

Report to Brentwood Borough Council

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an Examiner appointed by the Council

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Planning Act 2008 (as amended)

Section 212(2)

Report on the Examination of the Brentwood Community Infrastructure Levy Draft Charging Schedule

Charging Schedule submitted for examination on 23 March 2023

The examination hearing was held on 11 July 2023

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Abbreviations used in this report

BLV	Benchmark Land Value
BCIS	Building Cost Information Service
CIL	Community Infrastructure Levy
GDV	Gross Development Value
IDP	Infrastructure Delivery Plan
PPG	Planning Practice Guidance

Non-Technical Summary

This report concludes that the Brentwood Community Infrastructure Levy Draft Charging Schedule provides an appropriate basis for the collection of the levy in the borough. The Council has sufficient evidence to support the Charging Schedule and can show that the levy is set at a level that will not put the overall delivery of development in the area at risk.

I have recommended that the Charging Schedule should be approved in its published form without changes.

Introduction

1. This report contains my assessment of the Brentwood Community Infrastructure Levy ('CIL') Draft Charging Schedule (the 'Charging Schedule') in terms of Section 212 of the Planning Act 2008. It considers whether the Schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance.
2. To comply with the relevant legislation, the local charging authority has to submit a charging schedule which sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the area. Consultation on the Charging Schedule took place from 12 October to 9 November 2022. Following this consultation, the Council produced a Statement of Modifications setting out changes to the Schedule in light of the comments received. The Statement of Modifications was sent to everyone invited to respond to the Regulation 16 consultation and all other representors, as required by Regulation 19 of the CIL Regulations 2010 (as amended). This also included an invitation for participants to request to be heard by the Examiner.
3. It is therefore the modified Schedule, as amended by the Statement of Modifications, which forms the basis of this examination. In summary, it proposes the following rates:

Brentwood Local Plan Strategic Residential allocations:

- R01 – Dunton Hills Garden Village - £0 per square metre
- R02 – West Horndon Industrial Estate - £25 per square metre
- R03 – Land North of Shenfield - £150 per square metre

Residential Development in All Other Areas:

- £250 per square metre

Older People's Housing:

- £220 per square metre

Brentwood Local Plan Strategic Employment allocations:

- E11 – Brentwood Enterprise Park - £0 per square metre

General Retail:

- Brentwood Town Centre High Street - £340 per square metre
- All Other Areas - £80 per square metre

Supermarket:

- £260 per square metre

Retail Warehouse:

- £160 per square metre

Industrial Development on Greenfield Land:

- 2,000 square metres and above - £80 per square metre
- Less than 2,000 square metres - £0 per square metre

Industrial Development on Brownfield Land:

- £0 per square metre

Distribution and Logistics:

- £140 per square metre

All Other Development:

- £0 per square metre

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

Infrastructure planning evidence

4. The Brentwood Local Plan was adopted in March 2022. It sets out the strategy for the area including the type, amount and location of new development over the plan period.
5. The Local Plan is supplemented by the Brentwood Infrastructure Delivery Plan ('IDP')¹. This identifies the infrastructure needs of the area required to support the planned growth. Some of the chapters have not been updated since 2019. However, the IDP is an iterative document and is reviewed periodically and updated where necessary. The latest version, version 7, was produced in 2021 and informed the examination of the Local Plan, which was found to be sound and adopted as part of the development plan for the area. No contradictory evidence has been provided to suggest that the infrastructure requirements identified in the IDP are either unnecessary to support the growth proposed in the Plan, or significantly out of date. The evidence is appropriate and substantiates the need for new infrastructure in Brentwood.
6. The IDP Schedule (updated in 2021) lists the main types of infrastructure, their indicative cost and how each item will be funded, either by CIL, or through planning obligations. In summary, it projects an indicative total cost of £311,167,323 which is required to fund the necessary infrastructure in the area. A significant proportion of the total cost is attributed to transport and education. When deducting the amount of revenue expected from planning obligations, an overall shortfall of £71,093,353 is projected. CIL will contribute towards the funding of this shortfall.
7. Based on the information provided, the proposed levy would therefore contribute towards filling the likely funding gap required to deliver the necessary new infrastructure in Brentwood. The figures demonstrate the need to levy CIL.

Economic viability evidence

8. The Council's Viability Assessment was updated in August 2022² following adoption of the Local Plan. It supplements the 2018 Assessment which had previously considered rates for CIL. The Viability Assessment Update follows the same principles as the earlier assessment, but updates key assumptions regarding costs, values and policy requirements following adoption of the Plan. It also includes updated information on the strategic site allocations.

¹ Core Documents CSD7A and CSD7B

² Core Document CSD6

9. A residual valuation methodology has been used, which is the difference between the Gross Development Value ('GDV') and costs, including a profit margin for the developer. The residual amount is the maximum that can be paid to acquire a development site. To be viable, the residual amount must exceed the existing use value of the site plus an appropriate uplift for a landowner to sell – referred to as the Benchmark Land Value ('BLV').
10. To provide additional flexibility, the BLV has been increased by 30%. Whilst the amount is not prescribed in national policy or guidance, it is an appropriate buffer based on a reasonable judgement in seeking to allow for changing economic circumstances. The approach is also adequately explained in the Council's evidence.
11. The Viability Assessment Update then compares the residual value against the BLV +30%, with CIL costs added incrementally from £0 to £500 per square metre. Based on this methodology, the evidence shows that (except for strategic sites), new residential development is likely to remain viable with CIL up to £350 per square metre³. This is not intended to provide an exact figure upon which all sites are viable but is meant to give a broad indication as to the ability of new housing to accommodate CIL without threatening the delivery of development across the area as a whole.
12. Further consideration is given to viability by looking at CIL as a percentage of the residual value and as a percentage of GDV. For residential development, both calculations suggest that CIL rates up to around £250 per square metre would be appropriate. Above this level and the levy as a proportion of GDV would exceed 5%. Again, whilst this threshold is not an exact science, it nonetheless provides a further evidential basis upon which to judge the effects of CIL. The assumptions are reasonable and point to a levy rate of up to £250 per square metre without seriously threatening the economic viability of new housing across Brentwood.
13. Build costs have been derived from the Building Cost Information Service ('BCIS'), which is an appropriate and widely used source of data referred to in the Planning Practice Guidance ('PPG')⁴. At the time of publication in August 2022, build costs were rising, with the data predicting an 8% increase between July 2022 and July 2025. In response, the impact of cost variations is modelled in Table 10.12 of the Viability Assessment Update. The modelling shows that, for residential development, most schemes could absorb increases in build costs of around 10%, with anything over 15% starting to impact viability. Because the Viability Assessment is only a snapshot in time, and cannot accurately predict future economic events, it will be for the Council to monitor factors such as build costs going forward. At present, there is nothing to

³ Viability Assessment Update, Table 10.5

⁴ Paragraph: 012 Reference ID: 10-012-20180724

suggest that the Viability Assessment Update is significantly out of date, or that further modelling is required, especially when taking into account other tolerances and buffers used throughout in the Assessment.

14. A similar conclusion is reached in respect of borrowing costs. As the Bank of England base rate has continued to rise throughout 2023, it has been suggested that the Viability Assessment Update has underestimated the cost of borrowing. However, the methodology uses a figure of 7% which still broadly reflects current circumstances. Furthermore, this has been applied to all debt, whereas it was accepted by participants at the hearing that developers are likely to include some equity in their projects. Scope for changing circumstances is therefore taken into account.
15. In addition to the BCIS build costs, an allowance of up to 20% has been included for external works. This includes items such as roads, landscaped areas and service connections within a site. A further 5% on costs is included for any abnormal costs typically associated with brownfield sites, whilst a further 5% is included as a contingency allowance. These figures are all reasonable assumptions to make.
16. An allowance for Section 106 contributions of £2,500 per unit is included for 'typical' residential sites. Whilst some schemes may result in higher costs, on the whole, it reflects the evidence which includes a comparison of planning obligations from permissions granted. That analysis showed an average of £1,140 per unit. The figure used is therefore justified.
17. Strategic sites allocated in the Local Plan (Policies R01-R03) have been assessed individually. The cost of providing strategic infrastructure is derived from the IDP, which includes a contingency allowance on each item. Costs are also based on discussions between the Council, Essex County Council and the developers/site promoters to achieve a more accurate position. In summary, Section 106 costs range from £28,951 per unit at Officers Meadow to £42,170 per unit at Dunton Hills Garden Village. The higher costs are attributed to the need for greater strategic infrastructure, and in broad terms, results in a much lower viability threshold. For Dunton Hills Garden Village (the largest site in the Plan), the Assessment recommends that a levy is not charged. West Horndon and Officers Meadow are charged at £25 per square metre and £150 per square metre respectively. Given the importance of the strategic sites to the delivery of the Plan, the site-specific approach to their modelling is justified.
18. Potential strategic sites which are not in the Plan are excluded from the Assessment. This is an entirely reasonable and logical approach to take as large-scale windfall sites are not part of the strategy for the area, nor does the Plan rely upon such sites to come forward. Furthermore, there is nothing to suggest that the type of sites referred to at the hearing would be allocated in

any future Local Plan review, or, that their delivery would be put at risk by the imposition of CIL. In the event that new sites are required as part of a future review of the Plan, then the Charging Schedule would be taken into account as a cost in the necessary updates to the Viability Assessment. There would also be an option for the Council to review the Charging Schedule, as required, in the future.

19. The typologies used in the Viability Assessment Update cover a broad range of sites, using greenfield and brownfield scenarios. Clearly, it is not possible to cover every eventuality, but the Council's Assessment includes a proportionate and realistic mix of sites that would be expected to come forward in Brentwood.
20. The value attributed to new residential development has been determined by making assumptions based on average house prices, derived from both Land Registry sold prices and average asking prices. Assessing the data does show some variation across Brentwood. For example, prices are around £3,700 per square metre in West Horndon compared with around £5,700 per square metre in Pilgrims Hatch⁵. However, the sample sizes used are only limited, with values for Pilgrims Hatch based on only 3 sites. Even where large numbers of transactions are found, such as in Brentwood itself, the majority are from flatted developments. The sales values are therefore going to be skewed by the type and value of properties available and some broad assumptions have to be made. Neither the Viability Assessment nor any alternative evidence justifies taking a different, more refined approach to sales values across the borough. Similar conclusions apply in respect of non-residential uses, where the Viability Assessment Update has looked at wider sources of information to determine values for large industrial units due to a lack of local comparables. Overall, the sampling used by the Council is adequate and the assumptions around values are based on appropriate available evidence, which included engagement with the development industry.
21. Non-residential uses are modelled in the same way throughout the Viability Assessment Update by using the residual valuation approach. Typologies are tested on brownfield and greenfield sites taking account of policy costs from the Local Plan. The only other strategic site in the Plan (the Brentwood Enterprise Park) was assessed based on Section 106 costs known at the time, but, recognised that further evaluation may be required as details for the scheme emerged. Additional information is now provided in the Statement of Common Ground between the Council and St Modwen Properties⁶. It sets out an agreed position with strategic infrastructure and mitigation costs totalling approximately £40m. It is for this reason that the Charging Schedule (as modified) concludes that the site would be unviable with any CIL costs.

⁵ Viability Assessment Update, Table 4.6

⁶ Examination Document PSED1, dated March 2023

22. For industrial schemes, the Assessment differentiates between large and small-scale development based on a threshold of 2,000 square metres. This is consistent with the evidence on costs set out by the BCIS⁷. It also reflects the difference between typically smaller, start-up units and larger-scale industrial premises likely to come forward over the plan period. For similar reasons, the separate testing of distribution and logistics uses (Class B8) is justified and reflects the different type and format of these developments when compared with 'traditional' industrial buildings. The Council's evidence around values also points to differences between general industrial and logistics developments⁸.
23. Unlike industrial development, the Viability Assessment Update does not test brownfield scenarios for distribution and logistics developments. However, given the nature of these uses, and specifically their requirement to have good access to the motorway network, the evidence is justified in the context of Brentwood. Aside from the Brentwood Enterprise Park, no significant brownfield sites have been identified in the Local Plan of the size and location that could accommodate such uses. Nor do any of the Local Plan allocations provide any land parcels of the size and type that would be likely to accommodate large-scale warehousing for distribution purposes.

Conclusion

24. In summary, the Charging Schedule is supported by detailed evidence of community infrastructure needs and economic viability. The evidence which has been used to inform the Charging Schedule is robust, proportionate and appropriate.

Is the charging rate informed by and consistent with the evidence?

CIL rates for Residential Development

25. Strategic Policy MG01 of the Brentwood Local Plan makes provision for 7,752 (net) new dwellings over the plan period (2016-2033). Four strategic sites are allocated at Dunton Hills Garden Village (R01), West Horndon Industrial Estate (R02), land north of Shenfield (R03)⁹ and land at Warley (R04). With the exception of land at Warley, all the strategic housing sites have been modelled in the Viability Assessment Update. The reason for excluding land at Warley is because the allocation falls under the strategic site threshold of 400 dwellings. It is nonetheless a reasonable threshold to use as it reflects the typically greater infrastructure requirements associated with larger, strategic sites.

⁷ Viability Assessment Update, Appendix 11

⁸ Viability Assessment Update, Table 12.2

⁹ Policy R03 land north of Shenfield is referred to in the Viability Assessment Update and throughout this report as 'Officer's Meadow'

26. Dunton Hills Garden Village is the largest site in the Plan and has been assessed for 4,000 houses. An agreed position has been reached between the Council and the site promoters which estimates that the strategic infrastructure and mitigation costs are likely to exceed £168m, or over £42,000 per unit. Based on these costs, the evidence¹⁰ demonstrates that the viability of Dunton Hills would be marginal even without CIL. As a result, the identification of the site as a separate zone, with a rate of £0 per square metre is justified. The approach taken by the Council is consistent with guidance in the PPG, which states that low or zero rates may be appropriate where plan policies require significant contributions towards infrastructure¹¹.
27. Land at West Horndon and land at Officer's Meadow also have site-specific levy rates, at £25 and £150 per square metre respectively. For both these sites, using only the residual value method would suggest a rate of around £150 per square metre would be appropriate. However, the sensitivity testing in Table 10.5 points to a lower rate being appropriate for West Horndon. Recognising that assessing viability is not an exact science, and taking into account that West Horndon is a strategic site in the Plan, taking a more cautious approach is appropriate. The published rates for both sites are therefore consistent with the economic viability evidence and are justified.
28. It has been suggested that Officer's Meadow should be zero-rated in the same way as Dunton Hills Garden Village. But the Viability Assessment Update has looked at each strategic site individually, based on the evidence available, and based on the infrastructure costs derived from the latest IDP. A contingency allowance is accounted for in the IDP cost estimates, in addition to allowances in the viability methodology described above. Where sites have unusually high costs, over and above the allowance for abnormal costs in the Viability Assessment, this is likely to be reflected in lower land prices. The PPG is clear that abnormal costs should be considered when defining benchmark land value and should reflect the implications of these additional costs¹². I find no persuasive evidence at this time to recommend a different rate for the site at Officer's Meadow.
29. In considering the strategic sites I am mindful that the amount of development may change as final details emerge. At Officer's Meadow the site promoter now suggests that fewer homes will be delivered (700) than the 825 units modelled in the Viability Assessment Update. However, the site is allocated in the Local Plan for 825 dwellings. In finding the Plan sound, the Inspectors concluded that "*It is clear from the SoCG that the site is able to move forward fairly quickly and we are satisfied that it can accommodate the development proposed...*"¹³. It must also be acknowledged that the Viability Assessment is

¹⁰ Viability Assessment Update, Table 10.5

¹¹ Paragraph: 026 Reference ID: 25-026-20190901

¹² Paragraphs: 012 Reference ID: 10-012-20180724 and 014 Reference ID: 10-014-20190509

¹³ Examination Document PSED8 paragraph 159

only a snapshot in time and individual sites may achieve a higher or lower scale of housing than envisaged in the Plan. Ultimately, in this case, there is no robust evidence to suggest that a slightly lower level of housing would undermine the delivery of the plan.

30. All other residential development is charged at £250 per square metre. In reaching this conclusion the Viability Assessment Update adequately reflects the type, scale and location of development likely to come forward in the area and the costs associated with adopted Local Plan policies. Across all the typologies, the residual value exceeds the BLV +30% with CIL up to £500 per square metre. However, seeking to ensure that CIL does not account for more than 25% of the residual value, the evidence suggests that the maximum levy for non-strategic sites should not be any greater than £250 per square metre. Although this level of additional cost may still have an impact on some larger brownfield sites, the Plan's housing strategy does not rely upon significant areas of previously developed land. The majority of new residential development in the area will remain viable at this level.
31. Concerns have been raised regarding the cost of the levy and its impact on housing delivery by reference to rates used elsewhere. However, the rates proposed are based on the circumstances and evidence available in Brentwood. There is nothing in the PPG or the Regulations to suggest that charging authorities in the same region must adopt similar rates. Furthermore, with the exception of the strategic sites, I am unaware of any contradictory viability assessments to demonstrate that the rates will undermine housing delivery, either in terms of total housing numbers or the pace at which development is brought forward. Whilst it is accepted that the CIL rate could affect the viability of some individual sites, for example sites where abnormal costs are significantly greater, the Regulations are concerned with the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across the area. In those specific circumstances where additional costs are incurred to bring forward land, it would be for the Council as the decision-making authority to determine the suitability of a scheme should the cost of CIL result in other policy requirements not being met.
32. The residual valuation approach has also been used for older person's accommodation. Rates above £220 per square metre would have a notable impact on land prices with values potentially falling over 25%. Using this as the proposed levy rate is therefore appropriate and adequately reflects the evidence. No persuasive evidence has been provided to suggest that this type of development (where applicable) would be undermined in Brentwood.

CIL rates for Industrial and Distribution and Logistics Development

33. Local Plan Policy E11 allocates around 29 hectares of land for employment uses at the Brentwood Enterprise Park. It is the only strategic employment site in the Plan.
34. The Viability Assessment Update does refer to the Brentwood Enterprise Park, but acknowledges that if determination of the planning application is delayed then it will be necessary to model the site taking account of any strategic infrastructure and mitigation costs¹⁴. Following completion of the viability evidence a Statement of Common Ground has been prepared between Brentwood Borough Council and St Modwen Properties. It identifies site costs, with an additional allowance of 5% for abnormal items (consistent with the Viability Assessment Update). A further cost of £40m is then identified for strategic infrastructure, the majority of which relates to highway improvements. In very broad terms, this strategic infrastructure cost is the primary reason why there is no capacity for CIL on the site. Its identification on a plan and its zero rating is therefore justified.
35. For non-strategic sites, the Viability Assessment Update has tested brownfield and greenfield scenarios. It has also tested sites based on size, using a threshold of 2,000 square metres. This is derived from the BCIS cost data which provides information for units up to 500 square metres, 2,000 square metres and above. Using this threshold also differentiates between smaller, start-up units and larger commercial premises.
36. Using the same methodology as for housing sites, the evidence shows that, regardless of size, industrial development on brownfield land would be unable to support CIL. Conversely, where the type of development proposed involves the development of greenfield land, the evidence points to a figure of around £80 per square metre before CIL starts to exceed 5% of GDV. As with housing, whilst the use of this threshold is not an exact science, nor is it prescribed in policy, the judgements used in the Viability Assessment Update to gauge the effects of CIL are reasonable. Moreover, no alternative evidence of a similar level of detail has been provided to substantiate the use of a lower figure.
37. Distribution and logistics developments are modelled in the Viability Assessment Update appendices based on a standard unit size of 4,000 square metres. Although some larger schemes may come forward, the Brentwood Enterprise Park is the only development of its type identified in the Local Plan. All the other employment site allocations generally have much smaller land parcels available. The assumptions used in the modelling are therefore reasonable and seek to reflect the type of development likely to occur in Brentwood. As identified above, the evidence is not intended to cover every

¹⁴ Viability Assessment Update paragraph 12.75

possible eventuality, but instead consider the effects on economic viability across the area as a whole and ensure that CIL does not undermine the deliverability of the Plan. Using CIL as a percentage of GDV, in the same way as industrial development, demonstrates that distribution and logistics development would typically remain viable at £140 per square metre.

CIL rates for Retail and Town Centre Development

38. Retail developments have been categorised into supermarkets, retail warehouses and 'general' retail shops. For supermarkets, the Viability Assessment Update models different sizes to reflect different operators. Supermarkets are defined as convenience retail developments over 1,000 square metres.
39. The evidence supports the use of separate rates for supermarkets and retail warehouses, which are helpfully defined in the Charging Schedule as schemes selling predominantly comparison goods over 2,000 square metres. Both show comfortable capacity for CIL when looking at the residual valuation approach, with rates determined principally by the need to limit the amount of CIL as a percentage of GDV.
40. For general retail development, the Charging Schedule applies a levy of £80 per square metre in all areas except Brentwood Town Centre High Street, where the levy is £340 per square metre. It is accepted by the Council that the rate for retail development on the High Street is significant, especially when considering the challenges that high streets are facing from changing retail habits, such as online shopping. However, the Schedule reflects the evidence. It is also relevant to consider that the boundary for the Schedule has been drawn tightly around the footprint of the buildings on the High Street. It is not the same as the town centre boundary defined by the adopted Local Plan. When taking this into account, and the fact that the levy would only apply to new developments over 100 square metres (and not changes of use), I am satisfied that the rates are unlikely to undermine the viability of retailing on the High Street.

CIL rates for All Other Development

41. All other forms of main town centre uses would fall into the final category and are zero-rated in the Charging Schedule. This reflects the Viability Assessment Update which found that uses such as offices and hotel developments have no capacity for a CIL charge.

Other Matters

42. The Statement of Modifications rectified an error in the proposed instalment policy, which now provides the necessary clarity for users of the Schedule. Having a payment schedule is appropriate and justified when considering that

developments (especially larger ones) could be built out and occupied in phases. In doing so it reflects the approach in planning obligations.

43. Discretionary relief for exceptional circumstances would be a matter for the Council going forward. There is no need to repeat sections of the PPG or the Regulations in the Charging Schedule.
44. Finally, as for monitoring the levy, future Infrastructure Funding Statements will be published, as required, and will set out the necessary transparency on how contributions have been collected in the relevant reporting period.

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

45. The Council's decision to set out rates as presented in the Charging Schedule is based on reasonable assumptions about development values and likely costs. The evidence suggests that new development will remain viable across the area if the charge is applied. Only if sales values drop significantly and/or build costs increase more than 15% would development in some parts of the borough become unviable. However, the levy as been set at a rate which, based on the evidence available, allows for changes in economic circumstances without putting the delivery of development in Brentwood at significant risk.

Conclusion and Legal Requirements

46. In setting the CIL charging rate, the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in Brentwood. The Council has tried to be realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a range of development remains viable across the area.
47. I conclude that the Brentwood Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

Matthew Birkinshaw

Examiner