

ROYAL BOROUGH OF KENSINGTON AND CHELSEA
DRAFT COMMUNITY INFRASTRUCTURE LEVY (CIL) SCHEDULE
EXTENDED EXAMINATION HEARING
EXAMINER'S NOTE – 11 AUGUST 2014

1 Background

- 1.1. My name is Philip Staddon BSc, Dip, MBA, MRTPI. I am the appointed independent examiner of the Draft CIL Charging Schedule published by the Royal Borough of Kensington and Chelsea (RBK&C).
- 1.2. Earlier this year I undertook a full independent examination of the Council's CIL proposals. This included public Hearing sessions that were held at the Town Hall on 9 June 2014. Following the Hearing sessions and the assessment of a short clarification report that I had requested from the Council, I advised the Council that my independent conclusions were that there were a number of issues with its CIL proposals. I further advised that I regarded two of the issues as 'fundamental'.
- 1.3. The two fundamental issues that I identified related to (i) affordable housing assumptions used in the CIL rate setting and (ii) the approach to strategic sites. With regard to the affordable housing issue, it appeared to me, from the post Hearing clarification evidence, that the Council was intending to set its CIL rates based on modelled development scenarios that involved affordable housing content substantially below the levels set out in its adopted Core Strategy. With regard to strategic sites, my concerns are that the Council's evidence demonstrates very distinct development economics for strategic sites (notably its largest at Kensal), but this is not reflected in its CIL proposals, which may result in viability issues.
- 1.4. A correspondence exchange ensued and this can be viewed on the Council's examination website. In that exchange, the Council sought to introduce new evidence. It concluded with my agreement to the Council's request to extend the examination to allow the further evidence and clarifications the Council wished to put forward, to be formally considered. The further Hearing sessions will explore these matters.

2 The extended examination and further Hearing sessions

- 2.1 The extended examination and further Hearing sessions will focus on the two key issues identified above i.e. affordable housing and strategic sites. I have set out a 'main issues and questions' paper which is appended to this note. I have also asked the Council to make written evidence

submissions in response to the identified issues and questions. The Council will submit this evidence and publish it on the examination website three weeks before the Hearing. The Council's further evidence will be examined at the Hearing.

- 2.2 The further public Hearing sessions will take place on a date to be arranged and will be advertised in advance. The date is likely to be in October and I expect the further hearing sessions to last for up to half a day. The Programme Officer, Chris Banks, will advise all Representatives of the arrangements. Given the exceptional circumstances, which involve new evidence and issues, Representatives who wish to participate (even if they did not attend the 9 June session) may make requests to me through the Programme Officer. However, all participants should note that these further sessions will be focused on the identified two specific issues and I do not intend to revisit other matters examined in the earlier Hearing sessions.
- 2.3 The Hearing will be open to the public and the media. Any filming / recording of the Hearing will be at my discretion. After the Hearing, I will not be accepting further evidence unless I have specifically requested it. I will then prepare and submit my report based upon my examination of the evidence.

3 The Programme Officer

- 3.1 For any queries or clarifications regarding this extended examination, please contact the Programme Officer. His contact details are set out below:

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Philip Staddon Bsc, Dip, MBA, MRTPI

11 August 2014

**DRAFT COMMUNITY INFRASTRUCTURE LEVY (CIL) SCHEDULE
ROYAL BOROUGH OF KENSINGTON AND CHELSEA (RBK&C)**

EXTENDED EXAMINATION

IDENTIFICATION OF MAIN ISSUES AND QUESTIONS

1. Introductions

2. Affordable Housing

Background

In setting CIL rates Charging Authorities must take account of policy requirements set out in the 'relevant plan' which for RBK&C comprises the London Plan and its Core Strategy. For CIL viability testing, the costs associated with the provision of affordable housing within development schemes can be significant. These costs need to be accounted for to inform the proposed CIL charging rates.

RBK&C's Core Strategy (adopted 2010) includes a Policy (CH2) that states that the Council will "*require developments to provide affordable housing at 50% by floor area on residential floorspace in excess of 800m² gross external area*". The policy expands to include greater detail and specifications for affordable housing content and delivery.

The Council's substantive CIL evidence, that I examined in June 2014, suggested that it had set its CIL rates using 50% affordable housing content as the 'base' position. However, the post- hearing clarification evidence submitted by the Council appeared to suggest that, in fact, it has based its CIL rates on development scenarios involving lower levels of affordable housing (20% and 30%).

The main questions that arise are:

QUESTION 1 - What is the background to Core Strategy Policy CH2 and the 50% affordable housing requirement?

Note – it is not my role to re-examine the Core Strategy's content and policies. However, in responding to this question the Council should seek to explain to me more fully the background to the policy and the evidence base (particularly on viability) that supported it. This is important for my further assessment of the Council's CIL proposals in the light of its approach of relying on lower levels of affordable housing than the policy requires.

QUESTION 2 – To what extent does Policy CH2 allow for flexibility over affordable housing content?

Note – the policy’s use of the word ‘require’ along with Policy CH1’s minimum affordable housing target suggest limited flexibility. The Council should explain its position on policy flexibility, particularly in relation to development viability (see also Question 3).

QUESTION 3 – How has Policy CH2 been applied in practice and what levels of affordable housing have been achieved?

Note – in responding to this question the Council should summarise its delivery record against Policy CH2 and explain any related viability issues. This should include evidence on submissions related to ‘exceptional site circumstances’ and the use of the ‘Dynamic Viability Model’ (paragraph 35.3.21 of the Core Strategy).

QUESTION 4 – What is the evidence to support the Council’s use of lower levels of Affordable Housing (20% and 30%) to inform its CIL proposals?

Note – the Council should set out fully its evidential case for using development scenarios of 20% and 30% affordable housing content (rather than the 50% Policy CH2 level) to inform its CIL charging proposals. It would also be helpful if the Council could explain the apparent inconsistency between the post hearing clarification evidence (dated 15 June 2014) and its earlier substantive CIL evidence (which suggested that the policy ‘base’ position had been used).

QUESTION 5 – What would be the effect on scheme viability of applying Affordable Housing at, and closer to, the Policy CH2 requirement?

Note – the Council’s post-hearing clarification note identified the modelled development scenarios that had been used to inform the proposed CIL rates. This included highlighting the most relevant benchmark land value (or values) for each proposed charging zone. However, the highest affordable housing content used is 30%. The Council is asked to repeat the exercise for full policy compliance (50%) and for a closer to policy compliance scenario (40%). This evidence will be explored further at the Hearing.

QUESTION 6 – What is the relevance of other CIL examinations and is there, as the Council appears to contend, a ‘special case’ for London boroughs?

Note – it is important to make plain that my examination relates to the CIL proposals of RBK&C. It does not extend to the re-examination of CIL proposals of other authorities. Each examination is specific to the Charging Authority and its unique evidence base. For those reasons, the extent to which parallels and precedents can be drawn is limited. Nonetheless, I will, with the foregoing limitations in mind, invite the Council to make any relevant submissions.

3. **Strategic Sites**

Background

Strategic sites appear to be fundamental to the delivery of the Core Strategy's objectives, including the delivery of substantial numbers of new homes. The impact of CIL on such strategic sites is clearly critical. The Council undertook viability testing on the two largest strategic sites, which are yet to come forward. The Council's evidence on the first (Earls Court) demonstrated significant (negative) viability issues, which appeared to justify the Council's proposal to create a zone to distinguish this strategic site and set a £0 psm CIL charge.

However, the Council's appraisal of the largest strategic site, at Kensal Gasworks, did generate a positive land value but that value would be substantially below even the lowest benchmark land value employed in the Council's CIL testing methodology. This did not appear to be reflected in the Council's CIL proposals which proposed to set a CIL rate based on the evidence drawn from more conventional notional sites (rather than a former gasworks).

The main (inter-related) questions that arise are:

QUESTION 7 – Does the Council's evidence support the imposition of the Zone F CIL charge (£110 psm) on the strategic site at Kensal?

QUESTION 8 – Is there a case for treating the Kensal strategic site differently?

Note on Questions 7 and 8 - the Council should explain, through specific evidence, the justification for its CIL proposals in respect of the Kensal strategic site, particularly in terms of the divergence between the modelled residual land value and the benchmark land values employed in its methodology. The evidence should seek to demonstrate, in greater detail than presented to date, that the imposition of the proposed CIL charge (on top of a modelled land value well below the adopted lowest benchmark land value) would not threaten viability and that it would serve a positive purpose.

QUESTION 9 – Are there any implications for other strategic sites arising from the Council's CIL proposals?

4. **Round Up and Close**

This session will pick up any other matters and final summaries and submissions, prior to the close of the Hearing.

Philip Staddon Bsc, Dip, MBA, MRTPI

11 August 2014