

our ref: [REDACTED]/Q30311  
email: [REDACTED]  
date: 17 April 2014



Pauline Butcher  
Programme Officer  
Tower Hamlets CIL Examination  
c/o Infrastructure Planning  
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5 Clove Crescent  
London, E14 2BG

**Submitted by email**

Dear Ms Butcher,

**LB Tower Hamlets, Community Infrastructure Levy Schedule Examination**

I am writing on behalf of the Berkeley Group in response to the Examiner's questions in relation to the London Borough of Tower Hamlets CIL Draft Charging Schedule. This response should be read alongside the responses submitted to the formal consultation on the Preliminary Draft Charging Schedule (PDCS) and the Draft Charging Schedule (DCS) and the Revised Draft Charging Schedule (RDCS), which remain relevant and address a number of the Examiner's questions directly. The most recent representations submitted to the Council (to the RDCS) are enclosed with this letter.

This response relates to the questions listed under Hearings Sessions 1 and 2, which are dealt with, in turn, below.

**Hearing Session 1: General Matters**

The key issues we wish to comment on in relation to Hearing Session 1 are summarised below:

- The buffer is too low;
- Concern relating to the reference to 'in-kind' contributions in respect of S106 assumptions;
- Impact of the instalments policy.

Berkeley Group recognises that Tower Hamlets has significant infrastructure requirements arising from both the rapid recent growth in the Borough and planned future growth. There is no doubt that investment in infrastructure is required.

The Berkeley Group is already contributing to that infrastructure requirement through substantial financial contributions from the Goodman's Fields development which is underway, and shortly from London Dock, which also provides the site for a new secondary school. Both include provision for on-site health facilities. As a result, Berkeley is aware of the tension between the provision of on-site infrastructure on strategic sites and the delivery of affordable housing, as well as the practical issues of securing delivery and the effect that the CIL regulations will have on this once LBTH has adopted its Charging Schedule.

The reliance of LBTH for its housing supply on a large number of strategic sites which will have significant development costs and, in many cases, require the delivery of infrastructure on site means that caution is required when dealing with 'buffers' and assumptions about appropriate returns from development.

The LBTH CIL Viability Study notes that CIL Guidance suggests that a buffer should be considered so that the CIL rate is not set at the margins of viability (Section 2:2:2:4 in the February 2014 Guidance). That section of the guidance also notes that the impact on viability is likely to be most significant on brownfield sites, and that authorities should also test impacts on strategic sites. The LBTH Viability Study notes four key risk factors in setting CIL one of which is exceptional costs which again is likely to be most significant on strategic sites.

In relation to the Examiner's **Question 4**, on assumptions about ongoing Section 106 obligations we noted in our most recent response to the RDCS that we felt that the Revised SPD did provide a reasonable level of certainty that obligations would be scaled back for most sites. However we retained a concern that the Council's intention within that SPD to allow for 'in kind' contributions of land or infrastructure on strategic sites to contribute to CIL would not be practically feasible.

Having reviewed the 2014 amendments to the CIL Regulations (CIL Regulations 2010 as amended - Regulations 73, 73A, 73B and 74)) with our Client's legal advisers we are of the view that it would indeed prove very difficult to provide infrastructure required by the Council's Managing Development DPD (2013) as an 'in kind' CIL contribution, and this should not therefore be regarded as part of a 'safety valve' should CIL contributions impact on development. It would be helpful if the Council could clarify their view of this matter.

Therefore, in response to the Examiner's **Question 3**, we are concerned that proposing a buffer at the bottom end of the range identified by the Council's advisers for residential development (paragraph 8.4 of the August 2013 Viability Study) does not provide sufficient flexibility for larger sites and we would suggest that the Council should consider a higher buffer. However, as we set out below the site specific assessments do not appear to provide any buffer for those sites.

In relation to **Question 6** we have previously raised a query about the impact of the difference between the assumptions in the Council's viability assessment and the actual proposed adoption of the Mayor of London's instalments policy and its potential impact. We note that the CIL amendment regulations (2014) have afforded greater flexibility for Applicants and Local Charging Authorities to take into account phasing on both outline and full (and therefore hybrid) planning permissions which may mitigate this somewhat.

However it would be useful for the Council to clarify whether using their actual proposed instalment policy as opposed to that used in its viability study would impact on viability. This should be a relatively simple sensitivity test for the Council or its advisers to undertake.

### **Hearing Session 2 – Strategic Sites, Residential Development Rates and Office Development Rates**

The general points above relate directly to the issues covered in session 2, namely strategic sites and residential development. The key concerns we wish to raise in relation to Session 2 include:

- The assumed developer's return is too low;

- The strategic site assessments do not reflect the range of strategic sites identified within the Local Plan.

In relation to Internal Rates of Return (IRR), the site-specific assessments assume relatively low rates of return (c.13 to 15%). Whilst it is true that some London developers have agreed to proceed with developments at similar IRRs the CIL viability study should not assume that such rates of return are necessarily able to secure development funding or that all developers will be able to take the implied risk. In effect this approach means that there is no buffer included for strategic sites, which we have identified above are those which potentially face the most significant risks from CIL.

We also have some concerns as to whether the viability assessments do cover the full range of strategic developments coming forward in LBTH and, in particular, in the Isle of Dogs Opportunity Area. This is a critical location for development not just for Tower Hamlets but for London as a whole. The Viability Study includes an assessment of the impacts of CIL on two sites on the Isle of Dogs – Wood Wharf and Westferry. The Opportunity Area as a whole however has identified capacity in the London Plan for a minimum of 10,000 homes and 100,000 jobs. The population modelling for LBTH's Infrastructure Delivery Plan (2009) assumed even higher residential figures with 11 to 13,000 additional homes by 2025.

The Managing Development DPD identifies a number of other sites in the Isle of Dogs in addition to these Wood Wharf and Westferry including:

- Site 15: Billingsgate Fish Market
- Site 17: Millennium Quarter
- Site 19: Crossharbour Town Centre
- Site 20: Marsh Wall East

Sites 17 and 19 include a number of sub-sites. The Examiner will be aware that there are currently proposals for a large number of tall residential buildings on the Isle of Dogs in these locations, but the study does not appear to directly address this typology.

### **Summary**

In summary the Berkeley Group welcomes the opportunity to respond further to the Council's RDCS, and the engagement that the Council has undertaken in response to its and other representors' concerns. Berkeley recognises the balance that the Council has to strike between ensuring that development comes forward and that such development is sustainable and supported by necessary infrastructure.

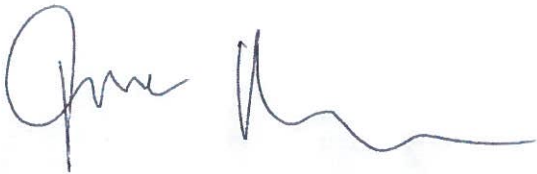
Berkeley has worked constructively with the Council at Goodman's Fields and London Dock to facilitate the on-site delivery of such infrastructure and through making significant off site contributions to infrastructure needs, whilst providing affordable housing that the Borough requires. However, the Group remains concerned that the transition to CIL, particularly where it is set at the margins of viability for strategic sites, will make such delivery more difficult in the future by reducing flexibility and ultimately reducing the ability of developments to meet the ambitious affordable targets set by the Borough.

As demonstrated in our previous representations the Council has refused or deferred a number of planning applications on the basis of insufficient affordable housing provision and we are concerned that the introduction of CIL at the proposed rates on large sites could increase the likelihood of this happening by reducing the flexibility to take into account on site provision and requirements for other off site obligations. Given Tower Hamlets critical importance to achieving London Plan housing targets this is a risk not just for the Borough but for London.

We hope these representations are clear and self-explanatory. The Berkeley Group does not wish to attend the LBTH CIL Examination.

If you or the Examiner have any queries on any of these points please do not hesitate to contact me.

Yours sincerely,



  
**Director**

**Enc:** Representations to the RDSCS (December 2013)

our ref: [REDACTED]/Q30311  
your ref:  
email: [REDACTED]  
date: 02 December 2013



Anne-Marie Berni  
CIL RDCS Consultation,  
Infrastructure Planning Team,  
London Borough of Tower Hamlets,  
2nd Floor Mulberry Place,  
5 Clove Crescent,  
E14 2BG

Dear Anne-Marie,

#### **CIL Revised Draft Charging Schedule Consultation**

I am writing on behalf of the Berkeley Group in response to your Revised Draft Charging Schedule (RDCS) and associated documents, including the revised draft SPD on Planning Obligations.

You will be aware that we have previously submitted two sets of detailed representations which set out my client's concerns that, on the basis of their knowledge of viability issues on a number of the Borough's strategic sites, the proposed CIL rates would threaten the delivery of the sites and scale of development set out in the Local Plan (CIL Guidance, 2013, para. 8). In particular, we expressed concern that, in a Borough with clear housing need and a very firm line on affordable housing delivery, there is a significant risk that affordable housing viability would be reduced as a result of the implementation of the proposed CIL rates.

We were also concerned that the Council did not appear to have benchmarked the proposed CIL rates against actual developments in the Borough. In addition, the Section 106 contributions achieved in examples we have reviewed, suggests that CIL will be at a premium over current planning obligations and, therefore, impact directly on the viability of developments.

Alongside our CIL representations, we submitted representations on your Draft Planning Obligations SPD. We were concerned that the initial draft did not contain sufficient certainty that planning obligations would be significantly scaled back to levels suggested in the CIL viability assessment. We are, therefore, pleased that the wording in the revised SPD and its interpretation of the Legislation and Regulations has been significantly tightened. We acknowledge the Council's intention with regard to strategic sites, that the 'In-Kind' provision of infrastructure may be considered by the Council as an 'In-Kind Contribution'. While we welcome the intention and agree with the Council that it would provide additional flexibility on large sites, we are concerned that the Regulations themselves may not provide sufficient flexibility to achieve the Council's intentions. The Council may wish to consider reviewing this approach when the revised Regulations are published and consider whether that impacts on its viability findings in relation to large sites.

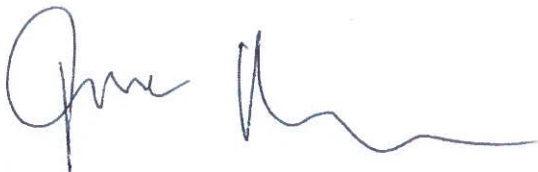
The Council has made some minor amendments to its Charging Schedule and undertaken additional viability research to support this review. This includes an updated indicative site-specific appraisal of Berkeley's London Dock site. The Council is aware of our concerns that, even when carried out well and with care, such appraisals which, by definition, do not address real schemes are unlikely to provide re-assurance that the viability of such developments will not be negatively impacted. This is particularly the case given that CIL is non-negotiable and, therefore, as the Council acknowledges in its evidence, there will be instances where it will need to reduce affordable housing requirements.

You will be aware that my client is currently working with the Council to finalise the independent assessment of viability of the London Dock planning application, and the required obligations, including affordable housing. This is not yet finalised but is likely to be prior to the Council submitting its Charging Schedule for examination. We would suggest that the Council may want to review the conclusions of the generic London Dock appraisal in light of this evidence when the process is complete and in advance of finalising the Charging Schedule.

We are grateful for the Council's continued engagement on this matter but remain concerned that the CIL rate in Residential Zone 1 remains too high. The Berkeley Group would like to reserve its right to appear at any Examination of the CIL Charging Schedule.

Please do not hesitate to contact me if you require further information.

Yours sincerely,



██████████  
Director

cc: ██████████ (St George), ██████████ (Berkeley Group)