AN EXAMINATION UNDER SECTION 212

OF THE PLANNING ACT 2008 (AS AMENDED)

REPORT ON THE DRAFT MAYOR OF LONDON

COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Independent Examiner appointed by the Mayor: Keith Holland BA (Hons) Dip TP MRTPI ARICS

Charging Schedule Submitted for Examination: 25 June 2018

Issue of Final Report: 06 November 2018

Main Findings - Executive Summary

In this report I have concluded that the Draft Mayor of London Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area.

The Greater London Authority has provided sufficient evidence that shows the proposed rates would not threaten delivery of the London Plan 2016 as a whole.

One modification is necessary to meet the drafting requirements. This modification is to exclude the Elephant and Castle Opportunity Area from the Central London Charging area for office, retail and hotel development.

The specified modification recommended in this report does not alter the basis of the authority's overall approach or the appropriate balance achieved.

Introduction

1. I have been appointed by the Greater London Authority (GLA), the charging authority, to examine the Draft Mayor of London Community Infrastructure Levy (CIL) Charging Schedule hereafter referred to as MCIL2 to distinguish it from the Mayoral CIL Charging Schedule brought into effect in April 2012 referred to as MCIL1. I am a chartered town planner and an Associate of the Royal Institution of Chartered Surveyors with more than 40 years' experience, including over 20 years inspecting and examining development plans and CIL Charging Schedules as a Government Planning Inspector.

2. This report contains my assessment of the Charging Schedule in terms of compliance with the requirements in Part 11 of the Planning Act 2008 as amended ('the Act') and the Community Infrastructure Regulations 2010 as amended ('the Regulations'). Section 212(4) of the Act terms these collectively as the "drafting requirements". The London Plan 2016 is the adopted development plan for London[1]. I have also had regard to the National Planning Policy Framework (NPPF) and the CIL section of the Planning Practice Guidance (PPG), which replaced the stand alone CIL Statutory Guidance last published in February 2014.

3. To comply with the relevant legislation, the submitted Charging Schedule must strike what appears to the charging authority to be an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across London. The PPG states that the examiner should establish that:

[1] A revised London Plan has been prepared and is scheduled to be examined, commencing in January 2019. This is considered further in paragraph 59 of this report.

- the charging authority has complied with the legislative requirements set out in the Act and the Regulations;

- the draft charging schedule is supported by background documents containing appropriate available evidence;

- the proposed rate or rates are informed by and consistent with the evidence on economic viability across the charging authority's area; and

- evidence has been provided that shows the proposed rate or rates would not threaten delivery of the relevant Plan as a whole.

4. The basis for the examination, on which hearing sessions were held on 11 and 12 September 2018, is the submitted schedule of June 2018, which is effectively the same as the Draft Schedule published for public consultation in December 2017.

5. The Mayor proposes four charging rates applied to all qualifying development from 1 April 2019. Within Band one the rate would be £80 per sq. m., in Band two it would be £60 per sq. m. and in Band three £25 per sq. m. Band one applies to the boroughs of Camden, City of London, City of Westminster, Hammersmith and Fulham, Islington, Kensington & Chelsea, Richmond-upon-Thames and Wandsworth. Band two applies in the boroughs of Barnet, Brent, Bromley, Ealing, Enfield, Hackney, Haringey, Harrow, Hillingdon, Hounslow, Kingston upon Thames, Lambeth, Lewisham, Merton, Redbridge, Southwark, Tower Hamlets, and Waltham Forest. Band two also applies to the London Legacy Development Corporation and the Old Oak & Park Royal Development Corporation. Band three applies to the boroughs of Barking and Dagenham, Bexley, Croydon, Greenwich, Havering, Newham and Sutton.

6. The fourth charging Band applies to office, retail and hotel development in Central London and the Isle of Dogs. The Central London and Isle of Dogs areas are shown in Figures 2 and 3 of the MCIL2 Draft Charging Schedule. Within these two areas the proposed rates per sq. m. are £185 for offices, £165 for retail and £140 for hotels.

7. Nil rates are proposed for development used wholly or mainly for the provision of any medical or health services, except the use of premises attached to the residence of the consultant or practitioner. Nil rates are also proposed for development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education.

Has the charging authority complied with the legislative requirements set out in the Act and the Regulations?

8. The Preliminary Draft Charging Schedule was consulted on between 26 June 2017 and 7 August 2017. A total of 59 responses were received. The main issues raised were: the cumulative impact of proposed rates and the adopted borough rates, the impact on affordable housing policy, the proposed charging zone boundaries, the top-down approach/adequacy of the evidence, the proposed use of MCIL2 and the discretionary reliefs. As a consequence of the representations, minor changes were made to the proposed charging boundaries in Kensington and Chelsea; Westminster and on the Isle of Dogs. The Draft Charging Schedule was consulted on between 18 December 2017 and 4 February 2018. A total of 46 representations (including 3 late representations) were received. The main issues raised at the Draft Charging Schedule stage were essentially the same as those raised at the earlier consultation stage.

9. The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation and consistency with the adopted London Plan. It is supported by an adequate financial appraisal. I also consider it compliant with the national policy and guidance contained in the NPPF and PPG respectively.

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

Infrastructure planning evidence

10. MCIL2 is intended as part of a package of funding measures for Crossrail 2. The current estimate is that MCIL2 could provide 15 – 20% of the Crossrail 2 project costs, estimated at £30 billion at 2014 prices. Crossrail 2 is intended to relieve key bottlenecks in Central London, to facilitate improvements on the South West Main Line and to transform connectivity to key growth areas in north east London. It is also expected to provide opportunities for around 200,000 new homes along the route and support some 200,000 new jobs. In 2016 the National Infrastructure Commission recommended that Crossrail 2 be taken forward as a priority with the aim of opening in 2033. Costings for the project have recently been subject to an independent review. The results of the review are not yet public and at this stage there is no formal government approval for Crossrail 2. However, the need for new infrastructure to support the region's growth was endorsed by the Secretary for State for Transport in July 2017 and there is no doubt that an extremely strong case can be made for Crossrail 2. Moreover, there is general endorsement for Crossrail 2 from those making representations.

11. Some of the boroughs, while supporting the concept of Crossrail 2, argue that some or all of the proceeds from MCIL2 should be spent on infrastructure schemes that have more local benefits. The approach by the

Mayor is that Crossrail 2 should be given priority as a major strategic scheme that would have wide-spread benefits. In the event that Crossrail 2 is not taken forward, the Mayor would apply the MCIL2 proceeds to other strategic infrastructure projects in London. The Mayor's approach is justified given the strategic nature of Crossrail 2 and the advantages for London and some adjoining areas that would flow from its construction. If Crossrail 2 does not proceed there would be no shortage of significant local infrastructure projects, demonstrated by Table 6.1 of the London Plan 2016, which could benefit from the funds raised.

12. In the light of the information provided, the proposed charge would make an important contribution towards the cost of Crossrail 2 or alternatively could contribute towards funding important local infrastructure projects. The figures clearly demonstrate the need to levy CIL.

Economic viability evidence

13. The Mayor and Transport for London (TfL) commissioned Jones Lang Lasalle Limited (JLL) to prepare a CIL viability evidence base for MCIL2. JLL reported in November 2017. Unsurprisingly JLL has broadly followed the general approach that was found to be acceptable when the MCIL1 charging schedule was examined. A fundamental aspect of this approach is the use of residential house prices as a proxy for viability. Although strongly challenged at the MCIL1 examination, this approach to viability has proved to be reasonable and the Mayor has been able to raise the funds anticipated when the MCIL1 charging schedule was put in place. No evidence was presented to the present examination that showed that MCIL1 had seriously put at risk the overall development of London. Moreover, there is generally no call from those making representations for a substantially more complex or fundamentally different approach.

14. For the current viability assessment JLL builds on the MCIL1 viability work by taking into account changes in values since MCIL1, changes in building costs, the impact of boroughs CIL charges on viability and the impact of affordable housing policy.

15. On residential values data has been collected by borough, showing the median and mean changes in house prices between 2010 and 2016. The purpose of this is to test the validity of the allocation of boroughs to the three identified charging bands. Based on the figures a limited number of changes are proposed. Band 1, the highest price band, would remain unchanged. Greenwich would move from Band 2 to Band 3. Waltham Forest and Enfield would move from Band 3 to Band 2. In the case of the two Mayoral Development Corporations, account has been taken of the borough location of these and they have both been allocated to Band 2. Table 4 of the Supporting Information document shows the comparison between the forecast/indexed MCIL1 at 2019 compared to the proposed MCIL2. The Band 1 rate would increase by 23%, the Band 2 rate by 31%, while the Band 3 rate would fall by 4%.

16. The validity of using residential values as an indicator of values in other sectors has been tested by looking at the correlation between residential values and other uses. The evidence shows a high correlation (correlation coefficient 0.7510093) between office rents and house prices. Retail is more difficult to assess because of the very specific locational characteristics of retailing but in general the boroughs with the most significant retail provision are in the top two charging bands. In relation to industrial uses JLL told the examination that this sector is in decline in London and that the view has been taken that any policy initiative to reverse this trend would not be affected by the MCIL2 charging rate. For the sake of simplicity, therefore, industrial uses are not singled out for a different rate to other uses. Also, for simplicities sake, the assumption has been made that the viability of non-commercial uses broadly matches the viability for commercial uses, except in the case of the health and education sectors where constrained public resources are a major factor.

17. Evidence by borough has been supplied showing the comparison between house prices, office rents and disposable incomes. This data reinforces the conclusion that residential values remain a good proxy for the viability characteristics of non-residential uses.

18. Comparing average house price growth with build cost growth between 2010 and 2016 shows that for all boroughs house price growth has exceeded building cost inflation by a very considerable margin. The borough with the highest excess of average house price over building costs is Waltham Forest, where the excess between average house prices and growth in the BCIS index 2010 – 2016 is 64%. Evidence has also been produced showing that in central London retail, office and hotel price growth has exceeded build cost inflation by an even greater margin than is the case for average London house prices. JLL conclude that the overall viability evidence indicates that a rise in CIL rates can be accommodated.

19. JLL has also looked at the impact the borough CIL charges have had. The boroughs generally have varied CIL charges that reflect the local characteristics of the boroughs. Wandsworth for example has four charging zones ranging from zero to £575 per sq. m. To assess the impact of the borough charges, JLL has taken the mid-point of the borough charges and compared these to average house prices as at November 2016. Although the use of the mid-point results in a small degree of inaccuracy in some cases, it is accurate enough to show that generally borough CIL rates rise as house prices rise. The introduction of the borough CILs after MCIL1 has not seen a reduction in development activity. The Mayor is now collecting more CIL monies since the borough CILs were introduced. JLL conclude that in combination, the borough CILs and MCIL1 is a relatively minor factor as regards the viability of development.

20. The JLL viability work has tested the existing and proposed charge as a percentage of the highest and lowest average house prices within each charging band. As a percentage for MCIL1, the highest figure (1.13%) applies to the lowest average house price in Band 2 with the lowest figure

being 0.48% for the highest average house price in Band 1. For MCIL2 the predicted percentages range from 0.51% to 1.28%. As with MCIL1, these figures relate to the highest average house price in Band 1 and the lowest average house price in Band 2.

21. JLL has assessed the effect MCIL1 has had on development activity. Details are provided in Tables 6, 7, 8 and 9 of the Supporting Information document. The evidence shows that generally the boroughs in the highest two bands have seen the most development activity. The relatively lower CIL rate in Band 3 has apparently not encouraged more development. JLL conclude that broadly speaking the MCIL1 rates have had relatively little impact on development activity and that other factors are much more important in this regard.

22. Under the MCIL1 regime there is a Crossrail S106 contributions scheme in accordance with Policy 6.5 of the London Plan. This policy permits the seeking of S106 contributions from office, retail and hotel developments in Central London and the Isle of Dogs. The contributions are specifically intended to mitigate the additional demand for public transport rather than to provide improved benefits from improved accessibility that Crossrail 1 will facilitate[2]. The Mayor proposes to change this approach by rolling the S106 contributions into the MCIL2 charging regime. The London Borough of Wandsworth's 'Representation on Mayor's Additional Evidence' letter, dated 25 September 2018 raises an issue regarding the absence of definitions for specific use classes attributable to retail, office and hotel uses in the Draft Charging Schedule. The Mayor considers that whilst it is clear from the supporting documentation that MCIL2 is a combination of MCIL1 and the Crossrail Supplementary Planning Guidance (SPG) charges, he agrees that the absence of definitions and/or specific use classes in the charging schedule itself will pose administrative difficulties and inconsistencies in applying the charges. Accordingly, I recommend the definitions for hotels, office and retail uses (excluding the size threshold) as defined in the Crossrail SPG should be included in the charging schedule as a footnote for clarity. **(EM 1)**. At Table 5 of the Supporting Information document, the Mayor provides a comparison between the Crossrail S106 charge (indexed) and the proposed MCIL2 rate. The biggest increase is 98% for hotels in Central London. For offices on the Isle of Dogs the MCIL2 charge would be 16% lower. Where no Crossrail S106 rate applies, the increase in charge would of course be much larger. Details are not provided by the Mayor but comparing the indexed MCIL1 rate with the proposed MCIL2 rate gives the necessary information. The largest change would be an increase from £45.20 to £185.00 for offices in the Elephant and Castle and Waterloo Opportunity Areas.

23. Viability headroom has been tested using the example of the 2014 evidence from Hounslow's borough CIL. The choice of Hounslow was based on the fact that Hounslow has the lowest average house price in the middle charging band. Band 2 has the largest rate increase and the choice of

[2] See Panel Report paragraph 2.6.

Hounslow represents a worst case scenario. The Hounslow evidence, based on a notional residual appraisal, resulted in a buffer of around 30% after the borough CIL is applied. JLL updated this material by increasing values by 27% and development costs by 17% with the result that the viability buffer is now significantly higher (£305 per sq. m. compared to £35), even taking the proposed MCIL2 into account. No convincing evidence challenging the JLL figures was presented to the examination.

24. In terms of commercial viability JLL considered evidence prepared for borough CILs in Westminster, Tower Hamlets and the City of London. These areas make up the majority of the Central London charging area. For Westminster the evidence shows a viability buffer of over 90% for offices, retail and hotel uses in all locations other than for hotels in the fringe location in Westminster where the buffer would be 89%. For retail the evidence is most schemes will be mixed-use schemes where other uses including offices and residential will be the key factor in assessing viability. JLL's conclusion is that increases in office, retail and hotel rates in Central London would not impede the delivery of development.

25. JLL draw attention to the viability evidence undertaken by BNP Paribas for Tower Hamlets. This evidence, that takes into account the proposed MCIL2, concludes that there is scope, in some instances considerable scope, for increasing the borough CIL rate for office development. Within the City of London JLL provides figures that show that the increase in MCIL2 would amount to 0.22% as a proportion of the likely end value of a completed office investment. Based on an example from 190 Oxford Street JLL produced figures showing the percentage increase in the proposed MCIL2 over the current S106 payment (including indexation) of 0.15% per sq. m. of net capital value. The same calculation for Doubletree Hotel by Hilton at SW1P 4DD shows a figure of 0.80%. In terms of offices, retail and hotels the JLL evidence shows that the increased MCIL2 compared to indexed S106 rates would amount to between 0.15% and 0.80% of capital values. JLL contend that these small increases would not materially impact on the viability of development.

26. In addition, JLL has analysed the proposed MCIL2 rates as a percentage of capital values per sq. m. across office submarkets within Central London and the Isle of Dogs. For comparison purposes the Crossrail S106 office rates at the time (2009) when the viability evidence for the S106 arrangement was prepared is provided. This material draws on in-house data and information from other major London property agents.

27. In relation to affordable housing JLL note that, notwithstanding the London Plan aspiration for the provision of at least 35% affordable housing, in practice much less than this has generally been provided in recent years. JLL argue that the failure to meet affordable housing targets is dependent on housing policy, the grant regime and the cost of construction rather than the MCIL1.

28. The most vigorous challenge to the overall approach used by JLL relates to

the lack of viability testing of sample sites, particularly where the CIL charge is changing significantly. Many of those making representations draw attention to the Government's PPG that states that "a charging authority should directly sample an appropriate range of types of sites across its area, in order to supplement existing data"[3]. The Mayor's response distinguishes between guidance and a requirement and argues that taking practicality and proportionality into account a sampling approach would not be purposeful. Based on the experience of the last six years his view is that a broad brush approach based on a simple levy set at a relatively low level has proved to be successful and has been endorsed by the CIL review team in October 2016[4]. It is also argued by the Mayor that sampling is better suited to authorities that are allocating sites for development and doing fine grained work at the local level to set borough charging schedules.

29. While it may have made the Mayor's arguments more compelling, the paucity of sampling does not necessarily make the Mayor's proposed charges unacceptable. There is no legal requirement for sampling evidence to be provided. The relevant question for this examination is whether MCIL2 is supported by other adequate viability evidence, particularly in areas where MCIL2 would significantly change the level of charge that developments would incur. The view taken by the Mayor is understandable, given that the mayoral CIL is strategic in nature and the fact that MCIL1 has been successful without that charging schedule having been extensively tested through site sampling. Apart from the problem of knowing how many sites to sample, with a strategic level CIL set at a relatively low level, there is merit in avoiding an overly complicated approach, particularly in an area that is as complex and varied as London. The few site specific examples included in the JLL work do not point to a need for more extensive sampling and it is not considered that the lack of sampling renders the MCIL2 non-compliant. As detailed above, there is other viability evidence prepared by JLL that provides an appropriate basis for assessing whether the charging schedule is justified.

Conclusion

30. The Draft Charging Schedule is supported by adequate evidence of the need for improved strategic transport infrastructure, in particular the need for Crossrail 2. The viability evidence is based on a range of relevant considerations. On this basis, the evidence which has been used to inform the Charging Schedule is proportionate and appropriate.

[3] PPG Reference ID: 25-019-20140612.
[4] A New Approach to Developer Contributions, CIL Review Team (October 2016).

Are the proposed rates informed by and consistent with the evidence on economic viability?

Across the three bands

31. The simple approach of using three charging bands into which boroughs are placed on the basis of average house prices has proved to be successful and was supported by the CIL review work[5]. Some boroughs are pressing for a more nuanced approach that takes into account viability variations within the borough. Given the broad strategic nature of the Mayoral CIL and the success of MCIL1, the argument for a more complicated approach is not supported. Local variations in viability have and should continue to be dealt with through the borough CILs. The work required to deal with local viability variations can be very extensive. This is illustrated by the City of Westminster where the evidence base for the borough CIL involved 2,500 viability appraisals, including sensitivities. The approach taken by the Mayor is regarded as pragmatic and proportionate.

32. The proposed move of Enfield and Waltham Forest to Band 2 from Band 3 is justified on the basis of how prices have changed in these two areas. Table 2 of the JLL viability evidence shows that in the case of Enfield average house prices rose by around 55% between 2010 and 2016, for Waltham Forest the comparable figure is 82%. Both of these now fall clearly into the proposed Band 2 which starts with Hounslow where the average 2016 house price was £389,458. The 2016 average house price in Enfield was £395,044 and £438,294 in Waltham Forest. It is accepted that the change in the Mayoral CIL charge would result in the charge being a higher percentage of average house prices than is the case now, but even with the higher charge MCIL2 would still amount to less than 1.28% of the average house price in these boroughs. It is accepted that there are variations in the viability profiles of different parts of these boroughs but to attempt to capture this variation in MCIL2, as Waltham Forest are advocating, would compromise the simple borough based approach that has proved to be a success. The call for the introduction of a fourth charging band is not supported.

33. As far as the increase in the CIL rate is concerned the greatest increase would be in Band 2 where the rate would increase from £45.20 per sq. m. (indexed to 2016) to £60, a rise of almost 32%. JLL have looked at the percentage of the average house price that MCIL2 would represent for the lowest and highest average house price in each of the three charging bands. In four out of the six cases MCIL2 would represent less than 1% of the average house price. Taking the worst case situation even in the proposed Band 2 borough with the lowest average house prices (Hounslow), MCIL2 would represent only 1.28% of the average house price. Although this is slightly higher than the comparable figure for MCIL1, it is still a modest amount that would not represent an intolerable burden.

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[5] A New Approach to Developer Contributions, CIL Review Team (October 2016).

34. Looking at the Opportunity Areas (OA) that are subject to what may be described as the "standard" band payment, the bulk of the supply of land for homes and jobs as per the London Plan 2016 falls within OA in the lower charging bands. Nevertheless, there is concern from some boroughs in relation to some of the OA that MCIL2 would threaten the delivery of development in these OA. Kensington and Chelsea in relation to the Kensal Canalside OA and Enfield in relation to Meridian Water OA are examples. The GLA acknowledge that there may well be considerable local infrastructure costs involved in development in an OA. At Kensal Canalside for example the local authority has demonstrated that in a development at Kensal Gas Works with a total forecast cost of £1,909,616,162 the anticipated transport infrastructure costs would be £164,554,000, and the construction costs (excluding contingencies) would be £821,019,758. For this scheme the MCIL2 charge is put at £17,944,424. Clearly reducing the MCIL2 charge would be a benefit as regards the economics of the development but it is also obvious that the proposed MCIL2 charge would be a very minor element in the overall cost of the project. Moreover the GLA accept that the scheme would need to be supported by public funds from other sources if it is to yield an adequate return to a developer.

35. In relation to the Meridian Water OA, Enfield Borough Council has not produced convincing evidence to show that MCIL2 would seriously threaten development in the area. The assertion is made that MCIL2 could adversely impact on the funds left over to provide affordable housing and local infrastructure. This argument is based on a general point about the lower than average house prices in the Lower Edmonton Ward and a proposed rise in the MCIL from 0.55% to 1.27% of average house prices. While this rise is material, 1.27% is still a small percentage of the average house price. At this modest level it cannot reasonably be argued that MCIL2 would be a decisive viability factor.

36. The conclusion to be drawn from the material before the examination is that the standard bands are reasonable and based on a demonstrable link between average house prices and viability. The allocation of the various boroughs to the 3 charging bands is consistent with the evidence. There is no strong evidence that demonstrates that the proposed charges in the three standard bands would seriously undermine the viability of development in London. The suggested rises in CIL rates are justified and MCIL2 would remain as a very small element in overall development costs.

37. A number of boroughs argue strongly that MCIL2 would potentially jeopardise the provision of affordable housing. The contention is that provision of affordable housing is vulnerable because developers are frequently able to claim that on viability grounds it is not possible to meet the targets set in the development plans once CIL charges are taken into account. In reality less affordable housing has in the past been provided than is sought by local authorities. However, as a percentage of overall development costs MCIL2 would remain a very small element. I agree with JLL that what is achieved by way of affordable housing is much more dependent on housing policy, the grant regime and construction costs than

on the proposed MCIL2 rates.

38. I also agree with JLL that MCIL2 would be a very modest element on the cost side of any development appraisal. Developers should take all of the planning policy requirements into account and should not, as a matter of course, expect to be able to negotiate the affordable housing policy requirements downwards because of CIL charges. Provided council's affordable housing policies are justified, clear and are applied consistently and robustly, the development industry in London should build the cost of both MCIL2 and all other policy requirements into their calculations. This has evidently happened with the Crossrail S106 contributions, demonstrated by the fact that very few of the S106 contributions, and none in the last three years, have been negotiated downwards.

39. The conclusion is that the simple flat rate borough based three band approach using average house prices as a proxy for viability is justified. The allocation of the boroughs to the three bands is supported by the evidence provided.

Central London and Isle of Dogs charging area for office, retail and hotel development

40. For convenience sake the two areas – Central London and the Isle of Dogs are referred to here as the Charging Area (CA). The most contentious issue in relation to the CA is the inclusion of four areas – the Isle of Dogs including Canary Wharf, the Waterloo Opportunity Area (WOA), the Elephant and Castle Opportunity Area (E&COA), and the Nine Elms Vauxhall Opportunity Area (NEVOA).

41. The case against the inclusion of Isle of Dogs presented by the Canary Wharf Group PLC rests primarily on two main points. First the area would derive little or no benefit from Crossrail 2. Second the MCIL2 charge for offices in particular would be an unfair tax on developers trying to deliver the London Plan policies. It is argued that for offices the Canary Wharf area would be put at a competitive disadvantage compared to areas such as Stratford, Paddington and Croydon. It is also argued that land costs within the Canary Wharf Estate are matched by land costs outside the estate because of high demand for land from residential developers. As the MCIL2 rate would be much higher for offices than for residential development, the Canary Wharf Group PLC claim that MCIL2 would make it difficult to deliver the office jobs sought by the London Plan. In relation to fairness the group also contend that by not charging the higher rate that Canary Wharf is subject to in other areas such as Stratford and Park Royal, the GLA is missing an opportunity to capture value in these other areas.

42. The Canary Wharf Group PLC arguments are countered by the GLA and TfL. First and significantly, it is noted that for offices the proposed MCIL2 charge would be 16% less than the combined S106 charge (indexed/forecast to Quarter 2 2019) and MCIL1 charge. The Canary Wharf Group dispute the validity of this comparison on the grounds that the MCIL1 arrangements are

acceptable because the area benefits from MCIL1 through the provision of improved access to the Isle of Dogs. The GLA say that the issue of benefits is irrelevant as the S106 charge is not based on benefits but on relieving congestion. Reference is made to the report of the Panel that considered the S106 arrangement in which it is recorded that "it is the latter *mitigation* through congestion relief rather than the former *benefits* of improved accessibility that must, in the Panel's judgement, be determinative to satisfy the Circular 05/2005 test of necessity"[6] (emphasis in the Panel Report). JLL also pointed out at the examination that the Canary Wharf Group PLC is not claiming that office development at Canary Wharf would not be viable under the MCIL2 proposals.

43. The validity of the argument advanced by the GLA in relation to the basis for the S106 payments is demonstrated by the Panel report. Consequently, it is acceptable to compare the proposed MCIL2 charge with the current arrangements that include the S106 charge. On this basis the charge for office development on the Isle of Dogs would reduce and there is no viability reason for excluding the Isle of Dogs from the CA. Furthermore, the question of fairness and competitive disadvantage is not a test that this examination has to apply. Nor is the examination concerned with whether additional funds could be raised by imposing rates in other parts of London that are comparable to the proposed rate on the Isle of Dogs. This examination is concerned with whether the proposed rates would put the overall development of the area at serious risk. In my judgement there is no convincing evidence that including the Isle of Dogs within the CA would seriously threaten the overall development of the area.

44. A suggestion has been made by the Borough of Tower Hamlets and Quod on behalf of One Housing that what is termed the Northern Isle of Dogs boundary should be used to define the area that is within the CA. Introducing finer grained distinctions would compromise the simplicity and clarity of the approach being proposed by the Mayor, including the way the CA is related to the planning definition of the Central Activities Zone (CAZ). Hence this suggestion is not supported.

45. Turning to the E&COA, I accept that there is merit in generally relating the CA to the CAZ. It is apparent from the JLL evidence that as a percentage of capital value of office schemes MCIL2 would be small. Further it is noted that the E&COA is largely based on residential redevelopment schemes. However, there is a London Plan policy aspiration to achieve the delivery of up to 5000 new jobs across the OA. There is little evidence that this scale of jobs growth will be achieved in the near future, notwithstanding the effort by Southwark Council to promote office development by having a zero borough CIL charge for office development in the southern part of the Borough. My view is that the office market in the E&COA is at this stage embryonic and materially different in viability terms to the situation in other parts of the CAZ. The E&COA is not subject to the MCIL1 S106 arrangement so the proposed MCIL2 charge would represent a considerable

[6] Paragraph 2.6 London Plan Crossrail Alterations. Report of the Panel February 2010.

new burden on office, retail and hotel development. JLL argue for the inclusion of the E&COA in the CA on the grounds of keeping MCIL2 simple and because "there is little office development likely to be built in Elephant & Castle"[7]. This is an inadequate reason given the policy aspiration to promote jobs growth in the area and the very early stage that has been reached in realising this aspiration. Nor does the JLL evidence regarding the proposed MCIL2 office rate as a percentage of the capital value per sq. m. provide adequate reassurance that MCIL2 is appropriate in the E&COA. The figure for Elephant and Castle shows a higher proportion of MCIL2 rate/capital value when compared with a number of other examples including South Bank Central, 160 Blackfriars, 53 Great Suffolk Street and Union House. The average for the examples quoted is 1.60% whereas the figure for E&COA is materially higher at 1.94 – 2.05%. In my judgement there is a risk that MCIL2 would have a material adverse impact on the viability of commercial development in the E&COA.

46. Accordingly, I recommend that the E&COA be excluded from the CA, notwithstanding the fact that this will introduce a small complication into the operation of the MCIL2 charging schedule. A revised charging area map should be included at Figure 2 to reflect the exclusion. **(EM2)**.

47. The viability evidence (JLL dated September 2018) suggests that the position in relation to commercial development in the WOA and the NEVOA is different to the situation in the E&COA. In both of these areas the evidence provided indicates that they are more mature markets for commercial development than is the case in the E&COA. Examining the proposed MCIL2 as a percentage of capital value per sq. m. for offices (2018) gives a figure of 1.67% for Battersea and 1.38% for Waterloo compared to around 2.0 % at Elephant and Castle. This is an indicator that the viability of development with MCIL2 added in the E&COA may not match that at Waterloo and Battersea.

48. As regards the WOA, I agree with the GLA and TfL that Waterloo is part of the CAZ by virtue of its ready accessibility to the heart of London and the major entertainment and cultural facilities found on the South Bank. While Waterloo is not yet an area with a fully mature office market, there is evidence that points to relatively strong viability for office development in the area. Not only is there the evidence from commercial developments that have recently taken place, there is also evidence of developments that are currently being promoted in the area. Representations on behalf of a developer active in the area refer to significant office development "only just starting to occur"[8]. I agree with this assessment but do not agree with the follow on point that conditions at Waterloo remain unchanged since 2010. The 2010 Panel Report[9] refers to an office market that has remained "relatively subdued over a long period" and included reference to the non-implementation of proposals to enhance the Shell Centre and the stalled

[7] MCIL2 Viability Evidence Base, JLL November 2017, Paragraph 10.1.8.
[8] Representation dated 26 September 2018 on behalf of HB Reavis UK Limited
[9] Paragraph 2.32 London Plan Crossrail Alterations. Report of the Panel.

situation at Elizabeth House.

49. Evidence from JLL on prime office rents per sq. ft. shows that rents in Waterloo are now on average higher than those at Canary Wharf, whereas in 2009 they were similar. The increase in average prime office rents in Waterloo between 2009 and 2018 is around 60%, a figure that is significant as an indicator of strengthening viability and comparable to the situation at Victoria and Paddington. The Shell Centre, that has a substantial commercial content, was redeveloped recently while a major commercial development opportunity is now being marketed by the Guys and St Thomas Charity in Royal Street opposite the hospital. There is an indicative master plan for this scheme that involves 930,000 sq. ft. (86,399 sq. m.) of offices and 362 residential units. The proposals for Elizabeth House opposite Waterloo Station now involve 70,000 sq. m. of commercial space and 142 homes. These schemes are being promoted notwithstanding the proposed MCIL2. Even allowing for marketing hyperbole these proposed schemes and what has happened in the area in recent years do not suggest that the viability of commercial development in the WOA would be seriously compromised by the proposed MCIL2, or that the situation remains unchanged since 2010. In my judgement, the evidence is that the office market in the area has moved beyond the Panel's description of being "relatively subdued over a long period".

50. The points made by the South Bank Employers Group regarding the need to improve the public realm and the need for improvements to Waterloo Station to cope with increased passenger numbers are not disputed. However, the claim that MCIL2 would discourage developers from investing in the Waterloo area is an assertion that is not supported by convincing viability evidence.

51. Turning to the NEVOA, as at Waterloo, the significant rise in office rents points to a material improvement in the viability of development in the area. JLL point out that office rents in this area have grown from around £27.50 per sq. ft. in 2009 to about £55.00 recently. Quoted rents for future deals now stand at around £60.00, a figure that is comparable to City fringe locations. Furthermore, the attractiveness of the area for commercial development is expected to increase when the Northern Line extension is completed within the near future. Much of the office content of the Battersea Power Station development is pre-let to Apple and another recent deal at 1 Embassy Gardens involves some 83,600 sq. ft. of offices with a blended rent of over £50.00 per sq. ft.

52. At the examination it was argued by some that NEVOA should continue to be treated as a special case as it was when the Panel reported on the Crossrail S106 arrangements. I disagree with this argument and accept the point made by JLL and TfL that the area has changed very considerably over the last eight years and is likely to continue to change with the advent of the Northern Line extension. It should also be noted that Wandsworth Borough Council are able to justify a borough CIL of £575 for residential development and £100 for offices and retail, in what is termed the Nine

Elms Residential Area A. These figures do not suggest that the area should continue to be treated as a special case.

53. It is accepted that Battersea Power Station may represent an unusual situation. However, I consider that the presence of a company such as Apple, irrespective of what commercial deal has been struck by Apple, is likely to reinforce the attractiveness of the area for commercial development. Evidence provided by JLL based on information from a number of property agents shows that the proposed MCIL2 office rate as a percentage of capital value of offices per sq. m. would be around 1.6 - 1.7%. Bearing this modest level in mind and taking into account the way the area is changing does not point to the office market in the area being too immature in viability terms to accommodate MCIL2.

54. Further evidence of the economic viability of the area is the fact that within the Wandsworth Borough part of the OA just under 500,000 sq. m. of retail, office and hotel floorspace has been permitted on allocated sites[10]. Although only 14% of this is expected to be completed by 1 April 2019, when MCIL2 is due to come into force, a further 224,000 sq. m. is presently under construction. Some of this may be subject to MCIL2 if, for example, a revised planning application is submitted and approved, but the likelihood is that MCIL2 would have no impact on most of the substantial amount of development already under way.

55. There is some criticism that no evidence has been provided justifying the rates for retail and hotel development. However, the evidence from the Westminster CIL viability work points to a very substantial buffer for retail and hotel development in Westminster. In addition, JLL provide an illustrative viability example for a hotel development at John Islip Street SW1P 4DD. The criticism of the Mayor's evidence regarding hotel and retail development is not backed up by any convincing counter-evidence and thus it is concluded that this criticism does not point to the proposed charges for hotels and retail development being unacceptable.

Conclusion

56. The MCIL2 proposals for office, retail and hotel development in Central London and the Isle of Dogs are consistent with the viability evidence other than for the E&COA where the proposed rates could put at serious risk commercial development within the opportunity area.

Has evidence been provided that shows the proposed rates would not threaten delivery of the Local Plan as a whole?

57. The GLA's decision to set three general charging rates plus different rates for office, retail and hotel development in two defined areas is based on

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[10] Letter from Wandsworth Council dated 25 September 2018 commenting on the Mayor's additional evidence.

reasonable assumptions about development values and likely costs.

58. In setting the CIL charging rate the GLA has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in London. The GLA has tried to be realistic in terms of achieving a reasonable level of income to address the need to help fund Crossrail 2 while ensuring that a range of development remains viable across London.

59. As noted in paragraph 2 of this report, the London Plan 2016 is the adopted development plan for London. A revised London Plan (New London Plan) has been prepared in draft. The Draft New London Plan is scheduled to be examined commencing in January 2019. Some have argued that MCIL2 should have been developed in parallel with the emerging New London Plan and that MCIL2 should be subject to review once the New London Plan is adopted. Given that the thinking behind the New London Plan will no doubt have been taking place at the same time that MCIL2 was being prepared it is unlikely that MCIL2 would in any serious way jeopardise the emerging policies and strategy of the New London Plan. It is noted that the Mayor has undertaken two biennial reviews of MCIL1 to ensure that the MCIL1 rates continue to be appropriate. The Mayor has also helpfully given an indication of what the present thinking is about a future CIL. Clearly the Mayor is alert to the need to keep the CIL position under constant review and there is no need for me to make any recommendation regarding reviewing MCIL2.

Conclusion

60. I consider the viability assessment to be robust and conclude that the rates proposed would not threaten delivery of the London Plan 2016. The proposed rates are justified.

Overall Conclusion

61. I have considered all of the representations made including those that raise matters not discussed above. In some instances matters are raised that do not concern this examination. These include the question of discretionary reliefs and infrastructure payments in lieu of the CIL charge. These are matters for the Mayor to decide. None of the other matters raised provide evidence that the proposed MCIL2 would threaten the balance that has been struck between the need to help fund Crossrail 2 and the potential effect on the economic viability of development across London.

62. I conclude that the draft Mayor of London Community Infrastructure Levy Charging Schedule, subject to the making of the modifications set out in the report and Appendix A**,** satisfies the drafting requirements and I therefore recommend that the draft Charging Schedule be approved.

Keith Holland

Examiner

<u>Attachments:</u>

Appendix A – Modifications that the examiner specifies so that the Charging Schedule may be approved.

Appendix A

Examiner Modification (EM) recommended in order that the charging schedule may be approved.

Examiner Modification (EM)	Page no./ other reference	Modification
EM1	Table 2	Add a footnote to Table 2 as follows: "Office is defined as any office use including offices that fall within Class B1 Business of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order. Uses that are analogous to offices which are sui generis, such as embassies, will be treated as offices. Retail is defined as all uses that fall within Classes A1, A2, A3, A4 and A5 of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order, and related sui generis uses including retail warehouse clubs, car showrooms, launderette. Hotel means any hotel use including apart-hotels uses that fall within Class C1 Hotel of the Town and Country Planning (Use Classes) Order 1987 as amended."
EM2	Page 13	Exclude the Elephant and Castle Opportunity Area from the Proposed Central London Charging Area for office, retail and hotel use shown in Figure 2. A revised charging area map should be included at Figure 2 to reflect the exclusion.