



The Planning
Inspectorate

Report to London Borough of Brent Council

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an Examiner appointed by the Council

Date: 15 January 2013

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT BRENT COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 14 September 2012

Examination hearings held between 13 and 14 November 2012

File Ref: PINS/T5150/429/9

Non Technical Summary

This report concludes that the London Borough of Brent Community Infrastructure Levy (CIL) Charging Schedule provides an appropriate basis for the collection of the levy in the Borough. 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.

One modification is needed to meet the statutory requirements. This can be summarised as follows:

- Reduce the rate for retail warehouse clubs to £14 per square metre.

The specified modification recommended in this report is based on matters discussed during the public hearing sessions and does not alter the basis of the Council's overall approach or the appropriate balance achieved.

Introduction

1. This report contains my assessment of the London Borough of Brent 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 hearings sessions were held on 13 and 14 November 2012, is the submitted schedule of September 2012. This includes three modifications which were made by the Council following the public consultation period of the original CIL document in July 2012. These minor modifications are all within the zero rated CIL category, and are:
 - replacing 'police stations' by 'police facilities';
 - after the term 'fire station' adding 'and fire service facilities'; and
 - including 'water and wastewater infrastructure' in the zero rated CIL category.
4. These specified minor modifications which have been posted on the Council's website since mid September do not alter the basis of the Council's overall approach or the appropriate balance achieved.
5. A further modification [**EM1**] has been suggested by the Council, to amend the charge for warehouse clubs from the full retail rate to a rate reflecting its sui generis use, of about one-third A1, with the remainder classified as B8.

The charge for warehouse clubs, which has been subject to public consultation, is considered in full later in the report.

6. The Council proposes a range of differing CIL rates for various uses, each one applying across the entire Borough.

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

Infrastructure planning evidence

7. The *Core Strategy*¹ sets out the main elements of growth that will need to be supported by further infrastructure. The accompanying IIF² identifies Brent's infrastructure requirements that will enable the proposed development to meet the needs of the Borough's existing and future population.
8. The IIF identifies scheme costs over the length of the plan period, delivery mechanisms and where funding has been secured for key sectors, such as education, transport, health facilities, community facilities, green infrastructure, open space and public realm. It points to a likely infrastructure funding gap of at least £224.8 million over the next 15 years, when the expected contributions from other sources are deducted from the total capital infrastructure cost of £406.8 million. The accuracy of the IIF was not challenged at the Examination, and I consider it is a sound basis for the preparation of the CIL.
9. The amount of CIL that could be collected is dependent on the quantum and type of development that would be completed over the 15 year period. If these reflect the *Core Strategy* and the proposed CIL rates, it is estimated that around £60-90 million of infrastructure funding could be secured. Although this would amount to a significant contribution, it would not close the funding gap. The figures, however, demonstrate the need to levy CIL in Brent.

Economic viability evidence

10. The Council commissioned a CIL *Viability Study (VS)*³, based on the well recognised residual valuation approach, using standard assumptions for a range of factors such as building costs, profit levels and fees. These assumptions are appropriately justified. This approach was tested against a number of variables across a wide range of sites in the Borough, including transacted sales values and average costs for contamination. Build costs were based on BCIS⁴ data for both residential and commercial development.
11. The VS tested the viability of varying levels of CIL on a wide range of development scenarios, including a variation from 10% to 50% affordable housing, using a range of sales values and development densities. In addition

¹ London Borough of Brent Local Development Framework: *Core Strategy*; Adopted July 2010 [Document CD022].

² Brent *Infrastructure and Investment Framework (IIF)*; October 2011 [Document CD020].

³ BNP Paribas Real Estate: *Community Infrastructure Levy: Viability Study (VS)*: Prepared for the London Borough of Brent; June 2012 [Document CD002].

⁴ RICS Building Cost Information Service (BCIS).

to residential schemes, the VS tested a range of student housing schemes, and hotel, office and retail, developments and developments of industrial and warehousing floorspace.

12. Some developers argued that the Council's residual valuation approach was fundamentally flawed; that it was too arbitrary and unconnected with real scheme prices on the ground; and that a market led approach would be more realistic, and therefore more appropriate, for Brent. The SG (paragraph 22), however, states that:

"There are a number of valuation models and methodologies available to charging authorities to help them in preparing evidence on the potential effects of CIL on the economic viability of development across their area. There is no requirement to use one of these models, but the charging authorities may find it helpful in defending their CIL rates to use one of them."

13. The Mayoral CIL Examination Report⁵ states that the market approach, while offering certainty on the price paid for a development site, suffers from being based on prices agreed in a historic policy context. This view is mirrored in the recently produced Draft SPG on planning obligations by the Mayor of London⁶, which was discussed during the Hearings. It states (paragraph 6.6) that the market value approach focuses heavily on historic values (i.e. those before the introduction of a proposed CIL) and is less useful in taking account of dynamic changes that may be made as a result of the introduction of a CIL. Whilst I accept that there is an arbitrary nature to the selection of some of the parameters of the residual valuation approach, the VS roots these parameters in reliable data sources.
14. In addition to its historic focus, the market approach also runs the risk of being over-complicated⁷. Although some of the figures and assumptions in the VS were criticised, no robust alternative Borough-wide calculations were submitted in evidence. A combination of these reasons leads me to conclude that the Council's basic methodology, set out in the VS, is not fundamentally flawed and is an appropriate and dynamic basis for the calculation of the CIL charging rate proposed by the Council. Moreover, there was an opportunity at the Hearings to comment on the basic components of the Council's methodology, which are illustrated in the diagram on page 9 of the VS; none of these were challenged. The residual valuation method also makes it easy to test different CIL options, as the VS effectively does.
15. Some representations argued for a differentiation of CIL rates by geographic zones, including designating the Wembley area with a lower rate of CIL in recognition of its growth area status and the importance of schemes in this

⁵ Report to the Mayor of London: *Report on the Examination of the Draft Mayoral Community Infrastructure Levy Charging Schedule*; 27 January 2012 [Document CD021].

⁶ Mayor of London: *Draft Supplementary Planning Guidance (SPG)-Use of planning obligations in the funding of Crossrail and the Mayoral Community Infrastructure Levy*; November 2012 [Document S1].

⁷ It was stated by a party making representations at the Mayoral CIL Examination Hearings, that it was estimated that if the market approach had been adopted, as many as 400,000 separate valuations would have been necessary, with clear adverse resource, sustainability and time implications.

area for meeting a significant proportion of the needs of the Borough as a whole⁸. Another suggestion was to divide the Borough into two CIL rates, to the north and south of the North Circular Road.

16. The Council commented that it would be difficult to clearly define specific CIL rate areas, and that such an approach would lead to anomalies and contention; moreover the SG advises against undue complexity and that any differentiation has to be justified on the grounds of economic viability, a point repeatedly made in paragraphs 34 to 40. No clearly defined separate markets, for housing (or any other uses), or robust viability evidence was submitted to support these representations, whilst the granting of favourable CIL rates on policy grounds alone could give a selective advantage, contrary to the EU State Aid provisions.
17. The evidence in the VS also shows that the differences in CIL rates by uses are significantly greater than their geographic variation across the Borough. Using both geographic zones and uses would lead to an excessively complicated charging schedule. Although Regulation 13⁹ enables a Charging Authority to set different rates for zones or intended uses, I consider that the basis of the Council's differential CIL rates by Use Classes with a single charging zone is appropriate for Brent.
18. It was argued that the Council should clarify its intentions for allowing discretionary relief from CIL. In accordance with the Regulations (paragraph 55), 'exceptional circumstances' are intended to be exactly that, and in my view it would be inappropriate and unhelpful to try and define those rare circumstances in advance in a policy statement alongside the introduction of the CIL. Some representations which refer to exceptional circumstances appear in reality to be seeking a nil charging rate. In any event it is for the charging authority to decide whether or not to grant relief.
19. One representation stated that it was inappropriate to base the CIL on the established Use Classes, on the grounds that the Use Classes Order is a deregulatory tool. The Use Classes, however, are both very clear in their description of different types of development and familiar in the property world. There is no reason why the Council should not choose to base its charging schedule on the Use Classes Order.
20. The Council was criticised for having taken little notice of its neighbouring authorities in preparing its CIL. The Duty to Cooperate, however, does not apply to CILs and it would also be unreasonable to hold back the Brent CIL to accommodate the views of neighbouring authorities, several of which are not at such an advanced stage.
21. Concerns were expressed that individual schemes might be put at risk by the proposed CIL. Regulation 14, however, recognises that the introduction of CIL may put some potential development sites at risk, and that it is for the charging authorities to decide an appropriate balance across their area as a

⁸ See *Core Strategy* policies CP1 and CP2.

⁹ SI 2010/948: The Community Infrastructure Levy Regulations 2010 [Document CD017].

whole.

22. The Council was also criticised for lack of consultation, especially in relation to the IIF. Consultation on this document was carried out at the Examination of the *Core Strategy*. An updated version is available as a core document for the CIL Examination, and it can be accessed via the Council's website. I am satisfied that the Council's consultation in the preparation of the CIL has been in accordance with the Regulations, and the expectations of good practice.
23. Finally, some developers stated that the CIL would result in market uncertainty, and that it should therefore be delayed until more favourable economic conditions prevailed. This is unnecessary and unrealistic, and it would fuel additional uncertainty as to when the CIL rates would eventually be introduced. In many respects development can be an uncertain process. Under the CIL regime, however, the developer will have an 'up-front' figure, whilst the current S 106 situation, although more flexible, is also potentially more uncertain, and in many instances is introduced at a later stage in the development process.

Conclusion

24. The draft Charging Schedule is supported by detailed evidence of community infrastructure needs. A key finding of the VS is that a minority of development scenarios showed a negative viability, irrespective of CIL; and clearly, some sites at the margin of viability are affected by differing rates of CIL. The majority of development schemes, however, should be able to absorb their respective CIL rates, including the Mayoral CIL of £35psm; and the proposed CIL would enable some of the schemes at the margins of viability to come forward for development. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.

Is the charging rate informed by and consistent with the evidence?

CIL rates for residential development

25. The proposed rate of residential and other forms of development, in one of the fastest growing local authority areas in England¹⁰, will lead to significant pressures for improved and additional social, economic and physical infrastructure. The *Core Strategy* makes provision for over 11,200 new homes by 2017/16.
26. The VS approach was tested against a number of variables across a wide range of sites in the Borough. These included transacted sales values (from £3,563 to £7,287 per square metre (psm) for residential development); residential densities (100 to 450 units per hectare); bedroom mix (35% 1 bed; 40% 2 bed; and 25% 3 bed); a gross to net floorspace ratio for flats of 85%; and average costs for resolving contamination issues. Build costs were based on BCIS data. Profit levels were factored in at 20% of gross development value for private housing and 6% for affordable housing, where the risks are

¹⁰ Brent's population has increased from 263,454 in 2001 to 311,200 in 2011, and is projected to reach around 348,700-352,450 by 2026.

significantly lower.

27. The VS concluded, on the basis of the above considerations and a wide range of development scenarios, that a CIL rate of £300 psm appears to be the highest level that could be set without a significant impact on the viability of residential development for a majority of schemes. The SG (paragraph 29) states that authorities should avoid setting a charge right up to the margin of economic viability, and the VS follows this advice. The rate proposed allows for an appropriate viability cushion.
28. The majority of residential schemes in the Borough, assuming 50% affordable housing, in accordance with *Core Strategy* policy CP2 (70% rented and 30% intermediate housing, assuming nil grant), should be able to absorb the proposed CIL, which together with the Mayoral CIL would represent less than 5% of development costs. A key finding of the VS is that the imposition of CIL is not a critical factor in determining whether a scheme is viable, with the relationship between scheme value, costs and existing use value benchmarks being far more important. This is also true in relation to other uses.
29. Concerns were expressed that assumptions used in the VS were skewed towards sales costs that were too high and build costs that were too low, and ignored what is happening on the ground; and that the delivery of affordable housing would be restricted by the CIL in relation to the current S106 regime. My attention was drawn to adverts in newspapers for properties at lower prices than those presented in the VS. The VS figures are based on newbuild, whilst second hand prices are more variable.
30. The Council's consultants considered that a 5-10% increase in build costs would not cause currently viable schemes to become unviable, although above 10% it would be marginal. Although some representations stated that sales prices were unlikely to increase in the short to medium term, the Council's evidence indicates that there is likely to be an increase in house prices over the CIL period. This view is confirmed by information which shows that sales for new housing have recently exceeded their 2007 values, and by three independent forecasts from property experts, all of which forecast medium term growth in London house prices, with no indication that Brent would be excluded¹¹. This would be likely to counter-balance any impact of increased building costs on viability.
31. Turning to the delivery of **affordable housing**, the Council's statement on the residential levy rate¹² shows, on the basis of a scheme example of 100 units with 50% affordable housing across a typical mix of bedroom sizes, that the levels of developer contributions for infrastructure to be secured under the proposed CIL and S106 would be similar.

¹¹ Savills forecast growth of 19.1% in the London mainstream markets between 2012 and 2016 [Savills Residential Research; November 2011]; Knight Frank forecast growth of 9.3% in the London Market for the same period 2012-2016 [Knight Frank Residential Research, Q4 2011]; and Cluttons forecast that house prices in Greater London will increase by an average of 5% per annum over the next 5 years [Cluttons Residential Property Forecasts, October 2011].

¹² Brent LB Council's Document LBB/CIL/002; Example scheme#1: 100 units, 50% affordable housing.

32. I therefore conclude that the Council's proposed CIL rate of £200psm for housing development across the Borough as a whole is justified by the available evidence and is deliverable.

CIL rates for student accommodation

33. The *London Plan*¹³ recognises the significant contribution London's universities make to its economy and labour market. *London Plan* policy 3.8 (h) also states that the need for student housing should be met without compromising the capacity for conventional homes.
34. Student accommodation built and operated directly by universities and similar educational establishments would have charitable status and as such would be exempt from CIL under the Regulations. The current available evidence shows, however, that much of the new student housing is provided by commercial operators, in which case the prospect of CIL applies. The VS indicates that the amount of CIL that student housing could absorb is very sensitive to rent levels, and identifies a range of rents for recent major housing schemes in the Borough of £165 to £188 per week. These rates would support maximum CIL rates of £315psm to £785psm, which are well above the proposed rate of £200psm. Moreover, without the affordable housing requirement which 'mainstream' housing is subject to, student accommodation is better placed to accommodate the CIL tariff, and the proposed CIL rate would be less than 4% of development costs.
35. Some providers of student accommodation argued that the high levels of rents in the VS are unlikely to be sustained, for two main reasons; firstly, increased student fees reduces their purchasing power; and also that the emerging migration restrictions are driving down demand. They cited examples of student flats being advertised for £159 per week in local newspapers. The VS figures, however, are based on recent information, which shows that rents are not decreasing, despite the arguments put forward by the student accommodation providers. The Council also pointed out that newspaper adverts are often for discounted rents after the majority of a block of accommodation has been let, and therefore do not accurately reflect the main picture, which points to increased demand in this property sector.
36. The Council's evidence is also criticised on the grounds that all the examples of student accommodation cited in the VS are from the Wembley area. Developers of student accommodation requested a lower CIL rate for student accommodation elsewhere, and/or flexibility or relief, arguing that otherwise, any student schemes outside the Wembley area would be unviable.
37. The Council argues that Wembley is the preferred location for student housing in the Borough, due to the opportunity for development in the area and its good public transport links. However, private rented accommodation around transport nodes in the south of the Borough, within zone 2 of the Underground, will attract equal or higher rents than Wembley. The Council also considers that lower density, established residential parts of the Borough,

¹³ Mayor of London: *The London Plan: Spatial Development Strategy for Greater London*; July 2011 [Document CD024].

further away from good public transport, are not particularly appropriate for student accommodation. Although this last point is an important policy matter, viability is the sole consideration of the Examination.

38. No robust evidence has been submitted to justify the case for a two-tier CIL tariff in Brent. Finally, my attention was drawn to the fact that a single rate for student accommodation is mirrored elsewhere in London, including Islington, Southwark, Harrow, Lambeth, and the Mayoral CIL, of which the latter has already been examined and found to be sound.
39. I therefore conclude that the proposed CIL rate for student accommodation is justified by the available evidence and strikes an appropriate balance between helping to fund new infrastructure and its effect on the economic viability of this form of development across the Borough.

CIL rates for other uses

40. The VS states that **hotel developments** could accommodate a CIL of up to a maximum of £295 psm. The proposed rate of £100psm would allow a buffer and accommodate the Mayoral CIL and would be less than 4% of development costs. On balance and taking into account that no robust contrary evidence was submitted, I consider that the charge would not render such development unviable across the Borough as a whole.
41. There has been limited demand for **office development** in Brent in the recent past, and most scenarios in the VS suggest a maximum CIL of £100psm, or £40 after allowing for the Mayoral CIL and a margin to absorb site specific viability issues. The proposed CIL would be less than 2% of development costs. In the absence of robust evidence to the contrary I consider that the charge would not render such development unviable across the Borough as a whole.
42. The VS states that the land values generated by **retail developments** vary according to rent levels, with small changes in rents resulting in steep changes in the viability of CIL rates. The proposed rate of £40psm, exclusive of the Mayoral CIL, is considered to be an appropriate balance at the lower end of the range and would have a minimal impact on viability across the area as a whole. It would also be less than 2% of development costs.
43. It was argued that shops or premises for the sale, repair, testing and/or maintenance of motor cycles, scooters or bicycles should be exempt from a CIL charge, as they promote regeneration, environmental quality and sustainable alternatives to cars, and would lead to traffic reduction. CIL rates cannot be set on planning policy considerations, even where they contribute to sustainability. The critical consideration is that no evidence pointed to these uses being more or less viable than other stores. Giving an advantage to one retail sector could also contravene the EU State Aid rules.
44. The same representor also suggested a zero rate for enterprise hubs, on the grounds that they provide opportunities for learning and training. If they are an education use, they would fall into a zero rate CIL anyway; no substantive evidence was submitted to demonstrate that, if they were a commercial use, the proposed CIL rate of £40psm would render such a use unviable.

45. **Warehouse clubs**, or retail warehouse clubs, which in my view is a more accurate reflection of their function, are not included within the list of retail uses comprising Use Class A1, and are classified as 'sui generis' in the Use Classes Order (as amended) (Article 3(6)(k)). Although the National Planning Policy Framework (*the Framework*)¹⁴, in its glossary of terms, refers to warehouse clubs (and factory outlet centres) under the grouping of retail development, in my view, this is for the purposes of determining whether they are a main town centre use, and does not override their exclusion from the list of uses within Use Class A1. In any event, *the Framework* does not remove the 'sui generis' status of retail warehouse clubs.
46. The Council and Costco have signed a Statement of Common Ground¹⁵, based on evidence which shows that the rental value attributed to a sui generis retail warehouse club, and hence its viability, is more akin to a B8 development and is significantly below a retail use¹⁶. This supports an apportionment for retail warehouse clubs as comprising 65% Class B8 and 35% Class A1. On this basis, the CIL, as proposed by the Council, should be 35% of the retail figure, which is £14psm. I therefore recommend that the schedule is modified to change the charge for retail warehouse clubs to £14psm, as set out in **EM1** in Appendix A.
47. The VS appraisals show that **industrial and warehousing developments** are unlikely to generate positive residual land values, and even when positive land values are achieved, they fall short of existing use values. The Council's proposed zero rate for these uses is therefore considered to be appropriate.
48. **D1 uses**, such as schools, health centres and places of worship, do not generally accommodate revenue generating operations, and even those that generate an income stream, such as swimming pools, often have operating costs that are higher than the income and some require public subsidy. The Council's proposed zero rate for these uses is therefore considered to be appropriate.
49. In relation to **D2 uses**, such as assembly and leisure, a CIL rate of £5psm is proposed, which would help mitigate the impact on the transport network. The proposed rate is modest and there is no evidence that it would put the viability of D2 uses at serious risk.

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

50. In setting the CIL rates, the Council has had regard to detailed up to date evidence of infrastructure planning derived from the IIF, which is based on the strategic provision of development in its *Core Strategy*. It has balanced this with evidence in its VS which is based on reasonable assumptions about development values and likely costs. Subject to modification **EM1**, the

¹⁴ Department for Communities and Local Government: National Planning Policy Framework (*the Framework*); March 2012.

¹⁵ Statement of Common Ground between London Borough of Brent and Costco Wholesale UK Ltd, dated 6 November 2012 [Document LBB/CIL/003].

¹⁶ Costco Wholesale UK Ltd Position Statement dated 22 October 2102.

evidence suggests that residential and commercial development will remain viable across most of the area if the charges are applied. Only if development sales values are at the lowest end of the predicted spectrum would development in some parts of the Borough be at serious risk.

Conclusion

51. The Council has been realistic in terms of achieving a reasonable level of income to address the identified gap in infrastructure funding, while ensuring that the overall development of the area would not be at serious risk. Providing there is not a significant downturn in the economy, it may be an appropriate time to consider any revision to the charge after it has been in place for about two years.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended 2011)	The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted <i>Core Strategy</i> and <i>Infrastructure and Investment Framework</i> and is supported by an adequate <i>Viability Study</i> .

52. I conclude that, subject to the modification set out in Appendix A, the London Borough of Brent Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended 2011). I therefore recommend that the Charging Schedule be approved.

Mike Fox

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 recommends so that the Charging Schedule may be approved

Modification No.	Submitted CIL Rate	Modification
EM1	Warehouse clubs (sui generis) £40 per sqm	£14 per sqm