



The Planning
Inspectorate

Report to London Borough of Barnet Council

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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 BARNET COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 5 November 2012

Examination hearing held on 21 December 2012

File Ref: PINS/N5090/429/7

Non Technical Summary

This report concludes that the 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, subject to the modifications identified in the attached schedule, the levy is set at a level that will not put the overall development of the area at risk.

Modifications are needed for the schedule to meet the statutory requirements. These can be summarised as follows:

- Restrict the categories of chargeable development to residential (Use Classes C1-C4) and retail (Use Classes A1-A5) floorspace.
- Clarify that car parking space within new development, including ancillary car parking, will not be subject to charge.

These modifications are based on representations received during the consultation periods on the draft schedules and the modified version and on the discussion during the public hearing session. Whilst they alter the basis of the Council's approach they would not have a major impact on the appropriate balance between the amount of levy received or the level of risk to development.

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 (Charge Setting and Charging Schedule Procedures – DCLG – March 2010). To comply with the relevant legislation the local charging authority has to submit a charging schedule which it considers achieves an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the Borough.
2. The basis for the examination, which included one hearing session, is the submitted schedule of 5 November 2012. This is broadly the same as the one published for public consultation in July 2012.
3. The Council propose a flat rate charge of £135 per square metre (psm) on all types of chargeable development.

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

Infrastructure planning evidence

4. The Barnet Borough Local Plan Core Strategy (CS)¹, recently adopted in September 2012, sets out the broad land use strategy for the Borough. A key element of the CS is the housing trajectory, which responds to the significant housing challenge in London by proposing 28,000 new homes by 2026. Although the majority of new development will be residential there is also a major commercial proposal for the expansion of Brent Cross Cricklewood (BXC) to deliver a new metropolitan town centre. This already has planning permission and would not be subject to the CIL, unless major changes involving a new permission were required. Other CS proposals involve more retail floorspace concentrated in town centres at north Finchley and Edgware, among others.
5. To deliver the strategy, the Council has produced an Infrastructure Delivery Plan, which will be continually rolled forward following its original approval in November 2011. The projects contained in the IDP represent an accurate, up to date assessment of a range of needs which have generally been informed by service providers. The total estimated funding cost of all 'critical and necessary' infrastructure projects in Barnet over the CS plan period to support the population and housing growth up to 2016 is about £272m. It has not been disputed that even allowing for known funding mechanisms as shown in the IDP, including grant income, there will be a funding gap of about £92m. The CIL and income from Section 106 planning obligations are expected to generate about £30m in this period. Although what might happen to funding programmes cannot be predicted with accuracy, the level of income likely to be raised by the CIL would therefore make only a modest contribution towards filling the gap. The figures demonstrate the need to introduce the CIL.

Economic viability evidence

6. The Council commissioned an Affordable Housing and CIL Viability Study (VS) from BNP Paribas which was originally prepared in 2010 and updated in September 2011. The study analysed a number of scenarios based on a residual valuation approach, comparing existing use values that reflected up to date values for a range of sites that typically come forward for redevelopment in Barnet with their likely value after development. In general, there were few queries about the methodology and assumptions used in the residential appraisals. Values for completed developments were based on up to date information less than a year old; the Council and its consultant confirmed that sale prices and rentals had increased slightly (possibly by 2-3%) over the past year. It took account of variations in values across the Borough by postcode, and other relevant local data on housing densities and unit mix.
7. The VS employed a residual valuation method and used standard assumptions for a range of factors such as building costs (including Code for Sustainable Homes requirements) based on the industry standard RICS Building Cost

¹ ED01

Information Service (BCIS). Building costs had seen little change over the last year and the information was up to date. Other largely unchallenged assumptions for profit levels, finance costs, fees and developer's profit were included.

8. There were some objections to commercial scenarios, in particular those for retail development. These related to the omission of demolition costs and purchasers' costs, differences of opinion about professional fees rates and other minor factors such as the introduction of Mayoral CIL since the study was completed. I discuss the implications of these factors in my assessment of the justification for the levy below.
9. The VS tested the viability of CIL levels ranging from £0 to £250 psm on residential development at various densities taking account of affordable housing provision at 0%, 30% and 40%. It also tested a range of retail schemes offices in and out of town centres, industry/warehousing, a hotel, community and leisure uses and a residential institution.

Conclusion on the available evidence

10. The draft Charging Schedule is supported by detailed evidence of community infrastructure needs and a funding gap has been identified. Accepted information sources fed into the recognised valuation methodology which was informed by reasonable assumptions about local sale prices, rents and yields. The residential scenarios were robust. However, there were some acknowledged shortcomings with regard to the retail scenarios, which I consider in more detail below. While these may have had implications for some of the scenarios for commercial uses, in general the Council produced a sufficient amount of evidence to inform conclusions about the impact of the proposed CIL on the viability of a number of development scenarios. The evidence which has been used to inform the Charging Schedule is proportionate, appropriate and, in most instances, robust.

Is the charging rate informed by and consistent with the evidence?

CIL rates for residential development

11. The detailed evidence of house prices across the Borough was fed into a considerable number of affordable housing viability appraisals. The VS indicates that at the previously required affordable housing ratio of 30% a range of CIL rates at £210 to £350 per sq m could be applied across the Borough, depending on the location. The Council stated that the CIL rate had been set below the viability threshold in higher value areas deliberately, to be comparable with current Section 106 tariffs and so retain investor confidence in the housing market. Overall CIL would be a very small proportion of residential development costs (about 3.3%).
12. A key scenario (model 23) tested affordable housing provision at 40% on sites with more than 10 dwellings, in accordance with recently approved CS policy, split into 60% affordable rent and 40% intermediate housing, without grant but with appropriate allowances for Section 106 costs of £20 per sq m,

the Mayoral CIL and Code for Sustainable Homes standards. This showed that housing would generally remain viable across the Borough with the CIL rate proposed, albeit at reasonably high densities and with sales values at the higher end of the expected range.

13. There may be some parts of the Borough, such as the Regeneration Areas, one of which is BXC, where the viability of housing schemes supported by site specific Section 106 planning obligations is more marginal. Although not a subject for my examination, the Council has stated that it may consider granting 'exceptional circumstances' relief for certain key proposals. If the strict criteria of the CIL Regulations are met, critical development important for the success of the regeneration policy may be unlikely to be jeopardised. A review of necessary infrastructure funding at key sites should be informed by the Council's recently published draft guidance on Section 106 obligations. As far as CIL is concerned, the overall development of new housing in the Borough would not be put at risk, based on the VS.

Retail development

14. The justification for charging the rate on retail development was based on one scenario in the VS for a store of about 2650 sq m. The VS calculations showed that the development would be viable with CIL in most parts of the Borough, assuming medium or high rent levels. Objectors proposing a major mixed use development incorporating about 19,000 sq m of retail space in Edgware town centre argued that the appraisal was flawed, because it did not represent a realistic proposal through the omission of cost elements and the Mayoral CIL. It was agreed that the types of retail schemes likely to come forward would vary; small unit developments were improbable in the current and likely future economic climate but developments of between 1,500 and 3,000 sq m, as expansions of convenience stores or in mixed use schemes, were possible.
15. The Council acknowledged that demolition and purchasers' costs should have been included in the appraisal, but argued that assumptions about professional fee levels were realistic. The appraisals include a yield assumption of 7%, which would give substantial headroom to accommodate some extra costs. Certainly any convenience floorspace would be assessed at a much lower yield of 4.5% to 5% and would be viable with CIL at £135 per sq m. While I have some sympathy with the argument that the retail scenario should have been done more thoroughly, taken in the round the evidence about retail costs and values suggests strongly that schemes would be viable with CIL as proposed across the Borough as a whole.
16. The potential viability problems with the Edgware scheme arise principally because it involves a significant area of car parking within a multi storey building which would be liable to charge. Some 33,000 sq m of parking would generate a levy of just under £4.5m which I have no doubt would jeopardise the viability of the scheme. The Council accepted that in principle a scheme such as this which involved replacement car parking for an important town centre site, would comply with its policy for the regeneration of the centre. In these circumstances it is appropriate to consider the impact of CIL on an individual proposal of such significance to the Borough as a whole.

17. In order to secure its policy objectives, if satisfied with the viability case, the Council's suggested solution appeared to involve some legal commitment before development commenced to re-imburse the CIL charge in some form of payment for provision of the parking infrastructure or grant exceptional circumstances relief. The former would create considerable uncertainty while the latter would be unlikely to address viability concerns if a Section 106 obligation with a value at least equivalent to the CIL charge were required. I consider the more appropriate way forward would be to exclude CIL charges on car parking space in the Borough, whether ancillary or not, as there is no supporting viability evidence to underpin charging for this element of any new development. The Council now supports this change, which would not prejudice any party's interest and should be clarified in the schedule **[EM2]**.

Other commercial development

18. The VS states quite clearly that in broad terms, most office, industrial and warehouse development is not viable at present within Barnet. The office market in outer London has been stagnant for many years and sites often come forward for conversion to residential use. A similar picture is painted for industrial/warehouse sites. The VS recommends a nil rate for other commercial development. The Council's argument that introducing a CIL would have little impact on the very small revenues likely to be generated has little force. The balance could easily be tipped against the limited amount of development that might come forward in mixed use schemes if another cost were to be added. There is no justification for the CIL on these uses.

Community facilities

19. Similarly there was compelling evidence from the bodies responsible for providing facilities for policing and fire safety that charging CIL would prejudice the provision of buildings needed to maintain essential public services. These uses have to be supported through public subsidy in any event. The Council's stated commitment to reimburse CIL charges through some form of grant lacks certainty and would appear to add an unnecessary layer of bureaucracy to the funding of buildings for public services. Similar argument would apply to other publicly funded buildings for leisure uses. Not all educational or community facilities would be eligible for charitable relief. Similarly health facilities would have to go through a potentially cumbersome and uncertain process of negotiation with the Council to secure scarce CIL resources before committing to a development.

Other matters

20. In producing the schedule the Council include a considerable amount of additional material that was in essence supporting text justifying the charge and publicising procedural matters. Much of this material could be excised without detriment to the clarity of the main elements of the schedule, namely the classes of development to be charged and the rate per sq m. To limit the schedule in this way would enable a much simpler process if it needed to be reviewed in future years. I recommend the Council make a further change to the schedule to include only paragraphs 1.1.1 to 1.1.7, which should be subject to the removal of all classes of development from the levy except residential and retail.

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

21. In setting the CIL rates the Council has had regard to detailed evidence of infrastructure planning derived from the Core Strategy and the updated IDP. It has balanced this with evidence in the VS, taking account of the characteristics and varying sales values in different parts of the Borough for residential property. It has also taken into account evidence of varying viability for retail development. However, the draft schedule disregards the evidence of the VS that other commercial development, such as offices and industry/warehousing, is not likely to generate rent levels or sales values that would sustain a CIL charge. The draft CIL is not justified by the evidence and a significant number of development categories would be put at risk across the Borough if it were to be levied. The lack of general viability of other types of commercial, industrial and community development leads me to conclude that a modification is essential, to ensure the CIL is charged on residential and retail development alone [EM1]. The proposed CIL rate on these two types of development is based on reasonable assumptions about development values and costs.

Conclusion

22. The evidence suggests that the overall development of the area will not be put at risk if the CIL is charged on residential and retail development at the rate of £135 per sq m. 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 Barnet Borough. In broad terms, because about 95% of income is expected to come from residential schemes, the Council has taken a realistic approach in terms of achieving a reasonable level of income to address the identified gap in infrastructure funding, while ensuring that the overall development of the area would not be at risk.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy and 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 Core Strategy and the Barnet Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

23. I conclude that subject to the modifications set out in Appendix A the Barnet Borough 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 2011). I therefore recommend that the Charging Schedule be approved.

Geoff Salter

Examiner

This report is accompanied by:

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

Appendix A

Modification recommended by the Examiner to allow the Charging Schedule to be approved.

Modification No	Modification
EM1	Re-draft the CIL to apply to residential (Use Classes C1-C4) and retail (Use Classes A1-A5) development only.
EM2	Clarify that car parking space within any development, whether ancillary or not, will not be subject to the charge