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AN EXAMINATION UNDER SECTION 212
OF THE PLANNING ACT 2008 (AS AMENDED)

**REPORT ON THE DRAFT LONDON BOROUGH of BROMLEY
COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

Independent Examiner (appointed by the Council): Keith Holland BA (Hons)
DipTP MRTPI ARICS

Charging Schedule Submitted for Examination: 13 January 2021

Date of Report: 17 February 2021

Main Findings - Executive Summary

In this report I have concluded that the draft London Borough of Bromley Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area.

The Council has provided sufficient evidence that shows the proposed rates would not threaten delivery of the Local Plan.

One modification is necessary to meet the drafting requirements. This is to add the following to footnote 1 that accompanies the Charging Schedule table:

**Large scale refers to 50 or more units of accommodation.
Accommodation with less than 50 units will be subject to the £100 per sq. m charge.**

The specified modification recommended in this report does not alter the basis of the Council's overall approach or the appropriate balance achieved.

Introduction

1. I have been appointed by the London Borough of Bromley Council, the charging authority, to examine the draft Bromley Community Infrastructure Levy (CIL) Charging Schedule. I am a chartered town planner with more than 50 years' experience including 25 years' experience inspecting and examining development plans and CIL Charging Schedules as a Government Planning Inspector.
2. This report contains my assessment of the Charging Schedule in terms of compliance with the requirements in Part 11 of the Planning Act 2008 as amended ('the Act') and the Community Infrastructure Regulations 2010 as amended ('the Regulations')¹. Section 212(4) of the Act terms these collectively as the "drafting requirements". I have also had regard to the National Planning Policy Framework (NPPF) and the CIL section of the Planning Practice Guidance (PPG)².
3. To comply with the relevant legislation, the submitted Charging Schedule must strike what appears to the charging authority to be an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the district. The PPG states³ that the examiner should establish that:

¹ The Regulations have been updated through numerous statutory instruments since 2010, most significantly through the Community Infrastructure Levy (Amendment) (England)(No. 2) Regulations 2019, which came into force on 1 September 2019.

² The CIL section of the PPG was substantially updated on 1 September 2019.

³ See PPG Reference ID: 25-040-20190901.

- the charging authority has complied with the legislative requirements set out in the Act and the Regulations;
 - the draft charging schedule is supported by background documents containing appropriate available evidence;
 - the charging authority has undertaken an appropriate level of consultation;
 - the proposed rate or rates are informed by, and consistent with, the evidence on viability across the charging authority's area; and
 - evidence has been provided that shows the proposed rate or rates would not undermine the deliverability of the plan (see NPPF paragraph 34).
4. The basis for the examination, which took place through written representations, is the submitted schedule of January 2021 which is the same as the Draft Schedule published for public consultation from 6 November to 20 December 2020.
 5. In summary, the Council propose a matrix approach as follows:
Residential development excluding residential development which delivers additional care and support services £100 per sq. m; large scale purpose built shared living and purpose built student accommodation £150 per sq. m; retail warehousing over 1000 sq. m £100 per sq. m; supermarkets/foodstore over 280 sq. m £100 per sq. m. All other development is charged at £0 per sq. m.
 6. For the sake of clarity, footnote 1 to the Charging Schedule table needs to be amended to include a definition of "large scale purpose built shared living". I recommend this modification (**EM1**) as set out in the Appendix to this report.

Has the charging authority complied with the legislative requirements set out in the Act and the Regulations, including undertaking an appropriate level of consultation?

7. The consultation process undertaken by the Council involved publishing the full range of supporting documents and the draft Charging Schedule on its website, informing the Section 16 "consultation bodies", notifying all those registered on the Council's notification database, those who responded to the Preliminary Draft Charging Schedule and any individual who requested to be notified on the progress of the CIL. A notice was placed in the local press. The documentation was not put on public deposit because of the Covid-19 pandemic but any interested party could make arrangements with Council officials to inspect the documents on an appointment basis. No requests to inspect the documents were received. In total there were 18 written responses to the Regulation 16 consultation.

8. The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Local Plan (LP) and the Infrastructure Delivery Plan, and is supported by an adequate financial appraisal. I also consider it compliant with the national policy and guidance contained in the NPPF and PPG respectively.

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

Infrastructure planning evidence

9. The LP for Bromley was adopted in 2019 and complies with the London Plan 2016. The LP sets out the main elements of growth that will need to be supported by further infrastructure in Bromley. The Plan provides for 641 additional dwellings per year (2015 – 2025). Three strategic areas for economic growth are identified at Biggin Hill, Bromley Town Centre and Cray Valley Business Corridor. The town centre proposals reinforce the policies in the 2010 Bromley Town Centre Action Plan. Thirteen sites are allocated for housing in the LP which includes a policy requiring 35% of dwellings on sites of 11 or more dwellings to be in the form of affordable housing.
10. Bromley Town Centre is designated as a Metropolitan Town Centre and as an opportunity area in the London Plan with Orpington defined as a Major Town Centre. Cray Valley is defined as a Strategic Industrial location. The London Plan forecasts employment growth of 13.6% in Bromley between 2011 and 2036. Bromley Town Centre is seen as the focus for sustainable growth for retail, office, housing and leisure/cultural facilities.
11. An Infrastructure Delivery Plan (IDP) for Bromley was updated in August 2020. Based on the growth proposals in the LP the IDP identifies 12 areas that will require infrastructure provision including transport, education, health, community facilities and utilities. Each of these areas is examined in terms of the existing infrastructure, future demand, costs and potential funding sources.
12. The IDP contains a very wide range of projects some of which are long term – for example the extension of the Bakerloo Line after 2030 costing an estimated billion pounds. The majority of the projects are much less ambitious and include for example relatively modest schemes such as cycle hubs at three railway stations costing an estimated £120,000 each and more costly schemes such as a local cycle network at an estimated £12,000,000 (this scheme has a funding gap of £9,400,000). For education the identified funding gap is over £56,000,000 and all of the other areas examined by the Council in the IDP also show a funding gap at the present time, albeit not necessarily on the scale of the education gap. The IDP convincingly shows that a CIL can be justified on the basis of an identified funding gap of £93,000,000 of which £26,000,000 is needed in

the next 5 years.

13. In the light of the information provided, the proposed charge would make only a modest contribution towards filling the likely funding gap. The figures clearly demonstrate the need to levy CIL.

Economic viability evidence

14. For the LP, viability work based on a residual valuation approach was undertaken by Dixon Searle Partnership in 2016. This study was updated for the purposes of establishing a CIL Charging Schedule. The updated viability study report was published in July 2020.
15. For the purposes of assessing how the CIL impacts on the viability of development using a residual valuation approach it is necessary to have data for three broad areas. First the anticipated costs of development including profit and costs associated with planning policies but excluding land costs. Second, end sales values in the locality. The difference between the cost and the value is the residual land value (RLV) i.e. the amount of money available to purchase the development site. Third a judgement then has to be made about how much of any RLV can be used to pay a CIL charge. Clearly the CIL charge cannot be set at a level that would discourage a reasonable land owner from selling their land for development.
16. Dixon Searle's work is based on reasonable standard assumptions applicable in London for a range of factors such as building costs, profit levels, contingencies and fees. None of the representations have challenged the assumptions made. The assessments carried out have taken into account costs that are expected as a result of the policies in the LP, including the provision of affordable housing (assumed applicable on sites of 10+ dwellings to meet the NPPF requirement rather than the LP policy that relates to 11+ sites). Furthermore the "top slicing" cost resulting from the Mayoral CIL2 - £60.00 per sq. m - has also been taken into account. Hence the imposition of the CIL charge by the Council should not compromise the policies in the LP.
17. Part of the viability assessment involved testing a range of CIL rates. For residential development the range was between £0 to £300 per sq. m, going up in increments of £25 for residential development and increments of £15 for commercial/non-residential development. The on-going role of s106 was also a consideration that was taken into account with an allowance of £3,000 per dwelling applied.
18. In assessing viability, it is necessary to have regard to the type of development anticipated in the area. The use of typical anticipated development site types (typologies) rather than specific site examples is frequently used in CIL viability assessments. In this instance for residential development a wide range of typologies has been used. Sites of varying sizes from 1 to 800 dwellings at densities varying from 35 to 300 dwellings per hectare have been tested. Schemes for a range of

developments have been assessed including houses, flats, mixed use, student housing and co-living accommodation. The testing is comprehensive and clearly relates to development opportunities typical of those found in a London Borough such as Bromley. Account has been taken of where development is focussed in the LP policies. In some forms of development cost estimates have included elements such as basement parking that add to standard costs. Appraisals are also provided for student accommodation, co-living and care homes.

19. To establish residential sales values the assessment provides a comprehensive amount of data based on research material from the Office of National Statistics, the UK Land Registry, the Royal Institution of Chartered Surveyors and Savills. Sold and asking price data for new build and resales in Bromley from the Land Registry, supplemented by information from "Rightmove" and "Zoopla", is provided. For retirement, sheltered and extra care homes the data is supplemented by information from "RightMove" and McCarthy and Stone. Not surprisingly the data shows price variations in the borough. For key development locations such as Bromley Town Centre and Crystal Palace the research shows values in the mid to upper range for the borough - £5,500 to £6,100 per sq. m. For specialist forms of residential accommodation such as retirement homes the data is limited but based on experience, Dixon Searle believe that the values are likely to be relatively high at £6100 - £7000 per sq. m.
20. As regards commercial development and specialist accommodation the assessment provides information from several sources including CoStar (for lease and sales comparables for retail, office, industrial/warehousing and hotels), Valuation Office Rating list, the 2019 Commercial Market Surveys from the Royal Institution of Chartered Surveyors and Savills and the property Investment Yields Guide 2019 from Knight Frank.
21. Using the research information development appraisal summaries are provided for a wide range of forms of development of varying sizes including supermarkets, comparison shops, small convenience retail, large format retail warehousing, industrial/warehousing, car showrooms, offices, hotels and restaurants. Rental levels for each development typology are tested against three levels of build values (low, medium and high).
22. The third broad area to be considered in a CIL viability assessment is to test the RLV against a benchmark land value (BLV) to establish the level, if any, of viability headroom. Dixon Searle have assessed BLVs for Bromley on the basis of existing evidence, previous viability studies, site specific viability work and the Ministry of Housing, Communities and Local Government (MHCLG) guidance on land value estimates for policy appraisal (2018). Government planning policy guidance is clear that BLV should be based on the principle of existing use value plus a premium (EUV+) to incentivise the owner of the site to release it for development. Dixon Searle note that an uplift factor of 20% above EUV is usually sufficient to provide the necessary incentive.

23. The 2016 viability study carried out for assessing viability for local plan purposes assumed £5,000,000 as the upper BLV. The 2020 updated assessment for this CIL is based on an upper level BLV of £10,000,000. This is a prudent approach given that there is expected to be a concentration of development in and around Bromley Town Centre where higher EUVs based on existing commercial uses could be found. At the lower end BLVs of £250,000 are often used based on a 10X premium above agricultural land values. However, development in Bromley is highly unlikely to be on land that is presently in agricultural use and hence a higher lower end BLV of £750,000 has been used by Dixon Searle for this assessment. Thus, for both residential and commercial development this CIL viability assessment compares RLVs against BLVs ranging from £750,000 to £10,000,000.
24. The draft Charging Schedule is supported by detailed evidence of community infrastructure needs and justified by a comprehensive and convincing viability assessment. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.

Are the proposed rates informed by and consistent with the evidence on viability across the charging authority's area?

Residential development

25. Testing by Dixon Searle involves a variety of residential schemes in different locations subject to varying CIL levels assessed against a BLV appropriate for the type of development being considered. Value levels (VL) for the different types of development in different parts of the borough are shown to be a critical element of the testing. Affordable housing requirements are also taken into account for schemes of 10 or more dwellings. Thus for example for schemes involving less than 10 dwellings the assessment does not allow for any affordable housing and assumes that the site is likely to involve previously developed land (or garden land) with a BLV of £3,500,000 to £5,000,000 per ha. The conclusion is that this type of scheme could stand a CIL of £75 - £100 per sq. m and remain viable with a VL of £5,500 - £5,800 per sq. m. Critically in the assessments Dixon Searle assume a viability buffer of around 50%.
26. For a housing scheme for between 10 and 100 houses the assessment shows that using a BLV of £3,500,000 and requiring 35% affordable housing a CIL rate of £100 per sq. m would be acceptable in viability terms assuming VLs at the lower end of the range in the borough – above £4,200 per sq. m. For schemes involving flats higher development costs require VLs at £5,500 per sq. m and above to justify a CIL of £100/sq. m. Clearly schemes involving flats are more challenging in viability terms than those involving houses but, as Dixon Searle note, given the expected location of developments involving flats (other than in Bromley Town Centre) higher level VLs over £5,500 per sq. m can reasonably be

expected.

27. In Bromley Town Centre the viability situation is more fragile for developments involving flats, especially those with underground parking. In Bromley Town Centre Dixon Searle regard £5- £10,000,000 as the appropriate BLV. Dixon Searle conclude that at the high VLs of £6,100 – £6,700 per sq. m that can be expected in the town centre a CIL charge between £25 and £75 can be supported. Where underground parking is included at a cost of £25,000 per space the assessment is that a CIL charge is not supportable. Dixon Searle contend that there is “a good possibility that when such viability constraints come together, they will be supported by sufficiently high sales values to overcome them ...”⁴. Dixon Searle consider that a £100 per sq. m charge remains broadly supportable overall on a borough-wide basis.
28. Turning to sheltered and retirement housing Dixon Searle note that although these types of schemes usually involve higher build costs they also have higher sales values in the £6,100 to £7,000 per sq. m range. The assessment shows that on previously developed land this form of development can support a charge of £100 per sq. m. A different conclusion is reached in relation to care homes/nursing homes on the basis that values for this type of development would need to be higher than £7000 per sq. m and because these types of development are highly sensitive to falling values. Hence a logical view that these types of development should have a nil charge.
29. Build for rent developments with affordable private rents set at 75% of market rent would not easily be able to meet a £100 per sq. m CIL. However, this form of development is not particularly prevalent in the borough and the Council has reasonably decided not to complicate the Charging Schedule unnecessarily.
30. Purpose built student accommodation and co-living developments show strong viability with yields as low as 3.75% demonstrating strong investment prospects and confidence in the sector. The assessment shows that these forms of development can support a CIL charge of up to £200 per sq. m. The Council’s proposed rate of £150 is in line with the view taken by Dixon Searle.

Commercial rates

31. For supermarkets/foodstores the assessment is that a £100 per sq. m charge is supportable taking a positive view based on high rental values and a yield of 5%. The positive view is justified by the evidence of the Knight Frank Yield Guide (May 2020) that shows positive market sentiment with yields of 4.25 to 4.75% for this type of development. The Dixon Searle assessment is not unduly optimistic. For retail warehousing the 2016 viability work for the LP showed the strongest viability prospects. This continues to be the situation. Although not based on yields that are

⁴ CIL Viability Assessment – Update Review – Final Report paragraph 2.2.22.
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as positive as those for supermarkets, retail warehouses can achieve RLVs around £5,000,000 per ha and are able to support a £100 CIL charge.

32. In contrast to supermarkets and retail warehouses, town/local shops and restaurants show high yields that support low development values. These types of use cannot support a £100 CIL charge without a threat to their viability assuming a BLV of £1,500,000/ha. A similar general conclusion applies to car showrooms.
33. Yields for offices and industrial development increased in 2020 showing a decreasing confidence in these forms of development. The 2016 work by Dixon Searle showed that offices/industrial developments could not support a CIL charge and this conclusion remains the case. For hotels the prospect of being able to accommodate a CIL charge are poor unless based on high rental values and a yield of 5%. These yield and rental levels are vulnerable to negative sentiment for the hotel sector and the Council has reasonably accepted the view that a nil rate should apply to hotels.

Has evidence been provided that shows the proposed rate or rates would not undermine the deliverability of the plan (see National Planning Policy Framework paragraph 34)?

34. The Council's decision to adopt a matrix approach is based on reasonable assumptions about development values and likely costs. In setting the charging rates the Council has attempted to take into account the need to avoid setting rates at or close to the margins of viability. The viability buffer applied in Bromley is around 50% - meaning that the charging rate is set at about half the level that it could be if taken to the limit of viability.
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 Bromley. 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.
36. A number of the representations relate to how the funds raised by the CIL should be spent. This consideration is a matter for the Council and is not relevant to this examination of the Charging Schedule.
37. The substance of the relevant representations that claim the charge proposed is too high, is essentially that the CIL should be used as a means of encouraging development in various locations including Bromley and Orpington town centres and the Ravensbourne, Plaistow & Sundridge Renewal Area. The concern is that the proposed CIL charge could discourage development in the parts of the borough, including the opportunity area, where there is a need to support development,

particularly housing. A zoning approach is suggested whereby lower rates are applied to areas where development needs to be encouraged. No quantitative evidence has been supplied and no alternative CIL rates are suggested. Furthermore, the representations have not produced any quantitative evidence that challenges the assumptions and assessments provided by Dixon Searle.

38. Notwithstanding the lack of any substantial hard evidence from those making representations there is an issue about the rate being proposed for residential development in Bromley Town Centre. This is particularly important given the crucial role Bromley Town Centre has to play in the delivery of the Bromley Local Plan. This issue arises firstly from the cautionary tone taken by Dixon Searle and secondly from their conclusion about the CIL charges that can be supported for flat developments in Bromley Town Centre.
39. As regards the first, Dixon Searle note that "The nature and type of housing development planned for Bromley Town Centre (i.e. predominantly high density flats) in particular may need closer consideration around whether potential CIL differentiation is necessary or appropriate...."⁵. A factor in the caution is the high BLV in the town centre. Thus, compared with the 2016 study, the updated study revises the BVL upwards from £5,000,000/ha to £10,000,000/ha in Bromley Town Centre.
40. As regards the second, Dixon Searle conclude that: "Our extensive values research indicated that Bromley Town Centre can support values at the upper end of our range from VL8 to VL10 (£6,100/m² to £6,700/m²). On this basis we consider a lower CIL rate of £25 to £75 is supportable whilst £100/m² CIL remains broadly supportable overall (borough-wide, on typically lower value sites)"⁶.
41. Dixon Searle conclude that Bromley Borough Council could consider setting a differential rate for town centre areas, particularly Bromley Town Centre. Dixon Searle do not recommend this on the grounds that there is a good possibility that sufficiently high sales values may be achieved to overcome any viability issue⁷. Their view is that one cannot be certain that a more targeted approach would be significantly more responsive. This is because the overall recommended rate is set at a level workable across a great majority of circumstances (i.e. relatively low) and "any differential would be relatively small in monetary terms and in the context of CIL as a modest proportion of development value of cost"⁸.
42. The need for a differential rate for Bromley Town Centre is clearly a matter that deserves consideration, not least because of the clear conclusion by Dixon Searle that a charge of between £25 and £75 is

⁵ CIL Viability Assessment – Update Review – Final Report paragraph 1.4.30.

⁶ Ibid Paragraph 2.2.18.

⁷ Ibid paragraph 2.2.22.

⁸ Ibid paragraph 3.2.3.

supportable. However, there are factors, in addition to simplicity, that support the Council's view that a differential rate should not be applied. First under the draft London Plan, Car Free proposals basement parking is unlikely to be required and the Council say that the frequency of schemes relying on basement parking is likely to be low. Second as the 50% viability buffer is a generous one there is scope for CIL notwithstanding the results of the Dixon Searle assessments. Third the Dixon Searle work takes a cautious approach in so far as it takes no account of any discounting of the CIL charge to reflect the existing floorspace on development sites. In a report to the Development Control Committee (September 2020) regarding the CIL Charging Schedule it is recorded that typically two thirds of sites contain existing lawfully used floorspace and that this represents about a 33% reduction in CIL liabilities. Fourth at £100 per sq. m a CIL charge would represent "a maximum of about 2.5% Gross Development Value in this borough context; more likely 1.5 to 2.0% GDV"⁹.

43. It is considered that the quantitative conclusion reached by Dixon Searle carries considerable weight, particularly in the light of the importance of the Bromley Town Centre to the delivery of the LP. However, the points made in support of a borough wide rate of £100 are also considerations that weigh in the balance. Taking both sides of the issue into account it has been concluded that a £100 rate is acceptable in Bromley Town Centre notwithstanding the quantitative assessment by Dixon Searle. There are two factors that are critically important to this conclusion. First there is the generous 50% viability buffer. Second is the legislative provision relating to existing lawfully used floorspace. This factor is particularly important in a town centre where the scope for discounting the amount payable under CIL will frequently apply because of existing buildings on development/redevelopment sites. Confidence that this conclusion is justified is provided by the assessment that a £100 charge would usually represent less than 2% of Gross Development Value.

44. I consider the viability assessment to be robust and conclude that the residential and commercial rates proposed would not threaten delivery of the Local Plan. The proposed rates are justified therefore.

Overall Conclusion

45. I conclude that the draft Bromley Community Infrastructure Levy Charging Schedule, subject to the making of modification **EM1** set out in the Appendix to this report, satisfies the drafting requirements. I recommend that the draft Charging Schedule be approved.

Keith Holland

Examiner

⁹ CIL Viability Assessment – Update Review- Final Report Paragraph 33.

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Attachments:

Appendix – Modifications that the examiner specifies so that the Charging Schedule may be approved.

Appendix

Examiner Modifications (EM) recommended in order that the charging schedule may be approved.

Examiner Modification (EM)	Page no./ other reference	Modification
EM1	Page 2 Footnote 1. Charging Schedule Table.	Add to footnote: Large scale refers to 50 or more units of accommodation. Accommodation with less than 50 units will be subject to the £100 per sq. m charge.