Report to the Old Oak and Park Royal Development Corporation

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

Date: 12 January 2024

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

REPORT ON THE EXAMINATION OF THE OLD OAK AND PARK ROYAL DEVELOPMENT CORPORATION COMMUNITY INFRASTRUCTURE LEVY DRAFT CHARGING SCHEDULE AS MODIFIED

Charging Schedule submitted for examination on 12 July 2023
through Penny O’Shea Consulting

Date of Hearing: 6 December 2023

Non-Technical Summary
This report concludes that the Old Oak and Park Royal Development Corporation Community Infrastructure Levy Modified Draft Charging Schedule provides an appropriate basis for the collection of the levy in the Corporation's area. The proposed rates will not put the majority of developments at risk, and it can be recommended for approval, subject to modifications required to one class of development, setting out the table to clearly show the charges with 2 Zones and other minor modifications.

Introduction

1. I have been appointed by the Old Oak and Park Royal Development Corporation (OPDC) to carry out an examination of its proposals for a Community Infrastructure Levy (CIL) Charging Schedule. I am a chartered Town Planner, being a Fellow of the Royal Town Planning Institute. I have more than 50 years of professional experience, including more than 40 years holding public inquiries and examining local plans, and have been examining CIL proposals for charging authorities since 2013.

2. To comply with the relevant legislation, the local charging authority has to submit a charging schedule that sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across its area. This is the first submission of a Draft Charging Schedule (DCS) by OPDC since it was formed on 1 April 2015.

3. A DCS was subject to public consultation from 28 November 2022 to 23 January 2023. Under Regulation 19(4) of the CIL Regulations 2010 (as amended), the authority may modify the CIL DCS following publication and consultation. The authority published a Modified Draft Charging Schedule (MDCS) on 8 June 2023 in response to representations made to the DCS. However, these modifications were not subject to further consultation.

4. The essential elements of the MDCS were only marginally different to those of the DCS. All the explanatory material that was useful for the purposes of consultation were removed, together with such matters as CIL Relief, monitoring and review and references to the Planning Obligations Supplementary Planning Document. None of these matters affected the charging rates. The only change to the CIL rates was that the Office developments rate became restricted to a new limited Zone. Thus this amounted to a reduction in the rate of payment for office developments over most of the OPDC's area. I therefore have taken the view that there was no prejudice to any party by not going through an additional

consultation stage. I did, however, provide an opportunity for respondents to the earlier consultation to make representations on this modification.

5. It was the MDCS that was submitted to me for examination on 12 July 2023, and this report henceforth makes no further reference to the substantive content of the DCS. As part of my examination of the MDCS, I raised a number of preliminary questions to the OPDC, which were also referred to those making the earlier representations and can be found on the CIL examination page of the OPDC website.

6. The MDCS proposes the following CIL Rates per square metre:

• Residential (excluding older person housing)	£80
• Hotel	£80
• Co-living	£135
• Student accommodation	£180
• Office developments (in Zone B)	£80
• Data centres	£120
• All other uses (with exceptions explained)	£35

The Examination

7. This report contains my assessment of the OPDC MDCS in terms of Section 212 of the Planning Act 2008, and the Community Infrastructure Levy Regulations 2010 as amended. I have had regard to the National Planning Policy Framework (the Framework) and the Community Infrastructure Levy section of the Planning Practice Guidance (PPG). My report 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.

8. OPDC commissioned BNP Paribas Real Estate (BNPPRE) to produce the Old Oak and Park Royal Development Corporation Community Infrastructure Levy Viability Study (VS1), which was published in April 2022. This was the basis for the DCS. As a result of the consultation on the DCS, there was criticism of the VS1 and the proposed charges in the DCS.

9. The OPDC then commissioned BNPPRE to produce an updated Viability Study (VS2), which was published in May 2023. This updated report responded to the representations received as well as taking account of market changes since the preparation of VS1. It is VS2 that is the basis for the MDCS.

10. As I proceeded with my examination, I raised questions with the authority to seek further clarification following the points made in representations, and my own reading of the documentation. I also asked my programme officer to seek clarification from those making representations as to whether they wished to appear at a hearing. This resulted in a limited number of requests to be heard. Thus I arranged for the hearing that was held on 6 December 2023.

Is the Charging Schedule supported by background documents containing appropriate available evidence?

The Viability study

11. I have already referred to the VS2 as the basis for the MDCS. This meets the broad requirements set out in the Framework, the PPG and the Local Housing Delivery Group guidance 'Viability Testing Local Plans: Advice for planning practitioners'. It tested levels of CIL in combination with the cumulative impact of the policy requirements of OPDC's Local Plan, adopted in June 2022.

12. The VS2 uses the residual valuation method based on development appraisals of hypothetical schemes. This is accepted practice and has been used in the development of many previous CIL Charging schedules and is advocated in the PPG. The purpose of the VS2 is to identify charging rates at which the bulk of the development proposed in the development plan is financially viable so that the CIL does not put at risk the overall level of development planned for the area. It uses locally-based sites and assumptions that reflect local market circumstances and planning policy requirements, so that it is specific to the OPDC area, reflecting adopted planning policy.

13. It involves calculating the value of completed development schemes and deducting development costs (construction, fees, finance, sustainability requirements, Mayoral CIL and other plan policy costs) and developer's profit. The residual amount is the sum left after these costs have been deducted from the value of the development and guides the amount available for site acquisition. The residual land values are compared to a 'Benchmark Land Value', 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.

14. The aim of a CIL viability study is to strike an appropriate balance that sets CIL at a level which maximises the delivery of development in the area. If CIL is set too high, many potential developments will become unviable; set too low, development will be compromised because it will be constrained by insufficient infrastructure. I am satisfied that the VS has been prepared with this balance in mind.

15. A key variable is the establishment of Benchmark Land Values (BLV). Following the indication in the PPG, BLV have been based on existing use values plus a reasonable incentive for the land owner to bring the land forward. Development costs can be assessed through national and local monitoring, which gives reasonably accurate results for 'normal' costs – setting aside exceptional costs that can be encountered which are expected to be reflected in the land buying bidding process. Developer's profit is an input to these appraisals, which the PPG indicates for private housing is in the range 15% to 20%. BNPPRE advises that profits of 17.5% are typical for scheme-specific viability assessments. Mayoral CIL and planning policy requirements such as for affordable housing are, of course, taken into account.

16. The land uses which the VS2 identifies as being central to the delivery of the local plan or are otherwise likely to be significant forms of development comprise Residential, Build to rent, Housing for older people, Co-living, Student accommodation, Offices, Industrial and warehousing, Data centres, Retail, and Hotels.

17. As the PPG states "It is an expectation that any viability assessment is prepared with professional integrity by a suitably qualified practitioner and presented in accordance with this National Planning Guidance". That is the case in respect of the VS2 study. That does not mean that inputs of the variables cannot be criticised, as is the case here where respondents raised a number of issues. I deal with these below under appropriate headings

18. In the representations, various aspects of the VS2 assumptions and inputs were criticised. Many of these criticisms were in the form of having 'concerns', often without explicit alternative evidence or even with no evidence offered at all. Without evidence or evidential examples, little weight can be given to them. It was also suggested that OPDC commission a review of the VS2 by another party. In this connection, in my experience, CIL proposals are produced on the basis of a single viability study by an experienced professional consultancy, and this meets the requirements of the Regulations and PPG.

The allowance for residual s106 obligations

19. I will begin with the allowance for section 106 obligations that would continue to be sought after the introduction of CIL. The VS2 notes that OPDC had undertaken an analysis of previous s106 agreements, taking account of the elements that would remain after the introduction of CIL. An allowance was built into the study to account for the residual s106 costs. The allowance used in VS2 was £1,500 per unit for residential schemes and £30 per square metre for commercial schemes.

20. This issue raised uncertainties for respondents because OPDC had adopted its Planning Obligations Supplementary Planning Document (POSPD) on 15 June 2023, which explained at paragraph 2.12 *"Some of the planning obligations set out in this document may relate to infrastructure that may in the future be funded by CIL. The Planning Obligations POSPD will be revised following adoption of a CIL Charging Schedule to reflect the infrastructure which OPDC intends to fund primarily through CIL rather than through Section 106 obligations. In the meantime, this POSPD will provide guidance and certainty to developers and stakeholders on the planning obligations required to make development acceptable in planning terms and achieve Local Plan policy objectives".* But there was no clarity as to how the POSPD would be revised, and whether this revision would justify the figures given for the necessary allowance of continued s106 requirements.

21. It should be noted that the POSPD was not a matter that I have under examination and it was not a submission document. So that I could understand whether or not the s106 allowance was reasonable, I raised a

question[1] (EQ1) with OPDC asking which elements of the POSPD requirements would be deleted and for an explanation for the allowances of £1,500 and £30. The response set out the contributions that would continue post CIL and those that would be replaced once CIL was adopted. I was also provided with document reference ED-001-OPDC-A that was a track change version of the POSPD that showed the intended version after CIL was adopted.

22. At the same time I was provided with a spreadsheet, document reference ED-001-OPDC-B, that showed an assessment of s106 monies secured from permitted schemes (August 2023). It was explained that "*Document reference ED-001-OPDC-B contains an analysis of implementable s106 agreements negotiated on schemes in the area to date. It considers the total s106 contributions secured on schemes, the level of affordable housing and defines the non-affordable housing contribution classes as being either:*
    - *CIL funded: principally contributions related to Healthy Streets and public realm, public transport, health, education, and air quality contributions; or*
    - *s106 funded: principally contributions related to open space, play space, employment, training and skills, affordable workspace, carbon offsetting, and s106 monitoring*".

23. I found this document a little difficult to follow and asked for clarification. In response I was provided with an amended version of document ED-001-OPDC-B that rectified some drafting anomalies. This clarified which schemes were either residential or commercial and a column was added showing the number of private units on the residential schemes and with a brief further explanation of the contents. As OPDC pointed out to me, the result showed that residual s106 contributions come out slightly higher than the allowance of £1,500 (at £1,559). It was further explained that on one of the sites, a new planning application for a commercial scheme has been validated: if the current scheme that included residential is taken out, and the new scheme substituted, the residual figure would be £1,369 – well below the £1,500 allowance figure.

24. This spreadsheet also showed that the £30 allowance for commercial schemes is above recent experience. At the hearing I asked if there were any comments on this spread sheet from attending respondents, but none were forthcoming.

25. In addition to the above matters, at the hearing OPDC made the point that CIL charges would result in similar amounts being paid to recently negotiated s106 packages. Two examples were given:
    - *One Portal Way 21/0181/OUTOPDC:* The projected CIL charge for this scheme would be in the region of £10.431m discounting existing floorspace and affordable housing. Using the approved s106 package there is £781k (employment and skills and monitoring) that in the revised POSPD would still be payable as residual s106 along with a CIL

[1] My questions to OPDC and the responses can be found on the OPDC CIL examination webpage. They, and the answers from OPDC, were provided to the CIL consultation respondents.

charge. This adds up to £11.212m which is of a similar order to the total s106 package Imperial College London agreed (£10.258m) with no CIL.

- *5-7 Park Royal 23/0014/FUMOPDC:* The projected CIL charge for this scheme would be in the region of £7.563m discounting existing floorspace and affordable housing. Using the approved draft s106 package there is £372k that in the revised POSPD would still be payable as residual s106 along with a CIL charge. This adds up to £7.957m which is of a similar order to the total projected s106 package agreed by the applicant (£7.563m) with no CIL.

26. These examples indicate that the evidence and testing appropriately accounts for any residual s106 contributions and that the proposed CIL rates are reasonable, and moreover, that CIL would largely be replacing the financial contributions currently obtained through s106. Since s106 obligations are intended to relate primarily to site specific requirements, CIL will usually encompass additional considerations of infrastructure need. I regard the additional cost that the above examples demonstrate as being within the bounds that can reasonably be expected.

27. My conclusions on this matter are that, so long as the POSPD is revised and comes into effect at the same time as a CIL charging schedule is made, there will be no duplication of payments via s106 and CIL. I am also satisfied that the allowances of £1,500 per unit and £30 per square metre for residential and commercial schemes respectively, are reasonable assumptions for the VS2 to make.

Build cost inflation

28. Table 4.47.1 of VS2 sets out the build costs adopted in the study. As is noted at VS2 paragraph 4.47, these costs were provided by CDM Project Services (CDM), who are described as having extensive experience of costing developments in London and have also undertaken numerous site-specific assessments of build costs associated with viability submissions in support of planning applications in London and specifically in the OPDC's area. The schedule of build costs provided by CDM is set out in Appendix 1 of the VS2 (not Appendix 2 as stated in paragraph 4.47). In Appendix 1 it can be seen that these costs are at 1st Quarter 2023. Since VS2 is dated May 2023, these figures were up to date for the purposes of the study.

29. A representation pointed to BCIS[2] forecast of a 3.5% rise in 2023 and 2.8%. in 2024, compared to a flat 2% in VS2. I am not told whether this figures have been based to the OPDC area, and consider that the CDM evidence is sufficiently robust.

30. There was a suggestion in a representation that there should be a further update of build costs to December 2023, but I regard this as both impractical and unnecessary. Whether it be for local plan preparation or CIL, the final viability study can only reasonably be carried out just prior to the

[2] The Building Cost Information Service provides independent cost and price data for the UK

publication of the plan/schedule that relies on it. That is not to say that it is wrong to look at any further indications of price/value movements as a check on reliability going forward. However, no evidence has been provided to suggest the build cost basis of VS2 is not reasonable for establishing CIL rates.

House prices

31. A similar view is taken in representations in respect of house prices, that figures should be updated. In particular reference was made to the August 2023 Nationwide House Price Index which suggests that house prices have fallen by an average of 5.3% in nominal terms, from a peak a year previously: such falls have not been seen since the 2009 crash. Countering this, OPDC point to Land Registry figures for its area that indicate an average 6% increase over the 3 Boroughs within which OPDC sits. Whilst Land Registry figures may be 6 months old at publication, recent figures from Nationwide and Halifax suggest a supply/demand balance at present, with house prices likely to be relatively flat for the next 2 years. I consider that the house price element of VS2 is set at a reasonable level.

Cost of debt – high inflation

32. Concern was also expressed in representations about the high cost of debt, it being suggested that 8.5% is more realistic. The VS2 figure for finance costs is 6.5%. With the Bank of England combating inflation, there have been sharp rises following a long period of cheap money. This will have had an effect on bank lending rates. No evidence for 8.5% has been provided, but financial commentators are suggesting a lowering of Bank Rate in the coming year as a result of inflation coming down. Reflecting this, mortgage rates are coming down at the time of writing this. The figure of 6.5% remains a reasonable input to VS2.

Profit levels

33. Developer's profit is dealt with in some depth in VS2 paragraphs 4.60 to 4.65. I need not refer to this in detail, although it is worth mentioning that, whilst developers set their own targets for minimum profit, it is the banks and their view of risk that determines rates in the market. The rate for residential developer's profit is set in VS2 at 17.5% of gross development value (GDV) for market housing and 6% of GDV for affordable housing.

34. Representations suggest that these 2 rates should be seen as a blended value relating to the profit on the whole of the development, which for the VS2 percentages would be 11.5%. It was also suggested that a blended rate of 25% would be an appropriate figure to use in current circumstances. No explanation was given as to the component percentages to reach the figure of 25%, but since affordable housing has always been set at a much lower percentage than market housing in all the studies that I have seen, it would seem that the market profit level would be well above 25%.

35. For OPDC it is stated that no developer of market and affordable housing will do its calculations on a blended rate because the expectation of level of

profit is based on risk, and affordable housing carries much reduced risk compared to market housing.

36. No evidence for a blended rate or 25%, or its constituent parts, has been put forward which leaves it as an unconvincing argument. I note that the PPG includes the following advice: "*For the purpose of plan making an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish the viability of plan policies*"; and "*A lower figure may be more appropriate in consideration of delivery of affordable housing in circumstances where this guarantees an end sale at a known value and reduces risk.*" (Paragraph: 018 Reference ID: 10-018-20190509, Revision date: 09 05 2019).

37. Individual schemes will be judged by developers on the basis of risk, and their target profit will vary from site to site. The level of risk will also vary over time, depending on such matters as demand against levels of supply. For the period that this charging schedule will be in place, I consider that profit has been set at a reasonable level in VS2.

Student accommodation rates – rental levels and yields

38. The proposed rates for purpose built student accommodation are firstly criticised on the basis that they are the highest of all uses and double that of proposed residential and hotel floorspace. This is not a material consideration, since the correct question is whether VS2 competently provides evidence that support the proposed rates.

39. More relevantly, the basis of the market rent research in VS2 is questioned in one representation, with the suggestion that the comparables are likely to be 'dynamic pricing' as opposed to 'captured pricing'. I understand dynamic pricing to be that which reacts to demand – high demand high price and vice versa, whilst I take captured pricing to refer to rents that are set at a stable level over a period of time. Examples given relate to the developments that were used in the BNPPRE research that are listed on page 39 of VS2 under paragraph 4.34. These do show a variation in rent depending on which pricing method is used.

40. The first 2 examples, using only the 'ensuite' form of accommodation for brevity, show that captured pricing results in lower rents such as £275-340pw (captured) compared to £380-345pw (dynamic) for Wembley Park; £255-268 compared to £273-387pw for Sterling Court, whilst the third example, Felda House, shows £265-341pw compared to £275-289pw. The fourth example, Grand Felda House, shows very similar rents for both pricing. The effect of this comparison is that captured rents tend to show lower rents, but not always.

41. The VS2 does not specify which form of rents is being used, but since it is quoting from 8 specific examples, I assume that the rents must be as advertised, and there is no suggestion that they are incorrect figures. I also note that the representation simply states that the VS2 figures are <u>likely</u> to be dynamic. Furthermore, not all the examples demonstrate the claim that captured rents are significancy lower. In any event, the VS2 figures are not

being disputed as accurate even if of a dynamic form, and therefore are representative of market rents. As such that means they can be relied upon for the purposes of a viability assessment.

42. A further criticism is that the yield adopted for student accommodation is too light at 4.5%, suggesting from 2 examples that a yield of between 4.63% and 4.85% would be more appropriate. The VS2 explains, at paragraph 4.36, that the 4.5% is based on market research published by Knight Frank, CBRE and JLL as well as recent experience of viability assessments of student schemes in and around the OPDC's area. These are reliable sources and footnotes identify that they date from January to May of 2023, so that for a May 2023 publication date, they can be taken as up to date.

43. Another response raises matters concerning the operating costs set out at £3,000 (up from £2,500 used in the April 2022 version of the viability study) and said by BNPPRE to be higher than costs seen in adopted viability assessments in recent student accommodation schemes proposed in the local area. This figure is criticised on the basis that the respondent is aware of valuation reports by leading firms which include operating costs in excess of £3,000 per unit. It refers to an example of a budget used in such valuation reports, where facility management considerations include an example of the budget categories apportioned, with 24% of the operating cost budget allocated for rates and utilities. At £3,000 per room, this equates to £720 per room, whereas utility costs alone on student rooms in London at the same time were averaging between £1,250 to £1,450 per room per annum. This equates to a much higher cost per room than £3,500 and £3,850 per annum that the respondent is aware of, based on 2,000 rooms in London.

44. The same respondent observes that the stated 27square metre 'Gross area' per unit may not sufficiently take into account the growing need for comprehensive communal facilities required for student accommodation in London at the room rates assumed.

45. These matters do suggest that the CIL rate for student accommodation may be set above a level that allows a reasonable 'buffer'. But my difficulty is that the criticisms are based on a lack of clear evidence that can be given credibility. Simply producing a figure from unnamed reports that the respondent is 'aware of', or quoting figures that are said to 'average' between certain sums, is not reliable evidence that can be tested. The same applies to the point about the gross area per unit which 'may not be sufficient', and which appears to be speculative.

46. I note that BNPPRE recommended a rate of £190 per square metre, whereas OPDC in the MDCS has proceeded with a proposed rate of £180. To that extent there is an additional element of buffer above the 20% that the VS2 recommendations provide for. But I also note that the recommended level of charge would amount to circa 4.5% of development costs. Although the reduction from the recommended level will have reduced this to a degree, all the charges for other typologies have had percentage of development cost at 3% or lower, and largely below 2%. Of course, the

percentage of development costs and the likelihood of developer's decision to proceed or not is not a precise measurement.

47. Viability appraisals are less than a precise tool, and the PPG advice on CIL, at paragraph 020 Ref ID: 25-020-20190901 states that 'there is no requirement for a proposed rate to exactly mirror the evidence… There is room for some pragmatism'. I also note what is said at VS2 paragraph 7.25 – 'In most cases, the changes in residual land values required to accommodate the increased CIL rates is very modest and the CIL itself accounts for a very small proportion of overall development costs (typically well below 5%). The imposition of CIL is therefore not the critical factor in determining whether or not a scheme will come forward'.

48. Cumulatively there is enough in the representations to cause me concern, even though it is not adequately evidenced. Certainly 4.5% of development cost is not 'well below 5%'. As a matter of pragmatism and taking a balanced view, I recommend that the charge for Student accommodation rates be reduced to £170 per square metre.

Build to rent

49. This is another case where criticism of the proposed CIL rate is not founded on evidence produced by the respondent, but rather it was suggested that there was insufficient clarity in the VS1, and that a review should be commissioned to be carried out by independent specialist. No response has been made to VS2. I do not regard the suggestion of commissioning an independent review as being either necessary of desirable. This will still leave the percentage of development cost at around 4%.

Strategic sites - Site specific abnormal costs

50. The principal points made in representations are as follows. Usually CIL Charging Schedules contain different approaches for strategic sites including lower rates, instalments policies and/or removing strategic sites from the CIL Charging Schedule altogether. Strategic sites are often large and complex schemes delivered over long periods of time. They usually require significant on-site and off-site infrastructure in order to unlock the scheme and meet local planning policy. Adopting site specific charging rates or a nil rate across the strategic sites would ensure these schemes can be delivered. In the absence of this, the instalments policy must be adapted to support large scale, mixed use developments. Also a point is made, in relation to large scale residential development generally, that whilst BCIS data reflects abnormal costs, some sites have abnormal costs over abnormal costs.

51. OPDC point out that in its area there are not 'strategic sites' as usually understood, but individual sites that produce strategic scale development. Therefore the normal approach to development sites should apply. I am satisfied by this explanation.

Data centres

52. Representations raised concerns about the rate for data centres, responding to the VS1 document, but further representations have not been made following the publication of VS2. The evidence supporting the data centre charge has been considerably updated and expanded upon in VS2. Also, bearing in mind the greater clarity about the shift from S106 obligations, there is no evidence the persuades me that the proposed charge for data centres is not well founded.

Rates for all other uses - industrial development – sport and leisure

53. The VS2 suggests that, for all other uses, it would be possible to set a nominal rate of CIL of no more than say £35 per square metre. This would ensure that all development is contributing towards infrastructure required to support this growth. It points out that such a charge would be in line with the requirements of Regulation 14, which identifies that when deciding the levy rates, an authority must strike an appropriate balance between additional investment to support development and the potential effect on the viability of developments.

54. The VS2 also makes the point that a nominal CIL charge is unlikely to be a significant factor in developers’ decision making, typically being less than 1% of development costs, and could therefore be absorbed without having a significant impact on the viability of developments across the OPDC’s area, whilst making an important contribution towards the delivery of much needed supporting infrastructure. Uses such as healthcare, emergency services facilities and education could be excluded from this category, but offices, retail and industrial and warehousing could be included within this category.

55. I see the sense in seeking to ensure that most, if not all, development of a commercial nature should make a contribution to the infrastructure that is required to support it. A problem with this approach is that there is not a viability study that clearly demonstrates that such a charge would in general ensure that such developments remain viable across most of the area. Nevertheless, I am satisfied as to the general proposition of setting a charge on all other uses (subject to exclusions) on the basis that it would typically amount to less than 1% of development costs. However, there are a number of uses where representations raise issues that I will now deal with.

56. Respondents raised concerns about the inclusion of Industrial and warehousing developments in the ‘All other uses’ charging class, responding to the VS1 document. Most have not made further representations following the publication of VS2 other than to reiterate opposition to a charge on industrial and warehouse development. The respondents raise wide ranging concerns about industrial and warehousing, point out the essential nature of these uses in implementing the local plan, and the fact that the proposed charge for these other uses rests on a low figure that is not actually supported by the viability evidence. In particular I have taken into account the Analysis of Viability Evidence Base undertaken by Urba in January 2023.

57. I have already referred to the rationale behind the 'All other uses' charge in paragraphs 53 to 55 above. VS2 has acknowledged that the market has moved on since VS1 was published, and the update reflects this. There have also been matters that have been clarified since the representations were made, in particular the extent to which s106 obligations will be replaced by the CIL charges, so that there will be only a minor addition in the total financial burden on development. Another matter that OPDC has made clear since the publication of VS2 is that it has produced a draft of its 'In kind' payment policy to be brought in at the same time as the MDCS, whereby either transfer of land or the provision of infrastructure under Regulations 73 and 73A is accepted.

58. I recognise that the evidence shows that viability in industrial and warehousing is likely to continue to be challenging, but consider that the factors mentioned above and the small percentage of development cost that this level of CIL charge would bring, is unlikely to have any real impact on such development coming forward, whilst at the same time it is important that the development that does come forward helps to provide the necessary supporting infrastructure.

59. In respect of multilevel industrial development there has been a substantial change agreed by OPDC since my examination of the MDCS began. This is in recognition that there are specific features of multi-storey industrial developments which come within the Gross Internal Area (GIA) such as enclosed access roads, ramps and service yards. These elements are typically outside of the GIA in a single-storey industrial building, but within the GIA in a multistorey development. Discussions took place between OPDC and Lichfields on behalf of Prologis UK Limited. Prologis is a large developer of industrial logistics buildings within London and across the UK. These discussions resulted in an agreed amendment to the MDCS and a Statement of Common Ground (SoCG) dated 21 November 2023. These documents can be found on the OPDC CIL examination webpage.

60. As background to this, the amount of levy that is payable is typically calculated by multiplying the additional gross internal area ('GIA') by the rate for a particular development type. The RICS definition of GIA is normally used as the basis for this calculation. On a traditional single storey industrial development, the access roads and service yards are all external, not forming part of the floorspace of the building and, therefore, would not be CIL liable. However, the service yards and access roads (ramp areas) in multi-storey schemes would be CIL liable on the basis that they are enclosed and form part of the GIA floorspace. This would not be an equitable or reasonable approach in respect of multi-storey industrial schemes.

61. The SoCG sets out that it has been agreed between OPDC and Prologis that the 'All other uses' category of development would carry an exclusion to the CIL charge in the following terms "enclosed access roads, ramps and service yards within multistorey industrial developments". I have been supplied with a revised copy of the CIL rates table that incorporates this change.

62. I fully agree with the outcome of the discussions concerning this matter. Quite obviously this element of development should not be charged CIL simply because servicing provision that is normally exterior to the building becomes enclosed floorspace. I will endorse this modification in my recommendations.

63. In respect of sport and leisure facilities, concern was expressed by Sport England that the MDCS will have a detrimental impact on the delivery of sports facilities unless these uses are exempt from the 'All other uses' category. It recommended that sport facilities and facilities that encourage physical activity should be excluded. Without exempting sport, leisure and community facilities, it will make it more expensive for these developments to come forward, within uses in the charge categories or independent of them. There is further concern on the basis that the removal of developments now subject to s106 contributions from the POSPD will mean that future applications for community facilities and for sports and leisure facilities will all need to rely on contributions from the same CIL pot which they will also be required to contribute towards.

64. It is also considered that the 'In kind' payment policy, while helping to address the large applications where new leisure centres are expected to be included, will not give a local sport club or community group an exemption for an extension or replacement of their community hall or pavilion. An exemption in the following terms would allay most of these concerns (by modifying the existing exclusions in the MDCS): "Development by a predominantly publicly funded or 'not for profit' organisation *(definition given) including:
- medical, health and emergency services;
- development used wholly or mainly for the provision of education as a school or college or as an institute of higher education; and
- <u>community, sport and leisure facilities</u>."

65. OPDC, in responding, highlights that its area is largely either protected Strategic Industrial Location (SIL) or sites allocated for large-scale mixed use development. It is not aware of any existing community sports/leisure facilities within the area that would benefit from the exemption suggested in this representation. It is therefore contended that the CIL 'In kind' Policy is an appropriate safeguard for the delivery of the required public access sports and leisure facilities.

66. It seems to me that paying the 'All other uses' charge could be quite a burden for an organisation that is not profit making and provides facilities for the community, while making a minimal contribution towards the area's infrastructure. The fact that OPDC is unaware of any existing community sports/leisure facilities within the area that would benefit, is again an indication that the loss to CIL would be negligible. It also seems to me that it would not overburden the table of charges with the number of exemptions. For this reason I will recommend a modification along the lines suggested.

Other matters raised

67. In representations made in responding to the proposed CIL charges and the VS2 there were matters encouraging the adoption of charitable relief, exceptional circumstances relief, and a revised extended instalments policy. However, these are outside the scope of my examination, and therefore I make no comment.

68. For the sake of completeness I should mention that I have carefully read all representations that have been submitted. This includes 2 responses to the consultation of the DCS from Old Oak Neighbourhood Forum and Grand Union Alliance. Old Oak Neighbourhood Forum is concerned about the time that it has taken to introduce CIL for the area, and is generally critical of the process and the level of charges, and is concerned about neighbourhood funding. Grand Union Alliance is generally supportive of the remarks of Old Oak Neighbourhood Forum. None of these matters come within my remit and therefor I make no further reference to them.

<u>The Infrastructure Delivery Plan</u>

69. The submitted Infrastructure Delivery Plan (IDP) identifies infrastructure being required for the delivery of policies in the adopted Local Plan, the total cost of this infrastructure, anticipated funding from developer contributions, and other funding sources. The document sets out the importance of the individual items of infrastructure, the total cost, the funding status, the funding sources secured and unfunded cost. The required infrastructure for the following categories is set out: Rail and Bus, Roads, Pedestrian and Cycle Connections, Utilities, Green Infrastructure and Open Space, and Social Infrastructure. The full Infrastructure Schedule is set out in Appendix B of the document.

70. The IDP states that the overall cost of identified infrastructure is considered to be £2.14 billion, but of this £1.348 billion has been secured, leaving a gap of £792 million. However, the cost of ‘necessary’ infrastructure which is considered unfunded, and not assumed to be a developer or service provided cost, is £347 million. The document estimates that planning contributions will produce between £145 million to £211 million of the infrastructure costs, but with the revised POSPD, due to the introduction of CIL, this has been revised down to approximately £41 million. Based on the submitted MDCS, OPDC anticipate CIL receipts in the region of £126 to £183 million. Some of the future s106 income will go towards employment and skills and affordable workspace, which are not items identified and costed in the IDP.

71. It can be seen from this that there would remain a significant funding gap of circa £220 million at the lower estimate and £164 million at the higher potential level of CIL receipts, which would need to be filled by other sources, such as central government funding and borrowing. This demonstrates that CIL receipts of the order anticipated would make a reasonably substantial contribution to close the funding gap.

My conclusions on the documentation supporting the MDCS

72. From the above (paragraphs 11 to 72), it can be seen that there is appropriate and adequate evidence in the background documents. Subject to the few modifications that I recommend, I conclude that the viability evidence shows that OPDC has struck an appropriate balance on the basis of appropriate available evidence between the need to fund infrastructure and the potential impact on viability of development, in accordance with Regulation 14.

73. The Infrastructure Delivery Plan, shows the extensive infrastructure requirements in the OPDC area, its likely costing, funding that has been secured and yet to be secured and the funding gap that CIL would make a substantial contribution to filling. The introduction of CIL is justified and necessary.

The MDCS as a document

74. At the hearing I raised a number of matters about the MDCS as a document: the clarity of the uses and zones regarding charges, the content of the charging area map (including the new Zone B), and the desirability of considering a £Nil rate in place of the exceptions to the 'All other uses' rate. OPDC responded positively to these points. For the sake of clarity I will set these out in a recommendation, although for some of them I could have left the changes to the Development Corporation. Some of the modifications to the MDCS that I recommend will be as the result of the conclusions I have reached in paragraphs 48, 62 and 66 above.

75. One small outstanding matter is that the Regulations require the zoning map to have national grid lines shown. This has not been done on the latest version submitted to me, and it might be thought that in this age of digital mapping these are not the most important of features. Nevertheless, it is what the regulations require: I will leave this point to the judgement of the Development Corporation.

Are the legal requirements met?

76. The documents submitted to me with the MDCS included a Statement of Compliance. This comprehensively went through the legislation and the regulations and set out the way in which every statutory requirement had been addressed and met. I am satisfied that the legal requirements are met.

77. The Charging Schedule complies with the 2008 Planning Act and 2010 Regulations (as amended), including in respect of the statutory processes and an appropriate level of consultation, and the advice in the PPG; the proposed rates are informed by and consistent with the evidence on viability, subject to the modifications that I recommend. It is supported by an adequate financial appraisal, it is consistent with the local plan, and should not undermine its delivery.

Overall conclusion

78. I conclude that, in setting the CIL charging rates in the MDCS, and the DCS that went before it, the authority has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in the area of OPDC. The authority 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 its 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.

Recommendation

79. The MDCS for the Old Oak and Park Royal Development Corporation Community Infrastructure Levy, submitted for examination on 12 July 2023, subject to the modifications that I recommend, 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, subject to four modifications set out in the schedule below, the Modified Charging Schedule be approved.

Terrence Kemmann-Lane

Examiner

Schedule 1
Modifications required by the Examiner

Modification number	Modification
EM1	In the Table of CIL rates, introduce a third column that shows rates for Zone B, in particular differentiating between the charge for offices of more than 20,000 square metres between Zones A and B
EM2	In the Table of CIL rates, for Student accommodation, in columns 2 and 3 omit £180 and insert £170.
EM3	Modify the Table of CIL rates by, for 'All other uses', removal of all references to exceptions.
EM4	Modify the Table of CIL rates by adding a category with £Nil in columns 2 and 3 based on the exceptions previously under 'All other uses'. This to include additions referring to enclosed access roads, ramps and service yards in multi-storey industrial

	developments and community facilities, sport and leisure facilities.

The effect of Modifications are shown in Annex A which is definitive in that it clarifies, if necessary, the text in the table above.

Annex A

Table 1 Proposed CIL Rates

<table>
<tr><td>Use</td><td>CIL rate per square metre in Zone A</td><td>CIL rate per square metre in Zone B</td></tr>
<tr><td>Residential</td><td>£80</td><td>£80</td></tr>
<tr><td>Hotel</td><td>£80</td><td>£80</td></tr>
<tr><td>Co-living</td><td>£135</td><td>£135</td></tr>
<tr><td>Student accommodation</td><td>£170</td><td>£170</td></tr>
<tr><td>Office developments over 20,000 square metres</td><td>£35</td><td>£80</td></tr>
<tr><td>Data centres</td><td>£120</td><td>£120</td></tr>
<tr><td>All other chargeable uses</td><td>£35</td><td>£35</td></tr>
<tr><td>Development by a publicly funded or 'not for profit organisation'*(definition below) comprising:
• medical, health and emergency services;
• development used wholly or mainly for the provision of education as a school or college or as an institute of higher education; and
• community, sport and leisure facilities.

Affordable workspace

Specialist housing in accordance with Local Plan policy H9

Enclosed access roads, ramps and service yards within multi-storey industrial developments.

*Definition: Not for profit organisation is one that does not earn profits for its owners but conducts business for the benefit of the general public; all money earned by or donated to the organisation is used in pursuing the organisation's objectives</td><td>£ Nil

£ Nil

£ Nil

£ Nil</td><td>£ Nil

£ Nil

£ Nil

£ Nil</td></tr>
</table>