Examination of Community Infrastructure Levy Draft Charging Schedule - London Borough of Barking and Dagenham

Examiner’s Issues and Questions

**Issue 1: Whether the submitted Draft Charging Schedule (January 2013) complies with the requirements of the Planning Act 2008, as amended by the Localism Act 2011, and the CIL Regulations.**

**Questions:**

1. The Council’s response to question 1 of its CIL Statutory Guidance: Setting and Examination Checklist [Doc EV1]- whether it is meeting the legal requirements- is “Yes”. Is there any contrary evidence?

2. The Council submitted its Draft Charging Schedule for examination [EV3] on 25th February 2014. The Government published The Community Infrastructure Levy (Amendment) Regulations 2014 on 23rd February, which were designed to come into force the following day, with transitional arrangements as shown in S14. New Community Infrastructure Levy Guidance was also published by the Department for Communities and Local Government (DCLG) in February 2014. Does the Draft Charging Schedule conflict with any changes introduced by these documents? If so, how exactly?

**Issue 2: Whether a funding gap, which the CIL might help to fill, has been demonstrated taking account of the Borough’s infrastructure needs and the likely availability of funding from other sources.**

**Questions:**

1. The Borough’s Community Infrastructure Plan 2012-2025 [EV5] states that its purpose is to establish the community infrastructure requirements to support the growth planned in Barking and Dagenham. Is EV5 sufficiently reflective of the “relevant Plan” for the area, having regard for paragraph 2.2.1 of the DCLG Guidance 2014?1.

2. Does the table at 8.6 of the Draft Charging Schedule [EV3] fairly reflect the likely costs of providing the community infrastructure which will be required to implement the relevant Plan? What adjustments are needed to reflect Transport for London’s comments on extensions to Docklands Light Rail and the Renwick Road junction improvements?

3. How much funding is known to be available or can be expected to come forward from other sources to help meet requirements and fill the funding gap? ie. can more detail be provided to indicate how the costs in the table at 8.6 of EV3 might be met if not from CIL?

4. How much funding can be expected from CIL (approximately and I note that the GVA Economic Viability Report anticipates a review of the CIL schedule in 2016/7)?

5. Is there any substantive evidence that a sizeable funding gap does not exist, or that CIL will not be needed to help fill it?

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1 The LBBD Preliminary Draft Charging Schedule [EV2] sets out, in section 6, the Local Development Framework documents which, I assume, make up the “relevant Plan” for the Borough.
**Issue 3: Whether the charging rates are informed and consistent with evidence of economic viability**

**Questions:**

1. The Economic Viability Assessment (GVA) [EV6] uses a residual development appraisal model, explains the approach and methodology, tests 29 hypothetical development schemes and 3 local authority schemes (for health, education & leisure), looks at alternative inputs to the model eg. for affordable housing. Is there any substantive evidence that the approach is inappropriate?

2. On Page 12 of EV6, it states that total costs include construction costs, fees, planning, finance charges, and also payments under S.106, S278, a tariff and CIL (my underlining). The payments in respect of S.106 and S.278 are likely to vary according to the scale and type of development, the site’s character and infrastructure required. Much development in the Borough is likely to occur on previously developed land which could lead to abnormal costs. How, more precisely, have such costs and requirements for S.106 and S.278 payments been allowed for in the Assessment?

**Residential Development**

3. Are the residential typologies (set out in Table 1 of EV6) and the benchmark land values and market value areas (Pages19-21) reasonable? If not, what available evidence supports different values and areas?

4. The Harman Report, Viability Testing Local Plans, supports the use of current costs and values when assessing plan policies for the first 5 years of a plan. Is the use of 2016 projected market figures justified in the context of this CIL?

5. What is the basis for the projected figures put forward? Have actual changes in costs and values over the last 2 years since EV6 was published justified the figures used in these projections?

6. Is the approach used by GVA to affordable housing provision consistent with up-to-date policy in the Core Strategy and London Plan? (I note the Council’s comment that the policy seeking 50% affordable housing is no longer applicable).

7. Is there existing, substantive evidence that the residential rates proposed for the 3 zones in the Borough would not be viable?

8. Has a sufficient viability cushion been allowed for in proposing the rates of £70, £25 and £10psm for the 3 zones? (Some representors noted that other Local Authorities set rates 30-60% below the figures from their viability appraisals.)

**Business (B1b, B1c, B2 and B8)**

9. The Economic Viability Assessment modelled a number of schemes (Table 6 of EV6), and reached conclusions based on 2 high and low benchmarks (page 40 of EV6). Is there any substantive evidence that the proposed charge of £5 psm could stifle new enterprise or the growth of employment opportunities in the Borough?

10. Do recent S.106 agreements, listed and compared with CIL charge estimates [EV12,13&14] indicate that some industrial developments could be disadvantaged by CIL? The EV12 table suggests that the
following could pay more in Total CIL than S.106: 10/00287/FUL; 11/00399/OUT; 11/00564/FUL; 11/00992/FUL?

11. Is there a clear case for differential rates for different industrial uses or areas, and, if so, how should these be defined? Or would this make the Schedule unnecessarily complex?

**Supermarkets and Superstores of any size**

12. Does the Draft CIL Charging Schedule define supermarkets clearly enough? Are they distinguishable from small convenience stores?

13. Responding to representations from Morrisons [EV9 & 11] on the data underpinning the Retail Addendum [EV7], the Council stated that more detailed information would be placed on the website ahead of the examination. Where is that information?

14. The Consultation Response draft October 2013 [EV8] provides additional information including development appraisals describing allowances for car parking and enabling costs, as well as planning and off-site highway costs where appropriate. Is there substantive evidence that these assumptions are flawed or omit key cost items?

15. Should more allowance be made for site assembly for large sites including fees and holding costs, remediation and site preparation costs for brownfield sites?

16. Is there evidence to support the claim that the proposed CIL rate is likely to prevent the development of supermarkets/superstores as anchor stores or catalysts for mixed use development?

17. CIL should not be set at the margins of viability. The Preliminary Draft Charging Schedule sought £300 psm for large convenience retail, whereas the Draft Schedule seeks £175 psm for supermarkets and superstores. Doesn’t the revised rate indicate that a suitable buffer has been applied?

18. Are the proposed rates for retail development state aid compliant? Could they count against discount operators (who state that they have low profit margins)?

**Issue 4: Whether the charging rates strike an appropriate balance, in terms of Regulation 14, and avoid putting the overall development of the Borough at serious risk**

Questions:

19. The Draft Regulation 123 List [ENV17] recognises the need to avoid “double dipping” and gives examples of site-specific items for which funds might be sought from developments separately from CIL. Is the List with this additional information sufficiently clear as to what site-specific contributions will be expected from developers?

20. Is there evidence that the potential effects of the imposition of CIL taken as a whole would have a materially harmful effect on the economic viability of development in the Borough? Could it hold back development of Barking Town Centre or Riverside?

21. Is there any case for departing from the principle that “exceptional circumstances” for relief from CIL payments should mean one-off unusual or untypical cases which cannot be described and specified before they occur?

Jill Kingaby (Examiner)
Examiner’s Note

The attached Issues and Questions arise from my early reading of the Draft Schedule and the Council’s submitted evidence which includes all the representations made on the Preliminary Draft and Draft Charging Schedules. It would be most helpful if the Council and those who made representations earlier would submit any responses to my Questions to the Programme Officer, Mrs Tracey Adams.

Responses should be submitted by Tuesday 15th April 2014 at the latest.

You may be content to rely on the representations you have already submitted. These will all be taken into account in full when I am reporting on the Schedule. For those who wish to submit further representations, these should build on your initial representations and should not be repetitive, or amount to new (out of time) representations. Responses to the Questions posed should not exceed 3,000 words in total.

Your answers should improve my understanding of the Schedule and appreciation of any perceived problems with it. It is helpful, if you consider there to be flaws in the Draft Schedule, if you can suggest justified changes to overcome them. Your answers would also inform any hearing sessions which are needed as part of the Examination. Hearing sessions, if required, are expected to take place in mid-May. Further information will be available from the Programme Officer in due course.

Jill Kingaby (Examiner)