Report to Birmingham City Council

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an Examiner appointed by the Council

4 June 2015

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

Non-Technical Summary

This report concludes that the Birmingham City Council Draft Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. 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 its draft Birmingham Development Plan 2031, at risk. The proposals will secure an important funding stream for infrastructure necessary to support planned growth in the city.

Introduction

1. This report contains my assessment of Birmingham City Council's draft Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008 (as amended). 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 set out in the National Planning Practice Guidance (NPPG).

2. To comply with the relevant legislation and guidance the local charging authority has to submit a charging schedule that should set an appropriate balance between helping to fund necessary new infrastructure and the potential effect of the proposed CIL rates on the economic viability of development across its area.

3. The basis for the examination, onm th onm th xam4( )-11(m)3(y)7(a)5 0 hbCr 0 -1.(a)-

Development' and is drawn around a proposed urban extension west of the A38 at Langley; CIL would be zero rated in this zone i.e. £0 psm. All of the remainder of the city's administrative area would fall within the defined 'Low' market value areas where it is proposed that the CIL charge would also be zero rated. The DCS makes clear that residential development by 'Social Housing Providers registered with the HCA and Birmingham Municipal Housing Trust development' would be zero rated for CIL; this exemption would include any market housing developed by these providers to cross subsidise affordable housing provision.

6. Student housing developments would incur a CIL charge of £69 psm in all locations except for the urban extension zone at Langley (where it would be zero rated).

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7. Retail CIL charges would apply only to 'retail convenience' developments for schemes with a floorspace exceeding 2,000 square metres.

8. Hotel developments would be subjeba0(d be)-5(d be)-5(s)ewoHRe/TT1 1d6(d D 0.348 0

population growth of 150,000

to the higher tiers of the city centre itself, the sub-regional centre at Sutton framework defining ‘the development of an area’[1] that CIL is intended to support. However, not all prospective charging authorities will be able to present a CIL schedule alongside freshly adopted development plans, due either to the inevitably long gestation period and / or (as is the case in Birmingham) if they encounter complexities and delays in the process.

23. The important point is the evidence base itself, rather than the procedural status of the development plan (although clearly these matters are closely linked). The Birmingham Plan 2031 is a mature policy document that has been the subject of extensive public consultation and is supported by a detailed evidence base. Whilst there remain issues to be resolved, modifications to be made and further consultation to be undertaken, I am satisfied that these matters do not present any obstacle to the principle of progressing a CIL regime.

24. The ‘development’ of the city, in the terms envisaged in S.205 of the Planning Act 2008, is clear, and the strategy of concentrating most growth on largely brownfield sites within the urban area, supported by strategic Green Belt releases, is very unlikely to change. There is a sufficiently stable development plan backcloth to enable high level CIL viability assessments to be made. However, my comments should not be treated as any predetermination of the Plan’s outcome and, at the examination Hearings, the Council did concede that there could be circumstances that would require the CIL proposals to be revisited e.g. any changes to the Green Belt housing release (which has its own tightly drawn CIL zone).

(supermarkets), with residential development (higher value zone) generating £1.7 million and lesser amounts from city centre hotels (£0.6 million) and student housing (£0.5 million).

28. I have some reservations about the robustness of these figures which have been arrived at by looking backwards (actual past delivery in 2009 – 14) rather than forward (planned delivery) for the various CIL paying development types. This may have some credence for residential development but is unlikely to be the case for commercial developments such as hotels, supermarkets and student housing schemes, which will tend to progress when the market identifies capacity, but will cease if the finite market is considered to be sated. Furthermore, the Council's projections have not factored in the effect of discounting CIL for existing floorspace, which is likely to be a factor on many former employment sites and will reduce receipts. In my view, the Council may have overestimated the likely CIL receipts.

29. However, these factors do not affect my overarching conclusions that the funding gap is substantial and that CIL revenue would make an important contribution to filling that gap. Taking the Council's assessed gap and revenue estimates at face value, CIL may equate to about 20% of the gap (although I think the true figuus(the)-6rTwhe thi CL0-4(.)]TJ /CS1J 16.87 0(.Td ( )T

Economic viability evidence – methodology, data sources and assumptions

32. The Council commissioned consultants to undertake a Viability Assessment (VA) to support its CIL proposals. The VA was completed in October 2012 and has been supplemented with additional topic based viability evidence in December 2013. These supplements included additional viability testing in respect of the SUE, employment, retail and a paper covering ‘miscellaneous’ matters (an update on residential sales values and allowances for a ‘viability cushion’). The evidence also includes a letter from the Council’s consultants providing a commentary and analysis of developments relating to retirement homes, sheltered housing and ‘extra care’ schemes. Hereafter, I refer to this collective of evidence as the VA.

33. The VA employs a residual valuation approach. In simple terms, this

37. The establishment of robust BLVs is clearly of great importance in this type of viability modelling. The Council considers that most new housing development will come forward on land previously in employment use but it also expects some element of supply from existing residential sites, particularly in the lower value areas where developments seek to increase density and / or provide a better quality / higher value housing product.

38. The Council established BLVs based on a triangulation of Valuation Office Agency (VOA) data, known transactions and the CIL stakeholder workshop. It concluded that there were distinct differences between the higher and lower value areas of the city. In the higher value areas (market value areas 1, 2 and 3) it assessed a BLV of £1.1 million per hectare for existing employment land (which includes a premium of 20% on existing use value) and £1.9 million per hectare for existing housing land. In the lower value areas (market value areas 4, 5, 6 and 7), the figures were £595,000 per hectare and £740,000 per hectare respectively.

39. For the greenfield SUE, the Council assu-5(tte)-53ingc,000 per

provide sensitivity tests.

44. The modelling assumed that there would be no residual S.106 planning agreement costs, as the Council considers that CIL will largely replace the use of S.106 agreements and obligations. However, it is apparent from the Council's Draft Regulation 123 list that some element of site specific mitigation may still be required to be secured through S.106 agreements. In most cases, this is likely to be limited but some consideration of these costs is required in the assessment of the modelling results and CIL proposals. For the SUE, substantial S.106 costs are anticipated and the modelling tested levels of £10,000 per plot and £20,000 per plot.

45. The commercial development modelling used similar assumptions and methodology. Notional schemes for care homes, offices, employment, retail, hotels, student accommodation, leisure, education and health developments were all tested. The assumptions employed for the notional commercial development schemes all appeared reasonable, including the assumed rents, yields, build costs, profit levels and BLVs.

Conclusions on background evidence

46. The Birmingham Plan 2031 provides a clear strategic planning framework to guide the sustainable growth of Birmingham. Although the Plan is yet to be adopted and more work and consultation is required, it is sufficiently mature and settled to enable the viability effects of CIL to be assessed. The Plan's strategy has a strong growth focus on brownfield sites within the existing urban areas of the city, supplemented by some strategic Green Belt releases for housing and employment.

47. The IDP identifies the infrastructure required to support Birmingham's planned growth in population and jobs. The evidence demonstrates a sizeable infrastructure funding gap that justifies the introduction of a CIL regime. CIL receipts will help to reduce that gap, although a significant funding shortfall will remain. There is some uncertainty over the level of CIL receipts and the Council would be wise to monitor performance closely once a CIL regime is operational.

48. Overall, the background economic viability evidence for both residential and commercial development that has been used is reasonable, robust, proportionate and appropriate. The interpretation and use of that evidence in defining the proposed CIL rates and zones is discussed more fully below.

Residential Development CIL – zones, charges and appraisal findings

The 'High' value CIL charging zone (£69 psm)

49. This zone comprises market value areas 1, 2 and 3 where sales values are
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demonstrably lower. The Planning Practice Guidance (PPG) does advise that, where evidence points to low viability, a charging authority should consider setting a low or zero levy rate in that area (Reference ID: 25-021-20140612). The guidance further advises that there is no requirement for a proposed rate to exactly mirror the evidence (Reference ID 25-019-20140612).

The 'Low' / 'High' zone boundary challenges

56. The Council's two-zone CIL approach for most of the city (the SUE is dealt with separately below) does, perhaps unavoidably, create some tensions around the zoning boundaries. There were two notable challenges. First, a property estate company sought revisions to the zoning boundaries in the Hagley Road and Bristol Road areas (south-west of the city centre) i.e. to effectively move its holdings from the 'High' to the 'Low' zone. Second, a commercial site owner on Lifford Lane, similarly sought a 'Low' zone status and proposed that a site specific review mechanism should apply.

57. With regard to the first set of challenges, evidence was submitted which purported to show that property values in these areas were more akin to the 'Low' zone and revised alignments of zone boundaries (departing from their postcode origin) were promoted. I have considered these submissions carefully but I am not persuaded that the Council should be required to make the suggested modifications. There are a number of reasons that have led me to this view.

58. First, the Council's two-zone approach, based on postcodes, is simple, supported by its evidence base and avoids 'undue complexity'[4]. Second, the strategic and broad-brush approach to CIL proposed by the Council inevitably means that its two large zones will contain a range of sales values, above and below the averages adopted for the value areas. Third, the evidence prese6(ro)-5c(unc)]TJoa8e presd fdevi aml c edencly ns8 0 f sales, .217 Td

with a CIL regime which, on adoption, is a fixed instrument (until the point of any review and revision). The Council advised that it would be reviewing its CIL regime in advance of this particular site coming forward. I am satisfied that there is no need to amend the zone boundaries and the review mechanism is a more appropriate method to address these matters, should it prove necessary.

The SUE charging zone (£0 psm)

60. The Council's testing of the assumed SUE development at Langley used a range of enabling and S.106 costs. They are unavoidably broad brush assumptions given the relatively early life cycle stage of the proposals. However, a 'best case' viability scenario, employing the lowest enabling works cost (£70 million) and the lowest assumed S.106 contributions (£10,000 per plot), did not achieve the assumed greenfield BLV. The actual RLV under that scenario was, by my calculation, £205,185 per hectare, which is well below the assumed BLV of £250,000. Higher enabling and S.106 costs clearly reduce the RLV further, although a positive land value is achieved in all test scenarios.

61. The Council envisages that the SUE will come forward through a comprehensive outline planning application. Its preferred approach is to deal with the SUE's substantial and specific infrastructure requirements in a self-contained manner through a S.106 planning agreement. This approach is reflected in its proposed CIL zone, defined around the site boundaries of the SUE, and its proposed £0 CIL charge. The evidence confirms that the development is unable to sustain CIL charges on top of the heavy burden of anticipated site enabling costs and S.106 obligations.

Specialist residential development types for older people.

62. The VA evidence suggested that residential scheme viability for retirement housing schemes falling within the C3 Use Class would display similar overall viability characteristics to conventional housing schemes. However, the Council recognised that those variants involving significant elements of support and associated facilities that led to a C2 Use Class classification were less viable. Indeed, the testing suggested that such schemes would only be viable in the highest value area.

63. I am satisfied that the Council's approach to differentiate by Use Class, applying a £0 rate to Class C2 uses, reflects the evidence. A modification to the DCS is required to reflect the Council's intention to apply a zero CIL rate to all Class C2 uses (rather than just the 'Extra Care' developments stated in the DCS). This is reflected in my recommendations.

Commercial CIL – viability appraisal evidence and proposed CIL charges

The ‘zero – rated’ commercial development types

64. The VA’s testing of office, industrial, warehouse, education and health developments demonstrated that these could not currently support CIL charges. The evidence suggested that commercial leisure developments had some potential to support very modest CIL charges. The Council does not propose CIL charges for any of these development types at this point in time and there would be no material impact on the amount of CIL receipts, due to the very limited number of such schemes anticipated to come forward.

Retail development

65. The VA tested a range of different types of retail development, in varying locations, sizes and covenant strengths. The initial 2012 VA testing generated potential CIL rates of £380 psm for a supermarket (5,000 sq. metres); £170 psm for a ‘non food retail park’ development (9,290 sq. metres) and £150 psm for a suburban food store (400 sq. metres). The Council’s further testing in 2013 included a finer grained analysis of convenience retail types. It tested notional schemes of 1,500 sq. metres, 2,700 sq. metres and 5,000 sq. metres supermarket combined with a petrol filing station. The CIL results with a 40% buffer applied were, respectively, £0 psm, £470 psm and £260 psm (assuming 20% profit on GDV).

66. The Council’s DCS proposes to apply a retail CIL charge of £260 psm solely to ‘convenience’ stores (supermarkets) over a 2,000 sq. metre size threshold (all other retail types would be zero rated). The Council advised that the city was generally well catered for with a network of centres and supermarkets and its greater priority was increasing comparison shopping floorspace to meet modelled capacity. That said, the Council’s latest retail needs assessment suggests that, once commitments are allowed for, a growth in the range of 39,700 – 53,600 sq. metres of new convenience floorspace may be achievable in the period 2012 - 2031. The Council also acknowledged the importance of the smaller supermarket formats, and the discount operators, in terms of meeting future demands, driving consumnowlm[and ’

68. This is quite a difficult area to arbitrate as the variable is not simply one of unit size and the economies of scale but of operator covenant strength (and associated rents and yields). In effect, the Council is seeking to promote a floorspace as a proxy to where low and high covenant strengths are likely to sit. Whilst there is nothing wrong with that approach, I share representor views that the evidence does not demonstrate that 2,000 sq. metres should be that watershed – it is simply a figure selected to fall in the middle ground between the unviable and viable tested schemes. At the Hearing sessions, the Council accepted that the use of 2,700 sq. metres was a more robust evidence based threshold, and indicated that it would not be unduly concerned about the use of the higher figure. I recommend that modification, as it will align the charging schedule more closely with the evidence and remove any potential risk to the viability of smaller formats of convenience retail development.

Hotel development

69. The VA testing of notional 150 bed hotel schemes indicated that there were differences in viability between city centre schemes and those elsewhere. City centre schemes generated a potential maximum CIL rate of £45 psm, whereas those elsewhere displayed weaker viability. The Council's proposed application of a £27 psm CIL charge in its defined city centre zone is supported by the evidence. Such a charge includes a healthy (40%) buffer from the maximum and I do not consider that hotel development viability will be compromised.

Student accommodation development

70. The VA tested notional student housing schemes of 50 and 250 units and both returned maximum CIL levels of £115 psm. The proposed app(f)1(f)1(e)-5(re)-5(nc)

vast majority of development planned in the city will not be contributing through CIL (or S.106 planning agreements) to the infrastructure requirements identified in the IDP. I understand the Council's desire to nurture growth, particularly given its reliance on growth beyond its own administrative boundaries, but care is needed to ensure that growth is appropriately supported by infrastructure (which must be funded). Earlier in this report, I also expressed some reservations about the robustness of CIL revenue estimates and whether these will fully materialise. These are not criticisms of the Council but they are important factors for the Council to monitor and review and may assist its thinking in terms of the timing and scope of its first formal CIL review. I recommend that the Council considers undertaking such a review within three years of adoption of the schedule.

73. Overall, I conclude that, subject to my recommended modifications, the Birmingham City Council Draft Community Infrastructure Levy Charging Schedule, as modified by its Statement of Modifications, satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

LEGAL REQUIREMENTS	
National Policy / Guidance	The Charging Schedule complies with national policy / guidance.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, and consistency with the development plan framework for Birmingham and is supported by an adequate financial appraisal.

P.J. Staddon

Examiner

Attached: Appendix A – Recommended Modifications

Appendix A