

CABINET (LOCAL DEVELOPMENT FRAMEWORK) COMMITTEE  
27 NOVEMBER 2013

CABINET  
4 DECEMBER 2013

COMMUNITY INFRASTRUCTURE LEVY: ADOPTION OF DRAFT CHARGING  
SCHEDULE & INTRODUCTION OF CIL CHARGE

REPORT OF HEAD OF STRATEGIC PLANNING

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RECENT REFERENCES:

[CAB2412](#) Community Infrastructure Levy: Consultation on Preliminary Draft Charging Schedule – Cabinet 14 November 2012

[CAB2420](#) Community Infrastructure Levy: Revised Table of Charges – Cabinet 5 December 2012

[CAB2466](#) Community Infrastructure Levy: Draft Charging Schedule – Cabinet 13 March 2013

[CAB2489](#) Community Infrastructure Levy: Submission Of Draft Charging Schedule – Cabinet 26 June 2013

EXECUTIVE SUMMARY:

The Council has decided to introduce the new Community Infrastructure Levy (CIL) as a mechanism for funding essential infrastructure partly from contributions from new development. At its July 2013 meeting the Council approved a number of minor Modifications to the Charging Schedule and its submission for independent examination.

An independent examiner was subsequently appointed (Mr Philip Staddon BSc, Dip, MBA, MRTPI) and held an examination hearing on 16 September 2013. The Examiner's Report was published on 7 October and concludes that the Charging Schedule 'provides an appropriate basis for the collection of the levy in the district'. The examiner recommended a minor modification to include a plan of the boundary of Winchester town centre.

Now that the Charging Schedule has been examined the Council is in a position to adopt it (subject to the minor modification above). This report recommends the adoption of the CIL Charging Schedule and that CIL be brought into effect in the part of the District outside the South Downs National Park with effect from 7 April 2014.

The Council will in due course need to publish its 'Regulation 123 List' setting out what it may spend CIL receipts on. This does not have to be resolved now, but it will

need to be agreed before the introduction of the new charging regime in April 2014. In addition, the Council will need to resolve how it proposes to prioritise the various bids and suggestions for the use of CIL funding that it is bound to receive. The report recommends that this issue is dealt with by developing a programme of schemes, to be agreed by Cabinet and reviewed annually, which would identify infrastructure projects across the District intended to be funded, in whole or in part, by CIL income.

Furthermore, the Council had indicated its intention to introduce a phased payments policy and mechanism for the collection of CIL income in relation to larger scale developments. This approach was considered and supported by the independent examiner and it is recommended that authority be delegated to officers to develop the detail of this.

#### RECOMMENDED TO COUNCIL:

1. That Council be recommended to adopt the City Council's Community Infrastructure Levy (CIL) Charging Schedule, incorporating the Council's Modifications published in July 2013 and the recommendations made by the Examiner's Report of October 2013.
2. That Council be recommended to bring the CIL Charging Schedule into effect in relation to development which is 'first permitted' on or after 7 April 2014.

#### RECOMMENDED TO CABINET:

3. That authority be delegated to the Head of Strategic Planning, in consultation with the Portfolio Holder for Built Environment, to prepare and publish the adopted Charging Schedule, as modified, and associated guidance notes and publicity material in advance of the Levy being brought into effect.
4. That the 'Regulation 123 List' be developed, taking account of current and expected government advice, and submitted for approval by Cabinet no later than its meeting of 19 March 2014.
5. That officers develop a mechanism for prioritising projects for CIL funding based upon the development of a programme of infrastructure projects, in consultation with the Portfolio Holder for Built Environment and taking account of the content of section 4 of this report, with the final programme to be presented for agreement by Cabinet. Thereafter this programme shall be reviewed and up-dated annually by Cabinet.
6. That the development and implementation of a phased payments policy and mechanism for the collection of CIL payments relating to larger scale developments be delegated to the Assistant Director (Built Environment), in consultation with the Portfolio Holder for Built Environment.

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DETAIL:

1. Background

- 1.1 The Community Infrastructure Levy (CIL) is a mechanism for local authorities to raise money from new development to fund infrastructure works. The way in which CIL works is set down in Government regulations and guidance. The City Council is a 'charging authority' which can collect and spend CIL for that part of the District for which it is the local planning authority. The South Downs National Park Authority (SDNPA) will make all the decisions about CIL in the part of Winchester District for which it is the local planning authority, hence nothing in this report relates to the National Park area.
- 1.2 In accordance with the CIL Regulations, the Council published and consulted on a Preliminary Draft Charging Schedule in December 2012 and January 2013 following which Cabinet and Council agreed minor modifications to the proposals. The Draft Charging Schedule, as it then became, was published for a six week consultation period in April 2013 and the responses were considered by Cabinet and Council. The Charging Schedule was then submitted for independent examination alongside the publication of a small number of Modifications which were subject to consultation during July and August 2013.
- 1.3 An independent examiner was subsequently appointed (Mr Philip Staddon BSc, Dip, MBA, MRTPI) and he examined the Schedule taking account of the Modifications and the representations submitted at the various stages of consultation. A public examination hearing was held on 16 September 2013 at which the Examiner questioned the Council's officers and consultants about various aspects of the Schedule, although none of the objectors elected to appear at the hearing.
- 1.4 The Examiner's Report was published on 7 October and concludes that the Charging Schedule 'provides an appropriate basis for the collection of the levy in the district'. The examiner recommended a minor modification to include a plan of the boundary of Winchester town centre (which is a sub-area for the purposes of the retail charge). Having had the Schedule examined the Council is now able to adopt its CIL Charging Schedule, subject to its earlier Modifications and the examiner's recommended changes.

## 2. Examiner's Report and Adoption

- 2.1 The purpose of the examination is for an independent person to check that the Charging Schedule complies with the requirements of legislation, regulations and Government guidance. These matters are known as the 'drafting requirements' and include testing that the proper consultation and notification procedures have been followed, that the evidence demonstrates a need to fund infrastructure through CIL, and that there is evidence to justify the effect of CIL on viability. Hence the Examiner's Report (attached at Appendix 1) addresses matters such as the adequacy of evidence on infrastructure need and viability, consistency with the strategy of the Local Plan Part 1, and whether the proposed charge would put the overall development of the area at risk.
- 2.2 The Examiner assessed the Charging Schedule both in respect of the residential element and the commercial charges. He concluded that there was a demonstrable 'funding gap' to justify the introduction of CIL and that the viability evidence for residential and commercial development is 'reasonable, robust, proportionate and appropriate'.
- 2.3 The Examiner also looked into the delineation of three charging 'zones' and again concluded that these were justified by the evidence and reflected the planning strategy set out in the Local Plan. He considered the type and location of development that was likely to arise from the Local Plan Part 1 strategy and considered that the Charging Schedule was consistent with the strategy and would not put at risk the general viability of those developments that it would apply to.
- 2.4 Accordingly, the Examiner reached the following overall conclusion:

*'The evidence demonstrates that the overall development of the area, as set out in the CS, will not be put at risk if the proposed CIL charges for residential, hotel and retail development are applied. In setting the CIL charges the Council has used appropriate and available evidence and has justified its differentiation in respect of its three charging zones and types of development. The CIL proposals will achieve a reasonable level of income to help address a well evidenced infrastructure funding gap.'*

The Examiner recommended that the Charging Schedule should be approved, subject to one modification relating to including a map of Winchester Town Centre, as follows:

<i>Modification No.</i>	<i>Modification</i>
<i>EM1</i>	<i>Page 2 of the Schedule under the 'Town Centre' heading - delete "Winchester Town Centre as defined by the town centre boundary shown on Inset Map 31 of the Winchester District Local Plan (2006) – Policy SF1" and replace with "The area defined on Plan 4."</i>

EM2	<p><i>Add Plan 4 to be titled "Zone 2 – Winchester Town Centre Boundary".</i></p> <p><i>Note – plan to be based on an Ordnance Survey map and to clearly delineate the town centre, in line with the Winchester District Local Plan (2006).</i></p>
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- 2.5 The [Draft Charging Schedule](#) can be viewed on the Council's web site and the Council's Statement of Modifications and the change recommended by the examiner are set out at Appendices 2 and 3 respectively (the examiner's recommendation relates to the Charging Schedule proper, which starts at page 8 of the Draft Charging Schedule Consultation document).
- 2.6 The Council is, therefore, now able to approve the Charging Schedule, as modified and in accordance with the Examiner's recommendations. Legislation requires that this must be done by a resolution of the full Council. It will be necessary to include the commencement date within the Charging Schedule and the issue of when the Schedule should come into effect is discussed below.
- 2.7 The Council indicated to the examiner its intention to introduce a phased payments policy and mechanism for the collection of CIL income in relation to larger scale developments. CIL guidance requires authorities to consider this issue and most authorities have introduced such a policy for large developments. Otherwise, the whole CIL requirement would be due at the commencement of development and this could impact on viability and lead to other contributions being reduced, for example affordable housing. This approach was supported by the independent examiner and it is recommended that authority be delegated to officers to develop the detail of the details of this policy for subsequent approval.
- 3 Commencement Date
- 3.1 There are no legal requirements as to when the Charging Schedule is brought into effect, provided it has been properly approved and notice has been given of its publication. The Schedule could, therefore, be brought into effect within a few days of approval by Council (scheduled for 8 January 2014), or at any time after this. In practice, most authorities that have implemented CIL have allowed several months between approval of the Charging Schedule and its introduction, both to allow for the necessary administrative processes to be established and to give applicants good advance notice of the introduction of CIL.
- 3.2 The CIL charge would apply to planning permissions which 'first permit' development from the date of the charging schedule taking effect. Development is 'first permitted' when planning permission is granted but, in the case of an outline consent or other condition requiring further approval, this is not until final approval of the last reserved matter is given. It is, therefore, entirely possible that developments which have been permitted before CIL is introduced would still be liable to the charge.

- 3.3 Work has been ongoing for several months to prepare the administrative processes for the introduction of CIL. These include mechanisms to identify developments that are liable to pay CIL, processes to manage the submission and issue of the various standard forms and notices involved and financial procedures for the collection of the charge, along with methods to monitor commencement of developments and to progress cases to enforcement stage where there are unpaid charges.
- 3.4 When CIL is introduced the scope to pool S106 obligations is severely constrained. This was also planned to happen nationally (even if CIL has not been introduced locally) from April 2014, but the Government has recently extended this deadline to April 2015. Hence the Council had worked on the assumption that it would wish to introduce CIL in April 2014, with preparatory work aiming towards this. It would also be administratively most convenient to introduce CIL at the start of the financial year.
- 3.5 Initial analysis of likely income from CIL suggests that it will generate slightly higher revenue than S106 and that the range of projects which it could fund is much less restricted. 'Tariff' type contributions, such as currently exist for open space and transport, would cease on the introduction of CIL unless they were justified by the needs of the specific scheme, but CIL income from housing schemes is expected to average about £800,000 per annum. This can (in principle) be spent on any item of 'infrastructure' and there would also be income from some types of commercial development, albeit not necessarily at the level or consistency of housing.
- 3.6 Although income from CIL is expected to be somewhat higher than from current 'tariff' systems, the difference is not large and the impact on viability has been one of the key tests assessed by the Council and the examiner. CIL is, however, non-negotiable, so if there is an impact on viability there may be pressure to reduce other contributions (such as affordable housing or on-site infrastructure). However, the examiner concluded that the impact of CIL, when applied in conjunction with requirements for affordable housing, etc, would not put the overall development of the area at risk.
- 3.7 The regulations governing CIL allow for the authority to recoup up to 5% of CIL receipts in any financial year to cover the costs of setting up and running CIL. Given the work involved in the on-going administration of the new charging regime, and the income it will produce, it is proposed to create a post dedicated to the management of CIL. The intention is that this role will be funded using 5% of the income received. Whilst the post may not be immediately self funding it is envisaged that it will become so once CIL has been operating for a number of months and development subject to CIL charges commences generating income for the Council. This post, and other existing roles affected by the introduction of CIL, will be the subject of a report to Personnel Committee.
- 3.8 Accordingly, it is concluded that it would be most advantageous to introduce CIL in April 2014, especially as any delay in introducing of CIL would only be for 1 year. This would also help avoid the risk of the evidence base becoming out of date and the charging schedule needing to be updated. Given the rules

regarding the recovery of 5% for administrative costs in the first 3 full financial years and part 4<sup>th</sup> year (see section 7 below), it would be advantageous not to introduce CIL for the full 2014/15 financial year, commencing instead on 7 April 2014.

#### 4 The 'Regulation 123 List' and Use of CIL Income

- 4.1 The CIL regime can operate alongside S106 but once CIL is in place it is not possible to collect tariff-type contributions through S106. It is also a key principle of CIL that applicants should not be charged through both S106 and CIL for the same item of infrastructure, known as 'double-dipping'. In order to prevent this, Councils can only continue to use S106 to secure infrastructure provision if they publish a 'Regulation 123 List' (R123 list). The R123 list sets out what the Council may spend its CIL receipts on and it cannot use S106 to secure these infrastructure items or types.
- 4.2 Whilst the Council needs to avoid 'double-dipping', it also needs to ensure that development is of an appropriate standard and meets expected levels of provision for open space, access, etc. A careful balance therefore needs to be struck when devising the R123 list, to avoid double-dipping whilst ensuring that necessary site-specific infrastructure is provided through S106. In practice, many developments that contribute CIL will also require a S106 obligation.
- 4.3 The R123 list does not need to be examined in the same way that the Charging Schedule was, so it has not yet been necessary to finalise it. Nor does the Council necessarily need to set out in any detail at this stage which infrastructure projects it may fund. Nevertheless, these are matters which have been given some thought, including a Members' workshop in June 2013. Following this the Council was able to agree in July 2013 the categories it would use to prioritise projects and gave authority for the production of an Infrastructure Statement and draft infrastructure list for the CIL Charging Schedule examination, to show how different types of infrastructure would be dealt with to avoid double-dipping (see report CAB2489).
- 4.4 The categories agreed by the Council for prioritising projects are as follows and were presented to the Charging Schedule examiner, who was satisfied that they represented a reasonable approach:
- Deliver the strategic objectives of the adopted Winchester Local Plan Part 1: Joint Core Strategy;
  - Deliver specific policies of the adopted Development Plan (Winchester Local Plan Part 1: Joint Core Strategy and Winchester District Local Plan Review 2006);
  - Contribute toward the delivery of sustainable (social, environmental and economic) communities within both existing and new developments;

- Address a specific impact of new development, beyond that which has been secured through a S106 obligation related to particular developments;
- Contribute towards the delivery of approved Council corporate strategies and objectives (relating to, for example, the arts, economic development, and sports and leisure);
- Contribute towards the delivery of infrastructure by an infrastructure provider (including the County Council, Government agencies, and private utility providers) where it can be demonstrated to the Council's satisfaction that infrastructure deemed necessary would not otherwise be delivered;
- Contribute towards meeting the defined infrastructure needs of local communities to make good a defined shortfall or absence of provision that is unlikely to be met by the parish levels funds (15% or 25%) of any CIL receipts; and
- Contribute towards meeting defined infrastructure needs of local communities to make good a defined shortfall or absence of provision, where it is recognised that little or no significant development is considered likely over the Local Plan period.

4.5 The Infrastructure Statement published with the submitted Charging Schedule clarified matters such as that certain types of public open space should be provided on-site through S106 in larger schemes (of 15 or more dwellings), whereas smaller schemes would contribute through CIL only. Similarly, other site-related infrastructure such as specific highway or junction improvements needed to enable a site to proceed, or to mitigate the impact of development, would be secured through S106 (or S278) whereas contributions to more general transport improvements would be through CIL.

4.6 The R123 List needs to set this out clearly but succinctly. A complication is that changes have been made by Government to CIL regulations and guidance on an annual basis since its introduction. Further updated guidance is imminent and it is believed that this will address some issues that are critical to the R123 list, including how S278 agreements (relating to transport) and the pooling of contributions are dealt with. The detail of the R123 list does need not be finalised at this stage, which is fortunate given uncertainty about several matters such as the content of Government guidance and the type of provision that may be secured in conjunction with site allocations in the Local Plan Part 2. Accordingly this report does not include a recommended R123 List, but this should be brought to Cabinet for approval in advance of CIL coming into effect (i.e. by 19 March 2014 Cabinet at the latest).

4.7 The R123 List will set out those infrastructure projects/types which the Council may spend CIL contributions on, not what it will spend them on or the priority order in which it will fund various projects. Decisions will need to be taken about whether CIL contributions will be used as they are received on a range



of smaller projects, 'saved' to enable a few substantial schemes to be funded, or a mixture of both. Similarly, although the Council has to pass on a 'meaningful proportion' to Parishes (15% or 25% depending on whether they have a Neighbourhood Plan), it could resolve to give a greater amount if it wished.

- 4.8 However, these decisions would logically be made taking account of the prioritisation categories above and following the agreement of the R123 List. It is not urgent at this stage that a detailed spending programme is finalised, as it is likely to be a year or more before any significant level of CIL contributions were built up, such that decisions would be needed on its spending. On the other hand, it would be best for the planning of future infrastructure if providers had advance notice of whether CIL funding would be available. In fact CIL will not be the only source of funding for some projects so its timing would need to be coordinated with other sources and, indeed, could even 'pump-prime' or attract funding by other bodies.
- 4.9 As discussed at the Members workshop in June 2013, it is important that the principles that will be used to prioritise CIL spending are set out as clearly as possible, to help 'sieve' the numerous requests for funding that are likely to be received. The alternative would be to develop a process for officers and Members to assess these requests, but this risks being very laborious, time-consuming and open to challenge.
- 4.10 It is therefore recommended that officers, in consultation with the Portfolio Holder for Built Environment, develop a mechanism for prioritising projects for CIL funding based upon the development of a (5-year) programme of projects which would be funded through CIL, in whole or in part, using the agreed principles set out above and R123 List. The draft schedule would then be considered and agreed by Cabinet and updated on an annual basis. This approach would ensure an open and transparent means of identifying projects to be funded by CIL and would also help with long-term planning and to manage expectations about what can be provided.
- 4.11 Clearly the Council will identify infrastructure it wishes to fund by CIL, and Members will have a role in this process, but is also likely to receive many requests for project funding from various other quarters including bodies like Hampshire County Council, as education and highway authority for example, public utilities, parish councils, and health providers. It may, therefore, be appropriate to allow an opportunity for such external bodies to put forward items of infrastructure be considered for inclusion in the programme each year.
- 4.12 These requests will need to be assessed against the set criteria for prioritisation outlined above and the R123 List, in order to ensure they can deliver the infrastructure priorities the Council is seeking to achieve, before being recommended for inclusion in the programme. Ultimately, in the vast majority of cases, the decision regarding whether schemes should be CIL funded will rest with Cabinet (see 4.13 below). All requests for CIL projects will need to be carefully considered, not just against the priorities referred to above, but in terms of their overall costs and deliverability especially as many

schemes will not be provided directly by the Council. The fact that a scheme is included in the programme does not, in itself, guarantee that it will be provided, as circumstances relating to factors like other sources of funding can change over time. This is another reason to review the programme every year.

- 4.13 There will need to be some degree of flexibility in the programme to deal with new requests or more urgent opportunities for infrastructure provision e.g. to offer CIL in bidding for other funding sources. Exceptionally therefore it would be possible for new requests to be considered before the annual review so as to avoid missing opportunities which are time critical. A procedure for handling these cases is needed and it suggested that this be dealt with by means of Portfolio Holder decision in most instances.

## 5. Conclusion

- 5.1 The endorsement of the Council's CIL Charging Schedule by an independent examiner (subject to a minor modification) enables the Council to proceed to bring its Charging Schedule into operation. Although the Government has recently announced an extension of the period during which S106 can remain in full operation, the Council has worked towards an introduction of CIL in April 2014 and this remains the most advantageous implementation date.
- 5.2 It is recommended that the Charging Schedule be brought into effect from 7 April 2014 and that delegated authority be granted to officers to continue putting in place the procedures and processes to enable this. This includes finalisation and publication of the Charging Schedule, advance publicity about its introduction and developing the detail of an instalments policy for larger developments.
- 5.3 The Regulation 123 List will need to be approved so that it is available from the date of implementation of CIL. However it does not need to be finalised yet and there are uncertainties at present about government advice and other matters that suggest it is best to continue working to develop the R123 list. This would be done taking account of the principles already agreed by the Council (paragraph 4.4 above), the expected nature of development allocations and applications, and updated government advice. The recommended R123 list would need to be approved by Cabinet at or before its March 2014 meeting.
- 5.4 While the R123 list sets out the 'headline' projects or topics that the Council may use CIL to funds, or whole or in part, it will not be a detailed programme of projects. Further work is needed to develop such a programme, including the associated prioritisation and timing of projects. It is recommended that this should be achieved by developing a programme (probably a 5-year programme) of schemes that would be funded, which would be approved by Cabinet and updated annually. This level of detail is not yet needed as it will take some time to accumulate CIL funds and it will therefore be developed taking account of the R123 list and the factors mentioned above and will be presented to Cabinet in due course.

## OTHER CONSIDERATIONS:

### 6. SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS (RELEVANCE TO):

- 6.1 As part of progressing effective spatial planning of the District, and in contributing towards the delivery of critical infrastructure, CIL is relevant to many of the stated aims of the Council's Community Strategy and to matters expressed in the Change Plans in so far as they relate to spatial planning and the implementation of the Local Plan.

### 7. RESOURCE IMPLICATIONS:

- 7.1 The key resources for undertaking work on CIL have been approved as part of the budget process and currently there are sufficient funds to cover the cost of developing and introducing CIL. A project team has been established to work on the implementation of CIL and therefore members of that team are dedicating a proportion of their working hours to this project. Other small items of miscellaneous expenditure will be met from departmental working budgets.
- 7.2 The amount of Community Infrastructure Levy proceeds that a charging authority can use to finance its levy administrative expenses is restricted in the Community Infrastructure Levy regulations to a maximum of 5% of annual receipts.
- 7.3 To help charging authorities with initial set up costs, the regulations allow for a rolling cap over the period comprising the first part year that an authority sets a levy and the following three financial years taken as a whole. From year four onwards of an authority's levy operation, the restriction works as a fixed in-year cap, meaning that an authority may spend up to 5% of receipts received in-year by the end of that year on its administrative expenses. It is anticipated that the annual costs of administering the Community Infrastructure Levy will be broadly equivalent to the 5% cap but, should there be any underspends within the first three years of operation the initial set up costs will be matched against these underspends.

### 8 RISK MANAGEMENT ISSUES

- 8.1 The CIL Regulations limit the role of S106 contributions after April 2014 (to be changed to April 2015) particularly in relation to tariff based policies which the Council has operated for a number of years, such as open space and transport where contributions from a number of developments are pooled to provide items of infrastructure. It is therefore important that the City Council adopts a CIL regime as soon as possible. Adoption of the Charging Schedule is an essential step towards bringing CIL into operation and this report recommends that the Charging Schedule be adopted and CIL brought into operation in April 2014 in order to ensure developments continue to make appropriate contributions towards infrastructure provision intended to mitigate their impacts.

9. BACKGROUND DOCUMENTS

None.

APPENDICES

Appendix 1: Examiner's Report dated 7 October 2013.

Appendix 2: Statement of Modifications, WCC June 2013

Appendix 3: Map of Winchester Town Centre (recommended for inclusion by the examiner)

**APPENDIX 1****EXAMINER'S REPORT DATED 7 OCTOBER 2013**

The Planning Inspectorate

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**Report to Winchester City Council**

by Mr Philip Staddon BSc, Dip, MBA, MRTPI

an Examiner appointed by the Council

Date: 7 October 2013

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

**REPORT ON THE EXAMINATION OF THE DRAFT WINCHESTER CITY COUNCIL  
COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

Charging Schedule submitted for examination on 26 July 2013

Examination hearings held on 16 September 2013

File Ref: PINS/L1765/429/7

## Non Technical Summary

This report concludes that the Winchester City Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the district. The Council has sufficient evidence to support the schedule and can show that the levy is set at a level that will not put the overall development of the area at risk.

A minor modification is needed to the Schedule to include an accurate plan to define the boundary of Winchester town centre.

### Introduction

1. This report contains my assessment of the Winchester City Council Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance (Charge Setting and Charging Schedule Procedures – DCLG – March 2010).
2. To comply with the relevant legislation the local charging authority has to submit what it considers to be a charging schedule which sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the district.
3. The basis for the examination, on which hearing sessions were held on the 16 September 2013, is the submitted Draft Charging Schedule, which is effectively the same as the document published for public consultation on 12 April 2013, and the subsequent Statement of Modifications, published for public consultation on 24 July 2013. The Draft Charging Schedule and the Statement of Modifications were submitted for examination on 26 July 2013.
4. The Council proposes three distinct geographical zones within which different CIL rates will apply. The areas are described as:  
  
Zone 1 – Strategic Allocations and South Hampshire Urban Areas.  
  
Zone 2 – Winchester Town.  
  
Zone 3 – Market Towns and Rural areas.  
  
The CIL will not apply to the South Downs National Park areas of the district. The Park Authority is preparing its own CIL proposals.
5. Within the three strategic growth allocations (Zone 1), CIL would be zero rated for all development types.

6. The Council proposes a levy on new residential development (Use Class C3) of £120 per square metre (psm) in Winchester (Zone 2) and £80 psm in Market Towns and Rural Areas (Zone 3). The Statement of Modifications removes specific housing types from the residential levy. These exclusions include sheltered housing, housing providing care for older or disabled people, and housing with restricted occupancy for agricultural or forestry workers.
7. The non-residential CIL proposals are limited to two commercial development types – hotels and retail. For hotel (Use Class C1) development, the proposed charge in Zones 2 and 3 is £70 psm. The Council proposes to differentiate its retail CIL charges by development type, as well as by geographical zone. In Winchester town centre all types of retail (Use Class A1) development would be subject to a proposed £120 psm charge. Elsewhere in Zone 2 (the rest of Winchester town outside the town centre), and throughout Zone 3, a proposed £120 psm charge would apply to *"convenience stores, supermarkets and retail warehouses."*

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

*Infrastructure planning evidence*

8. The Council has not yet produced its Regulation 123 list defining the infrastructure that its CIL would support. However, the Winchester District Local Plan Part 1 Joint Core Strategy (CS) was examined in 2012, and adopted in March 2013. This Plan sets out the main elements of growth that will need to be supported by further infrastructure in Winchester district, including the areas of the district that fall under the National Park's planning control. The CS covers the period to 2031.
9. The plan provides for a sustainable pattern of growth by focusing development in three strategic locations – north Winchester and two other strategic housing land allocations, in the south of the district along the M27 corridor, at sites known as West of Waterlooville and North Whiteley. Of the planned 12,500 homes in the CS period, 8000 are accounted for in the three strategic sites. The remaining 4,500 are anticipated to come from the Winchester urban area (around 2000) and the market towns and rural areas (around 2,500).
10. The Core Strategy's evidence base included a detailed Infrastructure Study and an Infrastructure Delivery Plan (IDP). The IDP has been updated to 2013. The IDP update includes the Council's estimate that there is an infrastructure funding gap, at current prices, of circa £185.7 million. Most of this gap (circa £163 million) relates to infrastructure outside of the three strategic housing sites. However, it does include infrastructure identified under the Partnership for Urban South Hampshire (PUSH) initiative, a cross boundary growth partnership. The Council's figures suggest that, of the total infrastructure bill for the plan period, about 60% is unfunded at present. These figures demonstrate the need to levy CIL.

11. CIL receipts are anticipated to raise circa £17 million over the plan period to 2031, with most of that (£13.5 million) anticipated from the residential CIL. The charges would therefore make only a very modest, but nonetheless important, contribution towards filling the likely infrastructure funding gap, required to help support planned sustainable growth in the district.

*Economic viability evidence – Residential*

12. The Council commissioned Adams Integra to produce a Residential Viability Report, which was completed in November 2012. This was updated and added to by a later Addendum Report (April 2013), a Viability Position Paper (July 2013) and further information requested by me at the hearing (September 2013). Hereon, the term "RVR" is used to denote this collective of Residential Viability Report evidence.
13. The RVR essentially used a residual valuation approach. The methodology entailed making assumptions about a range of factors such as sales values, build costs (including Code for Sustainable Homes requirements), profit levels, fees, contingencies etc. A good range of notional development scenarios, at different scales, densities and locations, were then tested to indicate a site's residual land value. These values were then compared with assumed existing use values for three types of land i) agricultural ii) employment and iii) housing (existing). That comparison, between the modelled residual value and existing use value, was then used to test viability i.e. if the residual value is significantly above the existing use value, the development would be viable and *vice versa*. This allowed the testing of CIL levels ranging from £0 psm to £150 psm, with the CS requirements for affordable housing applied, along with other scenarios for sensitivity testing.
14. The robustness of the assumptions used in the RVR modelling was tested at the hearing and the Council's consultants gave evidence in response to queries and challenges made in written representations. Much of the difference of view on component elements appeared to be largely related to labelling issues. For example, it was suggested that 'contingencies' should be 5% of build costs, whereas the Council's consultants had used 3% but had factored in a further circa 2% under 'site abnormalities'. Profit level assumptions, for both market and affordable housing, were reasonable and robust, matching or exceeding, respectively, the rates used by the Homes and Communities Agency (HCA) in its appraisal model.
15. Importantly, sales values were drawn from several hundred properties spread across the district, and build costs were informed by accepted industry indices, developer feedback (from eight developers) and local valuation expertise. The impact on build costs of the CS requirements for sustainable homes (Code 5 for Energy / Code 4 for Water) was set out and found to be reasonable. An allowance was made for site specific S.106 contributions.
16. The assumed existing use values for agricultural and employment sites were reasonable and robust. The establishment of an existing use value for existing residential land was less straightforward, as that land category could include a range of sites from gardens through to stock replacement.



Claimed examples of much higher land values were quoted, but these related to very small sites and did not appear to be representative of the general tone of the market. The Council's consultants quoted Valuation Office rates for nearby Southampton of circa £1.7 million/hectare and, along with their own experience of the local market, felt that the £2.2 million/hectare value applied in the modelling was robust. I concur with that view in terms of it being a reasonable approximation for modelling purpose. For reasons I will return to later, the figure is, in any event, of limited relevance.

#### *Economic viability evidence – Commercial*

17. Adams Integra produced a Non-Residential CIL Viability Report in November 2012. This was updated and added to by a later Addendum Report (April 2013), a Viability Position Paper (July 2013) and further information requested by me at the hearing (September 2013). Hereon, the term "CVR" is used to denote this collective of Commercial Viability Report evidence.
18. The CVR used a residual valuation methodology to examine viability of a range of development types including retail, offices, industry, warehouses, hotels, community uses, student accommodation and residential institutions. The modelling involved assessing the Gross Development Value (GDV) of a notional commercial development and deducting the Gross Development Costs (GDC) with an element of developer profit. The resultant residual value was then tested to assess the impact on viability of applying different CIL rates. The published examples of the CVR modelling did contain some unfortunate arithmetic errors in computing CIL on notional developments (an imperial rather than a metric multiplier was used) but this was corrected during and following the examination. Once corrected, this did not affect the impact of the CIL charge on viability.
19. To establish GDV and GDC, a range of assumptions were made about land values, rents, yields, building costs, fees, contingencies and profit levels. My examination found all of these assumptions to be reasonable and robust.
20. An element of the modelling that did attract some commentary related to the notional development scenario used for testing purposes. This assumed that an existing building did not optimise site value, and that redevelopment with a larger, better, building would increase value. Whilst it was suggested that was "arbitrary and contrived" I share the Council's consultants' view that, in a slow market where there are few comparable transactions, such a notional development is a reasonable and robust approximation of the middle ground. Subject to sufficient margins being allowed to accommodate the spectrum of development permutations, I consider the approach is reasonable.

#### *Conclusions*

21. Although the Council is yet to produce its draft Regulation 123 list, it will be drawn from the clear and detailed evidence of community infrastructure needs set out in the IDP (as updated). There is a demonstrable funding gap that justifies the introduction of a CIL regime.
22. The background economic viability evidence for both Residential and

Commercial development that has been used is reasonable, robust, proportionate and appropriate.

**Is the residential CIL charging rate informed by and consistent with the evidence?**

23. The background evidence demonstrates clearly a very distinct differentiation, across a spectrum of dwelling types and sizes, between sales prices in the three proposed CIL zones. Winchester commands the highest prices, the Market Towns and Rural Areas occupy the middle ground and the South Hampshire Urban Areas have the lowest prices. I am satisfied that the zones are informed by the evidence and that the zonal approach is appropriate and, indeed, desirable, as it helps to mitigate risks to viability in different property value locations. I will explore each zone in turn.

*Winchester Town*

24. Winchester commands high property prices. The evidence suggests that an average 1 bed flat sells at £175,000, a 3 bed house at £370,000 and a 5 bed house at £700,000. The RVR tested a good range of notional development scales and densities within the town and applied a wide range of sensitivity analyses, with varied affordable housing components and the application of an additional site specific S.106 allowance (which may or may not be applicable). For the purposes of this examination, whilst the sensitivity testing is helpful, the important scenario to be tested is that which best reflects the CS requirements, particularly in terms of affordable housing.
25. The evidence used a traffic light system to indicate viability on the three different land types of agricultural, employment and housing. Although helpful in some senses, it could also be a little misleading, given that agricultural land displayed strong 'green light' viability but is unlikely to feature in the urban town setting. Furthermore, residential development on existing housing land, with CIL applied, showed a 'red light' but, again, this was not a likely development scenario. Indeed, the Council considered that existing housing land would not be at all significant in land supply terms, and it was not relying on it to meet its planned housing numbers. It is for these reasons that I concluded that the 'threshold' land value (new housing on existing housing land) was of limited relevance (paragraph 16 above).
26. Most of the planned Winchester housing numbers were expected to come forward on existing employment sites and open urban land such as car parks. The evidence demonstrates that with the proposed £120 psm CIL applied, all residential developments on the primary land source (employment) remain viable. This is the case with a full CS affordable housing content and an allowance for site specific S.106 contributions. In that scenario, there would still be a 27% viability 'buffer' which allows for variation in sales prices across the town. The CIL charge would amount to between 2.4 – 2.6 % of GDV. I conclude that this is reasonable.

*Market Towns and Rural Areas*

27. A lower CIL rate of £80 psm is proposed in the market towns and rural

areas, reflecting the lower sales values, compared to Winchester. The Council has confirmed that the “vast majority” of housing planned in this zone is expected to be on greenfield (agricultural) land, on sites to be allocated through the progression of the Local Plan Part 2. The Council does not anticipate existing housing land or gardens contributing materially to new housing land supply.

28. The evidence demonstrates that with the proposed £80 psm CIL applied, all residential developments on the primary land source (agricultural) remain viable. This remains the case with the much higher threshold value employment land, although this is not expected to be a major contributor to supply. Development on existing housing land would not be viable, but it is not anticipated in any event. Throughout the tested scenarios, development viability on agricultural (and employment) land is maintained with a full CS affordable housing content and an allowance for site specific S.106 contributions. On agricultural land the viability ‘buffer’ would be substantial at 164% (reflecting the lower agricultural threshold) and on higher value employment land the buffer would be 32%. These buffers do therefore allow for variation in sales prices across the rural areas. The CIL charge would amount to between 1.8 – 1.9% of GDV in the modelled notional development scenarios. I consider this to be reasonable.

*Strategic Allocations and South Hampshire Urban Areas*

29. The three strategic sites account for 8,000 of the 12,500 homes planned in the CS to 2031. Under the CIL proposals these sites would be nil rated. Two of the three strategic sites already have planning permission, and will not, therefore, fall under the CIL regime. The planning permissions at North Winchester and West of Waterlooville include S.106 Agreements that will fully fund their identified infrastructure requirements, which are significant. The third, at North Whiteley, is expected to be the subject of a single planning application soon, again with a comprehensive S.106 Agreement securing its significant infrastructure requirements. At the hearing, the Council confirmed that CIL monies will not be used to support the strategic sites, other than through broader PUSH related infrastructure. It also confirmed that it was fully satisfied with its S.106 approach and I have noted the support of the North Whiteley developer consortium (NWC) for the Council’s CIL proposals.
30. I have examined the viability evidence and the S.106 infrastructure requirements. I concur with the Council’s consultants’ view that the significant site specific infrastructure costs at each site (much of which is already secured through S.106 Agreements), along with the lower land values on the South Hampshire sites, mean that an additional CIL charge could not be justified on viability grounds.

*Other residential CIL matters*

31. Although the Council’s consultants deal with specialist forms of housing under their non-residential report (the CVR), I will deal with these here as they are residential uses. I accept the finding that there is no case for imposing CIL on Class C2 Uses and that *sui generis* student accommodation

cannot support CIL payments on viability grounds, based on the evidence. I also accept the Council's fine grained analysis of the viability of specialist types of Class C3 use, which has led it to its proposed modification to the charging schedule which would exclude 'sheltered housing, Extra Care, or other specialist housing providing care to meet the needs of older people or adults with disabilities'.

*Conclusions on whether the residential CIL charging rates are informed by and consistent with the evidence*

32. The Council has used appropriate and available evidence to inform its proposed CIL charges for residential development. Its approach of three distinct geographical zones with different CIL rates is justified by the evidence and the circumstances. The CIL rates have been set at levels that maintain viability across a broad spectrum of sites that are likely to be needed to meet the CS housing requirements.

**Is the Commercial CIL charging rate informed by and consistent with the evidence?**

33. Although the local economy in the district is relatively strong, the commercial property market for offices, industrial and warehousing (the B Use Classes) remains challenging. Even without CIL the modelled appraisals show negative viability. That should not be taken as a signal that no such development will happen, as the market will respond to specific occupier demands. However, it does demonstrate that CIL should not, in current circumstances, be imposed as it would further compromise viability.

34. With regard to the two types of development where CIL charges are proposed, hotels and retail, I will deal with these in turn.

*Hotels*

35. A hotel (Use Class C1) CIL rate of £70 psm is proposed in Winchester (Zone 2) and the Market Towns and Rural Areas (Zone 3). The evidence indicates that hotel development within the district displays healthy viability and there should be a significant surplus to support the £70 psm CIL charge, which would represent about 1.43% of GDV of the modelled hotel development. This is reasonable and justified by the evidence.

*Retail*

36. A retail (Use Class A1) CIL rate of £120 psm is proposed in Winchester (Zone 2) and the Market Towns and Rural Areas (Zone 3). However, the Council seeks to differentiate between type of retail and, by location, within Zone 2. In essence it is proposed to apply the CIL charge to all Class A1 retail uses in Winchester town centre, whilst elsewhere in Zone 2 and throughout Zone 3 the CIL charge would be limited to "convenience stores, supermarkets and retail warehouses", definitions of which are set out in the draft Charging Schedule. All other retail development (effectively all comparison retailing outside of Winchester town centre) would be nil rated.

37. There is an important procedural point that I will deal with here before

examining the consistency of the charging proposals with the evidence. Regulation 12 requires Charging Authorities to define, on an Ordnance Survey map, the boundaries of different charging zones. The Council has done this with respect to the three zones. However, the Council's retail CIL proposals seek to further geographically differentiate, by retail type, within Zone 2 i.e. treat the town centre differently to the rest of the town. There is nothing to prevent this, subject to it being justified by viability evidence. However, the reference in the Charging Schedule to a map in another document (the 2006 Local Plan) to define the town centre is inadequate. At the hearing the Council accepted that a plan defining the town centre, effectively a 'sub-zone', should be included. This is reflected in my recommendations.

38. Turning to the viability evidence, I will begin with Winchester town centre. The retail economy in the town centre is strong. I observed a healthy, vibrant and attractive town centre with unusually low vacancy rates, all reflecting its strong performance as a retail destination. The CIL viability evidence supports these observations. The testing of a notional redevelopment for a 186 sq metre comparison retail unit in the town centre demonstrated a very healthy 'surplus' available to fund a CIL contribution. The CIL contributions at £120 psm would amount to just 0.69% of the schemes GDV. However, it should be noted that the scope for such redevelopments within the historic shopping core is quite limited. The main source of the CS planned new retail floorspace in the town is the Silver Hill scheme, which already has planning permission.
39. The broader retail CIL proposals have attracted commentary and criticism from a number of supermarket operators, although none of these attended the hearing. These representations included that S.106 /S.278 contributions should be factored in; that conversion and regeneration related costs should be included; that charging zones and the differentiation between convenience and comparison retailing all needed justification, and other general concerns about scheme viability.
40. The viability evidence does demonstrate that all types of retail development where a CIL charge is proposed can comfortably sustain it. Whilst I accept that the modelling can only provide a guide, the surpluses available to fund CIL appear to be substantial. In terms of the modelled scenarios, CIL would amount to 2.33% GDV for "convenience stores", 4.02% GDV for "supermarkets" and 4.48% GDV for "retail warehouses". The evidence also demonstrates that comparison retailing, outside of Winchester town centre, is only marginally viable with zero CIL, and the application of a CIL charge would put viability at risk.
41. A specific concern about the impact of the retail CIL on farm shops was raised. However, I share the Council's view, expressed at the hearing, that, in most cases, such outlets would relate to existing floorspace or small new buildings (under 100 sq. metres) and would therefore fall outside the CIL charging regime. I do not consider that specific viability testing on such developments is required.

*Conclusions on whether the Commercial CIL charging rates are informed by and consistent with the evidence*

42. The Council has used appropriate and available evidence to inform its proposed CIL charges for commercial development. The evidence supports a zero CIL approach to employment related use. The proposed hotel CIL charge is reasonable and justified by the evidence. The retail CIL proposals are well evidenced and the Council has justified its differential approach to types of retailing and the distinct treatment for Winchester town centre. However, it needs to include a clear plan, defining the town centre, in its charging schedule.

**Does the evidence demonstrate that the proposed charge rates would not put the overall development of the area at serious risk?**

43. The Council's approach to CIL has paid close regard to the Core Strategy and updated Infrastructure Delivery Plan. It should be noted that much of the development critical to the implementation of the CS will not be affected by CIL. Indeed the majority of the CS's 12,500 planned new homes are either consented and subject to S.106 Agreements, or soon will be. The Council estimates that, once existing planning permissions and affordable housing are factored in, less than 1500 homes will actually pay the CIL charge. Similarly, the principal retail scheme in the CS already has planning permission.
44. These district specific circumstances do mean that the CIL proposals will only affect a relatively limited proportion of the CS planned development. Nonetheless, the Council's evidence has demonstrated that, where it intends to apply CIL charges, these have been informed by, and are consistent with, the evidence, and will not pose a risk to the general viability of such developments.

**Other Matters**

45. There are a number of other matters that arose through the examination. These are set out below.

*Phased payments*

46. The Council confirmed that it would be devising and implementing a phased payment mechanism.

*Discretionary relief*

47. The Council has chosen not to apply a discretionary relief provision in exceptional circumstances. The Council explained at the hearing that it could not foresee any Development Plan critical project that would justify such a provision, and felt that its CIL proposals were set at such a modest level that a discretionary relief provision was, in its view, unnecessary.

*Review*

48. There was some discussion at the hearing about the appropriate time to

review the CIL regime following implementation. The precise impact of CIL will, to a large extent, be determined by the nature of sites allocated through the Local Plan Part 2 (particularly the housing sites in Zone 3). Although this is likely to confirm the assumptions made in this examination, it does seem sensible to timetable a review following adoption of that plan.

## Overall Conclusion

49. The evidence demonstrates that the overall development of the area, as set out in the CS, will not be put at risk if the proposed CIL charges for residential, hotel and retail development are applied. In setting the CIL charges the Council has used appropriate and available evidence and has justified its differentiation in respect of its three charging zones and types of development. The CIL proposals will achieve a reasonable level of income to help address a well evidenced infrastructure funding gap.

<b>LEGAL REQUIREMENTS</b>	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Joint Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

50. I conclude that, subject to one modification set out in Appendix A, the Winchester City Council Community Infrastructure Levy Charging Schedule as modified by its Statement of Modifications, 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.

*P.J. Staddon*

Examiner

This report is accompanied by:

Appendix A (attached) – Modification that the Examiner specifies so that the Charging Schedule may be approved.

## Appendix A

Modification that the Examiner specifies so that the Charging Schedule may be approved.

Modification No.	Modification
EM1	Page 2 of the Schedule under the 'Town Centre' heading - delete "Winchester Town Centre as defined by the town centre boundary shown on Inset Map 31 of the Winchester District Local Plan (2006) – Policy SF1" and replace with "The area defined on Plan 4."
EM2	<p>Add Plan 4 to be titled "Zone 2 – Winchester Town Centre Boundary".</p> <p>Note – plan to be based on an Ordnance Survey map and to clearly delineate the town centre, in line with the Winchester District Local Plan (2006).</p>



## **APPENDIX 2**

### **STATEMENT OF MODIFICATIONS, JUNE 2013**

#### **Statement of Modifications**

In accordance with Regulation 19 of the Community Infrastructure Regulations (as amended), Winchester City Council hereby sets out modifications to its Draft Charging Schedule as submitted to the examiner. The three amendments are set out below, with text to be removed (struck-through) and inserted text indicated (underlined). None is considered to be a substantive modification.

#### **Modifications**

1. Definition of retail (within Charging Rates table):

“All other ~~categories~~ retail development”

2. Definition of residential:

“Defined as all development within each of the three categories of Use Class C3: (Dwelling Houses (Use Classes Order 2010), ~~including except:~~

Sheltered housing, Extra Care, or other specialist housing providing care to meet the needs of older people or adults with disabilities within a development defined by the Local Planning Authority as within Class C3, subject to the statutory exemptions with regard to social housing and charitable purposes, or.

Dwellings where occupancy is restricted by planning condition or obligation to an essential agricultural or forestry worker

3. Definition of convenience stores:

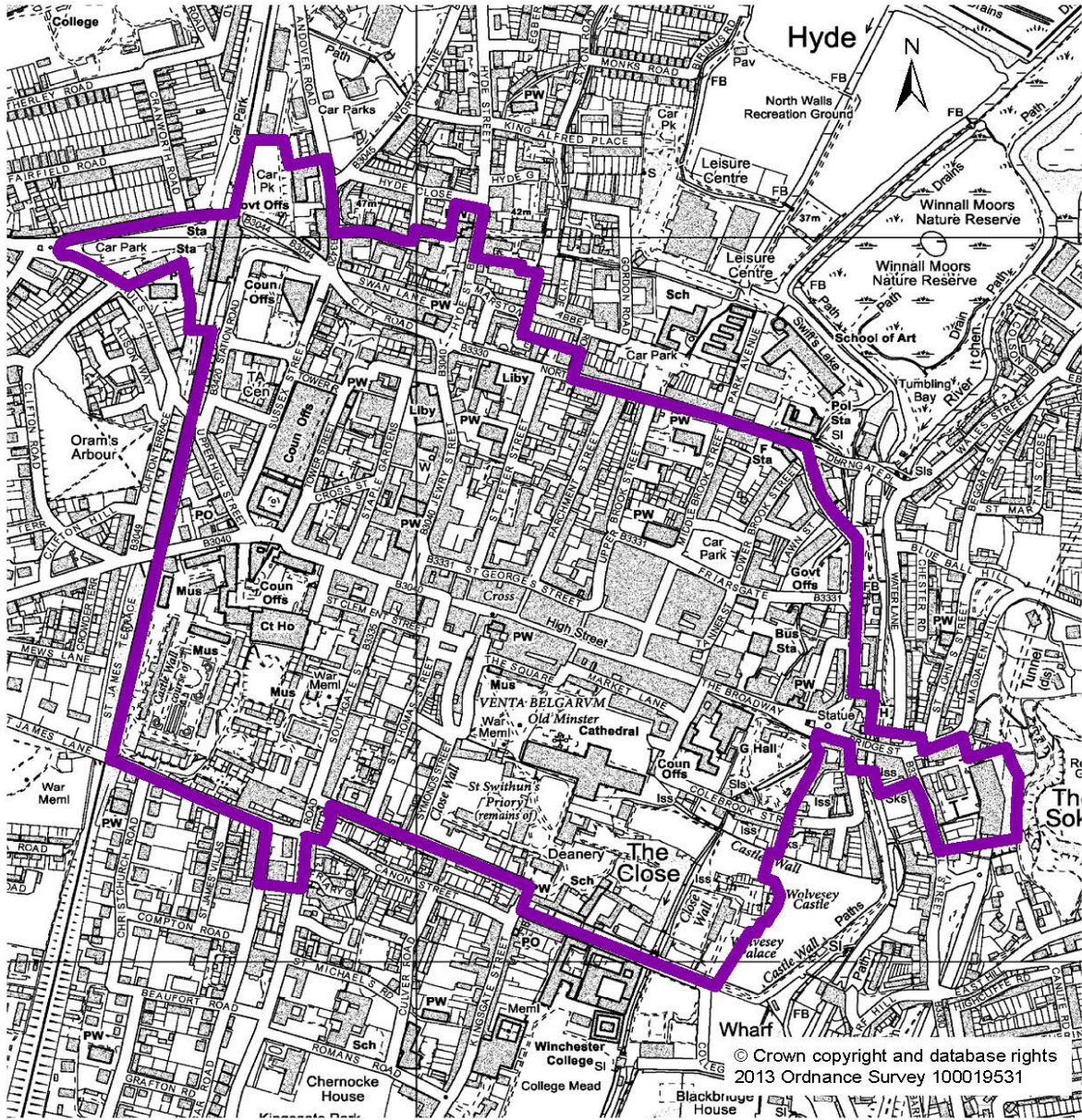
“Have a gross internal floorspace ~~of~~ not exceeding 278 sq. m (3,000 sq.ft).”

**APPENDIX 3**

**MAP OF WINCHESTER TOWN CENTRE**

**(RECOMMENDED FOR INCLUSION BY THE EXAMINER)**

**Winchester Town Centre Boundary**



 Town Centre Boundary