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## Report to Birmingham City Council

by Mr Philip Staddon BSc, Dip, MBA, MRTPI

an Examiner appointed by the Council

4 June 2015

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

### **REPORT ON THE EXAMINATION OF THE DRAFT BIRMINGHAM CITY COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

Charging Schedule submitted for examination on 4 February 2015

Examination hearings 30 April 2015

File Ref: PINS/P4605/429/8

## Non-Technical Summary

This report concludes that the Birmingham City Council Draft Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. The Council is able to demonstrate that it has sufficient evidence to support the Schedule and can show that the levy rates would be set at levels that will not put the overall development of the area, as set out in its draft Birmingham Development Plan 2031, at risk. The proposals will secure an important funding stream for infrastructure necessary to support planned growth in the city.

### Introduction

1. This report contains my assessment of Birmingham City Council's draft Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008 (as amended). It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance set out in the National Planning Practice Guidance (NPPG).
2. To comply with the relevant legislation and guidance the local charging authority has to submit a charging schedule that should set an appropriate balance between helping to fund necessary new infrastructure and the potential effect of the proposed CIL rates on the economic viability of development across its area.
3. The basis for the examination, on which Hearing sessions were held on 30 April 2015, is the 'updated' Draft Charging Schedule (DCS), which consolidates the originally published DCS with changes proposed through a later Statement of Modifications (SOM). The original DCS was published for public consultation between 29 September 2014 and 10 November 2014 and the SOM in the month before 4 March 2015. For the avoidance of doubt, all further references in this report to the 'DCS' relate to the updated version incorporating the SOM changes.
4. The DCS proposals include CIL charges for residential development, student housing, a particular type of retail development and for certain hotel developments.
5. The proposed CIL charges for 'residential' development relate to three residential market zones defined on a map in the DCS. The first zone relates to the 'High' value market value areas which comprises the northern part of the city's administrative area (the Sutton Coldfield locality) and parts of the south-west of the city's area (including the suburbs of Harborne, Bournville and King's Norton); a CIL charge of £69 per square metre (psm) is proposed in this zone. The second zone is notated as 'Green Belt

Development' and is drawn around a proposed urban extension west of the A38 at Langley; CIL would be zero rated in this zone i.e. £0 psm. All of the remainder of the city's administrative area would fall within the defined 'Low' market value areas where it is proposed that the CIL charge would also be zero rated. The DCS makes clear that residential development by 'Social Housing Providers registered with the HCA and Birmingham Municipal Housing Trust development' would be zero rated for CIL; this exemption would include any market housing developed by these providers to cross subsidise affordable housing provision.

6. Student housing developments would incur a CIL charge of £69 psm in all locations except for the urban extension zone at Langley (where it would be zero rated).
7. Retail CIL charges would apply only to 'retail convenience' developments for schemes with a floorspace exceeding 2,000 square metres.
8. Hotel developments would be subject to a £27 psm CIL charge within a defined city centre zone. Elsewhere such developments would be zero rated.
9. For completeness, the DCS lists zero rated CIL charges for other types of retail development and for industrial / employment, offices, leisure, education, health 'Extra Care' and 'all other development'.

### **Background evidence – the city, the development plan, infrastructure needs and economic viability evidence**

#### *Birmingham*

10. Birmingham is a major city with a population of just over 1 million. Since the 1980s the city has been through economic restructuring, estate regeneration and transformation of its environment. The city is a major employment centre, drawing in workers from across the West Midlands. It is a leading European business destination with an economic output of £20bn per annum. Many international companies are based in the area, including Jaguar Land Rover, Kraft, KPMG, Deutsche Bank and GKN. The local economy is supported by five universities and six major colleges, supporting over 73,000 undergraduate and postgraduate students. Birmingham is a major centre for culture, sports, leisure and shopping with a number of world class venues and over 30 million people visiting a year. In addition to the city centre's shopping areas, there is a network of over 70 local centres serving its urban and suburban communities. It is a major, diverse and dynamic city.

#### *The Birmingham Plan 2031 – Submission Draft*

11. The emerging Birmingham Plan 2031 sets out the Council's vision and strategy for the sustainable growth of the city in the period to 2031. The Plan seeks to respond to identified challenges that include an anticipated

population growth of 150,000 (estimated to result in 80,000 new households), the need to respond to climate change and the need to accommodate and deliver the longer term levels of growth needed through development beyond its existing built up and administrative areas.

12. Once adopted, the Plan will set out the statutory framework to guide decisions on development and regeneration in Birmingham up to 2031 and will replace the strategic content of earlier plans and documents. It sets out how and where new homes, jobs, services and infrastructure will be delivered and the type of places and environments that will be created.
13. The production of the Plan, by its very nature and scope, has been a complex and major endeavour. Indeed, its preparation can be traced back to 2007 and it has evolved over the years seeking to respond to new evidence, issues and changes in national planning policy. The Plan was submitted for examination in July 2014 and that 'submission draft' set out the following overall levels of growth:
  - 51,100 additional homes.
  - 2 regional investment sites (20 and 25 hectares) and an 80 hectare strategic employment site.
  - About 270,000 sq.m. gross of comparison retail floorspace (by 2026).
  - A minimum of 745,000 sq.m. of office floorspace.
  - New waste, recycling and disposal facilities.
14. In terms of the Plan's housing proposals, it seeks to maximise the level of housing delivery within the built up area, with a focus on re-using existing urban land. Key locations for such development will be the city centre, a portfolio of defined 'growth areas' and, more generally, sites spread throughout the urban and suburban areas. However, the Plan recognises that this cannot accommodate the full levels of population growth and its associated housing requirements and proposes that land at Langley should be released from the Green Belt to accommodate a Sustainable Urban Extension (SUE) of about 6,000 new homes. The balance of growth that would not be met in the city's area (circa 30,000 new households) is expected to be delivered beyond its administrative boundaries. The Plan explains (paragraph 4.7) that the Council will seek to work collaboratively with neighbouring authorities to achieve this end.
15. The Plan's employment proposals seek to deliver an additional 100,000 jobs in the period to 2031, through a focus on the city centre, existing 'core employment areas' and the promotion of growth areas. The largest strategic employment allocations are an 80 hectare site at Peddimore and 'regional investment sites' at Aston and Longbridge.
16. The Plan's approach to retail development is linked strongly to the city's established hierarchy of centres, with most planned new floorspace directed

to the higher tiers of the city centre itself, the sub-regional centre at Sutton Coldfield and three 'district growth points', with the large network of district and local centres serving specific community catchment areas.

17. The promotion of Birmingham's significant tourism and cultural roles is set out in the Plan, along with the importance of providing supporting facilities such as hotels.
18. The Plan seeks to promote the provision of good quality student accommodation and there is policy support for purpose built student accommodation schemes on-campus and, subject to specified criteria, in off-campus locations.

*The Birmingham Plan 2031 – Examination progress and CIL implications*

19. The Plan was submitted for examination in July 2014. Following the Hearing sessions, the appointed Inspector issued his interim findings in January 2015. These require the Council to carry out further work before the examination can continue. The further work relates to three broad areas. First, the need for an updated and more robust objective assessment of housing need. Second, the need to undertake additional work on the Plan's Sustainability Appraisal (SA), specifically concerning the approach to Green belt releases. Third, the need to bring forward modifications to address the housing 'shortfall' (that will need to be met by other Councils).
20. The Council advised that the additional work was now complete and it was awaiting the Inspector's more detailed report setting out the need for proposed modifications to make the plan sound. A further round of public consultation on the proposed modifications and the revised SA is planned to take place over the summer. The Council hopes to be in a position to adopt a modified Plan either late this year or early in 2016.
21. The Council is keen to progress its CIL proposals now that 'pooling' restrictions on S.106 contributions have come into force and, more generally, to establish a funding stream for infrastructure to support its growth strategy. The progression of the CIL proposals ahead of the conclusion of the Birmingham Plan 2031 examination process raises some issues, along with some widely held misconceptions, about the CIL legislative / regulatory requirements and the associated guidance.
22. In terms of the statutory provisions, there is nothing contained within either The Planning Act 2008 or The Localism Act 2011 that makes having an up to date and adopted Plan in place a prerequisite of the implementation of a CIL regime. Many of the Councils that have adopted CIL to date have the benefit of recently examined and adopted plans, whilst others have submitted their CIL proposals for examination alongside their development plans (as suggested in paragraph 175 of the NPPF). These scenarios are at the ideal end of the spectrum and ensure, in theory at least, that the CIL proposals are conceived in terms of the most up to date strategic policy

framework defining 'the development of an area'<sup>1</sup> that CIL is intended to support. However, not all prospective charging authorities will be able to present a CIL schedule alongside freshly adopted development plans, due either to the inevitably long gestation period and / or (as is the case in Birmingham) if they encounter complexities and delays in the process.

23. The important point is the evidence base itself, rather than the procedural status of the development plan (although clearly these matters are closely linked). The Birmingham Plan 2031 is a mature policy document that has been the subject of extensive public consultation and is supported by a detailed evidence base. Whilst there remain issues to be resolved, modifications to be made and further consultation to be undertaken, I am satisfied that these matters do not present any obstacle to the principle of progressing a CIL regime.
24. The 'development' of the city, in the terms envisaged in S.205 of the Planning Act 2008, is clear, and the strategy of concentrating most growth on largely brownfield sites within the urban area, supported by strategic Green Belt releases, is very unlikely to change. There is a sufficiently stable development plan backcloth to enable high level CIL viability assessments to be made. However, my comments should not be treated as any predetermination of the Plan's outcome and, at the examination Hearings, the Council did concede that there could be circumstances that would require the CIL proposals to be revisited e.g. any changes to the Green Belt housing release (which has its own tightly drawn CIL zone). However, those are matters to be addressed if and when they arise.

#### *Infrastructure planning evidence*

25. The draft Birmingham Plan 2031 is supported by an Infrastructure Delivery Plan (IDP) which assesses and analyses the city's future infrastructure needs. It is a wide ranging document that identifies and assesses a diverse range of physical, environmental and social infrastructure to enable growth to occur and to facilitate the delivery of key proposals. It includes known infrastructure costs and identifies funding sources and lead agencies. It is a 'live' document and the Council is continually updating it.
26. The Council has undertaken an infrastructure funding gap assessment. For the entire 'essential' infrastructure set out in the IDP, it assesses a net funding gap of circa £461.7 million in the plan period (to 2031). Although I am not wholly convinced by the categorisation of certain infrastructure as 'essential', i.e. that development and planned growth could not occur without such projects, the evidence of major infrastructure demands is compelling. The most significant funding requirements relate to transport and education.
27. The Council estimates that its CIL receipts in the plan period would be circa £90.7 million. It estimates a potential 'average annual CIL receipt' of circa £5.6 million, with almost half (£2.8 million) coming from convenience retail

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<sup>1</sup> S.205(2) of The Planning Act 2008

(supermarkets), with residential development (higher value zone) generating £1.7 million and lesser amounts from city centre hotels (£0.6 million) and student housing (£0.5 million).

28. I have some reservations about the robustness of these figures which have been arrived at by looking backwards (actual past delivery in 2009 – 14) rather than forward (planned delivery) for the various CIL paying development types. This may have some credence for residential development but is unlikely to be the case for commercial developments such as hotels, supermarkets and student housing schemes, which will tend to progress when the market identifies capacity, but will cease if the finite market is considered to be sated. Furthermore, the Council's projections have not factored in the effect of discounting CIL for existing floorspace, which is likely to be a factor on many former employment sites and will reduce receipts. In my view, the Council may have overestimated the likely CIL receipts.
29. However, these factors do not affect my overarching conclusions that the funding gap is substantial and that CIL revenue would make an important contribution to filling that gap. Taking the Council's assessed gap and revenue estimates at face value, CIL may equate to about 20% of the gap (although I think the true figure may be less). Even allowing for a degree of caution around the definition of 'essential' infrastructure, the evidence provides a compelling justification for introducing a CIL regime.
30. The Council has produced a Draft Regulation 123 list that sets out the infrastructure that it intends to fund, partly or wholly, through CIL receipts. The list includes a wide variety of infrastructure types covering transport, education, arts, parks, allotments, public realm etc. The document includes a clarification note on the continued use of S.106 agreements for site specific infrastructure and further clarifies that all infrastructure requirements associated with the SUE at Langley will be secured by S.106 mechanisms (and not by CIL).
31. Whilst I do not doubt the comprehensive nature of the list, it could be improved in a number of ways. First, it would be helpful to sort the projects and initiatives into clear infrastructure types, as this would provide much greater clarity and transparency. Second, in many cases the 'infrastructure' needs much greater definition as some projects just appear as locations e.g. 'Iron Lane, Stechford' and 'The Drum Arts Centre'; readers should be able to understand the destiny and purpose of any CIL receipts. Third, the Council's intentions on the use of CIL in respect of education projects are not clear from the current draft; this type of infrastructure appears on the Regulation 123 but also appears as an exclusion (to be secured by S.106 agreements) on 'large' sites. The list did not define 'large', although it became clear at the Hearing sessions that the reference related only to the SUE. All of these matters were discussed with the Council at the Hearing sessions and the Council agreed to address the issues through redrafting, which I would encourage it to undertake prior to the implementation of any CIL regime.

*Economic viability evidence – methodology, data sources and assumptions*

32. The Council commissioned consultants to undertake a Viability Assessment (VA) to support its CIL proposals. The VA was completed in October 2012 and has been supplemented with additional topic based viability evidence in December 2013. These supplements included additional viability testing in respect of the SUE, employment, retail and a paper covering 'miscellaneous' matters (an update on residential sales values and allowances for a 'viability cushion'). The evidence also includes a letter from the Council's consultants providing a commentary and analysis of developments relating to retirement homes, sheltered housing and 'extra care' schemes. Hereafter, I refer to this collective of evidence as the VA.
33. The VA employs a residual valuation approach. In simple terms, this involves deducting the total costs of the development from its end value to calculate a residual land value (RLV). That residual land value is then compared to assumed 'benchmark' land values (BLV) to test viability. If the RLV is higher than the BLV, the scheme would be judged viable and vice versa. Where there is a surplus above the assumed BLV this enables a maximum potential CIL value to be computed.
34. The testing of residential scheme viability included nine residential development 'typologies', along with a bespoke testing of the SUE assumed development. The nine typologies were devised by the Council to represent what it considered to be representative of likely future developments in the city and were informed by the sites in its Strategic Housing Land Availability Assessment (SHLAA). Four of the typologies were small schemes below the Council's affordable housing threshold and comprised: 1 house, 2 flats, 6 houses and 10 flats. The five larger development typologies, above the affordable housing threshold, were: 15 flats, 50 flats, 15 houses, 50 houses and 200 houses. The SUE testing was based on an assumed strategic scale development of 5,000 homes (a slightly lower figure than the 6,000 contained in the draft Birmingham Plan 2031). In my view, the range of sites tested is comprehensive and well grounded.
35. To undertake the viability analysis, the modelling on residential developments entailed making assumptions about a range of development costs and revenues.
36. To establish sales value assumptions the Council's consultants undertook a high level review of the city's housing market and defined seven 'market value areas' comprising defined postcodes. For each of these areas, average house price values (psm) were established from a combination of Land Registry data, the consultants own in-house expertise and a stakeholder workshop (held in March 2012). The average sales values ranged from the lowest of £1,615 psm (postcodes B7 and B4) to the highest of £2,585 psm (postcodes B15, B17, B73, B74 and B75). Although the data set appeared to be comprehensive, it was a little dated, with most of the values being drawn from 2011 and 2012. However, the Council advised that since this time, property prices had risen by about 7% in the city, suggesting that the values employed are conservative and cautious.

37. The establishment of robust BLVs is clearly of great importance in this type of viability modelling. The Council considers that most new housing development will come forward on land previously in employment use but it also expects some element of supply from existing residential sites, particularly in the lower value areas where developments seek to increase density and / or provide a better quality / higher value housing product.
38. The Council established BLVs based on a triangulation of Valuation Office Agency (VOA) data, known transactions and the CIL stakeholder workshop. It concluded that there were distinct differences between the higher and lower value areas of the city. In the higher value areas (market value areas 1, 2 and 3) it assessed a BLV of £1.1 million per hectare for existing employment land (which includes a premium of 20% on existing use value) and £1.9 million per hectare for existing housing land. In the lower value areas (market value areas 4, 5, 6 and 7), the figures were £595,000 per hectare and £740,000 per hectare respectively.
39. For the greenfield SUE, the Council assumed a BLV of £250,000 per hectare, which is reasonable in my view, and within the range indicated in research contained in the Department for Communities and Local Government (DCLG) study<sup>2</sup>.
40. Base build costs for residential schemes were drawn from Building Cost Information Service (BCIS) rates. The build costs for the SUE reflected the economies of scale achievable on large volume housing sites. As with sales values, the build cost assumptions were a little dated (Quarter 1 2012) and clearly do not include recent years' inflation. However, I am satisfied that build cost changes can be considered 'in the round' alongside sales value increases and the viability 'buffers' employed in the CIL rate setting.
41. In addition to base build costs, the modelling included reasonable allowances for enabling costs and contingencies. For the SUE, much greater enabling costs are anticipated, reflecting the costs of providing infrastructure and services to a large greenfield site. The modelling assumed a cost of £20,000 per plot on the SUE, which would sit within the £17k – £23k range suggested in the Harman Report<sup>3</sup> for 'strategic infrastructure and utility costs.'
42. Costs assumptions in respect of fees, contingencies and finance conformed with accepted industry norms. Developer profit was assumed at 20% of Gross Development Value (GDV) on market housing and 6% of GDV on affordable housing, which I consider reasonable.
43. Affordable housing was modelled at policy compliant levels in terms of proportion (35%), tenure split and the assumed absence of grant subsidy. Lower levels of affordable housing (0% and 20%) were also modelled to

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<sup>2</sup> *Cumulative Impacts of Regulations on House Builders and Landowners* - Research Paper. Published by DCLG in 2011 (although commissioned by the previous Government in 2008).

<sup>3</sup> *Viability Testing Local Plans* – Local Housing Delivery Group (Chaired by Sir John Harman) June 2012.

provide sensitivity tests.

44. The modelling assumed that there would be no residual S.106 planning agreement costs, as the Council considers that CIL will largely replace the use of S.106 agreements and obligations. However, it is apparent from the Council's Draft Regulation 123 list that some element of site specific mitigation may still be required to be secured through S.106 agreements. In most cases, this is likely to be limited but some consideration of these costs is required in the assessment of the modelling results and CIL proposals. For the SUE, substantial S.106 costs are anticipated and the modelling tested levels of £10,000 per plot and £20,000 per plot.
45. The commercial development modelling used similar assumptions and methodology. Notional schemes for care homes, offices, employment, retail, hotels, student accommodation, leisure, education and health developments were all tested. The assumptions employed for the notional commercial development schemes all appeared reasonable, including the assumed rents, yields, build costs, profit levels and BLVs.

#### *Conclusions on background evidence*

46. The Birmingham Plan 2031 provides a clear strategic planning framework to guide the sustainable growth of Birmingham. Although the Plan is yet to be adopted and more work and consultation is required, it is sufficiently mature and settled to enable the viability effects of CIL to be assessed. The Plan's strategy has a strong growth focus on brownfield sites within the existing urban areas of the city, supplemented by some strategic Green Belt releases for housing and employment.
47. The IDP identifies the infrastructure required to support Birmingham's planned growth in population and jobs. The evidence demonstrates a sizeable infrastructure funding gap that justifies the introduction of a CIL regime. CIL receipts will help to reduce that gap, although a significant funding shortfall will remain. There is some uncertainty over the level of CIL receipts and the Council would be wise to monitor performance closely once a CIL regime is operational.
48. Overall, the background economic viability evidence for both residential and commercial development that has been used is reasonable, robust, proportionate and appropriate. The interpretation and use of that evidence in defining the proposed CIL rates and zones is discussed more fully below.

### **Residential Development CIL – zones, charges and appraisal findings**

#### *The 'High' value CIL charging zone (£69 psm)*

49. This zone comprises market value areas 1, 2 and 3 where sales values are generally acknowledged to be higher than in the remainder of the city. The modelling of the residential development typologies in these areas returned generally strong positive viability. Smaller schemes below the affordable

housing threshold fared particularly well, with most remaining viable at theoretical CIL rates of £250 psm. Larger schemes with affordable housing at full policy target levels, returned lower theoretical rates, but still achieved an average of £90 psm.

50. Taking all of the results together, the Council assessed that a CIL charge of £115 psm represented the level that the 'majority' of schemes (at least 70%) could sustain. It then applied a viability buffer of 40% to arrive at its proposed CIL charge for this zone of £69 psm. In my view, that is a reasonable buffer and allows most schemes to remain viable. I have also considered the effects of increases in sales values and build costs and conclude that, overall, these are likely to increase the comfort margin.
51. At the Hearing sessions, the Council advised that the SHLAA sites in the urban area (i.e. excluding the SUE) currently totalled 33,395 potential new homes and of these 6,173 (or 18.5%) would be in the 'High' value zone and would incur the £69 psm charge. That is a modest but nonetheless important proportion of overall planned housing delivery. In my assessment, the evidence demonstrates that the delivery of these planned homes will not be unduly threatened by the imposition of the CIL charge. Indeed, in most cases, schemes can comfortably absorb the charge, which would fall within a range of 2 – 5 % of development costs.

*The 'Low' value CIL charging zone (£0 psm)*

52. This zone comprises market value areas 4,5,6 and 7. The modelling of the residential development typologies in these areas returned less strong viability results. Although the lowest value area 7 did not return any positive viable results, the 'majority' of schemes across the whole zone, including larger schemes with full policy target affordable housing levels (35%), were able to support a maximum theoretical CIL charge of £55 psm.
53. Were the same approach to buffers to be employed (as in the 'High' zone) this would suggest a CIL charge of £33 psm. However, the Council has elected to apply a £0 rate. At the Hearing sessions, the Council explained that its primary concern was to maintain viability and maximise affordable housing content.
54. Strictly speaking, the £0 charge is a straightforward matter. A nil charge clearly cannot threaten viability across this zone. However, some have questioned the Council's approach that effectively exempts most new homes that are planned in Birmingham (81.5% of the SHLAA sites) from CIL charges, given that all development will contribute to infrastructure needs and the evidence does suggest that modest charges could be sustained. The Council will also need to consider the much more limited role for S.106 agreements once a CIL regime is in place.
55. At the Hearing sessions, the Council advised that it does not rule out a more widespread application of CIL charges in the future, but its immediate priority is maximising viability and delivery and avoiding any pressure to compromise on affordable housing requirements in areas where viability is

demonstrably lower. The Planning Practice Guidance (PPG) does advise that, where evidence points to low viability, a charging authority should consider setting a low or zero levy rate in that area (Reference ID: 25-021-20140612). The guidance further advises that there is no requirement for a proposed rate to exactly mirror the evidence (Reference ID 25-019-20140612).

### *The 'Low' / 'High' zone boundary challenges*

56. The Council's two-zone CIL approach for most of the city (the SUE is dealt with separately below) does, perhaps unavoidably, create some tensions around the zoning boundaries. There were two notable challenges. First, a property estate company sought revisions to the zoning boundaries in the Hagley Road and Bristol Road areas (south-west of the city centre) i.e. to effectively move its holdings from the 'High' to the 'Low' zone. Second, a commercial site owner on Lifford Lane, similarly sought a 'Low' zone status and proposed that a site specific review mechanism should apply.
57. With regard to the first set of challenges, evidence was submitted which purported to show that property values in these areas were more akin to the 'Low' zone and revised alignments of zone boundaries (departing from their postcode origin) were promoted. I have considered these submissions carefully but I am not persuaded that the Council should be required to make the suggested modifications. There are a number of reasons that have led me to this view.
58. First, the Council's two-zone approach, based on postcodes, is simple, supported by its evidence base and avoids 'undue complexity'<sup>4</sup>. Second, the strategic and broad-brush approach to CIL proposed by the Council inevitably means that its two large zones will contain a range of sales values, above and below the averages adopted for the value areas. Third, the evidence presented by the representor did not convince me that sales values in these localities represented a clear value watershed. Fourth, these are densely developed urban areas and there is no development envisaged that would be critical to the delivery and implementation of planned growth in the city. Finally, it should be noted that the Council's evidence base suggests that even in the 'Low' zone, the 'majority' of tested developments could support CIL contributions. For all of these reasons, I do not consider the suggested modifications are justified or necessary.
59. The second set of challenges were more site specific but included similar concerns about inconsistencies in sales values in the 'High' and 'Low' zones. The site lies in the southernmost section of the 'High' zone and may come forward for re-development post 2018. It has the capacity to deliver several hundred homes. Whilst I can understand the site owner's desire to avoid the costs of CIL on what may be a complex development project, no viability evidence was available to suggest that CIL could not be sustained (as there is no scheme at this point in time). The suggestion of a mechanism to review the Low / High value status on a site by site basis is not workable

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<sup>4</sup> National Planning Practice Guidance - Paragraph: 021 Reference ID: 25-021-20140612

with a CIL regime which, on adoption, is a fixed instrument (until the point of any review and revision). The Council advised that it would be reviewing its CIL regime in advance of this particular site coming forward. I am satisfied that there is no need to amend the zone boundaries and the review mechanism is a more appropriate method to address these matters, should it prove necessary.

*The SUE charging zone (£0 psm)*

60. The Council's testing of the assumed SUE development at Langley used a range of enabling and S.106 costs. They are unavoidably broad brush assumptions given the relatively early life cycle stage of the proposals. However, a 'best case' viability scenario, employing the lowest enabling works cost (£70 million) and the lowest assumed S.106 contributions (£10,000 per plot), did not achieve the assumed greenfield BLV. The actual RLV under that scenario was, by my calculation, £205,185 per hectare, which is well below the assumed BLV of £250,000. Higher enabling and S.106 costs clearly reduce the RLV further, although a positive land value is achieved in all test scenarios.
61. The Council envisages that the SUE will come forward through a comprehensive outline planning application. Its preferred approach is to deal with the SUE's substantial and specific infrastructure requirements in a self-contained manner through a S.106 planning agreement. This approach is reflected in its proposed CIL zone, defined around the site boundaries of the SUE, and its proposed £0 CIL charge. The evidence confirms that the development is unable to sustain CIL charges on top of the heavy burden of anticipated site enabling costs and S.106 obligations.

*Specialist residential development types for older people.*

62. The VA evidence suggested that residential scheme viability for retirement housing schemes falling within the C3 Use Class would display similar overall viability characteristics to conventional housing schemes. However, the Council recognised that those variants involving significant elements of support and associated facilities that led to a C2 Use Class classification were less viable. Indeed, the testing suggested that such schemes would only be viable in the highest value area.
63. I am satisfied that the Council's approach to differentiate by Use Class, applying a £0 rate to Class C2 uses, reflects the evidence. A modification to the DCS is required to reflect the Council's intention to apply a zero CIL rate to all Class C2 uses (rather than just the 'Extra Care' developments stated in the DCS). This is reflected in my recommendations.

## **Commercial CIL – viability appraisal evidence and proposed CIL charges**

### *The 'zero –rated' commercial development types*

64. The VA's testing of office, industrial, warehouse, education and health developments demonstrated that these could not currently support CIL charges. The evidence suggested that commercial leisure developments had some potential to support very modest CIL charges. The Council does not propose CIL charges for any of these development types at this point in time and there would be no material impact on the amount of CIL receipts, due to the very limited number of such schemes anticipated to come forward.

### *Retail development*

65. The VA tested a range of different types of retail development, in varying locations, sizes and covenant strengths. The initial 2012 VA testing generated potential CIL rates of £380 psm for a supermarket (5,000 sq. metres); £170 psm for a 'non food retail park' development (9,290 sq. metres) and £150 psm for a suburban food store (400 sq. metres). The Council's further testing in 2013 included a finer grained analysis of convenience retail types. It tested notional schemes of 1,500 sq. metres, 2,700 sq. metres and 5,000 sq. metres supermarket combined with a petrol filling station. The CIL results with a 40% buffer applied were, respectively, £0 psm, £470 psm and £260 psm (assuming 20% profit on GDV).

66. The Council's DCS proposes to apply a retail CIL charge of £260 psm solely to 'convenience' stores (supermarkets) over a 2,000 sq. metre size threshold (all other retail types would be zero rated). The Council advised that the city was generally well catered for with a network of centres and supermarkets and its greater priority was increasing comparison shopping floorspace to meet modelled capacity. That said, the Council's latest retail needs assessment suggests that, once commitments are allowed for, a growth in the range of 39,700 – 53,600 sq. metres of new convenience floorspace may be achievable in the period 2012 - 2031. The Council also acknowledged the importance of the smaller supermarket formats, and the discount operators, in terms of meeting future demands, driving consumer choice and addressing localised gaps in provision.

67. The key examination issue in respect of the proposed retail CIL charge relates to the size threshold at which it would apply. The later 2013 evidence clearly indicates that smaller format supermarket stores cannot sustain a CIL charge, whereas a 2,700 sq. metre store can sustain a quite significant CIL charge (of £470 psm). Representations from the discount supermarket sector argued that there was no clear rationale for the Council's proposed 2,000 sq. metre threshold and that there were discount formats above this threshold and below the tested 2,700 sq. metres that simply could not sustain the CIL charge. Given that further stores of this nature are anticipated in Birmingham (one operator suggested up to ten sites were in the pipeline), it was argued that these schemes could face viability issues.

68. This is quite a difficult area to arbitrate as the variable is not simply one of unit size and the economies of scale but of operator covenant strength (and associated rents and yields). In effect, the Council is seeking to promote a floorspace as a proxy to where low and high covenant strengths are likely to sit. Whilst there is nothing wrong with that approach, I share representative views that the evidence does not demonstrate that 2,000 sq. metres should be that watershed – it is simply a figure selected to fall in the middle ground between the unviable and viable tested schemes. At the Hearing sessions, the Council accepted that the use of 2,700 sq. metres was a more robust evidence based threshold, and indicated that it would not be unduly concerned about the use of the higher figure. I recommend that modification, as it will align the charging schedule more closely with the evidence and remove any potential risk to the viability of smaller formats of convenience retail development.

#### *Hotel development*

69. The VA testing of notional 150 bed hotel schemes indicated that there were differences in viability between city centre schemes and those elsewhere. City centre schemes generated a potential maximum CIL rate of £45 psm, whereas those elsewhere displayed weaker viability. The Council's proposed application of a £27 psm CIL charge in its defined city centre zone is supported by the evidence. Such a charge includes a healthy (40%) buffer from the maximum and I do not consider that hotel development viability will be compromised.

#### *Student accommodation development*

70. The VA tested notional student housing schemes of 50 and 250 units and both returned maximum CIL levels of £115 psm. The proposed application of a £69 psm CIL charge (which includes a 40% buffer) is supported by the evidence. The Council indicated that, although this market is mature, there are signs of some activity and new schemes may come forward in the Plan period.

### **Overall Conclusions**

71. The evidence demonstrates that, subject to some minor modifications, the overall planned development of Birmingham will not be put at risk if the proposed CIL charges are applied. Two minor modifications are required. The first is a clarification that all Use Class C2 development will be zero rated for CIL purposes. The second is to increase the 'retail convenience' size threshold, at which CIL would apply, from 2,000 sq. metres to 2,700 sq. metres. Subject to these changes, I conclude that, in setting the CIL charges, the Council has used appropriate and available evidence which has informed assumptions about land and development values and likely costs. The CIL proposals are anticipated to achieve an important income stream that will help to address a well evidenced infrastructure funding gap.

72. However, my conclusions must include some comment on the very 'light touch' nature of the CIL proposals. Indeed, until at least the first review, the

vast majority of development planned in the city will not be contributing through CIL (or S.106 planning agreements) to the infrastructure requirements identified in the IDP. I understand the Council's desire to nurture growth, particularly given its reliance on growth beyond its own administrative boundaries, but care is needed to ensure that growth is appropriately supported by infrastructure (which must be funded). Earlier in this report, I also expressed some reservations about the robustness of CIL revenue estimates and whether these will fully materialise. These are not criticisms of the Council but they are important factors for the Council to monitor and review and may assist its thinking in terms of the timing and scope of its first formal CIL review. I recommend that the Council considers undertaking such a review within three years of adoption of the schedule.

73. Overall, I conclude that, subject to my recommended modifications, the Birmingham City Council Draft Community Infrastructure Levy Charging Schedule, as modified by its Statement of Modifications, satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

<b>LEGAL REQUIREMENTS</b>	
National Policy / Guidance	The Charging Schedule complies with national policy / guidance.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, and consistency with the development plan framework for Birmingham and is supported by an adequate financial appraisal.

*P.J. Staddon*

Examiner

Attached: Appendix A – Recommended Modifications

## **Appendix A**

Modifications that the Examiner specifies so that the Charging Schedule may be approved.

These modifications should be read in conjunction with Examination Document SO2 'Draft Charging Schedule – Version 1 – Updated January 2015.'

Modification Number	Modification
EM1	<p>Page 8 – Table – left hand column</p> <ul style="list-style-type: none"><li>• Delete 'Extra Care' and insert 'Use Class C2'</li><li>• Add footnote 3 referencing above - <i>The Town and Country Planning (Use Classes) Order 1987 (as amended)</i></li></ul>
EM2	<p>Page 8 – Table</p> <p>Second development type 'Retail convenience', middle column:</p> <ul style="list-style-type: none"><li>• Delete '&gt;2,000 sqm' and insert '&gt;2,700 sqm'</li></ul>