



The Planning Inspectorate

Report to the Royal Borough of Kingston upon Thames Council

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an Examiner appointed by the Council

Date: 5 October 2015

PLANNING ACT 2008 (AS AMENDED)
SECTION 212(2)

**REPORT ON THE EXAMINATION OF THE DRAFT ROYAL
BOROUGH OF KINGSTON UPON THAMES
COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

Charging Schedule submitted for examination on 22 June 2015

Examination hearings held on 3 September 2015

File Ref: PINS/Z5630/429/9

Non Technical Summary

This report concludes that the Royal Borough of Kingston upon Thames 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.

Two modifications are needed to meet the statutory requirements. These can be summarised as follows:

- Produce the Residential Charging Zones map on an OS base with National Grid lines;
- Make changes to remove unnecessary text and make the document clearer.

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

Introduction

1. This report contains my assessment of the Royal Borough of Kingston upon Thames 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 – February 2014).
2. To comply with the relevant legislation the local charging authority has to submit what it considers to be 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 district.
3. The basis for the examination, on which hearings sessions were held on 3 September 2015, is the schedule submitted on 22 June 2015. This is a version containing minor modifications to the draft that was subject to public consultation between 10 January and 7 March 2014.
4. The minor modifications were published for consultation on 5 May 2015 for a four-week period. The minor modifications merely deleted explanatory material, which would not be necessary in the adopted version, and updated the explanation of CIL charge calculation and did not alter the substance of the Schedule.
5. The Council propose a matrix approach to charging, as set out in the following table.

Development Type	Proposed CIL rate (£/sqm)			
	Zone 1	Zone 2	Zone 3	Zone 4
Residential	£210	£130	£85	£50
Care Homes & Retirement housing	£50		£20	
Extra Care housing	£20			
Student Housing	£220			
Retail-Convenience based supermarkets and superstores ⁽¹⁾ and retail warehousing (net retail space >280sqm) ⁽²⁾	£200			
	Kingston Town Centre - Primary Shopping Area		Rest of Borough	
All other Retail (A1-5)	£200		£20	
All other Uses (with the exception of those identified below)	£20			
Public Services and Community Facilities ⁽³⁾	Nil			

(1) Superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit.

(2) Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers.

(3) Public Service and Community Facilities: Public service includes development by the emergency services for operational purposes; development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education; and development used wholly or mainly for the provision of any medical or health services, community halls, community arts centres, theatres, museums and libraries where development is for the purposes of delivering a public service or community facility.

Does the charging schedule meet the requirements of the Community Infrastructure Levy Regulations?

- The submitted Draft Charging Schedule (DCS) complies with the CIL Regulations except in relation to the Residential Charging Zones Map. Where charges are to be differentiated by zones, Regulation 12(2) has to be followed.

This states:

“(2) A draft charging schedule submitted for examination in accordance with section 212 of PA 2008 must contain—

- (a) Where a charging authority sets differential rates in accordance with regulation 13(1)(a), a map which—
 - (i) identifies the location and boundaries of the zones,
 - (ii) is reproduced from, or based on, an Ordnance Survey map,
 - (iii) shows National Grid lines and reference numbers, and
 - (iv) includes an explanation of any symbol or notation which it uses.
7. The Residential Charging Zones Map did not have the National Grid line reference numbers, as required by Regulation 12(2)(a)(iii). I drew this matter to the Council's attention, and whilst doing so, referred to the possibility of making the Map clearer and reducing the text in the Schedule by omitting unnecessary elements and improving clarity. The Council rectified the omission of National Grid Line numbers and agreed with my suggestions. In particular the Council has introduced a note in the text below the Rates Table which draws attention to a map on its website where the residential zones can be explored in greater detail, and provides a link. The resulting Charging Schedule is recommended for approval.

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

Infrastructure planning evidence

- 8. The Royal Borough of Kingston upon Thames Core Strategy (CS) was adopted in April 2012 covering a fifteen-year period. This sets out the main elements of growth that will need to be supported by further infrastructure during the plan period. An Infrastructure Delivery Plan (IDP) was published in January 2011 as part of the evidence base for the CS. It identifies the known infrastructure requirements arising from development expected to occur during the period 2012-2027. Subsequently the Council has worked with service and infrastructure providers to update the IDP, including the addition of new projects, deletion of completed projects, updates, and refreshed information on costs and funding sources.
- 9. An Infrastructure Funding Gap Assessment (IFGA) has been undertaken and published in January 2014, which included a draft R123 List. The IFGA focuses on a number of infrastructure projects necessary to deliver the growth identified in the CS and the Kingston Town Centre Area Action Plan adopted in July 2008. The list of infrastructure projects is set out under the headings: Social infrastructure; Physical infrastructure; and Green infrastructure. The aggregate funding gap for infrastructure delivery is set out in the following table, necessarily excluding any unknown funding gaps, and therefore will likely be a minimum.

Project Type	Project Theme	Estimated Cost	Funding Gap
Social Infrastructure	Education Projects	£21,000,000	£13,082,000
	Community Facilities Projects	£20,000,000	£16,500,000
	Health Projects	£3,600,000	£3,600,000
Physical Infrastructure	Transport Projects	£110,495,000	£10,425,000
	Decentralised Energy Network Projects	£7,850,000	£7,850,000
Green Infrastructure	Green Infrastructure	£6,474,000	£4,052,000
TOTAL		£169,419,000	£55,509,000

10. It can be seen that the aggregate funding gap before possible CIL income is taken into account amounts to circa £55.51m. This is likely to be an under-estimation, partly because there is considerable uncertainty over a number of funding sources/streams. Set against this gap, the Council estimates a projected CIL income of approximately £21.782m, which would lead to a residual funding gap of circa £34m. In the light of these figures, the proposed charge would therefore make a modest contribution towards filling the likely funding gap. The figures demonstrate the need to levy CIL.

Economic viability evidence

11. The Council commissioned a CIL Viability Study (VS), dated June 2014. The VS uses a residual land value method, involving calculating the value of completed schemes and deducting development costs such as build costs, fees, finance, and CIL plus developer's profit. This is a standard method used by developers when determining how much to bid for land – the residual amount is the sum left after the costs have been deducted from the value of the development. Levels of CIL have been tested in combination with the Council's planning requirements, including the provision of affordable housing. Since the housing and commercial property markets are inherently cyclical, a sensitivity analysis has been run which inflates sales values by 10% and build costs by 5%. An analysis has also been run which decreases sales values by 5% to enable a view to be taken of the impact of any adverse movements in sales values in the short term. The commercial appraisals incorporate sensitivity analyses on rent levels and yields. These analyses are indicative only, but assist in understanding the impact of changing markets on viability. Subsequently a document was commissioned which produced additional student accommodation evidence in June 2015.

Conclusion

12. The draft Charging Schedule is supported by evidence of community infrastructure needs and a funding gap has been identified. Accepted valuation methodology has been used which was informed by reasonable assumptions about local sale values, rents and yields, etc. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.

Are the charging rates informed by and consistent with the evidence?

CIL rates for residential development

13. There have been a number of general issues raised regarding the rates for residential development. These include the appropriate Benchmark Land Values (BLVs), the extent of 'buffer' or 'cushion' that has been allowed, the residual s106 costs, and the lack of allowance for demolition and abnormal costs. However, no alternative viability evidence is put forward. I therefore deal briefly with these matters, looking at the evidence that has been put before me in the VS and the Council's judgements in considering the advice that it contains.
14. The VS BLVs are based on current use values and the usual assumptions relating to rents and yields, refurbishment costs, etc. A 'cushion' of 20% has been allowed, which is a reasonable balance between raising money for infrastructure and not putting the viability of development at risk, albeit that it is at the lower end of the usual range taken by charging authorities to date. It also needs to be borne in mind that frequently there will be an offsetting allowance for existing floorspace. The residual s106 allowance made in the VS appears to be reasonable, bearing in mind that post-CIL such obligations should be scaled back. In respect of the allowance for affordable housing, whilst the Council has generally not met its policy targets in this regard, the VS calculations have allowed for the full policy requirements. As for demolition and abnormal costs, these should be allowed for on a site by site basis and form part of the judgement which is taken on the value of a site at the time of purchase. Abnormal cost, in particular, are what they say they are, and are very site specific. My conclusion on all these general matters is that the VS and the Council's balanced view on it is reasonable, and nothing raised suggests that the rates will prevent the majority of schemes from going ahead.

Student Housing

15. It is suggested that the proposed CIL rate for student accommodation is based on an unrealistic use of existing use value plus a 20% landowner premium. This will constrain supply of such accommodation and will, in turn, put further pressure on already squeezed housing markets. It is particularly suggested that where there is agreement between a private student accommodation provider and the university there should be a specific CIL exclusion or at least a significantly discounted charge for the provision of affordable student accommodation. Once again, no specific evidence to back these representations is put forward.

16. In response to representations about the rate for student accommodation, the Council commissioned Additional Student Accommodation Evidence dated June 2015. This provided evidence of accommodation examples in Kingston with current rent levels, and included a copy of a paper "A Guide to UK Student Property Investment in 2014" published by 'Student Buy-To-Let Property Investments'. A further Student Housing Sensitivity appraisal was also included. The original VS and this additional evidence satisfies me that the proposed charge for student accommodation is reasonable.

Commercial rate

17. A concern has been expressed that only five retail development appraisals have been undertaken to provide evidence for the determination of the rate of charge for this form of development, and that additional testing should be carried out. However, no specific suggestion of what additional appraisals are thought to be needed has been put forward, or any evidence to throw doubt on the charges proposed. I note that the retail charges have been reduced, compared to the proposals in the Preliminary Draft Charging Schedule, and that the rates have not been set at the limits of viability, but have a margin or contingency to allow for site specific viability issues. There is nothing put before me which justifies either asking the Council to commission further appraisals or to reduce the proposed rates based on the evidence in the VS.

All other uses

18. The DCS has an "All other Uses" rate, which carries "the exception of those uses identified below". These exceptions are identified as "Public Services and Community Facilities" the nature of which is described in a footnote. The "All other Uses" rate is proposed to be £20 psm, and is described by the Council as being set at a 'nominal' level so as not to impact on the delivery of development whilst still contributing to the delivery of infrastructure to support development.
19. There is a representation on behalf of an undertaking in the Royal Borough that relates solely to its unique form in Kingston upon Thames. Therefore, whilst normally CIL Examination reports do not deal with identified individual Representors, this part of my report only considers the circumstances and nature of Chessington World of Adventures Resort (CWoAR). The essence of the representations can be set out in the following way.
20. CWoAR occupies a total of 80 ha and one of its unique selling points is its large zoo that houses over 1,000 exotic animals. Unlike many zoos, this is a commercial business and not a charity (which would be exempt from CIL charges). Modern animal welfare standards and legislation mean that there needs to be significant on-going investment in the type and number of buildings that support the operation of the zoo. There is no direct financial gain from the 'back of house' animal facilities.
21. CWoAR points out that it regularly invests in facilities throughout the Park, with typical CIL liable development including indoor attractions/rides, new accommodation, food and beverage buildings, operational buildings such as maintenance and storage buildings, and general theme park back of house facilities in addition to those of the zoo. Some of these will be large-scale

buildings where a significant level of new floorspace will be provided: the Borough CIL, together with the Mayoral CIL, will place a considerable financial burden on CWoAR. An example is given of a recent hotel extension on the Park with an extremely tight budget: had the Borough CIL been in force, non-essential elements of the scheme would have been lost. The operational and back of house facilities bring no direct commercial return to the company and they should not be treated in the same way as typical developments where new buildings generally result in direct commercial gain through rent return, such as manufacturing output or offices for example. It is also pointed out that CWoAR is in competition with other theme parks, a number of which are in areas that have no approved CIL in place. This places it at a competitive disadvantage.

22. The Council's response is that there is no evidence that the "All other Uses" rate would render development on the Park unviable. It notes that the current owners of the Park invested large sums of money in 2014, which would not have been done if a good return were not expected. It notes that all businesses need to continue to upgrade and invest in their facilities to continue trading, and that all development on the Park will be undertaken to either improve or maintain and increase visitor numbers to either save/reduce costs or increase revenue. The Council also points out that s106 obligations will be reduced post CIL and that replacement buildings will be able to discount existing floorspace. As to the zoo, it is part of the offer that attracts visitors and therefore is a business cost. No evidence has been produced to substantiate that CWoAR will not be able to absorb the proposed charge.
23. Prior to the hearing I invited the Representor to provide any particular evidence that it relied on to support the case. The response included the points mentioned in paragraphs 20 and 21 above, but did not provide any real evidence that could be properly weighed. Therefore, at the hearing, I sought to explore this through questioning. In essence the points made in response were that the Park must stand on its own, irrespective of the financial situation of the ownership group as a whole. The zoo in particular is an old zoo having old infrastructure. Necessary quarantine space is unused for most of the time which gives no return whatever. There is a lot of catching up to do over the whole Park. The recent hotel extension on the site proved very costly, and if the true cost had been known at the outset the scheme would not have proceeded. It is very difficult to compare development on CWoAR with development elsewhere. This is a large employer in the area, and there is a need to grow the business. In response to a question about investment criteria I was told that development proposals had to show a return of 20% on capital employed in order to proceed; but no evidence of costs that went into investment decisions was given.
24. The Representor sought a complete exclusion of CWoAR from CIL. As a poor alternative, it would be helpful if the zoo element were excluded.
25. My conclusions on this representation are taken in the absence of compelling real evidence of the viability of developments that might take place on the Park. During the hearing the Council suggested that the proposed rate for "All other Uses" plus the Mayoral CIL would only amount to about 1.34% of development cost, and this was not challenged. At that percentage I consider that the charge would indeed be nominal, and unlikely to be a deciding factor

in whether development on the park went ahead on viability grounds. Therefore I see no justification for either making the Park a zone with a Nil rate, or for finding some way to differentiate the Zoo and excluding that from CIL.

26. Concern has also been raised by others that the "All other Uses" rate would impact on the development of essential infrastructure such as that for water and wastewater/sewerage. However, the Council points out that buildings into which people go only intermittently for the purposes of inspecting or maintaining fixed plant or machinery are not liable to pay the levy. Therefore the infrastructure developments to which the representation refers are most likely to be Levy free.

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

27. The Council's decision to have a matrix approach 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.

Conclusion

28. 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 Royal Borough of Kingston upon Thames. 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 authority's area.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedule complies with the Act and (subject to the modifications I recommend) the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

29. I conclude that subject to the modification(s) set out in Appendix A the Royal Borough of Kingston upon Thames 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.

Terrence Kemmann-Lane

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.

Modification number	Modification
EM1	Replace the existing Draft Charging Schedule with the modified Charging Schedule set out in Appendix B