
Report to the London Borough of Newham

by Mr A Thickett BA(HONS) BTP MRTPI Dip RSA

an Examiner appointed by the Council

Date: 19 July 2013

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

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

Charging Schedule submitted for examination on 13 June 2013

Examination conducted by way of written representations

File Ref: PINS/LDF001405

Non Technical Summary

This report concludes that the London Borough of Newham Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. 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.

I have recommended that the schedule should be approved in its published form, without changes.

Introduction

1. This report contains my assessment of the London Borough of Newham 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.
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. The basis for the examination is the submitted schedule of 13 June, which is the same as the document published for public consultation on 19 December 2012.
3. The examination proceeded by way of written representations. I wrote to the Council on 24 June (EXAM 2) with a series of questions, the Council responded on 8 July (EXAM 3) and 17th July (EXAM 4). I have taken the Council's responses and all the representations received as a result of the consultation regarding the DCS into account.
4. The Council propose two charging rates for residential use (Classes C3 and C4¹) of £80 per square metre (psm) in Charging Zone 1 and £40 psm in Charging Zone 2². Retail uses (Classes A1 to A5) would attract a charge of £30 psm across the Borough, hotels (Class C1), £120 psm, student accommodation, £130 psm and all other uses would be nil rated.

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

Infrastructure planning evidence

¹ Town and Country Planning (Use Classes) Order 1987

² As shown on the map of the Borough in Appendix 1 to the Draft Charging Schedule

- 5.** Newham's Core Strategy was adopted in 2012 and sets out the main elements of growth that will need to be supported by further infrastructure in the Borough. The Council's Infrastructure Delivery Plan³ details the transport, education and social infrastructure required to enable and support this growth. The 'Indicative list of Infrastructure requirements for LB Newham Core Strategy Strategic Sites – June 2013'⁴ outlines the infrastructure required and the likely sources of funding necessary to deliver strategic sites.
- 6.** The Draft Charging Schedule is also accompanied by the Council's Regulation 123 list and an indication of infrastructure which may be secured through section 106 agreements⁵. Core document ED9 shows that the Council received almost £16m through section 106 agreements in 2009/10 falling to almost £8m in 2011/12. CIL is expected to raise around £5m per year up to 2025.
- 7.** The Council estimate the total cost of infrastructure necessary to deliver the development planned in the Core Strategy to be around £341m of which £220m has been identified to date, leaving a funding gap of about £120m. The Council estimate projected CIL income in the period 2011 to 2025 to be in the region of £27m leaving a residual funding gap of around £93m. The figures demonstrate the need to levy CIL.

Economic viability evidence

- 8.** The Council commissioned a CIL Viability Study, dated March 2013⁶. The assessment uses a residual valuation approach and tests the ability of a range of developments throughout the Borough to contribute to the provision of infrastructure through CIL. Levels of CIL were tested in combination with other planning requirements including section 106 requirements, the Mayoral CIL and affordable housing. I am satisfied that the assessment used reasonable standard assumptions for factors such as building costs, profit levels, fees etc. The assessment was updated and additional work carried out in response to the consultation on the Draft Charging Schedule⁷.
- 9.** The Viability Study concludes that, at current rent levels, office development is unlikely to come forward in the Borough as capital values are insufficient to cover development costs. It is considered unlikely that industrial and warehousing schemes would generate positive residual land values and that non residential institutions⁸ and assembly and leisure uses⁹ are unlikely to generate sufficient income to cover costs. These findings are not challenged and I have seen nothing to justify a different conclusion.
- 10.** The DCS is supported by evidence regarding community infrastructure needs and viability. On this basis, I consider the evidence which has been used to inform the Charging Schedule to be robust, proportionate and appropriate.

³ Appendix 3 to the Core Strategy

⁴ Core Document ED8

⁵ ED6

⁶ ED4

⁷ ED4.3

⁸ Use Class D1

⁹ Use Class D2

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

Large sites and mixed use development

- 11.** The Viability Study was updated in response to criticisms that the DCS did not consider the development of large, strategic sites. Two larger typologies were modelled based on details of strategic sites provided by the Council. The appraisal for the larger site (1,000 unit scheme) included an allowance of £5,000 per unit over and above the £1,000 allowance made for section 106 and section 278 requirements for smaller schemes.
- 12.** The £5,000 figure is based on the experience and understanding of the Council's consultant of the typical costs associated with brownfield schemes in Newham and elsewhere in London. The Council say that the £1,000 figure is broadly in line with those presented to other CIL examinations in London and accepted as reasonable for testing purposes¹⁰. Actual costs will clearly vary but I have read nothing to indicate that these are not reasonable assumptions given the available evidence.
- 13.** Business, industrial, community and commercial uses (excepting retail) are nil rated and so the overall CIL liability of a mixed use scheme would be less than for a purely residential development. The evidence submitted indicates that retail development is viable with CIL (addressed in more detail below). Consequently, I agree with the Council that it was not necessary to test different permutations of mixed use.

Residential development

- 14.** Newham is an inner London Borough and new development will take place on vacant previously developed land or land currently in use. The Viability Study indicates that, principally due to existing use values, the redevelopment of offices for housing is unviable regardless of CIL. The same applies to the redevelopment of industrial uses for larger residential schemes.
- 15.** The Core Strategy was adopted in January 2012. Policy H2 was supported by an Affordable Housing Economic Viability Study and seeks the provision of 35 to 50% affordable housing on sites with a capacity of 10 units or more. However, the Council concede that, at present, the majority of new schemes are unable to deliver affordable housing at the level required by Policy H2. According to the Viability Study, at 35% affordable housing, most sites are not viable regardless of CIL.
- 16.** As stated in the Viability Study, if a scheme is not viable before CIL is levied it is unlikely to come forward and CIL is, therefore, unlikely to be a material consideration in any development decision. Consequently, the Viability Study, sensibly in my view, did not factor in unviable schemes in recommending appropriate rates. The Viability Study is based on 35% provision of affordable housing (for schemes of 10 or more units). EXAM 3 contains further detail and analysis regarding the impact of CIL on the provision of affordable housing and concludes that '*a variation in CIL has only a marginal effect on the viability of a scheme and the level of affordable housing that is secured*'.

¹⁰ EXAM 3

- 17.** The Viability Study included appraisals of a range of types of schemes across the Borough. It found that developments in the Borough attract average sales values of between around £2,845 to £4,493 psm with Stratford, Canning Town/Silvertown areas attracting the highest values and Manor Park and East Ham the lowest values. The Assessment concluded that, depending on location, residential schemes should be able to absorb a maximum CIL rate of between £70 and 120 psm.
- 18.** The consultants recommended a 20% discount to take account of the Mayoral CIL (£20 in Newham) and to provide a buffer, resulting in proposed rates of £40 and £80 psm. The CIL Zones reflect these findings and the boundaries of CIL Zones 1 (£80 psm) and 2 (£40 psm) are clearly defined on the map of the Borough in Appendix 1 of the Schedule. The Viability Study concluded that CIL of up to £80 psm is unlikely to be an overriding factor in determining scheme viability as it would account for less than 3% of development costs. In light of the above, I am satisfied that the rates will not threaten the delivery of housing as envisaged in the Core Strategy.

Retail

- 19.** Outside E16, the Viability Study concludes that retail development would be able to accommodate a modest rate of CIL and recommends £30 psm. This is not meaningfully challenged. The Viability Study concludes that retail development in parts of Newham (postcode area E16) is not viable and recommends a nil rate but the DCS proposes a rate of £30 psm across the Borough.
- 20.** The Council contends that that retail rents are low in Canning Town, Custom House and the Royal Docks (E16), because much of the retail floorspace is run down and unattractive to modern retailers. Some is also awaiting demolition, with short term leases affecting rent levels. However, the regeneration of Canning Town is underway and the expansion of a local centre around the Crossrail station at Custom House will include new retail development. Elsewhere in E16, planning permission for 3,250m² of retail floorspace has been granted at Minoco Wharf and there is a current application for 1, 353m² at the Royal Albert Basin site.
- 21.** The grant of planning permission does not guarantee development but the Council's assertion that the permitted and emerging schemes suggests that there is a market for retail development in E16 seems to be a reasonable assumption. It is also fair to assume that the regeneration of Canning Town and Custom House will have a positive impact on viability. Evidence should inform not dictate CIL and rates should be reasonable given the available information¹¹. In light of the Council's submissions in EXAM 3 with regard to positive developments in E16, I am persuaded that a flat rate of £30 psm would not threaten the overall delivery of retail development throughout the Borough.

Hotels

- 22.** The Viability Study was updated¹² in light of criticism that it was too limited

¹¹ Paragraph 28, Community Infrastructure Levy Guidance April 2013

¹² ED4.3

with regard to the type of hotel and that there are differences in viability across the Borough. The Viability Study concludes that hotel development could contribute up to £1,242 psm but recognises that viability is sensitive to small changes in rent or yield. For example, a 10% reduction in rent would reduce the maximum range to £0 to £346 psm.

- 23.** The update supports the proposed rate of £120 psm which allows for a buffer to accommodate any site specific factors and is set well below the maximum CIL that could be absorbed by such development. I consider that the available evidence demonstrates that a rate of £120 psm would not create a serious risk to hotel provision in the Borough.

Student housing

- 24.** The Viability Study looked at two schemes for student housing¹³. The Council states that there is limited market interest in student housing outside the Stratford area and took the view that a flat rate across the Borough reflecting viability in Stratford was appropriate¹⁴. I am satisfied with this explanation and consider that the Council has demonstrated that the rate is based on appropriate available evidence. The Viability Study found that student accommodation could absorb up to £187 psm and, after allowing for a buffer, recommended a rate of no higher than £130 psm. I consider that the proposed rate strikes an appropriate balance and would not prejudice the supply of student accommodation.

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

- 25.** The rates set out in the DCS are based on reasonable assumptions about development values and likely costs. The evidence suggests that residential and commercial development will remain viable across most of the area if the charge is applied.

Conclusion

- 26.** In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and the viability of development in Newham. The Council has been 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.
- 27.** The Newham Core Strategy was adopted in January 2012 and the Infrastructure Delivery Plan includes a number of projects to be delivered by 2014/15. The Council currently propose to review the charge in 2015/16. However, it would be prudent to monitor viability, the impact of CIL and the delivery of infrastructure and consider carrying out a review sooner if there are any significant changes in circumstances before then.

¹³ ED4a

¹⁴ EXAM 4

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 Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

28. I conclude that the Newham 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 Charging Schedule be approved.

Anthony Thickett

Examiner