

**Appendix 1: Report of the examination of  
Rushcliffe Borough Council  
Community Infrastructure Levy Draft  
Charging Schedule**



## **Report to Rushcliffe Borough Council**

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

Date: 25 June 2019

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

### **REPORT ON THE EXAMINATION OF RUSHCLIFFE BOROUGH COMMUNITY INFRASTRUCTURE LEVY DRAFT CHARGING SCHEDULE**

Charging Schedule submitted on 13 December 2018

Date of Hearing: 20 March 2019

## **Non Technical Summary**

This report concludes that the modified Rushcliffe Borough Council Community Infrastructure Levy Charging Schedule, submitted during the course of this examination, provides an appropriate basis for the collection of the levy in the Borough. The proposed rates will not put developments at risk, and it can be recommended for approval.

## **Introduction**

1. This report contains my assessment of the Rushcliffe Borough Council Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS) 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 (Ministry of Housing, Communities and Local Government Guidance on the Community Infrastructure Levy).
2. To comply with the relevant legislation the local charging authority has to submit a charging schedule that sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across its area.
3. The basis for my examination, and the subject of this report, is the modified DCS (mDCS) that was produced during the course of the examination following questions that I raised about the submitted draft. It was the subject of debate at the Hearing on 20 March 2019. I now provide a brief explanation of the reasons for the modifications. It should be noted that the modification do not affect the charges or the boundaries of the Zones to which they apply.
4. When I began the examination of the submitted documentation, it appeared to me that the submitted DCS, dated September 2018, did not fully comply with the Community Infrastructure Levy Regulations 2010, with reference primarily to the identification of the Zones. I also raised some minor matters that have been accepted, and will be dealt with by the Council, and do not need to be referred to further.
5. My first concern related to the extent to which the Zones for the residential charges are clear and unambiguous. There were actually 5 Zones when the DCS refers by numbers to 3. There was a Zone for the 'Strategic Allocation', and then the other zones were numbered 1 to 3, of which Zone 2 had 2 different rates. I considered that, for clarity, all the zones should be numbered consecutively. Additionally the Zone 2 elements should be separately numbered. The DCS as submitted is shown in Annex 1 at the end of this report. To assist in understanding, Annex 2 is a table that cross-references the original Zones and the Modified Zone numbers, with the charging rates also shown, illustrating that the proposed charges have not changed. For clarity, the modified Zones Map is shown in Annex 3, whilst Annex 4 is the mDCS considered in this report.

6. The mDCS proposes 5 Rates for Residential development (C3 Use, but excluding apartments), as follows (using the modified Zone numbers): Zone 1, £0; Zone 2, £40; Zone 3, £50; Zone 4, £75, and Zone 5, £100. The proposed charges for Retail development, Borough-wide, are for General Retail (excluding Food Supermarkets), £50 and for Food Supermarkets, £100. The rate for all other development, Borough-wide, is proposed to be £0. It is the rates for residential development that produced the majority of representations. These are dealt with in paragraphs 18 to 31 below.

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

Does the Infrastructure Delivery Schedule support the introduction of CIL?

7. The Infrastructure Delivery Plan (IDP1) Version 4, 'Rushcliffe update' was published in February 2014. This was a version of the Greater Nottingham Infrastructure Delivery Plan that was updated for the purpose of supporting the proposed modifications to the Rushcliffe Local Plan Part 1: Core Strategy (CS). A further document, 'Rushcliffe Local Plan Part 2: Land and Planning Policies, Infrastructure Delivery Plan' (IDP2) was published in May 2018. IDP2 is a supporting document for the Local Plan Part 2 (LP2) currently under separate examination, as well as supporting the development of the DCS.
8. IDP2, therefore, is up to date in identifying the infrastructure required to meet spatial objectives and growth set out in LP2, aligning with the CS covering the period that extends to 2028. IDP2 takes account of the various strategies and programmes of the service providers in the Borough and across Greater Nottingham, thus identifying service capacity constraints, issues giving rise to infrastructure need, future programme investment, and potential sources of funding.
9. The IDP2 considers the following categories of infrastructure: Transport; Utilities – water and sewerage; Utilities – energy; Utilities – digital infrastructure; Flooding and flood risk; Health and education; Emergency services (police, fire and ambulance); Waste management; and Green infrastructure and biodiversity. Appendix 2 of the IDP2 provides an update of critical infrastructure, having regard to the cumulative requirements of LP2. It provides a description of infrastructure requirements, progress, estimated cost, funding secured, and funding sources.
10. Building on the two documents, IDP1 and IDP2 is the Infrastructure Evidence Base Report incorporated at Appendix 5 in the submitted DCS, beginning on page 29 of that document. This document determines the size of the infrastructure funding gap, taking into account known and expected infrastructure costs and possible sources of funding. Within this document, Table 2: 'Infrastructure projects and types listed on the Regulation 123 list' sets out the infrastructure projects/types, and the anticipated costs and sources of funding, and identifies the anticipated funding gap. At the end of the table, a total funding gap of £17.8 million is identified, whilst the total anticipated income from CIL during the remainder of the plan period is expected to be £18.8 million, of which £13.2 million will be available allowing for administration and local project elements. Thus the anticipated funding gap after CIL implementation is £4.6 million.

11. I consider that this method of calculating the infrastructure funding gap is likely to produce an optimistic figure in terms of what the costs of infrastructure over the plan period are likely to be, and the contribution that CIL will make. Nevertheless, it is clear that there will be a funding gap, and that in relation to the infrastructure on the Regulation 123 list, it will make a substantial contribution. I am satisfied that these figures reflect the cost of infrastructure requirements, and I consider that the need to impose the CIL has been demonstrated.

Does the economic viability evidence support the introduction of CIL?

12. Following on from earlier work, the Council commissioned a study, the Whole Plan & Community Infrastructure Levy Viability Assessment (VA), dated May 2018, from a consultancy specialising in such studies. The VA looks at the ability of different categories of development within the Borough to make infrastructure contributions, having taken account of the cost impacts of affordable housing delivery and other relevant development plan policies. The VA is based on two studies:
  - Evidence of land and property valuation - collating area wide evidence of land and property values for both residential and commercial property;
  - Evidence of construction cost – collating area wide evidence of construction costs for both residential and commercial property.
13. The VA uses a residual valuation approach in which the model subtracts the land value and the fixed development costs from the development value to determine the viability or otherwise of the development and any additional margin available for developer contributions. The model factors in a reasonable return for the landowner with the established threshold value, a reasonable profit return for the developer, and assesses the cost impacts of planning policies. This is a standard approach advocated by the Harman Report<sup>1</sup>. The development costs include building costs, fees, finance, profit levels, etc, and such matters as affordable housing, planning obligations, and other plan policy costs.
14. The VA considers the type and likely locations for growth in the Borough. This ensures that any proposed CIL charge will be applied to those developments most likely to come forward, and that the main elements of Local Plan delivery are identified, so that any charge does not put delivery of the Plan at risk. The study's methodology compares the Residual Land Values (RLVs) of a range of generic developments (typologies) to a range of Benchmark Land Values (BLVs) as an indication of existing or alternative land use values relevant to site use and locality. The VA identifies areas or zones where differential rates should be applied in respect of both residential development and retail development.

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<sup>1</sup> The Harman Report - 'Viability Testing Local Plans', advice for planning practitioners, was prepared by the Local Housing Delivery Group chaired by Sir John Harman and published in June 2012.

15. In addition, Appendix 3 to the main VA, is a separate study entitled Land to East of Gamston<sup>2</sup> Viability Assessment. This assessment indicated negative viability of minus £23m for the development of the allocation. The relatively high level of projected s106 contributions of £65 Million (at over £16,000 per dwelling) indicates that the strategic site cannot accommodate CIL charges.
16. The VA found that all development typologies in the Borough, other than residential and retail, could not support a CIL charge.

#### Conclusion

17. The DCS is supported by compelling evidence of community infrastructure needs and a funding gap has been identified. I am satisfied that the VA follows good and accepted practice. There is evidence for the various inputs used and adequate headroom. A reasonable 'buffer' has been allowed below the margins of viability. Subject to the detailed examination of a number of the individual inputs, which I deal with below, the DCS is supported by satisfactory viability evidence.

#### **Are the charging rates informed by and consistent with the evidence?**

##### Is the level of CIL proposed for residential development justified?

18. The principal concerns raised in the representations about the proposed CIL level for residential development relate to the delineation of zones, BLVs, build costs, residual s106 costs, residential sales values, together with some more minor matters.

##### Delineation of Zones

19. Apart from the matter of the naming/numbering of zones that I have already dealt with, the zero CIL rate for the strategic site (Zone 1) was questioned on the basis that the development should be able to afford a CIL contribution. It was also contended that the inclusion of the settlement of Cotgrave in its own zone (Zone 3) is misjudged.
20. I am satisfied that the charge for Zone 1 has been correctly set bearing in mind the significant site specific s106 obligations required by the LP policies (see paragraph 6.6 in the VA and paragraph 15 above). In respect of Cotgrave (Zone 3), whilst it is argued that its relatively low house values mean that it should be in the £40 rate (Zone 2) and not the £50 (Zone 3), this is explained by the higher level of affordable housing that is sought in Zone 2 at 30%, as required by Policy 8 of the CS. Therefore this impacts on the level of charge that can be imposed.

##### Benchmark Land Values

21. The BLV rates used in the VA are criticised as being too low when compared with comparable actual land transactions. I note that the example

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<sup>2</sup> The major strategic site in the Borough

transactions provided in the representations predate the issue of the revised Framework and Planning Practice Guidance on viability. The new guidance advocates the 'Existing Use Value plus Premium' approach. The VA adopts this approach and uses a 50% split in the uplifted land value to determine the appropriate premium. In my view this reflects the latest government guidance and is satisfactory. It is the case that CIL is intended to take value from the development process by encouraging land value to reflect the cost of infrastructure in development. That means that pressure must be brought to bear on the landowner's expectations.

### Build Costs

22. With regard to build costs, there is criticism of the data used in the VA on the basis that it is not in line with the updated BCIS<sup>3</sup> for Rushcliffe and that there should be an addition for externals and servicing. In respect of construction costs, the Harman report advises that for the purposes of viability testing these should be based on the BCIS or other appropriate data. It is claimed that the low 'all in build cost' in the VA therefore has an undesirable and misleading positive effect resulting in higher potential CIL rates.
23. The VA appraisals are based on a construction cost model developed by Gleeds, property and construction consultants, from analysis of costs of residential schemes, the great majority of which are taken from their internal database. Gleeds state that this data is preferred because the data used by BCIS for residential build cost rates is not relevant as costs of volume housebuilders is not captured within the overall data. Gleeds' own data is based on actual cost information obtained from their involvement and knowledge of actual large schemes.
24. In response to my request at the hearing, an anonymized list of 7 projects, varying from 50-100 unit to 200-300 unit schemes was provided. The median cost for the 7 schemes is shown as £1,118.00 per m<sup>2</sup>, with a mean cost at £1,135, updated for Rushcliffe as at 2Q2018. The 2 most relevant schemes, in the East Midlands, show a figure some £40 lower. These figures include associated infrastructure. Gleeds note that their work with Registered Providers and Local Authorities, who develop sites using main contractors, indicates that their costs are more often than not in line with the BCIS data. Volume housebuilders operate differently: no main contractor profit; design team fees are minimal; prices in supply chain agreements that a normal developer cannot match; and much of the 'Preliminaries' costs are reduced.
25. Many CIL viability Studies rely on BCIS data, but as the Harman Report states, other appropriate data can be used. There are shortcomings in the use of BCIS, in respect of arriving at building cost data for CIL. This is particularly so when dealing with potential large scale developments which are the subject of the representations.

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<sup>3</sup> Building Cost Information Service of the Royal Institution of Chartered Surveyors.

26. At the hearing, as set out in my hearing agenda, reference was made to the Report for the Federation of Small Businesses<sup>4</sup>, which addressed the differences in build costs between the small developer and the costs for volume housebuilders. BCIS cost data is largely informed by tender prices for schemes with fewer than 10 units, and the median average is heavily weighted towards 1 to 5 unit schemes. As such, this median cost may not show the benefits of economies of scale when building larger schemes. The recent evidence from BCIS is suggesting that larger schemes might achieve build costs at around the lower quartile scale across the BCIS transactions, and this may be some £200-£300 m<sup>2</sup> lower than the median build cost within BCIS. The analysis of the data shows that the cost of schemes of 10 units or less is on average +14% (for housing only schemes) compared with much larger schemes.
27. From this it can be seen that the use of BCIS data for high-level viability studies, especially where larger schemes are the focus of attention, is not straightforward and can lead to inconsistencies. The Gleeds data is also open to criticism: the anonymized data provided uses only 2 example projects (out of 7 for which data is supplied) that relate to the East Midlands (although the costs in these 2 examples are close to one another). However, it has the advantage of showing results for larger schemes. As to the question of the inclusion of external works and site-wide services and infrastructure, evidently these costs were included in the sample schemes used. It should also be borne in mind that any shortcoming in base building cost data, such as exaggerating the cost of larger schemes, will have knock-on effects through the addition of linked costs which are arrived at by using percentages of build cost, so that any exaggeration of building cost will increase inputs for professional and legal fees, marketing costs, etc.
28. My conclusion is that the Gleeds construction costs model comes into the category of 'other appropriate data'. It is not perfect, but neither is the BCIS data. I am satisfied that the Gleeds study is a satisfactory basis for a high level assessment of viability as required for assessing appropriate CIL charging rates. To the extent that the building costs figures may err towards lower figures, the 'buffer' that has been allowed between maximum potential rates and the proposed rates will fulfil its intended function.
29. A further point is the question of whether additional costs for garaging should have been added into build costs. For the Council it is explained that to ensure "like for like" analysis and appraisal, when a property on a comparable scheme is analysed, the sale price evidence is reduced by an appropriate amount for a single/double garage to produce a 'net' value. This is then applied to the viability tests, also "net" of garages. Thus the appraisals do not 'benefit' from additional sales revenue from a garage being present, nor do they 'penalise' for the cost of construction. In practice any additional cost of garage construction is offset by its additional sale value, i.e. in reality a

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<sup>4</sup> Housing development: the economics of small sites – the effect of project size on the cost of housing construction, Report for The Federation of Small Businesses, BCIS, August 2015.

garage is "cost neutral" to a development. Again, for the purpose of a high-level assessment, I find this a reasonable approach that is fit for purpose.

#### Residual s106 costs

30. In representations, in the absence of an explanation of how the allowance for s106 costs of £3,000 per residential unit has been arrived at, it is suggested that there is a risk that it is too low. In response, the Council states that in order to establish a realistic level of financial contributions, an analysis of s106 contributions on non-strategic sites was undertaken over the past five years. Discounting those contributions that would transfer to CIL, the remaining planning contributions average £2,875 per dwelling. This has been rounded up to £3,000 per unit in respect of the viability appraisals.
31. In other CIL viability assessments I have seen a nominal figure of £1000 used. I have also seen it postulated that no figure should be put in because the land purchase price should reflect planning policy requirements. In this case, I am satisfied that a robust approach has been taken.

#### More minor matters

32. There are some more minor matters raised, such as that CIL is not appropriate for this Borough and whether apartments should be subject to a charge. However there is evidence that development in Rushcliffe Borough can support a CIL charge, but there is no evidence to support the contention that apartments are able to do so. Nor is there any evidence put forward in relation to any other matter.

#### Conclusion

33. In conclusion, the evidence before me is clear that residential development will remain viable across most of the Borough if the proposed CIL rates in the mDCS are applied.

#### Charges for non-residential development

34. Nothing has been raised that suggests to me that the charges for non-residential development are not appropriate, and I find the evidence to be robust.

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

35. The Council's decision to set rates for residential and for retail developments is based on reasonable assumptions about development values and likely costs. All other development has a nil rate, and the evidence gives reasonable confidence that development will remain viable across most of the area if the charge is applied.

#### **Overall Conclusion**

36. In setting the CIL charging rates the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the

development market in Rushcliffe Borough. The Council has been realistic in terms of achieving a reasonable level of income to address a gap in infrastructure funding, while ensuring that development remains viable across the authority's area. An appropriate balance has been struck.

### **Are the Legal Requirements met?**

37. The Legal Requirements are met:

- The Charging Schedule complies with national policy/guidance
- The Charging Schedule complies with the 2008 Planning Act and 2010 Regulations (as amended), including in respect of the statutory processes and public consultation, consistency with the Local Plan and the Infrastructure Delivery Schedule, and is supported by an adequate financial appraisal.

38. I conclude that, the Rushcliffe Borough Community Infrastructure Levy Charging Schedule (as modified), 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 modified Charging Schedule be approved.

**Terrence Kemmann-Lane**

Examiner

## Annex 1

### The Draft Charging Schedule submitted on 13 December 2018

Development type	Zone	CIL Rate per m <sup>2</sup>
Strategic Allocation East of Gamston/North of Tollerton	Strategic Allocation	£0
Residential (use C3 dwellinghouses, excluding stand-alone apartment blocks) Zone 1.	Zone 1	£50
Residential (use C3 dwellinghouses, excluding stand-alone apartment blocks) Zone 2 Leake, Keyworth and Bingham.	Zone 2 Leake, Keyworth & Bingham	£75
Residential (use C3 dwellinghouses, excluding stand-alone apartment blocks) Zone 2.	Zone 2	£40
Residential (use C3 dwellinghouses, excluding stand-alone apartment blocks) Zone 3.	Zone 3	£100
Apartments	Borough-wide	£0
General retail A1-A5 (excluding food supermarket)	Borough-wide	£50
Food supermarket A1	Borough-wide	£100
All other developments	Borough-wide	£0

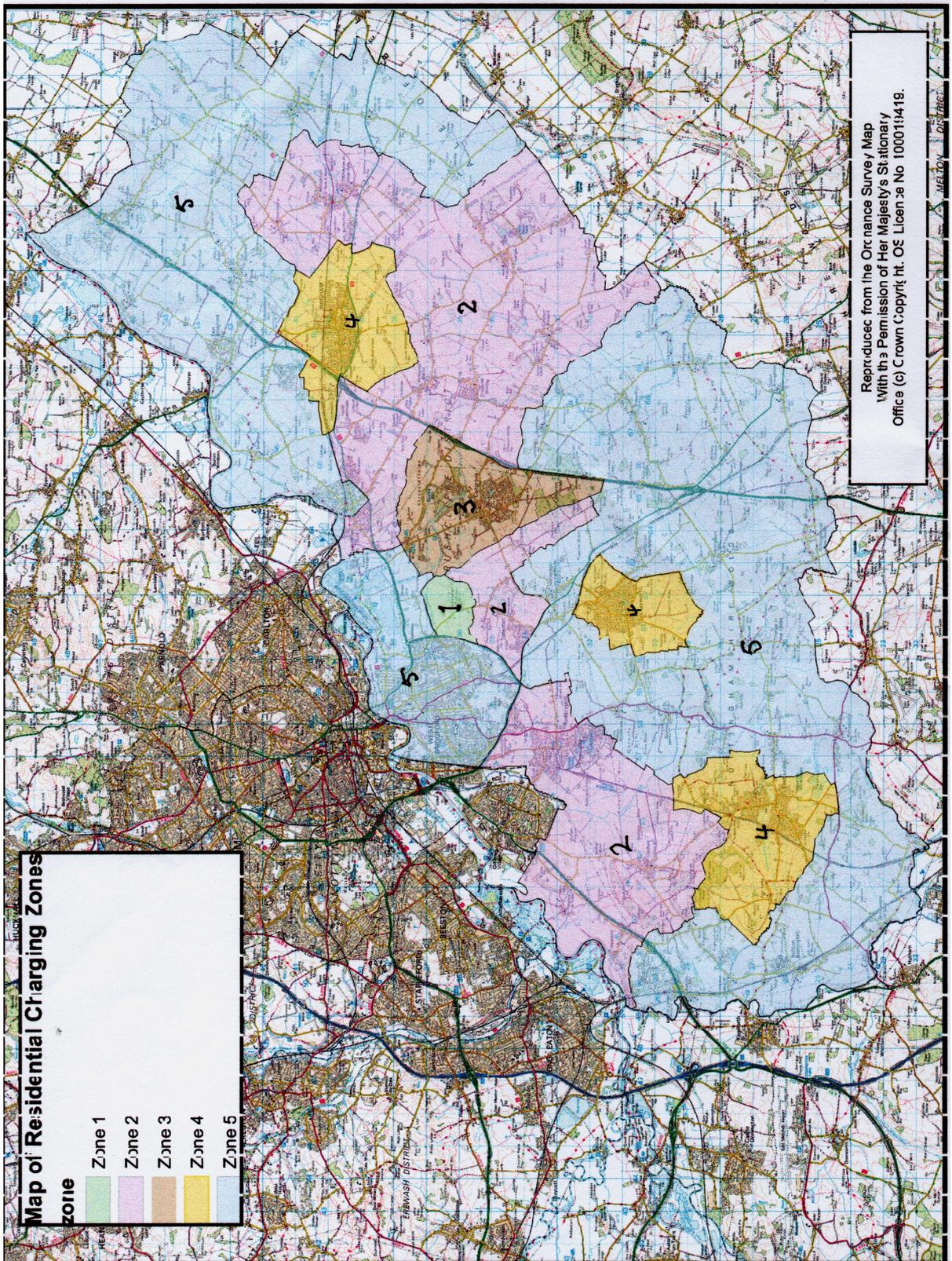
## Annex 2

### Table cross-referencing charging zone references as submitted and proposed references in the modified Schedule.

Charging zone reference in DCS/CIL viability study	New Charging Zone Reference	Proposed Charge
Strategic Allocation	Zone 1	£0
Zone 2	Zone 2	£40
Zone 1	Zone 3	£50
Zone 2 Leake, Keyworth and Bingham	Zone 4	£75
Zone 3	Zone 5	£100

### Annex 3

### The Revised Charging Zones in the modified Draft Charging Schedule



## Annex 4

### The Modified Draft Charging Schedule considered in this Report

Development type	Zone	CIL Rate per m2
Strategic Allocation East of Gamston/North of Tollerton	Zone 1	£0
Residential (use C3) excluding apartments.	Zone 2	£40
Residential (use C3) excluding apartments.	Zone 3	£50
Residential (use C3) excluding apartments	Zone 4	£75
Residential (use C3) excluding apartments.	Zone 5	£100
General retail A1-A5 (excluding food supermarket)	Borough-wide	£50
Food supermarket A1	Borough-wide	£100
All other developments	Borough-wide	£0