# Report to the Folkestone & Hythe District Council

**by Terrence Kemmann-Lane** JP DipTP FRTPI MCMI
**an Examiner appointed by the Council**

Date: March 2023

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

**REPORT ON THE EXAMINATION OF THE FOLKESTONE & HYTHE DISTRICT COUNCIL COMMUNITY INFRASTRUCTURE LEVY MODIFIED DRAFT CHARGING SCHEDULE**

Charging Schedule submitted for examination on 24 November 2022 through Penny O'Shea Consulting

POC

| Non-Technical Summary |
|---|
| This report concludes that the Folkestone & Hythe District Council Community Infrastructure Levy Modified Draft Charging Schedule provides an appropriate basis for the collection of the levy in the district. The proposed rates will not put the majority of developments at risk, and subject to a minor modification to the text of the Schedule of CIL charges, to reflect changes to the Use Classes Order, it can be recommended for approval. The modification has no effect on the rates of charge, other than to reflect the obligatory response to inflation. |

**Table of Abbreviations**

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|---|---|
| BCIS | Building Cost Information Service |
| CIL | Community Infrastructure Levy |
| CSR | Core Strategy Review |
| DCS | Draft Charging Schedule |
| DS | Dixon Searle |
| FHDC | Folkestone & Hythe District Council |
| GE | Gerald Eve |
| IDP | Infrastructure Delivery Plan |
| IFGS | Infrastructure Funding Gap Statement |
| IFS | Infrastructure Funding Statement |
| LR | (Local Plan and Community Infrastructure) Levy Review |
| MDCS | Modified Draft Charging Schedule |
| PPG | Planning Practice Guidance |
| PPLP | Places and Policies Local Plan |

## Introduction

1. I have been appointed by Folkestone & Hythe District Council (FHDC), the Community Infrastructure Charging Authority, to examine the FHDC Community Infrastructure Levy (CIL) Modified Draft Charging Schedule (MDCS). I am a chartered town planner, being a Fellow of the Royal Town Planning Institute, with more than 50 years' experience, including 35 years' experience holding inquires and examinations into development plans and CIL charging schedules as a Planning Inspector, and managing other Inspectors in development plan work. I have been examining CIL proposals for planning authorities since 2013.

2. The consultation on the Draft Charging Schedule (DCS) and the MDCS produced no representation that questioned the methodology of the viability evidence or the proposed charges that were recommended and adopted by the council (see paragraphs 5 to 7 below). Nor was there any request to be heard. The documentation put before me was straightforward and not controversial. I was able to explore matters that concerned me in writing, and I found no need to hold an examination hearing. That correspondence was put on the council's CIL webpage.

3. This report contains my assessment of the FHDC CIL MDCS in terms of Section 212 of the Planning Act 2008 as amended (the Act). 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. The requirements are set out in Part 11 of the Act, and in the Community Infrastructure Levy Regulations 2010 as amended (the Regulations). I have also had regard to the National Planning Policy Framework (the Framework) and the CIL section of the Planning Practice Guidance (PPG).

4. To comply with the relevant legislation the local charging authority has to submit a charging schedule that strikes what appears to the charging authority to be an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the district.

5. The council's first CIL Charging Schedule came into effect in August 2016 (when it was called Shepway District). Amendments to the Community Infrastructure Levy Regulations 2010 were introduced in September 2019. Significant changes included: removal of pooling restrictions for s106 obligations (i.e. the requirement that no more than five S106 obligations can fund a single infrastructure project); removal of the requirement for a Regulation 123 list (i.e. a list of infrastructure projects that CIL might be spent on); and introduction of a new requirement to produce an annual Infrastructure Funding Statement.

6. The council adopted the Core Strategy Review (CSR) in March 2022, and so it was timely for the council to amend the adopted CIL Charging Schedule to bring it 'in step' with the adopted CSR, as well as amendments to the CIL Regulations. The revised DCS was put out for public consultation between 22 August and 3 October 2022.

7. In the light of representations received during that period, the council produced a schedule of minor modifications. Under Regulation 19(4) of the Regulations, the council may modify the CIL DCS following publication and consultation. A Statement of Modifications was published in accordance with Regulation 19(1)(d), and consulted on during the 4-week period following the formal submission date of the DCS, that is, from 24 November to midnight on 22 December 2022. It is the modified version of the DCS that is now the subject of my examination.

8. There were five modifications in the consultation, relating to the use of s106 as the appropriate mechanism for funding infrastructure in relation to National Highways and Kent County Council, as education authority; the assignment of CIL receipts to Kent County Council; and references to an amended Infrastructure Schedule and Infrastructure Funding Gap Statement. At the same time, modifications to the Levy Review prepared by Gerald Eve on behalf of the council were publicised, again responding to representations made in the earlier consultation period. None of the modifications affect the tables of charges (the tables of £ per $m^2$) that were published in August 2022.

9. The 2016 Charging Schedule made CIL payable on residential and retail developments. These charges varied within different zones of the district. The CIL rates are updated each year in accordance with inflation as established in the "All-in Tender Price Index" published by the Building Cost Information Service (BCIS) in November of the previous year. The following table shows the CIL rates for the different uses and zones for Charging Schedule Year 6 – 1 January to 31 December 2022.

| CIL charging schedule Year 6 – 1 January – 31 December 2022 | | |
|---|---|---|
| **Residential Uses** | Price per square metre | Zone area(s) |
| Zone A | £0 | Lydd, some parts of Folkestone |
| Zone B | £58.86 | Romney Marsh (excluding Dungeness & Lydd), Hawkinge, some parts of Folkestone |
| Zone C | £117.73 | Hythe, some parts of Folkestone |
| Zone D | £147.16 | North Downs area, some parts of Folkestone |
| **Class E – commercial, Business and Service** | Price per square metre | Floorspace/ type of use proposed |
| Folkestone Town Centre (see map 3) | £0 | Convenience and comparison retail & other development akin to retail |
| Rest of District | £117.73 | Supermarkets, superstores and retail warehousing & other large scale development akin to retail (net retail space of over 280 sqm) and |
| | £0 | Other development akin to retail (net retail selling space of up to 280 sqm) |

| **Strategic & key development sites** | Price per square metre | Policy area |
|---|---|---|
| Core Strategy Policy SS6 | £0 | Folkestone Harbour & foreshore |
| Core Strategy Policy SS7 | £0 | Shorncliffe Garrison |
| Core Strategy Policy CSD8 | £0 | Core Development Area New Romney Masterplan |
| Core Strategy Policy CSD9 | £0 | Strategic redevelopment Sellindge |

10. There is additional text added under the heading 'CIL and S106 agreements' that explains the arrangements that have been agreed with Kent County Council and National Highways over the use of section 106 agreements and Strategic Road Network mitigation, and not using CIL receipts.

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

*Infrastructure planning evidence*

11. The council's development plan consists of FHDC Places and Policies Local Plan (PPLP), adopted in September 2020, and the FHDC Core Strategy Review (CSR), adopted in March 2022. To support the preparation of these two development plan documents, Infrastructure Delivery Plans (IDPs) were prepared, in August 2018 and January 2019 respectively.

12. These were produced to enable an understanding of what infrastructure was required to deliver the planned growth and wider objectives of the council, and to properly account for the funding, timing and delivery of projects. In addition, for the purposes of producing a new DCS, the council has produced an Infrastructure Schedule updated to October 2022. Among other things, the Schedule lists the infrastructure type, the project, its priority, the phasing, the delivery body, an indicative cost, the funding position, and the expected funding gap.

13. With the removal of the requirement for a Regulation 123 list in an amendment of the CIL Regulations on 1 September 2019 (mentioned in paragraph 5 above), there is a requirement for an annual Infrastructure Funding Statement (IFS). I have been provided with the final draft of the council's IFS for the year 2021/2022.

14. The IFS provides information on the monetary (and some non-monetary) contributions sought and received from developers for the provision of infrastructure to support development in Folkestone & Hythe District, and the subsequent use, or intended use, of those contributions by FHDC. It also provides a statement of the infrastructure projects or types of infrastructure which the council as CIL charging authority intends will be, or may be, wholly or partly funded by CIL. The report covers the financial year 1 April 2021 – 31 March 2022. It deals with both CIL contributions and those produced through section 106 agreements.

15. The IFS has the following sections dealing with CIL: Headline Figures, CIL infrastructure expenditure in 2021/22, Other CIL expenditure in 2021/22, CIL receipts retained (allocated and unallocated), CIL receipts retained (Regulation 59E and 59F), and the (CIL) Infrastructure List. For Section 106, the following are included: Planning Obligations Report, Headline Figures, Section 106 infrastructure expenditure in 2021/22, Section 106 receipts retained (allocated and unallocated), and Receipts from Planning Obligations transferred to other organisations. It has two annexes: ANNEX A: The Regulatory Requirements for Infrastructure Funding Statements, and Annex B: List of Schedule 2 requirements for the Infrastructure Funding Statement. It is accompanied by an Infrastructure List (required under Regulation 121A (1)(a)).

16. An Infrastructure Funding Gap Statement (IFGS), dated November 2022, has been submitted in support of the MDCS, meeting the requirement that the authority must consider what infrastructure is needed in the area to support development and what other funding sources are available. In determining the size of the aggregate infrastructure funding gap, charging authorities should consider known and expected infrastructure costs and the other sources of possible funding available to meet those costs. The government recognises there will be uncertainty in pinpointing other funding sources, particularly beyond the short term. However, a charging authority must provide evidence of an aggregate funding gap in order to charge CIL, or in order to review its adopted CIL charging rates.

17. The IFGS considers what infrastructure is needed to support development in the district, as identified in the adopted PPLP to 2031 and CSR to 2037, and as set out in the IDPs; the likely cost of this infrastructure; existing and known funding sources (including from s106 contributions); and the income projected from CIL.

18. The starting point for identifying whether a funding gap exists is to establish the total cost of infrastructure required across the district to support planned growth up to 2037. The next step is to eliminate from the funding gap analysis any infrastructure item that the council is not expected to contribute towards. This includes, for example, utilities infrastructure which is funded via revenue from consumer bills. The final stage is to deduct known funding from other sources which is earmarked for or likely to contribute towards the costs of some of the required infrastructure items.

19. Table 2: 'Identified Funding Gap' in the IFGS (below) sets out the estimated funding gap, taking into account infrastructure requirements identified for housing allocations and strategic projects. The difference between the total cost of the assessed infrastructure and the identified other sources of funding provides the estimated funding gap. Following national guidance, only infrastructure requirements which meet the following criteria have been taken into account: the total cost of the project is known or can be reasonably estimated, the project is required to support future identified development of the district rather than addressing existing capacity issues, and the project is something tangible (i.e. not a review or feasibility study).

*Table 2: Identified Funding Gap*

| | **Cost of assessed infrastructure**[2] | **Other Sources of funding**[3] | **Estimated Funding Gap** |
|---|---|---|---|
| Strategic highways | £10,000,000 | £3,500,000 | £6,500,000 |
| Local highways (including pedestrian and cycle connections) | £23,159,539 | £17,982,970 | £5,176,569 |
| Folkestone Place Plan Priority Projects | £49,457,945 | £0 | £49,457,945 |
| Education | £41,800,000 | £19,528,000 | £22,272,000* |
| Higher and Further Education | £8,000,000 | £8,000,000 | £0 |
| Green Infrastructure | £68,560 | £0 | £68,560 |
| Open space and play space | £4,244,117 | £2,434,117 | £1,810,000 |
| Water supply and flood defences | £32,245,500 | £30,162,500 | £2,083,000 |
| Health and social care | £26,558,600 | £26,558,600 | £0* |
| Waste and recycling | £7,135,000 | £1,800,000 | £5,335,000 |
| Community | £1,508,153 | £573,098 | £935,055 |
| Leisure and cultural facilities | £23,100,000 | £20,500,000 | £2,600,000 |
| Public realm (FHDC Operations Team) | £410,000 | £125,500 | £284,500 |
| TOTAL | £185,887,414 | £111,636,785 | £74,250,629 |

Notes:
[2] this estimate is based only on a selection of infrastructure projects where the likely costs are known. In reality the estimated funding gaps are likely to be much larger.
[3] Including Section 106 (S106), grant funding, Levelling-Up Funding
* the education infrastructure figures are not carried forward into the total values
* there might be a funding gap for healthcare provision, but this has not been presented in the infrastructure schedule based on currently known information.

20. Table 2 shows that the total cost of infrastructure identified in the IDPs equates to circa £185.9m. When other sources of funding are discounted, an aggregate funding gap of circa £74.25m remains (figures rounded). It should be noted, there are some infrastructure projects identified in the IDPs (and also infrastructure associated with windfall development) where the cost is unknown or uncertain, and therefore it is likely that this funding gap could be higher.

21. From Table 2, it can be seen that the likely aggregate finding gap is £74,25m, as a minimum. It is important for charging authorities to understand the likely income projections arising from proposed CIL rates as the charging authority cannot collect CIL receipts in excess of what is needed to fund the aggregate

funding gap. Using a number of assumptions, set out in the IFGS, it is estimated that CIL will deliver approximately £24.19m (rounded), including Levy collected so far, to the end of the plan period to 2037 (IFGS, Table 4: CIL income in the context of total infrastructure). Thus, there is a likely residual funding gap of £50.06m after the estimated CIL receipts of £24.19m are accounted for.

22. From these documents it can be seen that there is an estimated cost of assessed infrastructure (where known) of £185.9m, other sources of funding (including Section 106 (S106), grant funding, Levelling-Up Funding) producing £111.6m, leaving a funding gap of £74.3m (these figures rounded). This funding gap will need to be at least part funded through CIL, which is estimated to provide £21.75m between now and 2037. This demonstrates the need to continue to levy CIL in the district. Whilst, in practice, it is likely that the funding gap will be higher, the proposed CIL charges would make a significant contribution towards meeting the funding gap.

*Economic viability evidence*

23. The council commissioned the FHDC Local Plan and Community Infrastructure Levy Review (LR) from Gerald Eve LLP (GE), the latest update of which was published in October 2022. The LR uses a residual valuation method, an industry standard approach that follows the policy in the Framework, PPG and the CIL Regulations. It involves calculating the value of completed development schemes and deducting development costs (construction, fees, finance, sustainability requirements, CIL and other plan policy costs) and developer's profit. The residual amount is the sum left after these costs have been deducted from the value of the development, and guides the amount available for site acquisition. A 'Benchmark Land Value' is used, being the value above the existing use value a reasonable landowner would accept, including a premium as an incentive to sell, to bring the site to market for development. Thus a gross development value is established from which the gross development costs, including developer's profit, is deducted, resulting in a residual land value. If the residual land value is sufficient, including a buffer, the possibility and extent of CIL charges can be assessed.

24. The objective of the LR was to test the appropriateness of current CIL rates to ensure that the cumulative impact of the council's policies, including affordable housing and CIL, do not compromise the delivery of the Local Plan. The LR acts as a review/update of the CIL & Whole Plan Economic Viability Assessment report undertaken by Dixon Searle (DS) in July 2014.

25. The DS report provided viability evidence to support the proposed CIL recommendations, based on the Local Plan. In addition to the DS report, GE also had regard to the review undertaken by BPS in 2019 titled CIL Charging Schedule Review Viability Report to support the CSR. BPS had specifically assessed the CIL requirements and financial viability of two strategic allocations, Otterpool Park garden settlement and Sellindge. The LR is an update on the DS CIL Viability Study in 2014. The DS viability study recommended a four-zone approach, and CIL charges on residential and retail developments, and this was adopted by the council.

26. As part of the LR, it was necessary to assess the current CIL zones to check whether they remain appropriate. GE conducted an inspection of the district, visiting each of the zones to form an opinion of the quality of urban settlements, current stock and whether the zones are still applicable. The inspection revealed that the current ward profiles reflect the character areas and the respective boundary lines were generally evident by using main roads throughout the district. Along with the research on market evidence, it was concluded that the current four CIL zones incorporating local wards provides a suitable basis for designating CIL rates and should therefore be maintained.

27. The DS assessment adopted 13 residential typologies, which GE reviewed to determine whether they remain representative. The review found that certain typologies were not reflective of the current development market. As a result, 20 residential typologies were developed that better reflect the likely form of housing coming forward in the district. Consideration was given to a 'build-to-rent' typology, but it was determined that this was not likely to be prevalent in the district and consequently was not tested.

28. The LR re-assessed the strategic sites to check the return to developer of such schemes and whether they could be liable for future CIL. These schemes involve multiple complexities such as their cash flows and delivery programme when assessing their viability and thus require a master developer approach. The model provides a high-level assessment of each typology, and therefore a level of variance when compared to a detailed viability assessment should be anticipated. The purpose of the CIL Charging Model is to provide a basis of assessing multiple development typologies at once, on the same basis for comparison. It is not possible to include such complexities, and the strategic sites were therefore assessed using Argus Developer, to ensure accuracy in testing.

29. As to commercial typologies, a review was made of those adopted in the DS assessment. GE adopted and assessed 4 retail, 2 office, 2 industrial typologies and 1 for hotels.

30. The full results of the LR are set out in a separate volume of appendices, as follows:
Appendix 7. Residential Comparable Evidence Analysis
Appendix 8. Commercial Comparable Evidence Analysis
Appendix 9. BCIS Construction Costs
Appendix 10. Finance Analysis
Appendix 11. Model Outputs
Appendix 12. Sensitivity Testing

31. Having considered the results of the analysis and outputs, the recommendations in the LR, which the council accepted, were that the existing categories of uses, the CIL zones and the CIL rates should be maintained.

32. The LR inevitably, when dealing with the viability of development district wide, will be a high-level study. Thus the inputs are generalised, as opposed to those that deal with site specific developments. This means, among other things, that a degree of professional judgement is called for, based on using the best available evidence. For this reason, along with the requirement that care should be taken not to set charging rates at, or near to, the limits of viability, it is

important to ensure that there is an appropriate buffer, so that charges are sufficiently set below the theoretical maximum that could be levied. It is noteworthy that, throughout the consultation period on the MDCS and the DCS before it, no representations were submitted that criticised the LR method, inputs or conclusions on the recommended CIL rates

My conclusions

33. The MDCS is supported by evidence of community infrastructure needs and a continuing need to charge CIL is identified. I am satisfied that the LR follows good and accepted practice and there is evidence for the various inputs used and adequate headroom is allowed for. It is notable that the consultation responses raised no objections to the MDCS, or the initial submission version, which I see as a clear indication that the assessments are reasonable. There has also been no evidence put to me to suggest that the current rates have had any deleterious effect on development coming forward in the district on the basis of the development plan. The lack of objections might also suggest that there could be scope for some modest increase in some/all of the rates, but I view the outcome of the LR as being a thorough analysis, making appropriate judgements about the degree of buffer that should be allowed in setting the rates.

34. The LR was undertaken following a tried and tested industry standard approach, using the residual land value method, that follows the policy in the Framework, PPG and the CIL Regulations. I am satisfied that the MDCS is supported by background documents containing appropriate available evidence that justifies the proposed CIL rates: the charging rates are informed by and consistent with the appropriate available evidence.

## Matters raised during the consultation period

35. As I have reported at paragraphs 7 and 8 above, the revised DCS was put out for public consultation between 22 August and 3 October 2022. In the light of representations received during that period, the council produced a schedule of minor modifications. A Statement of Modifications was published and consulted on during the 4-week period following the formal submission date of the DCS, that is, from 24 November to midnight on 22 December 2022.

36. There were five modifications in the consultation, relating to the use of s106 as the appropriate mechanism for funding infrastructure in relation to National Highways and the education authority and assignment of CIL receipts to Kent County Council, together with references to an amended Infrastructure Schedule and IFGS. At the same time modifications to the LR were publicised, again responding to representations made in the earlier consultation period. None of the modifications affect the charges tables themselves (the tables of £ per $m^2$) that were published in August 2022.

37. The consultation responses are reported on in Document CIL1.2 'Statement of Representations'. These matters included support for the Schedule, a query about methodology (which was resolved with the respondent), matters in the Infrastructure Schedule, the IFGS, Sections 278 and 106 agreements, text relating to sources of infrastructure funding, and use of CIL receipts. None of

these matters questioned the methodology or the outcomes of the LR, or challenged the proposed charging rates of CIL. The were no representations in response to the consultation on the Statement of Modifications.

38. The PPG[1] states that the examiner should establish that:
- the charging authority has complied with the legislative requirements set out in the Act and the Regulations;
- the draft charging schedule is supported by background documents containing appropriate available evidence;
- the charging authority has undertaken an appropriate level of consultation;
- the proposed rate or rates are informed by, and consistent with, the evidence on viability across the charging authority's area; and
- evidence has been provided that shows the proposed rate or rates would not undermine the deliverability of the plan (paragraph 34 of the National Planning Policy Framework).

39. Therefore all the matters raised in the consultation responses do not come within the range of matters that I, as examiner, should establish. They are, therefore, matters for the council (which the council has dealt with) and not matters for me.

**Matters that I raised**

40. Following my initial reading of the examination documents submitted to me I raised a number of questions with the council. The first related to the references in the LR to a typology 'Senior Living', referred to as Care Homes Use Class C2 in paragraphs 6.34 and 6.35, and also referred to as C3 in paragraph 6.36. This is picked up again at paragraph 8.7 in Table 21, where the typology is referred to (sixth entry) as C3/C4 – Extra Care (Senior Living), although C4 is in fact 'housing in multiple occupation'. My first concern was to know exactly what form of housing was being referred to. Senior Living can simply refer to housing for over-55-year-olds, but also is applied to some forms of care homes.

41. My attention had been drawn to this because I had noted that in the LR, at paragraphs 6.34 and 6.35, it stated:
"*6.34 Review of the Dixon Searle assessment*[2] *highlighted that Care Homes (C2) had been included as a commercial asset, with nil CIL rates applied. Discussions with the Council have indicated that they wish to promote the delivery of assets that would be considered to benefit the local community, such as Care Homes. Whereas a product such as Senior Living is modelled for private revenue, a Care Home typology would be considered as a potential contribution to the local area, of (sic) which should not inhibit delivery.*
*6.35 As such, it has been agreed with the Council that Care Homes (C2) would maintain their current nil CIL rate and would therefore not be included within the area-wide CIL review*."

[1] The Planning Practice Guidance, Reference ID: 25-040-20190901.
[2] The Dixon Searle assessment refers to the CIL & Whole Plan Economic Viability Assessment undertaken by that consultancy in July 2014 which formed the viability evidence for the Charging Schedule that came into effect in 2016.

42. This caused me concern for two reasons, firstly that there should not be any confusion about which use classes were being referred to in the LR, and secondly senior living developments and care homes are both C Class residential uses, and on the face of it are not nil rated – there are no exclusions in the Residential CIL rate table. With regard to the reference to C4, (houses in multiple occupation), it has been explained that this arose because the Building Cost Information Service of the Royal Institution of Chartered Surveyors for 'supported housing' includes costs for both C3 and C4 – the latter reflecting flats in multiple occupation. However, it is confirmed that the assessment solely tested Senior Living, Class C3, and that Senior Living was meant to relate to housing for 'people over or approaching retirement age', which does not provide a significant level of care, as set out in the CSR.

43. As a result, my concern has been allayed, since I now understand that Senior Living does not encompass homes where a significant level of care is provided. The LR has been updated to Senior Living 'Age Restrictive Accommodation without Provision of Significant Care' throughout the report.

44. In addition to the above, in LR paragraph 6.32 states: *"In terms of value, a C3 senior living product would generally achieve a 5-15% premium in comparison to private residential products, following general residential assumptions. Therefore, it would be anticipated that the added premium may result in greater levels of potential return to developer and therefore, could be assessed on a separate basis to standard residential (C3) typologies. In doing so, there may be scope for a separate CIL rate for Senior Living".*

45. This led me to question whether a separate rate for senior living would be justified on the basis of the viability indication given. As a result of my question, a further review of the evidence base shows that the predominant future delivery of C3 (age restricted) accommodation will be on those strategic sites that are proposed to be exempt from CIL. There is no history of age restricted housing being delivered in the district and therefore it is unlikely that 'windfall' development in this category will arise outside of the CIL exempt strategic sites. As a result there is no basis for adding a separate senior living category under the residential charging rates. That makes sense to me.

46. The council have, however, agreed that it would add clarity if 'All development within Use Class C3' was added within the MDCS Table 1: 'CIL Charges for residential developments by zone'.

47. In respect of the MDCS Table 2 setting charges for retail use, the table itself carries the heading for the types of use as "Class E – Commercial, Business and Services". Use Class E came into effect by virtue of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. These regulations specified, among other things, that from 1 September 2020 buildings or other land that had been, on 31 August 2020, in a use within Use Classes Class A1 (Shops), Class A2 (Financial and professional services, Class A3 (Restaurants and cafes), or Class B1 (Business), shall be treated as if being used for a purposed specified in Class E. Class E includes use for any of all of 7 basic uses, which included for instance, retail sale; sale of food and drink, mostly on the premises; financial and professional services; offices and 'light' industry.

48. Whilst the itemised uses with a CIL rate are clearly identified as types of retail, the heading does not reflect the sole typology being charged. I suggested that this is potentially misleading, not accurately reflecting the content of the Charging Schedule. The council has agreed with me that the heading of these typologies should be simply stated as ‘Retail development’.

49. A final matter under this heading relates to the charges themselves. The MDCS was published in October 2022 and submitted for examination in November 2022. The CIL rates shown in the Schedule were proposed not to change from those in the Charging Schedule that came into effect in August 2016, but updated each year in between by the inflation rate (see paragraph 9 above) in accordance with inflation. The tables of rates in the DRAFT CHARGING SCHEDULE - SUBMISSION VERSION (AS MODIFIED) dated November 2022 had two columns for the rates: one for the proposed rates and one for the current rates. Because it was the intention to continue with the rates unchanged, both columns showed the same figures.

50. Since this report on my examination would not be provided to the council until sometime in 2023, the inflation rates for the previous year would come into operation. I checked with the council as to whether it was intended to keep the 2023 rates when the new Charging Schedule came into effect at the rates published in the consultation MDCS, or whether they should be at the updated rates for the year. It was confirmed that the intention was that the rates would be uplifted by the 2022 inflation rate.

51. For clarity about how the figures have changed following inflation as at last October, I will make the revised tables a formal recommendation. It should be clear that this recommendation for the updated rates does not amount to a change that should be advertised and consulted upon, because it is the simple operation of the Regulations that require indexation to be part of the calculation of the chargeable amount. The recommendation also deals with the titles of the classes of development to be charged CIL.

## Minor matters

52. The council will no doubt wish to ensure that there are no references in the Charging Schedule when it is approved that continue to repeat out of date matters or refer to proposed intentions when the document will no longer be a proposal.

53. I will mention a few examples that caught my eye, in the hope that this will be helpful. In paragraph 5.9 there is a reference to A1 – A5 uses and to Class E; the heading of Table 2 continues to refer to Proposed and Current charges (which will be dealt with by my recommended modification); there are a number of references to ‘proposed’, such as in paragraphs 1.3, 5.5, and the first two bullet points under that paragraph.

## Overall conclusion

Are the legal requirements met?

54. I conclude that the MDCS complies with national policy and guidance. The Charging Schedule complies with the 2008 Planning Act and 2010 Regulations

(as amended), including in respect of the statutory processes and public consultation. In stating this I have taken account of the submitted council document CIL 1.4: Statement of Compliance, which I find to be an adequate demonstration of meeting the requirements.

55. In preparing the DCS and MDCS account has been taken of the Development Plan for the area (the Folkestone & Hythe District Council Places and Policies Local Plan adopted September 2020 and the Folkestone & Hythe District Council Core Strategy Review adopted March 2022); the supporting IDPs for each of the development plan documents and the annual IFS; and the viability work undertaken by consultants acting for the council.

56. The revised DCS was consulted on from 22 August 2022 for 6 weeks, and the Statement of Modifications was consulted on from 24 November 2022 for 4 weeks. Both sets of consultations were online on the council's CIL Consultation webpage, and emails/letter notification was sent to 166 consultees on the consultation database, which included all the bodies set out in Regulations 16(1A) and 16(2)

57. I conclude that, in setting the CIL charging rates in the MDCS, and the revised DCS that went before it, the council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in the Folkestone & Hythe District. The council has been realistic in terms of achieving a reasonable level of income to address a gap in infrastructure funding, while ensuring that, in general, development remains viable across most of the district. It has made decisions about its priorities for bringing in funds through CIL and obtaining contributions through section 106 agreements. An appropriate balance has been struck.

**Recommendation**

58. I conclude that the MDCS for the Folkestone & Hythe Community Infrastructure Levy, submitted for examination on 24 November 2022, subject to making the modifications set out in Examiner's Modification EM1 in the appendix below, satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

*Terrence Kemmann-Lane*

Examiner

3 March 2023

## Appendix

**Modification that the examiner specifies so that the Charging Schedule may be approved:**

| Modification | Reference | Modification |
|---|---|---|
| EM1 | Tables 1 and 2 CIL charges | Replace Tables 1 and 2 of the CIL charges in the MDCS with the Tables below |

### Table 1: CIL Charges for residential developments by zone

| **Development type** | **CIL rate (£ per sq m)** | | | |
|---|---|---|---|---|
| **Residential development** | **Zone A** | **Zone B** | **Zone C** | **Zone D** |
| All development within Use Class C3 | £0 | £62.94 | £125.88 | £157.35 |
| **Residential development on strategic site allocations** | £0 | | | |

Notes:
The stated rates apply from 1 January 2023 and are subject to annual revision on the 1 January each year
Strategic site allocations comprise:

- North Downs Garden Settlement (SS6 to SS9)
- Sellindge Strategy Phases 1 and 2 (CSD9)
- Folkestone Harbour & Seafront (SS10)
- Shorncliffe Garrison (SS11)
- New Romney Strategy (CSD8)
- Nickolls Quarry strategic allocation, Hythe (Figure 5.6)

### Table 2. CIL charges for retail development

| **Zone** | **Retail Development** | **CIL Rate (£ per sq m)** |
|---|---|---|
| Folkestone Town Centre Area | All convenience and comparison retail and other development akin to retail | £0 |
| Otterpool Park strategic allocation | All convenience and comparison retail and other development akin to retail | £0 |
| Rest of district | Supermarkets, superstores, and retail warehousing (net retail selling space of over 280 sq m) (a & b) | £125.88 |
| Rest of district | Other large-scale development akin to retail (net retail selling space of over 280 sq m) (c) | £125.88 |
| Rest of district | Other retail development and developments akin to retail (net retail selling space up to 280 sq m) | £0 |