



**THE EXAMINATION OF THE SOUTHWARK LONDON BOROUGH
COUNCIL COMMUNITY INFRASTRUCTURE LEVY
DRAFT REVISED CHARGING SCHEDULE**

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

Report to Southwark London Borough Council

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI
an Examiner appointed by the Council

Charging Schedule submitted for examination on 25 May 2017

Examination hearing held on 26 July 2017
Report date: August 2017

Non Technical Summary

This report concludes that the Southwark London Borough Council Draft Revised Community Infrastructure Levy Charging Schedule, subject to the modification that I recommend, 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 can be summarised as follows:

- Modify the zone maps to show national grid lines and reference numbers

The specified modification recommended in this report is based on matters raised in writing prior to the public hearing and does not alter the basis of the Council's overall approach or the appropriate balance achieved.

Introduction

1. This report contains my assessment of the Southwark London Borough Council (SLBC) Community Infrastructure Levy (CIL) Draft 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 (DCLG Guidance on the Community Infrastructure Levy).
2. To comply with the relevant legislation the local charging authority has to submit a charging schedule that 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 is the schedule submitted on 25 May 2017. This had been subject to public consultation for a six week period between 30 January 2017 and 13 March 2017. The Examination hearings were held on 26 July 2017.
3. The Draft Charging Schedule subject of this examination is a revised schedule, which I shall refer to as the Draft Revised Charging Schedule (DRCS). It follows from the Charging Schedule that was approved by the Council on 25 March 2015 that came into effect on 1 April 2015. The approved Schedule was based on a matrix approach to charging.
4. To help understand the revisions in the DRCS it will help to show the charges in the Charging Schedule currently in operation, set out in the following table:

The 2015 CIL Charging Schedule

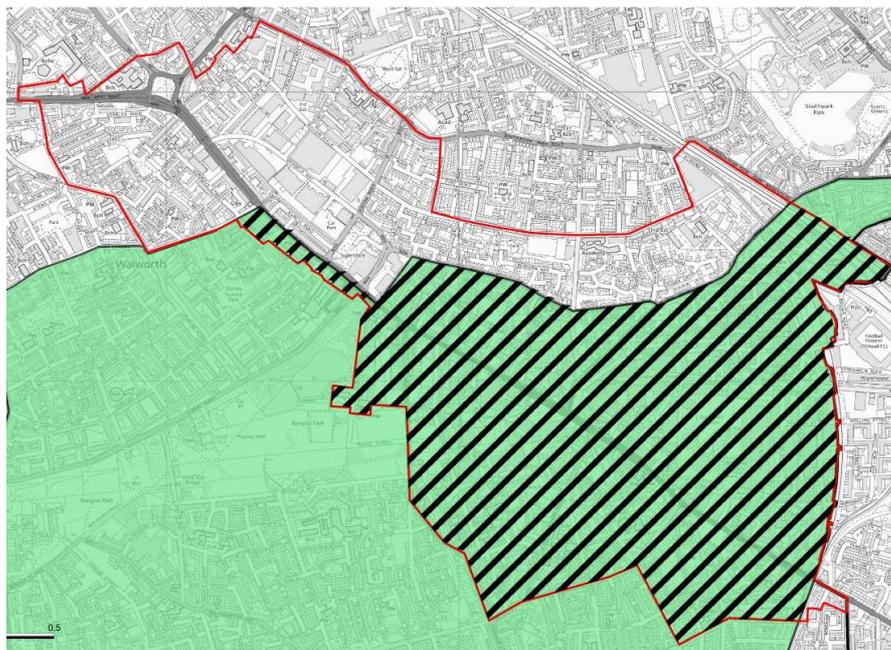
Development type	Zone	CIL Rate £ per sq,m.
Office	Zone 1	£70
	Zones 2-3	£0
Hotel	Zone 1	£250
	Zones 2-3	£125
Residential	Zone 1	£400
	Zone 2	£200
	Zone 3	£50
Student Housing – Direct let **	Zones 1-3	£100
Student housing – Nomination ***	Zones 1-3	£0
All retail	Zones 1-3	£125
Town centre car parking Industrial and warehousing Public libraries Health Education All other uses	Zones 1-3	£0

5. The DRCS seeks to do two things. Firstly, and the reason that it has been produced, is to revise charges for residential development operating within the Old Kent Road Opportunity Area. In the current Schedule the Old Kent Road Opportunity Area (OKR OA) falls across CIL Zones 2 and 3. The Council proposes to revise the Schedule to increase the rate paid by residential developments currently falling within Zone 3 in the southern part of the OA by amending the boundary between Zones 2 and 3 so that the whole of the OA comes within Zone 2. Secondly, the opportunity has been taken to increase all the existing rates in line with the All-in-Tender Price Index, as provided for in the CIL Regulations. These are the rates that would be charged for any chargeable development at this date in any event and so is not a real change to the rates that would be charged under the extant Schedule (in fact the rates are marginally lower than they otherwise would be due to a rounding process that has been used).
6. The revised rates as set out in the DRCS are as follows:

The 2017 CIL Draft Revised Charging Schedule

Development type	Zone	CIL Rate £ per sq.m.
Office	Zone 1	£76
	Zones 2-3	£0
Hotel	Zone 1	£272
	Zones 2-3	£136
Residential	Zone 1	£435
	Zone 2	£218
	Zone 3	£54
Student Housing – Direct let **	Zones 1-3	£109
Student housing – Nomination ***	Zones 1-3	£0
All retail	Zones 1-3	£136
Town centre car parking, Industrial and warehousing, Public libraries, Health, Education and all other uses	Zones 1-3	£0

7. This map shows current CIL charging zone 3 (green), OKR OA boundary (red) and the area that currently falls within zone 3 that is proposed to be brought within zone 2 (hatched).



Justification for the imposition of CIL in Southwark London Borough and its revision

The scope of this Examination

8. I made it clear in my questions to the Council (copied to representors and put on the CIL webpage) that, in my understanding, my examination is purely concerned with the substantive revision, and not with the changes to rates due to the inflation uprate as provided for in the Regulations. The Council response was to agree with me, but to ask me to take a view on the differential rate for nomination student housing – I deal with this towards the end of this report.
9. Since this is a proposed revision of the Charging Schedule, the justification for introducing the CIL in the Borough was settled in the procedure leading up to the approval of the 2015 Schedule. Therefore, at this stage, there is no need for me to look at broad infrastructure needs and the funding gap, except to note that the latest iteration of the Infrastructure Plan (Document CDEIP3), dated May 2017, shows a total cost for infrastructure at £2.2 billion, committed funding of £171 million and a funding shortfall of £1.7 billion (all figures rounded). There is no doubt about the need for the continuing collection of CIL.

The justification for the Revision of the Charging Schedule

10. The Old Kent Road was designated an Opportunity Area in 2015 and SLBC, the Greater London Authority (GLA) and Transport for London (TfL) have collaborated in developing the evidence base and planning framework for the area. Opportunity Area designations are a key plank in the London Plan strategy for managing growth. In 2016, together with LB Lewisham, SLBC, GLA and TfL launched a formal Growth Partnership to promote growth within the wider area covered by the proposed Bakerloo Line extension and coordinate the delivery of the infrastructure that will be required to support it.
11. The SLBC's draft Old Kent Road Area Action Plan (OKR AAP) is an ambitious strategy to deliver over 20,000 new homes and at least 5,000 additional jobs over the next 20 years or so. Clearly a huge challenge. The proposed Bakerloo Line extension (BLE), which passes through the middle of the OKR OA, is intended to transform connectivity in south-east London and increase the capacity and resilience of London's transport network. Funds for its design development have been committed in TfL's business plan, and the Mayor has prioritised the development of the scheme during this mayoralty. The anticipated completion point has recently been brought forward from 2030 to 2028/29. The funding package will need to include a significant contribution from local sources which will potentially include business rate retention and of course the community infrastructure levy.
12. The Council says that the proposed changes to the current CIL Charging Schedule reflect the ambition and scale of growth anticipated in the emerging OKR AAP and aim to ensure that CIL can make a meaningful and needed contribution to the BLE funding package. This scale of development, including the 20,000 new dwellings and 5,000 additional jobs, is expected to make a significant change to development values in the OA, and justifies the increased charges in the part of

the OA affected by the move from being within zone 3 to being within zone 2. (I deal with the extent to which changes in development value affect viability with the proposed increased rate in paragraphs 19 and 20.)

13. Within my written pre-hearing questions, I asked for an elaboration of the projected CIL income from the proposed change in the zone boundaries and of the supporting modelling. The Council clarified that its projected CIL income arising from development in the OKR OA is based on the amount of residential space expected to come forward. Business space (Class B) is nil rated in CIL zones 2 and 3, and while an uplift in retail space is expected, much of this may effectively be offset by existing space and is therefore more difficult to predict. It is anticipated that 20,000 homes will be completed in the OA. An average unit size of 92sqm has been assumed (which allows for a gross internal area of an individual unit of 69sqm based on the residential unit mix required by planning policy). It is also assumed that 20% of the proposed floorspace will be offset by existing floorspace and that 35% of the floorspace will be eligible for social housing relief. Using that formula, CIL income in the OA amounts to £208,582,400 over the plan period of 2016 to 2036.
14. It is not possible to break this down into the amount of extra CIL that would arise solely from the increase that would occur from the revision of the boundary between zones 2 and 3, but I have no reason to think that the extra income would not be a substantial figure, beneficial to the provision of the required infrastructure. Certainly the justification for charging CIL in the Borough remains.

Economic viability evidence

15. The Council commissioned the Old Kent Road Opportunity Area Viability Study April 2016 (VS) that uses a residual land value method. The methodology compares the residual land values of a range of notional development situations and site specific schemes on sites in the OKR OA to their current use value plus a premium – the “benchmark land value” (BLV). The site specific schemes that are tested take real site schemes derived from the Council’s “place making study” that explored the potential to create new ‘places’ along the Old Kent Road. The notional development schemes appraised reflect the range of sales/capital values and sizes/types of development and development densities within the OA. These typologies have been established by the Council reviewing historic planning applications and typologies expected to come forward in the OA. Thus they are reflective of developments that have been permitted/delivered in the Borough as well as those expected to come forward in the OA in the future.
16. This method is the same as that used by developers when determining how much to bid for land. It involves calculating the value of the completed scheme and deducting development costs, such as construction, fees, finance, general planning policy requirements, CIL and s106, plus developer’s profit. The residual amount is the sum left after these costs have been deducted from the value of the development. It is important to note that site value must have regard to development plan policies and all other material planning considerations, and must disregard anything that is contrary to the development plan. The principles behind the VS and the inputs into it are the same as those that have been used in many studies that underpin approved CIL charging schedules, and therefore forms an acceptable basis for the Council’s revisions to its approved CIL rates.

Does the Viability Study adopt appropriate and realistic input values?

17. The main questions raised in the representations in respect of the inputs adopted in the VS are about the BLVs, sales values assumed, and the extent of developer's profit allowed for. As a result of these issues, representors suggest that the impact of the increase in the CIL rate in the southern part of the OA will be considerable, and will result in unviable schemes.
18. *The BLVs* are said to be set at unrealistically low values, and recent land sales figures are quoted to support the contention. The Council responds that the use of historic transactions should not be relied upon and that the VS methodology of existing use (value of site with existing use and assumption that the use will remain) plus an uplift to incentivise an owner to sell is in line with guidance (for example in NPPG and that provided in the 'Harman Report') and with methodology that has been found satisfactory in many CIL examinations. In my opinion the approach in the VS is acceptable for the purpose of setting a CIL rate. There are a number of reasons affecting what purchasers will pay for a site (see paragraphs 3.17 and 3.18 of the VS), and it remains important to stress that an underlying concept of the CIL regime is that the price paid for land must reflect all the costs of achieving a viable development with a reasonable developer's profit.
19. *The sales values* adopted in the VS are also criticised in representations on the basis that sales values in the range £650-£725/sqft are reasonable, but an uplift to £850-£900/sqft in the southern part of the OA is not justified. I pursued this at the hearing when it was explained on behalf of the Council that in the south and east of the OA the recorded values reflect second hand stock and ex-local authority housing, that in the east being located around industrial areas. Paragraphs 2.20 to 2.23 of the VS explains this, but it could have been more clearly expressed in line with how it was explained at the hearing.
20. The explanation I was given is persuasive: that CIL will be collected on development that is not typical of the current housing stock in the part of the OA that changes from being in zone 3 to zone 2. The development on which CIL will be collected in this area will in all likelihood achieve considerably higher values, resulting from larger scale developments that provide a significant change to the character, as has been experienced elsewhere with new build out-performing existing stock and smaller new build developments. In addition, this part of the OA will benefit from the ambitious strategy with good quality housing, jobs, new school places, new and improved open spaces, cultural and leisure opportunities, and greatly increased capacity and resilience of the transport network. The proposed revised CIL rate must be judged against the higher sales values that can reasonably be expected, rather than the sales values of relatively unattractive existing stock.
21. *Developer's profit* allowed for in the VS is 18%, which is again criticised by representors as being too low, it being suggested that an allowance of a least 20% on market housing should be used. The Council's evidence, based on submitted viability appraisals for development schemes in the Borough over the past few years, shows that developers have assumed a range of profit levels on private housing. I am told that, in the main, these levels have been put at between 15% and 20%. It is this range that has led to 18% being adopted in the VS as being just above a middle figure. Clearly the profit percentage expected

will depend on the perceived risk of the development. There will always be uncertainties as to how factors affecting risk may change, and currently the uncertainty over the outcome of the UK's exit from the European Union is one of them. Nevertheless, in my judgement a profit level of 18% at the present time is a reasonable basis for the VS, especially when taking account of the fact that the charge is a very small percentage of the overall cost of development.

Would the proposed increase in the residential rate in the south of the OA result in a significant impact on the provision of affordable housing?

22. The likely impact of the change in the charge rate within the OA on the ability of developments to afford to provide affordable housing (AH) to meet the Council's planning policy was a matter that concerned me more than a little. This was particularly so in the case of appraisals using the lower sales values and higher BLVs. However, the matter of sales values dealt with in paragraphs 19 and 20 above and my conclusion about the values that can reasonably be expected on new development in the area, ease my concerns.
23. Nevertheless, paragraph 7.3 of the VS makes clear that, to ensure the delivery of the required growth identified for the OKR OA, particularly on sites with high existing use values and in lower value parts of the OA, the Council needs to apply its policies flexibly. The Study authors add *"In this regard we consider that the Council's flexible approach to the application of their emerging NSP and OKR OA AAP policies identified as having cost implications (ie. Subject to viability) will ensure both development viability and the delivery of the maximum quantum of affordable housing"*
24. This clearly suggests, since CIL is non-negotiable, that there is likely to be a proportion of schemes coming forward with demonstrable viability issues, where meeting the requirements of the Council's policies for AH, and other s106 obligations, may not be met. It is the normal expectation that charging authorities will set CIL charges at a level where the viability study shows that it is to be expected that generally the policies for AH can to be met in full. In the case of Southwark's VS, in testing the notional sites, the appraisals included the full policy requirement for AH (35%), but also tested at zero AH, at 10% and then at 5% increments up to 100% AH.
25. VS Appendix 6 sets out the appraisal results for the 'notional' sites, with four columns, the first two testing at 2016 values and indexed CIL (£210.77 and £52.69) and the third and fourth columns testing at 2016 values and 2017 indexed CIL (£217.69 and £54.52). The first thing that is very noticeable, looking across all the notional sites, is that there is generally little or no difference between the levels at which viability occurs across the four columns. Where there is a difference it is confined to one step in the percentage of AH percentages – i.e. between, for example, 15% and 20% AH, where the increase from the zone 3 rate to the zone 2 rate changes the proportion of AH by 5%. The other thing that is noticeable is that the notional sites are frequently not viable at any of the CIL rates tested. In respect of the latter point, it is necessary to keep in mind the point made in paragraph 20 above.

26. VS Appendix 11, where the results of the testing of the specific sites are set out, demonstrates a general lack of viability. This is so where the inputs include the 2017 proposed rate, but 0% AH. But, as the conclusions of the VS point out, and my observation in paragraph 25 above bears out, in the main the imposition of CIL is not the critical factor in determining whether a scheme is viable or not, with the relationship between scheme values, costs and land value being more important.
27. I am led to the conclusion that, at present scheme values and land values, many of the tested sites will either not be able to meet the AH policy requirements in full or at all, and to that extent the Council has not proposed a level of CIL rates in respect of the southern part of the OKR OA that will meet the expectation that the development plan AH policies will normally be met in full. That this normal expectation is not met is offset by the clear balance of judgement that the Council has exercised that there is an over-riding need to put in place a scheme that is most likely to be successful in enabling the delivery of infrastructure that is so essential to the fulfilment of the transformational aims for the OA.
28. Furthermore, there is a reasonable expectation that scheme values will increase above the levels tested in the VS because that testing used best evidence of present values in areas that are dominated by second hand stock and ex-local authority housing, much being located around industrial areas. Furthermore, the local charging authority has to submit a charging schedule that sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development *across the Borough* (my emphasis): there is no convincing evidence before me that this balance has not been struck or that residential development will not remain viable across the Borough as a whole.

Is the Nomination Student housing rate a matter for the Examination?

29. In the Charging Schedule, (as approved and as now proposed to be revised), the Nomination Student housing rate, which is £0 in all three zones, has three asterisks indicating a footnote. The footnote states "Nomination student housing schemes – rental levels set below an average of £168 per week secured through a section 106 planning obligation." Thus the £0 rate does not apply to nomination student housing schemes that are not secured at an average rent level of £168 or less. This rate is therefore clearly a differential rate. However, since the rate and its description has not changed in the RDCS, I considered that, as with all rates that are not proposed to be revised, it was not a matter for my examination. I thought it desirable, however, to invite the Council to say whether it agreed with me: in my pre-hearing written questions (question 6) I stated that I took the view that my examination is entirely confined to the proposed changes whereby the whole of the OKR OA comes within zone 2.
30. In its reply, the Council agreed with my interpretation, save for asking me 'to take a view on' the matter of nomination student housing schemes that are nil rated where rental levels are set below an average of £168 per week and secured through a section 106 planning obligation. It pointed out that "*The council has chosen not to vary it in the Revised CIL charging schedule. In 2016 the Mayor published his Housing SPG that also provides guidance on affordable student accommodation (2016; paragraphs 3.9.4-3.9.13). This document sets the rent*

for this type of accommodation at £155 per week for the academic year 2016/17, with the annual increase to be reported in the Annual Monitoring Report in subsequent years. To be consistent with other areas of London the council takes the view that the figure of £168 per week should not be inflated in the Revised CIL charging schedule. This will impact on developments of student housing outside the area of the enlarged zone 2.”

31. I made this an item on the hearing agenda, which enabled me to explore the matter with the Council and the Representor who had raised this as an issue on the basis that in 2014 (at the approval of the current CIL charging schedule), the Council stated that CIL in relation to Nominated Student Housing would be indexed on an annual basis to CPI with a base of October 2013 and last for a period of seven years for the whole of the Borough: the Representor contended that this was the basis on which CIL for student housing was adopted and implemented and it is inequitable that the Council should now take a decision to vary this.
32. At the hearing the Council explained that the figure of £168 came from its 'Section 106 and Community Infrastructure Levy SPD' (April 2015). The SPD sets out its own methodology for the indexation of the £168 rental level that the Council would be free to change, subject to the usual procedure for amending an SPD, from time to time. I offered the view that the Nomination Student Housing rate was a differential rate that was identified by a particular average weekly rent that was governed by a s106 obligation. As such in my view it could only be revised by a formal draft CIL charging schedule process, such as that which the RDCS had undergone, with preliminary and draft schedules being consulted on, and subject to examination. I decided to allow the Council to submit a written note to me, after the hearing, with the benefit of its own legal advice, as to whether this is a matter for my examination.
33. The Council note is available on the website, and I need not set it out in full here. In it I am reminded of the terms of Section 212 (7) of the Planning Act 2008 and the CIL Regulations, including the provisions for indexation in relation to inflation. In summary, the Council's view is that the 'informative' lies outside the scope of my examination. The informative is distinct from the "chargeable amount" referred to in the Regulations and therefore Regulation 40 that relates to indexation does not apply. In relation to the status of the figure of £168, this needs to be read in the context of Council's policy as a whole: the informative is likely to be read in conjunction with the adopted Section 106 Obligations and CIL SPD. This guidance will be applied until such point as the SPD is revised. Any such revision would be subject to the usual procedure for amending an SPD and would need to take account of any changes in Southwark's Development Plan or the London Plan.
34. Having considered the response, my view is that the differential rate for "Student housing – Nomination" has to be read as though the descriptor of the subject of the rate, included in the *** footnote, were written into the row for this type of development: that is the £0 rate applies to Nominated Student housing that is let at rental levels set below an average of £168 per week and secured through a section 106 planning obligation. Any Nominated Student housing that is let at a higher weekly rental does not benefit from this zero rate. This differential zero rate is applicable across zones 1-3 and not only within zone 2 or zone 3.

35. In my view it follows that the only way in which there could be a change in this rate in terms of the type of development to which it applies would be through the same process that the RDCS has progressed. Clearly there has been no such process. Since there is therefore no change to the descriptor of the development type or its rate, I consider that it is not a matter for my examination.

Are the requirements of the Community Infrastructure Levy Regulations met in full?

36. In my pre-hearing questions to the Council (question 4), the main matter I raised concerned the extent to which the Zone Maps meet the full requirements of the Regulations. Where charges are to be differentiated by zones, Regulation 12(2) has to be followed. This states:
“(2) A draft charging schedule submitted for examination in accordance with section 212 of PA 2008 must contain—
(a) Where a charging authority sets differential rates in accordance with regulation 13(1)(a), a map which—
(i) identifies the location and boundaries of the zones,
(ii) is reproduced from, or based on, an Ordnance Survey map,
(iii) *shows National Grid lines and reference numbers, (emphasis added)* and
(iv) includes an explanation of any symbol or notation which it uses.”
37. The Charging Zones Maps do not have national grid lines or reference numbers, as required by Regulation 12(2)(a)(iii). As a result the Council confirmed that it would deal with this omission when publishing an approved Charging Schedule. Since this matter relates to compliance with the CIL Regulations, I will make it the subject of a formal modification. I also raised other minor matters that I am content to leave to the Council, not requiring a formal recommendation.

Overall Conclusion

38. The Draft Revised Charging Schedule is supported by evidence of community infrastructure needs and a funding gap continues to be demonstrated. The proposed charges would make a much-needed contribution, and I consider that the figures demonstrate the need to review the CIL rates in the southern part of the OKR OA. The rates proposed for Southwark London Borough have been established by the Council on the basis of a Viability Study commissioned from experienced consultants in development economics. The methodology used is consistent with CIL Guidance that has found general acceptance in CIL examinations. The evidence persuades me that residential development will remain viable across most of the Borough if the proposed CIL rates in the DRCS are applied. On this basis, the evidence that has been used to inform the Charging Schedule is robust, proportionate and appropriate. The Council has struck an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the Borough.

Are the Legal Requirements met?

39. The Legal Requirements are met:

- The Charging Schedule complies with national policy and guidance
- The Charging Schedule complies with the 2008 Planning Act and 2010 Regulations (as amended), subject to my recommended modification, including in respect of the statutory processes and public consultation, consistency with the development plan, both adopted and emerging and Infrastructure Delivery Schedule and is supported by an adequate financial appraisal.

Recommendation

40. I conclude that the Southwark London Borough Community Infrastructure Levy Revised Charging Schedule, subject to minor amendments to the Zone Maps, satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability and other requirements of the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

Terrence Kemmann-Lane

Examiner

This report is accompanied by Appendix A below – The Modification that the examiner specifies so that the Charging Schedule may be approved.

Appendix A

Modification recommended by the Examiner to allow the Charging Schedule to be approved.

Modification Number	Modification
EM1	i) Modify the Zone Maps by adding National Grid lines and their reference numbers