



Report to the London Borough of Hammersmith and Fulham

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

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

REPORT ON THE EXAMINATION OF THE DRAFT HAMMERSMITH AND FULHAM COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 25 November 2014

Examination hearing held on 10 February 2015

Non Technical Summary

This report concludes that the Hammersmith & Fulham London Borough Council Community Infrastructure Levy Charging Schedule 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.

Four modifications are needed to meet the statutory requirements. These can be summarised as follows:

- i) modify the CIL Rates table to place only those uses which have been subject to viability testing in the £80 psm band, and to specify that all other uses are within a Nil charge band;
- ii) modify the Charge Zones Map to make more clear the boundaries of the zones;
- iii) modify the Charge Zones Map to account for the designation of the Old Oak and Park Royal Development Corporation and the removal of CIL charging from the Borough within that area;
- iv) modify the Charge Zones Map to show a revised boundary to the White City East Zone.

The specified modifications recommended in this report are based on matters discussed during the public hearing sessions and do not alter the basis of the Council's overall approach or the appropriate balance achieved.

Introduction

1. This report contains my assessment of the Hammersmith & Fulham London Borough Council Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance (Planning Practice Guidance – Community Infrastructure Levy).
2. To comply with the relevant legislation the local charging authority has to submit what it considers to be a charging schedule which sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the borough. The basis for the examination, on which hearings sessions were held on 10 February 2015, is the submitted schedule of 25 November 2014, which is effectively the same as the document published for public consultation on 22 August 2014.
3. The Council propose a matrix approach in which some of the rates are set in relation to particular zones of the Borough. The Zones, shown on the CIL Charging Zones Map included in the Schedule, are: North, Central A and Central B, South, White City East, and Earls Court & West Kensington Opportunity Areas. The rates for residential development are differentiated

across these zones: £100/psm in North, £200/psm in Central A and B, and £400/psm in South. Office developments (B1a/b) are charged a single rate of £80/psm in zone Central A only. There is a list of development types: Health, Education, Industrial, Warehousing, Selling/Display of Motor vehicles, Scrapyards and Hotels which have a Nil charge across all zones. All uses unless otherwise stated have a £80/psm rate in zones North, Central A & B, and South. All forms of development have a Nil rate in zones White City East and Earls Court & West Kensington Opportunity Areas. The rates, including those differentiated by Zone, are based on viability alone.

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

Infrastructure planning evidence

4. The Hammersmith & Fulham London Borough Council Core Strategy (CS) was adopted in October 2011. This sets out the main elements of growth that will need to be supported by further infrastructure in the Borough between 2012 and 2032. It proposes significant growth to be spatially distributed across the borough's five Regeneration Areas: Park Royal Opportunity Area, White City Opportunity Area, Hammersmith Town Centre and Riverside, Fulham Regeneration Area, and South Fulham Riverside. The CS states that it will use both Section 106 and CIL to help deliver its policies, which includes delivering infrastructure.
5. Chapter 10 of the CS introduces the Infrastructure Schedule that lists the priority physical, social and green infrastructure schemes required to support development in the borough. The evidence for this was provided by the April 2011 Infrastructure Study Update that sets out existing infrastructure provision and capacity across the borough and future infrastructure requirements and deficits. This evidence has since been updated to support the submitted draft Charging Schedule.
6. The updated Infrastructure Schedule lists infrastructure requirements by a number of categories: Adult Social Care; Children's Services; Environment, Leisure and Residents Services; Finance and Corporate Governance; Housing and Regeneration; Libraries and Archives; and Transport and Technical Services. Estimated costs are set out, as are assumed or committed funding leading to a figure for the 'Funding Gap'. The result of this exercise is that it is estimated that there will be a Funding Gap of £1,859m. However, there are schemes that the Council provisionally proposes to fund through 'future' CIL receipts, but these schemes have been excluded from the Draft 123 list. This is because the projects are longer-term with less accurate information available on costs and funding; they are not necessary to support the current Relevant Plan; and their costs are exceptionally high and could unhelpfully exaggerate the overall costs reflected in the Infrastructure Schedule. When these 'future' CIL infrastructure schemes are removed, the Funding Gap reduces to £481m.
7. The Council points out in the documentation that from April 2015 there will be limitations on the pooling of contributions from Section 106 obligations, and that it must ensure there is clarity "about the borough's infrastructure needs and what developers will be expected to pay for, and through which route -

CIL or S106". Although there will be the strict limitation on 'pooling', the Council will provisionally continue to rely on some S106 receipts, particularly so in White City East, Earls Court & West Kensington and South Fulham Riverside.

8. In these areas site-specific infrastructure that is needed to mitigate local impact is identified in the Supplementary Planning Documents and supporting Development Infrastructure Funding Studies prepared for them. Particularly in White City East and Earls Court & West Kensington, where the Viability Study (VS) recommends a £0 per square metre (psm) charge on viability grounds, most sites (the entire main site in the case of Earls Court & West Kensington) already have planning permission granted for redevelopment alongside considerable S106 contributions towards the identified DIFS infrastructure, largely on a pooled basis. The council considers that it is appropriate to continue to seek S106s in order to directly mitigate the development in these areas and that it should be possible to do this without contravening the limits on pooling S106s. When the S106 funds are taken out of the calculation the funding gap drops to £379m.
9. Based on the Charge Rates set out in the submitted draft Charging Schedule, an estimate of potential CIL income has been undertaken by the Council. Using known future housing sites (based on the Strategic Housing Land Availability Assessment, which does not include any 'windfalls') and an estimation of borough CIL-liable floorspace, plus future commercial floorspace quantum remaining to be developed from the Relevant Plan, a total estimated CIL income for 2014/15 – 2031/32 has been arrived at. Over this 18-year period a yearly average of £3m has been used. This provides a total estimated CIL income of £53.2m. Setting this against the funding gap for CIL of £379m, this leaves a remaining funding gap of £326m.
10. In the light of the information provided, the proposed charge would therefore make a modest contribution towards filling the likely funding gap. The figures demonstrate the need to levy CIL.

Economic viability evidence

11. The Council commissioned a CIL Viability Assessment: the Viability Study (VS) dated June 2014. The VS uses the residual valuation method based on development appraisals of hypothetical schemes: this is accepted practice and has been used in the development of many previous CIL Charging schedules. The purpose of the VS is to identify charging rates at which the bulk of the development proposed in the development plan is financially viable so that the CIL does not put at risk the overall level of development planned for the borough. As the introductory text of the VS points out, striking the appropriate balance means setting the level of CIL which maximises the delivery of development in the area. If CIL is set too high, many potential developments will become unviable; set too low, development will be compromised because it will be constrained by insufficient infrastructure. I am satisfied that the VS has been prepared with this balance in mind.
12. The land uses which the VS identifies as being central to the delivery of the CS or are otherwise likely to be significant forms of development comprise Residential, Offices, Industrial and Retail, and the focus of the study has been

on these types of development. The evidence base for the VS includes the Council's adopted Supplementary Planning Documents, Opportunity Area Planning Frameworks and, particularly, evidence based documents called Development Infrastructure Funding Studies.

13. As is usual in these studies, typical sales values were established, as were Benchmark Land Values (BLVs) for different uses. A range of values was found to be appropriate across different areas of the borough, leading to differentiation of CIL rates by area or Zone. The inputs to the VS included the value for land that an owner would expect to achieve, normal developer profit, Mayoral CIL and planning policy requirements such as for affordable housing.
14. An Addendum to the VS (VSA1) was published in August 2014 as a result of the Council reviewing future S106 requirements in South Fulham Riverside. This replaced the £1,000 per private residential unit previously used in the Study with a level equivalent to £50-100psm for each unit. This concluded that schemes would still be viable with the proposed CIL charge.
15. In the representations, various assumptions and inputs to the VS were criticised. These included: build and sales rates for large mixed use development; BLVs; the impact of basement parking on the viability of residential schemes; build costs; profit, professional fees and external costs; the need to update the mayoral CIL to reflect BCIS index increases; and the need for site specific testing of strategic sites, in particular Fulham Gas works. In January 2015, a further Addendum (VSA2) to the VS was published which gave responses to these representations, and to my initial questions to the Council. The VSA2 set out the following responses:

Build and Sales Rates

- 15.1. Further testing of build and sales rates led to an acceptance that some of the large sites require preparation and extended build periods. These assumptions have now been incorporated into the revised generic testing. The VSA2 reports that available evidence within Hammersmith and Fulham together with agents' reports suggests that demand for new residential accommodation within the Borough remains exceptionally strong. The high sales rates are a result of the following widely reported trends:
 - An influx of overseas investors into the London residential market;
 - A continuing increase in London's population.Recent high value schemes within Hammersmith and Fulham have shown significant pre-lets. The GLA reported that nearly half of all houses in London are either pre-let or pre-sold prior to practical completion.

Benchmark land values

- 15.2. The assessment of BLVs is based on Existing Use Values (EUV) of land as expected to come forward in accordance with the local Plan (largely employment and other uses) plus an appropriate uplift to incentivise vendors to release sites for development in line with the methodology adopted in the Harman Report. Regard has also been had to market evidence, consistent with the Harman methodology. In arriving at these figures, policy compliant densities of between 100 and 300 dph have been adopted. The resultant values are: Southern values - £23m ha; Central values - £9.2m ha; Northern

values - £5.7m ha. These values were established on uplift from EUV of notional cleared sites within the Borough on evidence based up to the end of December 2014. In practice the dynamic property market is seeing individual development sites exchange hands for far larger sums. These comparables were highlighted in the Southern Housing Group response to the draft charging schedule.

- 15.3. For CIL appraisal purposes, the benchmark figure is the minimum a developer would need to pay for a site above the existing use value while still allowing an owner a realistic premium. In real terms, values that owners receive would depend on the bargaining positions and aspirations of the two parties and the liability for CIL, any additional S106 and any abnormal costs. However, it must be borne in mind that not all sites will meet the benchmark land value due to lower existing use values or factors that reduce the uplift that landowners can expect. The sales values achieved on development opportunities shows that there has been an upward movement on benchmark land values. This is a consequence of increases in private sales values of residential units and keen interest from developers in bringing forward schemes within the Borough. In the analysis the headline figures have been adjusted for policy requirements and due regard to the site density in comparison to that adopted within the generic testing¹.

Basement car parking

- 15.4. The proposed CIL charge for residential development is intended to apply to car parking within a building to the extent that it is provided exclusively for residential use. Car parking provision for new build residential development is not mandatory within the Borough and therefore is not a policy requirement that needs to be automatically included in the viability testing. There is however a potential debate about whether the lack of parking on high-end new build schemes would impact on sales values and sales rates. Therefore the generic tests have been remodelled to include basement parking to provide 1 space for 80% of the total dwellings being provided. The Borough has a range of car parking options and values depending on location. On street parking is metered and restricted with substantial parking charges, resident's permits can be bought, whilst paid commercial parking is available in and around Hammersmith town. Private residents do rent out private land and contract hire is available in secure facilities. Taking the various rates into account it is suggested that the value of a car parking space in the central zone would be £50-60,000, in the south it would be £60,000-£80,000 and in the north £20,000 to £50,000.
- 15.5. Build costs for basement car parking have been derived from BCIS costs (re-based for LBHF), from building.co.uk, and from known comparable schemes. In the building.co.uk article a figure between £23,000 and £40,000 was stated. BCIS data shows a range of £17,132 and £38,235 per space with a

¹ The resultant revised benchmark land values used are set out in Table 4.2 of the VSA2

mean figure of £25,702 per space and median figure of £21,740 per space. A build cost figure of £25,000 per space has been used in the appraisals. The calculation of CIL chargeable floor space assumes an average area per space of 21.84 sq m, including an allowance for circulation space, derived from the Car Park Designers' Handbook. If a developer chooses to include basement car parking it is considered that viability is enhanced in the central and southern areas. In the northern areas viability diminishes but basement car parking is not a planning requirement and developers do not need to provide the space tested in these appraisals.

Mayoral CIL

- 15.6. Mayoral CIL was included in the June 2014 VS at £50 psm across all uses, excluding affordable housing. The Mayoral CIL was introduced on 1st April 2012. CIL charges need to adjust for inflation. The methodology to calculate this, according to CIL regulations, is to adjust the CIL charge with changes in BCIS tender price index as at November the following year. At the date of writing the VSA2, BCIS provided a forecast for the index figure of 255. Despite being a forecast this has been used in the analysis as the most robust figure to date. Using the Mayoral rate of £50psm and BCIS index of 255 the inflation increase can be calculated as: $\text{change in index } 255 - 230 = 25$; $25 / 230 \times 100 = 10.87\%$; $10.87\% \times £50 \text{ psm} = £55.43 \text{ psm}$. Based on this calculation a figure of £55.43 psm has been used in the updated appraisals.

Updated residential sales values

- 15.7. London's residential market is very strong in comparison to the rest of the UK. There are many factors that influence London's residential market that include: London is one of only a small handful of the world's global cities which attracts sustained international investment in commerce and industry; a physically constrained city therefore supply is restricted to a certain degree; a strong job market which places pressure on housing need. These influences have resulted in the London residential market experiencing a strong sustained period of price growth. Nationwide, the UK's largest building society and one the largest mortgage lenders, reported in December 2014 that London was the top performing region for the second year running, with prices up 17.8% over the last twelve months. Prices in the capital are now 35% above their 2007 peak, with the price of a typical London property now £406,730. Nationwide data shows that LB Hammersmith & Fulham has experienced strong house price growth of 104% over the last 10 years with the average price now £747,540. Only four other London boroughs have experienced a larger house price increase over this period.
- 15.8. Therefore sale values have been updated to reflect these changes in the Hammersmith and Fulham Market over the past 12 months. House prices vary across the Borough with the highest values in the southern area and the lowest in the north. The 12 month increases have been broken down by postcode and typology as reported by www.home.co.uk in the Borough up until October 2014. This website's data is based on land registry transactions (includes cash purchasers and mortgage purchasers) and is therefore a reliable source of data. In addition, there is always a time lag between property transactions and when the Land Registry data is updated and therefore an October 2014 figure is representative of current values. Taking

into account all the available evidence, the sales values have been adjusted within the appraisals as follows:

Zone	January 2014 data price per square metre	January 2015 data price per square metre
Southern	£5,985 Flats £4,970 Houses	£6,200 flats and houses
Central	£8,025 Flats £7,500 Houses	£8,700 flats and houses
Northern	£11,385 Flats £10,895 houses	£11,600 flats and houses

Costs update

- 15.9. In a response to previous consultations a much higher build cost was adopted in the generic appraisals when compared to the BCIS median figure, which is typically used in these studies. The BCIS costs include both market and affordable units in the costs analysis; some schemes are 100% market or 100% affordable and others a mix. Therefore the BCIS costs are inclusive figures of tenure types. To be consistent with the VS analysis the build costs used in the appraisals have been updated. The upper quartile figures within the BCIS costs have been adopted to reflect the enhanced specification of residential development within the Borough. Since BCIS also includes costs for affordable as well as private housing schemes, some to CSH4 standard, the build costs adopted are appropriate to the evidence base for the Borough. As a result of these factors, the appraisals in the June 2014 VS have been updated with the following changes: sale values increased; benchmark land values increased; build costs increased; basement car parking included, both cost and value to the scheme; and build periods increased.
- 15.10. The Council considers that the results of the January 2015 VSA2 show that all the scenarios still can support the proposed CIL charges except for scenario N5. This scenario is not the type or density of development the LPA is envisaging during the plan period in the north zone as the largest development sites lie within White City East, therefore the result is not critical to the delivery of the plan. All the rates are below the 5% (percentage of gross development value (GDV)) suggested as an appropriate rate for CIL charging throughout England and Wales.

Profit, professional fees and external costs allowance

- 15.11. For profit a figure of 20% on cost has been adopted across all residential scenarios. The adopted figure is a reflection of the risk in what is a relatively dynamic housing market. An alternative way of looking at the profit is on value. If that method were adopted then it is usual to apply a different profit level for private housing and affordable housing reflecting the different levels

of risk. Two of the generic scenarios have been tested and the actual level of profit compared. The results showed that GDV on the market housing and commercial varies between 17% and 20% once affordable housing profit has been fixed at 6%. This level of return is acceptable in the current market within the Borough.

- 15.12. The VSA2 continues to use a total professional fee allowance of 10% for the generic testing. This is inclusive of planning and other professional disciplines involved with scheme delivery. There has been no reduction in the percentage for economies of scale on large schemes or increase for smaller schemes. The figure does not include fees for planning appeals as it is assumed that the generic schemes tested are compliant with policy.
- 15.13. The national standard industry approach in dealing with cost allowance for external works is 10% to 15% of BCIS median build costs. This is an appropriate method for dealing with traditional housing development. This cost allowance is for service connections, landscaping, gardens, boundary treatments, driveways, car parking and internal estate roads. Applying a 10% to 15% cost allowance for external works is not appropriate for the scenarios tested in Hammersmith & Fulham and a 5% allowance is more appropriate because: base build costs are higher; the viability testing uses upper quartile BCIS costs therefore the percentage allowance of build costs needs to be lower to reflect this higher base position; the amount of external works required for the urban development is lower when compared to a traditional housing development because sites will have service connections in place, site coverage will be relatively high so that the amount of external treatments works will be limited, car parking cost are reflected separately in the appraisal (higher allowance for externals would lead to an element of double counting of costs) and each plot will have limited car parking and external plot servicing (e.g. driveways and footpaths) in relation to the number of units created. Thus a rate of 5% for external costs continues to be appropriate, reflecting the fact that most development has limited external areas in terms of size due to the high density of schemes in Hammersmith and Fulham. It is also assumed that standard Section 278 costs would also be in this figure. Exceptional costs would be reflected in the land value.

Strategic site – Fulham Gasworks

- 15.14. National Grid Properties own a 6.84 ha site in South Fulham Riverside. The site is currently occupied by redundant gasholders and mixed employment uses. As the gasholders are now surplus to requirements the owners propose to demolish the existing structures, remediate the site and redevelop for a mixed use residential and commercial project. National Grid has objected to the proposed CIL charge of £400 psm as they believe this makes the scheme unviable. As a consequence a site specific appraisal has been undertaken to test the ability of the site to bear CIL and planning obligations. It should be stressed that this has been done using evidence in the public domain: there has not been access to the detailed costings or remediation strategy for the site. The appraisals as such are high level and will evolve as the scheme progresses.
- 15.15. The indicative masterplan of the proposed scheme shows a mixed use scheme: four scenarios have been tested: Appraisal 1 - 1,200 dwellings of

which 40% affordable; Appraisal 2 - 1,200 dwellings of which 40% affordable; 10,000 sq. m of mixed use commercial space also included; Appraisal 3 - 1,200 dwellings, 40% affordable, sensitivity tests using Representor's assumptions; Appraisal 4: 1,200 dwellings of which 40% affordable, 10,000 sq. m of mixed use commercial space also included, with Representor's assumptions on inputs. It should be noted that 1,200 dwellings has been tested based on the figures suggested in the National Grid representation. The Indicative Masterplan Plan traffic study has modelled up to 1,710 dwellings (750 habitable rooms per hectare).

- 15.16. As with the generic testing, a residual value of each of the four appraisals has been produced and compared against the existing site value. However, in the case of these four appraisals, the proposed £400 CIL charge has been included as a cost. If the overage is positive then the scheme has the potential to fund CIL together with additional 106 payments beyond the £1,000 per unit.
- 15.17. All appraisal assumptions are in accordance with the generic figures except for the following: Existing Site Value - the benchmark figure in the generic appraisal is a blended rate of different uses. With the Gasworks site it is possible to be more specific. The existing use of the site is currently a redundant gas works with some occupied employment space. The element of the site used as a gas works has no current use value but may have the potential for open storage as an alternative use value. Previous studies of the South Fulham Riverside indicate that the site would have a value of £5m-£10ha following remediation. A mid-range figure of £7.5m ha has been adopted and a buffer of £2.5m ha has also been applied.
- 15.18. Contamination and Demolition – the representors included a figure of £21.5m for demolition and remediation. Under EU and UK legislation owners of contaminated sites are under a duty to remediate land so that it does not pose a risk to the wider environment. It is not clear from the submission whether this figure is the statutory remediation figure or additional costs to create a development platform for the proposed mixed use scheme. The figure is substantial, but in any event it would be expected that this cost would be reflected in the eventual disposal value to a developer.
- 15.19. Representor's alternative inputs - the following figures have been amended on appraisals 3 and 4 to reflect the representation: professional fees increased to 12%; remediation included at £21.5m; external works at 10%. Alternative S106 assumptions have been tested at £50psm and £100 psm on all dwellings. For this site £100 psm has been tested but it is stressed that this is not based on a detailed assessment of any particular development proposal. The figure is based on an assessment of the infrastructure identified in the South Fulham Riverside Development Infrastructure Funding Study.
- 15.20. The only response from the Representor to this element of the VSA2 was that the comment in paragraph 10.5.1 of the VSA2 that the remediation costs in appraisals 3 and 4 should be treated with "caution" is not accepted. The response went on to say that in previous information provided of remediation costs, National Grid has utilised its extensive experience of remediating gasworks sites: they have demonstrated that the remediation costs have a significant impact on the scale of overage that might be generated by the

site's redevelopment, and it is inappropriate to dismiss this impact in seeking to justify the residential CIL rate of £400 psm.

Berkeley Group representations

- 15.21. Berkeley Group provided representations that time-scale assumptions used in the VS appraisal were very unrealistic about development phasing which has a significant impact on cash flow, holding costs and costs of finance and therefore goes to the heart of viability. Based on Berkeley Group response sensitivity testing has been undertaken using their assumptions of delivery rates. Berkeley Group state that a 500 home development would be constructed in 18 months and a 750 home development in 27 months. This is a delivery rate of 28 homes per month on all units (market and affordable). The updated viability study also assumes that for both developments there would be two phases of sales at 41 homes per month which, based on current market conditions, are still considered by the Council to be reasonable assumptions.
- 15.22. Berkeley Group has challenged the appraisal inputs on the following two points: delivery rate of 28 homes per month and GDV fails to take Mayoral CIL or residual s106 contributions into account. In response to this representation, the table contained in the June 2014 VS has been updated. The VS showed CIL as a percentage of GDV of between 1.5% and 3.5%. Analysis of the proposed LBHF CIL combined with a Mayoral CIL of £50 psm results in a CIL as a percentage of GDV of between 1.86% and 4.05%. These percentages of GDV are still within a reasonable range and consistent with other CIL studies. The revised analysis is also in an acceptable range. As part of the representation it was suggested that modelling be extended to time periods as follows: planning - 12 and 18 months; site preparation up to 6 months; main construction (100 homes per year) – 5 years for 500 homes/and mixed use scenario and 7.5 years for 750 homes/and mixed use scenario; sales of 6-8 per month from consent, ensuring differentiation between pre-sales commencing and occupation as it is only at occupation that sales receipts including deposits should be reasonably taken into consideration in the VS.
- 15.23. The time-scales proposed by Berkeley Group are not accepted by the Council, but their build and sale rates have been sensitivity tested. The planning period of 12 to 18 months is not accepted as it has been assumed that the sites have planning permission prior to site purchase i.e. sites are bought on a conditional basis subject to planning or the landowner sells the site with the benefit of planning. Using Berkeley Group assumptions on build rate time-scales with the June 2014 VS assumptions results in a viability reduction: this is to be expected. When CIL is analysed against overage over the CIL chargeable floor space it shows that there is still sufficient headroom with the proposed CIL charges in central and southern zones but not the northern zone.
- 15.24. Using Berkeley Group assumptions on build rate time-scales with the January 2015 viability assumptions results in a viability reduction compared to the Council's assumption of timescales. Scenarios N5, C5 and S5, which are mixed use and relatively low density, are unlikely to be viable. The Representation proposes extended construction and sale periods. The Council does not agree that such revised phasing is appropriate or necessary for CIL viability

purposes. However, longer construction and sale periods on large sites have been tested to assess the impact on viability. The sensitivity testing shows that there is some impact on the ability to pay CIL but this is very limited. Some lower density flatted development (200dph) with a high ratio of commercial space, and two other schemes in the north zone, would not be able to meet CIL without a compromise on other planning obligations such as affordable housing. However, these schemes are not expected to form the majority of supply in the Borough. Overall, the testing demonstrates that even with very much extended construction and sales periods residential development on most large sites would still be sufficiently viable to pay CIL with a substantial overage remaining after deducting CIL.

- 15.25. The above summarises the content of the VSA2, which covers what I consider to be the material issues that need to be addressed in respect of the economic viability evidence². My conclusions are that across the broad band of inputs and assumptions, the Council and its advisors have taken the issues raised in representations and have demonstrated that the viability evidence underpinning the proposed CIL rates is robust and appropriate for the purpose of my examination. My conclusion on the issues within the Fulham Gasworks site (15.14 to 15.20 above) is that, on the basis of the evidence put before me, the results of the appraisals in the VSA2 show an overage on all assumptions and that the £400psm is appropriate for the National Grid Site: I accept this result.
16. A further consideration which indicates that the rates are generally well within a level that will not put development at risk is that no allowance has been made in the VS or VSA2 for existing floorspace. In practice almost any site coming forward in Hammersmith and Fulham will have a considerable amount of existing floorspace which will be off-set against the new floorspace in arriving at the CIL charge, with the result that the effective rate per square metre will be considerably reduced. The Council has carried out a study of existing floorspace in a large number of recent development proposals which shows that existing floorspace when compared with gross proposed floorspace can range from significant to substantial. Taking a broad view, as appropriate for this exercise, on average existing floorspace is about 30% of gross proposed floorspace for all sites, or around 40-50% of proposed floorspace for sites below 10,000 m². This study confirms that the existing floorspace offset provides a 'buffer' or 'cushion' which will reduce the actual burden of CIL on the viability of developments when the Borough's CIL is approved.

Conclusions on evidence of economic viability and infrastructure needs

17. I consider that the scope of the VS and Addendum studies provide the appropriate level of detail required to establish suitable and robust evidence. An accepted valuation methodology has been used, informed by reasonable
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² The VSA2 can be referred to for the detail - [http://www.lbhf.gov.uk/Images/20.01.2015 Final Viability addendum by PBA tcm21-193211.pdf](http://www.lbhf.gov.uk/Images/20.01.2015%20Final%20Viability%20addendum%20by%20PBA%20tcm21-193211.pdf).

assumptions about development costs, and local sale values, rents and yields, etc. I am satisfied that the VA, taken with the Addenda, provides the viability evidence against which to judge the rate of charges proposed by the Council.

18. The draft Charging Schedule is supported by detailed evidence of community infrastructure needs and a funding gap is evident. On this basis, the evidence that has been used to inform the Charging Schedule is robust, proportionate and appropriate.

Are the charging rates informed by and consistent with the evidence?

Is the rate for 'All Uses unless otherwise stated' justified?

19. I had to question the rate for 'All Uses unless otherwise stated' – in light of the fact that a number of uses which would be subject to this charge have not been the subject of viability testing, that some uses which might be subject to the charge are primarily provided at public expense, and that it is a 'catch-all' rate for which I saw no justification. As far as justification is concerned, study of the VS showed that the following have been subject to viability testing and have been found to be able to absorb a CIL rate of £80 psm: Student Accommodation, Retail (including warehouse clubs), Leisure (including health & fitness and cinemas), Nightclubs, Laundrettes, Taxi businesses, and Amusement Centres. Thus these are the only uses for which there is a viability test justifying a £80 per sqm charge.
20. Upon reflection the Council decided that a modification of the Charging Schedule was desirable and have asked me to recommend accordingly. The modification involves deleting the existing column "All uses unless otherwise stated" and the column listing a number of uses which have a Nil charge, and inserting a column which lists those uses which I have identified in paragraph 19 above with an £80 psm charge; and a final column headed "All other uses" which carries a Nil rate. This seems to me to be eminently sensible and justified and I will recommend accordingly. In addition the Council identified that 'Hostels' had been incorrectly inserted within the Residential column, and that it should be deleted. Again I will recommend that modification.

Are the Charging Zones correctly delineated?

21. Upon my initial examination of the Charging Zones Map I was concerned that it was not possible to clearly identify where the boundaries were drawn between the North Zone and the South Zone with Central Zone B. This was because of the scale of the map and the fact that, as it turns out, the boundaries are taken behind the frontage properties of the major roads that are the main dividers between zones. At the same time, the map met the requirements in the regulation 12(c)(ii) and (iii): is reproduced from, or based on, an Ordnance Survey map, and shows National Grid lines and reference numbers. I drew the Council's attention to my concern.
22. As the Council has explained, "it is important to avoid as far as possible, any unintended anomalous outcomes when charging CIL. Although, at the PDCS stage the CIL zone boundaries were set to follow the middle of the main roads, the boundary line was adjusted at draft Charging Schedule stage, to

run along the rear boundaries of north facing properties fronting onto the identified main roads. Doing so avoids differential CIL rates being charged for developments on either side of the main road. That would be anomalous, as the main road corridor would be expected to have similar economic factors affecting viability. It should be noted that this change results in the relevant properties falling within a lower proposed CIL charge zone.”

23. The Council also pointed out that its website has the function of enabling every property to be searched to provide information on all local government regulatory factors which affect it. Thus a search on a particular property would, once CIL is in force and among other things, identify the CIL charging zone within which it is situated. At the same time, in response to matters which I deal with below, the Council provided a revised Charging Zones Map which displays the underlying street pattern more clearly and asked me to recommend a modification to put it in place of the original. Thus my concerns are met and I will recommend accordingly.
24. During the course of my examination there was an announcement that the Mayor of London was designating the Old Oak and Park Royal Mayoral Development Corporation. Within the area of such Corporations the Borough CIL is not collected, but the Corporation sets and collects its own CIL. Since the Old Oak and Park Royal Mayoral Development Corporation is due to come into being on 1 April 2015 I drew the Council’s attention to the fact that the area of the Corporation should be delineated on the Charging Zone Map, with a note explaining the Charging responsibility. The Council has agreed that a modification is necessary along the lines suggested and has provided a modified Charging Zones Map for me to recommend as a modification.
25. The Council has indicated that a minor change to the White City East Zone boundary is justified, having considered a representation about the boundary of this Zone. This is a minor change to the boundary to more accurately reflect the extent of the development area. The Council has formally requested that I recommend this modification and has supplied a revision to the Charging Zones Map.
26. A representation on behalf of Chelsea Football Club (CFC) seeks to have the boundary of the Central B Zone modified to follow the middle of Fulham Road in the vicinity of the Club’s landholding. This would have the effect of removing the landholding from the South Zone and putting it in the Central B Zone.
27. The basis for this request is that the boundary as drawn deviates from its natural progression along Fulham Road, which appears to serve as a clear and defined boundary between the two zones. This is in contrast to the boundary as drawn which follows the District Line to the north and the east – either within a tunnel or cutting. There is no physical barrier with the Central B zone as the CFC’s landholding is very accessible by both pedestrians and cars from the Central B zone. Defining boundaries by main roads is a much simpler and fairer method. It is clear that the land use south of Fulham Road is very different to the north. The evidential reliance by the Council of Land Registry price paid data for the CFC local area is criticised as being unclear and that the data relied upon had not been provided. At the same time there is no house

valuation data or development values provided on behalf of CFC to support its case.

28. The Council acknowledges that generally the lines of major roads represent a broad correlation with residential property values. However, the precise boundaries were set having regard to the following: in the vicinity of Shepherds Bush and Fulham town centres the CIL zone boundaries follow the southern part of the defined town centres. This is because a main road boundary though the town centre would split an area where the factors affecting the viability of development would be expected to be the same. This also accounts for the differences between the town centre and the residential areas to the south. In the area east of Fulham Town Centre, partly occupied by Chelsea Football Club, the District Line is considered to form a more appropriate dividing line between the south and central zones based on prevailing property values in this area (in respect of which, data was supplied in response to the representation) and the fact that the District line forms an impermeable physical barrier, more clearly demarcating these CIL zones than if it was set along Fulham Road.
29. In my judgement, and based upon an detailed evaluation which I made on a visit to the area, the District Line is indeed an impenetrable barrier to the north of CFC, so that the only linkages north and south are around both sides; through Brompton Cemetery to the east (within the Royal Borough of Kensington and Chelsea) and through Fulham Broadway to the west of Fulham Broadway station. Furthermore, the Council's property values evidence, that the District Line forms a more appropriate dividing line between the south and central zones, struck me as being an accurate assessment of the nature of the area around CFC's landholdings. It appears to me that any design, layout and marketing of new development in this area would take its connections from the south. Furthermore, from what I saw of current on-going development to the north of the District line, new property values have ambitions to reach those to the south of the line. I am therefore satisfied that the District Line, in this locality is a sensible dividing line between the Central B zone and the South zone, and that it fairly represents the prevailing property values, and the degree to which new development can remain viable with the CIL charge set at £400 psm. I see no justification to alter the boundary of the zones in this vicinity.
30. Ptarmigan Riverside LLP seeks to have a nil rate set for development of all the Safeguarded Wharves in the Borough – Albert, Comley's, Swedish and Hurlingham. This is on the basis that the redevelopment of these sites is needed to deliver the CS policies in relation to regeneration, housing and employment, whilst having to bear exceptional costs associated with safeguarding the land for wharf use. Albert Wharf has a current planning application, with an associated exceptional cost of £20m relating to the construction of a box to contain the wharf before development of residential uses can occur. This cost, added to an estimated CIL liability of £19m means that the scheme would not be viable and therefore undeliverable.
31. The Council points out that the Albert Wharf site is not identified in the Core Strategy. For CIL purposes, any proposed redevelopment for a mixed use scheme that includes housing is not essential to ensure the implementation of the Core Strategy. The Core Strategy designates Swedish, Hurlingham and

Comleys Wharves as safeguarded wharves, but none of these are allocated for housing and are not required in order to meet the Borough's housing target, which is being met. The objective of the safeguarding is to keep them in a cargo handling use: they could be left in their present state. They are very small sites and not appropriate to identify as separate zones. To do so would introduce undue complexity which guidance cautions against.

32. Whilst I can see that the redevelopment of the wharves is desirable, I am not persuaded that they make an essential contribution to the Council's regeneration objectives. I am satisfied that the development of Albert Wharf and the safeguarded wharves is not essential in terms of meeting the Borough's housing target. In my view the only reasonable way of differentiating the wharves and providing for a low or nil CIL charge would be to identify them as individual zones. I do not consider that this would involve undue complexity, but I am not persuaded that it is justified in terms of the CIL regime and government guidance.

Other matters

33. Many representations seek to have an 'Exceptional Circumstances' policy put in place. This is a matter for the Council, which has firmly resisted any such intention on the basis that, if the CIL rates are shown to be set at a level that development generally will not be put at risk, there is no need for such a policy. In addition it is fearful of such a policy resulting in many claims of exceptional circumstance that could be wasteful of the Council's scarce resources in responding to what would inevitably be detailed analysis.
34. However, it was suggested in one representation that "Leading Counsel considers that not to allow for exceptional circumstances would be a breach of the Council's Statutory Duty in framing the CIL Charging Schedule." If this were a correct interpretation of the law, it would be a matter for me to consider under the requirement for me to be satisfied that the Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes.
35. Upon further enquiry, it became clear that the statement followed from a consultation and Opinion from a leading Counsel in a case unrelated to anything before me, and that it was not possible to impart the Opinion for the purposes of the examination. However, it was explained that the statement was based upon the general public law principle that it is contrary to Statutory Duty to impose blanket requirements and that it is necessary to allow for exceptions in a fair and reasonable manner, based on individual circumstances.
36. As far as I am aware the only provision in the CIL regulations is that a charging authority wishing to offer exceptional circumstances relief in its area must first publish a notice of its intention to do so. In view of the nature of CIL, and the fact that the Act and Regulations leave the decision to be made by the individual charging authority, I am led to believe that this is not a matter upon which I should seek to intervene.

Does the evidence demonstrate that the proposed charge rate would not put the overall development of the area at serious risk?

37. The Council’s decision to use a matrix approach to its CIL rates is based on reasonable assumptions about development values and likely costs. The evidence suggests that residential and commercial development will remain viable across most of the area if the charge is applied. No evidence has been put forward which convincingly suggests that the proposed rates would put development in the Borough at risk.

Conclusion

38. In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in the London Borough of Hammersmith and Fulham. The Council has tried to be realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a range of development remains viable across the Borough.

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, consistency with the adopted Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

39. I conclude that, subject to the modifications set out in Appendix A, the London Borough of Hammersmith and Fulham Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended).

Terrence Kemmann-Lane

Examiner

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

Appendix A

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

Modification Number	Modification
EM1	Remove the column "All uses unless otherwise stated" and the column with the list of uses beginning with "Health" from the Charge rates table. In their place, insert a column with the following uses: Student Accommodation, Retail (including warehouse clubs), Leisure (including health & fitness and cinemas), Nightclubs, Laundrettes, Taxi businesses, and Amusement Centres, with a charge of £80/m ² ; and a column with the heading "All other uses, and a Nil rate. Remove "Hostel" from the Residential column. All as shown on the modified Schedule set out below.
EM2	Modify the Charging Zone Map to display more clearly the boundaries between the North Zone and the South Zone with Central Zone B as shown on the modified Charging Zone Map set out below.
EM3	Modify the Charging Zone Map to show the area of the Old Oak and Park Royal Mayoral Development Corporation, and append a note explaining that the Charging Authority in that area is the Development Corporation, as shown on the modified Charging Zone Map set out below.
EM4	Modify the Charging Zone Map to show a modified boundary to the White City East Zone as shown on the modified Charging Zone Map set out below.

The following modified Schedule of CIL Charge Rates and the modified Zones Map, both produced by the Council, show the results of the Recommended Modifications.

The Modified Schedule of Charge Rates

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Charge rates

Charging zones	Uses			All other uses
	Residential (C3)	Office (B1a/b)	Student accommodation	
	HMO (C4)		A class uses (including retail clubs)	Nil
			Health and fitness leisure centres	
			Hostels	
			Night clubs	
			Laundrettes	
			Taxi businesses	
			Amusement centres & Casinos	
North		£100/m ²	Nil	
Central A†	£200/m ²	£80/m ²		
Central B		Nil		
South	£400/m ²			
White City East‡ Earls Court & West Kensington Opportunity Area‡	Nil			

† The Central A Charging Zone boundary is the same as the Hammersmith Town Centre boundary on the council's adopted Proposals Map.

‡ It should be noted that, whilst a £0/m² (nil) rate is proposed at White City East and Earls Court & West Kensington Opportunity Area, this does not mean that the council will not receive significant financial contributions from developments in these areas as S106s will continue to be used.

The Modified Zones Map

