

# BRIGHTON AND HOVE COUNCIL'S COMMUNITY INFRASTRUCTURE LEVY SCHEDULE EXAMINATION

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## **BRIEFING NOTES**

### **1 EXAMINER**

The Examiner is Jameson Bridgwater PGDipTP MRTPI.

### **2 PROGRAMME OFFICER**

The Programme Officer [PO] is Pauline Butcher. For the purposes of the examination she acts as an **impartial** officer of the Examination, under the Examiner's direction, and not as an employee of the Council.

Details of **how to contact her** up to and during the examination hearings are set out at the end of these notes. Her 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.

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

### **3 HEARINGS**

The hearings will commence at 10:00 on **Tuesday 2 April 2019** in Committee Room 3 at Brighton Town Hall, Bartholomew Rd, Brighton BN1 1JW.

### **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 relevant CIL Regulations, as amended in 2015, in respect of **legal compliance and viability**.

The examination will focus on viability. The Council 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 development plans. 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** Hearings is akin to a structured debate, with "Round Table"/"Informal Hearing" sessions addressing particular topics, rather than the traditional form of public inquiry.

After the hearing sessions, the Examiner will prepare a **Report to the Council** with conclusions and decisions as to the action it needs to take with regard to the viability of the Schedule. This report is not fully binding on the Council but it should amend the document accordingly, moving swiftly to formal adoption.

In terms of published documents DCLG's CIL 2010 Regulations (as amended 2015), and the online Planning Guidance (June 2014) should help interested parties with further understanding but there is also other advice available on the DCLG, PINS, and Council/Examination websites. Representors should seek advice from the Council or the PO if still not clear.

The Council is not expected to put forward any more substantive changes to the schedule. If, exceptionally, fundamental changes are proposed, the Council must fully explain and justify the reasons for the changes, with supporting evidence. They 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 COUNCIL**

At the start of the Examination the Council will be asked formally:

Can the Council confirm that the Schedule has been prepared in accordance with: -

- The statutory procedures?
- The Council's Core Strategy and Infrastructure Delivery Plan?
- The consultation requirements set out in the Regulations?
- Is it supported by a viability appraisal(s)?
- Are there any fundamental procedural shortcomings?

## **6 PROCEDURE PRIOR TO THE OPENING OF THE HEARINGS**

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 submitted in response to the Council's consultations for the Examiner to come to informed conclusions on the issues. A **short, focussed**, series of hearings should lead, in turn, to a short, focussed, report.

Those who have made representations on the Schedule within the relevant time period ["representors"] should have already decided whether their views have been adequately expressed in **written form** or whether they wish to also present them **orally** at a hearing session. Both methods will carry the same weight and the Examiner will have equal regard to views put orally or in writing.

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 must confirm attendance at the hearings by **Friday 22 March 2019** so arrangements can be finalised. Please indicate specifically which hearing matter/which part of your representations you wish to discuss.

The Examiner considers that there is no requirement for **further written submission** and that the information already submitted as part of the Council's

consultation process along with the oral representations will enable all areas to be fully examined. However, should parties wish to submit a further written representation this should be concise (no more than 1500 words including appendices) and be submitted to the PO by **Friday 22 March 2019**.

**Essentially, the Examiner needs to know the following** from those making oral representations:

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

## **7 THE EXAMINATION ARRANGEMENTS AND PROCEDURE**

The draft programme indicates that the hearing will be for one day only.

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 17:00. Drinking water will be provided. Mobile phones and similar devices need to be switched off when the Examination is in session [they may be used during 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 Council who have two seats], though there is no objection to the representative changing if notified to the Examiner and others present at the time.

Advocates/legal representatives take part as a normal participant/member 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 in response to the Council's consultation on the modifications.

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 Council.

The hearing 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 of the other parties, with the Examiner's approval, and all involved may join in the discussion, 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 Council. 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. Any unsolicited items sent in will be returned.

## **10 SUBMISSION OF THE REPORT TO THE COUNCIL**

The report should be submitted to the Council during Summer 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 to prepare for fully participating in the 'round table discussions'.
- 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 Council.
- Keep looking at the website and/or in contact with the PO.

The Examiner looks forward to meeting everyone in April.

Pauline Butcher - Programme Officer

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