



The Planning
Inspectorate

Report to The Mayor of London

by Keith Holland BA (Hons) DipTP MRTPI ARICS

an Examiner appointed by the Mayor

Date: 27th January 2012

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT MAYORAL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for examination on 31 August 2011

Examination hearings held between 28 November 2011 and 02 December 2011

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Non Technical Summary

This report concludes that the Mayoral Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in Greater London. The charging authority has sufficient evidence to support the schedule and can show that the levy is set at a level that will not put the overall development of the area at risk.

Introduction

1. This report contains my assessment of the London Mayoral Community Infrastructure Levy Charging Schedule in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance (Charge Setting and Charging Schedule Procedures – DCLG – March 2010).
2. To comply with the relevant legislation the local charging authority has to submit what it considers to be a charging schedule which sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across its area. The basis for the examination, on which hearings sessions were held 28 and 29 November and 01 and 02 December 2011 is the submitted schedule of 31st August 2011, which is effectively the same as the document published for public consultation between 8th June and 8th July 2011.
3. The Mayor proposes three charging bands. The rate in Zone 1 is set at £50 per m sq and will apply to all qualifying development in the London Boroughs of Camden, City of London, City of Westminster, Hammersmith and Fulham, Islington, Kensington and Chelsea, Richmond-upon-Thames and Wandsworth. The rate in Zone 2 is set at £35 per m sq and will apply to all qualifying development in the London Boroughs of Barnet, Brent, Bromley, Ealing, Greenwich, Hackney, Haringey, Harrow, Hillingdon, Hounslow, Kingston upon Thames, Lambeth, Lewisham, Merton, Redbridge, Southwark and Tower Hamlets. The rate in Zone 3 is set at £20 per m sq and will apply to all qualifying development in the London Boroughs of Barking and Dagenham, Bexley, Croydon, Enfield, Havering, Newham, Sutton and Waltham Forest. Nil rates will apply to 2 types of development: development used wholly or mainly for the provision of any medical or health services, except for premises attached to the residence of the consultant or practitioner; 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.
4. In the light of the representations made and the discussion at the hearing sessions the main issues that are critical to how acceptable the Mayor's Charging Schedule is can be grouped under three main headings:

Approach adopted by the Mayor

Viability Issues

Exceptions policy

This format does not follow the approach adopted in the case of other charging schedule examination reports. This is because the London situation is unique in so far as there is provision for both the Mayor and the Boroughs to impose a Community Infrastructure Levy and the nature of the representations to the Mayor's proposals reflect the unique situation in London.

Approach

Justification for the Mayoral Community Infrastructure Levy

5. An in principle objection to the Mayor's approach was made on the grounds that he should have considered all infrastructure needed to support development across London and he should not have used as a "starting point" the sum (£300 million) he wishes to raise from his Community Infrastructure Levy (CIL). This criticism is in my view without merit. The statutory Community Infrastructure Levy Guidance - March 2010 (SG) at paragraph 12 does not refer to all infrastructure but to the total cost of infrastructure that the charging authority desires to fund, while paragraph 16 of the SG refers to "bespoke" infrastructure planning. In line with this SG the Mayor is entitled to identify Crossrail as the top priority strategic transport infrastructure project in London as he has done in the recently adopted London Plan. He has reasonably decided that he would like to partially fund this strategic project to the sum of £300 million from the proceeds of a Mayoral Community Infrastructure Levy (MCIL).
6. The £300 million is only a small part of the total cost of Crossrail and there is no doubt that the Mayor has demonstrated that there is a funding gap taking into account all sources of funding Crossrail. In this context it is then necessary to test to what extent raising £300 million impacts on the viability of development in London generally. Putting the amount that the Mayor is aiming to raise on one side of a balancing exercise is the logical way to proceed.

Valuation Methodology

7. Another criticism of the Mayor's approach, levelled by some including the Royal Institution of Chartered Surveyors (RICS), is that using established use value (EUUV) plus a margin for assessing development viability is fundamentally flawed. Those making this point argue that the Mayor should re-work his viability assessments on the basis of market value using recent transactions as evidence. This would inevitably involve an adjournment of these proceedings but it was not clear how long a delay this would need to be. Those promoting this approach were not in agreement about how many transactions should be reviewed, with the range being from hundreds of thousands to about one thousand. Nor were they able to say whether the results would be any different as far as viability is concerned.

8. The EUV plus a margin approach suffers from the disadvantage of having to use what some describe as a totally arbitrary assessment of what an acceptable margin may be. Obviously this will vary considerably, often depending on the landowner's circumstances. Having said that, based on their experience land valuation experts are able to propose reasonable average figures and it is somewhat misleading to describe this approach as totally arbitrary. The market value approach on the other hand, while offering certainty on the price paid for a development site, suffers from being based on prices agreed in an historic policy context. In most cases it is probably not possible to say with any certainty to what extent future policy changes – such as CIL - were taken into account when the market price was agreed.
9. The market value approach is not formalised as RICS policy and I understand that there is considerable debate within the RICS about this matter. The EUV plus a margin approach was used not only by the GLA team but also by several chartered surveyors in viability evidence presented to the examination. Furthermore the SG at paragraph 22 refers to a number of valuation models and methodologies and states that there is no requirement for a charging authority to use one of these models. Accordingly I don't believe that the EUV approach can be accurately described as fundamentally flawed or that this examination should be adjourned to allow work based on the market approach to be done.

Use of Residential Proxy

10. The basic starting point for the Mayor was that in general the amount of different kinds of development taking place in London demonstrates a fundamental viability. Moving on from that general proposition the Mayor faced the problem of looking at viability in a very large city containing a variety of land uses with widely different values. His solution was to adopt a relatively simple approach based on using residential values as a proxy for viability. A case for using other more sophisticated and complex approaches can obviously be made but in adopting a very basic approach the Mayor has taken account of the clear message in the SG that the charge should be set on the basis of appropriate available evidence. Moreover the SG acknowledges that this evidence is unlikely to be fully comprehensive or exhaustive. Accepting that for land to come forward for development there needs to be a margin above EUV, the Mayor makes the logical point that high values lead to a higher likelihood that land values for development will exceed existing use values with sufficient margin for the landowners to consider development options. Some of those making representations argue that the Mayor should have tested the viability of other uses independently rather than adopt a proxy approach. However those making this point did not produce evidence that such an exercise, which would be much more complex, would have resulted in a different MCIL.
11. Clearly the factors involved in assessing the viability of different forms of development are variable. The fact that different land uses are valued in different ways is largely irrelevant. What matters in this examination is whether there is evidence that the viability of development in general would be seriously prejudiced by the Mayoral CIL.

12. The Mayor's justification for using residential values is that private residential development is not covered by the Mayor's S106 Crossrail policy and is the use that in floor area terms is by far the most significant form of development that will be charged under the MCIL. The expectation is that residential development of this sort will on its own account for more development than all other forms of development together. Bearing in mind the statutory CIL guidance that it is for the charging authority to decide what evidence to present, the approach adopted by the Mayor is logical and reasonable given the overwhelming importance of residential development and provided that there is a reasonable correlation between house prices¹ and most other significant land uses that would be subject to the MCIL. In this regard the Mayor has looked at the correlation between house prices and office and retail rents. In the case of office rents the correlation co-efficient is 0.71 and in the case of retail rents it is 0.61.
13. In statistical terms these correlations indicate a fairly significant correlation level but they do not, of course, tell us anything about why the relationship exists. However for the purposes of this examination the reasons for the correlation are not important – what is important is whether office and retail development would be significantly prejudiced by the imposition of the MCIL. This matter is considered below. Criticism of the use of rents in the case of offices and retail in contrast to sales prices used in the case of residential is not justified as ultimately rent received forms the basis for calculating capital value.
14. Another complication of using other types of land uses is the variation in scale and nature of office, industrial and retail development. Many representations argue against the use of residential values by the Mayor because of the variation in residential values within boroughs. However the variations in terms of the scale and nature of industrial, retail and office development is

¹ The term house prices in this report means prices for all types of dwelling

likely to be at least as great and frequently far greater than is generally the case for residential developments. Assessing viability on the basis of these other uses would therefore be difficult and complex and prone to error, particularly as accurate Valuation Office Data is not available for office and retail land in key centres.

Charging Bands

15. The three charging bands in the MCIL are based on April 2010 average house prices in each borough. Not surprisingly a number of the boroughs argued that there should be a different number of bands and/or that they should be in a lower charging band. In some cases this argument was based on the perceived benefits from Crossrail and in others on a view that the nature of the borough in question is more akin to the nature of lower band boroughs. A number of representations sought to have more than one band in each borough to better reflect price variations within boroughs.
16. The Mayor's approach is undoubtedly relatively basic and is not based on a spatially differentiated approach below borough level. The Mayor argues that a finer grained approach would be difficult to adopt for 2 reasons – first the lack of consistent and robust data and second, the complexity of defining more detailed charging zones based on property prices. The Mayor argues that a finer grained approach could lead to as many as 65 to 96 different charging zones.
17. Robust data on property prices based on recent transactions is available and the data justification for the Mayor's approach is not convincing. On the other hand the complexity argument is compelling. Residential values can and very often do change significantly within short distances and it would be a difficult to define a number of different charging bands within each borough without creating anomalies and potentially contentious/complicated boundaries. While in some boroughs it may be possible to define broad areas with different residential values, Haringey for example contrasts Tottenham with Highgate, the guidance issued by the Government advises against undue complexity. Given that this is a London-wide strategic CIL and the relatively modest level of the charge when seen in the context of a large proportion of London residential prices, adding complexity by having varying charging bands within boroughs is not justified. The Mayor's approach may of course put some marginal schemes at risk in some parts of London but it is more likely that what might be put at risk in some instances is the scope the boroughs have for imposing a local CIL at the level they would like. While this is obviously less than satisfactory from the borough perspective, it is an inevitable consequence of the way the legislation has been drafted to give priority to the MCIL.
18. The Strategic Housing Land Availability Assessment used to inform the replacement London Plan was based on four home value bands and on the grounds of consistency some advocate a 4 band approach. Applying this approach to the Mayor's charging bands it is noted that the top and bottom pricing bands would remain the same as under the proposed 3 band system. The difference would be in having 2 mid-range bands, one at £40 and the other at £30 rather than one band at £35. The advantage of introducing this added complexity is not clear – some Boroughs would "benefit" others would

be subject to a slightly higher Mayoral CIL. The £5 difference, up or down, is not obviously justified on viability grounds.

19. The Mayor accepts that the bands are to some extent subjective. The option of having one band throughout London, while having the benefit of being simple, would disadvantage the boroughs with the weakest viability based on house prices. Arguably more than three bands would have produced a more refined charging schedule but it would have added complexity – a consideration that the SG warns against. Overall in London the MCIL would result in an average charge equivalent to 0.87% of the value of a house with a range around this mean from 0.48% to 1.13%. The 3 bands result in most boroughs ending up with a charge that is relatively close to the average of 0.87%. Hence the 3 bands represent a reasonable balance between complexity and fairness.
20. The detail of how the charging schedule should be divided into the 3 bands was raised at the examination hearings. In simple terms and in the context of the acceptability of three bands, there appears to be an anomaly in band 1 where the average house price of the bottom borough – Wandsworth – is much closer to the top borough of band 2 – Hackney - (£12606 difference) than to the second highest – Islington – in band 1 (£49609 difference). It would seem logical, based on the Mayor's approach of defining the bands on the basis of average house prices, to put Wandsworth in band 2 on the grounds that the average price in Wandsworth is very much closer to the average price in Hackney than to the average price in Islington.
21. The GLA provided a table showing that such a change would be relatively inconsequential in relation to their aspirations for the MCIL. Be that as it may, there is no evidence that leaving Wandsworth in the top band would seriously put at risk development in London or indeed in Wandsworth. Consequently, although I believe that the Mayor should re-consider the position of Wandsworth, I am not able to make a recommendation to this effect.
22. Other arithmetic variations such as excluding boroughs that have exceptionally high average prices and using a comparison of the differences between the top and the bottom prices within a band are clearly possible and are favoured by some. However the Mayoral approach has a simple logic to it and changing it for some other variation is not justified. Another argument is that the Mayor should have used the median rather than the mean approach. However the Mayor has demonstrated that there is no great difference whether the median or the mean approach is used. There is no strong justification on viability grounds for recommending a change in approach.

Use of benefit criteria

23. Some argue that the relative anticipated benefits of Crossrail should be taken into account in setting the charge. However the issue of the relative benefit is not a factor that can under the present legislation be taken into account in setting the rate. The rate must be based on viability considerations balanced against the part that the infrastructure proposed will play in the development of the area. The Mayor takes the legitimate view that although the benefit will not be spread evenly throughout London, Crossrail will be of strategic benefit for the whole of London and that all boroughs will benefit to some

extent.

State Aid

24. Article 107 of the Treaty on the Functioning of the European Union does not specifically define State Aid but includes the qualification “in any form whatsoever”. Paragraph 40 of the CIL statutory guidance advises that the responsibility for ensuring that CIL schedules are State Aid compliant rests with the charging authority. To be compliant a CIL charging schedule needs to be clearly based on viability considerations.
25. The SG warns that complex patterns of differential rates run a greater risk in relation to State Aid and that any charging schedule should not impact disproportionately on a particular sector or small group of developers. The Mayor is not seeking to set a complex pattern of different rates. In fact the Mayor’s approach is deliberately broad brush and is based on a link between house prices and viability. Inevitably with this relatively simplistic approach some anomalies will arise but this is inevitable for a complex large city like London. The use of borough boundaries is a sensible way of broadly relating the highest charging band to the parts of London where generally viability is the most robust. Significantly the MCIL does not seek to give any economic advantage to any particular type of development. The CIL legislation and SG has been very specifically designed to mitigate the likelihood of state aid problems arising. The Mayor believes that he has followed the legislation and SG in preparing his CIL.

Viability

26. Many of the representations assert that the imposition of the Mayor’s CIL will jeopardise the viability of development in London.
27. Logically, any additional burden could undermine schemes that are at the margins of viability. However the charging authority is entitled to set a charge that strikes an appropriate balance between the desirability of funding infrastructure to help support the development of the area and the potential effects of the CIL on the economic viability of development across the area – in this case London. Hence the law recognises that the rate set may put some development at risk. The Mayor argues that his rate would not do this to any great extent and hence that his rate does set an appropriate balance.
28. Many representations argue that the “top slicing” by the Mayor will undermine the ability of the boroughs to propose CIL rates that are appropriate and necessary for the provision of local infrastructure. While this concern is understandable, the legislation is quite deliberately framed to allow the Mayor to impose his CIL on development throughout London in the interests of providing strategic infrastructure. The law requires the boroughs to have regard to the Mayoral CIL when setting their charges and hence, whatever the merits of the arrangement, the Mayor is entitled to his top slice.
29. The claim is made in many of the representations that the MCIL will reduce the amount of affordable housing that can be provided. This is obviously a possible consequence but by no means inevitable. As the GLA point out the provision of affordable housing is influenced by a number of factors not least

being the level of grant aid that is available, a factor that is likely to be far more critical than the MCIL. In any event the additional cost arising from CIL charges can be met in several ways either individually or in combination.

30. The S106 requirements, other than any affordable housing requirement, set by local planning authorities could be scaled back and/or different priorities set. Arguably this may be occurring in some instances now because the requirements for a legitimate S106 agreement have been enshrined in law and not simply in guidance.
31. Profit levels sought by developers could be reduced. I fully appreciate the natural resistance that there would be to this but a modest reduction in profit levels may be something that the development industry will have to learn to accept. Alternatively it may be possible for developers to pass on at least some of the additional cost to purchasers/occupiers. Looking at how house prices have changed in London since April 2010 this is not an unrealistic or fanciful prospect. Further while some view CIL as a negative in the sense that it represents an additional cost, there is the positive aspect that infrastructure to support development should make an area a more attractive place to invest in.
32. Finally the price paid for development land may be reduced. As with profit levels there may be cries that this is unrealistic, but a reduction in development land value is an inherent part of the CIL concept. It may be argued that such a reduction may be all very well in the medium to long term but it is impossible in the short term because of the price already paid/agreed for development land. The difficulty with that argument is that if accepted the prospect of raising funds for infrastructure would be forever receding into the future. In any event in some instances it may be possible for contracts and options to be re-negotiated in the light of the changed circumstances arising from the imposition of CIL charges.
33. A number of those making representations argued that the MCIL would seriously undermine the prospects of office development in areas away from the centre of London. However very little evidence was produced to support this contention or to seriously challenge the Mayor's view that his MCIL proposals would not threaten office development to any significant extent in locations where there is a demand for offices. The Mayor's view is supported by the evidence available from a number of boroughs who have, or are, producing borough CIL charging schedules. Some examples of borough CIL charges for offices being proposed or in the case of Redbridge adopted, after taking into account the MCIL are; Brent £40 per m sq, Croydon £120 per m sq and Redbridge £70 per m sq.
34. At the examination the GLA acknowledged that office development is not viable in many locations in outer London but pointed out that these are locations where there is no significant demand for offices. Furthermore because of structural changes in the office market it is very unlikely that this situation will change in the foreseeable future. Hence the Mayor argues that the MCIL will not put the development of offices in London at serious risk. This is a question that goes to the balance to be struck and is a judgement that the Mayor is entitled to make.

35. No clear evidence was produced that demonstrated that retail development over the charging area would be seriously prejudiced by the MCIL.
36. The other significant land uses that are likely to be affected by the MCIL are industrial and warehouse development. The essence of the Mayor's approach in this regard is that while warehouse and industrial development is more vulnerable in viability terms than offices or residential, this is compensated for by the fact that industry and warehouse development is generally likely to locate in the areas subject to the two lowest MCIL rates. The GLA say that industrial land values are for the most part in a band between £0.7 million and £1.2 million per acre. The claim from the GLA is that taking a cleared site of 0.4 hectares and 50% site cover, a MCIL rate of £35 per sq m would equate to just under 8% if the land is worth £1 million per acre or 6.5% if worth £1.2 million per acre. The Mayor argues that at these levels the payment of the MCIL should not generally seriously prejudice the viability of industrial and warehouse development.
37. Based on sample work, consultants acting for the London Borough of Brent concluded that warehousing and industrial development is unlikely to generate a positive land value. Even if it did the consultant's view is that the value is unlikely to be sufficiently above EUV to make the development an attractive proposition. This opinion is supported by agents acting for Segro Estates. On the other hand a similar study for the London Borough of Barking and Dagenham concluded that industrial and warehouse uses could support a borough CIL of £10 per sq m which could increase to £20 if economic conditions improve.
38. The GLA dispute the Brent material primarily on the grounds that the projected revenue is capitalised at too high a rate (9%) and the EUV at too low a rate (8%). Given the inverse relationship between yield and capital value these rates give a relatively low development value and a high EUV. Using yields of 6.25% for the development and 10.5% for the EUV the GLA calculate that a sample development could generate about £60,000 to fund CIL payments after paying a landowner premium of 20%. At the hearing session the agents acting for Brent accepted that there is an arguable case for the GLA yield figures but pointed out that even using these figures the viability is marginal. The SG advises that charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area.
39. In relation to the Barking and Dagenham example the GLA point out that the example assumes a worst case position, making no allowance for existing floor space and taking the MCIL into account.
40. As is widely acknowledged, with residual valuations small changes to inputs such as rents and the capitalization rate have significant impacts on the outcome of the calculation. On the basis of the various and varying figures and assumptions presented to this examination it is not possible to conclude with any degree of certainty how the MCIL will impact on the overall viability of warehousing and industrial development in London generally. It seems likely that the viability of some schemes in some locations may be threatened by the MCIL and in some cases it may be that the boroughs are not able to impose a borough CIL on warehousing and industrial development.

41. Clearly this is not a situation that the boroughs are likely to find palatable. However it has to be remembered that the legislation has been deliberately framed to require the boroughs to take the MCIL into account when setting their charges but not the other way around. As noted in paragraph 28 above, the Mayor is entitled to a "top slice" of CIL revenues to help pay for a London-wide strategic transport proposal like Crossrail. In the light of this and because it is for the Mayor to set an appropriate balance when setting the MCIL, it is concluded that the proposed MCIL is acceptable in relation to industrial and warehouse development.
42. Arguments were advanced that within Opportunity Areas (OA) identified in the London Plan the MCIL should be reduced/set at nil or that development in OA should be treated as an exception. In some cases, for example Waterloo OA and the Vauxhall, Nine Elms and Battersea OA, the point was stressed that these areas are excluded from the Mayor's S106 Crossrail policy and should logically also be excluded from the MCIL. The representations largely argued for special treatment on the basis that these are areas where substantial numbers of jobs and homes will be created and other desirable development accommodated. The claim was that the MCIL would inhibit development or endanger viability and that it would be unfair to impose a MCIL given that developers in these areas would in any event be providing very substantial infrastructure and public realm improvements.
43. As regards the S106 point I accept the GLA argument that S106, with its focus on site by site negotiations and site specific considerations, is very different to a CIL charge. The justification for excluding areas from the Mayors Crossrail S106 arrangements does not apply when looking at a strategic London-wide infrastructure project. I also accept the GLA point that to give the OA the advantage of a low or nil MCIL rate on the grounds of promoting desirable development would run the risk of contravening the State Aid rules.
44. Notwithstanding the obvious and often substantial costs of providing the accompanying and necessary area specific infrastructure, little evidence was produced that demonstrated that the imposition of the MCIL would seriously jeopardise the viability of a substantial amount of development in OA. The arguments for different rates were very largely based on unsubstantiated assertions. Nobody was able to successfully counter with evidence the Mayor's contention that his CIL rate is set at such a modest level that it would not in general terms have a seriously detrimental impact on the viability of development in London.
45. In fact viability evidence produced, for the Earl's Court and West Kensington OA, shows that the MCIL would not be a decisive factor. Clearly the MCIL would impact on viability as it would represent an additional cost, but in this OA the critical cost considerations are the replacement of the existing Transport for London depot and land and the abnormal costs of decking over the railways. The viability under the three scenarios tested does not change from positive to negative depending on whether or not the MCIL is applied.
46. Further recent evidence is provided by a viability study done for Southwark Council for the Elephant and Castle OA. This research concludes that based on current values and costs residential development (which forms the main proposed use in the OA) could absorb a borough tariff of up to £175 per sq m

across the majority of the sites tested. This assessment took into account a MCIL of £35 in Southwark.

47. Similarly in Croydon viability work, again taking into account the MCIL and assuming a worse case position with no existing floor space to offset against the CIL charge, concluded that the borough should be able to charge a CIL of between £10 and £180 (depending on location and type of scheme) without adversely affecting the land supply for development. At the examination the Croydon Borough representative confirmed that the Borough does not object to the proposed £20 MCIL.
48. My conclusion in relation to overall viability is that evidence to support the assertion, vehemently made by a number of those making representations, that the MCIL would seriously threaten the viability of development in London was not forthcoming. None of the representations were able to convincingly counter the argument advanced by the Mayor that the general impact of his charge would be very modest – in the order of 1% of the value of the completed residential units. 1% is within the margin of error for most valuations and cannot be said to generally represent an intolerable burden. On the contrary the evidence presented to the examination strongly points to the MCIL usually being a relatively unimportant factor in relation to viability. Obviously some marginal schemes might be at risk but that is not the test for the acceptability of the level of charge.

Exceptions

49. The legislation is very clear about discretionary relief for exceptional circumstances. Under the terms of section 55 of the Planning Act 2008 it is clear that the intention is that the exceptional circumstances relief should only apply in a very limited number of closely prescribed instances. Furthermore the legislation makes it clear that the decision about whether or not to grant relief lies with the charging authority. I am therefore not in a position to make a recommendation that will require the Mayor to change his present stance that relief for exceptional circumstances will not be made available.
50. Some of those making representations argue that the Mayor should be more flexible and make the exceptional circumstances relief available in cases where the viability of a desirable scheme, for example a regeneration project, is threatened. These representations seemingly fail to appreciate the prescribed context for the consideration of relief. Significantly there is also the point that one of the principal aims of the CIL legislation is to provide the development industry with certainty and to remove some of the unpredictability of site by site negotiations. Allowing the substantial flexibility sought by some would undermine this aim.
51. On the other hand it may be that it is unwise for the Mayor to be so dogmatic about exceptional circumstances relief. A preferable approach may be to re-emphasise how prescribed the position is and to make it clear that exceptional circumstances relief is not a routine matter. I appreciate that the Mayor has said that he will keep this matter under review. However this has the disadvantage of meaning that the Mayor will be reacting rather than being proactive if a situation arises where there are genuinely exceptional circumstances that might justify giving relief.

52. Some representations which refer to exceptional circumstances relief appear to in fact be seeking a nil charging rate. The Mayor is proposing a nil rate for most developments relating to health and education. Some are seeking a nil rate for other uses such as community and recreational facilities. The logic of the Mayor's position is that there is a legal obligation to provide health and education facilities in response to population changes and that these facilities are usually either publically funded or provided by charities. Given the difficulty of dealing with the viability of a wide range of non-commercial uses I consider that the Mayor's approach is acceptable in order to avoid undue complexity and inconsistency.
53. The question of the fairness of the MCIL in relation to airports was raised by both Heathrow Airport Ltd and London Biggin Hill Airport. For operational purposes these types of uses have to provide very large buildings, such as hangars, and the British Airports Authority is already committed to a direct financial contribution of £180 million towards Crossrail. Heathrow Airports Limited suggested that a solution to what they see as unfair triple charging is for the Mayor to pass any MCIL payments that they incur back to the airport to be spent on infrastructure. Heathrow Airports Limited say that the contribution of £180 million that has been agreed by British Airports Authority could be at risk if special concessions are not made for Heathrow. However the Department for Transport has underwritten this contribution so there would appear to be no danger of this money not being made available.
54. Whilst there may be some merit in the point that it seems unfair to have to pay CIL on large buildings like aircraft hangars there is no viability evidence before me that would justify me recommending a lower or nil rate for airports. In any event such an approach would run the risk of falling foul of state aid rules. The notion of passing some of the MCIL back to Heathrow Airport Limited is not a matter for this examination – it is a matter that is entirely at the discretion of the Mayor.

Conclusion

55. The Mayor has justified the need to raise a MCIL to help pay for a strategic transport facility for London. In order to assess the implications of the proposed charge for the viability of development in London as a whole the Mayor has adopted an approach which links viability with 2010 house prices. The reasonable assumption has been made that higher value areas are likely to be the most robust in terms of development viability. A three band charging schedule is justified on the basis of borough house prices. Given the extreme complexity of London and the SG about the nature of the evidence required to justify charging schedules, the Mayor has sensibly adopted a very basic but fundamentally sound approach. The available evidence is that the charge proposed by the Mayor would represent a very small part of the overall cost of development and hence would not seriously threaten the economic viability of development across London.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended 2011)	The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation. It is consistent with the London Plan July 2011 and is supported by an adequate financial appraisal

56. I conclude that the Mayoral Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended 2011). I therefore recommend that the charging schedule be approved.

Keith Holland

Examiner