

# ROYAL BOROUGH OF KENSINGTON AND CHELSEA

## Community Infrastructure Levy Examination

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Ms. Claire Shearing  
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Royal Borough of Kensington and Chelsea  
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London W8 7NX

27 June 2014

Dear Ms Shearing,

### **Royal Borough of Kensington and Chelsea - Community Infrastructure Levy Independent Examination**

I refer to the above.

As you are aware, I conducted the hearing sessions on 9 June 2014 and subsequent to that I have received the Council's 'clarification' evidence. I am now in the process of finalising my report.

The purpose of writing to you is to advise that I have concluded that there are significant and fundamental problems with the Council's CIL proposals. I will be concluding that the Draft Charging Schedule (DCS) should be rejected, as it would threaten development viability, particularly on sites that are critical to the Council's Core Strategy. I summarise my concerns below.

#### Policy Context

My examination role requires me to assess the potential risks to the viability of development across the borough's area. In essence, that 'development' is that set out in the Council's adopted Core Strategy (CS).

The CS approach to meeting its assessed housing requirement is very clear. Given the very densely developed and constrained (largely Conservation Area) nature of the borough, the CS approach is founded on identified strategic sites delivering assessed housing growth. Some of those sites have been developed, others have not. The largest, and most significant by far, is at Kensal and has not yet been developed. Overall, housing delivery in recent years has fallen a long way short of the original CS figure of 350 units per year. The likelihood of changes to The London Plan increasing the borough's housing requirement (perhaps to 733 units p.a.) further underlines the importance of strategic site housing delivery.

## Fundamental Issue 1 – CIL evidence and rate setting

You will recall that at the hearing sessions I expressed my puzzlement at how the Council had arrived at its CIL proposals from a mass of appraisal results (the consultants note says there were 840). I simply could not see what process was followed to sift and blend the results, as there seemed to be an inordinate number of irrelevant results and sensitivity analyses. I could not understand why certain benchmark land value (BMLV) scenarios were tested in locations where they did not exist.

The Council's clarification evidence produced following the hearing sessions raises significant issues. It confirms to me that the results selected to set CIL rates involve very substantial departures from the CS affordable housing requirements. Whilst I acknowledge that the policy has a degree of flexibility, when read alongside the annual CS's affordable housing requirement (expressed as a minimum 200 p.a.), that flexibility is limited.

Furthermore, the Council's own VS evidence states that 50% affordable housing is the 'base position' (paragraph 4.5 of the 2012 VS) tested for CIL purposes. However, that 'base position' has not been used to inform the rate setting. The Council has used significantly lower rates of 30% and 20% which, in my view, sit well outside CS 'policy compliance' which is necessary for CIL testing purposes. There are many instances where, if the affordable housing content is increased to the 50% 'base' policy position (rather than those highlighted in the clarification note), the hypothetical schemes become unviable.

I am also afraid that I can give little weight to the 2014 testing of the twelve 'real world' sites that we discussed at the hearing sessions. The problem here is one of comparability and departure from the methodology employed in the substantive Viability Study (2012) which is based upon residual land values exceeding BMLV's by a sufficient margin (20%) to trigger land sales for development to occur. However, that methodology has not been applied to the testing of the real world sites. Instead, the Council has calculated the negative impact that CIL would have on residual land value and also calculated the CIL payments as a percentage of scheme GDV. It would be dangerous to draw conclusions from these results in isolation. Whilst the percentages of GDV may seem reasonable (11 out of 12 are under 5%), some of the reductions in residual land value are quite significant (the highest being -19.27%). What is missing in this analysis is the key question of whether the application of the CIL charge would have tipped any of the developments from 'viable' to 'not viable' based on the Council's employed methodology, which is founded on residual values exceeding pre-set BMLVs.

## Fundamental Issue 2 – Strategic Sites

Given the importance of strategic sites to the delivery of the CS objectives, the impact of CIL is clearly critical. There is a limit to the extent of testing that can reasonably be expected, and the choice of the two largest strategic sites, which are yet to come forward to deliver new homes, is a sensible one.

The Council's evidence on the Earls Court scheme demonstrates significant viability issues. Based on that evidence the case for creating a zone to distinguish this strategic site and setting a £0 psm charge is compelling and the Council have followed that evidence.

However, Kensal Gasworks is, in terms of the CS, the most significant strategic

site and, in my assessment, the evidence points clearly to the need to treat that site differently too. The Council's appraisal concludes that whilst the assumed scheme would generate a positive residual land value, it would be substantially below even the lowest BMLV employed in the Council's CIL testing methodology. Whilst I am mindful that I have not received representations from the landowners, the Council's own evidence indicates that 'exceptional relief' and /or a CIL review may be required for this site.

In my view, the Council's evidence points to an overwhelming case to treat this strategic site (and perhaps others) differently.

### Other Issues

There are two other issues.

First, the Draft Regulation 123 list. The 2014 Guidance makes plain that it is not the purpose of the CIL examination to challenge the list. However, I do feel compelled to pass some comment on the list in terms of the issues of transparency and its consistency with the infrastructure evidence. Given that much of the Council's assessed funding needs relate to transportation matters, the omission of this type of infrastructure from the list may puzzle a CIL paying developer. Furthermore, as currently drafted, the list lacks a close connection with the CS infrastructure priorities. The Council may wish to consider refinement of its Regulation 123 list to improve that transparency and clarity, given that the 2014 Guidance does encourage charging authorities to "*think strategically in their use of the levy to ensure that key infrastructure priorities are delivered to facilitate growth and the economic benefit of the wider area*" (Para 2:2:1).

Second, the number of zones seems excessive and unduly complicated, particularly when very little (CIL paying) development is expected throughout most of the zones. The Council may wish to consider a revised simpler approach.

### Two Options

I do appreciate that my views will not be those the Council would ideally wish to hear. However, my role is independent and my examination has been conducted accordingly. It has found some fundamental, and other, issues that I consider will need to be addressed in bringing forward a viable CIL regime for the Royal Borough. I do not intend to enter a correspondence debate about the evidence or my findings. However, there are two options now available to the Council:

Option A – invite me to finalise and submit my report for publication.

Option B – withdraw the DCS from the formal examination process (and produce revised proposals).

I would be grateful if you would advise me, through the Programme Officer, of your Council's preferred option within the next seven days.

Yours sincerely,

*P.J. Staddon*

Examiner