

Report to the London Borough of Havering Council

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

Date: 29 May 2019

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

REPORT ON THE EXAMINATION OF THE LONDON BOROUGH OF HAVERING COMMUNITY INFRASTRUCTURE LEVY DRAFT CHARGING SCHEDULE

Charging Schedule submitted for examination on 19 November 2018

Non Technical Summary

This report concludes that the modified London Borough of Havering Council Community Infrastructure Levy Draft Charging Schedule, submitted and consulted on 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 London Borough of Havering Council (LBH) 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). There were no requests for a hearing in the consultation responses and I have taken the view that the written representations are sufficient for the purposes of my examination.
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 the borough.
3. The basis for my examination is the modified schedule that was published for public consultation during the course of the examination, with a closing date for representations of 24 April 2019. I now provide a brief explanation of the reasons that the Council has modified the DCS.

Modifications to the Draft Charging Schedule

4. The submitted DCS included differential charging rates in relation to residential and retail developments. Following my initial reading of the submitted documents, it became clear that the submitted DCS was not completely compliant with the Community Infrastructure Regulations 2010 (as amended). The specific regulations were concerned with the format and content of charging schedules. Under Regulation 12, a charging authority may determine the format and content of a charging schedule, subject to certain provisions. In particular, Regulation 12(2)(c) specifies specific content that a DCS must contain:
*"12(2)(c) where a charging authority sets differential rates in accordance with regulation 13(1)(a), a map which—
(i) identifies the location and boundaries of the zones,
(ii) is reproduced from, or based on, an Ordnance Survey map,
(iii) shows National Grid lines and reference numbers, and
(iv) includes an explanation of any symbol or notation which it uses;
and
12(3)(c) a statement that it has been issued, approved and published in accordance with these Regulations and Part 11 of PA 2008."*
5. The residential rates were differentiated by 2 Zones – Zone A and Zone B –

and these zones were depicted on a map, while retail supermarkets, superstores and retail warehouses were differentiated from other retail by being above 280m² gross internal area. However, the 'All other retail' charging zones were not depicted on a map, which must be contained in the charging schedule. The submitted DCS requires that reference is made to the Local Plan, wherein the Metropolitan, District and Local Centres are defined, which obviously is not included as part of the DCS.

6. I made a number of points: a map is not contained in the charging schedule with an identification of 'All other retail' charging zone boundaries or any relevant symbol or notations, and there needed to be a Map or Maps which show each of the areas within which the 'All other retail' charge would be applied. In addition there were other more minor matters, such as National Grid lines and reference numbers that needed to be added. The Council readily acknowledged these points. Although the charging rates were not to be altered, the fact that additional mapping needed to be added within the DCS meant that these were modifications that needed to go through the Statement of Modifications procedure.
7. The Modifications were then advertised and the documents made available to view online and at various locations within the Borough. A period of 4 weeks was provided for representations to be made, ending on 24 April 2019. At the end of this period I was provided with the representations thus made, and have taken them into account along with those made in respect of the October 2018 DCS. This report now deals with the DCS as modified through the procedure described above.
8. For convenience, I set out below the CIL rates proposed by the Council. As mentioned in paragraph 6 above, the modifications did not affect the proposed charging rates.

TYPE OF DEVELOPMENT (and use class)	CIL RATE (£ PER M ² OF NET ADDITIONAL FLOORSPACE)	
	ZONE A (NORTH)	ZONE B (SOUTH)
Residential*	£125	£55
Office and industrial	£0	
Retail – supermarkets**, superstores and retail warehouses*** above 280m ² gross internal area	£175	
All other retail (A1-A5) in Metropolitan, District and Local Centres as shown on the retail zoning maps	£50	
Hotels	£20	
All other development	£0	

*Including private care homes and retirement homes (excluding Extra Care)

** Supermarkets/Superstores are defined as shopping destinations in their own right, where weekly food needs are met, catering for a significant proportion of car-borne customers, and which can also include non-food floorspace as part of the overall mix of the unit.

***Retail Warehousing is defined as shopping destinations specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for a significant proportion of car-borne customers.

Note: the Residential Charging Zones Map and the Retail Zoning Maps are appended at the end of this Schedule.

Other Examiner's Questions

9. In addition to my question to the Council (EQ-1) concerning compliance with the Regulations, dealt with above, I also raised a number of questions (under reference EQ-2) with the Council. These included reference to some of the representations made, and inviting further responses to these. I also sought clarification from the Council's viability consultants of the level of 'buffer' against the maximum CIL charge. This was because, whilst it was apparent that a buffer had been allowed for, I could find no clear indication of its scale. Further, I questioned Benchmark Land Value (BLV) figure for industrial use, since it was shown as £650,000 in Table 4.39.1 – Summary of Benchmark Land Values in document CIL-CD07, but a figure of £750,000 is used in Figure 5.5.1 – Sample format for residential results, and this value is used throughout the appendices to the document.
10. In relation to the question about the extent of buffer allowed for in setting the rates, the response was that for residential development, after allowing for the Mayoral CIL charge in addition to the proposed Borough charge, the buffer was close to 30% (see the Council's response to EQ-2 for precise figures). With respect to commercial uses, the proposed charge of £175 psm for supermarkets etc equates to a buffer of between 65.28% and 28.28%, whilst for 'all other retail', the buffer equates to between 90.88% and 44.44%, and for hotels the buffer is 71.42%.
11. In relation to my query about inconsistency between BLVs of £750,000 and £650,000 I am told that the correct figure is the latter and that the £750,000 was a typographical error. However, this error, which was used to establish the viability and maximum CIL charge for residential and retirement housing has the effect of an additional cost of £100,000 per gross hectare and effectively provides a greater buffer.
12. I ensured that my questions and answers were put on the Council's CIL webpage and sent to the original consultation respondents, who were invited to comment if they wished. I have taken all responses into account in my examination.

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

Does the Infrastructure Delivery Plan support the introduction of CIL?

13. The Council commissioned an Infrastructure Delivery Plan (IDP), document CIL-CD05, which was published in March 2018. The aim of the IDP is to set out the type and scale of infrastructure required to underpin the Local Plan's vision and framework for the future development of the Borough. The Local Plan (LP) was submitted for examination in March 2018, covering the period 2016 -2031: at the time of writing the Inspector's report on that examination has not yet been delivered, but the LP is expected to be adopted during the summer of 2019.
14. The IDP was compiled in consultation with all the relevant delivery agencies. The need for infrastructure was assessed in the following categories: Transport; Education; Health and Well-being; Utilities; Flood

Protection; Culture & Community; Green Infrastructure; Recreation & Leisure; Emergency Services; Waste Management; Urban Regeneration; and Environment. It includes an explanation of the main funding sources likely to be available. Tables ES1 and 7.1 within the document set out the estimated total cost of identified infrastructure requirements, arriving at a total of £578m.

15. A further document, the Infrastructure Funding Gap Report (IFGR), document CIL-CD04, was commissioned. This report, dated October 2018, demonstrates an aggregate funding gap after taking into account CIL projected income. The estimated CIL receipts are based on an assessment of likely development that will come forward during the LP period, excluding that which has planning permission granted already. The projected CIL income amounts to about £67m. The report also provides an estimate of the total available funding, which includes the Council's capital funding, funding from the Greater London Authority/Transport for London, developer contributions, central government allocations, lotteries and charities, and direct charges for services as in the case of utility companies. The total funding from these sources is circa £134m. Thus, after allowing for funding from other sources, there remains a gap of the order of £444m. Clearly CIL will make a contribution to meeting this, but there will still be a gap of some £377m: CIL can be a useful contributor, but will make only a modest contribution.
16. Thus I am satisfied that the IDP reflects the infrastructure requirements of the emerging Local Plan for the Borough and that there is a funding gap. The proposed charges will make a modest contribution, and I consider that the need to impose the CIL has been demonstrated by the figures.

Does the economic viability evidence support the introduction of CIL?

17. The Council commissioned a report, called the Havering CIL – Viability Assessment (VA), from a consultancy specialising in development viability studies. This report, dated October 2018 (document CIL-CD07) with 5 Appendices, followed on from an earlier report prepared for the Preliminary Draft Charging Schedule (PDCS) that was dated February 2015 (document CIL-SD03). In addition a Retail Warehouse Sensitivity Test was produced (document CIL-CD12).
18. The VA uses a residual valuation method of calculating the value of each development. This involves calculating the value of the completed scheme and deducting development costs (construction, fees, finance, sustainability requirements, CIL and other plan policy costs) and developer's profit. The residual amount is the sum left after these costs have been deducted from the value of the development and guides the amount available for site acquisition. A 'Benchmark Land Value' (BLV) is used, being the value above the existing use value a landowner would accept, including an incentive to sell, to bring the site to market for development. This is a standard approach advocated by the Harman Report. The VA also includes allowance for Mayoral CIL (Mayor of London CIL 2) at the rate of £25 per square metre (psm).

19. The VA considers the type and likely locations for residential growth in the borough. This ensures that any proposed CIL charge will be applied to those developments most likely to come forward. The study's methodology compares the residual land values (RLVs) of a range of generic developments (typologies) to a range of BLVs as an indication of existing or alternative land use values relevant to site use and locality. Ten residential development typologies were appraised, representing the types of site that the Council expects to come forward.
20. A series of commercial development typologies are also appraised reflecting a range of use classes on existing commercial sites. The assessment assumed that the site could currently accommodate one of three existing uses (thereby allowing the site to be assessed in relation to a range of three current use values ('CUVs')) and that the development involves the intensification of the site. Lower rents and higher yields for existing space than the planned new floorspace have been assumed, reflecting the lower quality and lower demand for second hand space, as well as the poorer covenant strength of the likely occupier of second hand space. A modest refurbishment cost is allowed for to reflect costs that would be incurred to secure a letting of the existing space. A 15% - 20% landowner premium is added to the resulting existing use value as an incentive for the site to come forward for development. The actual premium would vary between sites, and be determined by site-specific circumstances, so the 15% - 20% premium has been adopted as a 'top of range' scenario for testing purposes.
21. In relation to locality, for residential development only, the VA identifies two areas or zones where differential rates should be applied. For commercial development, retail development is shown as being able to support a CIL charge, but with differential rates, one for supermarkets, superstores and retail warehouses and one for all other retail (A1-A5) in Metropolitan, District and Local Centres as defined in the Local Plan. The only other commercial development found to have viability levels able to absorb a charge is hotel development. The VA finds that all other development should be set at a nil charge.

Conclusion

22. The DCS is supported by evidence of community infrastructure needs and a funding gap has been identified. I am satisfied that the VA follows good and accepted practice. Furthermore, there is evidence for the various inputs used and adequate headroom – a minimum 'buffer' of at or just below 30% is allowed for. I conclude that the DCS is supported by satisfactory viability evidence and evidence of the costs of infrastructure and that the background documents contain appropriate available evidence.

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

Is the level of CIL proposed for residential development justified?

23. At paragraph 22 above I conclude that the DCS is supported by satisfactory viability evidence. However among the responses to the consultation on the DCS there were two issues raised that I need to deal with: firstly whether

the delivery of the LP's housing requirement will be adversely affected by the introduction of CIL, and secondly the justification for the increase in charges in Zones A and B in the DCS compared with those in the PDCS.

24. The first of these issues – whether CIL will affect the supply of housing in the Borough, so that the LP target for new dwellings may not be met – essentially revolves around whether CIL is set at a level that does not damage the viability of residential development generally. It is the role of this examination to ensure, on the basis of the evidence, that CIL is not set at rates that harm the viability of development in the Borough.
25. As I report in paragraphs 17 to 21 above, the DCS is supported by a VA that has been carried out in accordance with appropriate advice and follows normal practice in such studies and by the development industry generally. The setting of CIL rates can only be done on the basis of evidence. No evidence has been submitted that throws any significant doubt on the inputs or the outcome of the VA.
26. It is clear that there is particular difficulty in producing viable higher density (flatted) schemes while providing the profit margin of 20% allowed for in the assessments. The VA explains that there are tested schemes that will not be viable even if CIL was set at a zero rate, and only a change in other factors will make them viable. Indeed, the VA has taken the approach that, if a scheme is unviable before CIL is levied, it is unlikely to come forward and CIL will not be a critical factor. The VA has therefore disregarded 'unviable' schemes in recommending an appropriate level of CIL (VA paragraph 6.8). The footnote to this text also refers to sensitivity analyses that reduce affordable housing in increments down to 0%, which shows that even such reductions do not always remedy viability issues.
27. This approach (of dismissing schemes that are indicated as being unviable irrespective of the imposition of CIL) is challenged in representations, but there is no alternative evidence or analysis put forward. In fact, it is stated that a high-level scheme specific appraisal, supported by a development viability specialist, supports the view that high density flatted schemes will be unviable with the imposition of CIL: but there is no comment on whether the analysed scheme would be viable at a lower rate or with a zero rate. No additional evidence arising from the scheme specific appraisal has been put forward. The only further comment made in the representation in this regard is that the proposed CIL rate would have the effect of reducing developer profit to below an acceptable level – ie below the 20% profit margin adopted in the VA.
28. My conclusions on this are that, for reasons other than the imposition of CIL, there are areas of the Borough, and schemes of high density, that are important for housing delivery, that are very testing from the point of view of viability. It may be that, as a result, housing delivery to meet LP targets will be challenging. However, I cannot find fault with the rationale behind the approach that if a scheme is unviable without a CIL charge, it is not a critical factor in setting charging rates and CIL itself will not be a prime determining factor.

29. A further matter that I must address in this part of the report is the allowance in the VA for continuing section 106 contributions. Representations criticise the allowance of £2,000 per residential unit as being without supporting justification. I have seen similar figures put into viability appraisals elsewhere. In the context of site specific requirements varying from site to site, I consider that to put a reasonable proxy figure into the assessment at least leans towards caution. I and other Examiners have accepted this approach and I accept it here.
30. The second issue, as put by a representor, is the fact that the uplift in the proposed DCS rate for Zone A represents a large increase on the PDCS rate and this puts in doubt the justification for that rate. Arithmetically it is correct that the currently proposed residential charge in Zone A is 79% higher than the rate proposed in the PDCS, whilst the same calculation for Zone B is a modest 10% uplift.
31. The Council accepts that the simple analysis of the percentage increase in the charges is methodologically correct. However, the percentages of rate increases in themselves can be misleading as the increase is expressed by reference to the starting point charge, and provides no information as to the likely impact on development of the revised charge. As explained for the Council, if a rate of say £10 psm were to be increased by 50% this would take the charge up to £15 per sq ft. An increase of 50% appears to be significant, however this in fact only represents a £5 per sq m increase. More particularly however, the percentage uplift does not identify the impact on development viability of such a charge. The important issue to consider is the amount of the actual charge being proposed and the impact of this on residual land value of developments.
32. As set out in the VA analysis of the appraisal testing, the charge amounts to an average of 2.3% of total scheme value in the residential Zone B (south of the A1306) and an average of 3.8% in zone A (north of the A1306). The simple calculation of the percentage increase between PDCS and DCS residential rates is no indication that the currently proposed rates are not founded on cogent evidence. I agree with the Council and its viability consultants that the proposed charges are unlikely to adversely impact on the viability of development generally in the Borough, and that where, in certain areas and for high density schemes there are viability issues, CIL is not the significant driver for this difficulty.

Conclusion

33. The rates proposed for residential development in the Borough have been established by the Council on the basis of a Viability Assessment commissioned from experienced consultants in development economics. The methodology used is consistent with CIL Guidance and industry practice. The CIL rates proposed for residential development are justified.

Is the CIL rate for Retail development justified by the Viability Assessment?

34. Representations question the two retail typologies chosen to be tested in the VA – 'retail supermarkets, superstores and retail warehouses' and 'all

other retail' and what is seen as an insufficient number of developments/locations assessed.

35. In my experience the two typologies are not uncommon in CIL viability assessments and CIL charging schedules, as is the divide between units that are above and below the Sunday Trading Threshold levels. The larger store types are clearly identifiable in everyday experience, whilst I can accept that the smaller units, below 280m², reasonably reflect the 'all other retail' category. For the 'high level' appraisals required to establish CIL viability, I consider the 2 typologies adequately represent the retail market.
36. The explanations given on behalf of the Council that experience shows that retail warehouses and supermarkets have a similar capacity to absorb CIL charges, despite rent and yield differences, is persuasive. I also support the contention that to test smaller or larger developments would be a matter of scaling, resulting in the same outcome for the level of charge. In addition I note that a further sensitivity test for retail warehouses (document CIL-CD12) has been run with build costs identified in BCIS, demonstrating the ability to accommodate a maximum CIL charge ranging between £32m² to £504m². The appraisals and the absence of any contrary evidence lead me to conclude that the retail rates are justified.

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

37. The Council's decision to set differential rates for residential and retail, and a rate for hotel 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.

Other Matters

38. There is a representation that contends that the six weeks allowed for consultation on the DCS was insufficient, bearing in mind that the PDCS was consulted on between February and April 2015. It is also suggested that it would have been more appropriate to have published a revised PDCS in view of the time that has passed. I note that the six week period for consultation is in excess of the requirements of the CIL Regulations. Furthermore there is no requirement for a revised PDCS to be produced, irrespective of the length of time that elapses between a PDCS and the DCS. I am satisfied that sufficient time has been allowed for properly judged responses to be made.
39. A small final point: on page 2 above I have set out the charging rates table for the convenience of readers of this report. I have amended the text slightly to refer to the Zoning Maps, in the row for 'All other retail' and in a 'Note' following the existing footnotes to the table. I consider that it is necessary to be clear within the table that the Zoning Maps are referred to and where to find them. I do not consider that it is necessary for me to make a formal recommendation about this. The Council has confirmed that it will make the appropriate changes to the text, and I am happy to leave it to the Council to do so.

Overall Conclusion

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

Are the Legal Requirements met?

41. 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 emerging Havering Local Plan 2016 – 2031, and the Infrastructure Delivery Schedule and is supported by an adequate financial appraisal.

42. I conclude that Havering Community Infrastructure Levy Charging Schedule, with the modifications that have been consulted upon, satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

Terrence Kemmann-Lane

Examiner