

Brighton & Hove City Council Community Infrastructure Levy Examination

2 April 2019

Statement by Brighton & Hove City Council

This statement has been prepared by the Council to assist the Round Table discussions at the Examination Public Hearing on 2 April 2019.

It addresses each of the Examination Inspector's Agenda questions.

Part 1 – Residential applies to C3 use.

a) Are the 3 levy rates and zones for Residential use (Use Class 3) Zone 1 - £175sqm, Zone 2 - £150sqm and Zone 3 - £75sqm, justified by the appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the various adopted and emerging planning policies for Brighton & Hove?

Appraisal assumptions, differential zoned approach leading to proposed C3 CIL charging rates

1.1 Yes. The approach taken is based on a review of appropriate, proportionate and available evidence aligned to CIL principles. The 2017 Viability Study (VS) looked at a wide range of development typologies (scenarios) and considered a full range of values/costs data that are representative of residential development likely to come forward across the city during Brighton & Hove City Plan period (to 2030). The approach factors in planning policy requirements and has included a generous buffer.

1.2 In terms of the three proposed CIL zones, the appraisals have considered how residential and land values vary across different parts of the city. The available evidence provides a strong justification for a **differential zoned approach** to CIL for C3 which is strongly supported and recommended by the VS (2017 VS, para. 2.5.1 – 2.5.8 and Figure 6; also 3.1.1 – 3.1.11; and at 3.5.6).

1.3 The viability testing has factored in assumptions to reflect **policy requirements** in the adopted City Plan Part One and the emerging City Plan Part Two. These include affordable housing requirements, water and energy efficiency standards, residential unit size mix considerations and internal space and accessibility standards (VS, 2.1 – 2.2).

1.4 S106 contingency has been allowed for alongside CIL. Overall, prudent assumptions together with a proportionate approach have been used.

1.5 A comprehensive range of **residential typologies** has been considered. This is set out in the 2017 VS at Figure 3: Residential Scheme Types, (p.28) and tested against a range of value levels seen across the city (VS, para. 2.3.3 and 2.5.8, Figure 6 – Value zones, p.35).

1.6 The majority of the typologies are previously developed land (PDL) scenarios and have been tested to reflect likely types of residential development seen in the city. The VS clearly acknowledges (para. 3.2.5) that development, overall is likely to be predominantly PDL based.

1.7 Typologies considered by the VS and Addendums are considered appropriate and suitable for purpose. The VS acknowledges that a very significant contribution to

the city's overall housing supply is likely to be made by smaller sites (para.3.2.6); but it has, through its progression, also tested an appropriate range of larger scale sites; some of which reflect a range of 'strategic' sites planned to come forward for development.

1.8 At paragraph 3.5.6, the 2017 VS set out recommendations for a zonal approach and parameters for CIL charges that the Council could consider in its Preliminary Charging Schedule (PDCS). The council considered that to respond to the full range of local circumstances and to support planned housing development, it would consult at the **lower end of the recommended parameters**.

1.9 At the PDCS stage of consultation, responses indicated a broad balance between those supporting and those objecting to the proposed rates. Some of those objecting to the proposed charging rates sought lower rates but some sought higher CIL rates (see p.9, PDCS Consultation Report)

Further available evidence – November 2018 VS Addendum

1.10 The approach set out at the PDCS and DCS stages is further supported by the second Viability Study Addendum (DSP, November 2018). This was undertaken in response to representations received at the Draft Charging Schedule stage of consultation.

1.11 The November 2018 VS Addendum undertook:

- a. An updated review / sensitivity analysis for a range of typologies already undertaken; and
- b. Additional appraisals for some larger site typologies (for schemes of 200 and 500 residential units); to widen the consideration of larger / strategic sites.
- c. Expansion of the testing scope to consider the interaction with affordable housing; and
- d. Further consideration of the application of CIL to housing/care provision for the elderly (proposed at that point for charging as per C3) and to purpose built student housing (See Council's response to Q2 and Q4 below).
- e. General wider review of all CIL proposals.

1.12 This further work provides an updated review of viability/interpretation of results and has looked again at values and build costs relevant to the city. The results of that further review, with respect to a) above, acknowledge the benefit and appropriateness of the Council's differential zoned approach (paras. 2.1.12 – 2.1.14) and the CIL rates across these. It concludes that there is no reason to amend the C3 residential charging rates.

1.13 In terms of the additional larger site typology testing, the VS Addendum acknowledges more mixed results but indicates that the application of CIL would not be likely to 'make or break' site delivery if s.106 and other planning objectives were carefully managed (2.1.17 – 2.1.21). The testing also indicates that alongside any reduced affordable housing level, CIL would have a further reduced effect.

1.14 The council therefore considers that the CIL charging rates have been set at practical and realistic rates and represent a suitable balance in terms of securing housing delivery and infrastructure contributions.

Build to rent as a model of delivery

1.15 One of the representations received refers to 'build to rent' as a model of housing delivery that the CIL VS does not specifically appraise.

1.16 Planned housing delivery as set out in the City Plan Part 1, Policy CP1 – Housing Delivery does not dictate the mode or format of housing delivery over the plan period. Similarly, the CIL VS has to be undertaken at a suitably 'strategic' level and cannot reflect individual site / delivery circumstances.

1.17 Build to Rent as a model of housing delivery is new to the city and there are currently no existing build to rent schemes that have been completed. As part of the preparation for City Plan Part Two, the council has consulted on a draft build to rent policy and has commissioned further viability work to look at this mode of housing delivery; particularly in terms of its scope for securing affordable housing. That work is still underway.

1.18 The C3 residential charging rates have been set at the lower end of the VS recommended parameters. Therefore, it is considered that the council's approach is practical and pragmatic and one that will allow for viability variations associated with different types of housing delivery.

Impact of CIL rates on affordable housing delivery

1.19 Some representations received were concerned that the CIL charges would adversely impact on affordable housing delivery. It is important to note that a CIL charge only represents a very small proportion of overall development costs. Also, CIL is not typically a new cost to development but is, in most cases, a different way of collecting infrastructure contributions, with the use of s.106 scaled back.

1.20 Appraisal work undertaken through the 2017 VS and subsequent Addendums has tested residential scenarios against the policy targets for affordable housing as set out in Policy CP20 Affordable Housing in adopted City Plan Part 1. The policy is clear that the targets may be applied more flexibly where justified in relation to

stipulated criteria set out as part of the policy¹. In practice, this means a policy compliant scheme may be secured with affordable housing contributions which are lower than the targets where this can be justified. To reflect the council's recent and considerable experience in this regard it requested further expansion of the appraisal testing scope (as indicated above) to consider the impact of varying levels of affordable housing contributions.

1.21 Within some lower value areas, a lower CIL charge has been set to allow for generally lower overall viability against policy requirements.

b) Overall, do they strike an appropriate balance between helping to fund new infrastructure and the potential effects on economic viability with particular regard to the securing of the delivery of housing in Brighton & Hove?

1.22 Yes. The council firmly believes that the proposed C3 charging rates represent a practical and pragmatic approach and strike the right balance between helping to fund new infrastructure and the potential effects on economic viability.

1.23 The approach of the VS has been to carefully consider the policy requirements of the Plan and to appropriately factor these into assumptions underpinning the viability appraisals. The assumptions therefore take into account the cumulative cost effects of policies where those are relevant in developing a CIL charging schedule, costs for infrastructure provision and costs for residual S106 contributions likely to sit alongside CIL. The VS acknowledges that development, overall, is likely to be predominantly PDL site based and again this has been factored into the appraisal assumptions.

1.24 The VS notes that it is not the purpose of a CIL VS to look at specific sites or undertake a detailed viability appraisal of every site anticipated to come forward over the plan period. The proposed CIL charging rates represent only a modest proportion of overall development values/costs and are not out of step with approaches being adopted /considered across adjoining local authority areas or when viewed more widely. No alternative evidence/approach has been put forward in terms of general rates to apply to residential C3 development.

1.25 The proposed three charging zones/rates for C3 residential developments, set at the lower end of the parameters recommended by the VS (para. 3.5.6), are considered to be realistic and achievable without detriment to the delivery of the planned housing requirements.

¹ CP20 Affordable Housing, criteria i) – v) and paragraph 4.223.

Part 2 – Private care residential homes with a degree of self-containment including Extra Care and Assisted Living

a) Is the local levy rate of £100sqm for Private care residential homes with a degree of self-containment including Extra Care and Assisted Living in Zones 1 and 2 justified by appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the council’s recently adopted planning policies?

2.1 Yes. The local levy rate of £100sqm for Private care residential homes with a degree of self-containment including Extra Care and Assisted Living in Zones 1 and 2 is justified by appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the council’s recently adopted planning policies.

2.2 The council’s adopted City Plan Part One and emerging City Plan Part Two planning policies support the need for a mix of accommodation types to respond to the city’s various local housing needs. This includes the need for a range of accommodation types to meet the needs of older and disabled people.

2.3 The submitted Charging Schedule, including the modifications, has been informed by the 2017 Viability Study, representations received at the Preliminary and Draft Charging Schedule stages of preparation and further viability review (Viability Study Addendum 2, November 2018) and consideration.

Preliminary and Draft Charging Schedule rate setting

2.4 At the Preliminary Draft Charging Schedule (PDCS) and Draft Charging Schedule (DCS) stages of CIL preparation, the proposed CIL charging rates for all types of market provided C2 (residential institution) uses were aligned to those proposed for C3 residential uses. This position was consistent with the findings and recommendations of the 2017 Viability Study (para.3.7.1 – 3.7.9) which suggested there was no viability case to differentiate between the two. The study notes (3.7.3) that any affordable provision would be exempt from CIL through the regulations.

2.5 The 2017 Viability Study (VS) acknowledges that whilst some schemes typically involve the costly construction of much larger non-saleable proportions of overall floor area (communal space) and that some appraisal assumptions will need adjustment, such schemes also have some balancing viability characteristics. These typically include achieving premium sales values, having higher densities and reduced external works (para.3.7.1). In addition, C2 uses do not typically attract affordable housing policy requirements (para.3.7.5) which will provide a significant viability boost.

2.6 The VS also acknowledges, in respect of accommodation for the elderly, the determination of the relevant planning Use class may be difficult in some situations

and may need to be considered on a scheme by scheme basis (3.7.4). This is commonly the case given the very wide ranging formats of accommodation for the elderly that have emerged in recent years, e.g. extra care, assisted living, very sheltered housing, close care.

2.8 Taking account all of the above, the 2017 VS recommended that the council could align such uses to the overall parameters put forward for market C3 residential rates or that a single rate charge be put forward on the basis that specialist schemes are unlikely to vary greatly (in nature or value) across the local authority area. At 3.7.8, the VS advises that the charging schedule should be clear in terms of how the council intend to treat these forms of development and to describe accordingly for clarity.

Further review and Proposed Modifications

2.9 In response to representations made at the DCS consultation stage, the Council and DSP have given further and more detailed consideration to the application of CIL to housing/care provision for the elderly in order to set out an amended approach so that CIL strikes the right balance between supporting the planned development infrastructure requirements and any potential viability effects. The second Addendum to the VS (November 2018) addresses this issue at para.2.1.23 – 2.1.35.

2.10 This further review indicates that the development of **certain types of C2** accommodation for the elderly could warrant a differential CIL treatment (2.1.24).

2.11 It is the council's view, and that of their viability consultants, that in terms of more 'traditional' C2 bed space based private residential care/nursing home provision, further consideration points to the justification for a nil CIL rate which is in accordance with many other councils CIL approach.

2.12 For other types of market C2 provision, which might typically include 'Extra Care' or 'Assisted Living' models of provision including self-contained residential units such as apartments (available to purchase or rent on the open market) to encourage independent living but also require residents to formally enter into care package agreements, there remains justification for an appropriate CIL charge rate. On the plus side, this form of development typically attracts premium sales/rental values (typically above general needs housing) and reduced policy requirements (e.g. exempt from affordable housing provision and reduced open space/recreation provision requirements).

2.13 To address this, the Council has proposed modifications in the statement of proposed modifications. Modification 8 removes the reference to C2 use class alongside reference to C3. Modification 9 provides a description of a form of older persons housing/care development (rather than the Use class) and proposes a single rate of £100 sqm across charging zones 1 and 2 of the city only. This rate is

significantly lower than the C3 CIL charge for both zones and has been informed by the recommendations of the November 2018 VS Addendum (paragraph 2.1.35).

2.14 It is the council's view that the proposed modifications are justified by the further review of representations and evidence and strikes a more appropriate balance between helping to fund new infrastructure and any potential effects on economic viability.

2.15 The council does not consider modification 9 to be a substantive or material change. The modification has been proposed through the process of reasonable and further consideration of available evidence, including the representations made at the DCS consultation stage where all types C2 uses were aligned to the proposed charging rates for C3 uses. The modification has clarified the scope of elderly housing/care provision development for which either a reduced or nil CIL charge is sought.

2.16 Should the Examination Inspector wish to re-consider the wording of the proposed modification, to aid implementation and avoid any potential confusion, then the Council is willing to discuss an amended form of wording.

2.17 For information, other types of housing provision for the elderly e.g. retirement homes, sheltered housing provision which are considered to fall within a C3 Use class would remain subject to the C3 Residential charging rates.

b) Overall, do they strike an appropriate balance between helping to fund new infrastructure and the potential effects on economic viability?

2.16 Yes. For the reasons outlined above, it is the council's view that proposed modifications are justified by proportionate available evidence and positively address concerns raised in representations² seeking a reduced charge.

2.17 As such it strikes the right balance between helping to fund new infrastructure and the potential effects on development viability.

² Representation by Turley at DCS stage of consultation.

Part 3 – Nil CIL charge zone (DA2 Brighton Marina, Gas Works, Black Rock Area and King Alfred Leisure Centre/RNR site and Brighton General Hospital site)

a) Is the local levy rate of £0sqm for Nil CIL charge zone justified by appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the council’s recently adopted planning policies?

3.1 Yes. The local levy rate of £0sqm for Nil CIL charge zone is justified by the appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the council’s recently adopted planning policies.

3.2 The council’s submitted CIL charging schedule (including modifications) proposes differential treatment in the form of nil-CIL rating for some Strategic sites / Development Areas as set out in the adopted City Plan Part One and the emerging City Plan Part Two. This nil CIL zone approach has developed with the progression of the CIL preparation from Preliminary Draft Charging Schedule (PDCS) stage to Submission stage.

Preliminary Draft Charging Schedule (PDCS) rates

3.3 The PDCS did not propose specific nil CIL rate sites/zones, reflecting the recommendations of the 2017 Viability Study (VS). At this stage, the development typologies/scenarios tested ranged from 1–100 residential units together with a further larger scale 700 residential unit mixed comprehensive scheme (as indicated in Figure 3, 2017 VS).

3.4 The VS notes (2.3.6) that, for larger scale comprehensive development proposals, much depends on the extent, cost and phasing of the infrastructure to be funded by the development, the amount and type of housing that can actually be accommodated on the site and the timing of its provision in relation to that of the accompanying infrastructure.

3.5 It also notes (3.8.2 – 3.8.3) that the nature of larger scenarios in the Brighton & Hove local plan context generally relate to the scale of delivery likely, rather than other large scale site characteristics (e.g. in respect of scale of related infrastructure requirements). In terms of the 700 unit mixed typology tested (aligning with the Toads Hole Valley DA7 strategic site allocation in City Plan Part 1) these factors did not appear to justify a differential CIL treatment (3.8.14).

Draft Charging Schedule rates

3.6 Representations received during the 2017 PDCS consultation led the council to review its position for some key ‘strategic’ sites identified in the adopted City Plan

Part One. Further review of available appropriate evidence, site characteristics and infrastructure requirements resulted in two strategic sites proposed for nil CIL rating at the DCS stage of preparation. These were:

- the King Alfred/ RNR site where government approved HIF funding in Feb 2018 (due to marginal viability) had been secured; and
- the Inner Harbour site at Brighton Marina which falls within the City Plan Part One DA2 Development Area – Brighton Marina, Black Rock and Gas Works Area.

3.7 The council prepared an informative setting out that both sites are ‘strategic’ in terms of the scale of housing delivery anticipated to come forward to meet the city’s planned housing requirement³ and, importantly from the CIL perspective, both have significant infrastructure requirements and/or significant abnormal development costs (as identified in the IDP) that will impact significantly on overall development viability.

Further review and modifications

3.8 A range of responses were received at the Draft Charging Schedule (DCS) consultation stage. These requested the council to consider further sites as ‘strategic’ and to nil CIL rate such sites. Some of the sites identified are proposed site allocations in the emerging City Plan Part Two (e.g. Brighton General Hospital Site and the Sackville Trading Estate, Hove).

3.9 As part of its consideration of representations, the council commissioned additional larger site typology viability appraisals, falling between the earlier assessment of sites providing 100 dwellings and the c.700 dwelling tests aligned to Toads Hole Valley (DA7). Additional development typologies at 200 and 500 residential units were provided (November 2018 Further Update VS Addendum 2).

3.10 These were considered to be reflective of some of the strategic sites yet to come forward from City Plan Part One and those proposed to come forward through City Plan Part Two. The findings and conclusions of this further work are set out at paragraphs 2.1.16 – 2.1.22 of the VS Addendum 2. The results, in overall terms, indicate that the application of CIL would not be likely to ‘make or break’ viability (2.1.20).

3.11 The effect of reducing the affordable housing proportion on schemes of this size was also included as part of the further review. The purpose was to examine and broadly assess the impact of a reduced/negotiated position on affordable housing, where justified. City Plan Part One policy CP20 requires the provision of affordable housing for new residential development, with a negotiated target of 40%

³ City Plan Part One, Policy CP1 – Housing Delivery, 13,200 new homes by 2030.

onsite provision for sites of 15+ dwelling units. Criteria within the policy indicate where targets may be applied more flexibly.

3.12 In considering this additional viability work alongside submitted representations, the council has proposed modifications to the DCS as follows:

- **Brighton General Hospital site is nil CIL rated** following further review of submitted viability evidence and also reflecting the fact that the provision of a new Healthcare Campus is identified as important infrastructure in the IDP and is sought by the emerging City Plan Part Two site allocation. The onsite presence of heritage assets is also acknowledged as a factor impacting on viability. (Modification 13; 14)
- **The DA2 Development Area as a whole is nil CIL rated** to afford consistency between the Inner and Outer Harbour sites, the Gas Works Site and Black Rock⁴; all of which have significant abnormal site development costs and some essential infrastructure requirements as identified in the IDP (Modification 11, 12)
- **The Sackville Trading Estate site is not nil CIL rated.** Although 'strategic' in terms of planned housing delivery, this site is not required by the City Plan Part One, the IDP or the emerging Part Two Plan, to provide any significant strategic infrastructure; nor is the council aware of any significant abnormal site development costs.
- **The Toads Hole Valley (DA7) Strategic site allocation is not nil CIL rated.** The November 2018 VS Addendum concludes the characteristics of this site are such that it would be unlikely to warrant a differential (nil CIL) treatment. Development of this type should be amongst the most viable in the city area (para. 2.1.22).

b) Overall, do they strike an appropriate balance between helping to fund new infrastructure and the potential effects on economic viability?

3.13 Yes. As outlined above, the council firmly considers that the DCS, including modifications, strikes an appropriate balance between helping to fund new infrastructure and the potential effects on economic viability. The council's approach to nil CIL charge rating for some sites reflects the nature of larger development scenarios in the Brighton & Hove local plan context. In many instances, the term 'strategic' in this local context largely relates to the scale of delivery likely, rather than necessarily to other large scale site characteristics (e.g. in respect of the scale of related infrastructure requirements).

3.14 Those strategic sites/Development Areas proposed to be nil CIL charging zones are those where there are identified and significant viability challenges and where required infrastructure provision is sought either as part of

⁴ Awarded Coast to Capital LEP funding of £12.1m

planned development (e.g. King Alfred/RNR site, Brighton General Hospital) or required to ensure development can physically be brought forward (DA2 Development Area) as identified by the IDP which underpins the implementation of the City Plan.

3.15 In reaching these conclusions, the council has been mindful that a balance needs to be struck between the need to secure a funding stream to assist the provision of citywide infrastructure for which such developments will generate a significant demand and the need to have regard to potential effects on viability.

Part 4 – Purpose Built Student Housing / Purpose Built Shared Living Accommodation

a) Is the local levy rate of £175/sqm for Purpose Built Student Housing Purpose Built Shared Living Accommodation justified by appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the Council's adopted planning policies?

4.1 Yes. The local levy rate of £175 sqm for Purpose Built Student Housing / Purpose Built Shared Living Accommodation is justified by appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the Council's adopted planning policies.

Preliminary Draft Charging Schedule rate setting

4.3 The 2017 VS undertook an initial review of a 150 unit cluster type student accommodation scenario (Figure 5 VS 2017 p31). The recommendation (paragraph 3.6.4) was that 'for clarity and consistency, we recommend that the Council could consider CIL charging rates aligned to its selection of rates within the above noted recommended parameters for residential (C3) development. This would appear to present an appropriate and equitable scenario in our view.'

4.4 In reviewing potential preliminary rates for PBSA, the Council took account of the VS recommendations and also a wider consideration of local factors including evidence indicating a strong investment market for this type of development in the city⁵.

4.6 The council initially set a city wide rate of £250/sqm for consultation purposes. This rate did not exceed the proposed C3 residential rates range, albeit at the higher end, and allowed the council to acknowledge specific local circumstances such as the high levels of purpose built student accommodation coming forward for development.

4.7 The council considered this a pragmatic and simple approach, set within the broader scope of the suggested viability parameter range for Residential, (2017 VS figure 14 p116); and within the context of:

- the iterative process of setting a CIL rate including 2 statutory consultation stages;
- the scope for charitable relief where regulatory requirements set out in CIL regulation 43 are met;
- the fact that PBSA will not attract the same type/level of planning obligations as C3 residential development (e.g. in terms of affordable housing contributions, on-site open space contributions), and

⁵ Authority Monitoring Reports indicating strong development market for PBSA.

- seeking to strike an appropriate local balance between the funding of infrastructure required to support development within the city, and the potential effects as a whole on the economic viability of development within the city.

Draft Charging Schedule rates

4.8 In response to representations and further evidence received at the PDCS stage of consultation, further viability review was undertaken. Specific issues identified in representations related to the range of PBSA typologies appraised and the single citywide charge (paragraph 2.1.10, VS Addendum, February 2018).

4.9 The February 2018 VS Addendum therefore undertook further testing regarding:

- the breadth of typologies appraised; these were expanded to include a 400 unit cluster typology and 150 unit studio typology; and
- a range of CIL rates were tested for the typologies.

4.10 The Addendum notes (paragraph 2.1.12) that the further testing clearly indicates the overall strength of the PBSA results with high residual land values produced across the scenario testing. Only the lowest rents and highest CIL levels combination indicated the potential for marginal viability. Paragraph 2.1.13 clarifies that the findings and parameters of the original Viability Study remain valid and paragraph 2.1.14 concludes that the council could consider CIL rates aligned to its selection of C3 rates within the recommended parameters.

4.11 In response to the representations at PDCS stage and the findings of the February 2018 Viability Study Addendum, the council proposed a reduced rate for purpose built student accommodation to £175/sqm at the DCS stage of consultation. This both recognised and sought to address the potential for marginal viability in the most challenging notional scenario outlined in the Feb Viability Addendum. The simple approach of a single citywide rate was maintained.

4.12 Two representations on this amended PBSA rate were made to the DCS consultation seeking further reductions to the rate and a zoned approach. The November 2018 VS Addendum reviewed points made in the DCS representations but considered they did not overcome the strong viability scenarios within the Brighton & Hove City Council area, noting the city's 'large and vibrant higher education provision and student scene' (2.1.36).

Large-scale purpose-built shared living Sui Generis use developments

4.13 Due to the evolving nature of accommodation typologies, the council has added the Sui Generis purpose built shared living accommodation to the scope of the PBSA charge rate. This is to ensure that this commensurate model of development is addressed within the schedule and to avoid the unintended

consequence of this living accommodation incurring a nil CIL charge which would not serve to strike an appropriate balance between the funding of infrastructure required to support development within the city, and the potential effects as a whole on the economic viability of development within the city required by CIL regulation 14.

b) Overall do they strike an appropriate balance between helping to fund new infrastructure and the potential effects on economic viability?

4.14 The council is firmly of the opinion that the PBSA rate is proportionate and supported by the appropriate viability evidence (Addendum 2; 2.1.36 - 38) which states 'with the proposed charging rate having been reduced from PDCS (£250sqm Citywide) no further change is considered necessary as part of reaching the appropriate balance' in terms of CIL regulation 14, further noting that the council does not require this form of development to provide affordable housing.

4.15 It is a simple approach which is deemed a best fit to reflect the variable nature of the development within an area wide approach suitable for CIL.

4.16 It is considered that these rates will not deter provision of PBSA development coming forward from site allocations in City Plan Part One and emerging City Plan Part Two.

Part 5 – Retail - Larger Format – Retail warehousing/Supermarkets and Retail Other Shopping Units development

a) Are the local levy rates for Retail - Larger Format – Retail warehousing/Supermarkets £100sqm and Retail Other Shopping Units development £50sqm justified by appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the Council’s adopted planning policies?

5.1 Yes. The Council’s approach to setting a CIL retail charge is based on a review of appropriate available evidence aligned to CIL principles.

Preliminary Draft Charging Schedule (PDCS) rate setting

5.2 The 2017 VS considered proposed rates for a number of larger and smaller retail typologies, as illustrated in ‘Figure 5 Commercial / Non-residential Development Types Reviewed – Overview’(p.31). The recommended parameters for setting a CIL rate are then set out at ‘Figure 14: CIL charging rates parameters – Recommendations Summary’ (p.115). The council reviewed these recommendations and set the preliminary retail rates to the lower end of these recommended parameters.

Draft Charging Schedule (DCS)

5.3 The February 2018 Viability Addendum responded to PDCS consultation responses, including a query on the rate set for city centre retail comparison typology, by reviewing additional testing scenarios and carrying out further sensitivity appraisals. This further review helped to inform the Council’s further consideration of the proposed options for retail rates taking account of its local context (paragraphs 1.1.7 and 1.1.8 Viability Addendum Feb 2018).

5.4 Findings indicated that there was no overall evidence to suggest that applying the ‘other shopping units development’ rate of £50/sqm to city centre comparison retail would unduly undermine the viability of a comprehensive shopping centre development broadly aligned to the Development Area DA1 policy ‘Brighton Centre and Churchill Square Area. The addendum concludes that should such a development come forward, then it is likely to be viable and a CIL charge of £50 sqm would be a minor element in terms of the overall development value and costs associated with what would be a prime shopping location. (para 2.1.7 Viability Addendum, Feb.18).

5.5 The council responded to the consultation response received at PDCS stage by including the following clarification within the notes supporting the Draft Charging Schedule: ‘Retail – Other shopping units development: includes city centre comparison retail’

5.6 Issues raised at the DCS consultation stage were as follows:

- queries regarding why retail rates appeared lower than comparable cities;
- suggestions that the rates might result in unviable retail development; within a worsening retail climate; with particular respect to proposals for Brighton Centre/Churchill Square;
- a request that ancillary retail supporting Major Sporting Venues should be included within a nil-CIL charge

5.7 The Viability Addendum 2 (November 2018) provided further information for review in terms of potential impact on the retail element of policy DA1 (para. 1.1.6e). The conclusions of this second Viability Addendum reiterate the findings of the previous addendum findings (Paragraph 2.1.39); that it would not be possible to say a £50/Sq.m CIL charge for Development Area DA1 policy 'Brighton Centre and Churchill Square Area' would be likely to render the retail element of the scheme unviable.

5.8 In terms of including ancillary retail supporting Major Sporting Venues within a nil-CIL charge; it was considered that the 'other shopping units development' rate of £50/sqm would have a minimal impact on what would be an ancillary use and therefore the simple approach taken by the draft charging schedule was maintained.

b) How will the Council differentiate between Retail Larger Format and Retail Other Shopping Units for the purposes collection of the levy?

Should a floorspace threshold that reflects the differences in scale be applied to provide certainty and clarity for developers?

5.9 The council's approach, as set out above, has been to define 'Retail - Larger Format' and 'Retail - Other Shopping Units: includes city centre comparison retail' within the detailed notes supporting the charging schedule. This reflects the commentary and observations set out in Section 3.11 'Further Background – Retail' of the 2017 Viability Study (and specifically paragraphs 3.11.13–15, p.103-7).

5.10 An overview of typologies reviewed is shown in 'Figure 5: Commercial / Non-residential Development Types Reviewed – Overview' which noted '300 sq. m retail ('small retail') scenarios representative of smaller shop types also permitting Sunday Trading Act⁶ related trading hours (see also subsequent information in this report).'

5.11 However, paragraph 3.11.12 sets out that the key factor generally differentiating the smaller types of retail scenarios from the larger ones referred to in the viability evidence is the value/cost relationship related to the type of premises and the use of them. The study notes differentiation is more about the distinct

⁶ The Sunday Trading Act 1994 defines a large shop as that with a relevant floor area exceeding 3,000 sq.ft. (approx. 280 sqm).

development use and different retail offer that it creates and the particular site type that it requires (para.3.11.13). This is also particularly relevant to the planned expansion of the city centre Churchill Square shopping centre (Policy DA1, City Plan Part One), which as outlined above would currently be captured by the 'Retail - Other Shopping Units: includes city centre comparison retail'.

5.12 Paragraph 3.11.13 considers that 'the description of the use and its characteristics may therefore be more critical than relying simply on a floor area threshold or similar.'

5.13 Therefore, although the council considered including a floorspace threshold, for example one based on the Sunday Trading provisions floor area, as outlined above this would not appear to match the available viability evidence underpinning the schedule which considers 'such an approach may not be relevant in Brighton and Hove' (paragraph 3.11.15).

5.14 The council is open to further discussion/consideration on this matter, should the Examination Inspector feel this would be beneficial.

c) Overall, do the retail levy rates strike an appropriate balance between helping to fund the new infrastructure required and the potential effect on the economic viability of retail schemes?

5.15 After full and proper consideration of the appropriate available evidence outlined above and the requirement to fund infrastructure, the Council firmly considers that the CIL draft charging schedule retail rates strike the appropriate balance between helping to fund the new infrastructure required and the potential effect on the economic viability of retail schemes, and have proposed no further modification to those rates.