

CLOSING STATEMENT

We have heard much about the appropriateness of the Council's evidence base but this is secondary to the critical issue - whether you consider that the non residential zero rates are consistent with the evidence. That of course will be a matter for your judgement

We would submit however that the evidence in the Fordham Research reports is quite clear. Large Office, Industrial and any food retail development can all stand substantial rates of CIL. The Council appear to claim that a £20 margin is de minimis. We would submit it is certainly not – Newark and Sherwood has adopted 3 rates of CIL on industrial development in 3 of the charging zone areas at £5, £15 and £20 – because according to the Regulations and charge setting procedures and advice from CLG, we had to – to be consistent with our evidence in the event we adopted a differential rate system

We have heard no credible evidence to justify slicing off 10-20% from researched market values simply to suit a pre-conceived purpose. We must therefore rely on the submitted evidence and not consider either % increases or decreases from that evidence

We were under great pressure from our economic development policy section and indeed many Members, to Zero rate industrial uses in order to encourage employment uses in our District. We concluded that we were not able to do this and are very concerned that if the Shropshire approach is approved our neighbouring authorities will be able to ignore economic viability and effectively establish their own enterprise zones around us.

If Shropshire do wish to charge Zero rates on certain commercial developments in certain locations then the Regulations are quite clear on what they must do. Create appropriate charging zones and charging categories in line with their evidence. If they wish to adopt a simple system that's fine – but they must treat all development proportionately and set commercial CIL rates across that sector in line with the evidence.

The Charge Setting Procedures give clear guidance on CIL examination on the grounds for rejecting a Charging Schedule. Paragraph 68 states :-

The examiner should reject a charging authority's draft charging schedule for any one of a number of reasons.....

A charging schedule should be rejected if the conclusions that the charging authority has reached in setting the draft CIL rate are either not informed by, or are inconsistent with the evidence.....

There is no question in our view that the conclusions the Council has reached are inconsistent with the evidence. There is no room for interpretation or pragmatism here – by any reasonable judgement the Councils proposals contravene the Regulations and Statutory Guidance.

There is a special responsibility attached to this Examination. Every Planning Authority in England and Wales is looking to the outcome of both this and the Newark and Sherwood hearing to see how CIL should be properly approached. We are aware that the Planning Inspectorate has been instructed to take a light touch to CIL examinations and there is governmental pressure to push CIL proposals through but we hope this doesn't end up with the principles of the Statutory Guidance being thrown out with the bath water in headlong pursuit of a localist agenda. You will be aware the Localism Bill contains provisions that in the event a strictly localist approach is taken that breaches any EU regulation, any resulting financial penalty incurred by the Government will be passed on to the local authority. The message being do what you like under localism but if you get it wrong you'll pay the price.

Whilst it is acknowledged that there is no 'one size fits all' solution to CIL and that many different approaches and methodologies may be acceptable, there are fundamental principles of the Statutory Guidance that should not be breached :

- 1, CIL rates must be based solely on economic viability evidence and not on any policy based agenda.
- 2, If a differential rate approach is adopted, CIL Rates must be set consistently across all development categories in all charging zones based on the evidence.
- 3, CIL must not selectively favour any area or category of development by applying very low or zero rates unless such rates are entirely consistent with the economic viability evidence. Otherwise there will be a clear breach of State Aid rules.

In the event that you are minded to approve this schedule we would urge the Planning Inspectorate and CLG to seek specialist legal advice on the State Aid issue as such a decision could have very far reaching consequences nationally.

Whilst we believe that the Charging Schedule should be rejectedsetting a clear marker for those that follow that rates must be consistent with evidence..... and because the alternative - significant modification to the commercial rates - would remove the right to be heard, of commercial developers who had no reason to attend this hearing in view of the zero rates that were proposed. We do acknowledge Para 67 of the Charge Setting Procedures which states :-

The examiner should modify the charging authority's draft charging schedule if a charging authority has complied with the requirements of the Act and the regulations, used appropriate available evidence, but the proposed CIL rate (or rates) is not informed by the evidence, or is inconsistent with the evidence, and a modification would result in the proposed rate (or rates) being informed by and consistent with the evidence.

At the least....at the very least..... this Charging Schedule must be modified to accord with and be consistent with the evidence. We submit that CIL rates that are proportionate to the maximum potential rates identified by Fordham Research must be applied to commercial development in Shropshire – if nothing else, to avoid a major investigation into State Aid.