



The Planning Inspectorate

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**Report to the Royal Borough of Kensington and Chelsea**

**by Philip Staddon BSc, Dip, MBA, MRTPI**

**an Examiner appointed by the Council**

**Date: 22 December 2014**

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

**REPORT ON THE EXAMINATION OF THE ROYAL BOROUGH OF  
KENSINGTON AND CHELSEA DRAFT COMMUNITY INFRASTRUCTURE  
LEVY CHARGING SCHEDULE**

Charging Schedule submitted for examination on 31 March 2014

Examination Hearings held on 9 June 2014 and 14 October 2014

File Ref: PINS/K5600/429/6

## Non-Technical Summary

This report concludes that the Royal Borough of Kensington and Chelsea Community Infrastructure Levy (CIL) Draft Charging Schedule requires modifications to enable it to provide an appropriate and viable basis for the collection of the levy in the area.

The modifications necessary can be summarised:

- That a new Zone H is defined around the strategic site at Kensal and that CIL is set at £0 psm for all development types in this zone.
- That the CIL charge for 'Extra Care' housing developments in Zones E and F be reduced from £20 per square metre (psm) to £0 psm.

Subject to these modifications the Council is able to demonstrate that it has sufficient evidence to support the schedule and can show that the levy rates would be set at levels that will not put the overall development of the area, as set out in the relevant plan, at undue risk.

In addition to these modifications, the Examiner recommends that the Council undertakes an early review of the operation of its CIL regime. This will allow for the local effects to be monitored and enable any necessary changes and refinements to be made to reflect the outcome of (current) policy reviews and progress on the major strategic site at Kensal.

## Introduction

1. This report contains my assessment of the Royal Borough of Kensington and Chelsea's Community Infrastructure Levy (CIL) Draft Charging Schedule in terms of Section 212 of the Planning Act 2008 (as amended) and the associated CIL Regulations 2010 (as amended). It considers whether the schedule is compliant in legal and regulatory terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance. The national guidance was, at the time the Schedule was submitted for examination, the Community Infrastructure Levy Guidance – DCLG – February 2014, which was subsequently added to the National Planning Practice Guidance (NPPG) in June 2014.
2. To comply with the relevant legislation and guidance the local charging authority has to submit a charging schedule that strikes an appropriate balance between helping to fund new infrastructure to support development and the potential impact of the levy upon the economic viability of the sites and scale of development identified in the 'relevant plan' covering the council's area.
3. The basis for the examination, on which Hearing sessions were held on 9 June 2014 and 14 October 2014, is the submitted Draft Charging Schedule (DCS),

which was published for public consultation between 21 January 2014 and 23 February 2014.

4. It is necessary to explain two particular features about this examination. The first relates to the 'unique' nature of the Royal Borough, and the second relates to the process this examination has followed.
5. On the first point, the 'uniqueness' of the borough was referred to by a number of participants in the examination as a factor in assessing the CIL proposals. It is said to be the most densely populated borough in the country, with an estimated population of 178,600 in an area covering less than five square miles. The urban form is similarly high in density and about three quarters of the borough's area is covered by designated Conservation Areas. The predominant land use is residential, although it also includes parks, cultural and shopping facilities of international renown. The borough includes some of the wealthiest neighbourhoods in the country (indeed in Western Europe) where property prices in the 'super prime' market can reach unprecedented levels. It is an area that, the Council reports, attracts significant interest from investors. However, it also includes some areas of serious deprivation, with complex problems of low incomes, high unemployment and poor health being evident, particularly in North Kensington and parts of Earl's Court.
6. On the second point, this has been an unusually complex examination. After the first Hearing, I identified some significant issues in respect of the Council's CIL approach to (i) affordable housing and (ii) strategic sites, along with some other, but less fundamental, issues. At the request of the Council, I extended the examination and held a second Hearing to provide an opportunity to present further evidence and clarifications on the two key issues i.e. to provide the Council with an opportunity to allay my concerns.
7. With these particular features in mind, I have endeavoured to structure this report under the headings (in bold) of the main issues that I identified through the examination.

### **The Council's CIL proposals**

8. The Council's CIL proposals for the borough include charges for residential development and for specified types of commercial development.
9. The residential CIL proposals relate to seven defined geographical charging zones, notated by letters A – G, which are informed by, but do not precisely mirror, post code boundaries. For 'Class C3 (Residential)' development, different CIL rates would apply in the defined zones, the highest charges being £750 psm in Zone A (Knightsbridge) in the south east of the borough and the lowest being £110 psm in Zone F covering the North Kensington area. An additional zone (G), covering a strategic site at Earl's Court, would be zero rated for CIL purposes i.e. £0 psm. The Council proposes to differentiate 'extra care' housing which would incur a similarly zoned, but lower, set of charges ranging from £20 psm in Zones E and F up to £510 psm in Zone A. It is, in my opinion, a complex set of charges in a restricted geographical area.

10. The commercial CIL charges would apply across the borough with the single exception of the strategic site at Earls Court (Zone G), which is zero rated for all development. The charges are limited to two commercial development types. First, 'hotels' which would incur a £160 psm charge and second, 'student accommodation' which would incur a £125 psm charge.

### **Background evidence – the relevant plan**

11. The 'relevant plan' for CIL purposes comprises The London Plan 2011 and the 'Core Strategy for the Royal Borough of Kensington and Chelsea with a Focus on North Kensington Development Plan Document 2010' (hereafter 'CS').
12. It is not the role of a CIL examination to revisit The London Plan and CS issues that have been properly examined and adopted. That said, it is important for the CIL examination to understand fully the 'relevant plan's' approach to sustainable growth in order that a balanced view can be reached on the effects of the CIL proposals on the economic viability of that planned development delivery, particularly in respect of housing.
13. The London Plan is the Mayor's high level spatial development strategy for the capital city. It sets out an integrated economic, environmental, transport and social framework for the development of London over the next 20-25 years. Proposed further alterations to The London Plan were the subject of public consultation and examination earlier this year and have some relevance to the CIL examination.
14. The CS was adopted in December 2010. It combines an overall vision, a set of strategic objectives, identification of 'places' where change is anticipated, strategic site allocations and a suite of development management policies.
15. The adopted CS identified a housing target of "a minimum of 3,500 homes between 2007/8 and 2016/17 – or 350 units a year" (Policy CH1). The policy narrative notes that planned revisions to The London Plan would raise that number substantially (to a figure of 585 p.a. at that time). Draft further alterations to the London Plan, which were the subject of public consultation between January and April 2014, propose to increase the borough's housing target to 733 p.a. for the ten year period 2015 – 2025. Policy CH1 also sets out the Council's commitment to make provision for the maximum amount of affordable housing with a target of a minimum of 200 units per annum for the period 2011 – 2028 (raised from 90 p.a. prior to 2011).
16. Building on this target, the Council's more detailed affordable housing policies are set out in Policy CH2. This is a wide ranging policy headed 'Housing Diversity' and it deals with three sub-issues of 'housing mix and type', 'affordable housing' and 'gypsies and travellers'. With regard to affordable housing, the policy sets out the required provision from developments.
17. The headline requirements are 50% affordable housing (by floorspace) on all sites over a defined threshold (800 square metres gross floorspace) with an 85/15 split between social rented and intermediate housing. Nine of the ten policy criteria begin with the word 'require'. The one that does not sets out the only circumstances where less than the 50% requirement may be accepted –

these relate either to where there are proven viability issues (and evidence is required to demonstrate that the 'maximum reasonable amount' of affordable housing is provided) or there are 'exceptional site circumstances or other public benefit'. At the extended Hearing session in October 2014, the Council advised that it had begun the process of reviewing its affordable housing policies.

18. The CS's spatial approach to delivering its housing target is heavily reliant on identified strategic sites, with a particular focus on the North Kensington Area where the need for regeneration and renewal has been identified as a priority. The CS identifies eight strategic sites, although not all include housing allocations and some are quite small. Those that do include housing would, collectively, provide for over 5,000 new homes in the plan period i.e. the great majority of the planned new homes in the borough. Some of these allocations have been built out, but others have either not been developed, or are part developed. In terms of this examination, clearly the most relevant are unimplemented allocations (that may incur a CIL charge). The most significant strategic sites are at Kensal (2,500 unit allocation); land adjacent to Trellick Tower (60 unit allocation) and at Earls Court (500 unit allocation), a site that straddles the boundary with the Borough of Hammersmith and Fulham. The nature of much of the borough (high density and Conservation Area) dictates that housing delivery outside of the strategic sites will be limited.
19. In recent years, actual housing delivery has fallen substantially short of CS targets. Indeed, in the six years between 2007/08 - 2012 /13, based on the Council's evidence, the annualised average delivery rate was 175 units p.a.
20. The above policy and delivery matters are significant contextual factors in terms of assessing viability and CIL in the context of the 'relevant plan'. There is clearly some distance between the plan's ambitions and stated policies and the reality of development delivery. It is also clear that the progression of the strategic sites, and in particular the largest site at Kensal, is critical to the delivery of the relevant plan's market and affordable housing objectives.

### **Background evidence - infrastructure needs**

21. The CS evidence base included an Infrastructure Delivery Plan which was updated in March 2014. It draws on existing studies and assessments to identify infrastructure requirements in the borough. The IDP assesses the following categories of infrastructure requirements: transport, utilities and waste, social infrastructure, environmental and green infrastructure and culture and leisure. The Council assesses an overall infrastructure requirement bill of circa £364million, which is currently about two thirds funded, leaving a funding gap of circa £122 million. Much of this gap is comprised of 'environment and transport' (£81 million) and 'other e.g. National Grid' (£30 million), the former including a sum of £20 million towards the borough's aspiration to secure a Crossrail station at Kensal. The funding gap is substantial and provides a justification for the introduction of a CIL regime.
22. The Council assesses that CIL receipts will be relatively modest, given that much of its planning application caseload will not generate CIL (e.g. residential extensions) or, where it does, it will be limited due to the deduction of existing

floorspace. To give some indication of potential receipts the Council has examined those developments for which it has collected the Mayoral CIL since its introduction and back calculated the CIL receipts that would have accrued were its own DCS in place. This is a fairly crude approach, as it does not necessarily equate to the profile of future development. Nonetheless, the Council arrived at an estimated range of between £1 – 3 million per year. If that were to be accurate, CIL receipts would make a modest contribution to filling a substantial funding gap for the area's assessed infrastructure needs.

### **The Council's regulation 123 list**

23. The NPPG makes clear that a charging authority should set out a draft list (known as a 'Regulation 123 list') of infrastructure projects or types of infrastructure that CIL receipts will be used to fund. This is to provide transparency on what CIL will fund and what may still be sought from S.106 planning agreements.
24. The Council's list sets out five 'types of infrastructure' (education, medical, sports and recreation, open space and flood defences) which will be funded by CIL receipts. It also includes a heading for specific 'infrastructure projects' that may be accepted as 'in kind' payments, although none are identified at this point in time.
25. The 2014 Guidance makes plain that it is not the purpose of the CIL examination to 'challenge' the list. However, it is appropriate for me to comment on the list in terms of the issues of transparency and its consistency with the infrastructure evidence. There are two inter-related concerns.
26. First, given that much of the Council's assessed funding needs relate to transportation matters, the omission of this type of infrastructure from the list may puzzle a CIL paying developer, given the weight of evidence. It also implies that a development's full burden of transportation requirements and mitigation will remain to be dealt with by S.106 planning agreements. On larger sites this could be considerable, and may involve the provision of strategic transportation infrastructure.
27. Second, the list lacks a close connection with the CS infrastructure priorities. The Guidance is clear in advising charging authorities to "*think strategically in their use of the levy to ensure that key infrastructure priorities are delivered to facilitate growth and the economic benefit of the wider area*" (Paragraph 011 - Reference ID: 25-011-20140612). As currently drafted, the list appears as a set of categories of everyday local authority expenditure, without a clear link to the positive purpose of supporting the development set out in the relevant plan. For example, there is no indication that CIL funds will be used to help unlock and / or support strategic site delivery which is so critical to the CS.
28. At the second Hearing the Council acknowledged these issues and its submissions indicate an intention to consult on a revised Regulation 123 list, and a revised Planning Obligations Supplementary Planning Document (SPD), prior to the adoption of CIL. Whilst this is welcome, it is not evidence currently before me. The Guidance confines my comments here to an advisory capacity only, but I urge the Council to use its intended review to redraft and refine its

Regulation 123 list to improve transparency and clarity and to clearly demonstrate the positive purpose of its proposed CIL regime.

**Residential development economic viability evidence – modelling assumptions and proposed charging zones.**

*Modelling assumptions*

29. The Council's substantive evidence base comprises a Viability Study (VS) published in October 2012. This was supplemented by additional viability testing in January 2014 and by clarification notes, produced at my request, in June 2014. It was further supplemented by evidence submitted in response to the main issues and questions I identified for the extended (second) examination Hearing.
30. The 2012 VS uses a residual land valuation method whereby the total value of hypothetical development schemes is assessed before various assumed development costs (including developer profit) are deducted, to arrive at a 'residual' land value. In essence, this residual value is the amount that the developer would pay to the landowner. The methodology assumes that a landowner will require a premium above the current use value, in order to trigger that sale for development.
31. Clearly, such modelling relies on a range of assumptions about values and costs. Such generic modelling can never be an exact science and it is not unusual for CIL examinations to be the focus of some dispute and challenge over key assumptions. Some of the assumed variables such as fees, financing, London Mayoral CIL and contingency allowances, conform to reasonable standard assumptions and require no further exploration here. However, there are a number of assumptions that require some explanation and comment.
32. Sales Values were drawn from a postcode analysis of circa 370 real world 'asking prices' spread across the borough. 'Super prime' values were, wisely in my view, excluded from the data set to avoid undue distortion of averaged area sales values. Asking prices were discounted by 5% to reflect buyers' negotiations and the results were averaged for each postcode area. This gave a very wide spectrum of sales values ranging from £7,434 psm in the north of the borough to four times that in Knightsbridge (£30,105 psm). In my view, although now a little dated, this is useful and appropriate evidence. Given the improved market since the collection of the data set, it is likely that the adopted sales values underestimate the revenue side of the modelling.
33. Benchmark Land Values (BMLV) were defined for four different land types that may come forward for development in the borough. A 20% landowner premium was added to each (above existing use value). In summary:
  - BMLV 1 – higher value secondary office space - £73.78m / hectare
  - BMLV2 – lower value secondary office space - £39.92m / hectare.
  - BMLV3 – secondary industrial space - £15.65 m / hectare.
  - BMLV4 – community use / public sector - £7.48m / hectare.

These BMLVs reflect the high land values generally in the borough and also the significant range of values, the most desirable land being effectively ten times the value of the lowest. Whilst I consider the BMLVs to be reasonable for generic testing, a complication is that the specific BMLVs are much more relevant in some locations than others, as is often the case in large and complex urban areas.

34. Profit levels were assumed at 20% of Gross Development Value (GDV) on market housing and 6% on GDV of affordable housing. Given the characteristics of the local market, and the generally lower risk profile of development in London, I regard the assumed profit level as generous. Such assumed profit levels on market housing could, in my view, include a degree of viability headroom (or buffer) as I consider it possible that many schemes would proceed at somewhat lower profit levels in this part of London.
35. Affordable housing was modelled in line with CS's 50% policy requirement (on sites over the size threshold) which the Council's evidence stated was used as the 'base position'. However, significant sensitivity testing of other (lower) variants was also undertaken.
36. Build cost assumptions generated a degree of debate. The Council had used values drawn from the Building Costs Information Service (BCIS). Upper quartile base building rates had been used and these were inflated by 30% to reflect the quality expected by purchasers in the borough. Adjustments were also made for schemes which involved taller buildings. It was argued by some that even higher build costs should be used to reflect the reality of what the market demands locally. In my view, that argument may have some merit at the higher end of the market, but not for the majority of the planned CS housing. In any event, this is a matter to be considered in the round along with viability margins and other factors (such as the healthy assumed profit level and improved sales values). I consider the Council's build costs assumptions to be sound for generic CIL modelling purposes.
37. Five 'Development Typologies' were defined for testing purposes. All were suitably high density and included small schemes of 4 houses and five flats (below the affordable housing threshold) and larger flatted schemes of 50, 100 and 200 units (above the affordable housing threshold).
38. One further assumption employed was that the tested development sites were treated as having no existing floor space. Given the highly developed nature of the borough this is unlikely to be the case. Most sites are likely to have some existing floor space which would be netted off CIL liabilities. The effect of this seemingly artificial assumption is that, in most cases, there is a hidden buffer i.e. less CIL (than that assumed in the modelling) will be payable once the existing floor space on any site is deducted.

#### *CIL Charging Zones*

39. The Council's approach to CIL charging zones draws heavily on its analysis of sales values. The evidence demonstrates that sales values vary, quite dramatically, across the borough and that the postcode areas may act as proxies for the general value tone of borough sub-markets. However, it must

be recognised that each postcode itself contains a range of sales values, and that the approach of defining seven zones in such a small geographical area requires a degree of care, given that sales values alone are not the sole determinant of viability. For example, there is clearly a strong link with the prevalent BMLV(s) in any particular zone.

**Residential (Class C3) development - modelling appraisal outputs and evidence (non-strategic sites).**

40. The 2012 VS tested an inordinate number of scenarios. Five different residential development types (plus extra care housing schemes) were tested in seven different sub market areas and compared to four different benchmark land values. To add to this complex matrix, other than the small schemes (below the affordable housing threshold), each scheme included seven sensitivity testing appraisals exploring the effects of changes in future sales values and build costs and, importantly, different (lower than the CS policy requirement) affordable housing content. In all, the 2012 VS presented 840 appraisal results.
41. Whilst the Council can be commended for its rigour in terms of sensitivity testing, I made clear through the examination process that it was extremely difficult to discern the relevant from the irrelevant and, in particular, how the evidence had been used to inform proposed residential CIL rates. Indeed, it seemed to me that much of the presented evidence had the potential to distract attention from the most relevant appraisal results. For example, Zone A comprises the Knightsbridge area, one of the most exclusive property locations in Western Europe, where it is inconceivable that the lower BMLVs will have much relevance. Similarly, the prospect of certain development types (such as major new build flats schemes) appearing in this exclusive highly developed Conservation Area setting, are similarly unlikely. At the other end of the borough's value spectrum, the same issue applies, with hypothetical schemes in North Kensington being tested against unrealistically high BMLVs. Furthermore, whilst all of the variants in possible future sales values, build costs and affordable housing proportions can be helpful, it is important that the prime focus is on scenarios which most reflect current circumstances and stated policy requirements.
42. In the light of these difficulties, I asked the Council to produce a clarification report (June 2014) setting out a distillation of the appraisal results it considered to be the most relevant, and to explain how these had been used to determine the proposed CIL rates. My assessment of this clarification evidence revealed a significant issue. The appraisals selected by the Council as those most relevant to the CIL rate setting involved substantial departures from the headline CS 50% affordable housing requirement. The Council had used significantly lower rates of 30% and 20%, which appeared to sit well outside the 'policy compliance' parameters which are normally assumed for CIL testing purposes.
43. There are scenarios where this departure from the 50% base position makes no difference. For example, in Zone A, all tested developments requiring affordable housing are viable at a 50% proportion on the most valuable land (BMLV1). However, little development is expected in this part of the borough,

so it is of limited relevance to my assessment of the impact of the DCS on development viability across the borough.

44. Given the 'relevant plan's' strategy of promoting growth and regeneration in the north of the borough, the zones here are of much greater relevance. Zone F covers North Kensington. I share the Council's assessment that the lowest BMLV4 is likely to be the most relevant here. However, the Council seeks to justify its £110 CIL by reference to 20% affordable housing scenarios (less than half that set out in the CS). When the affordable housing proportion is increased to 30% (still well below the CS policy 'base') only one of the three tested development types (50 flats) can afford the CIL charge, generating a maximum CIL of £150 (to cover the £110 charge). The other scenarios, relating to schemes of 100 and 200 flats, generate, respectively, a maximum CIL of £25 psm and a 'not viable' result. If the affordable housing content is increased to the 'base' 50% policy level, none of the three schemes are viable and, arguably, the level of any CIL charge becomes academic.
45. There are similar patterns in other zones where the 'base' position (50% affordable housing) is not viable, or not sufficiently viable, for modelled developments to proceed and /or sustain CIL charges. With the exception of Zone A (Knightsbridge), the true 'base' positions assumed by the Council appears, from its own clarification evidence, to be either 20% or 30% affordable housing, which is significantly less than the 50% the CS policies states that it 'requires'.
46. After the first examination Hearing, I raised these concerns with the Council and a correspondence exchange ensued. As an exceptional measure, I agreed to the Council's request to extend the examination, and to hold additional Hearing sessions to explore this matter (and the strategic sites issue).
47. The extended examination proved to be a worthwhile exercise. It revealed issues in respect of affordable housing that had not previously been fully apparent to me. It became clear that the Council accepted that its 50% affordable housing requirement is 'very rarely met' and that viability testing on each site determined the 'maximum reasonable amount' of affordable housing. It also adopted the view that its policies contained sufficient flexibility to allow significantly lower levels (than 50%) to be 'policy compliant' (a stance that was contested by representors from the development industry). The Council also takes the view that affordable housing needs to be considered and balanced against other policy requirements, including CIL and the infrastructure benefits its CIL receipts will deliver. Its representatives at the Hearing further expressed the view that the Mayoral CIL inevitably reduced affordable housing provision by directing monies to Crossrail that could otherwise be used for affordable housing provision. Over the longer term, the Council believes that its affordable housing requirements will be met and it has set out an anticipated 'pipeline' over the CS period. This is heavily dependent on the strategic site at Kensal.
48. There are some complex issues here. I begin by noting that whilst CIL examinations are still relatively new (and each one is unique), there is a generally established orthodoxy around the treatment of affordable housing costs in CIL viability appraisals. That is based upon the use of the 'headline'

policy requirements (i.e. the percentage of affordable housing and the tenure split) to undertake the principal viability modelling. Sensitivity analyses are often used to complement the 'base' results to explore the effects of higher / lower levels of affordable housing, perhaps in areas of more challenging viability. 'Policy compliance' is the central theme and this is the area of some contention in this examination.

49. There is little detail in the body of guidance and advice to help define what is and is not 'policy compliant' for CIL testing purposes. The NPPG advises that 'development costs' should be taken into account and that these *"...include costs arising from existing regulatory requirements, and any policies on planning obligations in the relevant Plan, such as policies on affordable housing..."* (Paragraph: 020 Reference ID: 25-020-20140612). The NPPF (paragraph 173) offers general advice on the importance of the collective burden of requirements being set at levels that ensure viability is maintained. The Harman Report (Viability Testing Local Plans 2012) similarly provides general advice that the viability testing approach should *"....allow for the consideration of the application of policy requirements..."* (page 38).
50. The matter is one of interpretation. The problem for the Council is that if it adopts the 'orthodox' approach which many other charging authorities (including some of its neighbouring boroughs) have followed, many development scenarios become unviable under a 50% affordable housing scenario and clearly cannot support CIL. With the exception of some of the highest value areas (where little development is envisaged) this is a general issue – the 50% policy 'requirement' appears to be not generally achievable. This presents a pragmatic case for examining lower, more realistic, levels of provision. However, I am mindful of something of a conundrum that arises from the wording of policy CH2 which uses the word 'require' extensively unless there is an evidenced 'viability' case for a lower level. Development industry representatives made the point that CIL should not be imposed on developments which have acknowledged viability issues, as that would clearly add to the viability burden and / or reduce affordable housing content further, and be in conflict with the relevant plan.
51. In my view, some pragmatism is called for. The Council's affordable housing policy position appears to 'require' generally unachievable levels of affordable housing and, whilst the policy does contain some flexibility, I do not accept the Council's position that it has the degree of flexibility it relies on, particularly when read alongside Policy CH1's minimum delivery target of 200 affordable homes per annum.
52. Comparing policy 'requirements' and 'minimum targets' with actual delivery is a useful 'sense check' here. This paints a picture of limited affordable housing delivery, well short of the policy 'requirements' and 'minimum targets'. In the five years spanning 2006/7 – 2010/11, completions averaged 51 p.a. (against a target of 90 p.a.). Since the minimum target was raised to 200 p.a., actual annual completions have been 23 units (2011/12) and 4 units (2012/13). These are snapshots but suggest a pattern of affordable housing delivery in recent years which is some way below the annualised CS delivery rate. It seems that affordable housing is being secured on a case by case basis,

determined by individual scheme viability, to secure what the Council regards as the maximum reasonable amount in line with The London Plan policy provisions. However, the Council believes that its minimum affordable housing target will be achieved in the longer term (primarily through the strategic site at Kensal). It is beyond my remit to make recommendations on CS policy matters, but the review of the affordable housing policies that has begun may enable an approach which avoids the necessity for routine viability testing of every individual development proposal (which currently appears to be the case).

53. Looking forward, there are two important themes to consider. First, pending the affordable housing policy review, affordable housing content is likely to be determined on a site by site negotiation basis (rather than via an applied percentage 'requirement' as the current policy wording dictates). Second, the achievement of anywhere near the CS planned affordable housing targets will depend heavily on the strategic sites and, in particular, on the Kensal site where 1,250 affordable homes are earmarked.
54. Returning to the CIL proposals on the 'notional' sites, the Council has drawn together the most relevant appraisal outputs and applied a degree of blending and judgement to establish an average maximum CIL rate for each charging zone. The easiest to explain is Zone A (essentially Knightsbridge) where values are such that all tested development types, even with 50% affordable housing and against the highest BLV, achieve the highest CIL level tested of £1,000 psm. Allowing for Mayoral CIL (£50) and a 20% buffer, the Council arrives at a proposed CIL rate of £750 psm. Zone B (South Kensington) displays similar, although slightly lower viability, resulting in a proposed CIL rate of £590 psm. Little development is anticipated in these zones and, where it does happen, CIL receipts are likely to be reduced by the offsetting of existing floorspace. Moving along the remaining zones, C – F, there is an increasing need to reduce the affordable housing content to achieve viable development scenarios, which are similarly blended and reduced by a 20% buffer to give rates of £430 psm (C), £270 psm (D), £190 psm (E) and £110 psm (F).
55. Overall, there is a degree of logic to the charge setting and it is informed by the evidence. Although some say that a 20% buffer is tight, it needs to be considered in the context of relatively generous assumed profit levels, a general growth in sales values and the absence of any allowance for existing floor space, all of which would enlarge the viability buffer. However, the overall acceptability of the set of charges is, of course, contingent on the Council's approach of lowering affordable housing content to achieve scenarios where developments are sufficiently viable to support CIL payments. In most cases the application of higher affordable housing levels (at or nearer to 50% 'requirement') would simply render the scheme unviable (even before CIL is applied). The key test here is the viability consequence of the application of the proposed CIL charges.
56. To an extent this question is assisted by the Council's supplementary evidence from January 2014 which undertook an exercise of retrospectively applying the proposed CIL charges to 12 real world schemes. The portfolio was something of a mixed bag, although smaller housing schemes were predominant. This

evidence suggested that most of these schemes typically involved a considerable uplift on existing use value which would enable the CIL charges to be absorbed. CIL expressed as a percentage of development costs also appeared to be reasonable (11 out of 12 are under 5% and the average of all was 2.33%). Based on these indications alone, it seems unlikely that the CIL element of development costs would be a critical factor in determining whether a scheme proceeded. That said, there are clearly not enough of these schemes currently coming forward to achieve the CS housing target, which underlines the importance of larger sites, such as at Kensal, to achieve the Council's trajectory and targets.

57. There is the added question of whether applying CIL might further reduce affordable housing on certain schemes. In my view, the answer is that it possibly could and the Council agrees that small reductions may happen. However, this takes us full circle to the policy position. I find this situation to be unsatisfactory, as CIL was very much conceived as a 'top slice' infrastructure charge and not one that should result in compromising, however small, policy requirements of the relevant plan. However, I am also mindful that development on non-strategic sites, whilst still important, will be a relatively small proportion of overall planned development. On balance, I have concluded that subject to modifications set out in detail later, this is not a matter that should prevent the adoption of a CIL regime.

### **Extra Care Residential Development - Modelling Appraisal Outputs and Evidence**

58. The Council modelled Extra Care schemes in a similar manner to Class C3 residential developments. It found that the particular development economics of these specialist schemes resulted in similar but notably lower patterns of viability and value. The testing supports the proposed CIL rates in Zones A – D, as schemes are generally viable and can support the charges with a degree of headroom. However, in Zones E and F, Extra Care schemes are not viable against even the lowest BLV and there is no evidential basis, or positive purpose, of applying a £20 psm CIL charge. Accordingly, I recommend a modification of the charge to £0 psm in these zones (EM1).

### **Strategic sites**

59. Given the CS's heavy reliance on strategic sites to deliver its housing requirements (including additional numbers that may emanate from the further alterations to The London Plan) it is clearly important to test the ability of those developments to support CIL. There is a limit to the extent of testing that can reasonably be expected, and the choice of the two largest sites, which are yet to come forward to deliver new homes, was a sensible one. The Council tested both sites in its January 2014 evidence.
60. The Earl's Court development has been the subject of an outline planning application which has been approved by the Council and its neighbour Hammersmith and Fulham, subject to S.106 planning agreement. The scheme includes 7,500 new homes (500 anticipated in the Royal Borough). There are significant viability issues and, based on evidence in the public domain, the most likely scenario shows an estimated residual land value of circa -£100

million, which would rise to -£288million if the Council's proposed CIL was applied. That said, it was reported at the second Hearing that some phased development is proceeding. Nonetheless, based on the evidence, the case for creating a zone to distinguish this strategic site and setting a £0 psm charge is convincing.

61. The Kensal strategic site is, by far, the most significant in terms of delivering the CS planned housing requirements. Upwards of 2,500 homes, including 1,250 affordable homes, are planned on this site, which is identified as an Opportunity Area in The London Plan. I understand that there are particular issues with this site in terms of public transport accessibility, remediation (part of it was a gasworks but has been partially remediated) and physical infrastructure (bridges) to access the site. The Council continues to campaign for a Crossrail station at Kensal but this aspiration may be replaced by a package of other public transport improvements. No development has commenced and the site is not available until at least 2017 as it has been acquired by Crossrail for construction / storage purposes.
62. The Council appraised an assumed development, recognising that there was little detail then available, and concluded that the scheme would generate a residual land value of £63.4 million without the Council's CIL and £50.14 million with the Council's CIL applied.
63. With CIL applied this equates to a residual land value of about £3.0 million / hectare. However, this is substantially below even the lowest BMLV employed by the Council for CIL testing (which is £7.48m / hectare). At the first Hearing, the Council indicated that it recognised that there may be viability issues at Kensal and suggested that 'exceptional relief' and/or a CIL review may be required. In my view, all of these factors support a case to treat the site differently, particularly given its critical strategic importance to delivering the CS housing (including 1,250 affordable homes) and regeneration requirements and objectives. Following the first Hearing, I raised these concerns with the Council and, as with affordable housing, agreed to extend the examination to allow a further and fuller consideration.
64. The Council's further evidence seeks to make a number of points to justify its position. First, it asserts that BLVs should not be used as definitive fixed variables. Second, that a 'no CIL' scenario would simply raise the RLV by "only £0.8m/ha" and this would still be well below the lowest BLV employed in the VS. Third, it considers that the RLV with CIL still represents a significant incentive to develop. Fourth, it computes that reducing affordable housing content to 40.95%, with CIL in place, would equalise the RLV with a 'no CIL' scenario. Fifth, for completeness it computes that reducing affordable housing from 50% to 34.1% with no CIL, or from 50% to 31.43% with CIL in place (a 2.67% difference) would enable the RLV to achieve BLV4 (although the Council does not accept this to be necessary). At the second Hearing session, the Council also expressed a concern that setting a zero CIL rate here would run the risk that the site might be split into more than five parcels and it would be unable to pool S.106 contributions for essential infrastructure, although I consider that to be unlikely and, in any event, capable of control by planning conditions.

65. An added complication here is the limited landowner engagement in the formal CIL process, although there have clearly been opportunities through two rounds of public consultation. Overall, the landowner currently appears to be generally supportive of the Council's DCS but seeks further discussion with the Council to *'...further understand the detailed viability work which has been undertaken to justify the Council's proposed CIL charge at Kensal.'* The landowner and the Council have agreed to continue that discussion outside the formal examination process. However, as things stand, I am obliged to make judgments based on the limited information in front of me.
66. Overall, the Council asserts that the effects of CIL on viability at the total Kensal site are 'largely negligible' to use its words. I do not agree that its evidence base confirms this position. There are a number of reasons that support my view.
67. First, on the issue of BLVs I accept that these should not be seen as mechanistically fixed elements. Benchmarks are essentially informed points of reference but, in adopting them, based on local evidence and intelligence, and employing them as a central element of the testing regime, they cannot be entirely set aside when a site does not 'fit'. Indeed, based on the Council's methodology employed on other sites (which will include a range of actual site values) the Kensal development would be deemed 'not viable'. That is not to say that Kensal must achieve BLV4 to proceed, as there are particular abnormal costs associated with the site that will have the effect of lessening land value. However, care needs to be taken in assuming that the Council's modelled positive land value is sufficient to deliver all of the cost burdens and policy requirements associated with this critically important site, although it has sought to factor in costs insofar as they are known.
68. Second, it seems to me that the site has a very heavy infrastructure cost burden. The Council has allowed for some substantial costs in its modelling, but there are still a number of unknowns and the actual costs will be dependent on negotiations.
69. Third, the Council's position on affordable housing provision at this site is difficult to reconcile with its wider evidence base. Earlier in this report, I have highlighted that the 50% affordable housing requirement is rarely met due to viability issues (including in areas with much stronger assumed sales rates). The Council's viability testing, on more conventional sites, indicated that affordable housing content needed to be significantly lower than the 50% requirement in many areas, particularly in the north of the borough where Kensal lies. The Council seems to suggest that Kensal will deliver 50% affordable housing, whereas other sites have not, and it relies on the site to yield up most of its future supply of affordable homes in the plan period. However, the Council's most recent CS monitoring report (2013) appears to cast doubt on the achievement of the 50% affordable housing requirement at Kensal due to viability issues. Furthermore, the Council's latest evidence seems to suggest that, in effect, CIL could be funded by reducing affordable housing content. The Council considers that it is possible that, whilst the headline percentage of affordable housing may be below 50%, the planned number of 1,250 affordable homes would still be achievable at the site. I

consider that the position is altogether unclear and there are some significant unknowns at this point in time.

70. Fourth, as I noted above, at the first Hearing the Council acknowledged the viability challenges at Kensal and was openly talking in terms of 'exceptional relief' and the use of a first review of CIL regime to address these issues at the Kensal site. It indicated that a CIL review was likely before the Kensal development commenced.
71. Overall, I am not convinced that the Council's evidence base supports its CIL approach for the Kensal site. The development economics of this large and complex site are clearly very different to those of other tested sites, yet the site is treated the same for CIL purposes in terms of setting the proposed rates (within Zone F). Whilst I accept that CIL will always be a relatively small proportion of development costs, the Council's evidence does not convince me, particularly given the substantial number of unknowns, that viability will not be compromised. That compromise may not be the difference between 'viable' and 'not viable', but it could result in reductions in affordable housing requirements, or strategic infrastructure requirements, all of which are important elements of the 'relevant plan's' objectives.
72. Whilst I have taken a pragmatic view on the CIL / Affordable Housing relationship on other sites, I do not feel that this can be the case on the strategic Kensal site, given its scale and importance in delivering the substantial proportion of the planned new market and affordable homes in line with the relevant plan. It would not serve a positive purpose to impose the Council's proposed CIL charge in these circumstances as the potential effects could be significant. Accordingly, I conclude that an additional zone should be defined around the Kensal site and a £0 psm CIL rate applied (EM2/EM3). My conclusion should not be interpreted as a finding that the Kensal site cannot ever support a CIL charge but, rather, that there is currently insufficient evidence to support the treatment of the site in the same way as other sites in Zone F. Given that the site will not come forward before 2018, the Council has a good opportunity to develop a much more detailed evidence base and revisit the issue of CIL for the Kensal strategic site.
73. With regard to other strategic sites, the Council has provided helpful information which satisfies me that there are no wider implications arising from the Council's CIL proposals on these sites. For the most part these sites have planning permission and are progressing.

### **Commercial development economic viability evidence, modelling and CIL charges.**

74. The commercial CIL charging proposals are more straightforward than the residential development CIL proposals. Rather than relying on BMLVs, the modelling focuses on the redevelopment of hypothetical commercial development sites. Given the characteristics of the area, it is not unreasonable to assume that a typical site will be occupied by an existing use and associated floorspace. The trigger for development is assumed to be an intensification of the use by developing more floorspace on the site with an assumed post development higher rent and lower yield. A range of relatively standard

assumptions were employed and combined with rents and yields drawn from local experience. The resultant capitalised end value was compared to the existing use value (with a premium added) to test for the ability to sustain CIL charges.

75. I do not intend to explore the development types where no CIL charge is proposed, although the evidence does point to office development being able to sustain a modest CIL charge in parts of the borough (the 'City Fringe').
76. Using the modelling assumptions summarised above, student housing was shown to be able to support a maximum borough CIL charge of circa £200 psm and hotel development, a borough CIL charge of circa £250 psm. The proposed CIL charges of £125 psm and £160 psm respectively, appear to be reasonable and offer good viability margins. In any event, neither development type is expected in any great volume. Based on the evidence, the commercial CIL proposals are justified and appropriate. However, for reasons that should be apparent from my earlier analysis, I do not consider the commercial CIL charges are appropriate within the Kensal strategic site and therefore this area should be treated similarly to the Earl's Court site i.e. zero rated for all development types (EM2/EM3).

### **Overall Conclusions**

77. The Council's CIL proposals have raised some complex and difficult issues, most notably concerning the potential effects on the delivery of affordable housing and the delivery of major strategic developments, notably at Kensal. These issues are not discrete and there are significant inter-relationships between them. Much of the complication in this examination has been focused on the Council's affordable housing policies and their application in practice. Those policies are soon to be reviewed which will hopefully provide greater clarity and precision in future.
78. After the first Hearing sessions, I had some fundamental concerns about the Council's CIL proposals. The extended examination and second Hearing sessions have proved to be valuable. Mindful of the Council's desire to introduce a CIL regime soon, and the general positive purpose that it will serve (as well as allowing for a 'settling in' and monitoring period) I have given considerable thought to the modifications necessary to enable the DCS to be adopted. I recommend two modifications and a supporting recommendation.
79. The first modification (EM1) is to define a zone around the strategic site at Kensal and to zero rate it for CIL purposes. For reasons set out above, I am concerned at the potential impacts of CIL on this critically important site.
80. The second modification (EM2) is to remove CIL charges for Extra Care housing developments in Zones E and F, as the evidence does not support these charges and they would not serve a positive purpose.
81. In addition to these modifications, I consider it appropriate to make a recommendation that, given the particular circumstances that have been

highlighted through this examination, the Council should undertake an early review of its CIL regime.

82. There are three principal reasons for this recommendation. First, it will allow for the local effects of the CIL charges in practice to be carefully monitored. Second, it will also allow for any revisions to affordable housing policies to be devised, adopted and reflected in the CIL regime. Third, it will provide an opportunity to revisit the CIL approach to the strategic site at Kensal. It is clearly a matter for the Council to consider the timing of such a review, although it would seem sensible to undertake it before the anticipated commencement of the strategic development at Kensal. Such a review, which the Council has indicated that it is likely to undertake in any event, will provide the opportunity to evolve and refine the CIL regime in a positive manner and should ensure that it is aligned with any key changes in policy requirements and with the progress on the borough's most significant strategic development site.
83. Subject to these modifications, I am able to conclude that the Royal Borough of Kensington and Chelsea's Draft Community Infrastructure Levy Charging Schedule, would satisfy the requirements of Section 212 of the 2008 Act, and meet the criteria for viability in the 2010 Regulations (as amended) and generally accord with national guidance.

<b>LEGAL REQUIREMENTS</b>	
National Policy/Guidance	Subject to the Examiner's specified modifications, the Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	Subject to the Examiner's specified modifications, the Charging Schedule complies with the Act and the Regulations in respect of the statutory processes and public consultation, and is generally consistent with the 'relevant plan' which comprises the Council's adopted Core Strategy and The London Plan.

*P.J. Staddon* Examiner

Appendix A (attached) – Examiner's Modifications.

**Appendix A**

Modifications that the Examiner specifies so that the Charging Schedule may be approved.

Modification No.	Modification
EM1 (Kensal site)	<p><u>Page 1</u></p> <p>Under 'Zone G Earl's Court...' add:</p> <p>Zone H (Kensal Strategic Site) and under the CIL rate column add 'Nil (all uses).'</p> <p><u>Page 2</u></p> <p>Map – amend map to define new Zone H based broadly on the site boundaries shown in the adopted Core Strategy site plan (page 152).</p> <p>Table - amend table accordingly to reflect the above.</p>
EM2 (Extra Care Housing)	<p><u>Page 1</u></p> <p>For 'Extra Care Housing' reduce the CIL charge for zones E and F from £20 psm to £0 psm.</p>