



The Planning
Inspectorate

Report to Elmbridge Borough Council

by **Simon Berkeley BA MA MRTPI**

an Examiner appointed by the Council

Date: 7 January 2013

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT ELMBRIDGE COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 21 September 2012

Examination hearing held on 27 November 2012

File Ref: PINS/K3605/429/5

Non Technical Summary

This report concludes that the Elmbridge Borough Council 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.

I have recommended that the schedule should be approved in its submitted form, without changes.

Introduction

1. This report contains my assessment of the Elmbridge Borough Council Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance (Charge Setting and Charging Schedule Procedures – DCLG – March 2010).
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. The basis for the examination, on which hearings sessions were held on 27 November 2012, is the submitted schedule of 21 September 2012.
3. The submitted schedule differs from the document published for public consultation on 23 April 2012. The latter included a differential rate for retail development related to the level of new floorspace. The Council produced a statement about this modification and informed the appropriate parties in line with the Regulations.
4. The schedule submitted proposes a rate of £50 per square metre (psm) for all retail development and £125 psm for new residential accommodation. A nil rate is proposed for all other types of new development which, on the basis of the evidence produced, is reasonable.
5. Representations on the submitted schedule have been fully considered in so far as they relate to its viability. However, they are not reported on individually.

The infrastructure planning evidence supporting the charging schedule

6. The Elmbridge Core Strategy (CS) was adopted in July 2011 and sets out the main elements of growth that will need to be supported by further infrastructure. The Infrastructure Delivery Plan (IDP) underpinning the CS has been updated and was published in November 2011.
7. The IDP and other evidence identify the key infrastructure needed to meet the

level of growth anticipated in the first ten years of CS, from 2011 to 2021. These largely relate to transport, education, leisure facilities including play areas and playing pitches, and the delivery of Suitable Accessible Natural Greenspace (SANG) to mitigate against the effects of development on the Thames Basin Heaths Special Protection Area (SPA). For that period, at current prices, the Council estimates the infrastructure funding gap to be around £41.45 million.

8. It is clear that the main source of CIL receipts will be residential development. Taking account of the level of new homes sought by the CS, and those which will not be subject to the CIL either because they are affordable units or already have planning permission, CIL receipts from new housing are expected to raise approximately £24.32 million over the next ten years, on the basis of the proposed rates. The level of receipts from retail development is rather less certain. The CS does not include any targets for this kind of development. The Council says that there is no projected demand for additional retail floorspace in the borough and significant growth in the sector is not anticipated. Consequently, given this and the lower CIL rate proposed, it is highly probable that receipts from retail development will be substantially less than those for residential accommodation.
9. Overall, the draft Charging Schedule is supported by sufficiently detailed evidence of community infrastructure needs. On this basis, the evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.
10. In the light of the information provided, the proposed charges would not make a full contribution towards the likely funding gap. Nevertheless, the figures clearly demonstrate the need to introduce the CIL to help deliver the infrastructure needed to support the growth planned for.

Economic viability evidence

11. The Council commissioned a CIL Viability Study (the Study), dated November 2011. It essentially uses a residual valuation approach, using reasonable standard assumptions for a range of factors such as building costs, developer profit levels, professional fees and finance. The model incorporates relevant and reasonably up to date local data about land values; likely sale prices based on a range of sites across the area; housing densities and gross to net ratios. It also encompasses the impacts of the policies in the CS. The model was discussed with the Development Market Panel, which includes representation from locally active agents. The Council has confirmed the Panel's agreement that the model's inputs and variables are appropriate.
12. The robustness of the Study and the degree to which it justifies the CIL levy rates proposed in viability terms are central to this examination, and are explored further under the main issues I have identified below.

Main issues

13. In addition to the above and taking account of all the evidence, there are two other main issues on which the viability of the CIL charging schedule depends.

Issue 1: Residential Levy Rate

(a) *Is the local levy rate for new residential accommodation justified by appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the Council's adopted Core Strategy?*

(b) *Overall, does the rate strike an appropriate balance between helping to fund the new infrastructure required and the potential effect on the economic viability of new residential accommodation across the borough?*

14. For residential developments, the Study examines a range of schemes differentiated by their value levels. Existing and alternative land values have been considered, and the extent to which any uplift may be necessary to encourage residential development taken into account. The principle is that the range of value levels should reflect the general spectrum of residential developments, including houses and flats, which are likely to come forward across the borough.
15. In gathering this information, and using it to model the residual land values, data has been drawn from the RICS Building Cost Information Service, Land Registry and from Government sources. This includes information specifically concerning Elmbridge. The Council's Affordable Housing Viability Study, Strategic Housing Land Availability Assessment and monitoring database have also been used, particularly in respect of the types of schemes likely. Information has also been sourced from estate agencies selling property in the borough. All in all, it is clear that the Study's inputs are founded on a sufficiently robust base of locally specific evidence.
16. The use of 'asking prices' rather than the actual price properties have been sold at has been criticised. The latter value would be that ideally used. That being said, the Study has applied a 10% reduction of the asking price to establish notional sale prices. This is a sound and practical approach to take and the degree of 'correction' appears realistic.
17. Garage floorspace has not been included in the Study. As such, it may be that some schemes would be liable to a higher CIL charge than anticipated. This amounts to an underestimation of the impact of the levy. However, it seems unlikely to me that this will affect the viability of residential schemes to a significant degree. In any case, it will be for developers to decide whether to provide garages within their developments, and this judgement will no doubt take into account the level of CIL levied. Overall, it is improbable that this factor will place at serious risk the viability of schemes across the borough.
18. An allowance for external works has been added to base build costs of between 14% and 21%. A further 5% has been added for contingencies, and £500 for Section 106 (S106) legal agreements. It has been suggested that the latter figure is low. However, a significant proportion of financial contributions presently required through S106 will be incorporated in the CIL levy. While all these figures are likely to differ from one development to another, these general levels appear to be reasonable in the context of the Study's high level, inevitably broad brush consideration of viability.
19. Abnormal costs have not been taken into account in the Study. That is because,

by definition, they are not normal or consistently occurring, predictable development costs. They are site or scheme specific. It is not realistically possible for generic viability studies of the sort required to support CIL levies to account for individual site circumstances. That this Study does not is entirely appropriate.

20. The Viability Study's generic testing takes squarely into account the contribution to affordable housing required under CS Policy CS21. This is based on a sliding scale, and has been clearly incorporated into the scenarios considered in the Study.
21. A split of two thirds affordable rented accommodation to one third intermediate tenure has been assumed. It is also assumed that these homes will be delivered with nil grant, reflecting the Homes and Communities Agency's present expectations. This is appropriate and realistic.
22. Policy CS27 of the CS requires housing development of ten or more dwellings to meet Level 4 of the Code for Sustainable Homes (the Code) in relation to the energy and carbon dioxide emissions category, and to meet future national requirements. The Viability Study reflects this. In effect, it adds 4% to build costs to account for these factors. The Study says that this assumption provides some allowance for future cost increases in meeting the Code. However, as the Study points out, base build costs are expected to rise in the future, coming out of recession. This, and the possible introduction of Level 5 of the Code, is an area of sensitivity.
23. However, generic viability studies can only go so far in projecting the effect of future changes on viability. It is clear that the potential impact of higher build costs have been borne firmly in mind by the Study's authors in reaching their overall conclusions. Considering all of this, the build cost inputs into the Study should be regarded as appropriate, for the time being at least. As these factors could have a bearing on the timing of the schedule's future review, the Council should ensure that its data monitoring regime is alert to shifts in this area.
24. A number of factors suggest that the viability margins for each of the scenarios considered in the Study are not presented as 'best case' illustrations. It has been assumed that all schemes would be debt funded. That is not always the case. On this point, while criticisms have been made about the finance periods and interest rates used, in the context of such a 'high level' study, they generally strike a broadly reasonable balance. Even though the circumstances on some schemes may be less favourable, others may well be more so, and on the whole the figures used should not be regarded as unrepresentative or invalid.
25. In addition, the levy on previously developed sites has potentially been overestimated. It has been assumed that all the residential development on such brownfield schemes is new floorspace. While that may be so in some cases, it is likely that many others will involve the conversion of existing buildings, at least in part. Given the CS policy expectation that a significant proportion of new homes will be on such sites, this is an important factor.
26. It has been suggested that this should mean that the CIL rate should be increased. I disagree. To my mind, the possibility that residential developments

may be subject to a lower levy than accounted for in the Study should be seen as a counter to possible underestimations of the costs to developers. In short, I regard this aspect as an indicator of the Study's robustness which lends confidence in the viability margins and adds to their degree of reliability.

27. It is possible that this overestimation could mean that the level of CIL levied will be less than anticipated. But this is not a certain outcome. It could equally lead to greater CIL receipts, given the potential increase in the number of viable schemes.
28. In any event, in setting the residential CIL rate, the Council has not sought to 'push the boundaries' or levy the maximum level of CIL that the Study shows to be theoretically possible. In striking the balance between the need to fund new infrastructure and the effects on economic viability, the approach taken is more moderate. Given the nature of the Study, dealing as it must with a range of variables and unknown factors, and making numerous assumptions, this is a commendable path. It significantly bolsters confidence that the rate proposed will not put at serious risk the overall development of new homes in Elmbridge envisaged in the CS.
29. It has been suggested that the introduction of the residential levy will lead house builders to negotiate a reduction in the level of affordable housing sought by Policy CS21. Indeed, the Council points to the flexibility of the policy in this respect. I note the CS paragraphs about viability, and that if satisfied that it would not be viable to provide the affordable housing required the Council will seek to negotiate alternative provision. In general terms, that is a matter for the Council.
30. However, the imposition of the CIL should not be used to justify lower levels of affordable housing. Allowing this situation could jeopardise the delivery of the affordable homes needed in the borough, and thus undermine the CS. That is not the intention of the levy. It is incumbent on the Council to take a consistently robust stance in this regard, to give certainty to developers and landowners and to secure the successful delivery of both the CS and the CIL.
31. Moreover, on the basis of the evidence, there is no reason why the rate proposed should cause serious viability problems when considered in combination with the costs of meeting the CS policy requirements. If a few individual schemes are affected and become unviable as a result of the CIL rate, then so be it. This does not amount to exceptional circumstances of the sort envisaged by the Regulations as qualifying for relief, nor is it the aim of the Regulations to ensure that all developments viable without the levy remain so with it. Consequently, where they do not remain viable this should not be regarded as exceptional. The point here is that in the highly unlikely event that the residential rate genuinely puts at serious risk the viability of schemes across the borough as a whole then, rather than accept reduced affordable housing provision, the rate should be expediently reviewed.
32. Some respondents argue that the schedule should include a differential rate whereby new homes in more expensive or upmarket parts of the borough would be subject to a higher levy. It is clear that the Study's authors, and the Council, have explored this possibility. They conclude, however, that the transition between more and less exclusive areas is not sufficiently clear or marked such

that the evidence would support the necessary delineation of boundaries. There is no compelling evidence to the contrary, even if the Council's Design and Character Supplementary Planning Document might be of assistance. In any case, setting differential rates is only a possibility open to Councils to explore in drawing up CIL schedules. It is not a requirement of the Regulations that differential rates be set, even where there is robust evidence to support such an approach.

33. At present, the Council requires developer contributions from residential schemes between 400 metres and five kilometres from the SPA to deliver Suitable Accessible Natural Greenspace (SANG) through S106 agreements. In parallel, a contribution is also sought for the associated Strategic Access Management and Monitoring (SAMM) measures to manage recreational pressure on the SPA itself.
34. However, as the letter of 2 August 2012 from the Department for Communities and Local Government confirms, SANGs are within the definition of infrastructure in CIL. That is to say that SANGs will be funded through CIL receipts generally rather than through specific S106 obligations. The adoption of this CIL schedule will effectively sever the direct link between providing mitigation and the development that caused the need for it. Both Natural England and the RSPB initially raised concerns about the capability of the CIL to secure compliance with the Habitats Regulations in this respect. Strictly speaking, this issue falls outside the remit of this examination. However, securing mitigation measures to comply with the Habitats Regulations is an important matter, and is a significant issue for Elmbridge and neighbouring authorities.
35. The Council's *Developer Contributions* Supplementary Planning Document, dated April 2012, is clear that CIL will be used to deliver SANGs. Paragraph 2.19 says that the Council will ring fence the required amount of SANG funding using the 'per dwelling' tariff in the IDP from all relevant development between 400 metres and five kilometres from the SPA. Both Natural England and the RSPB now agree that so long as this approach is followed, then the Habitats Regulations will be complied with. I consider that the introduction of the CIL does not undermine the Council's ability to meet its obligations under the Habitats Regulations. As the Council is a responsible public authority, I see no reason why any of this should present a problem.
36. Some suggest that the levy for residential developments beyond five kilometres from the SPA should be reduced, as these schemes would not give rise to the need for a contribution towards SANGs. But CIL is not based on any link between an individual development and the specific infrastructure needs it creates. Rather, it rests on the infrastructure requirements of the areas as a whole and the ability of developments to pay the levy rate. It is for this reason that schemes for one bedroom flats should not pay a reduced rate, even though their occupants may not place any demand on local schools.
37. One respondent has raised an issue about the effect of the levy on the development of homes for older people. The Council says that this has been taken into account in drawing up the schedule. The CIL schedule is clear that only residential dwellings falling within Class C3 of the Town & Country Planning (Use Classes) Order 1987 (as amended) would be liable to the charge. Many types of older people's accommodation fall within Class C2 of the Use Classes

Order, and as such would not be required to pay.

38. Whether a particular development of older person's accommodation falls within Class C2 or Class C3 depends on a number of factors, particularly whether the dwellings concerned each form a single household. This is a matter of fact and degree, to be judged on a case by case basis. It will be for the Council, in the first instance, to reach a view on this in determining the planning application and deciding whether or not the levy applies.
39. In some cases older person's accommodation will fall into Class C3. Private market sheltered housing with self-contained dwellings and no significant element of care is one example. The Council suggests that schemes of this sort are directly comparable to 'mainstream' residential developments in terms of viability. There is no evidence to indicate that the proposed levy would put at serious risk the delivery of such schemes across the borough. Overall, I regard the schedule to be appropriate in relation to this issue. So long as proper and robust judgements are made in respect of the Use Class of developments coming forward, then the levy need not cause significant viability problems across the borough.
40. I therefore conclude that the local levy rate for new residential development is justified by appropriate available evidence and strikes an appropriate balance between helping to fund new infrastructure and its effect on the economic viability of residential development across the borough.

Issue 2: Retail Levy Rate

(a) Is the local levy rate for new retail floorspace justified by appropriate available evidence, having regard to national guidance, local economic context and infrastructure needs, including in relation to the Council's adopted Core Strategy?

(b) Overall, does the rate strike an appropriate balance between helping to fund the new infrastructure required and the potential effect on the economic viability of new retail floorspace across the borough?

41. Similar to the methodology used for residential development, the Study considers retail rents and yields in relation to the likely life of the schedule based on value levels. It draws on a range of data, including RICS information about build costs, Valuation Office information, and the Estates Gazette Interactive tool. As I understand it, this includes specific local, detailed information about properties available, asking prices, rents, and deals that have been struck. While 'visible' information published by landlords and others may not provide an entirely accurate picture, on the whole all of this evidence should be regarded as appropriate.
42. The Study's authors identify the annual rental and yield assumptions as being the most sensitive to change. These largely drive the capital value of schemes and relatively small changes to them can lead to rather different viability outcomes.
43. Consequently, the Study undertakes sensitivity testing of these elements. It examines a variety of rental levels combined with a range of assumed yields between 6.5% and 8%. The Study's authors conclude that the medium rental

level assumption combined with a 7.5% base yield is the most appropriate at the present time. This is a matter of judgement. However, it is clear that this view has been reached taking account of the current economic context and the downturn in the property market, including at the local level. The authors' experience of working in Elmbridge adds to the credibility of their opinion.

44. In any event, it is apparent that the degree of sensitivity involved here is a matter that has been borne firmly in mind in setting out the Study's recommendations for the CIL rates. As discussed further below, this includes a higher rate than that proposed in relation to larger retail schemes. Put simply, to address the sensitivities concerned, the Study selects more cautious CIL levels than might be theoretically viable, and the schedule proposes only the lower of the two rates recommended. Given this, it appears highly unlikely that the rate proposed will place at serious risk the viability of retail schemes across the borough.
45. Moreover, as with the residential CIL, the amount of levy to be paid by developments has potentially been overestimated. This is because the Study assumes that all retail floorspace within a development will be new, chargeable space. But given the thrust of the CS, it is reasonable to conclude that a significant proportion will be existing floorspace, incorporated into conversion schemes and the like. This bolsters the degree of reassurance in relation to the effect of the proposed CIL rate on viability.
46. Build costs is another sensitive factor. Information in this regard has been sourced from RICS Building Cost Information Service. From the range of figures based on schemes developed, median build costs have been used with an adjustment for Elmbridge. This is reasonable. In the context of the Study's approach of taking a wider view, balancing the sensitivity of the range of factors involved and not aiming to press against the boundaries of theoretical viability, the assumptions made about build cost should be regarded as appropriate.
47. As indicated in the introduction above, the draft schedule published for consultation proposed a rate of £125 psm for retail development (A1 to A5) over 280m², and a rate of £50 psm for such development of 280m² and less. The Study generally supports these levels.
48. However, it seems that two related factors have persuaded the Council to propose the single flat rate put forward for examination. These stem from the approach of the CS. The CS recognises that aside from Walton, town centres in Elmbridge have not been subject to any significant investment. It says that many people consider that the function of district and local centres is being eroded through the loss of shops and the growth in non retail uses. To tackle this, the CS seeks to steer retail uses towards centres and, to this end, designates primary and secondary frontages. It neither encourages larger supermarkets or other larger retail types nor aims to deliver any specific quantum of retail development over the plan period.
49. The consequence of this is that most retail uses coming forward in the plan period are expected to be smaller units within centres. On the one hand, the Study indicates that floor area will not produce a different nature of use and value/cost relationship. But it recognises that for smaller schemes the actual sums of money available for land purchase can become relatively small. It also

acknowledges that developments of this sort in Elmbridge will usually be on previously developed land, and could also be associated with mixed uses where the retail element will need to provide a positive contribution to overall viability.

50. In this context, the proposed application of the lower £50 psm rate is appropriate. While the higher rate could be levied on larger schemes, it is not incumbent on the Council to maximise the CIL receipts theoretically possible. This is a question of balance, and the Council's approach of seeking to ensure that more retail schemes remain viable than might be the case with the higher levy rate is a reasonable one. In any event, as the Council points out, it is unlikely that the inclusion of the higher rate would yield significantly greater CIL receipts, given the very limited number of larger schemes anticipated.
51. In conclusion, I consider that the local levy rate for new retail development is justified by appropriate available evidence and strikes an appropriate balance between helping to fund new infrastructure and its effect on the economic viability of retail development across the borough.

Overall conclusion

52. The Council's decision to set a charge of £125 psm for residential development and £50 psm for retail is based on reasonable assumptions about development values and likely costs. The evidence suggests that residential and retail development will remain viable across most of the area if the charge is 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.
53. 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 Elmbridge. 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.
54. The submitted schedule makes provision for CIL payments to be made in instalments, as the Regulations entitle the Council to allow. This is a matter for the Council's discretion and is beyond the scope of this examination. So too are the issues raised about the Council's approach to S106 agreements and the time given for their completion.
55. Similarly, it is for the Council to decide what infrastructure CIL receipts are spent on, and this will be published in the Council's 'Regulation 123' list. The precise time for reviewing the schedule is also a matter for the Council, although I agree that the monitoring and reviewing intervals indicated appear reasonable.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations	The Charging Schedule complies with

(as amended 2011)	the Act and 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.
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56. I conclude that the Elmbridge 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.

Simon Berkeley, Examiner

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