Report to Dartford Borough Council

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Examiner appointed by the Council

Date: 14 November 2013

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

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

Charging Schedule submitted for examination on 1 August 2013

File Ref: PINS/T2215/429/5
Non Technical Summary

This report concludes that the Dartford Borough Council Community Infrastructure Levy 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.

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

Introduction

1. This report contains my assessment of the Dartford Borough Council 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. The basis for the examination, which took place through written representations, is the schedule submitted on 1 August 2013, together with a Statement of Modifications. The Modifications relate to changes to the Draft Charging Schedule published in January 2013 and have been consulted on for a period of four weeks in accordance with the requirements of the Community Infrastructure Levy Regulations 2010 (as amended).

3. The Council propose a matrix approach including rates for Residential, Retail and Other Development Types. Residential development rates are differentiated between two zones as is Retail development, but the two retail zones are different to the residential zones. These zones are based on viability alone and are defined on an OS map base as required by the CIL Regulations.

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

Infrastructure planning evidence

4. The Dartford Core Strategy (CS) was adopted in September 2011. This sets out the main elements of growth that will need to be supported by further infrastructure in the Borough. It sets out the social, physical and green infrastructure needed to support planned development for the period 2006-2026. Appendix 2 of the adopted Core Strategy sets out the Infrastructure Delivery Plan which was prepared in July 2010 based on information from partners and infrastructure providers. This was updated in November 2012, as
a ‘living document’, with identified projects and cost estimates. It is indicative of infrastructure to support development that could be funded through CIL.

5. In response to consultation comments, cost assumptions, alternative funding sources, timing of projects and identification of projects that are likely to be CIL funded, have been reviewed and updated. The review has taken into account the revised housing trajectory, particularly changes to the five year land supply. Table 1 - Indicative CIL-Funded Infrastructure - in paragraph 4.3 of the ‘Overview Report August 2013’ is a list of the schemes that are likely to be funded through CIL. The schemes identified are considered by the Authority to be essential to support planned development. The total anticipated cost of the indicative CIL-funded infrastructure is £197.58 million. After taking into account committed and potential sources of funding as set out in Table 1 there is an unmet funding requirement of approximately £93.55 million.

6. The potential CIL revenue based on the proposed CIL rates has been estimated, taking into account planned floorspace in the Borough without planning permission and estimated net floorspace losses. The potential contribution of CIL in meeting the funding gap is estimated as £40 million, leaving an outstanding funding gap of £53.3 million and, after CIL receipts are passed onto local neighbourhoods, of between £59.4 million and £63 million. In the light of this information, the proposed charge would therefore make a reasonably significant contribution towards filling the likely funding gap. The figures demonstrate the need to levy CIL.

Economic viability evidence

7. The Council commissioned a CIL Viability Assessment, dated March 2012. This gave viability advice on potential CIL rates for different uses and locations in the Borough. Following consultation on the Preliminary Draft Charging Schedule, the Viability Assessment has been updated to provide additional information on the viability assumptions and further sensitivity testing of the retail scenarios and has considered the viability of care homes. These additional assessments are set out in two addendums, dated 26 November and 30 November respectively. The further findings enabled a review of the proposed levy rates and potential impacts of CIL on development in the area.

8. The assessment uses a Residual Development Appraisal Model which assumes that the residual land value is the value left once the total costs (including construction costs, fees, planning and finance charges, payments under S106, S278, and CIL and developer’s profit) have been subtracted from the Gross Development Value of a scheme. Benchmark Land Values were used as a guide to the price a landowner would be likely to accept in order to sell for development. Reasonable standard assumptions were used for a range of factors such as build costs, fees, finance, profit levels, etc.

Conclusion

9. The draft Charging Schedule is supported by detailed evidence of community infrastructure needs, including the Council’s draft Regulation 123 list. The economic viability evidence has been prepared by experienced consultants using an approach which is generally standard practice for viability assessments. The assessment involved well researched inputs for a range of
factors including local values. 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**

10. The Council has carried out an analysis of Dartford’s housing sites in order to understand the extent to which the Borough’s planned housing development might be impacted by CIL. This looked at housing sites which have not yet been completed but which underpin the Core Strategy planned development of 17,300 homes. Much of this development requirement has either been completed, has planning permission, or is likely to be permitted before CIL is implemented and therefore will not be liable to a CIL charge. Since the Council intends to review the CIL Charging Schedule rates within five years, it is the five year land supply that will bear the impact of the current CIL rates. The Council has calculated that only 18% of the five year land supply is likely to be liable to CIL and argues that, even if CIL had an adverse impact on some land within the five year supply, it would be unlikely to put overall development at serious risk. I agree with its analysis.

11. The Viability Assessment indicates that the major factor in the viability of housing development appears to be sales values, and that a 5% reduction in sales values would render some development unviable or marginally viable irrespective of whether there was a CIL charge. This suggests that a reduction from the CIL rates proposed would provide limited relief in different market circumstances. Since at present the risk of a reduction in sales values appears to be diminishing, and there is evidence of an improvement in sales and market conditions in Dartford, the risk from this factor appears to be diminishing, but I do not regard it as a consideration of any weight in my examination, which must focus on current values and costs.

12. No viability evidence has been put forward in representations which suggest that the inputs to the Viability Assessment are unrealistic or that different values should be used. However, a case is put that retirement housing has particular viability characteristics which mean that it should not be subject to CIL charging requirements or that the charge should be lower. It is contended that the submitted Charging Schedule would impact disproportionately on this particular specialist form of development against recent Government National Planning Policy Guidance “How should different development types be treated in decision taking”.

13. In response to these representations the Council proposed a modification of the Draft Charging Schedule to provide a clearer distinction between types of specialist accommodation according to their viability impact characteristics. This is in acknowledgment that the distinctions provided between the classifications of different types of retirement housing in the Use Classes Order results in a grey area between C2 (residential institutions) and C3 (general housing). This seems to me to be a helpful clarification, but of course does not fully meet the concerns of the Representors which seek to distinguish between all retirement housing (whether C2 or C3) and general housing.

14. The Council responded to consultation submissions on the Preliminary Draft
Charging Schedule by commissioning further viability appraisals to specifically consider the viability of retirement/sheltered housing. This advised that development that is genuinely and wholly within Use Class C2 will not be able to afford a CIL contribution. The consultants also provided additional information in response to the issues raised in respect of retirement housing which comes within Use Class C3.

15. In this response GVA Grimley noted that they have acted in cases involving retirement homes, sheltered homes and extra care homes for both applicants and councils. In their experience they have found that it is not correct that development which is within Use Class C3 leads to a nominal, nil or negative land value. They point out that commercial operators and charities can and do buy sites on the open market, and are willing to pay the appropriate value. They also state that mainstream housebuilders have noted that they can be outbid for land on occasions by the specialist developers.

16. Clearly there are likely to be higher build costs in purpose built retirement housing which comes with Use Class C3 than general housing within that Use Class, and there are additional factors such as delayed sales. But these developments can also attract premium sales values. Having weighed the opposing arguments and evidence I have found the viability assessments convincing that generally the developments undertaken by the Representors should remain viable. Set against this I did not find the Representors’ case convincing to the point where I would be justified in recommending changes to the Schedule.

*CIL rates for Retail*

17. Development above 500 square metres is the only form of retail development which has a charge proposed. In Zone C, which is Dartford town centre, the proposed charge is £65 per m² for supermarkets/superstores (above 500 m²) whilst in the rest of the Borough all retail development above 500 m² has a proposed charge of £125.

18. Representations variously assert that the Council’s CIL levels are too high and will prevent investment by retail developers and occupiers in the District; do not support the aim of promoting economic development and employment opportunities; and that applying different levels of charge to small and large retail development is outside the scope of the CIL Regulations. In addition it is contended that the assumptions in the Viability Assessments are inadequate in that Section 106 and Section 278 contributions, together with the costs of obtaining planning permission have not been sufficiently allowed for; insufficient weight has been given to the economics of change of use and conversion schemes; and the draft Charging Schedule does not make a connection between the CIL charge and the infrastructure requirements of a particular development.

19. Since these issues were raised at both the Preliminary and Draft consultation stages, the Council’s consultants were asked to carry out further testing of retail scenarios, both inside and outside the town centre. This led the Council to reduce the proposed charge from £200 to £125 per m² outside the town centre. A wide range of retail scenarios has been tested by a specialised consultancy, and that work has demonstrated that, at the CIL levels proposed, development...
will remain viable. In considering the application of differential rates, the Council has taken account of the evidence which shows variations between Dartford town centre and other parts of the Borough. The proposed rates outside the town centre have been set at the lower end of the range tested. Furthermore, viability modelling has considered a variety of retail forms outside the town centre, including separate testing of convenience, comparison and retail warehouse typologies. The Council’s evidence demonstrates to my mind that the rates proposed are unlikely to prejudice the implementation of the Core Strategy and I cannot accept the claim that the rates proposed will not support economic development growth.

20. The differentiation based on the scale of retail development is supported by appropriate viability evidence, and there is a functional difference between the two scales: I consider that it is in conformity with the CIL Regulations. All development applications have planning costs, and these have been allowed for in the viability assessments. As to Section 106 and Section 278 payments, these will arise out of site specific factors and the ‘viability buffer’ provided in the proposed rates should enable retail schemes to fund site specific measures. The viability appraisals have assumed no set-off for existing floorspace (that is, all new floorspace is assumed to be subject to CIL) which I consider is a very conservative approach which takes account of the objections made about the economics of change of use and conversion schemes.

21. In addition to the above matters, there are points raised which I can deal with shortly. There is no requirement for a direct link between the charges for a particular development and the infrastructure to support it. Exceptional circumstances relief can only be made in exceptional circumstances: by nature it cannot be a provision within the Charging Schedule. In any event, exceptional circumstances relief is not a matter for my examination, which is also true of an instalment policy.

CIL rates for other forms of development

22. The Other Development types covered in the draft Charging Schedule are office, industrial, hotel and leisure; all with a proposed charge of £25 per m². There have been no representations relating to this part of the Schedule and my examination of the Viability Assessment leads me to the conclusion that this part of the Schedule is sound.

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

23. The Council’s decision to adopt a matrix approach is based on reasonable assumptions about development values and likely costs. The evidence suggests that residential and the forms of retail and commercial development covered in the Charging Schedule, will remain viable across most of the area if the charge is applied. The assumptions on which the Viability Assessment is based and the conclusions drawn have taken into account identified good practice so that charges are not set near the limits of viability. A nil charge is proposed for all uses which do not come within those specifically identified in the Schedule, as the Viability Assessment concludes that such development would be at significant risk of not being viable across the District if a CIL charge were levied.
Other Matters

24. There is one matter which I consider requires specific mention in this report. Representations were received from the Kent Police that it had not been sufficiently consulted on the infrastructure required across the Borough and sought to re-open the infrastructure planning that has already been submitted in support of a sound relevant plan – in this case the adopted Core Strategy. I informed the Kent Police that I considered that this was not a matter within the remit of my examination, but there continued to be a request for a hearing. Having considered the response resulting from my questions I decided that I would not accede to the request to hold a hearing in these circumstances: it would be of no point and a waste of public resources. My justification for this course of action is Regulation 21(12)(c) of The Community Infrastructure Levy Regulations 2010 which provides that “the examiner may refuse to allow representations to be made at the hearing if the examiner considers that the representations are irrelevant ...”.

25. All written representations have been considered: where the matters raised are pertinent to the examination, they have been dealt with above. A number relate to matters that are not within the scope of this examination: for example, seeking a higher rate of CIL.

Overall Conclusion

26. In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in Dartford Borough. The Council has sought 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 district.

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27. I conclude that the Dartford Borough Council 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.
Terrence Kemmann-Lane
Examiner