Report to London Borough of Waltham Forest Council

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an Examiner appointed by the Council

Date: 10 January 2014

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

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

Charging Schedule submitted for examination on 25 September 2013
Examination hearing held on 10 December 2013

File Ref: PINS/U5930/429/8
Non Technical Summary

This report concludes that the London Borough of Waltham Forest Community Infrastructure Levy Charging Schedule, with the modification set out below, 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 is contained in Appendix A of this report and can be summarised as follows:

- Deletion of the floorspace threshold for convenience based supermarkets/superstores and retail warehousing.

The specified modification recommended in this report is based on matters discussed during the public hearing session 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 Waltham Forest 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 guidance1.

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 Borough. The basis for the examination, which included one hearing session, is the submitted schedule of 25 September 2013. This is broadly the same as the document published for public consultation in July 20132.

3. The Council proposes two charging areas for residential development, including private care/retirement homes, with charges per square metre (psm) of £65 (Zone A – North of North Circular) and £70 (Zone B – South of North Circular). Single charge rates for the entire Borough are proposed as follows (psm): convenience based supermarkets/superstores and retail warehousing (net selling space of over 280 sqm) £150; hot food takeaways and restaurants £80; betting shops £90; and hotels £20. All other uses, including publicly funded care homes, are nil rate.

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1 Department for Communities and Local Government: Community Infrastructure Levy: Guidance (April 2013).
2 Changes are set out in the Schedule of Post Publication Minor Changes (ref. CIL02).
Is the charging schedule supported by background documents containing appropriate available evidence?

Infrastructure planning evidence

4. The Waltham Forest Local Plan Core Strategy (CS), adopted in March 2012, sets out the main elements of growth that will need to be supported by further infrastructure in the Borough. A draft Infrastructure Delivery Plan (IDP)\textsuperscript{3}, dated September 2013, updates and supersedes the Strategic Infrastructure Plan (November 2009)\textsuperscript{4}, which set out the social, transport, utilities and physical infrastructure required to support CS targets for population and employment growth. In summary, these include the provision of some 11,400 homes, along with commercial and employment development, focussed in particular on four key growth areas: Blackhorse Lane, the Northern Olympic Fringe, Walthamstow Town Centre and Wood Street.

5. The draft IDP, which has not been substantively challenged, identifies projects with a total cost of some £319 million (for CIL-eligible projects) over the 15 year CS period. Education (33%) and public realm improvements (32%) are the major components. Over a 5 year period, reflecting the Council's intention to review the charging schedule within a period of 3-5 years to keep it up to date with developing market conditions, this figure reduces to some £289m. Funding from other sources, mostly grant funding, is anticipated to account for approximately £183m. This indicates a funding gap of approximately £106m. The projected income from CIL, estimated at some £6.2m during 2014-17, would make only a modest reduction in that figure.

6. It is apparent from the above that the overwhelming majority of costed projects are anticipated to arise during the next 5 years. The Council comments that this reflects the fact that the projects that have been subject to the most feasibility work are the ones that have had costings attached to them. Other projects, as yet uncosted, are also identified. It is clear that a funding gap exists and, as such, a basic requirement of the CIL regime is in place. Taken together, the above figures demonstrate the need to introduce the levy.

Economic viability evidence

7. The Council has commissioned a CIL Viability Study by BNP Paribas Real Estate. This was originally issued in January 2013, with a revised version – the Viability Study Update (VSU)\textsuperscript{5} – published in September 2013. This contains additional information on retail development and retirement housing. As set out below, further work has been undertaken during the examination. This has been made available for public comment on the examination website.

8. The VSU uses a residual valuation method, using reasonable standard assumptions for a range of factors such as residential sales values, building costs (including Code for Sustainable Homes level 4 requirements) and profit levels. Development costs are based on the RICS Building Cost Information

\textsuperscript{3} Document ref. CIL04.
\textsuperscript{4} Document refs. CIL18-CIL21.
\textsuperscript{5} Document ref. CIL06.
Service (BCIS) tender price index, which makes locational adjustments to reflect relative cost differences. Regard has been paid to the Mayor of London’s CIL charge and to the possibility of costs arising from residual site-specific Section 106 agreements. Six residential development typologies have been identified, reflecting the variety of such schemes within the Borough. Appraisals have also been undertaken for various commercial uses within which a range of CIL rates have been tested. In relevant cases, residential developments have been tested against both the 50% affordable housing target required by the CS and a lower 20% figure derived from the Council’s Affordable Housing Viability Study Final Report (AHVS)\(^6\) dated February 2010.

9. The VSU’s methodology and underlying assumptions have generally been accepted, although I comment below on matters that have been the subject of specific debate – most notably the testing of the 20% affordable housing figure, the treatment of specialist housing for the elderly and the evidence supporting the proposed convenience based superstore/supermarket and retail warehousing floorspace threshold. While some objections were raised to the principle of adopting an Existing Use Value approach rather than an assessment based upon market value, I am satisfied that the study’s methodology is in line with the approach advocated by the Harman Report\(^7\). Specifically, benchmark land values have been selected that include a 20% ‘premium’ to incentivise release of the site. This figure has been confirmed by valuations of sites that have been the subject of planning applications. Although the VSU’s models relate to generic developments, these appear to broadly reflect the range of actual schemes coming forward in the Borough. Actual development costs from past developments have been factored into the appraisals. As noted below, additional appraisals have also been undertaken.

10. The VSU’s outputs demonstrate that, when considered in the context of total scheme value, the CIL would be of a modest scale. For residential schemes it would typically amount to some 1.2-3.2% of value, while for commercial developments the approximate figures would be as follows: convenience based supermarkets/superstores and retail warehousing 2.9%; hot food takeaways and restaurants 2.5%; betting shops 2.4%; and hotels 0.3%.

11. Recent data on residential sales values in the Borough\(^8\) show an increase from those at January 2013 when the initial viability study was carried out: as such, it is likely that development viability will have improved from the assessments set out in the VSU.

**Conclusion**

12. The draft charging schedule is supported by detailed evidence of community infrastructure needs and economic viability justification. On this basis, and subject to my comments below, I conclude that the evidence which has been used to inform the charging schedule is robust, proportionate and appropriate.

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\(^6\) Document ref. CIL40.

\(^7\) Local Housing Delivery Group: *Viability Testing for Local Plans: Advice for planning practitioners* (June 2012).

\(^8\) See the Council’s response dated 5.12.13 to the Examiner’s further queries.
Are the charging rates informed by and consistent with the evidence?

**CIL rates for residential development**

13. Unlike other elements of the charging schedule, the proposed residential CIL rates relate to two zones, separated by the North Circular Road. The VSU indicates that sales values on new developments are marginally higher in the south of the Borough than in the north. The difference between the two proposed CIL rates is not therefore substantial. Given that the North Circular Road comprises a well-defined physical boundary between the north and south of the Borough, the suggested differential rates are therefore, on balance, adequately justified.

14. CS policy CS2 seeks to provide at least 50% (5,700 homes) as affordable over the Plan period. Developments proposing below that figure are required to demonstrate a viability case: in such circumstances the shortfall is treated as a deferred contribution secured through a review mechanism. This requirement is set out in more detail in policy DM3 of the recently adopted Waltham Forest Local Plan: Development Management Policies (DMP), which states that the deferred contributions policy applies to sites capable of providing 10 or more homes.

15. Notwithstanding the development plan requirement, the AHVS suggests that a maximum level of only 20% affordable housing can be delivered in current market conditions. The Council confirms that, in practice, a reduced level of affordable housing provision has been accepted in many cases where a proven viability case has been made. It is not for this report to comment upon the relationship between the 20% figure and the 50% target that is contained in the above-noted LP policies. However, bearing this evidence in mind, and notwithstanding the need to ensure that the Local Plan delivery target is not undermined by proposed CIL charging rates (a matter considered below), it is appropriate in principle for the VSU to test residential development viability against the lower figure as well as against the 50% target set out in the CS.

16. The VSU indicates that a residential CIL rate of £70 is generally viable in cases where affordable housing is provided at 20%. When tested against 50% affordable housing provision, two of the relevant development typologies (sites types 4 and 6\(^9\)) are shown to also be viable when CIL is charged at this rate. However, substantial viability problems are demonstrated in site type 5, which relates to a flatted scheme of 100 units, where affordable housing is provided at 50%. Given that the CS makes particular reference to intensifying residential uses and building at higher densities in the Borough’s four key growth areas\(^10\), site type 5 appears to represent an important part of the Borough’s future housing supply. This suggests that, in present market conditions, achieving the 50% affordable housing target from general housing development within the Borough represents a significant challenge. It is contended by the Council that, within the Borough as a whole, the resulting shortfall has been compensated for by the delivery of 100% affordable housing developments that are subject to separate funding arrangements.

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\(^9\) Relating respectively to schemes involving 50 and 100 houses at 60 units per hectare.

\(^10\) For example at CS paragraph 5.6.
17. In any event, the VSU also demonstrates that, in respect of site type 5, the cost of providing affordable housing is considerably greater than the CIL rates that are now proposed. For example the residual land value (RLV) model suggests that increasing the amount of affordable housing from 20% to 50% in such a scheme would result in a cost of some £7m: in contrast, a CIL rate of £70 psm would result in a cost of some £½m\textsuperscript{11}. The potential CIL liability applying to such a development therefore represents a small percentage of the overall deficit arising from a scheme providing 50% affordable housing. As such, reducing the CIL requirement (or removing it altogether) would make little difference to overall scheme viability. A substantial deficit would remain even if a nil CIL charge was applied. Indeed, the sensitivity testing carried out for the VSU suggests that such a deficit would remain in some cases even if the amount of affordable housing is reduced well below the 50% figure. The underlying problem in such circumstances is that the value generated by residential development is lower than some existing use values. I return to this matter when discussing the delivery of development below.

18. Concerns have also been raised about the adequacy of the Council’s evidence base in respect of housing for the elderly. The Council accepts that such housing has different characteristics to general market housing, including a requirement for more communal internal space. Bearing this in mind, the VSU was updated to include an appraisal of a specific retirement housing scheme. Inputs were generally based on data submitted by representors, although the Council’s consultant applied a different figure in respect of yield (assuming 6% rather than 7%) and added a premium of 10% above prevailing market values to reflect the values achieved by retirement housing. With reference to data produced for the Retirement Housing Group\textsuperscript{12}, the assumptions of the Council’s consultant in this regard appear on balance to be broadly justified.

19. Applying these figures, the representative scheme submitted by representors was shown to have an RLV clearly in excess of the benchmark land value adopted by the VSU. The proposed CIL rates would represent a small percentage (some 2%) of development costs. Taking these matters together, the economic viability evidence does not support introducing a differential charging rate for privately-funded housing for the elderly within the Borough. Given that publicly-funded care homes require subsidy in order to be developed, they are not viable developments in their own right: indeed, they are likely to be recipients, rather than providers, of CIL funding. The nil rate for such schemes is therefore justified. While it has been suggested by some representors that CIL should only be levied on net floorspace in such developments, this is not allowed for in the Regulations (as amended) which set a specific formula for calculating the chargeable amount.

CIL rates for retail and other commercial development

20. The VSU includes appraisals of a range of retail and other commercial development types. Those relating to office, industrial/warehouse and comparison retail schemes demonstrate viability concerns based upon a realistic assessment of rental levels. The conclusion that a nil CIL rate is justified in such circumstances is generally accepted. Similarly, there is no

\textsuperscript{11} See Council’s response (not dated) to Examiner’s queries of 25.11.13.

\textsuperscript{12} Appendix 1 to the Council’s response (5.12.13) to the Examiner’s further queries.
substantive challenge to the VSU’s detailed findings in respect of the viability of hot food takeaways/restaurants, betting shops and hotels. These show that the proposed CIL rates could be absorbed by the developments concerned: in these cases the proposed rate has been set below the lowest figure of the range of potential CIL rates identified as acceptable by the VSU, establishing a buffer to ensure that the charge is not at the margin of economic viability.

21. The viability of convenience retailing was modelled in three scenarios relating to 1,000 sqm, 4,000 sqm and 7,000+ sqm. The suggested CIL rate of £150 psm is set substantially lower than the minimum levy that these studies suggest could be absorbed by such schemes (a range of £251-£421 psm). This allows for a clear viability buffer in line with relevant advice.

22. The charging schedule sets a minimum threshold of 280 sqm net selling space in respect of convenience based supermarkets/superstores and retail warehousing. The floorspace figure, which is based on the threshold for stores that are able to open on Sundays, is intended to distinguish between small independent stores and major supermarket operators that operate smaller outlets. However, as already noted, the VSU does not model the viability effects of different CIL rates for stores of this size.

23. This work has now been undertaken. While the assessment shows that an independent retailer of less than 280 sqm floorspace would be unable to absorb any CIL contribution, this conclusion is particularly affected by the application of a higher yield rate (6%) than was considered in respect of other convenience retailing (5%). The former figure derives from a table of property investment yields prepared by the Council’s consultant (dated November 2013)\(^\text{13}\), where it is represented as relating to ‘in-town (market towns)’ retailing. It does not therefore relate to the specific floorspace size that is referred to in the charging schedule. Indeed, it is unclear to what extent this category is directly relevant to Waltham Forest. For these reasons, the evidence in support of the stated floorspace threshold is not compelling.

24. The Council accepts that this floorspace threshold is a subsidiary element of the relevant definition within the charging schedule and raises no objection to its deletion. Given my comments above, I consider that such a modification [\text{EM1}] should be made to the schedule.

Conclusion

25. Subject to the modification described above, I conclude that the CIL charging rates are informed by and consistent with the evidence.

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

26. In most cases, the Council’s proposed charging rates are based on reasonable assumptions about development values and likely costs. Subject to my comments below, the evidence suggests that residential and commercial development will remain viable across most of the area if the charges are applied.

\(^{13}\) Submitted as further evidence by the Council dated 10.12.13.
27. As discussed above, economic viability problems have been demonstrated in respect of larger flatted residential developments if affordable housing is provided at the 50% rate required by CS policy CS2 and DMP policy DM3. However, as also described, these viability problems are inherent in this type of development, given present market conditions, irrespective of whether or not the charging schedule is brought into effect.

28. Given the requirements of the National Planning Policy Framework, first, that Local Plans should be deliverable and, second, that affordable housing policies should be sufficiently flexible to take account of changing market conditions over time\(^{14}\), the Council will need to assess the relevant policy target in the light of prevailing market conditions when its Local Plan is reviewed. In the meantime it is clear that the proposed CIL residential charging rates would not, in themselves, cause a previously viable housing development to become unviable. Indeed, they would represent a relatively modest burden on such schemes when compared to the cost of meeting the 50% affordable housing policy target. Taking these factors together, it has not been shown that the proposed residential charging rates would act as a barrier to achieving that target.

Conclusion

29. I therefore conclude that the evidence demonstrates that the proposed charge rates would not put the overall development of the area at serious risk.

Other Matters

30. All of the written representations in respect of the draft charging schedule have been considered. Some of these relate to matters that are not within the scope of this examination, including comments about the draft Regulation 123 list of infrastructure to be funded by CIL and concerns about the Council’s intended approach to discretionary relief in exceptional circumstances. The Council has reviewed the draft Regulation 123 list in its schedule of post-publication modifications. Its intention to consider exceptional relief applications on a case-by-case basis is set out in Appendix 2 of the draft charging schedule. Although this examination has not considered representations to the Draft Planning Obligations Supplementary Planning Document, which was subject to consultation at the same time as the draft charging schedule, it is noted that Appendix 2 of the schedule provides some clarification of the intended relationship between CIL and residual Section 106 requirements. In summary, this aims to ensure that a developer is not charged twice for the provision of the same infrastructure.

Conclusion

31. 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 Borough of Waltham Forest. The Council has tried to be realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a range of development remains viable across the Borough.

\(^{14}\) National Planning Policy Framework paragraphs 173 and 50 respectively.
LEGAL REQUIREMENTS

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<th>National Policy/Guidance</th>
<th>The Charging Schedule (as modified) complies with national policy/guidance.</th>
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<td>2008 Planning Act and 2010 Regulations (as amended)</td>
<td>The Charging Schedule (as modified) complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Core Strategy and the draft Infrastructure Delivery Plan and is supported by an adequate financial appraisal.</td>
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32. I conclude that subject to modification **EM1** set out in Appendix A, the London Borough of Waltham Forest 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). I therefore recommend that the modified Charging Schedule be approved.

*M J Hetherington*

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 recommended by the Examiner to allow the Charging Schedule to be approved.**

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<th>Modification no.</th>
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<tr>
<td>EM1</td>
<td>Delete floorspace threshold from the charging rate for convenience based supermarkets/superstores and retail warehousing.</td>
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