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## **Report to Hertsmere Borough Council**

**by Mr Philip Staddon BSc, Dip, MBA, MRTPI**

**an Examiner appointed by the Council**

**Date: 13 December 2013**

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

### **REPORT ON THE EXAMINATION OF THE DRAFT HERTSMERE BOROUGH COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

Charging Schedule submitted for examination on 13 September 2013

Examination hearings held on 29 October 2013

File Ref: PINS/N1920/429/12

## **Non Technical Summary**

This report concludes that, subject to modifications, the Hertsmere Borough Council Draft Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area.

The main modifications can be summarised:

- That the levy in "Area B" is reduced from £210 per square metre to £180 per square metre
- That the levy for specialist types of accommodation for the elderly / disabled is set at £120 per square metre.

Subject to these modifications the Council is able to demonstrate that it has sufficient evidence to support the schedule and can show that the levy rates would be set at levels that will not put the overall development of the area, as set out in its Core Strategy, at risk.

## **Introduction**

1. This report contains my assessment of the Hertsmere 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 (Community Infrastructure Levy Guidance – DCLG – April 2013).
2. To comply with the relevant legislation the local charging authority has to submit what it considers to be a charging schedule that sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the district.
3. The basis for the examination, on which hearing sessions were held on 29 October, is the submitted Draft Charging Schedule (DCS), which was published for public consultation between 26 July 2013 and 6 September 2013, and the subsequent Statement of Modifications. The Draft Charging Schedule and the Statement of Modifications were submitted for examination on 13 September 2013.
4. The Council's CIL proposals include charges for residential development and for certain specified types of commercial development.
5. The residential CIL proposals relate to three defined geographical charging zones within which different CIL rates would apply. The smallest zone is an urban regeneration area called the 'Elstree Way Corridor' in the centre of Borehamwood and, in this area, a zero or nil rated CIL levy would apply. 'Area B' actually covers two distinct parts of the borough, one covering the WD23 postcodes (southwest of the M1, which includes the settlements of Bushey and

Bushey Heath), and the other, the WD7 postcodes (including the settlements of Radlett and Shenley); a CIL charge of £210 per square metre (psm) is proposed in these locations. 'Area A' comprises the remainder of the borough, which includes the settlements of Elstree, Borehamwood (other than the Elstree Way Corridor) and Potters Bar; a CIL charge of £120 psm is proposed here.

6. The Commercial Development CIL proposals are not subject to geographical zoning and borough wide rates are proposed. The types of commercial development for which CIL charges are proposed include 'retail' (£80 psm) and 'hotels' (£120 psm). A £120 psm CIL charge for development initially described in the DCS as 'retirement homes' was the subject to some redefinition and change through the modification and examination process - this is discussed more fully later in this report. All other commercial developments, including employment uses, would not incur a CIL charge.
7. This report is structured under the headings (in bold) of the main issues that I identified through the examination. I draw conclusions after exploring each issue.

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

#### *Core Strategy*

8. The Hertsmere Core Strategy (CS) was adopted in January 2013. This sets out the strategy for the borough's growth until 2027 that will need to be supported by further infrastructure. The CS makes provision for 'at least 3,990 additional dwellings' (Policy CS1) in the plan period, and seeks to locate the majority within the borough's main settlements of Borehamwood (up to 60% of the new homes), Bushey (up to 25%), Potters Bar (at least 10%) and Radlett (at least 5%). No significant development is currently anticipated outside of these settlements as most of the borough (80% of its area) is designated Green Belt.
9. It is of some relevance to this CIL examination that the CS Examiner had concerns about housing numbers. Modifications were necessary to increase the CS housing requirement to a minimum sound level and the Examiner noted that identified housing land supply was barely enough to meet that minimum. A commitment to undertake an early partial review of the CS (within 3 years) was also required. Such a review would be in co-operation with neighbouring authorities and take account of an updated Strategic Housing Market Assessment and an updated jobs growth / employment land study. The CIL implication of this context, in my view, is that there is no margin for error in viability terms in setting CIL rates. The CS relies on maximum development delivery in the identified locations.

#### *Infrastructure planning evidence*

10. The CS evidence base included an Infrastructure Topic Paper setting out the infrastructure that would be necessary to support the population and growth in housing up to 2027. This evidence has been refreshed and updated into an

Infrastructure Assessment 2013. This has been used to distil a draft CIL Regulation 123 list which, whilst presented in broad brush terms, does provide some clarity on the types of infrastructure that would be funded by CIL receipts.

11. The Council estimates that there is an infrastructure funding gap, at current prices, of about £67 million. This is principally for education, transport and parks projects. The figure would rise to over £90 million if the higher range estimate for education infrastructure were applied. The Council estimates that its residential CIL proposals could generate circa £13 million in the plan period, and this would be supplemented by more modest, but unspecified, CIL receipts from commercial development.
12. The CIL charges would therefore make only a modest, but nonetheless important, contribution towards filling the likely infrastructure funding gap, required to help support planned sustainable growth in the borough.

#### *Economic viability evidence*

13. The Council entered a commissioning partnership with seven other Hertfordshire councils to produce a 'Stage 1' Community Infrastructure Levy Economic Viability Assessment (EVA). Lambert Smith Hampton (LSH) were appointed and produced the Stage 1 EVA in December 2012.
14. The Stage 1 EVA was clearly a major and complex commission covering most of the county of Hertfordshire (8 out of the 10 councils). It offered advantages in terms of adopting a consistency of approach across eight neighbouring councils, but there were complexities in terms of the spectrum of values, different CS stages and policy requirements of the councils, and an inevitable limit on the level of fine grain analysis. The status of the Stage 1 report was presented by LSH as sufficiently robust for early CIL promoters (with a CS in place) to proceed with its recommended 'single rates'. However, the report made clear that Councils may opt to undertake more detailed 'Stage 2' work to inform and refine their CIL proposals. Hertsmere Borough Council followed the latter route and a more detailed 'Stage 2' EVA, specific to the borough, was commissioned, undertaken and produced (July 2013).
15. Both the Stage 1 EVA and the Stage 2 EVA employed a residual valuation approach. In simple terms, this involves deducting the total costs of the development from its end value to calculate a residual land value. That residual land value is then compared to assumed 'land value benchmarks' to test viability. If the residual land value is significantly above the land value benchmark, the scheme would be judged viable and *vice versa*. LSH have developed a computer model to make this comparison and to test potential CIL levels against the land value benchmarks. The tested notional schemes included five residential development types ranging from low density rural greenfield sites to high density urban development, along with a range of commercial development types.
16. To undertake this analysis, the modelling on residential development entailed making assumptions about a range of factors such as build costs (including Code for Sustainable Homes requirements), fees, contingencies, sales values, profit levels etc. For the commercial development types, common assumptions

were made across the eight authorities, with the exception of rental values and yields, which were tailored to the local markets.

17. The robustness of the assumptions used in the EVA were tested through the examination and found to be largely sound. Build costs were based on BCIS rates for the county and allowances for Code for Sustainable Home requirements (Level 4), fees, contingencies and financing all appeared to be well grounded and reasonable. A notional allowance for site-specific S.106 costs was included and Affordable Housing provision was assumed in line with the CS policy. Assumed commercial rents and yields were well founded and reasonable.
18. However, two modelling components require some commentary at this point. These relate to i) residential sales values and ii) developer profit.
  - i) Residential Sales Values – For a near county-wide study the Stage 1 report was inescapably broad brush. However, the study drew on available evidence of circa 250 transactions, and research of 17 development schemes. A postcode analysis was undertaken and the average Hertfordshire sales rate was found to be circa £3950 psm. However, there was a significant range above and below this average, with the highest value postcodes achieving more than double the lowest. This spectrum of sales values is of great significance in determining development viability and the potential for CIL charges. Hertsmere included lower value areas (WD25), medium value areas (WD6 and EN6) and higher value areas (WD23 and WD7). The Stage 2 report, using a similar methodology, sought to undertake a finer grained analysis. This refinement reduced the assumed sales rates, quite significantly, in four out of the five Hertsmere postcodes. I will return to the implications arising from this later.
  - ii) Developer Profit – Submitted evidence challenged the assumed 17% profit return on Gross Development Value (GDV) and suggested that a minimum of 20% profit return would be more appropriate. In my view, this is a matter to be considered 'in the round'. Whilst house builders would prefer, and perhaps expect, a higher profit level, no detailed viability appraisal evidence has been submitted to support this position. On balance, I consider that 17% on GDV is not an unreasonable profit figure for use in the high level modelling required for a CIL examination. The figure also needs to be judged in the context of other allowances and viability 'buffers'. I return to this later.

### *Conclusions*

19. The Council has produced robust and up to date evidence of community infrastructure needs required to support the planned growth set out in its CS. These requirements are reflected in the Council's Draft Regulation 123 list. There is a demonstrable funding gap, that justifies the introduction of a CIL regime.

20. The background economic viability evidence for both residential and commercial development that has been used is reasonable, robust, proportionate and appropriate. The assumptions on developer profit levels are considered acceptable for CIL modelling purposes, subject to being considered in a wider viability context. The interpretation and use of sales rate evidence is a significant factor in defining differential CIL rates for residential developments.

**Is the Residential CIL charging rate informed by and consistent with the evidence?**

21. The examination revealed a degree of complexity arising from the two EVA reports. It found that, in some instances, the refinement brought by the more detailed Stage 2 evidence was not altogether consistent with the earlier Stage 1 EVA.
22. The broader brush Stage 1 EVA made recommendations for single CIL rates for each local authority area. The single rate recommendation for Hertsmere was £120 psm. This was arrived at by modelling the maximum CIL rates across a variety of different residential schemes across the five Hertsmere postcodes. This demonstrated that most (20 out of 25) of the modelled notional development scenarios could support a CIL charge above the proposed £120psm single rate. Indeed, in most cases the maximum achievable CIL rates modelled were comfortably above the £120 psm proposed. There were some exceptions but these were not likely development scenarios. The examination also appeared to identify that some of the sales values for WD23 (Bushey) were incorrect and understated the potential CIL rates.
23. The Stage 2 EVA sought to build on the Stage 1 EVA to provide evidence and justification for a differentiated approach to reflect differences in values and development characteristics across the borough. Clearly, where there are significant differences in values across an area, a zonal approach can be appropriate and, indeed, desirable, as it helps to mitigate risks to viability.
24. The Stage 2 EVA undertook a more targeted analysis looking more closely at the location, scale and nature of real world anticipated development (in line with the CS). This indicated that most new housing development was expected in Borehamwood (66%); followed by Bushey, Aldenham and Patchetts Green (20%); Potters Bar, Ridge and South Mimms (9%); Radlett (3%) and Elstree and Shenley (2%). I note that these figures are similar, although not identical, to those contained in the CS.
25. The Stage 2 EVA also refined sales values by further research into real world property sales. The results of this additional research and refinement were twofold. First, the sales values dropped in all five postcodes, and quite substantially in four of the postcodes. Second, the spectrum of average values drawn from the postcodes narrowed by a not insignificant amount - the Stage 1 average values ranged from £3810 – £5845 psm (a difference of £2035 psm) whereas the Stage 2 values ranged from £3488 – 4488 psm (a difference of just £1000 psm). Although this finding does not preclude a

geographically differentiated approach, it does suggest that the sales value differences, at least those based on the averages used in the modelling, are not as stark as the Stage 1 EVA indicated.

26. In the light of this refined analysis I have set out below my findings on each of the residential charging areas.

#### *Elstree Way Corridor*

27. This regeneration area is the subject of an emerging Action Area Plan. It is clearly an important and desirable project that will rejuvenate and revitalise the centre of Borehamwood. It will also deliver a substantial number of new homes. The Council proposes a Nil CIL rate in the Elstree Way Corridor. This reflects the specific circumstances here. There are substantial site specific infrastructure requirements directly related to this complex urban site. The Council's approach is to deal with these matters through S.106 obligations and, in recognition of that, it has excluded Elstree Way Corridor infrastructure from its Regulation 123 list. The evidence clearly demonstrates that, once site-specific infrastructure (which could exceed £10,000 per unit) is factored in, there is no scope to impose a CIL charge.

#### *Area A*

28. Area A covers the greater part of the borough and includes the settlements of Borehamwood and Potters Bar which, together, are anticipated to accommodate three quarters of the borough's planned new housing, 66% and 9% respectively. It should be noted that the Borehamwood percentage does include the Elstree Way Corridor planned dwellings, but the broader Borehamwood urban area is still expected to deliver a significant number of dwellings in the CS period.
29. The more refined analysis in the Stage 2 EVA, using the revised (lower) sales rates, demonstrates that all of the notional developments remained viable with the proposed £120 CIL charges in place. The evidence indicates that there is a good amount of headroom built in. The Council's consultants stressed that, whilst noting that house builders would understandably prefer a higher profit level, they had factored in allowances throughout the model, including on land values and development costs. Acknowledging these allowances, the least viable notional development was still able to afford a CIL of £157psm, and the most profitable a CIL of £231psm.
30. The Council calculates that, when averaged, the Borehamwood 'buffer' is 70% (i.e. schemes could afford a CIL charge up to 70% more than that proposed and still remain viable) and, for Potters Bar, the buffer is reported to be 43%. At my request the consultants tested the house builders preferred profit level (20% on GDV) and this demonstrated that developments remained viable, with the exception of very high density Borehamwood schemes, which are only envisaged in the Elstree Way Corridor i.e. the area excluded from Area A (where CIL would be zero rated).
31. I conclude that the Area A £120 CIL rate is informed by and consistent with the evidence, and is reasonable in all other respects.

### *Area B*

32. Area B is drawn around areas where property sales prices are relatively higher and a higher CIL charge of £210psm is proposed. Effectively, this relates to development in two settlements: Radlett where a small amount of the CS housing is anticipated (3%) and Bushey where a significant amount of the CS housing is anticipated (20%).
33. There is evidence of higher sales values in Area B but this is only markedly so in respect of Radlett. The Stage 2 EVA actually indicated similar average sales values for Bushey and Potters Bar (where a £120 CIL is proposed). Furthermore, the higher sales values are inevitably associated with higher benchmark land values, which are modelled at £6 million per hectare in the most desirable locations (Radlett).
34. The viability summaries produced at my request following the examination Hearing indicate that the Area B rate is set too high. Whilst I acknowledge that allowances have been built in to the modelling assumptions, there is also an assumption that quite substantial new build premiums (over existing sales values) will be achieved (+8% for Bushey and +20% for Radlett). Overall, the proposed £210 CIL rate appears to be only marginally affordable and this is a concern given that the Council confirmed that there would be a range of different sites in this area, with inevitable differences in viability characteristics. Indeed, the theoretical maximum CIL rates indicated by the modelling are £229 (Bushey) and £226 (Radlett) which amount to buffers of just 9% and 8% respectively. Applying the house builders preferred profit assumption (20% on GDV) reduces the buffers to 7% and 0%. The rate appears to be set at the margins of viability.
35. Paragraph 30 of the 2013 CIL Guidance states that "charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area". Whilst the combined sites of Radlett and Bushey cannot be seen as the 'vast majority of sites' they do amount to about a quarter of the CS planned homes and, for reasons emanating from the CS examination (see para 9 above), I consider that this CIL rate should be lowered, at least until the first periodic review. This will reduce the risk that housing delivery will be constrained.
36. Having considered the evidence I recommend that the Area B CIL rate is reduced to £180 psm. This would increase the modelled buffer in Bushey, where most development is proposed, to circa 23%. This would be lower than the modelled buffers in the remainder of the borough but would reflect the viability evidence and allow for a degree of variability between development schemes in this area. I consider this to be reasonable and sound.
37. Although it is beyond the scope of the examination, it is my view that the Council should consider timing its first review of the operation of its CIL regime to coincide with its early CS review.

### *Specialist types of residential accommodation.*

38. The Council has, through its process of exploring its CIL proposals, sought to include within its charging regime certain types of specialist residential accommodation, typically (although not exclusively) for older people. This is



an important issue given that the CS envisages that the proportion of pensioners in the Hertsmere population is expected to "rise significantly" (Para 2.4 p.17 of CS). A degree of uncertainty and ambiguity was perhaps inevitable in defining the proposals as such uses can embrace both C3 (dwelling houses) and Class C2 (residential institutions). The EVAs modelling suggested, specifically, that 'retirement homes' could support a CIL charge of up to £165 psm.

39. The Council engaged with the retirement housing sector and identified a concern that the higher dwelling house CIL rate (£210) would present viability issues for retirement housing schemes in those areas. A statement of common ground, prepared by the Council and retirement housing developers, was presented to the examination. This effectively proposed a further modification to the charging schedule for my consideration. The effect would be to more clearly define the types of specialist residential development to which a £120 psm CIL charge would apply (Class C2 and Class C3). I give weight to the fact that the principal developers in this field regard the £120 CIL rate as acceptable in viability terms across the borough. Accordingly, subject to some formatting and refinement, I consider this to be reasonable and robust and the change is reflected in my recommendations.

**Are the Commercial CIL charging rates informed by and consistent with the evidence?**

40. The commercial CIL proposals are more straightforward as they are not zoned, appear to be modestly set and have attracted no representation from the industry (with the exception of specialist housing that I have dealt with above). However, I will deal with each in turn.

*Employment Development (Offices, Industrial and Storage and Distribution)*

41. The evidence demonstrates that speculative office development, using reasonable rents and yields, was for the most part unviable in Hertsmere and could not support a CIL charge at the present time. Similarly, industrial and storage and distribution development, whilst showing marginally positive appraisals could not support a CIL charge with any confidence that viability would not be threatened.

*Retail Development*

42. The Council does not anticipate any major retail development and its policy is for a low level increase with a focus on development within existing shopping centres. However, it has viability tested both small scale and large scale (supermarket) retail developments for CIL purposes. The evidence shows that whilst all retail development is viable with a CIL charge there is a significant range. Small scale retail developments could support a CIL charge of up to £84 psm, whereas large scale retail developments could support a CIL charge of up to £170 psm and remain viable. The Council's proposal is to adopt an £80 psm rate i.e. below the lower end of the tested spectrum. I do have some concerns that the rate is set close to the margins of viability for small retail schemes. However, I am also mindful that such developments are not critical to the CS and that little such development is envisaged. I also note that there have been no representations or evidence from the development industry

challenging the retail CIL charge. On balance, I consider the £80 CIL charge to be acceptable but the Council may wish to consider the small retail scheme viability issues through its monitoring and review processes.

*Hotel Development*

43. Although local market intelligence suggests that speculative hotel development is unlikely in the coming years (existing provision is healthy), the viability testing demonstrates the ability to support a CIL rate of up to £145 psm. The Council's proposal to adopt a rate £25 psm below this level (£120 psm) is, whilst including only a limited buffer, reasonable in the circumstances.

**Overall Conclusions**

44. The evidence demonstrates that, subject to a modest reduction of the residential CIL rate in Area B and some other minor modifications, the overall development of the area, as set out in the CS, will not be put at risk if the proposed CIL charges for residential, hotel and retail development are applied. In setting the CIL charges the Council has used appropriate and available evidence which has informed assumptions about land and development values and likely costs. The CIL proposals will achieve a reasonable level of income to help address a well evidenced infrastructure funding gap.

<b>LEGAL REQUIREMENTS</b>	
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 Hertsmere Core Strategy and is supported by an adequate financial appraisal.

45. I conclude that, subject to the modifications set out in Appendix A, the Hertsmere Borough Council Community Infrastructure Levy Charging Schedule, as modified by its Statement of Modifications, 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, subject to my modifications, the Charging Schedule be approved.

*P.J. Staddon*

Examiner

This report is accompanied by:

Appendix A (attached) – Modification that the Examiner specifies so that the Charging Schedule may be approved.

**Appendix A**

Modifications that the Examiner specifies so that the Charging Schedule may be approved.

NOTE – these modifications should be read in conjunction with the Modified Draft Charging Schedule submitted for examination (Examination Document CD/17)

Modification No.	Modification
EM1	Page 2 of the modified Schedule under CIL Rates Area B - delete "£210" and replace with "£180"
EM2	Page 3 of the modified Schedule under map key – delete "Area B (£210)" and replace with "Area B (£180)"
EM3	Page 2 of the modified Schedule under CIL Rates – delete "Residential Institutions (C2)" and replace with "Specialist accommodation for the elderly and / or disabled including Sheltered and Retirement Housing and Nursing Homes, Residential Care Homes and Extra Care Accommodation."
EM4	Page 2 of the modified Schedule under Commercial Development types insert "Use Class" in bracketed references i.e. Use Class C1, Use Class A1, Use Class B1 and Use Class B2.