

Report to the Council of the London Borough of Barnet

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an Examiner appointed by the Council

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Planning Act 2008 (as amended)

Section 212(2)

Report on the Examination of the Draft London Borough of Barnet Community Infrastructure Levy Charging Schedule

Charging Schedule submitted for examination on 12 August 2021

The examination hearing was held on 25 November 2021

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Abbreviations used in this report

BLP	Barnet's Local Plan (Core Strategy) – September 2012
dBLP	Barnet Draft Local Plan 2021 to 2036
CIL	Community Infrastructure Levy
MM	Modification
The Council	London Borough of Barnet
VA	CIL Viability Review December 2019 and CIL Viability Review – Update (January 2021).

Non-Technical Summary

This report concludes that, subject to the modification detailed below, the London Borough of Barnet 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.

One modification is needed to meet the statutory requirements. This can be summarised as follows:

- That the CIL charge for 'Leisure (including former D2 uses and sui generis leisure uses)' is reduced from £20sqm to £0sqm.

The specified modification recommended in this report is based on matters discussed during the public hearing sessions and does not significantly alter the basis of the Council's overall approach or the appropriate balance achieved.

Introduction

1. This report contains my assessment of the London Borough of Barnet 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.
2. The proposed partial review of CIL Charging Schedule seeks to revise and modify the extant London Borough of Barnet Community Infrastructure Levy Charging Schedule, adopted on 1 May 2013.
3. To comply with the relevant legislation the local charging authority has to submit 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 hearing session held on 25 November 2021 is the submitted schedule of 12 August 2021, which is effectively the same as the document published for public consultation between 18 February and 21 March 2021.
4. The submitted charging schedule from the London Borough of Barnet [the Council] proposed the following revised and new CIL rates:
 - Residential including C2, C3 and C4 use classes and sui generis HMOs and other sui generis residential uses - £300sqm
 - Leisure (including former D2 uses and sui generis leisure uses) - £20sqm
 - Employment (including former B use classes and/or B2 and B8 uses) - £20sqm
 - All other uses - £0sqm

Extant CIL Charging rates (1 May 2013) retained:

- Hotels (C1) - £202sqm - Index linked
- Retail (including former A1-A5 uses) - £202sqm - Index linked

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

Infrastructure planning evidence

5. Barnet's Local Plan (Core Strategy) (BLP) was adopted in September 2012. This sets out the strategy for future growth and development in the Borough to 2026. The Council are therefore currently undertaking a review of the BLP,

preparing a new development plan for the borough, the Barnet Draft Local Plan 2021 to 2036 (dBLP), that was submitted for examination on the 26 November 2021.

6. The spatial strategy for Barnet in the dBLP sets out the broad locations where the Council expects a concentration of development to be located and expected levels of growth up to 2036. The dBLP seeks to deliver a minimum of 35,460 new homes, 395,000m² of new office space at Brent Cross Town and 56,600 m² of new retail space at Brent Cross North, up to 67,000 m² of additional office space across Barnet's town centres, including the provision of affordable workspace, a new Regional Park and 3 new destination hubs for sport and recreation. Although the Local Plan process is not yet completed, the development strategy across the plan area is already sufficiently clear, with the relevant up to date and extensive supporting evidence in place, including infrastructure requirements and viability.
7. Therefore, in these specific local circumstances I conclude that there is no reason why the CIL charging schedule cannot be submitted, examined and adopted, if viable and appropriate. I am satisfied that this accords with the national Planning Policy Guidance, which states that "information on the charging authority's infrastructure needs should be drawn from the infrastructure assessment that was undertaken as part of preparing the relevant plan".
8. This conclusion is reinforced by the decision of the Court of Appeal in the *Oxted Residential Ltd v Tandridge DC* case on 29 April 2016 (EWCA Civ 414), which effectively confirmed, amongst other things, that there is no statutory obstacle to adoption of a CIL charging schedule in advance of a new Local Plan if this is justified in all of the relevant local circumstances. However, in the event of a significant change to the development strategy as a result of the Local Plan examination, it would be appropriate for the Council to consider whether a review of the CIL charging schedule is needed.
9. The draft Barnet Infrastructure Delivery Plan 12 August 2021 (IDP) outlines the new/improved infrastructure required to facilitate planned growth within the borough to the end of the dBLP plan period (2036). The IDP indicates that spending will be directed towards social, physical, and environmental infrastructure. These amongst other things include sports and physical activities, strategic open space projects, community equipment and assistive technology, early years child place sufficiency, highways asset management network recovery plan, Colindale parks and open spaces, Colindale highways and transport, and Town Centre Improvement, all of which will contribute towards implementing the objectives of both the BLP and the emerging dBLP.
10. Taking into account other likely funding sources, including direct from government, the Council's IDP estimates a total infrastructure gap of about

£1,347m. Since coming into force, the amount raised by the Council from their existing CIL levy rates is approximately £10m per year. It is anticipated that the revised CIL charges, as proposed, would raise between £25.5m rising to around £33.9m a year when the new rate is fully embedded. Therefore, it is projected that the CIL would generate between £382.5m and £509m in total up to 2036 towards infrastructure needs. In light of this evidence, the proposed CIL charges would make a significant contribution towards meeting the likely funding gap. The figures demonstrate the need to levy CIL in the London Borough of Barnet.

Economic viability evidence

11. The Council commissioned the London Borough of Barnet: Community Infrastructure Levy Viability Review (December 2019). As a result of the coronavirus pandemic the Council carried out a CIL Viability Review – Update (January 2021). These two documents taken together form the Council's CIL Viability Assessment (VA). The development typologies on sites across the borough selected for testing were not intended to represent specific development proposals, but to reflect typical forms of development that are likely to come forward in Barnet over the plan period. Whilst I accept that mixed use schemes were not included within the Council's development typologies, I do not consider that this is necessary nor is it practical, due to the mix and quantum of uses within each scheme almost certainly being unique to the site specific circumstances. The assessments use a residual valuation approach, using reasonable standard assumptions for a range of factors such as building costs, profit levels, fees, and changes in relation to national policy.
12. The VA sets out that the viability testing for the CIL review was carried out during a period of sustained growth, with the proposed CIL rates based on current values and costs. However, to take into account the market uncertainties related to exiting the European Union the model was subject to sensitivity testing in relation to projected growth over the plan period. This was achieved by carrying out indicative analysis that applies growth to sales values and inflation on costs to provide an indication of the extent of improvement to viability that might result. The model was adapted by relevant local data on existing land values; including Land Registry data and some recent transactions, taking into account that there are variations in average land values across the borough. Therefore, in general, the benchmark land values used are sufficiently realistic for comparison purposes in a generic study of this type.
13. The charging schedule has been informed by discussions with stakeholders and consideration of the representations made on the series of consultations carried out by the Council. The Submission Statement (CIL 3) demonstrates that an adequate and proportionate approach in relation to local stakeholder participation was taken by the Council. This was further reinforced by local developers being represented at the Examination Hearings.

14. The VA seeks to establish a residual value by subtracting all costs (except for land purchase) from the value of the completed development (the Gross Development Value). This is tested across a wide range of 'trial CIL rates' – i.e., with increasing CIL cost included. The price at which a typical willing landowner would be prepared to sell the land (the Benchmark Land Value) is then compared with the residual value to arrive at the 'theoretical maximum charge' that may be supportable. This informs the scope from which the CIL charge can be taken provided that there is a sufficient viability buffer or margin.
15. The Guidance states that it would be appropriate to include a buffer or margin so that the levy rates are not set at the margins of viability and are able to support development when economic circumstances adjust. This can also provide some degree of safeguard in the event that gross development values have been over-estimated or costs under-estimated and to allow for variations in costs and values between sites. As discussed below, the Council have apart from Leisure and Employment uses (both £20sqm) proposed CIL charges that provide a reasonable viability buffer or margin commensurate with the type of development being brought forward.

Conclusion

16. The draft Charging Schedule is supported by documentation demonstrating detailed evidence of community infrastructure needs and economic viability testing. 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?

Residential CIL rate

Residential including C2, C3 and C4 use classes and sui generis HMOs and other sui generis residential uses - £300sqm

17. The proposed requirement of a minimum of 35,460 new homes to be delivered in the borough is set out in Policies BSS01 Spatial Strategy for Barnet and GSS01 Delivering Sustainable Growth of the dBLP. To inform the VA the Council have used representative property sales data localised to the London Borough of Barnet. The approach considers a sufficient range and number of size and type of residential development schemes across the borough. These range from a very small residential house (1 Unit 108sqm) to large residential schemes (Flats 2,500 units), using average floor areas and a mix of units that are consistent with policies of the BLP. The analysis also includes estate regeneration schemes and older people's housing. The extensive testing of flatted schemes is particularly relevant in that this will be the key to the delivery of the residential growth planned to come forward in the borough over the plan period. Consequently, whilst there are differences in the results obtained, the

schemes are suitably reflective of the new housing projects likely to come forward locally in the current market conditions and provide the necessary information against which to assess viability in the borough. I consider that the Council's use of property sales data is sufficiently representative of the variations in the housing market across the London Borough of Barnet.

18. The VA recognises that, by definition, site specific abnormal costs cannot be accounted for in such generic analyses. Additionally, it is likely that any significant abnormal costs would reasonably be expected to be reflected in lower land sale values. Furthermore, the viability testing has properly examined the most likely scenarios but clearly cannot address all possible eventualities surrounding new development projects. Moreover, the residential CIL rates have been the subject of extensive viability testing to take into account land values, construction costs, density, residual planning obligation costs and the requirement for affordable housing.
19. Whilst overall there is an underlying strength and viability in the London Borough of Barnet property market, the Council's analysis also demonstrates the difference in the ability of residential development in different parts of the borough to viably support a CIL charge, in particular Golders Green/Hampstead which could viably support a CIL charge significantly higher than the rest of the borough. Notwithstanding this, the Council have proposed a single CIL rate of £300sqm for residential uses in the borough, that would replace the extant index linked rate of £202sqm. I concur with the Council's contention that a single residential rate is simpler to administer and that there would be limited benefit in setting a differential rate in Golders Green and Hampstead due to development in those areas being likely to benefit from self-build relief. I therefore consider that a single boroughwide residential rate is appropriate and justified by the available evidence.
20. With regard to the provision of affordable housing BLP Policies CS4 and DM10 set a boroughwide target of 40% affordable homes on sites capable of accommodating 10 or more dwellings. The Council's evidence indicates that the proposed residential CIL rate may possibly lead to a potential reduction in delivery of 1.2% when compared to the existing affordable housing delivery rates in the borough. As such, there could be implications for the delivery of affordable housing in the borough, albeit marginal. However, should viability issues come to the fore in relation to affordable housing there are established mechanisms that allow schemes to be tested on a site by site basis. Moreover, the Council confirmed that they intend to retain the Exceptional Circumstances Relief policy along with the introduction of a CIL in Kind policy. As such, I consider that there are adequate safeguards in place to ensure that the proposed residential CIL charge would not materially undermine the delivery of affordable housing in the London Borough of Barnet.

21. The proposed CIL rate of £300sqm is below the maximum theoretical CIL rate in the majority of circumstances and overall would remain a very low proportion of overall development costs, typically around 2.5%. The proposed rate would ensure a sufficient viability margin which would provide some degree of safeguard for variations in the market, ensuring that the vast majority of new housing development could be delivered in accordance with the BLP and emerging dBLP. I am therefore satisfied the proposed rate of £300sqm for Residential including C2, C3 and C4 use classes and sui generis HMOs and other sui generis residential uses is justified on viability grounds and would strike an appropriate balance.

Commercial rates

22. Representative commercial rent and yield data was used to inform the commercial elements of the VA. With the exception of Leisure uses which are discussed below, the approach considers an adequate range and size and type of commercial development schemes across the borough. These included office, industrial, storage and schemes. RICS BCIS data in relation to build costs was also utilised. This data was reviewed to take into account the Covid-19 Pandemic in January 2021. Consequently, the VA as a whole considers schemes that are suitably reflective of commercial projects likely to come forward in the borough in the current market conditions and provide the necessary information against which to assess viability in the borough. I consider that the Council's VA data is sufficiently representative of the variations in the commercial market across the London Borough of Barnet.
23. Based on their evidence the Council have proposed nominal rates for Leisure (including former D2 uses and sui generis leisure uses) and Employment (including former B use classes and/or B2 and B8 uses).

Leisure (including former D2 uses and sui generis leisure uses) - £20sqm

24. The Council have proposed a nominal CIL rate of £20sqm for Leisure (including former D2 uses and sui generis leisure uses). I have carefully considered the evidence submitted by the Council along with their hearing session representations. In particular I have taken into account the setting of similar rates elsewhere in London and that a CIL rate of £20sqm would be less than 0.5% of overall development costs. Furthermore, I accept that leisure uses are increasingly important to the vibrancy of the high street and their inclusion in development schemes can increase overall development value.
25. However, I must consider the appropriateness of the CIL rates based on the very limited evidence and analysis provided in relation to leisure typologies, in comparison with that provided for other uses. As such, I do not consider that the available evidence demonstrates that leisure development has the scope to absorb any material level of CIL. Consequently, I conclude that setting a rate of

£20 for leisure (including former D2 uses and sui generis leisure uses) would not be consistent with the viability evidence. I therefore recommend that the rate should be reduced to nil (**MM1**). In reaching this conclusion I have considered the impact on the delivery of new/improved infrastructure required to facilitate planned growth within the borough and conclude that setting the charge at £0/sqm is unlikely to materially reduce CIL income.

Employment (including former B use classes and/or B2 and B8 uses) - £20/sqm

26. In relation to Employment (including former B use classes and/or B2 and B8 uses), the Council have proposed to set a nominal CIL rate of £20/sqm. In doing this the Council accepts that their updated office appraisals (January 2021) show less capacity to absorb CIL contributions than was previously the case in 2019, although storage appraisals show improved capacity to absorb a CIL charge.
27. I recognise the evidence suggests potential viability implications of a CIL rate of £20/sqm in particular in relation to office development. However, the proposed CIL rate of £20/sqm would only be a very small proportion (0.5%) of overall development costs and in effect would be likely to have a neutral effect on viability. Therefore, whilst challenging in the current market, the nominal CIL charge would be unlikely to prevent office schemes coming forward in the borough. Conversely, there is significant demand for warehousing development, which has resulted in a significant increase in yields for this type of development providing an adequate margin for the nominal CIL rate.
28. Having reached the conclusions above, adequate evidence has been provided that gives reasonable assurance that the proposed rate of £20/sqm for employment (including former B use classes and/or B2 and B8 uses) would not undermine the deliverability of the BLP or the emerging dBLP. It would therefore strike an appropriate balance between securing additional albeit limited investment to support development and the potential effect on the viability of this specific type of development. I therefore consider that the proposed rate is reasonable and pragmatic, given the available evidence, accepting there is no requirement for a proposed rate to exactly mirror the evidence.

Hotels (C1) and Retail (including former A1-A5 uses)

29. The PPG is clear that charging authorities may revise their charging schedule in whole or in part. As set out above the Council have undertaken a partial review of their charging schedule with no changes proposed to the extant CIL rates for Hotels (C1) and Retail (including former A1-A5 uses), as such they will continue to be applied. Whilst it is noted that there has been some turbulence in both the hotel and retail sectors since the CIL came into force in May 2013 there is no

substantive or technical evidence that would suggest that the continued index linked CIL charges for Hotels and Retail would undermine the deliverability of the BLP or the emerging dBLP.

All other development

30. In relation to all other development, that includes education and health the Council have decided not to charge a levy. This is consistent with the evidence in the VA. This demonstrates that viability for these uses is challenging and with these types of development having limited scope to absorb any material level of CIL. I am satisfied that for the reasons given in the VA, setting a rate of £0sqm for these uses is evidence based and appropriate.

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

31. Having reached the conclusions above, with the exception of leisure (including former D2 uses and sui generis leisure uses), the Council's decision to set rates for the following development:

- Residential including C2, C3 and C4 use classes and sui generis HMOs and other sui generis residential uses
- Employment (including former B use classes and/or B2 and B8 uses)

And retain the existing rates for;

- Hotels (C1)
- Retail (including former A1-A5 uses)

is 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 charges are applied. Only if development sales values are at the lowest end of the predicted spectrum would development in some parts of the Borough be at risk, however, I consider this situation to be unlikely.

Conclusion and Legal Requirements

32. In setting the CIL charging rates, the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in the London Borough of Barnet. 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 borough.

33. Subject to the recommended modification the Charging Schedule complies with national policy/guidance.
34. Subject to the recommended modification, the Charging Schedule complies with the 2008 Act and the 2010 Regulations (as amended), including in respect of the statutory processes and public consultation, consistency with the adopted BLP and the IDP and is supported by an adequate financial appraisal.
35. Subject to the recommended modification, I conclude that the London Borough of Barnet 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.

Jameson Bridgwater

Examiner

Appendix A

Modification that the Examiner specifies so that the Charging Schedule may be approved:

MM1

Leisure (including former D2 uses and sui generis leisure uses) - ~~£20sqm~~ **£0sqm**