Report to the London Borough of Tower Hamlets

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

Date: 4 October 2019

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

REPORT ON THE EXAMINATION OF THE LONDON BOROUGH OF TOWER HAMLETS COMMUNITY INFRASTRUCTURE LEVY DRAFT CHARGING SCHEDULE

Charging Schedule submitted for examination on 24 May 2019

Date of Hearing: 1 August 2019

Non Technical Summary
This report concludes that the Revised London Borough of Tower Hamlets Council Community Infrastructure Levy Draft Charging Schedule, submitted and consulted on during the course of this examination, provides an appropriate basis for the collection of the levy in the borough. The proposed rates will not put developments at risk, and it can be recommended for approval.

Introduction

1. This report contains my assessment of the London Borough of Tower Hamlets Council (LBH) Community Infrastructure Levy (CIL) Revised Draft Charging Schedule (DCS) 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 the borough.

3. The Council published the DCS, in accordance with Regulation 16 of the CIL Regulations 2010 (as amended), for consultation between 22 November 2018 and 17 January 2019. Following this, the Council has corrected a small error. This related to retail developments in Zone 3 and the Schedule now shows the corrected rate, which is Nil.

4. Following an appeal decision on 2 East Ferry Road, resulting in potential development coming forward which otherwise would have remained within a conservation area, the Council identified a boundary that it considered was appropriate to amend. This was a small amendment to the boundary between CIL Zones 1 and 2 in the vicinity of the appeal address just mentioned. The result of the appeal was that the demolition of unlisted buildings was allowed, and this meant the site being available for development. A supplementary consultation took place between 14 March and 25 April 2019. The Council received responses from six representors but none related to the proposed change.

5. The submitted DCS, as modified by the insertion of the Nil rate for retail developments in Zone 3 and the amended boundary between Zones 1 and 2 in the vicinity of 2 East Ferry Road, was the subject of discussion at the hearing held on 1 August 2019 and of this report.

6. The submitted DCS is a revision of the schedule that has been in force since the 1 April 2015. 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). From my understanding of the current charging levels, with the inflation additions at November 2018 (the November of the previous year is used for the calculation) the increase above the inflated rates for some development

types is quite modest, whilst for offices in Zone 1 and convenience retail, hotel, and market rent student housing Borough-wide, the proposed rates are lower. The biggest changes proposed are in respect of the 'Large Allocated Sites'[1] (in respect of all development types that have a charge), and office development in North Docklands.

7. For convenience, I set out below the CIL rates now proposed by the Council.

Development Type	Proposed CIL rate per m² (GIA) of development		
Residential	Zone 1	Zone 2	Zone 3
	£280	£150	£50
Offices	City Fringe and North Docklands		Rest of Borough
	£100		NIL
Retail (Except Convenience Supermarkets/ Superstores and Retail Warehousing)	£100	Nil	Nil
Convenience Supermarkets/ Superstores* and Retail Warehousing** Borough Wide	Borough Wide		
	£130		
[2]Hotel	£190		
Student Housing Let at Market Rents***	£450		
Student Housing Let at Below Market Rents****	Nil		
All Other Uses	Nil		

* Convenience Supermarkets/Superstores are defined as shopping destinations in their own right, where weekly food needs are met, catering for a significant proportion of car-borne customers, and which can also include non-food floorspace as part of the overall mix of the unit.
** Retail Warehousing is defined as shopping destinations specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for a significant proportion of car-borne customers.
*** Student housing not falling with the definition at **** below.
**** Student housing, provided in the form of affordable student housing as defined by the Tower Hamlets Local Plan 2031: Managing Growth and Sharing the Benefits (Regulation 19 version), secured by a s106 planning obligation.

[1] Large Allocated Sites are defined as the sites, within Tower Hamlets, contained within the boundaries of the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock allocated sites as set out in the Tower Hamlets Local Plan Managing Development Document.

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

Does the Infrastructure Delivery Plan support the introduction of CIL?

8. The Council's Infrastructure Delivery Plan (IDP), document CIL AD 06, was published in October 2017. The IDP identifies a range of projects required to support the development of the Council's area, as described in the Local Plan and the London Plan. Behind the production of the IDP is the Council's decision-making process called the Infrastructure Delivery Framework, which is supported by an evidence base to ensure decision-making is well informed. This process was referred to and approved by the Mayor in Cabinet.

9. The evidence base for the IDP was produced in consultation with Council Service Areas and other infrastructure providers. It involved the reviewing and summarising of existing plans, policies and strategies as well as setting out the projects that will help the Council deliver these. The evidence base is an evolving document, updated in terms of project content every six months with a more comprehensive review taking place annually. It is a very substantial document with 18 chapters, each dealing with a specific infrastructure asset class, such as the various levels of education, health, leisure/sports, transportation, employment, youth facilities, strategic flood defences, and waste management.

10. Of course there are matters for which the Council will continue to secure section 106 contributions, and these are set out in some detail in the adopted Planning Obligations Supplementary Planning Document. Affordable housing will continue to be secured through s106, as well as such things as skills and training contributions, carbon offset contributions and site-by-site matters where there would not be conflict with the Regulation 123 list.

11. As further background evidence, I have also been provided with a summary of the amounts that the Council has collected in recent years through s106 and CIL. Between 2015/16 (the first year of CIL collection in the Borough) and 2017/18, a total of £39,115,651 was collected, whilst through s106, between 2014/15 and 2017/18 a total of £76,176,924 was collected. As further background I am informed that the extent to which the Council's affordable housing target has been met is as follows:

	2012/13	23013/14	2014/15	2015/16	2016/17
No. of affordable units delivered	262	691	730	822	1,008
% of affordable housing delivered by habitable room	34%	34%	35.6%	41%	23.6%

12. Detailed information on the Council's Funding Gap is set out in chapter 2 of the IDP. Taking all 18 specific infrastructure asset classes referred to in

paragraph 9 above, the total combined cost of projects is £1,900,804,433. However, it should be noted that 1 item 'Transportation, Connectivity and Public Realm Infrastructure totals £1,319,140,000, but this includes an upgrade to the entire DLR network, costing approximately £700m. At present this cannot be disaggregated to establish what only applies in this authority's area: in any event it is assumed that this will be funded entirely from TfL's Business Plan, and so does not affect the Funding Gap.

13. The Council's 'reasonable expectation' of funding sources is £792.68m from capital grants, £183.5m from s106 (existing account and projections up to 2028/29), and CIL funding of 292.75m (existing and projections up to 2030/31). These figures total £1,268m. The details of these figures and how they were derived can be found in the document 'Supporting Evidence and Funding Gap Report' (document CIL SD 04).

14. Taking the figures from document CIL SD 04, the residual funding gap can be determined. The total cost of infrastructure at £1,900,804,433, less funding from sources other than CIL of £1,015,368,055, provides an aggregate funding gap of £885,436,378. Deleting the amount of the projected CIL funding up to 2030/31 provides a residual funding gap of £592,682,953. Thus a significant residual funding gap is demonstrated. CIL will play a modest part in helping to fund infrastructure in the borough, but the vast majority of funding will need to come from sources other than CIL. I am satisfied that the IDP reflects the infrastructure requirements for the Borough and that the continuing need to charge a borough CIL is demonstrated.

Does the economic viability evidence support the introduction of CIL?

15. The Council commissioned a report, called the Community Infrastructure Levy Review (the ILR), from a consultancy specialising in development viability studies. The latest version of this is dated March 2019 superseding the August 2018 Report, taking into account a boundary change to the residential CIL Zones (see paragraph 4 above). This report reviews the CIL rates in the London Borough of Tower Hamlets Charging Schedule that was adopted on 25 February 2015 and implemented on 1 April 2015. Levels of CIL have been tested in combination with the cumulative impact of the requirements of the emerging Tower Hamlets Local Plan 2031.

16. The ILR uses a residual valuation method of calculating the value of each development. This involves calculating the value of the completed scheme 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. A 'Benchmark Land Value' (BLV) is used, 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. This is a standard approach advocated by the Planning Practice Guidance and the Harman Report.

17. The ILR begins with an appraisal of the economic and housing market context at national and local market levels with a commentary on consumer confidence and house price movements from the downward adjustment in

2008/9 through to the effect of the 2016 referendum and the impact on the Pound Sterling. Bank of England reports, International Monetary Fund forecasts, inflation rates and the effects of stamp duty changes and changes to tax on the purchase of second properties are reported. The analysis of various institutions commentaries and forecasts for the housing market are noted.

18. The section on the national context concludes by reporting that forecasts for house price growth identify that values are expected to increase over the next five years, but this price growth is expected to be more moderate than over the past 20 years. There is a consensus that a low level of price growth is expected until a return to stronger sales value growth in 2020 - 2022, when it is anticipated that there will be more certainty on the deal agreed for the UK's exit from the EU, and employment growth, wage growth and GDP growth return towards trend levels.

19. The ILR notes that, at the local level, according to Land Registry data, as of August 2009, values had fallen in Tower Hamlets by circa 25% from the April 2008 market peak. Subsequently values recovered steadily to April 2010, from which point values fluctuated within a 7% range until May 2013. From May 2013 average values have been seen to increase at a more rapid rate exceeding the April 2008 peak of the market value in October 2013. As of June 2018 residential sales values in Tower Hamlets were circa 140% higher than the April 2008 peak. Tower Hamlets has seen very strong growth in sales values across the borough, where values have been seen to almost double since the preparation of the Council's previous CIL viability evidence. Growth in values has resulted from a significant number of development schemes coming forward, regenerating the borough. Values in the city fringe, along the Thames, and in the Canary Wharf area have seen significant increases. These areas are now considered part of the central London 'prime market'. Growth in values in these areas has resulted in part from active interest from both domestic and overseas investors.

20. For residential development, the ILR appraised 9 development typologies, reflecting both the range of sales values/capital values and also sizes/types of development and densities of development across the borough. The Council reviewed historic planning applications and have based the appraisal typologies on a range of actual developments within the borough. These typologies are therefore reflective of developments that have been consented/delivered as well as those expected to come forward in Tower Hamlets in future.

21. For commercial development, a series of commercial development typologies were appraised, reflecting a range of use classes at average rent levels achieved on lettings of commercial space in actual developments. In each case, the assessment assumes an intensification of the site, based on three current commercial uses of the site, providing a range of current use values. The existing use value assumes that the existing building is 30%-50% of the size of the new development, with a lower rent and higher yield reflecting the secondary nature of the building.

22. The benchmark land values (BLV) were based on the existing use value or alternative use value of sites and are key considerations in the assessment of development economics for testing planning policies and tariffs. Existing

use value or alternative use value are effectively the 'bottom line' in a financial sense and therefore a key factor in the study.

23. The 4 BLVs used in the study were selected to provide a broad indication of likely land values across the Borough. It is necessary to recognise that a landowner will require an additional incentive to release the site for development. The premium above current use value is reflective of specific site circumstances (the primary factors being the occupancy level and strength of demand from alternative occupiers). For policy testing purposes it is not possible to reflect the circumstances of each individual site, so a blanket assumption of a 20% premium was been adopted to reflect the 'average' situation.

24. The inputs in the Review, such as build costs, professional fees, development finance, marketing costs, development and sales period and developer's profit all follow well trodden ground in viability appraisals. With regard to build costs, the Council commissioned a specialist consultancy to give advice. This firm provided advice on base build costs as well as the adjustments to the base costs necessary to reflect the Council's emerging policy requirements which are not already included in the base build costs. In addition to the build costs adopted in the study, the appraisals include a contingency of 5% of costs.

25. The ILR also includes allowance for Mayor of London CIL (MCIL2) at the rate of £60 per square metre (psm). A portion of the borough is located in the MCIL Central London Charging Area and the majority of the Isle of Dogs is within the Isle of Dogs MCIL2 Charging Area. Both locations have charges for offices, retail and hotels at £185, £165, and £140 psm respectively[3].

26. The ILR has taken into account the emerging policies and standards set out in the Tower Hamlets Local Plan 2031. These include inter alia affordable housing requirements and sustainability and developer contributions towards infrastructure. There are numerous policy requirements that are now embedded in base build costs for schemes (i.e. secure by design, landscaping, amenity space, internal space standards etc.). The ILR paragraph 2.48 sets out a summary of the policies identified as having cost implications for developments. Additionally an allowance has been made for residual section 106 costs for both residential development (see paragraph 4.25) and commercial (see paragraph 4.50). Following these allowances, a 25% 'buffer' has been allowed in all the CIL rates that the Review recommends.

27. The ILR follows the usual approach used in the high level appraisals of viability produced for the preparation and examination of CIL charging schedules. It appears a thorough and comprehensive study, of the sort that has been relied upon in many CIL examinations.

[3] See the ILR paragraphs 4.26 and 4.51.

Conclusion

28. The DCS is supported by evidence of community infrastructure needs and a funding gap has been identified. I am satisfied that the Community Infrastructure Levy Review follows good and accepted practice. Furthermore, there is evidence for the various inputs used and adequate headroom – a minimum 'buffer' of 25% is allowed for. I conclude that the DCS is supported by satisfactory viability evidence and evidence of the costs of infrastructure and that the background documents contain appropriate available evidence. The viability evidence in particular is proportionate, appropriate, and robust.

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

Is the level of CIL proposed for residential development justified?

29. At paragraph 28 above I conclude that the DCS is supported by viability evidence that is proportionate, appropriate, and robust. However among the responses to the consultation on the DCS there were a number of issues raised that relate to the detail of inputs and conclusions reached in the ILR that I need to deal with.

30. Since this examination is into a revised DCS, some 5 years after the previous examiner's report, it is perhaps not surprising that the range of issues raised is not that great. My predecessor dealt fully and robustly with the matters brought before him, and perhaps some of the concerns raised have proved not so concerning, or perhaps have simply been accepted as all part of the complex challenges that the development industry deals with. In fact, apart from representations about 'strategic sites', there has been little effective opposition to the Council's proposals.

31. The major outcome of the previous examination was the recommendation that 4 large sites that are allocated for development should be nil rated. These were the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks, and London Dock. Since the current DCS now proposes to bring these 4 sites into the charging rates of the Zones within which they stand, it would be surprising if this proposed change were not controversial. I will set out the broad thrust of the representations, before dealing with detailed issues.

32. The major issue raised is in respect of strategic sites identified in the Local Plan. Concern is expressed that the conclusions of the Examiner of the initial DCS have been ignored in the ILR, and the conclusions drawn from it, in taking the 4 large strategic sites out of the nil charge zone. There needs to be appropriate available evidence to support this change only 4 years after the adoption of the current schedule. The selection of allocated sites is also questioned; in particular why those significant site allocations at Wood Wharf, Westferry Printworks and London Dock have not been analysed?

33. As background, the previous Examiner in his 2014 report, in respect of residential development, found that the viability study and the Council's approach to assume that 10+ unit developments would deliver 35% affordable housing was a satisfactory assumption that would enable most residential development (other than on large allocated site – which he

considered separately) to provide both this level of affordable housing and a worthwhile contribution to other infrastructure. He also found that the rates for office, retail, hotel and student housing developments (other than on large allocated sites) were informed by and consistent with the evidence.

34. In respect of the large allocated sites, he was concerned about current or worsening economic circumstances and the poor return in those circumstances. He noted that the evidence demonstrated that the 4 appraised large allocated sites would only be likely to achieve an internal rate of return (IRR) of 20% (which he considered would be needed in the event of economic growth likely to be necessary for a scheme to come forward) if the affordable housing requirement were to be "flexed" below the 35%, and he was not persuaded that it would be appropriate to flex affordable housing without limitation. As a result he concluded that the CIL rates proposed were not consistent with the evidence insofar as they would apply to the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and the London Dock allocated sites, and recommended a nil rate for all development on these sites.

35. The Council's position now is that it is firmly of the opinion that the 4 large sites should not have been nil rated in the current schedule, and that the ILR demonstrates that they are able to bear the rates now proposed. It points out that Westferry Printworks has planning permission and development has commenced. The proposed CIL, including MCIL2, would amount to less than 5% of development costs. It also states that the economic circumstances of development have changed significantly since 2014, and that its current robust viability testing should be the basis on which to judge the DCS.

36. Furthermore, the Council considers that its decision to accept land and/or physical infrastructure in lieu of monetary CIL (see document CIL SD 01.3) is an important component of its justification for the proposed rates. Section 2 of the document 'Additional Evidence and Information Document' (CIL SD 01.4) sets out its position. In brief, it makes reference to the relevant CIL Regulations and CIL Planning Practice Guidance; the way the payment is established and the formal agreement that is entered into. It refers to an existing agreement that has been made and to another that is at an advanced stage of discussion. It makes clear that, for the purposes of the viability evidence base, it has been assumed that all infrastructure identified for provision on the site allocations will be delivered using the in-kind measures.

37. Looking first at the general concern of representors, a major factor is that there is currently a downturn in some sub-markets. The Local Plan examination showed clearly that the strategic sites are critical to delivery of the Plan's objectives. Flexibility is critical for all sites, and the representors suggest that in the last 3 or 4 years there has been very little flexibility shown by the Council. It is said that development management officers only want to talk about 35% affordable housing and are very reluctant to consider anything below 25%. With the CIL rates proposed, low affordable housing percentages are necessary to make a scheme work. CIL at 5% of scheme costs is a barrier to development: it is an upfront cost, and inflation is running at 3% or so each year. There are also concerns that the Council's in-kind approach does not meet the requirements of the CIL Regulations.

38. I now deal with the main detailed matters raised.

Site selection for viability testing

39. Bearing in mind that the 4 large sites were the subject of viability testing, the results of which led to the previous Examiner's recommendation, it is not surprising that there is concern that 3 of these sites (Wood Wharf, Westferry Printworks and the London Dock) have not again been selected for analysis. Section 3 of document CIL SD 01.4 sets out the rationale for the Council's selection of strategic sites for testing. In brief, the sampling approach was to focus on sites that the new Local Plan will rely on whilst avoiding excessive detail.

40. Guidance relating to viability testing of Local Plans describes that not every site needs to be tested. In particular, paragraph 6 of the Viability and Plan Making Planning Practice Guidance states: *"Assessing the viability of plans does not require individual testing of every site…..Assessment of samples of sites may be helpful to support evidence and more detailed assessment may be necessary for particular areas or key sites on which the delivery of the plan relies".*

41. A number of further practical matters have been considered, including the following: policy requirements of residential development are much more likely to impact on viability, so testing has focused on residential led schemes; testing the sites that propose to deliver the most housing (i.e. contribute most to the delivery of the Local Plan); not testing sites where there is a planning permission in place that is likely to be delivered or has already been implemented; where a number of sites have similar characteristics, only one of these sites has been tested; testing the sites that have the most significant cost burdens which may include the provision of on-site social infrastructure; and where there may not be sufficient information to facilitate the robust testing of a site then the site has not been tested.

42. The result of using the Council's criteria was that 14 strategic sites were selected for assessment. This seems to me to provide a suitable range of sites and I regard the Council's site selection process as both pragmatic and resulting in a sufficiently representative sample of sites.

Poor market conditions and residential sales values and rate of sales

43. Reference is made to the current market environment suggesting that the ILR presents an over positive economic view about the past 5 years. It is recognised that overall market values have increased since 2013, but it is said that new build values have stalled whilst construction costs have risen. Thus the ILR's present day position is said to be optimistic given the uncertainty that Brexit is having on the market. In addition changes to the stamp duty land tax and increased transaction costs on second properties are said to have had a significant impact. There is a significant risk of the country entering into recession during 2019.

44. Whilst there has been a review of the impact of house price growth, representations suggest that the impact of falls or rises in build costs has

not been undertaken. Whilst Land Registry data indicates that from March 2013 to November 2018 average property prices in Tower Hamlets have increased by 58% (whilst BCIS indicates construction cost have increased by 37%) the Land Registry data relates to all property, including second hand stock, whereas new build prices, particularly in the Canary Wharf area, are said to have seen a decrease over the past 12 to 18 months.

45. An additional concern expressed in representations is that the ILR assumed that 50% of residential units would be sold prior to practical completion and then 10 units per month until all units are sold in each phase. In the current market, and potentially for the foreseeable future, such sales rates are said to be very unlikely. One example given is that within the last 6 months, as at January 2018, there have been only 16 sales at the Canary Wharf Group Wood Wharf site.

46. The Council points out that a range of sales values were tested. In Zone 1 typologies tested values at high, medium and low residential value levels. A number of schemes are achieving around £1,350 psf and above. The new build data in the Land Registry database has been reviewed and confirms that, as of December 2018 (the most recent date for data availability) the average new build sales values across the Borough are 58.47% higher than the corresponding March 2013 values. Nevertheless, it is noted that average sales values of new build developments recorded through the Land Registry database have fallen over 2018 by circa 2.56%. Also, many property companies' residential forecasts identify a potential further drop of circa 2% in 2019. However, values are then forecast to return to growth from 2020 onwards. Development will take time to come forward and will benefit from a recovery in sales values. In any event, it is considered that the rates set for each of the areas are conservative as they are not based on the highest value and the CIL charges are not at the margins of viability.

47. I have no doubt that the decision to leave the European Union, the inconclusive negotiations and lack of a majority for any particular outcome within parliament to date has brought uncertainty generally and to the development sector in particular. Nevertheless the figures set out above do not paint quite such a gloomy picture as the representors' arguments suggest. The housing and commercial property markets are inevitably cyclical and there can be reasonable optimism that the market will improve, probably once a final outcome is achieved. I therefore consider that the sentiment in the ILR is not misplaced.

Benchmark Land Value (BLV)

48. Concern is expressed that low land values are compared with Residual Land Values deriving viable outcomes: but the low land values are unlikely to encourage the release of sites for development. The existing use value (EUV) approach is acceptable, but an Alternative Use Value (AUV) approach to BLV has not been tested. A number of the sites tested for example have commercial planning consents. A large number of schemes are only viable when compared to either BLV3 or BLV4, as well as dependent upon the residential values assumed.

49. Canary Wharf Group refers to the example in the ILR of a 3.84 ha site, based on open storage as the site is designated open land, with a BLV given

of £24.896m including a 20% premium. This represents 1.1% of the ILR stated Gross Development Value of £2.179billion, which is a major factor in the IRR of 21.75%. It is highly unrealistic in their view to expect a landowner to deliver a site like this to the market at this level given the development expectation for the site. They suggest that the Framework guidance seeks to ensure that a punitive approach to BLV does not render the site unviable.

50. Planning Practice Guidance[4] stipulates that EUV + premium should be the basis for determining BLV, and the guidance clarifies that EUV is value in existing use, not price paid and disregards hope value. Transactions can be used only as a cross check on other evidence. In addition, site value for an alternative use must take account of full policy compliance. For the purpose of viability assessment alternative use value (AUV) refers to the value of land for uses other than its existing use. AUV of the land may be informative in establishing benchmark land value. If applying alternative uses when establishing BLV these should be limited to those uses which would fully comply with up to date development plan policies, including any policy requirements for contributions towards affordable housing at the relevant levels set out in the plan.

51. The approach taken in the ILR follows the guidance. In terms of using an AUV, the possible alternative development will vary from site to site and, it seems to me, the assembly of evidence necessary to take it into account would go beyond the requirement to use appropriate available evidence in the context of the practice guidance that *"Viability assessments should be proportionate, simple, transparent ….." [5].* As paragraph 4.38 of the ILR explains: *"The four benchmark land values used in this study have been selected to provide a broad indication of likely land values across the Borough, but it is important to recognise that other site uses and values may exist on the ground. There can never be a single threshold land value at which we can say definitively that land will come forward for development, especially in urban areas".*

52. Whilst I can see the force of the Canary Wharf Group point (paragraph 49 above), I consider that the selection of BLV in the ILR has followed National Planning Practice Guidance and is suitable and adequate for a high level study that is proportionate and simple, although the word simple may not be readily applied to the ILR document that runs to almost 500 pages.

Build costs

53. Concerns have been raised about build costs, mainly in terms of a lack of information about the sources of the data and what is included. This was a

[4] For the full guidance see Paragraphs: 013 Reference ID 10-013-20190509; 014 Reference ID: 10-014-20190509; 015 Reference ID: 10-015-20190509; 016 Reference ID: 10-016-20190509; and 017 Reference ID: 10-017-20190509, Revision date 09 05 2019

[5] Paragraph: 019 Reference ID: 25-019-20190901, Revision date: 01 09 2019

matter that I included in the agenda of the hearing, but was told that this is not a major issue: no one present sought to put a contrary view.

Net to gross efficiencies ratios

54. A number of concerns about development efficiencies are raised in the representations. On behalf of Ballymore, it is said that, whilst all the planning consents referenced in Appendix A of the 'Additional Evidence and Information Document' of October 2018 have not been analysed, there is familiarity with a number of them, including Hertsmere House, 2 Hertsmere Road. The net to gross ratio is said to be 76% but the actual net to gross ratio is 65%, significantly less, which has a material impact on the viability appraisals. Further, there is no consideration of the impact on the net to gross ratio when providing 35% on-site affordable housing. South Quay Plaza 4 for example, cited in Appendix A, has 396 units of which 49 are affordable housing, short of the policy target. To provide 35% affordable units, it was suggested that an additional core and separate entrance would be needed for ease of management. The additional core and reduced residential net internal area of the development would impact on development efficiencies.

55. Representors also expressed concern that basement areas are not allowed for in the net to gross assumptions: this would also impact on the overall net to gross ratio and given that most sites within Canary Wharf and surrounding areas provide basements to meet planning requirements for the provision of car parking spaces and/or cycle spaces, plant and machinery, storage and so on, this needs to be considered. Excluding the basement areas overstates the viability of the project. Experience shows that schemes have on average a net to gross ratio of circa 74% excluding below ground areas. When factoring in below ground areas, this has a significant impact on the overall net to gross ratio. Therefore the accuracy and robustness of the ILR approach is questioned in the representations.

56. Strategic sites are generally more complicated given their scale, with basement areas needed as described, whilst upper floors may have more non-income producing space due to multiple entrances and cores, management/letting space and residential amenity. The 2017 North Quay application had a development efficiency of 63% compared with 78% in the ILR.

57. The Council counters by referring to research[6] that found that gross to net ratios were actually higher than the assumptions adopted, therefore the assumptions are reasonable and actually provide a buffer. Inefficient schemes stem from developer's design. Efficiency of circa 75% is a reasonable assumption for a high level study. Developers seek to maximise efficiency and therefore values and increasing gross to net value is one way of doing so.

[6] See section 4 of document 'Additional Evidence and Information Document'.

58. Even so, a sensitivity test of the North Quay a and North Quay b schemes to establish the impact of reducing the allowance from 80% to 75% resulted in an IRR of 19.85% as compared to 21.75% in the ILR for North Quay scenario 4a, and 20.11% from 22.62% in scenario 4b. Both remain viable as they are ungrown IRRs above the identified threshold of 12%-14%. Sensitivity testing further reducing the ratio to 70% resulted in an IRR of 19.85% and 16.64% respectively – both again identified as being viable. Furthermore, WTP (professional Build Cost Consultants that were commissioned to provide specific advice on development costs, as an input to the Review) confirms that the build costs advice includes allowance for basements.

59. I see that Table 1 in the Council's 'Additional Evidence and Information Document' sets out the development efficiencies for 9 typologies plus strategic sites used in the ILR against the average development efficiencies for each typology as found in Appendix A to that document. Appendix A analyses 25 planning permissions granted between 1 April 2015 and 29 March 2018. Table 1 shows that in 7 typologies and the strategic sites (in 2 cases the evidence was not available) the development efficiency of the permitted schemes was higher than the level input into the ILR – generally by about 6 to 8 percentage points. However, I also note that for the strategic site typology (within which there were 4 example permissions) the difference was only 2 percentage points, but also upwards.

60. Whilst the Ballymore representations provides an "actual net to gross ratio" of 65% for Hertsmere House (1 of the strategic sites in Appendix A) there is no explanation that effectively challenges the Council's figures. It might have been thought, for instance that a table of floorspace in different categories of revenue and non-revenue producing areas would be submitted. Similarly, for Canary Wharf Group, floorspace figures are given with efficiency percentages alongside, but this is not compelling when a representation is challenging the evidence of the Charging Authority. I would expect robust detail to be provided by the challenger. Finally for Bishopsgate Goods Yard it is simply pointed out that none of the planning permission given over the past 4 years are as complex and challenging as BGY.

61. I conclude that the Council's Table 1 referred to above, and Appendix A that the data is drawn from, is convincing evidence for this input into the ILR.

Affordable housing values

62. A question was raised in relation to affordable housing values, about the average pounds psf rate arrived at in the strategic site appraisals. Bishopsgate Goods Yard is an example where a rate of £376 psf for Shared Ownership is quoted, but £443 for London Living Rent. Experience suggests that Shared Ownership is more valuable than London Living Rent and it is assumed that this must be an error. In addition, Social Rent at £229 psf and Tower Hamlets Living Rent at £305 pounds psf are in excess of recent experience and it is considered that the value of affordable housing is overestimated in the ILR.

63. The Council's response to this is that the assessment of Shared Ownership and London Living Rent used a bespoke model to value the affordable

housing which replicates how registered providers undertake such appraisals. For shared ownership units, it was assumed that RPs will sell 25% initial equity stakes and maximum rent charge of 2.75% on the retained equity. This is subject to GLA income caps. London Affordable Rents, Tower Hamlets Living Rents and London Living Rent were valued based on the rents specified by the Council and the GLA as appropriate. The model runs cashflows for the rented tenures in the borough over a period of circa 35 years that capitalises the net rental income stream. The net rent is then calculated by taking into account factors such as: standard levels for individual Registered Providers' management and maintenance costs, finance rates that are currently obtainable in the sector, and allowance for voids and bad debt.

64. I have received no further representation on this and I am satisfied that the ILR incorporates the correct figures.

Individual schemes

65. In addition there are representations about individual development sites, such as questioning where the Zone boundary should be drawn, as in respect of Crossharbour Town Centre. It is pointed out that this site is located on the southern and eastern edge of Zone 1, but properties immediately to the east are in Zone 2. The CIL Zone 1 designation covers City Fringe and North Docklands. It is suggested that it is clearly inappropriate to include Cubitt Town in the same zone. The same argument was put to the previous Examiner, who found that *"the Council's contention that any new residential development in this area would be highly likely to be smaller but of a higher quality is a persuasive one. Consequently, the assumption that the value (psm) of new residential development in Cubitt Town would be higher than that of some existing property in this area is sound"* [7]. There is nothing that inclines me to a different view.

66. In any event, CIL viability testing is 'high level' and cannot reasonably get into the detail of every allocated site. It is necessary only that it relies on proportionate and appropriate evidence to demonstrate that development will remain viable across most of the area if the charge is applied.

Conclusion

67. In considering whether the level of CIL for residential development is justified, I have come to the following conclusions: that the 14 strategic sites selected for testing provided a suitable range of sufficiently representative sites for assessment; that the market conditions and residential values and sales were suitably identified; that the net to gross efficiency ratios were based on good evidence; and that the correct figures were used for affordable housing values in the ILR. On this basis I conclude that the level of CIL for residential development charges in the DCS are justified.

[7] Examiner's Report, November 2014, paragraph 26.

Is the level of CIL proposed for office development justified?

68. There was concern about the impact of the office rates that are proposed to be applied to developments that are currently nil rated. Following discussion at the hearing I invited further representations to be submitted on this matter. The following is the gist of those representations.

69. An interesting commentary on the North Docklands office market prepared by CBRE was submitted, including the following comments:

- Vacancy in the Docklands is high relative to trend. At the end of Q2, the Docklands vacancy rate was 7.1%, compared with the 10-year average of 6.5%. Availability (which includes space which will become ready to occupy within 12 months) in Docklands is similarly high, standing at 1.5m sq ft, ahead of the 10-year average of 1.4m sq ft. Of the 10 largest available units across Central London, four are located in the Docklands, the same number as are located in the City. This is despite the fact that the City is almost three times the size of the Docklands in terms of office stock. In addition to the units currently being marketed, there is a significant proportion of Docklands stock which could be available on a sublet basis but is not currently being marketed (grey space). As a result, availability in Docklands is likely to be higher than the officially stated position. As a proportion of total stock, there is more space due to come on-line in the Docklands than in any other Central London market, in terms of the development pipeline, second-hand space and sub-let availability. As a result, looking ahead, vacancy in Docklands is likely to see a steeper rise than other markets, where demand and supply are forecast to be more balanced.
- Pre-letting activity is well below that of 20 or so years ago, although there has been an increase in the first half of 2019 with a significant deal at 5 Bank Street. Pre-letting in the last 10 years is considerably lower than it was at its peak. Over the last 10 years, pre-lets have accounted for 1.5m sq ft of Docklands take-up, 16% of all deals. By way of comparison, in the five-year period between Q3 1998 and Q2 2003, pre-letting activity in Docklands totalled 7.2m sq ft, 80% of the market.
- Construction starts tend to follow pre-letting activity levels. Over the last 12 months, construction starts have totalled 331,038 sq ft, all of which is accounted for by the refurbishment of 25 The North Colonnade, which went under construction in Q3 2018. In the last 10 years, development starts in Docklands have totalled 2.4m sq ft. By way of comparison, in the period 1999-Q1 2001, 7.9m sq ft of developments commenced construction.
- Looking at rental values, there is something of a two tier rental market within the Docklands, and Canary Wharf specifically, whereby achievable rents are significantly lower for tenant release space. Prime rents in the Docklands stood at £48.50psf at the end of Q2 2019 while the rent-free period on a 10-year lease has moved out during past three years from 24 months to 24-27 months. Looking forward, forecasts suggest that the Docklands prime rent will increase to £52.00psf by the end of 2023. This represents the slowest annualised growth rate of the main London markets at 1.6% (the others being 1.7% in the City, 1.9% in Midtown and 2% in Southbank and West End). In real terms (deflating by CPI), rents have fallen by 2.8% since 2015 and will fall a further 4.3% between the end of 2019 and the end of 2023. Rent free periods in the Docklands

are expected to revert to 24 months over the same period. Compared to cyclical highs preceding the financial crisis, prime rents in the Docklands are significantly below the cyclical peak in real terms, which was £63.22psf (£47.50 psf in nominal terms) in Q1 2007. The same is true for the City and West End.

70. The Council responds thus:

- As far as vacancy and take-up is concerned, PROMIS figures also show Q2 2019 availability within Docklands at 1,820,000 sq ft, down from 2,192,000 sq ft in 2018 and 2,502,000 sq ft in 2017. Vacancy is shown to be at 8.9% (down from 10.9% and 12.4% in 2018 and 2017 respectively). The vacancy rates quoted also include schemes which are under construction, to be completed within the next 12 months and understood to have some 20% of this space pre-let at present. Knight Frank & PMA figures show take-up in Q2 2019 to be 458,200 sq ft, more than double the 10-year quarterly average of 223,000 and the highest quarterly level since Q4 2016. Data for the wider East London sub-market corroborates this. The Canary Wharf Estate has recently diversified its occupier base to include Fintech and Media Tech companies, and major government departments have committed to taking space in the Docklands. Due to the nature of the space and occupiers in the Docklands market, who frequently take leases over entire buildings, take-up and vacancy rates are still affected by these "lumpy" transactions, in contrast to other central London markets where smaller spaces are typically taken.
- In terms of letting, 284,704 sq ft has been sublet from EMA by WeWork at 30 Churchill Place, as of Q3 2019: it is understood fitting out has begun, aiming to open in December. This follows a Q1 letting of 72,200 sq ft to Spaces at The Cabot, 25 Cabot Square, where £50 psf was achieved on the top floor. Whilst not fully pre-let, the most recent large-scale completion in Canary Wharf, 5 Bank Street (Q2 2019) was mostly let to Société Générale and the European Bank for Reconstruction and Development (280,000 sq ft pre-let to Société Générale, 365,000 sq ft let U/C to the European Bank for Reconstruction and Development, of a total of 694,600 sq ft so 93% pre-let or let U/C). Named active requirements reportedly reached 912,000 sq ft in Q1 2019, increasing for a second consecutive quarter, and nearly doubling the long-term average of 458,000 sq ft. The Docklands office market has matured significantly over the past two decades, and comparing the present day with the late 1990s and early 2000s can show a distorted and pessimistic view of figures relating to construction starts. When considering the data in the respondent's table on take-up and construction starts from, say 2010 to the present day, the market appears more consistent, and in fact the period from 2017 onwards appears relatively strong, when considered in the context of the 2010-2020 decade.
- With regard to construction starts, if these are related to pre-lets, the levying of CIL would not have a significant impact on whether a scheme goes ahead. Rather, CIL would be considered to be a cost of construction incorporated after the decision to proceed has been made, based on demand-side factors. The office CIL charge in the Docklands will equate to some 1.67% of development costs, which is unlikely to adversely impact on the deliverability of development. The CBRE document states that over the last 10 years only 16% of all deals of new space in the Docklands have been pre-lets. The Promis Report identifies that of the

current emerging stock 20% is subject to pre-let. Developers are clearly choosing to take the risk given the demand and supply dynamics and there are market justifications to do so. Given this, it is arguable that pre-lets do not play a large part in influencing the delivery of office space in this market as otherwise significantly less stock would be being delivered. Although construction starts within Canary Wharf in the past 12 months totalled 331,038 sq ft, when a wider area extending to Wood Wharf is considered, this increases significantly, with c.273,000 sq ft under construction at 20 Water Street and c.60,000 sq ft at 15 Water Street under construction.

- Referring to rents, Carter Jonas' Occupancy Cost Map for Q2 states Canary Wharf rents to be £52.50 psf (unchanged since its Q1 publication). Refurbished rents range from £35.00 psf to £42.50 psf. Knight Frank meanwhile recorded prime rents as of Q1 2019 as being at £47.00 psf. This follows a general recovery since the low of 2008/9. BNP Paribas Real Estate's Central London Offices Report for Q2 identifies that prime rents have increased to £48.50 psf. PMA records top rents in Docklands as staying flat in Q2 2019. They also indicate that Docklands rents broadly follow the pattern seen in the City over the longer term, suggesting changes are structural rather than specific to the sub-market. The ILR adopted a rent of £45 psf, which remains reasonable, if conservative in light of the above.

71. Beginning with vacancy, looking at the 2 sets of figures, it appears to me that the comparison in the representor's 10 year average is misleading in the sense that the figures for the more recent period of 2017 to 2019 show a reduction in vacancy, representing an improving confidence in the market. The availability of space, which includes that which will be ready within 12 months, also suggests that development is proceeding in anticipation of successful marketing. Again it is said that, as a proportion of total stock, more space is due to come on line, including in terms of the development pipeline – suggesting a degree of confidence.

72. The Council's figures for pre-lets, the highest quarterly level since Q4 2016 supports this conclusion. In terms of figures for pre-letting, the representors make comparisons with 20 or so years ago, although admitting that there has been an increase in the first half of 2019.

73. I consider the representors' figures for construction starts, which compare the last 10 years of starts in Docklands with the period 1999-Q1 2001, to be misleading. In terms of judging the impact of CIL, it is more recent years that are relevant to the current market. As the Council points out, the proposed office CIL charge in the Docklands equates to some 1.67% of development costs, which is unlikely to have an adverse impact on delivery. The Council's figures for construction starts that include the wider area extending to Wood Wharf also support a more optimistic outlook.

74. Looking at the figures for rental values, it appears to me that comparing the cyclical highs preceding the financial crisis with present day rental values, when there has been 3 years of uncertainty because of the Brexit referendum is not helpful, and I note that the situation is the same for the City and the West end. Furthermore, on the Council's figures there does seem to be a general recovery since the low of 2008/9. Its figures also are indicative that the adopted rent of £45 psf in the ILR is reasonable.

Conclusion

75. I am led to conclude that there is no compelling evidence to persuade me otherwise than that the office rate as proposed for the City Fringe and North Docklands areas is justified.

Other matters

76. There was the suggestion that residential 'Build to Rent' is a new asset class and a new typology, and that work should be done to augment the ILR before the DCS is adopted. I was told that it is not a class of residential development that the Council considers important. In my view there is no justification for delaying the introduction of the new rates on this basis.

77. There are representations that queried the placing of Zone boundaries down the middle of main routes, suggesting that viability consideration must be the same both sides of the road. This will not always be the case, and I am assured that the evidence that informed the boundaries of the zones took account of frontage development as well as the nature of development in the hinterland to the rear.

78. There were representations about 3 gasworks sites – these sites having been shown in the ILR as having very severe viability constraints. I received a request for these sites to be considered during the examination hearing. However, negotiations had continued in the meantime, apparently to some good effect. There was no participation at the hearing in respect of the gasworks sites and I am informed that the developer, St. William, and the Council have an in principal agreement on a Payment in Kind mechanism for the Leven Road site, which addresses the concerns.

79. In the run-up to the hearing Amendment No.2 to the CIL Regulations was made in parliament, to come into effect on 1 September. I put an item on the hearing agenda because 3 features of the revisions to the regulations seemed to me to be potentially important in terms of the matters under discussion, in particular the amendments that:
    - give authorities more flexibility over the use of CIL and s106 planning obligations, by removing pooling restrictions that limit the number of planning obligations that can be used to fund a single infrastructure project, and by allowing planning obligations to fund infrastructure also being partly funded by CIL
    - make CIL fairer by ensuring that where a planning permission is altered and a new CIL liability created, the most recent CIL rate is only charged on the altered area
    - make CIL fairer by allowing multi-phased developments which were originally consented prior to CIL adoption, and are amended post CIL adoption, to offset increases in liability in one phase against decreases in another phase, to ensure that the final CIL liability reflects the amount of floorspace developed.

80. In the event it was thought to be too early to understand the implications of the amendments, and the promised revisions to planning practice guidance dealing with them would need to be studied and understood.

81. A concern was raised in the representations about the nil rate for affordable student housing because advantage could be taken of the situation by the developer offering affordable student accommodation only for a short period and then changing to market student housing having benefited from the nil rate. The Council considered this issue when the Local plan was drafted. The following is an extract from the latest version of the draft Local Plan with main and additional modifications:
"Student Housing: 4.6 ~~24~~ Part 1 (a) supports the delivery of affordable student housing in accordance with the London Plan (GLA, 2016). We will use the Housing Supplementary Planning Guidance (GLA, 2016) to negotiate the proportion of affordable housing, its cost and its allocation to students (an indication of the level of rent and the proportion of affordable housing will be provided through the London Plan annual monitoring report). This suggests that the cost should be no more than 55% of average student income for a UK full-time student living in London away from home, and suggests that the proportion of affordable housing should be the maximum reasonable amount, subject to viability. Planning obligations will be used to secure the affordability and availability of the affordable accommodation for as long as the student housing use continues".

82. For clarity, the Council intends to amend the current footnote of the DCS as follows: Proposed footnote **** *Student housing, provided in the form of affordable student housing as defined by the Tower Hamlets Local Plan 2031: Managing Growth and Sharing the Benefits (Regulation 19 version), secured by a s106 planning Obligation. The nil rates will only apply if the affordable student housing remains affordable in perpetuity.*

83. I support the clarification that would be achieved by the revised footnote, and will leave the Council to carry out its intention.

Overall conclusion

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

85. The main controversy in respect of the rates proposed in the DCS concerned the proposal of the Council to reverse the decision reached on the extant Charging Schedule, on the recommendation of the previous Examiner, and impose charging rates on the 4 large designated sites. Reading the report of the previous examination, it is clear that the Examiner recognised that these large sites would not be viable unless there was 'flexing' of the affordable housing policy below what he regarded as a minimum acceptable level of 25%.

86. The situation before me is somewhat different: there appears to have been an improvement in the development climate, although Brexit uncertainties are still a major factor, and the evidence is clear that most development will not have its viability undermined by the level of charges proposed.

87. But even if the viability of large sites were to be compromised without flexing the affordable housing policies, it is now clear that the Council is prepared to take a balanced view about the priority that should be put on

providing much needed essential infrastructure versus the continuing need for the delivery of affordable housing. The policy decision to be flexible, to ensure that development of the site allocations is viable, is being written into the emerging Local Plan that I understand is on the verge of adoption. The following are the relevant Main Modifications.

- Main Modification 2 concerns Policy D.SG5: Developer contributions, Part2: it inserts a new criterion after part 1 – "*2. For site allocations the policies set out in this plan may be applied flexibly to ensure that the sites are viable and deliverable"*.
- Main Modification 3 also concerns Policy D.SG5: Developer contributions after paragraph 2.45 it inserts a new paragraph and renumbers the paragraphs accordingly – "*2.46 Part 2 seeks to provide flexibility in the determination of planning applications relating to the site allocations (as outlined in section 4) to ensure that development is viable and can be delivered during the plan period, having regard to the provision of infrastructure and other site specific requirements set out in the plan*".

88. The political decisions about the priorities to be attached to the various categories of planning obligations are for the Council to make. It is clear to me that, in accordance with the new Local Plan 2031, as intended to be adopted, there is a formal policy to allow these decisions to be made in accordance with the policies of the development plan. In addition to the S106 route, I was told that affordable housing is also delivered through council housing and registered providers, using public land.

89. There were further matters put to me at the hearing. Firstly the 4 large sites would not amount to the delivery of a critical amount of residential development to meet the Local Plan's requirements. Secondly, the London Borough of Tower Hamlets has 100% met the Housing Delivery Test, which demonstrates that the CIL rates are not inhibiting development. In addition, the Housing Trajectory (Appendix 7 of the emerging Local Plan) is supplied in the Council's document 'Further Evidence Post Hearing'. This shows numbers for completed developments, under construction, prior approval, full planning permission, outline planning permission and windfalls. The totals are as follows: 2016/21 - 22,515; 2021/26 - 19,676; and for 2026/31 - 12,697. The total for the whole period is shown as 54,889. It can be seen that for the current period, the Council is well on the way to achieving the target.

90. I therefore conclude that, in setting the CIL charging rates, 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 Tower Hamlets. 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 authority's area. 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?

91. 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 public consultation, consistency with the Local Plan and the Infrastructure Delivery Schedule, and is supported by an adequate financial appraisal.

92. I conclude that, the London Borough of Tower Hamlets Community Infrastructure Levy Charging Schedule, submitted for examination on 24 May 2019, 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