# Report to the London Borough of Lambeth

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**an Examiner appointed by the Council**

**Date: 18 JUNE 2021**

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

**REPORT ON THE EXAMINATION OF THE LONDON BOROUGH OF LAMBETH COMMUNITY INFRASTRUCTURE LEVY MODIFIED DRAFT CHARGING SCHEDULE**

Charging Schedule submitted for examination on 8 March 2021
through Penny O'Shea Consulting

**Non-Technical Summary**

This report concludes that the London Borough of Lambeth Community Infrastructure Levy Modified Draft Charging Schedule provides an appropriate basis for the collection of the levy in the borough. The proposed rates will not put the majority of developments at risk, and it can be recommended for approval.

## Introduction

1. This report contains my assessment of the London Borough of Lambeth's (LBL) Community Infrastructure Levy (CIL) Modified Draft Charging Schedule (MDCS) 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 (Ministry of Housing, Communities and Local Government Guidance on the Community Infrastructure Levy).

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

3. The current LBL CIL charging schedule came into effect in October 2014. It set rates for residential, hotel, office, large retail, and student accommodation, across three charging zones within which some of the rates varied. In the summer of 2018, the council commissioned BNP Paribas Real Estate (BNPPRE) to produce a Viability Review (VR). In light of the VR, in October 2018, the council published a Preliminary Draft Charging Schedule (PDCS). Within the PDCS, the number of zones was increased to four as a result of considering the evidence in the VR. Having consulted on the PDCS and considered the responses, in January 2020 the council published the Draft Charging Schedule 2020 (DCS), making no changes to the charges proposed in the PDCS. Public consultation on the DCS took place between 31 January and 31 March 2020.

4. It should be noted that the public consultation on the DCS took place alongside and simultaneously with the pre-submission publication of the Draft Revised Lambeth Local Plan Proposed Submission Version (DRLLP). The DCS and DRLLP share the same evidence base of viability and infrastructure. This coordination between the DCS and DRLLP was aimed at ensuring that the new CIL charges would enable the successful delivery of the objectives and policies of the revised plan and the new London Plan[1]. As readers will recall, at the end of March 2020 the country went into lockdown

[1] The Draft London Plan referred to in the Viability Report December 2019 was the Draft London Plan – Consolidated changes version of July 2019. The Intend to Publish London Plan was published in December 2019, post-dating the Viability Report of the same month. On 2 March 2021, the London Plan 2021 was published by the Mayor, following the Secretary of State's confirmation that no further modifications were necessary (see paragraph 30 below).

as a result of Covid-19. At this point, the council decided to proceed with the submission of the DRLLP for examination, but the submission of the DCS was postponed until there was greater clarity about the impact of the lockdown on the development industry.

5. Having considered the DCS 2020 representations, in February 2021 the council agreed to submit a MDCS, having taken advice from BNPPRE about the impact of the pandemic on the development industry in Lambeth in January 2021 (see document LCX 05). It is the MDCS that is now under examination.

6. Under Regulation 19(4) of the CIL Regulations 2010 (as amended), the council may modify the CIL DCS following publication and consultation. The proposed modifications are set out in document LCX 02 – Statement of Modifications – Lambeth Modified Draft Charging Schedule 2021. The Lambeth MDCS 2021, as it will appear if approved, is set out in document LCX 01.

7. Modification 1 is a reduction in the rates for hotels in charging Zones B, C and D following consideration of the representations made on the DCS 2020 and of the impact on development of the Covid-19 pandemic. The DCS 2020 has been modified so that CIL rates for hotels in Zones B, C and D would be charged at a lower rate compared to hotels in Zone A, for reasons set out in document LCX 05. Modification 2 is an amendment to the definition of retail and large retail to remove references to specific use classes. This is intended to ensure that there is clarity about the uses included within the definition without reference to the Use Classes Order, which is subject to change from time to time (and indeed has been changed very recently).

8. Table 1, on the next page, sets out the rates and changes to the text, as now proposed following the consultation on the modifications. This shows figures and text to be removed by strikethrough, whilst modified figures and text is indicated in underlined red.

9. As already mentioned, the submitted MDCS is a revision of the schedule that has been in force since October 2014. The charging rates set out at that time will have increased by virtue of the provision in the Regulations for increases in rates to follow changes in the inflation rate in keeping with the "All-in Tender Price Index" published by the Building Cost Information Service (BCIS) in November of the previous year. As an indication of what this means in terms of the 2014 rates with inflation applied, as at November 2020, I set out the 2014 rates in black and the current rates as a result of the latest indexation in red:

- residential £265 - £369.23, £150 - £209.00, £50 - £69.67
- hotel £100 - £139.33
- office £125 - £174.16
- large retail £115 - £160.23
- student accommodation £215 - £299.56.
  (NIL rates unaffected)

**Table 1: The rates and changes to the text, following the modifications**

| Development Type | Zone A – Waterloo and Vauxhall | Zone B – Kennington, Oval and Clapham | Zone C – Tulse Hill, Brixton and Herne Hill | Zone D – Streatham, West Norwood, Streatham Hill |
|---|---|---|---|---|
| Residential including co-living schemes or shared accommodation | £500 | £350 | £250 | £200 |
| Self-contained sheltered housing, self-contained extra care schemes and care homes | £250 | £175 | £100 | £100 |
| Hotel | £200 | ~~£200~~ £75 | ~~£200~~ £75 | ~~£200~~ £75 |
| Office | £225 | £225 | Nil | Nil |
| Large retail development* | £225 | £225 | £225 | £225 |
| Other retail | Nil | Nil | Nil | Nil |
| Student accommodation | £400 | £400 | £400 | £400 |
| All other uses not identified above | Nil | Nil | Nil | Nil |

* Retail includes ~~all uses that fall within Classes A1, A2, A3, A4 and A5 of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order, as well as related D2 and sui generis commercial uses including cinemas, betting shops, car showrooms, launderette.~~ such uses as shops selling consumer goods, including food and essential items, to visiting members of the public, premises for the provision of financial and professional services, a café or restaurant, and gymnasium. It will also include related sui generis commercial uses such as pubs or drinking establishments, takeaways, cinemas, betting shops, launderette, and car showrooms. Large retail development ~~is defined as either one of the following~~ includes:

- Superstores/supermarkets/shopping mall/shopping centre/shopping arcade which are shopping destinations in their own right, with over 280m2 of retail space, with or without a dedicated car park; or
- Retail warehouses which are large stores ~~over 1000m2~~ specialising in the sale of household goods (such as carpets, furniture, and electrical goods), DIY items and other ranges of goods catering for mainly car-borne customers.

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

Does the Infrastructure Delivery Plan support the continued charging of CIL?

10. LBL produced the Lambeth Infrastructure Delivery Plan (document LCX 06) to provide evidence for the DRLLP and the DCS to meet requirements of the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG). It identifies the infrastructure required to meet the needs of the borough between the financial years 2019/20 and 2034/35. Two levels of infrastructure are dealt with: regional or sub-regional infrastructure – infrastructure that serves London-wide or sub-regional needs or is needed to accommodate expected growth across the capital, not just in Lambeth; and borough-level infrastructure – infrastructure that serves needs within Lambeth or is needed to accommodate expected growth across the borough.

11. The following categories of borough-level infrastructure are considered:
    - Climate Change Response and Air Quality
    - Cemeteries and Crematoria
    - Education
    - Emergency Services
    - Health and Social Care
    - Community Facilities and Libraries
    - Parks and Green Infrastructure
    - Sports and Leisure
    - Transport and Public Realm
    - Utilities

12. The borough-level infrastructure schedule for the first five-year period identifies 58 different infrastructure projects. These projects are estimated to cost a total of £600.5m. The infrastructure schedule has identified sources of committed funding where known. This results in an estimated funding gap of approximately £384.8m. The estimated amount of this gap that would need to be funded through CIL or section 106 is £265.1m.

13. With the removal of the requirement for a Regulation 123 list in an amendment of the CIL Regulations on 1 September 2019, there is a requirement for an annual infrastructure funding statement (AIFS). The council has produced this – document LCX 07 'Annual Infrastructure Funding Statement 2019/20' (December 2020). This includes, as appendices, the Infrastructure List, CIL Expenditure 2019/20, CIL Unspent Allocations 2019/20, Section 106 Unspent Allocations 2019/20 and S106 Expenditure 2019/20. The AIFS shows that the council collected CIL totalling £10,361,910 in 2019/20. It also shows that, at the start of 2019/20, a total of £26,022,832 of receipts were retained up to March 2019, of which £11,377,988 was allocated towards various projects, while £14,644,844 had not yet been allocated. As to expenditure, the AIFS shows that a total of £8,840,804 was spent in 2019/20, whilst the total retained CIL from 2019/20 is £27,543,938.

14. From these documents it can be seen that there is a funding gap of circa £385m, of which some £265m will need to be funded through CIL or S106. This and the receipts, allocated funds, funds retained awaiting allocation, expenditure and retained amounts, demonstrate that the proposed CIL

charges would make a significant contribution towards meeting the funding gap. The figures demonstrate the need to levy CIL in LBL.

Does the economic viability evidence support the proposed levels of CIL?

15. The council commissioned the London Borough of Lambeth: Local Plan and Community Infrastructure Levy Viability Review from BNPPRE, which was published in December 2019. In addition, as mentioned in paragraph 5 above, the council also commissioned advice from BNPPRE on the impact of the pandemic on the development industry in Lambeth.

16. The VR uses a residual valuation method: a standard approach that involves calculating the value of completed development schemes and deducting development costs (construction, fees, finance, sustainability requirements, CIL and other plan policy costs) and developer's profit. The residual amount is the sum left after these costs have been deducted from the value of the development and guides the amount available for site acquisition. The residual land values are compared to a 'Benchmark Land Value' (BLV), being the value above the existing use value a reasonable landowner would accept, including a premium as an incentive to sell, to bring the site to market for development.

17. The cost of Mayoral CIL (MCIL2) is accounted for, as are the policy requirements set out in DRLLP and the London Plan. In respect of the latter, the VR was written when the current version was the Draft London Plan – Consolidated changes version July 2019. I asked about the policy implications of the London Plan published by the Mayor on 2 March 2021. In reply, the council provided me with a table (Appendix 1 to document EX 13) that compares the wording of these policies in the Draft London Plan Consolidated changes version July 2019 and the wording in the published London Plan 2021, with comment in the final column on implications for the Lambeth CIL VR. This shows that, in respect of the relevant policies, there are no changes that require further testing of the outcomes of the VR.

18. In answer to a question from me, prompted by the recent publication by the Royal Institute of Chartered Surveyors (RICS) of a new guidance note on financial viability in planning, I was assured that the approach adopted in the VR is based on the PPG and the Local Housing Delivery Group Guidance (see response also in document EX 13). It was pointed out to me that the 2012 RICS guidance note on financial viability in planning had correctly advocated a specific recognition of the impact of planning policies on market value, but that specific section was subject to considerable misunderstanding and misapplication by some practitioners, as highlighted by Justice Holgate in the Parkhurst Road case. The approach reflected in the PPG is the correct approach to be followed, as it has been in the VR.

19. The VR inevitably, when dealing with the viability of development borough wide, will be a high-level study. Thus, the inputs are generalised, as opposed to those that deal with site specific developments. This means, among other things, that a degree of professional judgement is called for, based on using the best available evidence. For this reason, along with the requirement that care should be taken not to set charging rates at, or near to, the limits of viability, it is important to ensure that there is an appropriate buffer, so that charges are sufficiently set below the theoretical

maximum that could be levied. The VR is not easy to interrogate as to the extent of this buffer. I raised a question about the extent of buffer allowed for in the assessment of viability.

20. Table 1 in document EX 13 provides examples of maximum CIL rates for Zone A (sourced from VR table 6.34.2 incorporating 35% affordable housing). In this table, rows for proposed CIL as a percentage of the maximum rate have been set out. These proposed rates provide a buffer of between 55 and 80%. Generally, the buffer is in the region of 60 to 70%. This margin is a good indicator that, for the majority of schemes, the proposed CIL rate has been set at a reasonable level; one that will not put development generally at risk.

21. There is an additional factor that acts as a further margin, helping to ensure that rates are not set too high. The amended CIL Regulations specify that if any part of an existing building is in lawful use for six months within the 36 months prior to the time at which planning permission first permits development, all of the existing floorspace will be deducted when determining the amount of chargeable floorspace. This is likely to be the case for many development sites in Lambeth, although not all existing floorspace will qualify. For the purposes of the appraisals, it has been assumed that there is no deduction for existing floorspace to set off. This ensures that the proposed CIL rate is viable for developments where there is no qualifying existing floorspace to net off, but elsewhere amounts to an additional buffer.

My conclusions

22. The MDCS is supported by evidence of community infrastructure needs and a continuing need to charge CIL is identified. I am satisfied that the VR follows good and accepted practice and there is evidence for the various inputs used and adequate headroom is allowed for. Whilst there are concerns raised in consultation responses, which I deal with below when considering the proposed charges for individual development categories, I conclude that the MDCS is supported by satisfactory evidence of the costs of infrastructure and viability evidence, and that these background documents contain appropriate available evidence.

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

23. Before turning to deal with the individual development categories, I should mention the fact that I invited all representors who had provided a substantive response to the consultation on the DCS (there were no substantive responses to the consultation of the MDCS) to bring up-to-date their evidence if they wished, since previous representations dated from early March 2020 and some relied on responses to the PDCS of late December 2018 and the earlier version of the VR. For the most part, my offer was not taken up.

The rate for residential

24. A major development group raised a number of concerns, particularly expressing the need for caution in setting rates that might discourage

residential development. Emphasis was put on the importance of understanding the viability of large schemes, and the lack of any assessment of schemes with elements of mixed use. The rates used in the VR for costs and values were criticised, as were the benchmark land values; and the need for an adequate buffer below maximum CIL levels (and the need to understand the size of buffer used) was stressed. It was also suggested that large schemes in Zones A and B require high build and fit out quality to achieve the premium prices that are assumed in the VR, which in turn means that a premium should be added to the RICS BCIS build costs to reflect this.

25. VR Figure 2.15.1 was highlighted in respect of the concern about costs and values, since this shows average sales values in Lambeth have been flat since 2016. Whilst growth was predicted (at the time the representation was written – late 2018) from 2021 onwards, there remained significant uncertainty about the UK and global economy. However, I note that the timeline in that figure only runs to the third quarter of 2019, and more particularly that a steep rise in values is shown to have occurred from the date of the evidence base prepared in 2012, underlying the 2014 charging schedule, to 2016. This helps to show considerable scope for reviewing the 2014 rates.

26. Some of the above points were also made by the UK's largest listed residential landlord. Two additional points were made: that the "easier" development sites have gone, leaving the more challenging sites that now need to be developed to meet housing needs; and that there is a need to give greater consideration to the different economic characteristics of build to rent (BTR) schemes, there being no capital sale at the end of the construction period, only an annual rental period. If BTR schemes are not viable, there will not be the significant boost to housing supply, which is a key government objective.

27. Representations were also made in connection with student housing and co-living schemes: build costs used in the VR for both forms of development at £2,014$m^2$ are significantly exceeded, and have been at a median cost of £2,251 $m^2$ as shown in the BCIS data at September 2018 and the VR assessments and charges should be reviewed.

28. In respect of co-living, the following are the main issues raised: the form of tenure is more akin to purpose-built student accommodation and should be charged at that rate; there is only one typology tested for co-living and that is a small site, a range of site area/densities should be assessed; the VR demonstrates that, in many cases, co-living schemes cannot meet the proposed CIL rates and the 35% affordable housing requirement; there has not been effective assessment of DRLLP Housing Policy 'Large Scale Purpose-Built shared living'; the Gross to Net ratio of 80% is not appropriate for co-living schemes, having a higher provision of communal and amenity facilities and therefore greater floorspace, and testing of 70% and 75% should be undertaken; inputs of room size, rental level, investment yield and rent free period were questioned, and no indication of whether operating costs have been applied to gross rents, as is appropriate, is criticised.

My conclusions

29. The decisions and actions of a public authority should be taken as sound unless it is shown otherwise. I have questioned the approach of the authority and its advisers and have been assured that the VR and the decisions taken on it follow national policy in the Framework, in PPG and in the Local Housing Delivery Group Guidance (LHDGG). The PPG and LHDGG are in conformity, and together form the correct procedure for assessing development viability within a specific area, in order to identify levels of CIL charges that will ensure that general development remains viable across most of the authority's area.

30. It is also clear from the documentation, that the Mayoral CIL at its various levels has been accounted for, as has the cost of the policies of the emerging local plan, which is now at a late stage in its progress to adoption, and as were the policies of the emerging London Plan at the point when the DCS was consulted upon. Having asked the question, I have also been assured through the provision of a table relating to the polices of the now published London Plan 2021, that there are no additional policy requirements arising from the published policies that would affect the cost of development in Lambeth.

31. In addition, as I have set out in paragraphs 20 and 21, there is a range of levels of buffer at which the charges have been set, below the maximum CIL that the various development typologies could absorb; and the fact that existing floorspace on a development site has been ignored in the VR also provides strong reassurance that, generally, the charges are well below the maximum that the VR suggests could be levied.

32. Turning to the individual matters of controversy identified above, I am satisfied that the large schemes assessed in the VR are sufficiently representative of the large schemes coming forward in Lambeth and expected in the future. I am told that these are typically schemes of between 150 and 250 units on sites in former office or industrial use. Whilst it is true that mixed use typologies have deliberately not been tested, this is because it is not possible to delineate the CIL rate that the various uses (and mix) could viably absorb. Some uses are cross-subsidised by others, although in Zones A and B, commercial uses are viable in their own right, as the VR evidence shows.

33. Most schemes in Zones A and B are high density (20+ storeys), and the build costs already reflect a premium above other schemes – 20% above other tall buildings. I have dealt with costs and values in paragraph 25 above. The high specification and high cost are coupled with high value. In relation to costs/values, the evidence I rely on is that the Land Registry House Price Index quoted to me for Lambeth (document EX 13), has increased by 57% between August 2012 (when the last evidence base was drafted) and January 2021 (the most recent data available). Between April 2020 and February 2021, values increased by 5.4%. Very recent forecasts for 'Prime Central London' from Savills (Prime Residential Property Forecasts March 2021) indicate that values will increase by 7% in 2021 alone, with values predicted to be 20.5% higher in 5 years' time compared with 2021 – significantly faster than mainstream London markets. Over the same period, the BCIS 'General Building Cost Index' is forecast to increase by only

12.8%. These figures provide a substantial assurance about the affordability of the proposed charges.

34. As to BLVs, there is inevitably a need for professional judgement about what the '+' in 'existing use value +' should be. In this case, I am satisfied that national guidance has been followed, as has the ruling of Justice Holgate in the case of Parkhurst Road Ltd v Secretary of State for Communities and Local Government & another [2018] EWHC 991. No substantive evidence has been bought forward to suggest otherwise. Quite clearly, 'market value' is not anything other than a possible check on that professional judgement, providing that any market example follows a case which is fully policy-compliant, and bearing in mind that the VR deals with emerging policies rather than those applicable in the past.

35. Whilst easier sites may already have been seized upon for development, the viability of the more demanding sites should still be judged on the basis of the assessments required under national policy and guidance. To the extent that there are exceptional costs, these should be reflected in the price paid for the land and, in addition, there are the matters that I have dealt with relating to buffer, which gives a large margin to work with.

36. Turning to BTR, the evidence for the DRLLP has not been put before me, but I have had my attention drawn to the latest position on housing supply in Lambeth as set out in Topic Paper 10a: Housing provision statement, which is part of the evidence base for that plan. This gives the housing trajectory and information on five-year housing land supply required by the Framework. The housing trajectory includes a number of identified large sites (>0.25ha) expected to be delivered in years 1 to 10 of the plan period. Of these, three are currently expected to come forward as BTR schemes: OCCC Estate, Cornwall Road, Wootton Street and Windmill Walk (45 dwellings in year 3 and 101 dwellings in year 7);10 Pascal Street (148 dwellings in year 5 and 184 in year 6); and Land to the east of Montford Place, Kennington (139 units in year 9).

37. For the first scheme the developer is Grainger plc. The other two are on TfL land, being brought forward by TfL Commercial Development in partnership with Connected London Living (a subsidiary of Grainger plc). Together these schemes make up 617 units out of the total 14,490 expected to be delivered over the ten-year plan period (4.3%). Whilst the evidence in the VR suggests lower residual land values for BTR schemes, I do not accept that they are likely to be made unviable by the proposed changes. But even if BTR schemes proved to be problematical, the figures above do not suggest that delivery of a lower number of BTR units would put in jeopardy the overall number of additional dwellings in the borough required by the emerging DRLLP. Furthermore, market evidence demonstrates that BTR developers are securing sites in the borough to purchase through competitive tender. This indicates that BTR schemes are capable of generating residual land values that exceed those generated by build for sale schemes.

38. In respect of co-living/student housing and build costs from BCIS data, it is important to view this on a consistent date basis, which the VR has done. The VR has taken account of all policy requirements, including affordable housing. As noted in VR paragraph 6.24, co-living schemes have been

tested to reflect the requirement of London Plan policy H18B for 35% affordable housing provided at 50% of market rent levels and should generally be viable. Of note is that the published London Plan provides two options in relation to viability, which the DRLLP reflects, the 'Fast Track' route or the 'Viability Tested' route. In any event, the CIL regime does not have to ensure that all development across the borough must be shown to be viable.

39. As for co-living being more akin to purpose-built student accommodation and charged at that rate, student accommodation is charged at a higher rate than co-living in Zones B, C and D. It is not correct that schemes have not been tested to reflect the requirements of DRLLP Housing Policy 'Large Scale Purpose-Built shared living', which are incorporated within tables 6.34.1 to 6.34.12. Whilst there was only one typology tested for co-living, it provides 300 units which is typical of the size of such schemes. In respect of gross to net ratios, the co-living scheme assumes a gross internal area of 25 $m^2$ per room, which is significantly larger than the typical 12-15 $m^2$ net area of each room. The gross to net ratio is therefore 60%, which allows more than sufficient space to accommodate communal facilities and the like. There has been limited evidence of investment yield as no co-living schemes have been traded as yet. Guidance from CBRE in this matter indicates that yields for co-living should sit between BTR housing (3.25% in Zone A) and Purpose-Built Student Housing (4% in Zone A). In contrast, the VR assessments adopt a yield of 5%, which significantly understates value.

40. A representation was made in respect of nursing home accommodation, much of which referred to the emerging policies of the DRLLP, the thrust of this representation being that there is a shortage of nursing home accommodation. I understand that this is the subject of consideration in the examination of the DRLLP; as such these are not matters for me. To the extent that the representor was concerned about the CIL charge, no evidence has been provided that would suggest that the proposed charge in the MDCS would undermine the viability of nursing home accommodation.

The rate for offices

41. Respondents to the consultation on the DCS included companies engaged in development of very large office schemes. Concerns raised in relation to the proposed charge in Zone A include: the extent of increase in scheme value; the effect of pre-let economics on rents, and rent free periods; letting void for major schemes in this zone; build costs and demolition not reflective of those in the zone; uncertainty about treatment of basement and ancillary areas, and letting/disposal costs.

42. There is concern about the impact of the DRLLP policy requiring affordable workspace in developments where existing office space is demolished.

My conclusions

43. My understanding is that the large schemes referred to are for mixed use development. As referred to when dealing with the residential charges, mixed use schemes have deliberately not been tested because it is not possible to delineate the CIL rate that the various uses and mix could viably

absorb. Some uses are cross-subsidised by others, although in Zones A and B, the VR concludes that commercial uses are viable in their own right.

44. Rent free periods have been allowed for, as stated in VR paragraph 4.12, whilst the Commercial Inputs within VR Appendix 4 show that letting agent's fees of 10% of the first year's rent, and agent's fees and legal fees of 1% and 0.75% of capital value, have been deducted. I accept that some of the other matters raised are not clearly accounted for but, for instance, I am told that Avison Young's 'Q1 2021 Central London Office analysis' indicates that prime rents in Waterloo are £753 $m^2$, which exceeds the £700 $m^2$ adopted in the VR. Furthermore, an investment yield is applied in the VR of 5.25%, whereas Knight Frank's April 2021 yield guide indicates central London prime yields range from 3.5% to 4.25% which indicates a significant increase in capital value in comparison to values in the VR. Finally, as noted in document LCX 03 Regulation 19 Submission Statement, the maximum CIL rates that have been calculated are almost 10 times the rates proposed, and therefore there is a very significant margin. In addition, of course, there is also the deduction for existing floorspace to set off against the new floorspace, which will be a feature of such development sites, and which has not been allowed for in the VR.

45. With regard to affordable workspace, I am told that the policy taken forward into the submission version of the DRLLP is that affordable workspace should be provided for a period of 15 years at a discount of 50%. Consequently, the potential impact of this policy is that residual land values will reduce by circa 5% in Zone A and circa 11% in Zone B. The higher reduction of 22.27% given in VR paragraph 6.4 relates to affordable workspace secured for a 125-year period, which does not reflect the policy in the submission version of the Plan.

46. In addition, following the local plan examination hearing, the Inspector has proposed main modifications to the Affordable Workspace policy, as follows: i) The affordable workspace policy is to be applied to the net uplift in floorspace, rather than the gross floorspace provided by a development, using the same principle as is employed for the determination of CIL; and ii) the 10% requirement is to be amended from gross internal area to net internal area, which reduces the overall amount of affordable workspace required. If these changes are required in the adopted plan, this will further reduce the impact of the Affordable Workspace policy on residual land values generated by office schemes. I therefore consider that the concerns of the respondents have been met.

47. I conclude that there is sufficient assuredness that the viability of office development will not be put at risk by the proposed charges.

The rate for hotels

48. The MDCS has amended the hotel rates from those set out in the DCS in respect of Zones B, C and D, reducing the rates from £200 to £75 in these Zones. This appears to have been found generally acceptable, or at least reduces the concern of the respondents to the DCS. Concerns still exist about the rate proposed in Zone A which remains at £200 per $m^2$.

49. There were three respondents to the consultation of the DCS in respect of hotels but, following the consultation on the MDCS, effectively there remains only one. That representation is from a major budget hotel chain. Three of the development typologies, numbers 27, 28 and 29, appraised in the VR are of hotels; typology 28 being the nearest example to the representor's typical development.

50. Effectively, post-MDCS, the only real issue raised is in relation to construction costs, which are said to be far too low. The argument is that the hotel construction costs in the BCIS data are being 'skewed' with non-London sites, not reflecting the complexities associated with working in London. Furthermore, none of the schemes detailed in the BCIS analysis are projects of the representor company and therefore are not representative of its construction costs. The indication given is that within London construction cost should be above £3,200 $m^2$ compared with the figure used in the VR of just under £2,000 $m^2$. The difficulty for me is that the company's figures cannot be detailed for reasons of confidentiality, since schemes are typically brought forward by developers as leasehold deals.

My conclusions

51. It may well be that the BCIS data on hotel development in London needs to be viewed with caution. But I have no firm evidence to reach a conclusion, other than that the proposed charges for hotel development are reasonable. Offset against the degree of uncertainty about construction costs is the fact that there is not serious controversy about the other inputs to the VR, coupled with the degree of buffer, and the other off-setting matters that I have previously mentioned.

**Other matters**

52. I should just mention the representation made on behalf of Guy's and St Thomas' NHS Foundation Trust. It welcomes and supports that healthcare development (D1 use class[2]) is not identified as incurring a CIL charge in the MDCS. However, there is the question of ancillary and complementary land uses that may need to be provided within healthcare developments that may not be classified as entirely within the D1 use class. This could include offices, training rooms, residential/staff accommodation or research facilities, for example. It is noted that office development (B1 use class) is identified in the council' draft schedule, with a charge of £225 per sqm for Zone A, within which St Thomas' Hospital is located.

53. The Trust, as a public sector not-for-profit organisation, faces pressure on the viability of developments and the impact of a CIL charge would be substantial. There are also the practicalities of such an approach, with regards to cross-funding of assets. Whilst a future development on the Hospital site, for example, may be classed as B1, this will be inextricably linked to D1 operations and the space would be used by healthcare

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[2] The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 brought a number of changes to the use classes, including in respect of former classes B1 and D1. This is alluded to in the note under the charging schedule – see Table 1 above. However, for the purposes of this report, I refer to the classes as used in the representations.

professionals carrying out research and other operations associated with the Trust's remit. The council is urged to consider the context within which CIL liability should be applied to the Trust. The Community Infrastructure Levy Regulations (2010) (as amended) identify exemptions, including 'charitable institutions'. Whilst the Trust is not classified as a charitable institution, it is not-for-profit and is tasked with delivering a considerable public service. It is requested that the Trust's developments be regarded as that of a healthcare provider, regardless of use class, and should be exempt from CIL liability.

54. The council's response to this is that it will be a matter of judgement for individual decision-makers on the facts of particular applications how floorspace should be treated for CIL. It is not necessary or desirable to have to add 'sub-categories' to the development types. CIL charges are applied equally to all development proposals according to the charging schedule, the CIL Regulations and applicable CIL policies at borough level. Lambeth's approach to date has been that if a development can be regarded as supporting a healthcare use, even if the development itself would fall within a land use type normally chargeable, to treat such a development as entirely being for healthcare use and therefore not liable for CIL. The MDCS does not define uses by reference to the Use Classes Order, enabling the council, where necessary, to reach a judgement about the nature of the use for the purposes of applying rates of CIL.

55. This is not a matter for me or my examination. However, I considered it important to record the representation and the council's response. The latter appears to me to be entirely appropriate, but remains a matter for the council.

56. There were no issues raised, other than those dealt with above, that amount to anything more that an expression of opinion or objection without any or adequate evidence.

## Overall conclusion

57. I conclude that, in setting the CIL charging rates in the MDCS, and the DCS that went before it, the council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in the LBL. The council has been realistic in terms of achieving a reasonable level of income to address a gap in infrastructure funding, while ensuring that, in general, development remains viable across most of the borough. It has made decisions about its priorities for bringing in funds through CIL and obtaining contributions through section 106 agreements. An appropriate balance has been struck.

## Are the legal requirements met?

58. The legal requirements are met:

- The Charging Schedule complies with national policy/guidance
- The Charging Schedule complies with the 2008 Planning Act and 2010 Regulations (as amended), including in respect of the statutory processes and an appropriate level of consultation; the proposed rates are informed by and consistent with the evidence on viability across the borough, and it is supported by an adequate financial appraisal; it

is consistent with the emerging local plan that is at a late stage in its evolution while not undermining its delivery.

**Recommendation**

59. I conclude that the MDCS for the London Borough of Lambeth Community Infrastructure Levy, submitted for examination on 8 March 2021, 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.

*Terrence Kemmann-Lane*

Examiner