

Havering Community Infrastructure Levy Draft Charging Schedule Examination

Examiners Question Draft Charging Schedule and Charging Zones Map

EQ1

1. I set out here an extract from the Community Infrastructure Levy Regulations 2010 (with my emphasis).¹

Format and content of charging schedules

12.—(1) *Subject to the provisions of this Part a charging authority may determine the format and content of a charging schedule.*

(2) *A draft charging schedule submitted for examination in accordance with section 212 of PA 2008 **must contain**—*

(a) *the name of the charging authority;*

(b) *the rates (set at pounds per square metre) at which CIL is to be chargeable in the authority's area;*

(c) *where a charging authority sets differential rates in accordance with regulation 13(1)(a), **a map** which—*

(i) identifies the location and boundaries of the zones,

(ii) is reproduced from, or based on, an Ordnance Survey map,

(iii) shows National Grid lines and reference numbers, and

(iv) includes an explanation of any symbol or notation which it uses; and

(d) *an explanation of how the chargeable amount will be calculated.*

(3) *A charging schedule approved by a charging authority must, in addition to the contents mentioned in paragraph (2), contain—*

(a) *the date on which the charging schedule was approved;*

(b) *the date on which the charging schedule takes effect; and*

(c) a statement that it has been issued, approved and published in accordance with these Regulations and Part 11 of PA 2008.

(4) *In paragraph (2)(c)(ii) "Ordnance Survey map" means a map produced by Ordnance Survey or a map on a similar base at a registered scale.*

2. It appears to me that the submitted Draft Charging Schedule (DCS) does not fully comply with these Regulations, with reference to the elements that I have highlighted.

i) The most obvious point is that the 'All other retail' charging zones are not depicted on a map which must be contained in the charging schedule: the DCS requires that reference is made to the Metropolitan, District and Local Centres as defined in the Local Plan.

ii) A number of points can be made here: a map is not contained in the charging schedule with an identification of retail

¹ It is my understanding that subsequent amendments to the CIL Regulations have not altered these requirements.

- charging zone boundaries or any relevant symbol or notations.
- iii) In my opinion, there needs to be a Map or Maps which show each of the areas within which the 'All other retail' charge would be applied. This would not preclude a number or all of the individual areas being shown on a single map.
 - iv) Further, for consideration, I suggest how the retail element of the charging schedule might be set out:

| | | | |
|-----------------------------------|------|-----|---|
| All other Retail (A1 – A5 Use) | 'C'? | £50 | In Metropolitan, District and Local Centres as defined in the Local Plan, as shown on the Retail Charging Zone Map. |
|-----------------------------------|------|-----|---|

This will require a different layout to the present DCS because of the mixture of Zones and 'all Borough' scale of the other retail charge.

- v) Of lesser importance, it seems to me, but still a requirement of the Regulations, Regulations 12(2)(c)(iii) is not met in respect of the residential Zones.
- vi) As for Regulation 12(2)(d) – an explanation of how the chargeable amount will be calculated – the present reference to how this calculation is made does not provide this explanation.
- vii) In addition the first line on page 4 of the DCS does not appear to meet the requirement of Regulation (3)(c).

6. I have, in at least one previous examination, had to raise the same issues. In that case it was deemed necessary by the Charging Authority to carry out a statement of modifications exercise with an appropriate consultation period. Please see annex and respond to the points that I have raised.

7. As a more informal passing remark I see that the contents of the DCS include a considerable amount of material that is not required by the regulations. Since the Regulations allow: "12.—(1) Subject to the provisions of this Part a charging authority may determine the format and content of a charging schedule", this is really a matter for the Charging Authority, but it seems to me that concision is a virtue.

8. None of the above should be taken, at this stage, as an endorsement of the proposed levels of charge.

9. Please respond to the points that I have raised.

10. Your reply should be with Charlotte Glancy, the Programme Officer, by close of business on Friday 4 January 2019, but preferably before. I am especially concerned to know as soon as possible whether the Council considers that the main issues I raise will require a Statement of Modifications process to be put in train.

Terrence Kemmann-Lane
Examiner

Annex

I respect of my point 6 in EQ1 above, I hope that it might be helpful if I set out what seem to me to be the relevant CIL Regulations – Regulations 19 and 21 - with my highlights in bold. I must leave it for the Charging Authority to interpret this Regulation and determine whether, in the circumstances it is necessary to go through the Statement of Modifications procedure which appears to require a four week consultation period.

Submission of documents and information to the examiner

19.—(1) *The charging authority must submit the following to the examiner (in addition to the declaration required under section 212(4) of PA 2008)—*

(a) the draft charging schedule;

(b) a statement setting out—

(i) if representations were made in accordance with regulation 17, the number of representations made and a summary of the main issues raised by the representations, or

(ii) that no such representations were made;

(c) copies of any representations made in accordance with regulation 17;

(d) where the charging authority modified the draft charging schedule after it was published in accordance with regulation 16, a statement of modifications; and

(e) copies of the relevant evidence.

(2) Of the documents and statements mentioned in paragraph (1)—

(a) a copy of each must be sent in paper form; and

(b) a copy of those mentioned in paragraph (1)(a), (b) and (d) and, to the extent that it is practicable to do so, of those mentioned in paragraph (1)(c) and (e), must be sent electronically.

(3) As soon as practicable after a charging authority submits a draft charging schedule to the examiner it must—

(a) make available at the places where the documents mentioned in regulation 16(1)(a) were made available, a copy of the draft charging schedule and of each of the documents mentioned in paragraph (1);

(b) publish on its website—

(i) the draft charging schedule and the documents mentioned in paragraph (1)(a), (b) and (d),

(ii) any of the documents mentioned in paragraph (1)(c) and (e) which it is practicable to so publish, and

(iii) a statement of the fact that a copy of the draft charging schedule and of each of the documents mentioned in paragraph (1) are available for inspection and of the places at which they can be inspected; and

(c) give notice to those persons who requested to be notified of the submission of the draft charging schedule to the examiner that the draft has been so submitted.

(4) Where the charging authority modified the draft charging schedule after it was published in accordance with regulation 16, the charging authority must send a copy of the statement of modifications to each of the persons invited to make representations under regulation 15.

CIL examination: right to be heard

21.—(1) *A person who makes representations about a draft charging schedule in accordance with regulation 17 must (if the person so requests) be heard by the examiner.*

(2) A request under paragraph (1) must be submitted to the charging authority in writing before the end of the period the charging authority specifies for the purposes of regulation 17(2).

(3) Where a charging authority modifies a draft charging schedule after it is published in accordance with regulation 16, any person may request to be heard by the examiner in relation to those modifications.

(4) The right to be heard under paragraph (3) applies only in relation to the modifications made to the draft charging schedule as set out in the statement of modifications.

(5) A request under paragraph (3) must—

(a) be submitted to the charging authority in writing before the end of the period of four weeks beginning with the day on which the draft charging schedule is submitted to the examiner in accordance with regulation 19(1); and

(b) include details of the modifications (by reference to the statement of modifications) on which the person wishes to be heard.

(6) The charging authority must submit a copy of each request it receives under paragraph (3) to the examiner as soon as practicable after the end of the period mentioned in paragraph (5)(a).

(7) A person who has made a request to be heard under paragraph (3) may withdraw that request at any time before the opening of the examination by giving notice in writing to the charging authority.

(8) Where a person has submitted a request to be heard by the examiner, the charging authority must—

(a) publish the matters mentioned in paragraph (9) on its website;

(b) notify the following of those matters—

(i) any person who has made a representation in accordance with regulation 17, and not withdrawn that representation, of those matters,
(ii) any person who has made a request to be heard under paragraph (3);
and

(c) give notice by local advertisement of those matters.

(9) The matters referred to in paragraph (8) are—

(a) the time and place at which the examination is to be held; and

(b) the name of the examiner.

(10) Subject to paragraph (11), the charging authority must comply with the requirements set out in paragraph (8) at least four weeks before the opening of the examination.

(11) Where a person has made a request to be heard by the examiner under paragraph (3), the charging authority must comply with the requirements in paragraph (8) at least two weeks before the opening of the examination.

(12) Without prejudice to section 212(9) of PA 2008—

(a) it is for the examiner to decide how the hearing is to be conducted;

(b) the examiner may, in particular, decide the amount of time to be allowed at an examination for the hearing of representations;

(c) the examiner may refuse to allow representations to be made at the hearing if the examiner considers that the representations are irrelevant, frivolous, vexatious or repetitious.