



The Planning Inspectorate

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# **Report to London Borough of Barking and Dagenham Council**

**by Jill Kingaby BSc(Econ) MSc MRTPI**

**an Examiner appointed by the Council**

**Date: 28 May 2014**

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

## **REPORT ON THE EXAMINATION OF THE LONDON BOROUGH OF BARKING AND DAGENHAM COMMUNITY INFRASTRUCTURE LEVY DRAFT CHARGING SCHEDULE**

Charging Schedule submitted for examination on 25<sup>th</sup> February 2014

Examination hearings held on 14<sup>th</sup> May 2014

File Ref: PINS/Z5060/429/8

## Non Technical Summary

This report concludes that the Barking and Dagenham Community Infrastructure Levy Draft 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 London Borough of Barking and Dagenham Community Infrastructure Levy (CIL) Draft Charging Schedule [EV3] 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 (Community Infrastructure Levy Guidance – February 2014).
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, on which hearings were held on 14<sup>th</sup> May 2014, is the submitted schedule of January 2013, which is the same as the document published for public consultation from 15<sup>th</sup> March to 26<sup>th</sup> April 2013.
3. The Council proposes a matrix approach with three residential charging zones: (1) Barking town centre, Leftley and Faircross- £70 per square metre (psm); (2) Barking Riverside- £25 psm; (3) Rest of Borough- £10 psm. Across the Borough, supermarkets and superstores of any size- £175 psm; Business (B1b, B1c, B2 and B8)- £5 psm; Office (B1a), Municipal Leisure and Health, Education- £Nil; all other non-residential uses- £10 psm.

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

#### *Infrastructure planning evidence*

4. Barking and Dagenham has an up-to-date development plan which comprises The London Plan (July 2011)<sup>1</sup>, the Barking and Dagenham Core Strategy (July 2010), Site Specific Allocations Plan (December 2010), Barking Town Centre Area Action Plan (February 2011) and the Joint Waste Development Plan (February 2012). The Core Strategy and subsequent development plan

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<sup>1</sup> The Draft London Plan Further Alterations was consulted on 15<sup>th</sup> Jan-10 April 2014

documents set out the main elements of growth that will need to be supported by further infrastructure. The Core Strategy plans to deliver 17,850 new homes by 2025, an average of 1,190 homes per year, and the London Plan sets a minimum 10 year target of 10,650 with an annual target of 1,065.

5. The Council's Community Infrastructure Plan 2012-2025 (December 2011) [EV5] set out the community infrastructure requirements to support the growth planned for Barking and Dagenham in the development plan. The shortfall of providing this infrastructure, when all known funding sources were taken into account, was calculated at more than £894 million, as Table 8.6 of the Draft Charging Schedule [EV3] shows. The Council has been monitoring possible changes to this figure. In the Budget, March 2014, the Government announced that it would work with the Mayor to extend the Gospel Oak to Barking line to Barking Riverside. This would be a cheaper alternative to the previously proposed Docklands Light Rail extension, and could reduce the estimated shortfall for funding infrastructure by some £375 million.
6. By contrast, latest population figures from the 2011 Census indicate that average household size in the Borough has increased more than expected and the population is likely to grow to 2025 by more than an additional 36,082. The Further Alterations to the London Plan propose a higher target for new homes than previously planned, giving an additional 44,044 population by 2025. These demographic and housing policy changes are expected to result in requirements for additional infrastructure, in particular for education which is the largest item after transport shown in Table 8.6 of EV3, at £147.6 million. There is no substantive evidence that the shortfall in funding to 2025 for Barking and Dagenham will be significantly less than £894 million. Even in the best case scenario, it seems most unlikely to fall below £500 million.
7. The Council calculated that CIL receipts could yield about £9.6 million over the next 15 years, or £636,895 per year. This latter figure rises to £1,408,495 per year if allowance is made for receipts from the Mayoral CIL. In the light of the information provided, the proposed charge would therefore make only a modest contribution towards filling the substantial funding gap in Barking and Dagenham. The figures demonstrate the need to levy CIL

#### *Economic viability evidence*

8. The Council commissioned a CIL Viability Assessment (Affordable Housing & CIL/s.106) from GVA Grimley Ltd, which is dated January 2012 [EV6]. A CIL Economic Viability Study: Addendum on Retail report was also produced in September 2012 [EV7]. These assessments used a residual development appraisal model, assuming that land value is the difference between gross development value and build costs, once developer profit has been taken into account. Work on viability assessment included workshops and discussions with stakeholders, including local landowners, developers and agents.
9. On the quantitative side, some 39 hypothetical development typologies were considered reflecting the scale, nature and characteristics of development envisaged to come forward across the Borough. Standardised assumptions for a range of factors were used including build costs and fees, contingencies, profits and finance rates. They accord with those used in models developed by The Three Dragons for the Greater London Authority (GLA) and other Councils,

and in models used by the Homes and Communities Agency. Build costs were based on GVA's local experience in Barking & Dagenham, and average costs suggested by the Building Cost Information Service. Allowance was made in appraisals for the Mayoral CIL of £20 psm.

10. Sale and rental values were reviewed across the Borough, and discussed with local agents and developers. Market value areas were established, and benchmark land values (the level required to incentivise a landowner to sell land for development) were put forward, reflecting prevailing development and corroborated by data from the Valuation Office Agency. GVA pointed out that they have advised on a number of major schemes in the Borough in recent years, involving the former London Thames Gateway Development Corporation, and including land in Barking Town Centre, at Barking Riverside and the London Sustainable Industries Park. I give weight to the knowledge of local market values and conditions which this confers.
11. Development schemes with Section 106 (s106) obligations recently secured, and not yet triggered or only partially triggered, were compared with potential estimates of CIL liability [EV12]. These assist in determining whether or not the proposed CIL rates would be viable and realistic. Also, a CIL Economic Viability Study: Addendum report was produced in April 2014, which helpfully calculated how much CIL contributions might amount to, as a percentage of (i) build costs and (ii) gross development value (GDV).

### *Conclusion*

12. The draft Charging Schedule is supported by detailed evidence of community infrastructure needs. A sizeable funding gap to which CIL would make a modest contribution has been demonstrated. The Council's approach to assessing the economic viability of its proposed CIL Schedule uses suitable qualitative and quantitative techniques. I conclude that 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*

13. Different CIL rates are proposed for the three Zones, as set out in paragraph 3 above. Residential benchmark assumptions reflecting prevailing development values, based on affordable housing levels currently being achieved of 0-10%, were used in the viability assessment. Fourteen typologies, with 1-1,000 dwellings, a mix of family and other houses and flats, were tested, as well as a mixed use scheme which included residential development. Costs for achieving the Code for Sustainable Homes levels 3, 4 or 5 were added, and build costs assumed development on brownfield sites so that allowance was made for abnormal costs.
14. The Economic Viability Assessment looked at a number of scenarios for affordable housing of different amounts (0%-35%) and tenures, including affordable rent, for the 14 residential typologies. The Assessment concluded that, outside Barking Town Centre, no CIL could be charged with an affordable housing target of 10% or above. The GLA initially raised concern about the

proposed CIL and its impact on the delivery of affordable homes as envisaged by London Plan Policy 3.11. This sets a strategic target for 13,200 affordable homes per year in London, but there is no requirement for Boroughs to achieve 50% of housing as affordable, as some representors have implied.

15. The Borough's Core Strategy does not include a percentage or numerical target for affordable housing, and the Council confirmed that it has assumed nil grant for affordable homes' provision in its viability assessment. Historically grant has been necessary to secure affordable housing. Registered providers have been active in the Borough buying into schemes where planning permission has already been granted for housing. Affordable Housing 2007 to 2013 data in EV16 confirms this, showing that 47% of units built in Barking and Dagenham in 2012/13 were for affordable housing. It is clear that the affordable housing market operates in a complex manner in the Borough. In a letter of 9 May 2013, the GLA confirmed that the proposed CIL rates for Barking and Dagenham made an appropriate allowance for the Mayoral CIL and should not put at risk Policy 3.11A of the London Plan, which seeks to maximise affordable housing provision.
16. The Council provided examples of relevant development schemes in the Borough which had been permitted subject to s106 obligations commensurate with the proposed CIL charges. Promoters of two recent schemes in Zone 1, Barking Town centre, Leftley and Faircross, agreed to make s106 contributions equivalent to the proposed CIL charge. On recent permitted developments in Zone 3, higher sums in s106 obligations were agreed than would have been required by the proposed CIL. A current outline planning permission at Barking Riverside in Zone 2 was accompanied by a comprehensive s106 agreement which would also be greater than the combined CIL charges set by the Mayor and proposed by the Borough Council.
17. The Economic Viability Assessment modelled the ability to make a CIL contribution in a 'current' 2011 market and a projected 2016 market. The Council argued that the 2016 figures were not used to inform the Borough's proposed CIL rates, although the conclusions in the Economic Viability Assessment, paragraph 5.8, state "*2011 ... Barking town centre schemes can afford £25-£50 per sq m of CIL/s106 with a 10% affordable housing provision for all tenure splits*". £25-£50 psm is below £70, the CIL charging rate proposed for Zone 1 including Barking Town centre. In 2016, Barking Town Centre schemes could provide up to 10% affordable housing and circa £100 psm in CIL/s106, according to the Assessment. An analysis by GVA of build costs and sales' values since 2011 (Addendum study 14<sup>th</sup> April 2014) suggests that house prices are rising faster than build costs. It concludes that viability of development in general in the Borough is better than at the time of the original testing. The proposed CIL rate as a percentage of build costs in Zone 1 would be in the order of 3 or 4% for all except the smallest schemes (1 house or 8 flats), for which it would amount to 6%. CIL would represent less than 3% of GDV for all the scheme typologies in Zone 1. These factors provide support for the proposed town centre CIL rate of £70 psm.
18. CIL rates should not be set at the margins of viability, and representations referred to CIL setting by other local authorities where rates were 30-60% below the figures in their viability appraisals. The Council observed that land values are so low in this London Borough that substantial reductions below the

calculated rates would not be feasible. The Economic Viability Assessment [EV6] in its consideration of benchmark values indicated that CIL rates which reduced land values by about 25% or more were likely to cause land to be withheld from development, and 20% reductions would be marginal. The Council has tested outcomes at 20% rather than 25% of benchmark values, and considers that this provides a suitable buffer. I have seen no alternative economic viability evidence to support a different CIL rate for Zone 1.

19. Barking Riverside Limited secured planning permissions in 2007 and 2009, and has implemented the second which provides new housing with social and community infrastructure. On the basis that the company may submit a future, new planning application, it considers that the proposed CIL rate of £25 psm at Barking Riverside has not been justified. The Council has made clear that all costs have been accounted for in its appraisal. Table 13 of EV6 indicates, on the basis of 2011 figures, that for three of the five scenarios, schemes in Barking Riverside can afford £25 psm. This would give 0% affordable housing, but is a without grant scenario. Although the Council's viability evidence is criticised, no alternative appraisal has been provided.
20. Notwithstanding the developers' evidence that they had only experienced sales of £168 per square foot in Barking Riverside, the Council pointed out that current sales' values for an average sized home would be significantly higher. The effect of the proposed CIL would be to increase sales' values to £170.32 per square foot, and I have seen insufficient evidence that this would hold back development. The Company is concerned that, if it submits a fresh planning application, it may be charged twice for infrastructure because it has already entered into a s106 obligation. It contends that it should qualify for exceptional relief from CIL.
21. The Council has stated in its Draft Charging Schedule, paragraph 6.1, that it will make relief available "in truly 'exceptional circumstances' ". It has proposed to extend this paragraph to include a reference to Barking Riverside and to emphasise that the conditions specified in the CIL Regulations will be applied. A Statement of Common Ground has been signed which will achieve this change to wording. As there would be no change to the proposed charging rates, or departure from the statutory requirements, I make no further comment to this.
22. I am satisfied that the proposed CIL charging rates for residential development in the three Zones are consistent with the latest viability evidence.

#### *CIL business rates*

23. In the Preliminary Charging Schedule [EV2], the Council proposed a charge of £10 psm for all other non-residential uses which would have applied to B1b, B1c, B2 and B8 business uses. B1 office use would attract a £0 charge. These figures are supported by the findings of the viability appraisal in EV6, which examined industrial schemes of different sizes in different market value areas. It assessed industrial waste developments, and took account of the Mayoral CIL of £20 psm for commercial development. I note that the Inspector's Report to the Mayor of London on his CIL charging schedule, in January 2012, referred in a positive way to the study findings in Barking and Dagenham which concluded that industrial and warehousing uses could support a CIL of

£10 psm.

24. The Draft Charging Schedule [EV3] reduced the rate for business schemes excluding B1 offices to £5 psm, implying that the charges would not be set up to the margins of viability. This reduction should also ensure that new enterprise and pioneering industries including environmental industries would not be stifled. I agree with the Council that it would make the schedule unnecessarily complex if different rates were used for different commercial uses and/or for geographical areas within the Borough.

*CIL rate for supermarkets and superstores*

25. The Economic Viability Assessment [EV6] tested three types of retail development, namely small, retail warehouse, and supermarket/large food store. The last, based on a store of some 7,000 sqm with 300-400 car parking spaces, was found to be capable of contributing high levels of CIL/s106. EV6 indicated that an operator-led large food store could contribute in the order of £1,500 psm, assuming that all additional value above base land value was converted to CIL/s106.
26. The subsequent Addendum on Retail study, EV7, appraised six additional development schemes ranging from a 280 sqm convenience store to a convenience-led mixed use 10,000 sqm scheme, with 600 car parking spaces. Appraisals showing costs, revenue and profits' details for developer-led and operator-led schemes in different areas of the Borough were included in the GVA Response to CIL Consultation Queries, EV8. This explains that, when appraising supermarket developments in EV7, explicit allowance was made for enabling costs, as well as for planning and off-site highways' contributions and car parking costs, where appropriate.
27. The rate of £300 psm for large convenience retail schemes in the Preliminary Draft Charging Schedule was reduced to £175 psm in the Draft Charging Schedule for supermarkets and superstores of any size. These rates have resulted from the appraisals and from discussions with stakeholders. The reduction to £175 psm suggests a suitable viability buffer, especially when regard is had to the tables showing Maximum CIL Charges in EV7. As the Council commented, no-one has provided alternative viability reports to challenge the assumptions made for retail schemes, nor to support differential rates for non-residential uses by area in the Borough. The Council has given consideration to an instalments policy, referring to the one adopted by the Mayor [EV3, section 7].
28. The Government's CIL Guidance makes clear that differential rates can be set, and may be based on type of use. The definition of "use" is not tied to the use classes order. The distinctions between comparison and convenience shopping in supermarkets, superstores and other outlets are commonly emphasised by developers when seeking planning permission. The Council's experience is that developers routinely define what type of retailing is intended, and who is the intended operator. In this case, I am satisfied that supermarkets and superstores represent an appropriate type of use based on the results of the economic viability appraisals. Also, the definition is State Aid compliant.
29. Supermarkets and superstores often function as anchor stores in shopping

centres or act as catalysts for mixed use development, which can bring new investment and jobs to an area. Recent planning permissions for supermarkets in Barking have provided funds for a skills' centre and public realm improvements in the town centre, and for sport and recreation and employment elsewhere. However, since April 2010, planning obligations have had to satisfy three tests which may make it impossible to secure all of the benefits conveyed by supermarkets and superstores in the past. Practice in the past cannot justify a reduction in the proposed CIL charge rate for supermarkets and superstores in Barking and Dagenham, which must be based on viability. Recent changes to CIL Regulations, however, enabling the charging authority to accept payments in kind through the provision of land or infrastructure, may enable benefits to be achieved similar to some of those formerly secured by s106.

30. It is essential that "double-dipping", seeking contributions to necessary infrastructure twice through CIL and by a s106 obligation, is avoided. I see no evidence in the economic appraisals that "double-dipping" has been built in, though this will be a matter for careful scrutiny when the rates are applied. Overall, the proposed rate for supermarkets and superstores is reasonable.

*CIL rate for all other non-residential uses*

31. The police and the London Fire and Emergency Planning Authority (LFEPA) argued that their vital community safety facilities should be excluded from the payment of the levy. These are among the facilities that CIL was designed to fund. LFEPA contended that the £10 psm charge could render a new fire station unviable. However, police and fire station developments are liable for more substantial Mayoral CIL charges of £20 psm and, in spite of the representation from LFEPA, I have seen no substantive evidence such as an economic appraisal to demonstrate that Barking and Dagenham's proposed charge would make the provision of new fire station facilities unaffordable.
32. New sewage pumping stations and or water treatment buildings are also cited as examples of essential infrastructure which may be required to support growth in the Borough and deliver environmental improvements. The Regulations are clear that buildings into which people do not normally go are exempt from payment.
33. A draft Regulation 123 list of the strategic (non-site specific) infrastructure, on which CIL would be spent is shown in EV18. This includes community safety projects as sought by the LFEPA. Having regard for the evidence, the charge rate of £10 psm seems appropriate and need not be modified.

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

34. The Council's decision to set charge rates in accordance with the matrix in its Draft Charging Schedule is based on reasonable assumptions about development values and likely costs. The evidence suggests that residential, commercial and other development will remain viable across most of the Borough if the charge is applied. The difficulties associated with low land values, achieving much-needed affordable housing without grant, and with regenerating and maintaining vital and viable shopping centres, have been



taken into account. The evidence demonstrates that the proposed rates should not put the overall development of the area including achievement of the London Plan’s affordable housing policy at serious risk.

**Conclusion**

35. 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 Barking and Dagenham. 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. The Economic Viability Assessment, January 2012, advised the Council to consider a review of any CIL that it subsequently adopted in 2016/7. It may be appropriate to consider any revision to the charge after it has been in place for a comparable time period.

<b>LEGAL REQUIREMENTS</b>	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation. It is consistent with the development plan and Community Infrastructure Plan, and is supported by an adequate economic viability assessment.

36. I conclude that the Barking and Dagenham Community Infrastructure Levy Draft 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.

*Jill Kingaby*  
Examiner