
Report to London Borough of Merton Council

by Simon Emerson BSc Dip TP MRTPI

an Examiner appointed by the Council

Date: 16 October 2013

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT LONDON BOROUGH OF
MERTON COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 17 July 2013

Examination hearing held 26 September 2013

File Ref: PINS/T5720/429/6

Non Technical Summary

This report concludes that the London Borough of Merton Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the Borough. The Council has sufficient evidence to support the schedule and can show that the levy is set at a level that will not put the overall development of the area at risk.

One modification is needed to meet the statutory requirements. This amends the definition of superstore to make clear the type of retail development that will be subject to a CIL charge. The modification was requested by the Council at the hearing. It does not alter the basis of the Council's overall approach or the appropriate balance achieved by the proposed rates.

Introduction

1. This report contains my assessment of the London Borough of Merton 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*, DCLG, April 2013).
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 Borough. The basis for the examination, on which a hearing was held on 26 September 2013, is the submitted schedule of 17 July 2013, which is the same as the document published for public consultation between March and May 2013.
3. The Council proposes 2 charging zones/rates for residential development, namely: £220 per square metre (psm) in Colliers Wood, Raynes Park and Wimbledon and £115 psm in Mitcham, Morden and West Barnes. The boundary between the 2 zones is defined on a street-by-street basis on maps included in the draft charging schedule. In addition, a charge of £100 psm is proposed for retail warehouses and superstores throughout the Borough.

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

Infrastructure planning evidence

4. The Merton Core Strategy (CS) was adopted in July 2011. In terms of housing delivery, Morden and Mitcham are expected to deliver about one third each of the overall housing requirement to 2026. Colliers Wood and South Wimbledon; Wimbledon; and Raynes Park are expected to make an equal contribution to the remaining third of the housing requirement (Core Strategy policy CS9). Major change and redevelopment is expected in Colliers Wood (to

become a District Centre - policy CS1), with regeneration also being focussed at Mitcham (CS2) and Morden (CS3). Table 27.2 in the Core Strategy sets out a detailed list of planned and required infrastructure.

5. The Council's evidence on current infrastructure needs is in ED005, particularly Appendices A1 and A2. The latter is the *Detailed CIL Infrastructure List* March 2013. This list is an update of the table in the Core Strategy. A number of projects have been deleted from that table (e.g. where completed), some projects are combined and more detailed costings introduced for some projects (generally less than previously indicated). For a number of projects no cost is included due to lack of detailed information.
6. Appendix A1 of ED005 summarises infrastructure costs for different categories of infrastructure (e.g. education, green space) for the first 5 years of the Core Strategy plan period (2011-2016) and the subsequent 5 year period. In my view, the first 5 year period is most relevant for this Examination as it is likely that the Borough's CIL will be reviewed before the next 5 year period. For the first 5 years, total project costs are over £139m and funding from elsewhere is expected to be only about £10.4m. There is therefore a very substantial funding gap.
7. The Council calculates that on the basis of the proposed charging rates, CIL receipts would be about £1,240,000 per year (100 dwellings per year split evenly between the 2 charging zones - ED005, Table 3). CIL would thus make only a small contribution to reducing the funding gap. The Council has not included some potential sources of CIL receipts in calculating this figure. If, for example, the CIL does not significantly dampen the recent interest in redeveloping houses in Wimbledon Village for much larger dwellings (see below) there could be significant additional receipts from this source. But this additional income would still result in the CIL making only a small contribution to the infrastructure gap and any underestimate in this way does not weaken the justification for the CIL. No receipts have been included from retail warehouses/superstores, but the number of developments likely to come forward over the next 5 years within the Council's modified definition (see below) is likely to be very small and is difficult to predict. Again, the potential for additional receipts does not change the justification for pursuing the CIL.
8. I recognise that on the basis of the financial position summarised above, much of the needed infrastructure may not be delivered or will be delayed. Thus some of the benefits of new infrastructure in supporting new development will not arise. However, this does not undermine the justification for implementing the CIL as proposed. In the absence of the CIL, the ability of the Council to pool contributions from S106 obligations for necessary infrastructure would be severely curtailed, weakening its ability to deliver infrastructure such as additional school capacity, where the need arises from several developments. I note that the Government has consulted on proposals to delay by a year the restriction on pooled contributions from S106 obligations, but this would not change the position significantly.
9. Over the past 4 years an average of about £1,880,000 has been secured via S106 obligations from developments which have been permitted and an average of about £1,220,000 has been received by the Council from existing S106 obligations (ED006, Table 1). Evidence of the scale of contributions

agreed for different types of infrastructure is in Appendix 6 of the Council's hearing statement. This illustrates that in the last 2 years education, open space and transport have consistently secured the largest financial contributions. Regeneration and the economy and affordable housing have also secured significant funds, but with much more variation between the 2 years compared with the other main categories. The Council's illustrative Regulation 123 list of the types of infrastructure on which the CIL would be spent is in Appendix A of ED007. The list includes education and school provision, green infrastructure, transport, emergency services, flood defence and climate change. This illustrates that CIL is likely to be spent on the categories of infrastructure which have recently accounted for the greater proportion of funds secured by S106 obligations. There is a reasonable alignment between expected CIL receipts and the scale of funds secured from previous S106 obligations.

10. Bearing in mind: the very substantial funding gap (even if CIL receipts are greater than predicted); that the CIL Examination should not reopen infrastructure planning already submitted in support of a sound plan (*Guidance*, paragraph 18); and that it is not necessary to relate the list of infrastructure to particular development or types of development, there is sufficient evidence to demonstrate the need for the CIL.

Economic viability evidence

11. The Council commissioned a CIL *Viability Study* (VS), dated November 2012 (ED004). This was undertaken by consultants experienced in this type of work. The VS compares the residual values of various hypothetical development schemes against a range of benchmark existing land values plus a premium (20% for office and warehouse sites). These benchmark values are explained in paragraphs 4.45 - 4.47 of the VS. The selected land uses on which these values are calculated reflect the common sources of supply for residential developments in Merton and the types of sites proposed for residential allocations in the Council's forthcoming site allocations DPD (as shown in the Council's hearing statement, Appendix 3). These values are a reasonable choice.
12. Residential sales values were calculated based on local evidence of achieved sales values for new-build developments and asking prices, adjusted to reflect commonly negotiated discounts (VS, paragraph 4.2). From these, typical sales values were identified for 5 geographic areas of the Borough based on combinations of 5 digit postcodes (VS, Table 4.3.1). Residual values were calculated based on achieving the Council's affordable housing policy requirements. The VS runs appraisals on varying mixes of social and affordable rent and intermediate housing based on the Council's most recent experience of affordable housing provision (VS, paragraph 4.8).
13. The VS identified 7 different development typologies including houses, flats and a mix of both, at different densities and on sites of different size (VS, 4.48.1). In addition to the factors set out in Table 4.48.1, an allowance of 3% of gross development value was used to cover marketing and an additional £600 per unit for legal fees (VS, paragraph 4.26). A sensitivity analysis was run assuming units comply with Sustainable Homes Code 5, with a 25% uplift in costs (VS, paragraph 4.22). There is inevitably a high degree of uncertainty

about S106 costs in residential schemes once the CIL is in place. The assumption of £1,000 per unit is a reasonable approach. I recognise that particular developers and particular sites may have development costs greater than assumed in the VS. But this type of general study cannot reflect all possible circumstances. Overall, I consider that the VS made reasonable assumptions for the financial inputs for the residential schemes tested.

14. The residential development typologies used in the VS do not include a specific type for sheltered housing. However, private sector commercial sheltered housing developments have not been a common form of development in the Borough in the last 5 years. Appendix 5 of the Council's hearing statement shows that of the 5 schemes for sheltered housing granted planning permission in the Borough over this period, only 1 was a private commercial development; the others were by social housing providers. This omission is therefore reasonable.
15. I accept that the development costs of a private sector sheltered housing scheme may be greater than is typical for a similar-sized development of conventional flats because, for example: there is more communal space provided; sales are slower; and the developer is paying the substantial service charge for unsold flats from when the first occupier moves in. Thus some schemes of this kind may have higher costs than assumed in the VS. However, I would expect that the more a development includes additional features which distinguishes it from a conventional block of flats, the more likely that development is able to attract a premium on sale prices offsetting, to some extent, these additional costs. As explained later in the report, in parts of the Borough, the selected CIL rate is well below that which the VS suggests is the maximum viable rate, thus resulting in a substantial cushion to absorb any remaining additional costs. Thus the proposed CIL should not fundamentally undermine this type of specialist residential development in the Borough.
16. For the identified 5 geographic areas of the Borough, the VS sets out in a series of tables the maximum CIL rates that could be imposed for various scenarios drawn from the range of input assumptions tested (Tables 6.7.1-6.12.5). From this evidence, the study suggests the maximum CIL rates that should be charged based on a 30% reduction below those maximum values to create a positive viability buffer. The maximum recommended CIL rates are set out in Table 6.19.1. The recommended rates are: West Barnes and New Malden £90 psm; Mitcham £115 psm; Morden £150 psm; Merton (including Colliers Wood and Raynes Park) £220 psm; and Wimbledon £360psm. The recommended maximum CIL rates are a logical outcome from the evidence.
17. The VS tested a wide range of commercial development projects. The different development scenarios and the input assumptions are summarised in VS Table 4.50.1, with more detailed information contained in Appendix 5 of the VS. Three main types of retail development were tested. Firstly, a retail warehouse/superstore development of 30,000 sq ft with 50% of the existing floorspace on the site. This typology was tested for 3 different profit levels. Secondly, developments in Wimbledon town centre of 30,000 sq ft, 10,000 sq ft and 3,000 sq ft with 60% existing floorspace. Thirdly, retail in the rest of the Borough of 30,000 sq ft with 60% and 30% of existing floorspace on site. For each of the 3 main types of development, 10 variables of rent and yield

and 3 different existing use values were used to show the maximum CIL that could be sustained with these different input assumptions.

18. In my view, the range of yields/rents; the 3 different existing use values; and the 3 profit levels (for the retail warehouse/superstore development), provide a sufficient range of possibilities to reasonably reflect potential developments in practice. A significant assumption made for the inputs for all the retail types is that after the CIL is introduced, section 106 costs would be zero. This does not so much reflect an expectation that this would be the case, but more the difficulty of judging an appropriate input when S106 costs for site-specific works (such as highway access) would be likely to vary considerably from site-to-site. Assuming a fixed sum for S106 costs where circumstances vary widely would be no more accurate than the working assumption of zero costs. The approach is a reasonable choice in the circumstances, subject to a sufficient buffer in the overall assessment of viability (see below).
19. The retail development typologies involve assumptions about existing floorspace on the site, which reduces the CIL charge for the new development. Under current Regulations this is only the case if the space has been vacant for less than 6 months. I appreciate that in some redevelopment projects existing floorspace may have been empty for much longer and thus unable to offset new floorspace. But if space has been vacant for a long period it may have been impossible to re-let which is likely to reduce the existing use value of the site. The VS includes rent on the existing space in assessing the existing value. Accordingly, whilst there are different assumptions that could have been modelled, it is not necessarily the case that they would result in more development scenarios being less viable. I have not seen significant evidence to persuade me that the assumptions in the VS on this matter are unreasonable.
20. As there have been very few proposals for retail warehouses or superstores in Merton in the last 5 years, there is limited local information on which to draw. There are likely to be very few retail developments in this category over the next 5 years. In my view, it would be disproportionate to have evaluated a wider range of retail scenarios.
21. The VS concludes on retail viability in paragraphs 6.26-6.29. In Wimbledon town centre there is some ability to absorb CIL, but a cautious approach is recommended; for retail elsewhere there is no practical scope to charge CIL. For retail warehouses/superstores, many of the appraisal scenarios indicate an ability to absorb a high rate of CIL, but small changes in input assumptions can significantly weaken the ability of schemes to do so. The VS therefore suggests that the CIL charge for this type of development is £100 psm to create a considerable buffer below the maximum potential levels indicated in many of the scenarios.
22. The VS also tested different scales of office development in Wimbledon and the rest of the Borough; industrial and warehousing developments, student housing and a hotel. The VS concludes that a CIL charge would not be justified for these types of development (VS, paragraphs 6.22 - 6.25; 6.30 - 6.32). The VS also notes many developments coming within Use Classes D1/D2 typically accommodate non-revenue generating operations and thus cannot be tested for viability. These classes may also include types of public

infrastructure to which the CIL is expected to contribute. A zero charge for these types of development is therefore recommended in the VS.

Conclusion

23. The draft charging schedule is supported by detailed evidence of community infrastructure needs. It is also supported by reasonable and sufficiently detailed evidence on viability. The evidence which has been used to inform the draft charging schedule is robust, proportionate and appropriate.

Has the Council identified different uses with the retail sector?

24. The only charge proposed for non-residential development is £100 psm for retail warehouses and superstores throughout the Borough. The charging schedule (ED001) defines retail warehouses and superstores as follows:
- 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.
 - 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.
25. Regulation 13 allows for differential rates to be set where viability differs by reference to geographic zones, or by reference to different intended *uses* of development. It is now well accepted that different intended uses can be within the same Use Class under the Town and Country Planning (Use Classes) Order 1987 (see, for example, DCLG *Guidance*, April 2013, paragraph 35).
26. Where a charge is proposed on some uses within a Use Class, but not on other uses in that Class, a 2 stage process is necessary to ensure that such a difference is justified. Firstly, a difference in use must be clearly identified and described. Size alone cannot be the reason for charging different rates for development within the same Use Class, although size may be a proxy, reflecting underlying other differences. (I note that the Government has recently consulted on proposed changes to the Regulations which would explicitly allow size/scale to be used in justifying different rates - *Consultation on Community Infrastructure Levy – Further Reforms*, DCLG, April 2013). Secondly, there must be clear differences in economic viability between uses to justify different CIL rates. This latter aspect is covered in the VS.
27. I consider that both *retail warehouses* and *superstores* are well established descriptions of 2 distinctly different types of retail use which are characterised, by: substantial size, distinctive format with associated parking, and a predominantly distinctive use by customers. Retail warehouses are predominantly used for the purchase of bulky goods by car. Superstores are predominantly destinations for major shopping trips and provide a one-stop-shop for a substantial weekly food purchase with a very wide choice of products, combined with scope for non-food purchasers and the availability of other services and facilities, such as a cafe. They are terms which are well recognised as distinctive forms of development and use by the general public and in the planning realm. There is no evidence to suggest that the retail

stores within these descriptions which exist or which might be proposed in Merton would be significantly different in character or use to these nationally well recognised distinctive typologies.

28. Whilst the table of charges in the Council's draft schedule refers to *retail warehouses/superstores*, the subsequent description of *superstores* refers also to *supermarkets*. In my note of pre-hearing questions and comments (9 August 2013) I asked whether, in the absence of any floorspace threshold, some high street convenience stores would be subject to the charge. I was concerned whether *supermarkets* could be readily distinguished in terms of use from convenience top-up stores. This concern was also related to the viability evidence which indicated that, outside Wimbledon Town Centre, retail developments other than retail warehouse/superstores could not bear any CIL charge.
29. The Council's hearing statement suggested that any concern on the above point could be overcome by the addition to the definition of superstores/supermarkets in the charging schedule of a floorspace threshold of 1,000 sq m. The Council drew attention to the sizes of food stores in Merton listed in Table 1A of Appendix 2 of Merton's *Retail and Town Centre Capacity Study 2011*. However, in my view, this table shows no clear division at this threshold, with a variety of stores just above or below 1,000 sq m. This evidence does not show that there is a distinct difference of retail use at this threshold.
30. At the hearing, the Council did not further advocate the use of a 1,000 sq m threshold, but emphasised that the Council's intention had always been to refer to superstores. The Council tabled a revised wording for the definition as follows (now ED0018): *Superstores: are shopping destinations in their own right, selling mainly food or food and non-food goods, which must have a dedicated car park*. The Council invited me to recommend this definition in the charging schedule. I consider that this wording sufficiently captures what makes superstores distinctive. By no longer referring to supermarkets, it avoids undermining what makes superstores distinctive. It is also likely to minimise practical difficulties in deciding whether the charge should apply to development proposals. There are likely to be very few applications for superstores within the Borough over the next few years, whereas there might be considerably more proposals for a range of smaller supermarkets/local convenience stores, as has occurred in recent years in Merton. (Recent retail developments in Merton are listed in Appendix 10 of the Council's hearing statement.)
31. This revised definition reduces the number of developments potentially subject to the charge compared with the wording in the submitted draft schedule. It would not encompass any types of development not already captured in the submitted definition. I therefore consider that I could fairly recommend the Council's requested amendment without prejudice to any party. With this revision, I am satisfied that the Council has identified distinctive uses within the retail Use Class.

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

Rates for residential development

32. As noted in the introduction, the Council proposes 2 charging zones/rates for residential development, namely: £220 psm in Colliers Wood, Raynes Park and Wimbledon and £115 psm in Mitcham, Morden and West Barnes. The Council has created these 2 charging zones by combining the 2 areas where the VS evidence suggests the highest rates of CIL are viable, namely Merton (which covers Colliers Wood and Raynes Park) and Wimbledon, and combining the 3 lower value areas into the lower charging zone, namely: Morden, Mitcham and West Barnes/New Malden.
33. The rate of £220 psm would be the same as the rate recommended for Merton (Colliers Wood, Raynes Park) in the VS, but well below that recommended for Wimbledon. The rate of £115 psm would be at the same value as recommended in the VS for Mitcham, below that recommended for Morden, but higher than that recommended for West Barnes/New Malden. The Council notes, however, (ED005, paragraph 4.6) that the West Barnes area is not expected to deliver a significant proportion of Merton's planned residential development over the Core Strategy period. The rate proposed in that area would not exceed the maximum CIL rate identified in the VS (Table 6.19.1). Overall, the Council has adopted a reasonable and pragmatic approach in selecting the proposed rates/charging zones based on the VS. Having only 2 charging zones rather than the 5 geographic areas covered in the VS avoids excessive complexity, as recommended in national Guidance. The chosen rates and the grouping of areas appropriately balance maximising CIL receipts with not undermining the overall planned delivery of development in the Borough.
34. The boundary between the 2 charging zones is defined on a street-by-street basis as shown on the maps included in the charging schedule. The Council explains in its hearing statement (paragraph 4.29 and Appendix 4A-D) how the precise boundary between the 2 zones was defined. The postcode boundaries were adjusted to create logical physical boundaries and to avoid anomalies such as splitting the same side of a street between 2 zones. Where boundary adjustments were made, areas were moved from the higher postcode zone to the lower value charging zone so as not to undermine viability as a result of the adjustment. Again, this approach is pragmatic and appropriate.
35. There may be areas where the 5 digit postcodes used as the building blocks of the 5 geographic areas identified in the VS mask some significant differences in sales values, such as either side of the railway line at Raynes Park. However, in the case of the area around Raynes Park station, the Core Strategy is not expecting a major contribution to overall development requirements to come forward in that location. More generally, the chosen rates mostly incorporate a sizeable buffer below maximum viable rates of CIL which provides a cushion to absorb any such local variations of value within postcode zones (except in West Barnes /New Malden where the buffer is small). On the evidence before me, very localised variations in sales values and thus viability would not undermine the overall delivery of planned development in the Borough.
36. The proposed CIL charge may have a discouraging effect on the recent trend in Wimbledon Village for existing private houses to be redeveloped for much larger private houses. CIL may affect the economic attractiveness to private

house owners of selling their properties for redevelopment. However, this form of redevelopment is not specifically promoted or relied on in the Core Strategy for achieving the Borough's needed development. Indeed, many residential streets around Wimbledon Village are in conservations areas. Given the high value of residential properties in this area, I cannot envisage that there would be any negative impact on the overall attractiveness and quality of the area even if such redevelopments did become less common in the future. Similarly, CIL may have a discouraging effect on the construction of some very large domestic extensions (over 100 sq m). Whilst this may put off some home owners from such plans and upset some current intentions there is no evidence that any such effect is a disadvantageous outcome which, in the public interest, would justify a lower CIL rate.

Commercial rates

37. The Council has taken forward the rate of £100 psm recommended in the VS for retail warehouses/superstores. For many of the scenarios tested this rate is well below the maximum rate that could be imposed whilst still leaving development viable, thus creating a significant viability buffer. Conversely, some potential proposals may become unviable. Given the very few schemes likely to come forward over the next 5 years and the difficulty of modelling all the combinations of circumstances that might arise, I consider that the proposed rate represents a reasonable balance between seeking to raise some CIL income from these types of development and any negative effect on viability.
38. In response to my pre-hearing questions, the Council included in its hearing statement some further viability assessments for additional scenarios for retail warehouse/superstore developments down to the 1,000 sq m threshold that was suggested in that statement. However, as indicated earlier in this report, the Council did not pursue the suggested threshold at the hearing, but instead requested an amendment to the definition of superstores to more narrowly define this type of use. The Council considered that the differences in viability between the different types of retail uses identified by the Council (as clarified by the requested amendment) was sufficiently covered in the VS and did not require the additional viability scenarios in its hearing statement. I agree. I note, however, that these additional scenarios are consistent with, and do not undermine the conclusions of the VS.
39. Given the benefit of a straightforward approach to charging by different uses/zones to avoid undue complexity in understanding and applying the CIL, I consider that the evidence in the VS justifies the Council selecting a zero rate for all other types of retail development. The VS also justifies the Council's decision to apply a zero rate to all other types of development. There is no evidence of any substance to suggest that such other types of development are viable in the Borough and could withstand a CIL charge.

Conclusion

40. The Council's proposed charging rates are 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 in a number of scenarios if the charge is applied.

41. In setting the CIL rates the Council has had regard to evidence of infrastructure needs and relevant economic viability evidence. The Council has been realistic in seeking to achieve a reasonable level of income from CIL to support infrastructure, while ensuring that a range of development remains viable across the Borough.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended 2011)	Subject to the recommended modification, 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 infrastructure projects list and is supported by an adequate financial appraisal.

42. I conclude that subject to the modification set out in the Appendix below the London Borough of Merton 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.

Simon Emerson

Examiner

Appendix – Modification that the Examiner specifies so that the Charging Schedule may be approved.

In the charging schedule delete:

~~*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*~~

And substitute:

Superstores: are shopping destinations in their own right, selling mainly food or food and non-food goods, which must have a dedicated car park.