CIL. However the in principal decision was discussed before the submission of the CIL Draft Charging Schedule for Examination, and the decision was taken to proceed.

13. Policy Implications

13.1 The CIL is the Government's preferred method for gathering funds to spend locally on infrastructure. Our ability to use Section 106 legal agreements has been restricted. Therefore our requirements have to reflect this funding channel change.

14. Financial Implications

14.1 Overall there is a clear positive effect. In previous reports we have discussed the potential amounts of funding that might be available from CIL. This could amount

to £13-£16M over 10 years. In addition a more direct funding stream will be available to parish and town councils where development occurs and a CIL is charged (see paras 4.2 – 4.4 above).

15. Personnel Implications

15.1 A CIL Officer has been appointed and the costs of the post will be covered from a % charge against CIL receipts.

16. Statutory Considerations

16.1 The process of preparing a Draft CIL and having this examined is governed by CIL Regulations (these have been amended a number of times since the original set in 2010). To a degree the Examiner checks whether we comply with these and that we have taken into account the correct information. As noted above he concludes we have.

16.2 The issue of 'state aid' is dealt with at paragraph 2.6/7 above.

17. Risk Management Implications

17.1 CIL Receipts will depend on the pace of permitted applications being commenced. It will be some time before the Borough Council is collecting meaningful amounts of CIL.

Equality Impact Assessment (EIA)

Attached

Declarations of Interest / Dispensations Granted

Background Papers

(Definition : Unpublished work relied on to a material extent in preparing the report that disclose facts or matters on which the report or an important part of the report is based. A copy of all background papers must be supplied to Democratic Services with the report for publishing with the agenda)

(The CIL section of the Borough Council website contains links to all the relevant material, particularly the Examination and further additional material referred to above).



Pre-Screening Equality Impact Assessment

Name of policy/service/function	Community Infrastructure Levy – Charging Schedule				
Is this a new or existing policy/ service/function?	New /Existing (delete as appropriate)				
Brief summary/description of the main aims of the policy/service/function being screened. Please state if this policy/service rigidly constrained by statutory obligations	Charge per square meter levied on new development in the Borough to contribute to additional supporting infrastructure across the Borough.				
Question	Answer				
<p>1. Is there any reason to believe that the policy/service/function could have a specific impact on people from one or more of the following groups according to their different protected characteristic, for example, because they have particular needs, experiences, issues or priorities or in terms of ability to access the service?</p> <p>Please tick the relevant box for each group.</p> <p>NB. Equality neutral means no negative impact on any group.</p>		Positive	Negative	Neutral	Unsure
	Age			x	
	Disability			x	
	Gender			x	
	Gender Re-assignment			x	
	Marriage/civil partnership			x	
	Pregnancy & maternity			x	
	Race			x	
	Religion or belief			x	
	Sexual orientation			x	
	Other (eg low income)			x	
Question	Answer	Comments			
2. Is the proposed policy/service likely to affect relations between certain equality communities or to damage relations between the equality communities and the Council, for example because it is seen as favouring a particular community or denying opportunities to another?	Yes/ No	Principally this is a levy on the cost of development, and does not directly impact on specific groups			
3. Could this policy/service be perceived as impacting on communities differently?	Yes/ No				
4. Is the policy/service specifically designed to tackle evidence of disadvantage or potential discrimination?	Yes/ No				
5. Are any impacts identified above minor and if so, can these be eliminated or reduced by minor actions? If yes, please agree actions with a member of the Corporate Equalities Working Group and list agreed actions in the comments section	Yes/ No	Actions: None for reason as above			
		Actions agreed by EWG member: Claire Dorgan			
Assessment completed by: Name Alan Gomm					
Job title Planning Policy Manager	Date 23 November 2016				

Please Note: If there are any positive or negative impacts identified in question 1, or there any 'yes' responses to questions 2 – 4 a full impact assessment will be required.

Report of CIL Examiner



The Planning Inspectorate

Report to King's Lynn and West Norfolk Borough Council

by Mr Philip Staddon BSc, Dip, MBA, MRTPI

an Examiner appointed by the Council

Date: 21 November 2016

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT KING'S LYNN AND WEST NORFOLK BOROUGH COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 10 June 2016

Examination hearings held on 6 September 2016

File Ref: PINS/V2635/429/5

Non-Technical Summary

This report concludes that, subject to some recommended modifications, the King's Lynn and West Norfolk Borough Council's draft Community Infrastructure Levy (CIL) Charging Schedule provides an appropriate basis for the collection of the levy in the area.

Three modifications to the Draft Charging Schedule are required. First, the reduction of the residential development CIL to £0 per square metres in the 'King Lynn unparished area', as development viability on brownfield sites is not sufficient in this area to support a CIL. Second, the inclusion of a more detailed map to define the charging zone boundaries of the 'King's Lynn unparished area'. Third, the inclusion of descriptions of commercial development types for clarity.

Subject to these modifications, the Council is able to demonstrate that it has sufficient evidence to support the Schedule and can show that the levy rates would be set at levels that will not put the overall development of the area, as set out in the Development Plan for the area, at risk. The proposals will secure an important funding stream for infrastructure necessary to support planned growth in the borough.

Introduction

1. This report contains my assessment of King's Lynn and West Norfolk Borough Council's draft Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008 (as amended). 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 set out in the National Planning Practice Guidance (PPG).
2. To comply with the relevant legislation and guidance, the local charging authority has to submit a charging schedule that should set an appropriate balance between helping to fund necessary new infrastructure and the potential effect of the proposed CIL rates on the economic viability of development across its area.
3. The basis for the examination, on which Hearing sessions were held on 6 September 2016, is the Draft Charging Schedule, hereafter referred to as the 'DCS'. The DCS was published for public consultation between 14 March 2016 and 25 May 2016. The DCS proposes CIL charges for residential development and for certain types of retail development.
4. The DCS proposes different levels of CIL charge for new residential development based on geographic location and further differentiates

specified 'strategic sites' (effectively exempting them from the CIL charges).

5. There are two geographically large proposed CIL charging zones that cover most of the borough and a third, much smaller, zone defined around the town of King's Lynn.
6. In the *North East and East areas of the Borough (East of the Great Ouse and North of A1122/A134)*, the proposed CIL would be £60 per square metre (psm). In the *South and West of the Borough (West of the Great Ouse and south of A1122/A134, including Downham Market)*, the CIL would be £40 psm. In the smaller *King's Lynn unparished area* the CIL would be £10 psm.
7. The DCS identifies six 'strategic sites' where it is proposed that CIL would be zero rated (£0 psm). Four of these are in or adjacent to King's Lynn and the other two are at Downham Market and Walsoken (Wisbech fringe). Each of these sites is supported by a more detailed inset plan in the DCS that defines its geographical boundaries. Any other strategic sites, not specifically identified with an inset plan, would incur the proposed CIL charge based on their location i.e. they would not be subject to any reduced rate.
8. The DCS also proposes that developments of 'Sheltered / Retirement Housing (C3)' would be zero rated (£0 psm) in all areas of the borough.
9. The proposed retail CIL charges are not zoned and would apply across all parts of the borough. The DCS proposes £100 psm CIL charges for 'supermarket' and 'retail warehouse' developments. 'All other retail development' would be zero rated (£0 psm).
10. For completeness, the DCS sets out that CIL would be zero rated for 'all other development.'

Preamble and procedural matters

11. This has been a complicated and rather protracted examination. The Council's DCS attracted a large number of representations and a significant number of Representors attended and contributed to the Hearing sessions. Although the scope of representations was wide ranging, two particular themes dominated the Hearing sessions. The first was a concern by parish bodies that CIL should be higher in certain locations and that certain large sites should not be exempted. The second was about the treatment of strategic sites in terms of consistency and the robustness of the Council's evidence base.
12. The complexity and duration of the examination was also a product of a number of procedural matters and difficulties that arose. These are summarised below.

Publication of documents

13. In the period leading up to the Hearing, it became apparent that the Council's detailed development appraisals had been detached from its main viability report. They did not reach me in the initial document bundle nor were they posted on the CIL examination website.
14. However, the Council clarified that the full details had been available throughout its formal consultation period and thereafter, through its consultation portal. For completeness and transparency, the Council added the appraisal material to the CIL examination webpages.

Requests to submit additional representations in advance of the Hearing

15. One Representor claimed that the publication issue had disadvantaged his representations, as he wished to compute and submit 'detailed alternative calculations' to the examination. However, Regulation 17 (2)(a) establishes a certain discipline by prescribing that written representations 'must' be made within the set consultation time limits.
16. The period leading up to the Hearing session is not an opportunity to add new evidence, which should have been submitted during the prescribed consultation period. Accordingly, I declined the Representor's request that I allow him to submit late evidence and to issue 'position statements' with appendices prior to the Hearing.

Late requests to participate in the Hearing sessions

17. Shortly before the scheduled Hearing sessions, an amenity society made a request to participate in the Hearing sessions. However, as it had not made any representations through the consultation stages, I declined this request, in the interests of procedural fairness.

Errors and omissions

18. It became apparent through the scrutiny of the Hearing sessions that there were a number of errors and discrepancies in the Council's viability evidence. There were also instances where the evidence would benefit from some clarification. The Council addressed these matters by further updates following the Hearing. In the interests of transparency and fairness, I allowed other parties to consider and make comments on the additional material, setting a deadline of 4 October 2016.

Further comments and representations

19. The post Hearing consultation exercise on the Council's additional material resulted in further submissions from seven Representors. Two of those submissions were extremely detailed and included new appended evidence. Whilst I have read and considered this material, I have done so in the

context that other parties, including the Council, have not had the opportunity to comment on it. I have weighted it accordingly in my assessment.

Scope of this examination

20. Given the breadth and complexity of the representations received, it is important to appreciate the relatively narrow remit of examining the Council's DCS under the law and the guidance. The examination is essentially focused on the economic viability effects of the CIL proposals.
21. Many of the representations I have considered in this examination relate to matters of perceived 'fairness' to existing local communities and to views that the Council could, or indeed should, adopt different CIL proposals. These views are relevant and important and I have commented on them where appropriate. However, my examination must focus on the DCS as published and its likely impact on the economic viability of the planned development in the borough. Put more simply, it means that whilst I can recommend removal or reduction of CIL charges where I consider they threaten development viability, I cannot impose higher CIL rates or design a different Charging Schedule for the Council (as some would wish).

Background evidence – King's Lynn and West Norfolk Borough and the Development Plan

King's Lynn and West Norfolk Borough

22. King's Lynn and West Norfolk Borough Council covers a large and predominately rural area in East Anglia (circa 550 square miles). It extends from the north Norfolk coast, along the eastern side of The Wash and through the Marshland, Fens and Brecks.
23. The 2011 Census recorded a borough population of 147,451. The main population centre is the town of King's Lynn itself, which is home to about a third of the borough's residents (46,093 in the 2011 Census). Other notable settlements are Downham Market and the seaside resort of Hunstanton, with much of the remaining population living in a network of over 100 villages spread across the borough. It has an ageing demographic profile and this is particularly marked in some areas such as Hunstanton. The borough also has links with the town of Wisbech that sits just outside Council's administrative area abutting its western boundary.
24. The borough's economy is mixed and diverse and includes agriculture and fishing, hotels and restaurants, manufacturing, banking, finance and insurance. More than half of the borough's jobs are based in King's Lynn.

Local Development Framework – Core Strategy (adopted 2011)

25. The Core Strategy (CS) sets out the broad development requirements and strategy for the borough in the period up to 2026. The CS seeks to direct growth to the most sustainable and accessible locations in line with the borough's defined hierarchy of settlements. This means that most of the planned growth is directed to the 'main towns' of King's Lynn, Downham Market, Hunstanton and the 'Wisbech Fringe'¹.
26. In terms of housing growth, the CS plans a minimum of 16,500 new homes in the period between 2001 and 2026. The biggest proportion will be in the main town of King's Lynn, which will account for about 7,510 new homes (45.5% of the overall total), including an urban extension of at least 1,600 units south-east of the town (at West Winch).
27. The CS housing growth target figures for the other main towns are each expressed as 'at least' and are: Downham Market – 2,710 new homes; Hunstanton – 580 new homes and Wisbech Fringe – 550 new homes. The balance of housing growth would be within 21 'Key Rural Service Villages' (2,880 dwellings) and 34 'Rural Villages' (1,280 new dwellings). The CS proposes that, to meet these requirements, new allocations of 7,105 will be made and that this will be achieved through the production of a Sites Allocations Development Plan Document.
28. The CS sets out an affordable housing target of 15% on sites in King's Lynn and 20% elsewhere. The threshold for affordable housing is set at sites of 0.33 hectares or 10 or more dwellings in the King's Lynn, Downham Market and Hunstanton. In the rural areas, the threshold site size is 0.165 hectares or five or more dwellings. Most of the Council's parishes (91 out of 96) are 'designated rural areas' where a lower threshold (than that set out in the PPG) is justified.
29. The CS seeks to support employment growth, with a target of creating 5,000 new jobs in the period to 2021². It proposes the allocation of 66 hectares of employment land, split between King's Lynn (50 hectares), Downham Market (15 hectares) and Hunstanton (1 hectare).
30. The CS approach to retail and town centre uses follows the settlement hierarchy. It includes a proposed 20,000 square metre floorspace extension to the King's Lynn town centre (west of Railway Road) and support for the maintenance and enhancement of lower order centres.

Sites Allocations and Development Management Policies Local Plan (SADMPLP)

¹ Wisbech lies in Fenland District Council but some of its planned growth is within the administrative area of King's Lynn and West Norfolk Borough Council.

² A target and date carried forward from the former Regional Spatial Strategy.

31. The SADMPLP seeks 'to complement and facilitate the implementation of the CS by providing detailed policies and guidance'³ and this includes setting out site specific allocations. The Plan was submitted for examination in April 2015 and examination Hearings were held in July, September, October and November of 2015. The Inspector's report and his recommended modifications were published on 22 August 2016 i.e. just a few weeks before the CIL examination Hearing.
32. The Inspector assessed that the SADMPLP satisfactorily reflected the CS and that it provided an appropriate basis for the planning of the Borough, providing a number of modifications were made. The modifications included a commitment to an early review of the Local Plan and changes to various site specific allocations. The Council formally adopted the modified SADMPLP on 29 September 2016.
33. A Local Plan 'task group' has been established which will oversee the immediate' Local Plan review process that the Council has committed to. This process will, in effect, update and revise the CS and marry it with the SADMPLP.

Development Plan Conclusions and CIL regime implications

34. The adopted CS and SADMPLP provide a strategic Planning framework to guide growth in the borough. This establishes a firm foundation for any CIL regime. The SADMPLP is an important and up to date document in this CIL examination, as it sets out the portfolio of 'real world' sites that will be critical to the delivery of the CS (and may be affected by the CIL). However, it is also important to recognise that the review of the Local Plan may result in new sites and new growth directions that may, in turn, have future CIL implications.

Infrastructure needs and evidence

35. The Council has produced an Infrastructure Study (May 2015) which, in effect, updates a similar study produced in 2010 to support the CS. This latest study seeks to provide an up to date assessment of the infrastructure requirements needed to support the growth planned through the adopted CS and the (then emerging) SADMPLP.
36. It is a comprehensive study that draws on consultation with key infrastructure service providers to assess requirements associated with transport, utilities, flood defences and a wide range of community and social infrastructure, including schools, healthcare, fire and police stations, community centres and green infrastructure.
37. There are still some gaps in the infrastructure costings, but the Council has

³ Paragraph A.0.8 of the SADMPLP.

produced two lists based on known scheme costs. The first list is a set of projects that are likely to be 'priorities' for CIL funding and the cost of these totals £76.7 million, the largest elements being for schools (circa £31 million), road schemes (£30 million) and lesser amounts for leisure, sport and flood defences. The second list sets out 'additional' projects, which total £108.8 million, the greatest part of which (£75 million) would be for the A47 Middleton / East Winch Bypass project.

38. The Council estimates that its residential CIL proposals may generate a total revenue of £16 million in the remaining (10 year) plan period. It has discounted this figure to allow for the assumed parish / neighbourhood portion to arrive at a net estimate of £13.5 million. This would amount to about 17.6% of the total costs of the 'priority' project list and about 7.3% of the two lists combined ('priority' and 'additional').
39. The Council has produced a Draft Regulation 123 list that sets out the infrastructure that it intends to fund, partly or wholly, through CIL receipts. The list does not define specific projects but includes the following infrastructure types: transport related infrastructure (roads and public transport); library facilities; additional pre-school places at existing establishments; primary school places at existing schools; provision of secondary, sixth form and further education places; health facilities; leisure and community facilities; 'off-site' open space and public realm; strategic green infrastructure; open space; strategic flooding and waste infrastructure.
40. The Draft Regulation 123 list also identifies six strategic sites (those identified in the DCS) and states that it is expected that these '*....will provide the needed infrastructure for each site through planning obligations (and not Community Infrastructure Levy) relating specifically to those developments.*'
41. In my view, the Draft Regulation 123 list is reasonably clear and comprehensive and provides the certainty and transparency on the destiny of CIL revenues. However, the Council may wish to consider adding a little more detail on the demarcation between CIL and S.106 funded infrastructure. For example, it has been suggested that certain site specific local transport infrastructure (such as a site access / junction improvement) required as a direct result of a development should be differentiated. This is a matter for the Council to consider as it develops its Regulation 123 list.
42. Overall, the infrastructure evidence indicates that the funding gap is substantial and that the imposition of a CIL regime is justified. CIL revenue would make a modest, but nonetheless important, contribution to reducing that gap and supporting the delivery of new infrastructure required to support growth. However, a substantial funding gap would remain.

Economic viability evidence – methodology and modelling assumptions

Methodology

43. The Council commissioned consultants to undertake a Viability Assessment to support its CIL proposals. There are three separate volumes of work.

First, the '*Site Specific Allocations and Policies and Community Infrastructure Viability Study – November 2013*', which provided part of the evidence base for the SADMPLP and informed the preparation and publication of the Preliminary DCS (PDCS). Second, the '*CIL – Post PDCS Viability Update – March 2016*'. Third, the '*Additional Material Requested by Examiner*' document produced in September 2016. The second and third documents are of most relevance to this examination and are hereafter referred to as the 'VA'.

44. The VA uses a residual valuation approach. The modelling seeks to establish a Residual Land Value (RLV) by subtracting all development costs (including an allowance for developer profit) from the total value of the completed scheme - the Gross Development Value (GDV). The RLV is then compared to Threshold Land Values (TLV), which are set at levels at which it is assumed a typical willing landowner would be prepared to sell the land. If the RLV exceeds the TLV then any 'additional profit' (or 'overage') could be used to make CIL contributions. Where this additional profit occurs, the modelling expresses it as a financial value per square metre and this value can be seen as the maximum theoretical 'ceiling' for setting CIL.
45. Clearly, such modelling involves making a wide range of assumptions about the component inputs of development costs and revenues, and these have been adjusted and updated through the modelling iterations. Some of the inputs, such as sales values, land costs, building costs and developer profit levels, can have a profound influence on the modelling outputs and, accordingly, assumptions need to be reasonable and robust. The assumptions used by the Council were subject to a degree of challenge from some Representors. The main assumptions and issues arising are explored below.

Residential development modelling assumptions

Modelled site types

46. The residential modelling was undertaken for nine 'large sites' and ten development typologies.
47. The large sites are actual known developments anticipated to come forward in the plan period as follows:

<u>Site name / location</u>	<u>Modelled number of units</u>
Boal Quay, King's Lynn	350
South of Parkway, King's Lynn	260
Lynnsport, King's Lynn	297
Bankside, King's Lynn	200
West Winch, King's Lynn	3,820
Hall Lane, South Wootton	500
Knight's Hill, South Wootton	700

East of Lynn Road, Downham Market	400
Wisbech Fringe	550
TOTAL	7,077

48. The ten typologies ranged from a single unit 'infill' development up to 100 units. This portfolio of sites included brownfield and greenfield site scenarios and a housing mix, size and density informed by the Council's knowledge of sites likely to come forward, based on its most recent Strategic Housing Land Availability Assessment (SHLAA).
49. Taken together, the large sites and the typologies represent a very comprehensive range of the housing developments that are likely to make up the bulk of planned delivery in the Plan period.

Sales Values

50. The Council's consultants undertook an analysis of new build house prices. An initial survey was undertaken in late 2012 and refreshed in June 2015. Values were triangulated from a number of sources including published asking prices (with some discounting applied), actual prices paid sourced from Land Registry records, other secondary sources and stakeholder feedback.
51. The Council used this data to define bespoke assumed sales values for each of the nine 'larger sites' and for the ten typologies for each of the three charging zones. That process of defining a very wide range of assumed values is not altogether transparent from the Council's written evidence. At the Hearing sessions the Council's consultant did advise that the process does involve the 'art' of judgement based on the available evidence, which he recognised was limited.
52. There was Representor criticism that the values employed were generally too high and that suggested lower values should be used. Particular attention was drawn to the Wisbech Fringe, where it was suggested that £1,700 - £1,800 psm values should be used rather than the £2,100 employed by the Council. In the post Hearing submissions I was sent a copy of a 'viability and commercial report' covering the East Wisbech urban extension⁴ which employed a lower sales value of about £1,875 psm. However, the report itself recognises that the local market is not stable and that there has been little new development. It also notes that local estate agents have long waiting lists for properties and assesses that there would be 'good demand' for new homes on the urban extension.
53. In my view, there is something of a question mark over the Wisbech fringe values which current available evidence cannot answer with certainty. Whilst it may have been preferable for the Council to adopt values closer to that used in the other report, the proposed £0 CIL zone for this allocation renders it of limited relevance.

⁴ East Wisbech Urban Extension – Viability and Commercial Reports – Prepared by Colliers for ATLAS on behalf of Fenland District Council and King's Lynn and West Norfolk Borough Council - July 2016.

54. I do not consider that the particular issues concerning the Wisbech fringe values have wider implications across the borough. Indeed, I am satisfied that the assumed values do have a reasonably strong resonance with the actual empirical evidence and are suitable for high level CIL testing. That said, it must also be recognised that the dataset is limited in scale and there are some gaps, such as in locations where there have been no new build activity. Furthermore, notwithstanding the fact that there is a definite variation in value tone across the borough (with higher values in the north and west), there are also some quite significant variations within those value tones. For example, some of the 'prices paid' sales values in King's Lynn are comparable with those achieved in Hunstanton (where higher values are assumed).
55. None of these factors is altogether unusual in viability testing for CIL purposes, but they do underline the need for a degree of caution in interpreting modelled results. Indeed, that real world variability is a matter that needs to be considered 'in the round' when interpreting the results and ensuring that CIL rates are set with appropriate viability headroom (or 'buffers').

Land values

56. The Council gathered quantitative and qualitative evidence from a number of sources. These included its earlier Affordable Housing Viability Study (2008 and 2011 update); Valuation Office Agency (VOA) reports; known transactional evidence and feedback from its CIL consultation exercises and stakeholder engagement.
57. This process led to the establishment of assumed 'alternative land prices' of £25,000 per hectare for 'agricultural'; £50,000 per hectare for 'paddock'; £100,000 per hectare for 'garden' land and £380,000 per hectare for industrial land. From these base values 'viability thresholds' were devised to represent the assumed price that would trigger a landowner to sell a site for development. For certain already developed sites this involved adding a 20% premium to the existing use value. However, where the land was undeveloped, much greater value uplifts were employed. For example, the threshold for development of agricultural land was assumed to be £330,000 per hectare (13.2 times the existing use value).
58. I consider the establishment of land values and threshold land values to be sensible and robust for CIL testing purposes. Indeed, the Council's greenfield land value assumptions were supported by a number of Representors, although there were concerns about how the values should be applied in modelling on large sites which require land for open purposes (which cannot be developed).

Build costs and related costs and fees

59. 'Base' building costs for residential schemes were drawn from Building Cost Information Service (BCIS) rates using the 'median' rates for the area, with some enhancement for locally required environmental performance. Allowances were also made for enabling, external works costs and costs

associated with developing brownfield sites.

60. Although the BCIS base used was, by the time of the examination, a little dated (July 2015 figures were used), this does coincide with the most recent refresh of sales values. I am satisfied that any intervening build cost inflation can be factored in to the ultimate assessment of the 'headroom' above the proposed CIL rates.
61. Cost assumptions in respect of fees, contingencies and finance conformed to accepted industry norms.

Profit

62. Developer profit was assumed at levels of 20% of the scheme GDV. In my view, this is a relatively high profit level when applied across the entire scheme. It has become commonplace for charging authorities to model a reduced profit level on the affordable housing element of a scheme (typically to 6%). This reflects its de-risked nature. Nonetheless, the assumed profit level does build a degree of caution into the modelling.

Affordable housing

63. Affordable housing cost assumptions were modelled at the policy target level for the respective location (15% King's Lynn and 20% elsewhere) with a 70/30 tenure split between social rented and 'intermediate' (shared ownership) housing. The costs applied for these affordable housing products appeared reasonable and the Council advised that they had been informed by experience of what Registered Providers were able and willing to pay. The Council further advised that as its affordable housing targets are set at modest and realistic levels, they are generally achieved in practice.

S.106 Costs

64. For the larger sites, known S.106 costs were factored into the appraisals. These varied quite significantly, with some sites requiring major on-site school investment and transport schemes and others subject to very limited requirements. The range spanned from £266 per dwelling up to £9,207 per dwelling.
65. On other sites (the typologies), the modelling assumed a notional £2,000 per unit to cover site specific S.106 infrastructure requirements.

Commercial development modelling assumptions

66. The commercial development modelling used similar assumptions and methodology to assess the viability of different types of office, industrial and retail uses. The assumptions employed for assumed rents, yields, build costs, developer's margin and finance all appeared reasonable for high level CIL testing purposes.

Residential Development CIL – appraisal findings, zones and charges

67. The nine tested large sites generated a wide spectrum of viability results. It ranged from substantial negative viability, with a modelled 'maximum' CIL of -£491 psm to relatively healthy viability of £177 psm on a greenfield site. This reflects the diverse nature of the portfolio of large sites and, given the challenges made by Representors on some sites, it is necessary to explore each in turn. I begin with the six sites that the Council proposes to zero rate for CIL purposes and then explore the others (where CIL would be applied).

The six £0 CIL 'large sites' – viability modelling results

68. Boal Quay, King's Lynn – This brownfield waterfront site is allocated for a high density scheme of 350 homes (mainly flats). Anticipated S.106 contributions are £105,684. The viability modelling indicates that this would be the most challenged of all of the tested large sites. This is clearly a product of the brownfield nature of the site and the envisaged mix (primarily flats). The modelled deficit of -£491 psm provides a clear justification for a £0 CIL rate on this site.
69. South of Parkway, King's Lynn – This former college grounds site is allocated for 260 units, comprising a mix of family housing and flats. S.106 contributions of £104,222 are anticipated. The modelling shows a current viability deficit (-£59 psm CIL) which justifies the £0 CIL rate on this site.
70. Bankside, West Lynn - This brownfield site was originally allocated for 200 dwellings but this was reduced through the SADMPLP to 'at least 120' to reduce visual implications of the proposal. S.106 contributions of £1.6 million are anticipated. The modelling of 200 units returned a negative result of -£290 psm. The reduction in unit numbers (and associated GDV) is likely to worsen this situation. The £0 CIL rate is justified.
71. West Winch King's Lynn - This Strategic Growth Area is the most significant and substantial allocation in the borough. The CS established an allocation of 'at least 1,600 new homes' and identified this as a strategic growth direction (beyond the CS plan period) to accommodate 3,000 – 3,500 dwellings in the fullness of time. The VA tested the full scheme based on the latest understanding of numbers (3,820 units) which covers the main site and some outlying sites (all are included in the DCS site inset map). The result was a negative theoretical CIL of -£129 psm. This appears to be largely a product of the heavy S.106 costs on this site, which are anticipated to be over £18 million (notably for schools and transport infrastructure). The CIL modelling does not indicate that the scheme will not come forward and I understand significant progress has been made towards delivery. However, it does suggest that landowners may have to accept lower returns (than the CIL modelling assumed threshold values). The £0 CIL rate is justified.
72. East of Lynn Road, Downham Market – The modelling for this 400 unit site, with S.106 contributions of £104,060, did generate a value just above the set threshold. The modelled potential maximum CIL was £19 psm. The Council considered this marginal and insufficient to justify the imposition of a CIL. However, this attracted some forceful objection from the Downham Market Town Council, which considers that the site is viable, particularly given its strategic location, rail links and attraction to developers. They

consider that the £0 CIL approach is inconsistent with the treatment of other areas, including King's Lynn where a £10 psm CIL is proposed despite many tested schemes being unviable. They further allege that the approach could amount to 'state aid'. Whilst I acknowledge these views, on the central test of viability I can only conclude that the £0 CIL will not threaten the delivery of this planned development.

73. Wisbech Fringe, Walsoken – This 550 unit site allocation is part of the larger Wisbech greenfield urban extension. The scheme has a heavy anticipated S.106 burden of circa £4.6 million, which is a contributory factor in the negative modelled viability result of -£144 psm. As with West Winch, the modelled result does not dictate that the scheme is undeliverable, but it does suggest that lower landowner returns may need to be accepted (there would still be a significant uplift on the greenfield agricultural value). However, the evidence supports the £0 CIL for this site.

Other large sites

74. Three other large sites that were tested would be subject to the prevailing CIL rates in their respective areas.
75. Lynnsport, King's Lynn – The modelled 297 unit scheme on this surplus amenity land included an assumed S.106 contribution of £2.7 million. The modelled scheme returned a positive viability with a potential maximum CIL of £74 psm. The evidence indicates that the scheme can comfortably accommodate the £10 psm CIL proposed for King's Lynn (although my later conclusions on that charge are relevant).
76. Hall Lane, South Wootton – The modelled 500 unit scheme on this 40 hectare (gross) site generated a healthy viability result, with a residual land value of £630,588 per hectare (against a test threshold of £330,000). This equates to a maximum CIL of £177 psm. However, the agent promoting much of this allocation challenged the modelling in terms of sales values, costs and the calculation of land value (which he considered should be based on the whole site).
77. I am not persuaded by these arguments. I consider the sales values to be reasonably based on available evidence. I do not consider that undevelopable areas of the wider site, much of which is Flood Zone 3, should attract development value uplift to the assumed threshold. Overall, I consider the Council's modelling to be reasonable for high level CIL testing purposes and modelled surpluses are quite substantial. I am also mindful that the assumed S.106 and other costs on this site are quite limited for a strategic scale development. Even allowing some leeway for matters argued by the promoter, the proposed CIL of £60 psm can be readily absorbed. Indeed, based on the Council's modelling, the CIL would be set at about 34% of the theoretical maximum (beyond which the threshold residual land value would be placed under pressure).
78. Knight's Hill – Similar issues arise to the Hall Lane allocation. The Council's modelling of this greenfield site development of 700 units generated a strong residual land value and a potential CIL £170 psm. There was some

criticism of the use of 700 as the development quantum (as the SADMPLP allocations is for 'at least 600') but, based on what I have heard, the 700 figure appears appropriate for CIL testing.

79. Rather curiously, the Knight's Hill allocation straddles the charging zones for King's Lynn (£10 psm) and the North-East and East (£60 psm). There are no threats to viability under either CIL charge, although the reasons for not including all of the allocation within the £60 zone (as the evidence indicates that the site can readily sustain that CIL) are not altogether clear.

The 'large sites' – conclusions and issues arising

80. Large sites are critical in delivering the planned growth in the borough. Indeed, the most recent Housing and Economic Land Availability Assessment (HELAA) 2014 recorded 8,093 completions between 2001-2014, leaving a minimum residual housing target for 2014 - 2026 of 8,407 dwellings. It is clear that much of that supply will come through the strategic sites. Those sites that are proposed to be £0 rated would total 5580. These clearly are not put at risk by the DCS.
81. The viability evidence does, without any doubt, support the zero rating of CIL on 5 out of the 6 sites listed in the DCS. Whilst the East of Lynn Road site could, in theory at least, sustain a modest CIL, the Council's decision to propose a £0 rate clearly avoids any threat to viability. The evidence also confirms that other large sites, which are typically greenfield and do not have heavy S.106 cost burdens, are able to absorb the proposed CIL without any threat to viability or deliverability.
82. Whilst my viability conclusions are clear, there are some issues that arise that I suggest may need some careful reflection by the Council.
83. First, the consequence of implementing CIL on some sites needs to be fully understood. Two of the zero rated sites (West Winch and Wisbech Fringe) are quite self-contained in terms of funding and delivering their infrastructure needs, including new schools. However, the other four zero rated sites each have associated SADMPLP policy requirements for contributions to primary and secondary education and other infrastructure. Implementing the CIL (and the R.123 list) would effectively exempt these sites from these policy requirements. This could mean that over 1,000 homes might be delivered without any contribution to the education infrastructure demands they will create.
84. Second, the Council does need to satisfy itself on State Aid rules. Whilst I am satisfied that the DCS is informed by the evidence base, there is undoubtedly some difference in approach between different sites in terms of the infrastructure burden / bill they will face. It is not my task to undertake a legal appraisal of these matters but, in line with the Guidance⁵ and in the light of the representations made, the Council should assess whether its DCS is fully State Aid compliant.
85. Third, my findings below on the King's Lynn charge will have consequences

⁵ PPG - Paragraph: 021 Reference ID: 25-021-20140612

for two of the tested 'other' large sites (and possibly others that may come forward).

The King's Lynn unparished area charging zone - £10 psm

86. The typology modelling indicates a wide range of viability results in King's Lynn. The five greenfield and 'settlement edge' site typologies (sites 1 -5) fared well, returning potential maximum CIL rates ranging from £72 – £213 psm. Single plots (site 10) fared even better, returning a theoretical maximum CIL of £524 psm. However, none of the brownfield sites (types 6 – 9) were viable and the results ranged from -£141 to -£407.
87. The evidence indicates that in this zone the supply of housing will be drawn from a range of sites that will include greenfield and brownfield land. It is also clear that the brownfield land contributions will be significant, with over half of the town's known sites (16 in number) falling within site types 7 and 8 (there are no surveyed figures for the much smaller site types 6 and 9).
88. In my view, many Charging Authorities faced with such stark differences in viability within a town would be inclined to explore possible charging zones which geographically differentiate the 'greenfield' (typically beyond and abutting the built up area) from the 'brownfield' sites (typically within the built-up area). However, the Council's approach seeks to impose a £10 psm CIL across all of the town's sites. It is a straightforward matter to conclude that the greenfield sites can readily absorb the CIL (and indeed could arguably absorb a much higher CIL). However, the impact of imposing a CIL on the brownfield sites is concerning.
89. The Council explained that, in its view setting the CIL at just £10 CIL would represent such a small element of development costs that it would not be a determining factor in any development decision. Whilst there may be some merit in that argument, the Development Plan strategy directs and promotes development within the town. Furthermore, the Guidance makes specific reference to the need to consider brownfield sites 'where the impact of the levy is likely to be most significant'⁶.
90. Whether or not a £10 CIL is a critically determining factor in a scheme coming forward, CIL should serve a positive economic purpose. I do not see how loading additional costs on to already challenged brownfield development sites can serve that positive purpose. Accordingly, I recommend that the charge be reduced to £0 in the King's Lynn zone. In doing so, I am mindful that this modification, if implemented, will also remove the CIL from King's Lynn sites that can readily sustain it. However, it is the only modification I am able to make to address the issue of concern.

The 'North East and East areas of the Borough (East of the Great Ouse and North of A1122/A134' charging zone - £60 psm

⁶ Excerpt from PPG - Paragraph: 019 Reference ID: 25-019-20140612

91. The Council's evidence confirms that most of the sites in this zone will be represented by the greenfield and edge of settlement typologies (site types 1 – 5). The testing revealed very healthy residual land values, ranging from £290 psm - £443 psm. The evidence indicates that the £60 psm CIL can be readily absorbed and the remaining headroom would be considerable.

The 'South and West of the Borough (West of the Great Ouse and south of A1122/A134, including Downham Market)' charging zone - £40 psm

92. The sites in this zone will also be dominated by greenfield and edge of settlement typologies (site types 1 – 5). The modelled results for these sites ranged between £136 - £217 psm maximum CIL values. These results are healthy in viability terms but notably lower than the North East and East. The evidence indicates that the £40 psm CIL can be readily absorbed and the remaining headroom would be considerable in most cases.

Older people's housing developments

93. The testing of older people's housing schemes found that they were not generally viable in the borough. These findings support the zero rating for these development types.

Non-residential development – viability appraisal evidence and proposed CIL charges

94. The non-residential assessments tested a range of different types of commercial development. Industrial and office developments were tested in large and small formats but found to be unviable and unable to support CIL.
95. However, supermarkets and retail warehouse developments were shown to be viable and able to support a £100 psm CIL in the most likely locations (King's Lynn) under both brownfield and greenfield scenarios. The Council does not anticipate any substantial development of these types in the plan period. However, the evidence does support the proposed £100 CIL. I have included in my recommendation the addition of more precise definitions of these development types.

Overall Conclusions

96. The CS and SADMPLP provide a clear framework for planned growth and necessary infrastructure in the borough. The planned housing growth will include development of a portfolio of large sites and developments within and adjacent to the main urban areas, along with lower levels of growth in the network of larger villages spread across the borough.
97. The Council's CIL approach to large sites will not threaten their viability. It has differentiated six strategic sites, that are either challenged in viability terms or have heavy S.106 requirements, and proposes a zero CIL rate. The other large sites can readily accommodate the proposed CIL. The anticipated housing developments in and around villages across the rural parts of the borough can also accommodate the CIL (£60 psm and £40 psm) without risk to viability. However, the £10 psm CIL proposed in King's Lynn is not justified; whilst tested greenfield sites can readily accommodate the CIL, brownfield sites cannot and these form an important part of

planned growth. Accordingly, I recommend that the King’s Lynn zone CIL be reduced to £0.

98. The evidence indicates that the proposed CIL charges for specified types of retail developments will not threaten the viability, albeit that little if any such development is anticipated.
99. It will be clear from this report that the Council’s CIL proposals have proved to be controversial and unpopular with a number of Representors. Whilst I am able to recommend modifications that will enable the Council to adopt the DCS, there will be revenue consequences arising from the King’s Lynn modification. It will also be clear from this report that, in my view, the Council may be missing opportunities to capture CIL where the evidence indicates that it can be sustained (such as King’s Lynn greenfield sites and the strategic site that crosses the charging zone boundaries). It was also clear from the Hearing sessions that continued dialogue with parish and town council bodies on infrastructure matters would be desirable. The issue of State Aid compliance also needs to be assessed by the Council. None of these comments are made as criticisms of the Council – developing CIL proposals against a very complex development backcloth is not an easy task. However, it would be remiss of me not to highlight these issues for further consideration by the Council.
100. Overall, I conclude that, subject to my recommended modifications, the King’s Lynn and West Norfolk Borough Council’s DCS will be able to satisfy the requirements of Section 212 of the 2008 Act and will meet the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that, subject to the modifications set out in Appendix A to this report, the Charging Schedule can be approved.

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

P.J. Staddon Examiner

Attached: APPENDIX A – recommended modifications

APPENDIX A

Modifications that the Examiner specifies so that the King's Lynn and West Norfolk Borough Council's may be approved.

Reference	Clarification / Modification
EM1	<p><u>King's Lynn charging zone</u></p> <p>Table – page one of Draft Charging Schedule</p> <p>King's Lynn unparished area - delete '£10/m²' and insert '£0/m²'</p>
EM2	<p><u>King's Lynn Charging Zone map</u></p> <p>For clarity, add the map from page 29 of document '<i>Additional Material requested by Examiner</i>' - Dated 20 September 2016 - to the Charging Schedule.</p>
EM3	<p><u>Clarification – retail definitions</u></p> <p>Page 1 Draft Charging Schedule</p> <p>For clarity, add the Council's definitions of 'superstores / supermarkets' and 'retail warehouses' as set out on page 36 of document '<i>Additional Material requested by Examiner</i>' - Dated 20 September 2016.</p>

(Based on calculations using the current policy for affordable housing requirements of 15% in King's Lynn (in the un-parished area) and 20% elsewhere and that it will be delivered as 70% Affordable Rent and 30% intermediate housing – on sites of 10 and over in King's Lynn, Downham Market and Hunstanton and sites of 5 or more elsewhere).

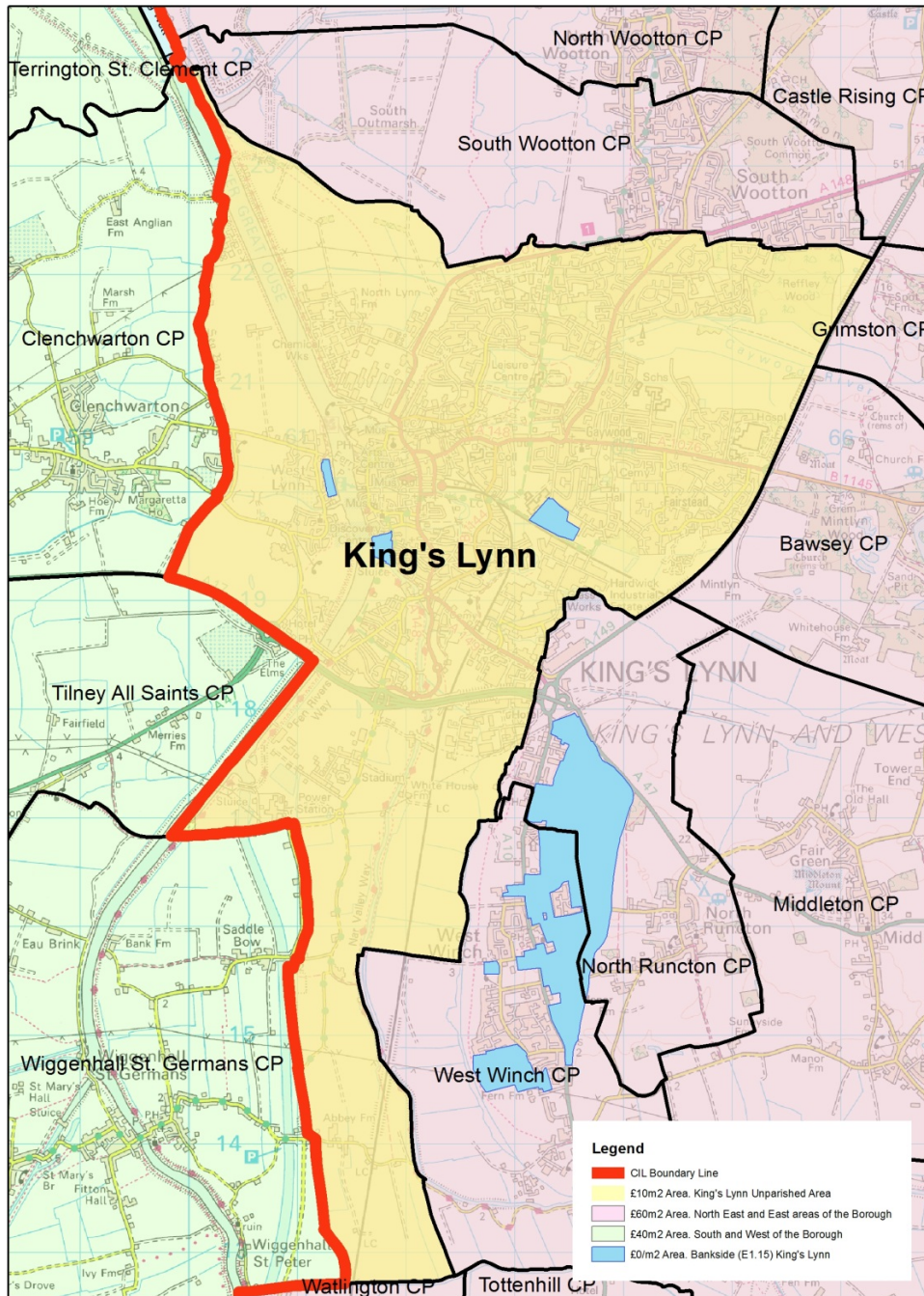
Residential Development	CIL rate
North East and East areas of the Borough (East of the Great Ouse and north of A1122/A134)	£60/m ²
South and West of the Borough (West of the Great Ouse and south of A1122/A134, including Downham Market)	£40/m ²
King's Lynn unparished area	£0/m ²
Sheltered / Retirement Housing (C3) - All areas	£0/m ²
Strategic sites ⁽¹⁾ at: <ul style="list-style-type: none"> ○ Boal Quay, King's Lynn ○ South of Parkway, King's Lynn ○ Bankside – West Lynn, ○ West Winch, strategic growth area ○ East of Lynn Rd, Downham Market ○ Wisbech Fringe, Walsoken <p>(all others should have the rate that applies to the area in which they lie)</p>	£0/m ²
Retail Development	CIL rate
Supermarkets (including discount supermarkets)	£100/m ²
Retail warehouses	£100/m ²
All other retail development	£0/m ²
All other Development	CIL rate
All other Development	£0/m ²

(1) Strategic sites are considered to be those of 150+ units

Note reference the commercial development types required by Examiner: (EM3)

Superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit.

Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods) DIY items and other ranges of goods catering for mainly car-borne customers.



£10m2 Area. King's Lynn Unparished Area

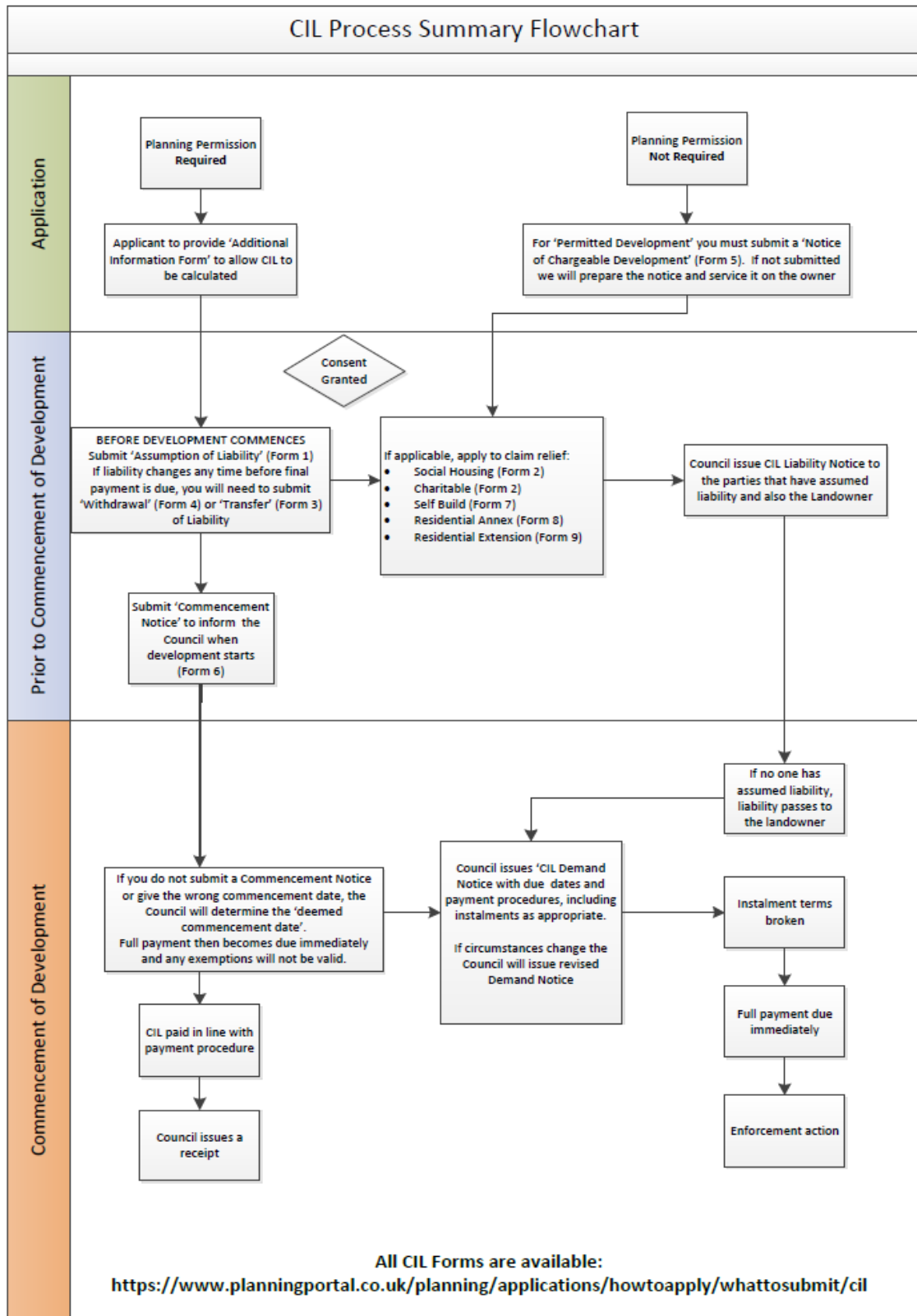
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Ordnance Survey 100024314

0 0.25 0.5 1 1.5 2 Kilometers

As from the 'Additional material' bundle presented to Examiner. NB reference to £10m2 is now £0m2. (Reference Examiner EM2).

Appendix 2

CIL liability / collection process



Appendix 3

Community Infrastructure Levy (CIL)

Payment in Kind and Infrastructure Payments Policy

February 2017

1. In accordance with Regulation 73, 73A, 73B and 74 of the Community Infrastructure Levy Regulations (2010) as amended, the Borough Council of King's Lynn and West Norfolk as the Charging Authority for the area hereby gives notice that the Council is offering the payment of CIL by way of the transfer of land to the Council, or by infrastructure payments.
2. This policy is effective from the day the Borough Council of Kings Lynn and West Norfolk CIL Charging Schedule comes into effect on xxxxxxxx
3. The CIL Regulations 2010 (as amended) allow the Council to accept full or part payment of CIL liability by way of transfer of land to the Council. The Council may also enter into agreements in writing (subject to the criteria in Regulation 73A) to receive infrastructure payments, before the chargeable development is commenced¹. The infrastructure to be provided must be related to the provision of the types of projects listed in the Council's Regulation 123 list.
4. The Council is not obliged to accept any offer of payment in kind by land or infrastructure.
5. Please see the Community Infrastructure Levy Regulations 2010 (as amended), for the full details relating to payment in kind.

See Regulation 7 of the CIL Regulations (2010) as amended for "Commencement of Development

Appendix 4

Potential option for Governance of CIL spending and monitoring

