



The Planning Inspectorate

Report to Ealing London Borough Council

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Examiner appointed by the Council

Date: 22 August 2016

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

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

Charging Schedule submitted for examination on 29 April 2016

File Ref: PINS/A5270/429/8

Non Technical Summary

This report concludes that, subject to the recommendations for further modifications that I make, the modified Ealing London Borough Council Community Infrastructure Levy Charging Schedule, 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 serious risk, and it can be recommended for approval.

Introduction

1. This report contains my assessment of the Ealing London Borough Council Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS), as proposed to be modified, 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 (DCLG 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 the district. The basis for the examination is the submitted schedule dated 29 April 2016, on which consultation took place between 27 March 2015 and 8 May 2015. During this period the Old Oak Park Royal Development Corporation (OPDC) was established. The OPDC is a local planning authority and becomes the Charging Authority for its own area. As a result, Ealing Council published a Modified Draft Charging Schedule in which the Charging Zones Map was modified by excluding the OPDC area: all other elements of the DCS remain the same. The Modification was subject to consultation between 29 April and 27 May 2016. The DCS, as modified, included the following proposed charges: for residential development (including hotels and student accommodation) within the Ealing Differential Zone a charge of £100/sqm and elsewhere in the Ealing Charging Area £50/sqm; for retail warehouses, retail parks and superstores (of more than 280sqm) £100/sqm; all other retail £30/sqm (both retail charges applying across all of the Ealing Charging Area); and a Nil rate for all other uses.

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

Does the Infrastructure Delivery Plan support the introduction of CIL?

3. The Ealing London Borough Council Core Strategy (CS), the 'Development Strategy 2026 DPD', was adopted in April 2012. This sets out the main elements of growth between 2010 and 2026 that will need to be supported by further infrastructure in the borough. The CS includes an Infrastructure Delivery Schedule (IDS) dated November 2011. This has been updated to April 2016 for the purposes of informing and supporting the development of

the DCS in an Infrastructure Delivery Plan (IDP), the 'Ealing Infrastructure Planning and Funding Gap Report'.

4. The IDP assesses a range of infrastructure requirements, including roads and transport, flood defences, education, health facilities, social care and community safety facilities, sporting and recreational facilities, and open spaces. It has been compiled from evidence collected:
 - from local service and infrastructure providers, including establishing reasonable estimates of funding likely to be available;
 - a review of the Borough's capital programme;
 - building a CIL income projection model;
 - and a review of future use of S106 obligations.
5. Section 3 of the IDP sets out a summary of project numbers for each infrastructure 'theme' covering the period 2016/17-2021/22. This 6-year period has been focused on as costs and income estimates are more likely to be accurate over the short to medium term, than estimates for the long term. A detailed list of projects is contained in Appendix A - Infrastructure Delivery Plan Project Schedule. Figure 3.2 in IDP section 3 shows total costs per theme and sets out a total of £452.047m (rounded).
6. In order to establish a funding gap that requires CIL to be introduced in the borough, it is necessary to calculate the funding from other sources. Section 4.2 of the IDP records that a large proportion of the funding available during the 6-year period mentioned above is already allocated to projects that are underway. The total funding available over the period is shown as £186.610m (rounded) – the vast majority of this funding is associated with a combination of grant, partnership, S106, and borrowing & mainstream funding.
7. It can be seen that the funding gap for the period 2016/17 – 2021/22 is the total cost of infrastructure shown in paragraph 5 above, minus funding from other sources shown in paragraph 6. Taking £452.047m - £186.610 it can be seen that the aggregate funding gap is of the order of £265.437m.
8. The Borough's CIL Funding Target has been arrived at using the Housing Trajectory and Commercial Development Trajectory and building a CIL Income Projection Model. Using the CIL rates set out in the submitted DCS, and applying the following variables to the housing trajectory figures – 50% affordable housing; 70% net additional floorspace; and 70sqm average unit size – the projected CIL income is £3.131m for the period 2016/17-2018/19 and £7.261m for the period 2019/20-2021/22. Thus the total projected CIL income is £10.392m. Set against the funding gap of £265.437, it can be seen that the introduction of CIL in the Borough will still leave a very considerable funding shortfall.
9. Thus I am satisfied that the IDP reflects the requirements of the current development plan for the Borough and that there is a funding gap. The proposed charges would make a modest contribution: I consider that the figures demonstrate the need to impose the CIL.

Does the economic viability evidence support the introduction of CIL?

10. The Council commissioned a CIL Viability Study (VS), which was issued to the Council in April 2013 with a re-issue in November 2013. The consultants have reviewed the report to ensure that it continues to contain appropriate up-to-date evidence. The major factors that might impact on development viability have been reviewed with the conclusion that the VS remains robust. They note that the most recently available Land Registry Price Index (February 2016) indicates that house prices in Ealing have increased by 42% between March 2013 and February 2016, whilst over the same period the BCIS 'All-in Tender Price Index' has increased by 18%. They conclude that this will result in an improvement in viability in comparison with the results in the 2013 VS. This review is contained in a Postscript dated April 2016 added at the end of the Executive Summary at the beginning of the VS that was submitted for the Examination. It is therefore the text of the VS dated April 2013 that the Council's case for the DCS relies.
11. The VS uses a residual valuation approach: using reasonable standard assumptions to ascertain a 'residual' value from gross development value of a scheme after all other costs are taken into account. The costs for producing a scheme include building costs, fees, finance, profit levels, Mayoral CIL, etc, and such matters as affordable housing, planning obligations, and other plan policy costs. Having allowed for all these costs, the resulting figure indicates the sum potentially available for the site purchase – the "residual land value" (RLV). The VS has been carried out recognising that CIL rates should not be set at the margins of viability, and indeed there has been a reasonable 'cushion' included in determining the level of charges to be set.
12. The VS considers the type of developments likely to come forward and, in respect of residential development, the likely existing uses that it will replace. The study's methodology compares the RLVs of a range of generic developments (typologies) to a range of benchmark land values as an indication of existing or alternative land use values relevant to site use and locality.
13. In relation to locality the VS identifies areas or zones where differential rates should be applied in respect of residential development. Thus for residential development two zones have been adopted. For commercial development the result of the study is that only retail development has viability that justifies the setting of a charge, in this case differentiated by whether the development is for retail warehouses, retail parks and superstores, with a higher rate, or all other retail types, in both cases throughout the district.

Conclusion

14. The DCS is supported by evidence of community infrastructure needs and a funding gap has been identified. Accepted valuation methodology has been used which was informed by reasonable assumptions about build costs, local sale values, rents and yields, etc. The charging schedule is supported by documentation containing appropriate available evidence that justifies the introduction of CIL.

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

Is the level of CIL proposed for residential development justified?

15. The pertinent representations about the proposed CIL level for residential development included the following points: that there should be greater flexibility introduced by additional differential zones being identified; there should be a higher rate set for the Cross Rail corridor; whether the right balance has been struck between the need for infrastructure and the potential effect on economic viability; the South Acton Estate should be identified as a specific nil-rated zone; and that there should be discretionary social housing relief for discounted open market housing.
16. The rates proposed for Ealing London Borough Council 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 which has found general acceptance in CIL examinations, therefore I am satisfied that the extent of the differential zones has been properly considered, particularly since there is an absence of any evidence to support the contention that there should be additional zones. In respect of the Cross Rail corridor point, I note that the Council's evidence is that sales values vary significantly between different parts of the Borough that will benefit from the new line, so that viability evidence does not support the contention. The point about the balance between funding infrastructure and maintaining viability is set against the background in the representation that care should be taken to avoid putting development at risk, rather than a concern to ensure that adequate infrastructure is provided: since the VS has suggested that a reasonable 'cushion' is included in determining the level of charges to be set, and that this has been heeded by the Council, I see no basis for considering the point further.
17. It is argued that the South Acton Estate should be identified as a specific nil-rated zone on the basis that it is a complex and phased scheme of estate regeneration, subject to complicated phasing and demolition programmes due to decanting and the need for revision to respond to experience as the scheme develops. Progress is being made under the existing master plan and the existing s106 agreement. This agreement mainly relates to site specific mitigation: any phases that come forward outside of the outline permission would have the additional burden of CIL which is inflexible.
18. I am told that the planning permission will provide 55% private housing and 45% affordable housing, whilst the VS used the assumption that schemes would provide 50% affordable housing. Thus there is an additional buffer in the VS calculations compared to any revised scheme retaining the 45% affordable housing provision. I accept that there is additional complexity in regeneration schemes such as the South Acton Estate, but set against this is, in addition to the buffer point above, there is no burden of a land receipt, and a modest adjustment of tenure mix would enable CIL to be absorbed. For example, switching from affordable housing to private typically provides a 'benefit' of around £4,000 per square metre. Therefore very little

floorspace would need to transfer in this way to compensate for the £50 per square metre CIL charge. Whilst the provision of affordable housing is clearly a priority, there is always a need to make difficult policy decisions: here I consider that the Council has struck the 'appropriate balance', whereby, if necessary, a small change in the affordable housing requirement could be made. The Council also states that, if necessary it could reinvest an equivalent amount of CIL into the estate to fund community infrastructure delivered by the scheme. Finally, any new planning permission for later phases could forgo the currently outstanding s106 payments for education and health of approximately £0.711m.

19. I therefore conclude that there is no basis for me to recommend a separate differential (Nil) change for South Acton Estate.
20. The question of discretionary social housing relief for discounted open market housing would not normally be a matter for this examination, unless perhaps it could be argued that its absence would make a material difference in delivering housing requirement of the development plan. However, there had been a request for a hearing, and I noted that the Council's intention appeared to be to allow consideration of such relief, but that it had couched its intention as being on the basis of 'discretionary relief for exceptional circumstances', rather than the recently amended Regulation 49A. Upon drawing this to the Council's attention, its officers have stated that it is their intention to follow the model adopted by Wandsworth and Lambeth London Boroughs, and they will be seeking authority from Full Council for this when seeking authority to implement CIL. It is a matter for the Council and I consider that this is a satisfactory outcome.
21. 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 DCS of April 2016 are applied.

Are the CIL rates for Retail development justified by the Viability Study?

22. There is minimal reference to retail development in the responses to the consultation on the DCS. Nevertheless as part of this examination I have reviewed the relevant parts of the VS in order to satisfy myself that the rates proposed are justified by the evidence. There does not appear to have been substantial development of new retail floorspace in the Borough over the past few years, and it is not anticipated that much development will come forward over the short to medium term. The existing retail market in the Borough is predominantly in the form of district centres arranged in traditional high street form. The main destination shopping district is Ealing Broadway, which has a large percentage of national multiple retailers.
23. The VS examined two retail typologies – supermarkets/superstores/retail parks and high street/other retail. These appear to be the relevant typologies for the Borough. The input assumptions are reasonable and appropriate. It is clear that supermarkets/superstores and retail park type developments have a greater degree of viability than other retail.

Conclusion

24. I am satisfied that the VS follows good and accepted practice. Furthermore, there is evidence for the various inputs used. It demonstrates adequate headroom within retail uses for the rates proposed. I conclude that the proposed rates are not likely to materially affect the viability of such developments.

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

25. 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. The evidence suggests that most development will remain viable across of the area if the charge is applied.

Overall Conclusion on Infrastructure Planning and Viability

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

Other Matters

27. I raised two matters with the Council concerning compliance with the Regulations. The first of these is that Regulation 12(2) states:

"(2) A draft charging schedule submitted for examination in accordance with section 212 of PA 2008 must contain—

(a) 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;"

The two maps in the DCS are clear as to the zones to which the differential charges are to apply. However, the maps do not show national grid lines and reference numbers.

28. Similarly there is a requirement in Regulation 12(2) that the submitted Schedule must contain an explanation of how the chargeable amount will be calculated:

"12. — (1) Subject to the provisions of this Part a charging authority may determine the format and content of a charging schedule.

(2) A draft charging schedule submitted for examination in accordance with section 212 of PA 2008 must contain—
(a), (b), (c) and, [not of relevance here],
(d) an explanation of how the chargeable amount will be calculated.
(3) A charging schedule approved by a charging authority must, in addition to the contents mentioned in paragraph (2), contain—
(a) the date on which the charging schedule was approved;
(b) the date on which the charging schedule takes effect; and
(c) a statement that it has been issued, approved and published in accordance with these Regulations and Part 11 of PA 2008.”
(emphasis added)

29. The Draft Charging Schedule includes the following text:

“The ‘Chargeable Amount’, including indexation to take into account inflation, will be calculated in accordance with Part 5 of the Community Infrastructure Levy Regulations 2010 (as amended).”

I was not satisfied that this meets the requirement of Regulation 12(2)(d) that a draft charging schedule submitted for examination in accordance with section 212 of PA 2008 must contain an explanation of how the chargeable amount will be calculated and I asked the Council to comment.

30. In response to these points the Council has provided revised Charging Zone maps with national grid lines and numbers and additional text concerning how the chargeable amount will be calculated. I consider that these modifications enable me to be satisfied that the Regulations have been met. I recommend accordingly.

Final Conclusions and Recommendations

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended 2011)	Subject to the Modifications that I recommend, the Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

31. I conclude that, subject to the text of the Charging Schedule being modified as set out in Appendix A, with the Zoning Maps set out in Appendix B, the

Ealing London Borough Council Community Infrastructure Levy Charging Schedule, as submitted, 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.

32. When approving the Charging Schedule, the Council will need to consider small textual changes to reflect the transition from the Draft. For instance, the "Introduction" that refers to consultation matters is unnecessary, and the text on the page following the Zoning Maps, which deals with the requirements of CIL Regulation 12(3), is normally placed at the beginning of the Schedule. However, these are matters that I can leave to the Council.

Terrence Kemmann-Lane

Examiner

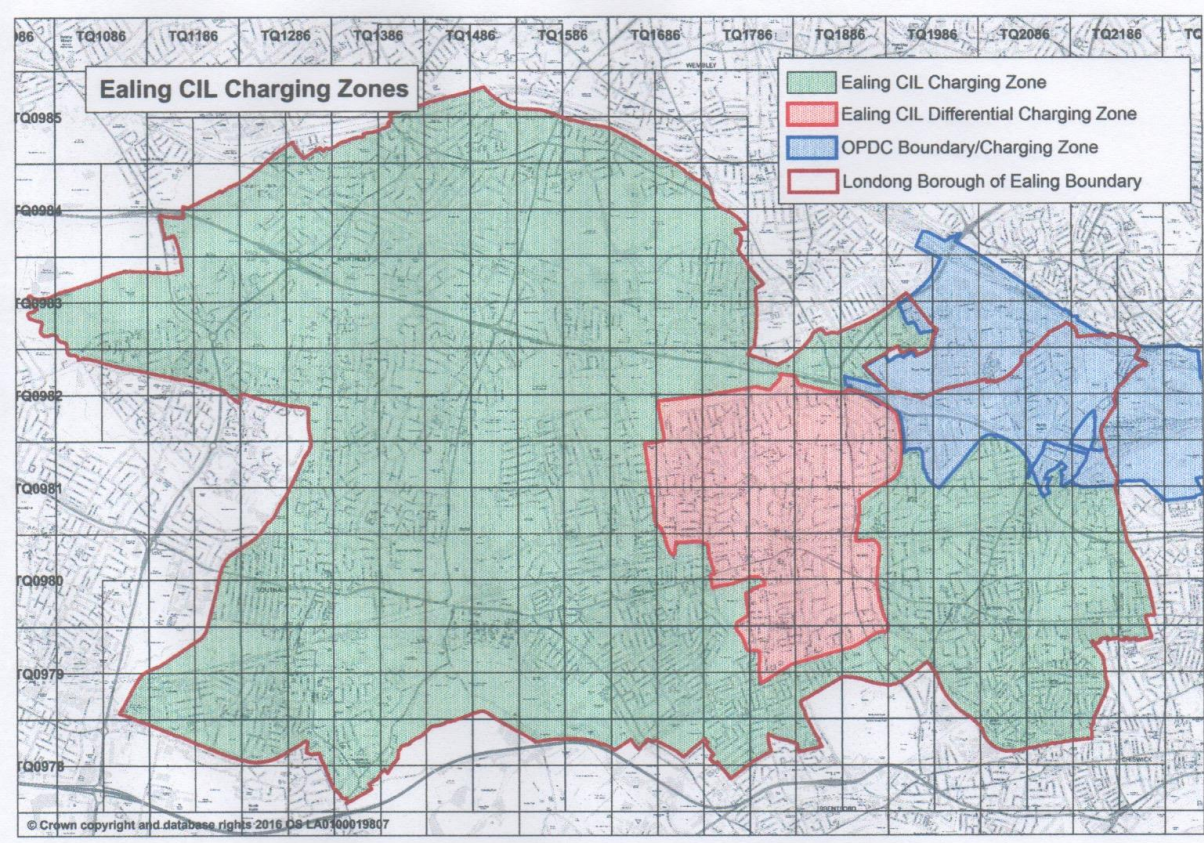
This report is accompanied by: Appendices (attached) – Modifications that the examiner specifies so that the Charging Schedule may be approved.

APPENDIX A

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

Modification number	Modification
EM1	Replace the existing Zoning Maps in the Draft Charging Schedule with the Maps set out in the Appendix B.
EM2	<p>Replace the text under the heading "Calculation of CIL charge & indexation" with the following:</p> <p>"CIL is currently calculated on the basis set out in Part 5 of the Community Levy Regulations 2010 (as amended by the Community Levy Regulations 2012 and 2014), although regard must also be had to any future regulations.</p> <p>For ease of interpretation, this means that CIL will be charged on the total net additional floorspace created (measured as Gross Internal Area).</p> <p>The CIL rates shall be tied to the Royal Institute of Chartered Surveyors <i>All In Tender Price Index</i>; the rate of CIL charged will therefore alter depending on the year planning permission for the chargeable development is first granted."</p>

APPENDIX B



Ealing CIL Differential Charging Zone

