



Intelligent Plans
and examinations

AN EXAMINATION UNDER SECTION 212
OF THE PLANNING ACT 2008 (AS AMENDED)

**REPORT ON THE DRAFT TORBAY
COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

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TP MRTPI ARICS

Charging Schedule Submitted for Examination: 11 August 2016

Date of **Final Report**: 05 December 2016

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Main Findings - Executive Summary

In this report, I have concluded that the draft Torbay Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area.

The Council has provided sufficient evidence that shows the proposed rates would not threaten delivery of the Local Plan as a whole.

Four modifications are necessary to meet the drafting requirements. These can be summarised as follows:

- Introduce a zero charge for small sites (1 – 3 dwellings) in Zone 2;
- Introduce a zero charge for strategic sites (30+ dwellings) in Zone 3;
- Introduce a charge of £140 for schemes of 15 – 29 dwellings in Zone 3; and
- Introduce a zero charge for Extra Care Homes, and a definition of extra care homes.

The specified modifications recommended in this report do not alter the basis of the Council's overall approach or the appropriate balance achieved.

Introduction

1. I have been appointed by Torbay Council, the charging authority, to examine the draft Torbay District Community Infrastructure Levy (CIL) Charging Schedule. I am a chartered town planner and chartered surveyor with more than 20 years' experience inspecting and examining development plans and CIL Charging Schedules as a Government Planning Inspector.
2. This report contains my assessment of the Charging Schedule in terms of compliance with the requirements in Part 11 of the Planning Act 2008 as amended ('the Act') and the Community Infrastructure Regulations 2010 as amended ('the Regulations'). Section 212(4) of the Act terms these collectively as the "drafting requirements". I have also had regard to the National Planning Policy Framework (NPPF), notably paragraphs 173-177, and the CIL section of the Planning Practice Guidance (PPG), which replaced the stand alone CIL Statutory Guidance last published in February 2014.
3. To comply with the relevant legislation, the submitted Charging Schedule must strike 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. The PPG 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 proposed rate or rates are informed by and consistent with the evidence on economic viability across the charging authority's area; and
 - evidence has been provided that shows the proposed rate or rates would not threaten delivery of the relevant Plan as a whole.
4. The basis for the examination, and on which hearing sessions were held 9 November 2016, is the submitted schedule dated September 2016. The Preliminary Draft Charging Schedule was consulted on in December 2011 – February 2012. The Draft Charging Schedule was consulted on in February 2015 – March 2015. A Revised Draft Schedule was published for public consultation in March - April 2016. A Revised Schedule incorporating Modifications was published for consultation in August 2016 but withdrawn shortly after the consultation period began. The Revised Draft Schedule with Modifications that was examined was subject to consultation between 5 September and 17 October 2016
5. In summary, the Council propose a matrix approach for qualifying development. All rates referred to in the charging schedule and in this report are in pounds per square metre. There are four charging zones proposed for residential development divided in 3 site size categories. For commercial development, there are two charging categories with all other development subject to a nil charge. The boundaries of the zones have been subject to various amendments. They logically relate to the strategy in the Torbay Local Plan and have not been seriously challenged.

Residential Zone	1 - 3 Dwellings	4 – 14 Dwellings	15+ dwellings
1 Built-up areas based on top 20% deprivation	zero	£30	£30
2 Elsewhere in the built-up area	£30	£70	£70
3 Outside the built-up area	£70	£70	£140
4 Future Growth Areas	£70	£70	zero

Commercial development	Town Centres, St Marychurch and Preston	Elsewhere including The Willows District Centre
Class A1 Retail over 300 sqm	Nil	£120
Food and Drink Class A3, A4 and A5	Nil	£120

Has the charging authority complied with the legislative requirements set out in the Act and the Regulations?

6. The Council’s Preliminary Draft Charging Schedule was published for consultation purposes between 9 December 2011 and 6 February 2012 attracting 13 representations. The Draft Charging Schedule was consulted on between 9 February and 23 March 2015 attracting 12 representations. 19 representations were received as a result of the 18 March – 29 April 2016 consultation on the Revised Draft Charging Schedule. The final Submission Draft Charging Schedule incorporating Revised Proposed Modifications was consulted on between 5 September and 17 October 2016 and attracted 12 representations.
7. A Torbay Local Plan viability study to inform the Council’s plan making and CIL was undertaken by Peter Brett Associates (PBA) in February 2014. The Torbay Local Plan was adopted in December 2015. In January 2016, a CIL specific viability study was done by PBA and this was reviewed and updated by Burrows-Hutchinson Ltd (B-H) in August 2016.
8. The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Local Plan and the Infrastructure Delivery Plan, and is supported by an adequate financial appraisal. I also consider it compliant with the national policy and guidance contained in the NPPF and PPG respectively.

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

Infrastructure planning evidence

9. The adopted Torbay Local Plan sets out the main elements of growth that will need to be supported by further infrastructure in Torbay. An Infrastructure Delivery Study undertaken by PBA in 2011 identified a total infrastructure funding gap of £160 million of which £52 million was considered critical to the delivery of the Council’s proposed strategy. The critical infrastructure included flood alleviation measures in Brixham and

Torquay, the South Devon Link Road, improvements to the Torquay Ring Road/Western Corridor, a new trunk sewer between West Paignton and Brokenbury and an upgrading of the Bucklands Sewage Treatment Works. For the years 2016/17 – 2019/20 the proposed capital spending is £128 million of which £47.8 million is currently funded.

10. It is clear that overall there is a significant funding gap. The Council, in its Regulation 123 list, is seeking to only use CIL funds for two infrastructure elements - the South Devon Link Road and measures to protect the limestone grassland at Berry Head for recreational purposes as agreed with Natural England. Some of the representations challenge the Council's Regulation 123 list on the grounds that the Link Road has already been built and funded. The regulations allow the Council to amend the list at any time and the contents of the list are not a matter for this examination. For this examination, the only relevant consideration is whether the list demonstrates a funding gap that justifies a CIL charge. The regulations allow the Council to repay expenditure that has already been incurred but not to pay the interest on money raised through loans.
11. There is no doubt that the Link Road is a critical piece of infrastructure and the Council is required to still pay £20.2 million towards the cost of construction. The Council expects some £18 million of this sum to be funded by borrowing (thus far £12.7 million has been borrowed) but the intention is to use most of the CIL receipts to repay part of the expenditure that has already occurred or will be incurred. Consequently, it is accepted that the Council is able to demonstrate a funding gap in relation to infrastructure expenditure already incurred. In any event if the Council chooses to revise the Regulation 123 list there is a substantial list of other critical pieces of infrastructure that have yet to be funded. In the light of the information provided, there is a specific funding gap in relation to the Link Road and significant funding gaps for other infrastructure. The proposed charge would make an important if modest contribution towards filling the likely funding gap or gaps. The figures demonstrate the justification for a CIL.

Economic viability evidence

12. The CIL Viability Study, dated January 2016 by PBA uses a conventional residual valuation approach. For residential development, the approach taken is to use a list of hypothetical developments that are likely to be brought forward in the area. The study involved twenty-five different types of development located in a variety of locations in Torbay, including the future growth areas as defined in the Local Plan. There has been some criticism of the viability assessment on the grounds that it has not taken into account sufficient local market data. However, it is noted that in many instances there was relatively little market information available at the time when the study was done. Consequently, it is considered that the use of hypothetical examples was justified.
13. Residual valuations depend on a variety of inputs and assumptions. The PBA work takes into account the Council's affordable housing policy, site

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coverage and housing density, saleable floorspace, accessible and adaptable building requirements, sales values, build costs and a range of other standard development costs. The assessments assume a profit of 20% on site Gross Development Value for market housing and 6% for affordable housing on a nil grant basis. To test viability and the scope for a CIL charge the residual values are compared with a benchmark value which reflects a competitive return for the landowner.

14. In August 2016, the PBA viability work was updated in an addendum report prepared by B-H. Working with Novahomes, a local firm, this work took into account the most recent sales on new build sites. There were gaps in the data as some areas within Torbay do not have current residential projects. B-H sought to address this by working with PBA to update the UK Land Registry data used by PBA. PBA were asked to re-run their January 2016 appraisals using the updated market values. An eight dwelling typology was introduced in the 4- 14 category in place of the four dwelling typology used by PBA as it was felt that a more central typology would be more representative. In addition, B-H reviewed the Charging Zone boundaries which resulted in minor changes to the boundaries between Zones 1 and 2. B-H also recommended how the Council should proceed should a development site fall in more than one Charging Zone.
15. There are criticisms from a number of representors to some of the assumptions made. The small sample size for sales values is challenged but it should be noted that the Council is entitled to take a proportionate approach and rely on available evidence. Furthermore, the PBA sales evidence has been supplemented by later work done by B-H. Other criticisms relate to development cost assumptions including the allowance of 10% for external works (rather than 15%) and the absence of an allowance for abnormal costs. B-H for the Council counters these points by noting that PBA took these sorts of factors into account by increasing build costs for brownfield sites by £200,000 per net hectare and by an allowance of between £5,000 and £17,000 per unit depending on the size of the development.
16. Another criticism made by several respondents is the intended relationship between CIL and S106 costs. The Council is in the process of clarifying the position through the production of a Supplementary Planning Document (SPD) dealing with planning obligations and affordable housing. The SPD was published for consultation in September 2016 and is currently being revised in the light of the consultation. The Council's approach is broadly to impose the CIL on smaller developments but to rely solely on S106 payments on large developments in the identified Future Growth Areas. Under the current proposals large sites in Zone 3 would be subject to a £140 charge. However, the Council has stated that it would not object to a modification that strategic sites of more than 30 dwellings outside the Future Growth Areas should be treated in the same way as large sites within the Future Growth Areas.
17. The SPD is to be revised by the Council to rectify an error in the current document which states that CIL will not be sought where affordable housing

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is provided and vice versa. There may be occasions when affordable housing will be sought on developments liable for CIL but the Council believes this will only occur in a limited number of cases. Experience from the recent past indicates that this view can be substantiated. Since 2012 only 17 sites would have been liable for both CIL and S106 had a CIL regime been in place in 2012. Of these, 7 sites would have a zero CIL if they are treated as strategic sites which would only be subject to S106 agreements. The Council is also proposing to revise the SPD to clarify the position with CIL contributions for what it terms "sustainable development". Specifically, the Council will not seek sustainable development contributions where the CIL applies. The SPD is not part of this examination but it is considered that the clarification now proposed by the Council should resolve the uncertainty that has been referred to in several of the representations. It should also provide reassurance for those who feared that the S106 "sustainable development" contributions would amount to a considerable burden – one estimate by a respondent put the figure at some £23,000 per unit on a hypothetical 50 house scheme. The evidence shows that the Council has been reasonable with what it has sought through S106 agreements. Between April 2015 and October 2016 for 1-3 dwelling schemes the average agreed was £3,320 per unit, £3,040 for 4- 14 dwelling schemes and £2,500 for 15+ dwelling schemes.

18. For CIL viability assessments the establishment of a benchmark land value is important as it provides the basis for establishing whether there is "headroom" available to pay a levy. Unfortunately, it is generally acknowledged that establishing a benchmark land value is fraught with difficulty, not least because landowners' expectations and financial circumstances can, and often do, vary greatly. As PBA point out, benchmark land values can only be broad approximations subject to a wide margin of uncertainty.
19. In Torbay PBA studied a cross section of land comparables and discussed the question of benchmark values with developers and agents. After taking into account the likely policy burden, including affordable housing, PBA concluded in 2014 that benchmark values in Torbay ranged from £800,000 per net developable hectare to £400,000 depending on the scale of the development. In their 2016 work PBA increased the benchmark figures by 10% in line with house price inflation and introduced a benchmark land value of £220,000 per net developable hectare for strategic sites. The justification for the figure for strategic sites is not clear from the PBA report. However, that figure is not critical for the purposes on this examination as the Council do not propose to charge CIL on strategic sites within the Future Growth Areas and are content with a recommendation that other strategic sites be subject to a zero CIL charge.
20. For small sites the benchmark value has been challenged on the grounds that it assumes a plot size of .11 ha of land for four dwellings resulting in plot value of £24,200 assuming 35 dwellings to the hectare. This it is argued is unreasonably low compared with the asking prices for single plots in Torbay as at April 2016 which averaged £242,857. This comparison is

not helpful as the sizes of the plots for which there are asking prices is not specified.

21. The question of the benchmark used by PBA was discussed at the hearing session. Significantly all of those attending, including development industry representatives who are familiar with Torbay, accepted that the PBA figures are reasonable for the area.
22. For non-residential development, a set of hypothetical schemes for a wide variety of types of development were tested. Again, a standard residual approach was used. To establish the gross development value PBA took into account local regional and national data relating to rents and yields and build costs were based on the RICS Build Cost Information Service. Establishing a benchmark figure for non-residential development proved to be difficult given that local agents told PBA in 2014 that there had been very few sales of commercial and employment land over the previous five years. Historic evidence indicated a range of values between £500,000 and £750,000 for employment land uses. PBA used the lower end of that range as the starting point for their viability assessment work and then adjusted that on the basis of location and use. Given the weak commercial market in Torbay the PBA approach was logical and justified.

Conclusion

23. The Draft Charging Schedule is supported by evidence of community infrastructure needs and by viability assessments undertaken by two different firms, including a very recent update of the evidence in relation to residential development. Several elements of the viability assessments for residential development have been challenged. However, viability assessments are not precise calculations that can only be done in one way. The approach taken by the Council's advisors and the assumptions they have made are reasonably conventional and no convincing counter evidence has been advanced. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.

Are the proposed rates informed by and consistent with the evidence on economic viability across the district?

Residential development

24. For convenience, this part of the report deals with the rates proposed on the basis of the scale of development. PBA based their 2016 report on the information that the Council wished to use S106 arrangements rather than CIL for sites of 15 or more dwellings. Taking into account overall development viability in Torbay and the Council's policies, including affordable housing, PBA recommended a single charge of £78 for all conventional residential developments of 4 – 14 units and a zero rate for all other residential development, including retirement housing for older people. B-H concluded that the more complex rates being proposed by the

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Council are acceptable other than developments for 1- 3 dwellings in Zone 2 and Extra Care Homes. B-H recommended that both these categories should be zero rated.

25. Dealing first with sites for 1- 3 dwellings the principal area of dispute is the proposed charge of £30 in Zone 2. The Council justifies this on five grounds. First, the lowest viability is in Zone 1. Second, small sites are not subject to affordable housing or tariff style obligations. Third, exceptional circumstances relief is possible should site-acceptable S106 obligations impact on viability. Fourth, small sites have historically been viable with S106 obligations. Fifth, neighbouring authorities have not excluded small sites from CIL. The Council's points are challenged by a number of respondents including the Brixham Peninsula Neighbourhood Forum and the Collaton St Mary Residents Association who fear that the imposition of a CIL charge on small sites would potentially jeopardise regeneration projects within the urban areas. In this regard, it is important to remember that the NPPF states that CIL should "support and incentivise new development" (paragraph 175).
26. The most up-to-date available viability evidence is provided by B-H. This evidence shows that 2 dwelling schemes in Zone 2 would clearly be unviable if they are required to pay any CIL charge. In both Brixham and Paignton/Torquay 2 dwelling schemes have a negative margin of some £86 to pay for CIL. This contrasts with a positive margin of £353 for larger schemes for 8 dwellings. The Council argues that the S106 payments that it has received on small sites shows that the CIL charge of £30 can be afforded. This may be true in some instances but in others small sites may also require S106 payments to make the developments acceptable. No other specific quantifiable viability evidence that contradicts the B-H figures has been provided by the Council. Bearing in mind the important contribution small urban sites are expected to make to the provision of new housing in Torbay over the local plan period it is considered that imposing a CIL charge on small urban sites could threaten the delivery of the Council's plan. **(EM1)**.
27. Turning to sites for between 4 – 14 dwellings the PBA evidence indicates that for all but one of the hypothetical schemes there is a substantial buffer between the proposed charges and the point at which the viability of development would be threatened. This applies to all of the Zones including Zone 1 which is the zone least able to pay CIL. In recognition of this the proposed charge for Zone 1 is less than half the charge for the other zones.
28. For 15+ dwellings the contentious issues are the proposed charge of £140 for Zone 3 and the proposal to use S106 only in Zone 4. Dealing with the latter, the Council accepts that the viability evidence does not rule out a CIL charge in the Future Growth Areas. However, the Council believes that within the growth areas S106 agreements and S278 Highways Agreements provide the most effective mechanism for providing the infrastructure needed in these areas. This is a judgement for the Council to make. In the Council's view if a CIL charge is levied it would restrict the scale of S106

and S278 contributions that it could seek. Moreover, using S106 rather than CIL for large scale strategic development is not an unusual approach for an authority to take. In Torbay, it is strongly favoured by a number of developers who are promoting development in the Future Growth Areas. Some representors doubt the Council's ability to negotiate appropriate deals with developers and therefore wish to see both CIL and S106 agreements in place. However, there is no evidence before the examination that supports this view and it would not be appropriate to base a recommendation on an assumption about the Council's competence to negotiate with developers. In any event, this examination is concerned with whether the proposed CIL would threaten the viability of development in the area as a whole. Clearly a zero charge as proposed by the Council cannot threaten the viability of development.

29. A number of representations argue that any strategic site should be dealt with in the same way as strategic sites in the Future Growth Areas because the infrastructure needs of all strategic sites are likely to best be dealt with outside of the CIL regime. This is a logical argument in relation to sites outside the urban areas that would, in all probability, have similar infrastructure needs to strategic sites in the Future Growth Areas. The point is accepted by the Council who are content for a recommendation to this effect be made. **(EM2)**. However, the Council in accepting this point notes that in accordance with the local plan strategic sites are defined as sites for 30 or more dwellings. On this basis, the question arises of what to do with sites for between 15 and 29 dwellings. Under the current proposals such sites would be charged at a rate of £30 in Zone 1, £70 in Zone 2, £140 in Zone 3 and zero in Zone 4.
30. The PBA evidence supports the Zone 1 and Zone 2 charge but it is argued by some that the evidence does not support a charge of £140 in Zone 3. PBA did not make any recommendation for 15+ schemes as their brief was that for developments of 15 dwellings and above S106 agreements would be relied on. Looking at their evidence it is noted that the headroom situation with 15+ schemes outside the built-up area is unclear. Their assessment for a 15 dwelling scheme outside Brixham put the available headroom at £311, for a 100 dwelling scheme, outside Paignton/Torquay it was assessed at £262 and for a mixed scheme outside Paignton/Torquay at £192. On the other hand, a 15 dwelling scheme outside Paignton/Torquay was assessed to have headroom of £148 while one for 25 dwellings in the same location was assessed at £150. Given the variation in these figures and the need for a viability buffer a degree of caution is needed in recommending a figure for CIL as high as £140.
31. Another factor possibly pointing to the need for some caution is the fact that PBA's modelled average open market floorspace sales value for new build properties (paragraph 4.4.2) is not very different whether one is inside or outside the built-up areas of Torbay. Against this B-H have sought to update the PBA work and their addendum report at Appendix A shows that for Brixham the average new build value for houses is now significantly higher in Zone 3 compared to Zone 2. Unfortunately, no data

is supplied for up-dated new build values for Zone 3 in Torquay or Paignton. The up-dated viability appraisal done by B-H (Appendix C) based on up-dated market values shows a substantial amount of headroom for schemes of 15 or more dwellings outside the built-up areas of Torbay. For these areas for 15+ dwelling schemes PBA put the headroom at a little over £200 whereas the updated assessment from B-H shows it to be just over £500. A weakness of the B-H work is that it is based on an increase in market values but no increase in costs. For this reason, it is considered that the headroom for 15+ schemes in Zone 3 is likely to be a little lower than the B-H figure. Nevertheless, based on the B-H evidence, even with a slightly smaller headroom figure there would be a very substantial buffer and the viability of development for such schemes would not be seriously threatened.

32. Some respondents challenge the viability work for 15+ dwellings on the basis that the evidence is not robust or comprehensive enough. However, no convincing alternative evidence has been produced. Furthermore, the Government's expectation is that authorities will take a proportionate approach and will largely use available evidence rather than undertake extensive and time consuming survey work. One attempt to challenge the Council's work assessed a hypothetical 50 dwelling scheme based largely on the PBA assumptions. This failed to provide a credible assessment not least because it includes an unusually high figure for S106 costs and erroneously put finance costs at 100% of net costs rather than 6.5% as was intended. Even taking into account the need for caution it is considered that a charge of £140 should not seriously threaten the general viability of development for above 15 but below 30 dwellings in Zone 3. **(EM3)**.
33. In the light of this conclusion it is worth noting that the Council's proposed schedule is relatively complicated and there is merit in the Council considering whether it would be more logical to treat strategic sites in Zones 3 and 4 as being sites for 15 dwellings and above. This would be justified on the grounds that the provision of infrastructure in the Future Growth Areas (Zone 4) and the parts of Torbay that lie outside the built-up areas (Zone 3) is very likely to be based on similar considerations in both zones. However, because a charge of £140 for schemes of 15+ dwellings in Zone 3 can be justified this suggestion is not being made as a formal recommendation.
34. In relation to retirement housing PBA concluded that it was not viable with CIL in place. However, the up-dated assessment by B-H shows that there is a margin available for a CIL charge of just under £190 for retirement housing. No convincing counter evidence was produced. Retirement housing can therefore be included with the general housing category. This category does not however include "Extra Care Homes" which are not viable with a CIL charge in place. **(EM4)**. An area of concern related to defining what is meant by extra care housing but this has now been clarified by the Council following discussions with one of the respondents. It is assumed that the Council will include this clarification in the SPD that it

is currently producing, and inclusion of this definition within the Charging Schedule will add clarity.

Commercial rate

35. None of the B-class commercial uses generate sufficient value to justify a CIL charge. This may not apply to a development designed to cater for a specific user but CIL needs to be based on the general local situation rather than one particular development. For retail uses there is a challenge to the distinction drawn between the Willows Centre and other district centres. However, as the 2014 PBA viability report notes the Willows Centre operates as an out-of-centre retail park. The evidence showed that for out-of-centre comparison retail a charge of £123 would be acceptable without jeopardising the viability of such development. The 2016 PBA viability work endorsed the view that a CIL charge of £120 for retail development of over 300 sqm in out-of-town centres would be acceptable.

Conclusion

36. A realistic view has been taken of the prospects for non-residential development in Torbay. The limited proposals for charging a CIL on commercial development do not threaten the viability of non-residential development in the plan area as a whole.

Has evidence been provided that shows the proposed rates would not threaten delivery of the Local Plan as a whole?

37. The Council's decision to use a matrix approach is based on reasonable assumptions about development values and likely costs.
38. In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in Torbay. The Council has tried to be realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a range of development remains viable across Torbay.

Overall Conclusion

39. I conclude that the draft Torbay Community Infrastructure Levy Charging Schedule, subject to the making of the modifications set out in Appendix A, satisfies the drafting requirements and I therefore recommend that the draft Charging Schedule be approved.

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Examiner

Appendix A

Examiner Modifications (EM) recommended in order that the charging schedule may be approved.

Examiner Modification (EM)	Page no./ other reference	Modification
EM1	Page 9 paragraph 26	Amend the Schedule to a charge of zero for schemes of 1-3 dwellings in Zone 2.
EM2	Page 10 paragraph 29	Amend the Schedule to a charge of zero for all sites of 30 or more dwellings in Zone 3.
EM3	Page 11 paragraph 32	Amend the Schedule to include a charge of £140 for schemes of 15 – 29 dwellings in Zone 3.
EM4	Page 11 paragraph 34	Amend the Schedule to include a charge of zero for Extra Care Homes, and provide a definition of Extra Care Homes.
Informal suggestion/advice	Page 11 paragraph 33	The Council should consider the merit of treating strategic sites in Zones 3 and 4 as being for 15 sites and above.