

London Legacy Development Corporation Community Infrastructure Levy Schedule Examination

Guidance Note

1 Examiner

The Examiner is Mike Fox BA (Hons), Dip TP, MRTPI.

2 Programme Officer

The Programme Officer [PO] is Chris Banks. For the purposes of the Examination he acts as an **impartial** officer of the Examination, under the Examiner's direction.

Details of **how to contact him** up to and during the Examination Hearing sessions are set out at the end of these notes. His principal functions are to:

- **liaise** with all parties to ensure the smooth running of the Examination.
- ensure that all the **documents** received before the hearings are recorded and distributed.
- maintain the Examination **Document list**.
- **assist the Examiner** with all procedural and administrative matters.

He will **advise** on any programming queries and all practical and procedural points should be addressed to him. He will pass them on to the Examiner for a reply, if necessary, but carries his authority to act in accordance with the regulations

3 Hearing sessions

The Hearing sessions will commence at **09:30 on Thursday 26 September 2019** at the London Legacy Development Corporation, Level 10, Stratford Place, Montfichet Road, London. E20 1EJ and have been initially timetabled for one day, but with the possibility of a second day on Friday 27 September, should this be necessary.

4 Scope of the Examination and Examiner's Role

This is to consider whether the Community Infrastructure Levy [CIL] Charging Schedule meets the requirements of the Planning Act 2008 and the CIL Regulations 2010 (as amended), in respect of **legal compliance and viability**.

The Examination will focus on viability. The LLDC should rely on evidence collected whilst preparing the Schedule to demonstrate that it is viable. **Those seeking changes have to demonstrate why that is not the case.**

The process of examining a CIL Schedule is similar to a development plan. The Examiner considers the viability of the Schedule, having regard to the evidence available and representations submitted, rather than just objections made. The process of Examination Hearing sessions is akin to a **structured debate**, with "round table"/ "informal hearing" sessions addressing particular topics, rather than the traditional form of public inquiry.

Following the closure of the Hearing sessions, the Examiner will prepare a **Report to the LLDC** with conclusions and decisions as to the action it needs to take with regard to the viability of the schedule. This report is not binding on the LLDC, but it should amend the document accordingly, moving swiftly to formal adoption.

In terms of published documents, the CIL 2010 Regulations (as amended) and the CIL Practice Guidance should help interested parties with further understanding but there is also other advice available on the DCLG, PINS, and LLDC/Examination websites. Representors should seek advice from the LLDC or the PO if still not clear.

The LLDC is not expected to put forward any more substantive changes to the schedule. If, exceptionally, fundamental changes are proposed, the LLDC must fully explain and justify the reasons for the changes, with supporting evidence. It should also indicate the implications in terms of the viability of the schedule and ensure that they have been subject to the same process of financial appraisal, publicity and opportunity to make representations as the submitted version.

5 Procedural Questions for the LLDC

At the start of the Examination Hearings, the LLDC will be asked formally:

- Can the LLDC confirm that the Schedule has been prepared in accordance with:-
 - the statutory procedures?
 - the LLDC's Local Plan and Infrastructure Delivery Plan?
 - the consultation requirements set out in the Community Infrastructure Levy (Amendment) Regulations April 2010 (as amended)?
- Is it supported by a financial/viability appraisal(s)?
- Are there any fundamental procedural shortcomings?

6 Procedure prior to the opening of the Hearing sessions

The Examination Hearings will be progressed in an **effective and efficient** manner, with a tight rein on the discussions and time taken. As part of that process the amount of written material should be limited to that necessary for the Examiner to come to informed conclusions on the issues. A **short, focused**, series of Hearing sessions should lead, in turn, to a short, focused report.

Attendance at a Hearing session will only be useful and helpful to the Examiner if participants can engage in a debate. Anyone participating in a Hearing session should prepare a **statement of their position, focused upon the issues** identified in the programme for that session but this is not compulsory. The statement should address the questions set out in the Examiner's Key Issues Discussion Paper. The statement should be submitted electronically to the PO by **Friday 9 August (deadline – 17:00 hrs)**.

Participants must confirm attendance by **Friday 26 July** so arrangements can be finalised or reliance on written submissions will be assumed. Both methods will carry the same weight and the Examiner will have equal regard to views put orally or in writing. Those who wish to rely on their previous submissions need take **no further action**. However, if a representor wants to make a **further written submission** it must be **focused** on the issues identified for the relevant hearing sessions and submitted within the deadline set or it risks being returned.

The LLDC is also invited to respond to the Discussion Note with its own written statement on each issue, setting out why it considers the Schedule to be viable and/or appropriate in that respect, by no later than one week in advance of the Hearing session i.e. **Friday 9 August (deadline – 17:00hrs electronically and for paper copies)**.

There is a list of **Examination Submission Documents** on the CIL Examination website, in the Examination Library or from the PO. These include the draft charging schedule, background papers and other documents that parties may wish to refer to. These documents will be posted on the LLDC's CIL website in due course.

Accordingly, participants should not attach extracts of these documents to statements as they are already Examination Documents and the Examiner will be familiar with them. **All such references should please include the Examination Document number.**

The Examiner also emphasises the need for **succinct submissions**, avoiding unnecessary detail and repetition. There is no need for lengthy quotes from the Schedule or other sources of policy guidance. Nonetheless, it is vital that the fundamental elements of cases are set out clearly, but it is the quality of the reasoning that carries weight, not the scale of the documents or the weight of the appendices!

Essentially, the Examiner needs to know the following from those submitting further statements:

- What particular part of the CIL schedule is unviable/unrealistic/unreasonable?
- Which of the above tests does it fail?
- Why does it fail?
- How could the schedule be made viable/realistic/reasonable?
- What is the precise change/wording sought?

All further statements should be no longer than **3,000 words per issue**. Any submissions that are of excessive length and/or containing irrelevant or repetitious material may be returned.

No photographs should be submitted. Any plans or diagrams should be folded to A4 size and listed as Appendices.

No additional statements or documents [including letters and press cuttings] will be accepted at the Examination Hearings.

All statements and appendices should be **clearly marked** at the top right-hand corner with the appropriate issue number. Those from the LLDC should be prefixed LLDC; representors should add their representor number after the issue number and also show their name at the top of the first page. All statements should be clearly paginated, with numbered paragraphs.

Any supporting material – **Appendices** to Statements – should be limited to that which is essential and not contain extracts from any publication that is already before the Examination, such as the Examination Documents, the National Planning Policy Framework (*the Framework*) or the Planning Practice Guidance (PPG).

Any Appendices should have a contents page and be paginated throughout, with numbered paragraphs and tagged at the side. They should also indicate which parts are particularly pertinent and are relied on to support the case made.

Any technical evidence should be limited to Appendices and kept brief, with a non-technical summary attached. Those of excessive length and/or which cannot be circulated electronically risk being returned.

7 The Examination Arrangements and Procedure

The programme indicates that one day has provisionally been indicated for the CIL Hearing sessions, with the outside possibility of a second day.

A short break will be taken mid-morning and mid-afternoon, with around an hour for lunch from about 13:00 and a finish no later than about 17:30. Mobile phones and similar devices need to be switched off/placed on silent when the Examination is in session [they may be used in breaks].

A separate session will be held on **each issue** identified in the programme and all sessions are open to the public and the press to observe.

The sessions will take the form of **Round Table/Informal Hearing Sessions**, where several parties are present. This approach will provide an informal setting for dealing with issues, by way of a discussion led by the Examiner. There will normally be **no formal presentation** of evidence or cross-examination.

Those attending may bring professional advocates, but there is usually only space at the table for one representative of each group, organisation or company [apart from the LLDC], though there is no objection to the representative changing (on the principle of hot desking) if notified to the Examiner and others present at the time.

Advocates/legal representatives take part as a normal participants/members of a team, rather than in a traditional advocate's role, as no cross-examination or opening/closing statements will normally be permitted.

The discussion will focus **on the issues in the programme** and any additional points arising from the written submissions.

Those present will be asked to introduce themselves. The Examiner may then make a **brief statement** as to his understanding of the issues under discussion and then **invite participants** to make their contribution in response to the points raised starting usually, but not exclusively, with the LLDC.

The Hearing sessions will then progress with the Examiner drawing those present into the discussion in such a way as to enable him to gain the information necessary to come to a decision on the relevant matters. There should be opportunities within the discussion to ask questions, when invited to do so.

8 Site Visits

The Examiner will visit relevant parts of the area, unaccompanied, if necessary.

9 Close of the Examination

Once all the information necessary to come to reasoned conclusions and decisions on the issues has been gathered by the Examiner, he will write the Report. The Examination itself **remains open** until this is submitted to the LLDC. However, once the Hearing sessions part of the Examination is completed, the Examiner can receive **no further information** from any party, unless it is a matter on which he specifically requests it. Any unsolicited items sent in will be returned.

10 Submission of the Report to the LLDC

The report should be submitted to the LLDC by the end of November 2019.

11 Examination Programme

The purpose of the issues listed for each session is **to focus attention** where the Examiner is seeking a fuller understanding of the comments and respective positions. If you think that a programme or issue **change** should be made, please inform the PO without delay, but with reasons, and the Examiner will consider it.

12 Closing Remarks

The Examiner urges everyone to:

- Make the best use of the remaining time before the start of the hearing sessions, as statements are needed by **Friday 9 August 2019**.
- Ensure that the timescales and deadlines are adhered to; otherwise examination attendance may have to be rearranged or curtailed at best.
- Be aware of the Examination Documents, the supporting evidence and any other relevant material produced by the LLDC.
- Keep looking at the website and/or in contact with the PO.

The Examiner looks forward to meeting everyone in September.

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