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## **Report to London Borough Lewisham Council**

**by Simon Emerson BSc DipTP MRTPI**

**an Examiner appointed by the Council**

**Date: 23 January 2014**

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

### **REPORT ON THE EXAMINATION OF THE DRAFT LONDON BOROUGH OF LEWISHAM COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

Charging Schedule submitted for examination on 22 August 2013

Examination hearing held on 15 October 2013

File Ref: [PINS/C5690/429/8](#)

## Non Technical Summary

This report concludes that the London Borough of Lewisham Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. 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.

### Introduction

1. This report contains my assessment of the London Borough of Lewisham 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 district. The basis for the examination, on which a hearing was held on 15 October 2013, is the submitted schedule of 22 August 2013, which is the same as the document published for public consultation between December 2012 and January 2013.
3. The Council proposes 2 charging zones (Zones 1 and 2) and 3 rates for development (Categories A, B and C). The zones are defined by postcode and identified on plans in the draft charging schedule. Zone 1 is the smallest zone, along the northern edge of the Borough abutting the Thames and Greenwich. The rate here for residential development in Use Class C3 (Category A) is £100 per square metre (psm). The rest of the Borough forms Zone 2 where the residential rate (Class C3) is £70 psm. Category C is all development in Use Class B where the rate is zero across the Borough. Category B is all other development for which the rate is £80 psm across both zones.

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

#### *Infrastructure planning evidence*

4. The Lewisham Core Strategy (CS) was adopted in June 2011. Spatial Policy 1 indicates that provision will be made for over 18,000 net new dwellings, most of which will be within the regeneration and growth areas. As set out in Spatial Policy 2, these areas will provide about 15,000 new homes; 100,000 sm of new and reconfigured employment space and 62,000 sm of new retail space by 2026. The main areas for change are: Lewisham Town Centre, Catford Town Centre and the area encompassing Deptford, Deptford Creekside, New Cross and New Cross Gate. Within these broad areas, 5

strategic site allocations are made where most development will take place. These sites are all in the northern part of the Borough. For some of the strategic allocations, essential, site-specific infrastructure is identified. Appendix 7 in the Core Strategy is an extract from the Council's Infrastructure Delivery Plan (IDP) (as of September 2010) which sets out a detailed list of planned and required infrastructure, although for many of the items listed the cost was not identified.

5. The Council's current evidence regarding infrastructure is in the *Infrastructure Delivery Schedule Review* (IDSR) (CIL 2.3). This contains an updated list of infrastructure projects from those in the 2010 IDP which supported the adoption of the Core Strategy. This focuses on the 5 year period between 2014 and 2019 which is appropriate given the need to keep CIL charges under review. The cumulative costs of the different broad categories of infrastructure are summarised in Table 3.1 of the draft charging schedule. All the infrastructure required over the 5 year period is expected to cost about £125.5m. Funding from other sources of nearly £40m has been identified and residual S106 contributions are estimated at about £15.5m. Thus the Council identifies a funding gap of £70.36m.
6. I note the detailed comments from Transport for London on the status and funding of some of the transport projects in the IDSR. It is inevitable that there will be changes in the specification and cost of schemes envisaged as necessary over the next 5 years. Even if a large capital project such as the highway scheme for Catford Town Centre did not go ahead or was much reduced, there would still be a large funding gap.
7. The Council calculate that on the basis of the scale of development likely to come forward in the next 5 years a CIL rate of £269 psm would be required to meet the funding gap. The actual rates proposed in the draft charging schedule would produce an income of about £20m over the 5 year period. There would thus still be a substantial funding gap. There is the possibility that needed infrastructure may not be delivered or will be delayed and 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 is likely to be curtailed after April 2015, weakening its ability to deliver infrastructure such as additional school capacity, where the need arises from several developments.
8. Bearing in mind: the very substantial funding gap; 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 a particular development or types of development, there is sufficient evidence to demonstrate the need for CIL.

#### *Economic viability evidence*

9. The Council's *Viability Appraisal* was commissioned from consultants experienced in this type of work. The published report (CIL 2.1) does not contain all the detailed financial tables for each of the development scenarios that it modelled, but includes summary viability tables for illustrative schemes.

The draft charging schedule states (CIL paragraph 3.8 ): *Additional technical detail used in the model is available from the Council on request.* I have not seen or relied on any such additional background material other than as published as part of the Examination process and referred to below.

10. Prior to the hearing, I requested that the Council publish the summary viability tables for the small A1 retail scheme and B1 office scheme which were referred to in the VA, but not included in it. These tables were included in CIL 4.3 which was published before I invited comments on my pre-hearing questions. At the hearing, the Council accepted that the summary table for small A1 retail in CIL 4.3 contained a contradiction and needed to be corrected. I also requested that the Council make clearer the assumptions used in all the non-residential summary tables, particularly the use of gross and net floorspace figures for calculating different elements of cost and income and the assumption made about existing floor space on the site which provides a discount for the CIL. This better presentation is set out in *Re-presentation of viability appraisal summaries* November 2013 (CIL 4.9). I provided all parties with the opportunity to comment on the *Re-presentation*. No further representations relevant to the new tables were made.
11. The VA is based on modelling the costs and income of various hypothetical development schemes and calculating the scope to levy a CIL charge, whilst ensuring that the residual value of the development is at least equal to the relevant benchmark existing land value appropriate for that location/type of use. These benchmark land values are explained in paragraphs 4.10 - 4.14 of the VA. It is reasonable to take as a starting point the value of industrial land in the Borough as this provides the most opportunities for redevelopment. To this base industrial land value (£2.8m per hectare – VA, paragraph 5.38 - 5.39) a premium is added to reflect the landowner's necessary incentive to sell. This premium varies between different uses to reflect, to some degree, market value (VA, paragraph 6.20).
12. Only B1 use has no premium added to the base benchmark value. This assumption is most favourable to achieving viability, but the model concluded that B1 was not viable and no CIL is proposed for this type of use, so the absence of a landowner's premium is an acceptable assumption. The final benchmark values used to assess residential schemes are adjusted to reflect variations in market value across the Borough (VA, paragraph 6.16). There is no evidence of substance to undermine the approach or values adopted and, in my view, the benchmark land values are sufficiently realistic for comparing against residual scheme values in a general study of this kind.
13. The VA differs from some other studies of this type in that the outputs of the model are designed to show what level of CIL could be absorbed whilst maintaining viability, rather than simply testing a set CIL rate. Thus the summary tables of various typical runs of the model included as illustrative examples in the VA (and the further illustrative examples subsequently provided in CIL 4.3 and in the Council's hearing statement) always show the residual scheme value equalling the appropriate benchmark land value (including the necessary premium for that scheme). This does not mean, as might at first appear, that the illustrated scheme is necessarily at the margin of viability. The key variable is the total sum included within the summary table for CIL. Most valuations indicate the ability of a scheme to absorb a CIL

rate above those in the draft charging schedule.

14. Standard industry assumptions were used for various costs and fees (VA, paragraph 5.41). Basic build costs were drawn from the RICS Build Cost Index Service with a 5% uplift to reflect Code for Sustainable Homes 4; a further uplift for 10% of dwellings to be wheelchair adaptable; and a 5% addition to all standard construction costs to reflect any abnormal site costs (in addition to a 5% contingency) (VA, 5.19 – 5.24). These are reasonable assumptions. Evidence from recent planning applications indicates that existing floorspace on development sites was about 15%-20% of total proposed floorspace. The model therefore assumes a 15% discount for existing floorspace in calculating CIL rates (VA, 5.45). If existing floorspace on a site exceeds 15% of the proposed floor area there would be a greater viability cushion.
15. Residential sales values to inform both the benchmark land values and scheme revenue were calculated based on land registry data for the 15 postcodes in the Borough and from values achieved on new build schemes in the Borough.
16. Core Strategy policy CSP1 sets a Borough-wide target of 50% affordable housing provision. It specifically allows for viability to be taken into account in considering the appropriate provision in any particular development. The Council may seek less affordable housing where there is already a high level of affordable housing, such as in the Deptford area where 4 of the 5 strategic allocations are based. In practice, the delivery of affordable housing has not achieved the 50% target in recent years, although 2010/2011 and 2011/12 came close with 49 % and 47% provision respectively. The 50% target takes into account that some development will be 100% affordable housing.
17. The baseline assumption used in the VA for the provision of affordable housing in the residential scheme examples is 35%, with a 70%/30% split between social rented and intermediate housing (VA, 4.17). The Council estimate that CIL liable developments will need to deliver only 35% affordable housing (in combination with other 100% affordable housing projects) to meet the Core Strategy's 50% overall target (VA, 4.16). There is no evidence to the contrary. Policy CSP1 is also clearly intended to be applied flexibly to reflect local housing circumstances and site characteristics. It would be inappropriate therefore to use the overall 50% Borough-wide strategic target for the assessment of individual development schemes. Nevertheless, some postcodes in the Borough are able to deliver 50% affordable housing with the proposed CIL rates (VA, paragraph 7.26). I therefore consider that the VA assumption of 35% is reasonable and that the introduction of the CIL as proposed would not undermine achieving the aim of policy CSP1 across the Borough over the plan's lifetime.
18. The residential development typologies used in the VA do not include a specific type for sheltered housing. I accept that the development costs of a private sector sheltered housing scheme may be greater than are 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 service charge for unsold flats from when the first occupier moves in. 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. In parts of the Borough, the selected CIL rate is below that which the VA suggests is the maximum viable rate, thus resulting in a cushion to absorb any remaining additional costs. Thus the proposed CIL should not fundamentally undermine the delivery of this type of specialist residential development in the Borough.

19. From the results of the various models run for residential schemes in the 15 different postcodes areas, a range of CIL rates were identified at which most development would remain viable. The results suggested 3 levels of CIL (£33, £76 and £125) for groups of postcodes with similar values (VA, 7.20 and 7.21). In the lowest value areas, most development was expected to occur in Catford Town Centre (postcode SE6) where sales values are higher than the surrounding postcode and thus development is able to withstand a higher CIL rate than £33. In the remaining postcodes in the lowest value band, only about 3.5% of planned Borough-wide housing is expected to be delivered. In addition, many housing schemes here are likely to be for fewer than 10 dwellings and thus not have to provide any affordable housing, improving their ability to withstand a higher CIL rate than initially indicated in the model.
20. Accordingly, the VA concluded that only 2 CIL rates were necessary to adequately reflect variations in value across the Borough (VA, paragraph 7.25). The final recommendation of the VA for the 2 residential CIL rates is a rate of £100 in the north of the Borough and one of £70 for the rest of the Borough (VA, 8.13); these are below the rates initially identified from the model (as referred to in the paragraph above).
21. In relation to non-residential development, the VA tested the viability of 4 commercial development types, namely: small A1 - a high street shop of 111 sm gross internal area (GIA), large A1 - a supermarket/superstore of 5,800 sm GIA; B1 office of 2,000 sm GIA and a C1 Hotel of 2,600 sm GIA (VA, paragraph 5.8). In addition, the residential models included one for mixed use with 20% of the floorspace for commercial development (VA, paragraph 7.2).
22. The VA did not assess other types of development such as commercial leisure (within the D2 uses class). I consider this issue later in the report. However, I accept that the VA has sought to assess the types of development of greatest significance for the Borough over the plan period. The evidence used by the Council to inform its charging schedule cannot test every type of development. Some of the untested types of development may not be viable with the CIL rate proposed, but provided that they are not significant for the delivery of the plan as a whole, then the approach is reasonable. I note that of the 5 strategic allocations only one – Lewisham Gateway - has a specific quantum of leisure space identified in the policy (SSA6) and that outline planning permission for this scheme has already been granted. I do not regard the delivery of further commercial leisure schemes as critical to the delivery of development in the Borough taken as a whole.
23. Revenues were assessed on the basis of net internal area for commercial space (VA, paragraph 5.18: B1 80%, A1 90%). The VA refers to drawing on over 450 commercial properties to assess revenues (paragraph 6.3); the short list of B1 and A1 properties on page 30 are only examples of the information collected, not the complete list (paragraph 6.11). The evidence for large A1

(supermarkets) is drawn from across south London, as there has not been sufficient recent schemes in Lewisham to provide enough data on revenues/yields. Based on this evidence, the VA concluded that non-residential values showed much less variation across the Borough compared with residential values. Accordingly, one set of rent and yield figures were selected for each of the 4 commercial developments tested in the model (VA, 6.19). I consider that these figures are a reasonable input for the model.

24. The VA concluded that both sizes of A1 and a budget hotel could bear a CIL below £100. (See CIL 4.9, Tables 1, 2 and 3: A1 large £86 psm; small A1 £88 psm, hotel £68 psm), but that B1 was not viable even without CIL (summarised in VA, 7.9). The VA report therefore recommended a zero rate for all B1 and a rate of £80 psm for all other development.
25. I turn now to consider the VA's assumptions about S106 costs after the CIL is introduced. The Council's paper *Affordable Housing/S106 performance monitoring and CIL performance monitoring* (CIL 2.5) indicates that there was a peak of planning permissions being granted with S106 obligations in 2012 prior to the introduction of the Mayor's CIL. In 2011/2012, £39.7m was secured via S106 obligations in contrast to only £2.8m in 2010/2011. Outline planning permission has been granted on 4 out of the 5 strategic sites identified in the Core Strategy. Only the Convoys Wharf strategic allocation has not yet got planning permission, although it may do so before CIL comes into effect.
26. From the list in CIL 2.5, the Council calculates that S106 contributions have been negotiated at an average cost of £7,288 per dwelling, which is about £8,000 per dwelling if the very low S106 contribution secured on the Lewisham Gateway permission is excluded. Taking an average-sized dwelling as 75 sq m, the Council calculates that this would equate to a CIL rate of about £107 psm. The Council thus believe this demonstrates that the proposed rates are within an acceptable range.
27. The Council's Draft Regulation 123 list (CIL 2.6) sets out the types of infrastructure on which the CIL would be spent. The list includes education and health care facilities, strategic transport enhancements, public open space, strategic flood infrastructure, public leisure facilities and local community facilities (eg community centres and halls). This list covers a number of potentially significant items previously addressed through pooled contributions. However, CIL 2.7 (*Draft Scope of the Planning Obligations SPD*) identifies the diverse matters which would remain to be negotiated as S106 contributions on a site-by-site basis where they were necessary and meet Regulation 122.
28. The larger and more complex the site, the greater the uncertainty with regard to these residual S106 costs. This issue is particularly relevant to the Convoys Wharf strategic site which I discuss later. For residential schemes the VA assumed that residual S106 costs would be £1,000 per dwelling. I recognise that such residual contributions may vary considerably between sites, but this is a reasonable working assumption for most conventional housing schemes.
29. For commercial developments S106 costs have been varied between different types of development. Thus for large A1, S106 is assumed to be £13 psm

(VA, p38). No S106 cost is assumed for the small A1 (CIL 4.3), which is reasonable given that such developments would typically be High Street locations. A S106 cost of £11 psm is assumed for hotels (VA, p39) and B1 office (CIL 4.3). Residual S106 costs may vary significantly on a site-by-site basis, such as if major highway works are required for a superstore, but no one assumption can reflect such possible wide variations. The figures used are reasonable bearing in mind the 5% allowance made for abnormals.

### *Conclusions*

30. I recognise that particular developers and particular sites may have development costs greater than assumed in the VA. But this type of general study cannot reflect all possible circumstances. Councils are required to use appropriate available evidence to inform their draft charging schedule, but this does not mean that all possible sources of evidence have to be used. The process has to be undertaken in a manageable way with a consistent approach to the use of evidence, which I am satisfied has been the case here. Overall, I consider that the VA made reasonable assumptions for the financial inputs for testing various development scenarios
31. 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.

### **Are the charging rates informed by and consistent with the evidence and does the evidence demonstrate that the proposed rates would not put the overall development of the area at serious risk?**

32. The CIL rates put forward by the Council in the draft charging schedule are the same as those recommended in the VA. They are therefore consistent with the evidence on which the Council relies. I explore further below whether the proposed rates would put at serious risk the overall development of the area.

### *CIL rates for residential development*

33. The boundary between the 2 charging zones for residential development follows the boundaries of the 15 postcode areas (or the parts of these areas lying within the Borough) which were the building blocks for much of the evidence in the VA on residential. I recognise that there may occasionally be some practical difficulties if a development were to straddle the boundary between the 2 charging zones. I note that the Surrey Canal Triangle strategic allocation straddles this boundary. This scheme already has planning permission. Any new planning applications for specific proposals within this large and complex development would be charged the rate applicable to the location of the new application. Only if an application for a large part of the site were to be submitted might the CIL charge have to be calculated using 2 charging rates. Whilst this would require careful consideration if it occurred, I do not regard any potential difficulties that might arise as sufficient to justify the need to realign the boundary between the 2 zones given that they are derived from a clear evidence base.

### *Convoys Wharf*



34. As already noted, the only strategic site allocated in the Core Strategy without planning permission is Convoys Wharf. An outline planning application has been submitted and at the time of the hearing the Council and developer were working towards a decision on the application in February 2014. The discussion at the hearing was in the context that if planning permission were to be granted before the 1 April 2014 it would be subject to the existing S106 regime, but if it were to be granted after that date CIL would be payable as well as S106 contributions for matters not covered in the Council's Regulation 123 list applicable at the time. Since the hearing, I understand that the Mayor of London has called-in the planning application for Convoys Wharf and so it will no longer be determined by the Borough. Furthermore, the delay in being able to complete my report pending the production by the Council of the *Re-presentation* of the summary valuation tables and resultant consultation may delay the timescale for implementing CIL. Nevertheless, these changes do not significantly affect the arguments put at the hearing.
35. The current scheme for Convoys Wharf is a very large and complex development and the site has some unusual constraints and development costs, such as the restoration of the large Olympia listed building and the protection of extensive archaeology. The developer is concerned that the introduction of CIL would materially weaken viability because of the requirement to pay a large amount for CIL, whilst seeing limited reduction in the likely site-specific S106 contributions. The developer is also concerned at the likely greater uncertainty regarding the delivery of critical infrastructure which would be funded by CIL and which may be linked to the progression of the development, but which would be then outside the developer's control.
36. It is not normally necessary or appropriate to consider in an Examination of this kind the viability of a particular development site and scheme. However, the proposed development of this site (in accordance with the requirements of the policy in the Core Strategy) would contribute almost one fifth of the Borough's housing target and 17% of the Borough's target for business space. The Council emphasised that even if this development were to be put at risk (which it does not accept) then 80% of planned housing development will still take place. However, whilst I am satisfied that the proposed charging rates would not put at significant risk development elsewhere in the Borough it cannot be assumed that the introduction of CIL will not have an adverse effect on the viability of some particular sites/proposals and therefore it cannot be assumed that all expected development elsewhere in the Borough will take place. More importantly, Convoys Wharf represents the largest single proposal in the Core Strategy and it is a very important site within the Borough. If a scheme broadly consistent with the scale envisaged in the Core Strategy allocation (not necessarily the current scheme) did not go ahead because of CIL it would, in my view, materially undermine the development plan as a whole.
37. The representations and discussion at the hearing focussed on the extent to which after the introduction of CIL, the combination of the CIL charge and residual S106 obligations would be similar to or greater than the current expectations of the parties in relation to S106 without CIL. Both the Council and the developer estimate that if the current proposal was subject to CIL the total CIL charge would be in the order of £30m. However, the parties have

widely different views of what S106 costs will be if the scheme is granted planning permission before the CIL is introduced.

38. In accordance with the information provided with the current planning application, the developer estimates that S106 costs would be in the order of £47.7m. This figure is put forward in the context of the scheme providing only 15% affordable housing which the developer understands was the basis for negotiations with the Council on a previous application on the site. The largest S106 items are: works to the listed building (£12.3m); new primary school (£6.9m); improvements to the existing wharf (£7.2m); various transport measures (improved local bus services £6m, local highway improvements £4.2m and introduction of a river bus £3.1m); and archaeology (£3.1m). On the developer's reading of the Council's draft Regulation 123 list, only the primary school and the health facility would be covered by CIL in the future, resulting in residual S106 costs being reduced by only about £7.5m whilst an additional £30m is paid in CIL. On the basis of this reduction in viability, the developer estimates that the scheme would be able to provide only 11% affordable housing. To avoid this reduction the developer seeks a bespoke charging rate for the Convoys Wharf strategic site of £26 psm for residential and £23 psm for employment.
39. Using the standard requirements in its existing Planning Obligations SPD the Council consider that current S106 contributions should be much greater than currently estimated by the developer, particularly in relation to education, health and leisure and open space. As these are matters covered in the draft Regulation 123 list, a much larger sum would, accordingly, no longer be payable once CIL is introduced. In addition, the Council consider that some of the other S106 costs may also come within the Regulation 123 list (possibly about 50% of the transport costs) and, finally, that the cost of works to listed building and archaeology are inherent scheme costs and should not be counted as S106 costs as contended by the developer. For these reasons the Council consider that post CIL, the Regulation 123 list is likely to strip out costs comparable to the additional payment that would be needed for CIL, thus ensuring that the viability of the development remains broadly the same.
40. The thrust of the representations made is that there is a considerable risk that if the proposal were to be subject to the proposed CIL rates it would worsen viability rather than make the development so unviable that it would never proceed. The representations did not seek to demonstrate this latter position. Detailed evidence was not submitted in relation to the overall viability of the development. As I indicated at the hearing, it would be disproportionate to require for this type of Examination complex financial information to be submitted on this very large scheme. Given the extent of current disagreement and the limited material before me, I am not in a position to conclude what are reasonable S106 costs for this scheme. That will only emerge from detailed negotiations between the parties (now, of course, the Mayor and the developer).
41. The debate at the hearing highlighted the scope for different interpretations of the Regulation 123 list when applied to major items such as transport infrastructure in the context of strategic scale development such as Convoys Wharf. The wording of the draft list is not a matter on which I can make any recommendation and the Council is able to change the list during the

operation of the CIL. The Council did not consider that the wording could or should be more detailed or precise than that currently proposed. However, it may take a different view once any practical issues of implementing CIL are experienced.

42. Given all the above, my conclusion on this matter is as follows. There is the possibility that if the Convoys Wharf development is subject to CIL then the final impact on viability or the uncertainty regarding the delivery of particular infrastructure might put its progression at risk. However, provided that the Council is alert to the potential effect of the CIL and takes a realistic approach to the interpretation of the Regulation 123 list to minimise the potential for "double-dipping" and provided that the decision maker on the application does not unreasonably tie the phasing of the development to delivery of infrastructure which is outside the developer's control, then CIL need not put this project at risk. There is not the evidence before me to justify a much lower CIL charge for Convoys Wharf. The introduction of such a lower rate here or more generally in this part of the Borough would significantly reduce potential CIL receipts for which there is a clear need.

#### *Retail and Leisure*

43. As already noted, the VA included viability appraisals for a superstore and a high street store and both indicated that such developments would be viable with the charge now proposed. The 2 retail schemes tested are very different in scale and character, but are typical retail developments and, in my view, are adequate to demonstrate that the impact of the CIL charge is acceptable.
44. The Council's hearing statement contains a further valuation summary for a shopping centre which also demonstrated viability with CIL. This is also included in the *Re-presentation* of the summary tables (CIL 4.9, Table 5). The Council's assumptions for this valuation, particularly for rent and yield are disputed and on the evidence presented these do appear to be optimistic. However, the Council's favourable valuation is based on a benchmark land value of industrial land plus a 150% premium. Such a premium would normally apply only where there is considerable existing use value, such as generated by high rents. If rents were lower, existing use value may also be lower. The assessment of viability for a scheme such as a shopping centre is particularly complex. The uncertainties with this valuation are insufficient to persuade me that the proposed charge on retail would jeopardise retail development generally in the Borough given the favourable valuations for the 2 more conventional retail typologies contained in the VA.
45. In response to representations and my questions, the Council's hearing statement included an example of commercial leisure within a shopping centre (also included in the *Re-presentation* in CIL 4.9, Table 6). The Council's viability summary of such a scheme demonstrates that it would be viable. Some of the specific assumptions used are challenged and, as with the shopping centre valuation, the rent and yields assumed by the Council seem optimistic. I accept that the viability of commercial leisure development, either stand-alone or as part of larger mixed use schemes, may well be uncertain. The alternative valuations put forward in representations show 2 examples of commercial leisure development as not viable, even without CIL. The proposed CIL rate would make only a small difference to overall costs.

CIL would not be putting such development at risk if they are unlikely to proceed in any event.

46. I have already concluded that the delivery of additional commercial leisure development beyond those already granted planning permission is not critical for the delivery of development overall in the area. Accordingly, even if the CIL charge did make some such developments unviable it would not be justification for concluding that the Council has not come to an appropriate balance between the need for CIL funds and the delivery of development as a whole.

#### *Public Infrastructure*

47. Because the proposed category B rate of £80 psm applies to all development other than in use classes B and C3, it would apply to those types of infrastructure buildings to which CIL is generally applicable, such as buildings for education and health services, new police and fire stations, community halls and so on.
48. I am aware that many CIL charging schedules both proposed and approved do not include public infrastructure as chargeable development. The Council's reasons for not taking a similar approach are set out in its pre-hearing statement (paragraphs 3.16.1 - 3.16.6). In summary, the Council is concerned that as there is not a robust definition of "public infrastructure" a zero CIL rate for "public infrastructure" may not apply fairly or appropriately. The Council fears that some privately funded/profit making educational or medical facilities may benefit from such a nil rate, potentially giving rise to issues of "state aid", or that some genuine community projects with links to private funding might miss out on benefitting from the nil rate.
49. The Council's chosen approach is to include all infrastructure developments within the category B chargeable rate and then consider infrastructure schemes on their public infrastructure merits. Provided that they are considered appropriate public infrastructure, the Council would fund the project to the amount equal to the CIL liability from previously secured CIL funds, thus negating the cost of the CIL charge imposed on the development. The Council recognise that to achieve this aim all relevant types of public infrastructure would need to be included in the Regulation 123 list. The Council's pre-hearing statement indicates that "Public Emergency Services" need to be added to the list when the CIL is introduced to allow new police and fire stations to benefit from the Council's approach.
50. If effectively applied, the Council's approach would ensure that no additional costs are incurred for public infrastructure projects as a result of the introduction of the CIL and that the delivery of projects necessary to support new development is not jeopardised. Much will depend on the clarity of the Council's judgement on such matters and the swiftness of its decision-making process to avoid introducing uncertainty regarding the cost of infrastructure projects. The Council's arrangements are more cumbersome than simply having a nil rate for infrastructure. However, the potential practical difficulties are not so great as to justify me intervening to introduce a nil rate for public infrastructure given the Council's fears regarding "state aid" and the inevitable problem of defining public infrastructure unequivocally.

51. The Council has not sought to assess the viability of public infrastructure projects in the conventional way since its intended approach would ensure that there is no overall increase in costs for such projects. There is no evidence to suggest that private educational, health or other developments which might fall outside the Council's assessment of public infrastructure projects are of themselves a significant element of future development in the Borough or essential to support development generally. I am therefore satisfied that the Council's approach and the proposed Category B rate on all other development will not put at significant risk development in the Borough as a whole.

**Conclusion**

52. In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and appropriate evidence on economic viability. The Council has sought 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.

<b>LEGAL REQUIREMENTS</b>	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended 2011)	The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

53. I conclude that the London Borough of Lewisham Council's 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**