TOWER HAMLETS

Community Infrastructure Levy Charging Schedule Examination

Response to Main Issues and Questions for the Examination

6 May 2014

Contents

Introduction

1. This document constitutes the Council's response to *ED5.5: Main Issues & Questions for the Examination* for all three Hearing Sessions in relation to the submission of the Revised Draft Charging Schedule (RDCS). It seeks to respond to the main issues that have been raised in the further representations, and to provide a context for the rates proposed. The Council's case, however, remains as set out in the documents already submitted to the Planning Inspectorate.

Procedural Questions for the Council

2. The Council can confirm that the Revised Draft Community Infrastructure Levy (CIL) Charging Schedule has been prepared in accordance with:-

- **The statutory procedures;**
  - The Council can confirm that the Schedule has been prepared in accordance with the Planning Act 2008 (as amended), the CIL Regulations 2010 (as amended up until 2013) and the CIL Statutory Guidance (April 2013).
  - The *Revised Draft Charging Schedule, October 2013 (ED2.1)* as amended by the *Statement of Modifications, February 2014 (ED3.5)* contains the required content, and is in the format required by CIL Regulation 12.
  - In setting its CIL rates, the Council has taken into account the CIL rates set by the Mayor of London.

- **The Council's Core Strategy and Infrastructure Delivery Plan;**
  - The proposed rates are based on the Council's assessment of the development viability set out in the *ED2.2: Viability Study - Revised Draft Charging Schedule* updated by *ED3.5: Statement of Modifications* and have been set at a level which would not put at risk the delivery of the Development Plan.
  - The Council has assessed the actual and expected estimated total costs of infrastructure and has identified a funding gap that justifies the need to levy a Community Infrastructure Levy; this is set out in the *Infrastructure Planning and Funding Gap Report (ED2.3).*

- **The consultation requirements set out in the Community Infrastructure Levy Regulations April 2010 (as amended);**
  - The Council confirms that the consultation and publication in relation to the *Preliminary Draft Charging Schedule* was undertaken in accordance with CIL Regulation 15. The Council also confirms that the consultations undertaken in relation to the *Draft Charging Schedule (ED.1.1)* and the *Revised Draft Charging Schedule, October 2013 (ED2.1)* have been undertaken in accordance with CIL Regulation 16. The latter document provided an additional stage of consultation, over and above that required by the CIL Regulations.
  - The Council confirms that the publication of the *Statement of modifications (ED3.5)* setting out amendments to the Revised Draft Charging Schedule was undertaken in line with CIL Regulation 19.

3. The Council can also confirm that the Revised Draft Community Infrastructure Levy Schedule is supported by financial appraisals, which are set out *ED2.2:*

Viability Study - Revised Draft Charging Schedule and appendices 1 and 2 of *Statement of Modifications (ED3.5).*

4. The Council can confirm, to the best of its knowledge, that there are no fundamental procedural short comings in relation to its submission of the *Revised Draft Charging Schedule* (ED2.1) for examination. The *Statement of Compliance (ED3.1)* provides further detail on the Council's compliance with procedural requirements. The Council considers that it has struck an appropriate balance between using CIL to fund the infrastructure required to support the development of the area, and the potential effects of its proposed CIL charge on the economic viability of development across its area.

Hearing Session 1 – General Matters

1 Is the evidence on infrastructure costs adequate to enable an appropriate balance to be struck?

1.1 An Infrastructure Delivery Plan was submitted and adopted with the Council's *Core Strategy (ED4.1).* Further work has been done on this and the *Infrastructure Planning and Funding Gap Report - Revised Draft Charging Schedule* (*ED2.3)* sets out up-to-date evidence on infrastructure funding. As this report identifies, the infrastructure costs stated have been based on formally adopted Council Plans, Policies and Political approvals e.g. Capital Programme (*ibid, Section 2.4*). In addition (and given the points on this matter raised by *Stephen Ashworth – CIL_MIQ01*), it should be noted that *ED2.3* also includes:

- an analysis of the quantum of population growth (*ED2.3, paragraph 2.2.3 – 2.2.4*);
- a clear identification of other known infrastructure funding sources (*ED2.3, Section 2.5 and Figure 3 in particular*); and
- an identification of an aggregate funding gap that demonstrates the need to establish a CIL in line with the Community Infrastructure Levy Guidance, 2013. The CIL is proposed to fund part of the infrastructure needed to support the development of the Council's area.

2 Are the land value assumptions appropriate?

Are site purchase cost assumptions appropriate? Should market value, as opposed to existing use value, be used to assess viability?

2.1 Site purchase cost assumptions *are* appropriate. The Council has used existing use value rather than market value to assess viability. Sections 2.10 – 2.15 of the *ED2.8: Summary of Consultation Responses to the Draft Charging Schedule (October 2013)* outlines why existing use value is the more appropriate measure to assess viability. This approach has been established as sound at multiple other CIL Examinations, including the Mayoral CIL and most recently the Islington Council CIL[1].

Are the four benchmark values realistic and appropriate? Do they adequately reflect actual property market evidence?

2.2 The benchmark values assumed are realistic and appropriate. They reflect the types of sites that typically come forward for development in the borough and were derived from market evidence i.e. transactional data in relation to rents and yields; see paragraphs 4.35 to 4.47 of *Viability Study - Revised Draft Charging Schedule (ED2.2)*. Each of the residential typologies reflects typical developments that have and will in future come forward within the borough, assessed against these benchmarks to establish the viable levels of CIL.

[1] Paragraph 10, Islington CIL Examination Report

Is it appropriate to assume lower rents and higher yields for existing space than for new floorspace?

2.3 This is an appropriate assumption as there would be limited economic incentive to develop if new floorspace was not achieving higher rents and lower yields than existing space. TfL in their response (CIL_MIQ03, paragraph 2.2) also note that while there is no absolute rule, this is a realistic assumption.

3 Is the discount/buffer used in determining the CIL rates appropriate?

What evidence is there to justify the 25% buffer (35% for student accommodation)?

3.1 The Council has adopted a minimum 25% buffer in determining the CIL rates in order to ensure that they are not set at the margins of viability (paragraph 1.6 of *ED2.2 Viability Study – Revised Draft Charging Schedule*) as advised in paragraphs 28 to 30 of the CIL Guidance 2013. The Council considers that this is a reasonable approach.

3.2 There is no prescribed level of buffer or discount that Charging Authorities have to adopt when setting their rates. However, the buffer allowed for is consistent with the buffers used in setting other adopted charging schedules such as Newham[2], who have used a buffer of 20% for their residential rates. Furthermore a number of factors and assumptions have been conservatively treated and these act to reduce the maximum CIL rates identified in the appraisals. These effectively provide a larger buffer. These include but are not limited to the following: -

(i) The appraisals assume that there is no existing floorspace on a site; however, the urban nature of Tower Hamlets means that in most cases there will be buildings on a development site. Most of these sites will be able to offset their CIL liability in relation to the existing floor area on the site if part of that area has been lawfully occupied for 6 months in the last 3 years. This will reduce the CIL payment. Whilst this will vary from site to site, a reasonable assumption is that this is likely to be of the order of about 30%. The Council used this figure of a reduction of 30% as a reasonable overall estimate as it was generally assumed in the viability appraisals that the building used to establish the existing use value was 30% of the size of the new development which would attract a discount of this amount. Please refer to table *4.48.2 of ED2.2 Viability Study - Revised Draft Charging Schedule.*

(ii) In the different charging zones identified, the Council has set the CIL rate based on the lowest value for an area that can be accommodated in that zone.

(iii) An additional 20% on top of the 20% premium assumed on Existing Use Value has been added to account for individual site constraints and

[2] Paragraph 18, Newham CIL Examination Report

unknown factors (paragraph 7.12 of *Viability Study – Revised Draft Charging Schedule (ED2.2)*)

3.3 TfL (CIL_MIQ03, paragraph 3.4) suggests that a buffer at a fixed rate per square metre is more appropriate than a percentage figure*.* The Council disagrees. *A*llowing for a buffer based on a percentage of the maximum CIL rate viable is a more appropriate method than assuming a fixed amount where there are wide ranges in viability by area and use – which are already reflected in a differential charge; for example, the maximum CIL rate that student accommodation can viably support is £657 per sq. m, whereas in zone 3, residential development can only accommodate a maximum viable CIL of £45 per sq. m. Applying a generic £50 per sq. m buffer to both of these development types would result in the buffer for student housing constituting only 7.5% whereas a zero rate would have to be levied for residential development in zone 3 even though a CIL can be viably be charged.

3.4 Even applying a fixed buffer to single rates – such as the residential rate – may not sufficiently ensure that the rate is not set at the margins of viability; this would result in a higher rate for residential uses in zone 1 (£215 per sq. m) and a zero charge for residential development in zone 3.

Has a double buffer been applied to the Mayoral CIL rate (ie in setting the Mayoral rate and again in setting the Tower Hamlets rate?)

3.5. Having reviewed the viability evidence submitted to justify the London Mayor's CIL, it is not clear that a buffer was accounted for at all in setting the rate. It is therefore the case that no additional or double buffer has been applied.

3.6. In any event, the Council has taken the Mayoral CIL as a fixed cost. Regulation 14(3) of the CIL regulations states that the Council must take account of the 'rates set by the Mayor', and this will not include any element of a buffer. The Mayoral CIL is a known and fixed cost and in this regard developers will build this into their appraisals for schemes and as such it is appropriately included in the Council's appraisals as a cost to development. In a similar way, the Tower Hamlets CIL charge will become a fixed cost once it is adopted, and the buffer will no longer be a relevant part of the appraisals.

3.7. TfL confirms in paragraph 3.5 of *CIL_MIQ03* that no double buffer has been applied.

4 Are the assumptions regarding ongoing s106 payments realistic?

4.1 In line with the CIL Regulations and guidance the use of the planning obligations will be scaled back following the introduction of the CIL. A draft Regulation 123 list has also been prepared and is included at Appendix 3 of the *Revised Draft Charging Schedule, October 2013 (ED2.1)*. In keeping with the spirit of the guidance, it reflects the Council's intention to fund most types of infrastructure through CIL (payments or in-kind mechanisms as provided for in the CIL Regulation Amendments 2014).

4.2 The Council has assumed that there will be a £1,220 unit cost for residential development and a £53.82 per sq. m cost for commercial development as a residual Section 106 (see 4.56 of *Viability Study – Revised Draft Charging Schedule, August 2013 (ED2.2)).* The residual section 106 requirements are site specific and will depend on the form of development and the site – this will vary and for some schemes there will be no residual section 106 payment (Section 2.17 of *ED2.8 Summary of Consultation Responses to the Draft Charging Schedule*). The limited number of possible financial contributions such as *Construction Phase Skills Training* and *End User Phase Training* (for commercial development only, as set out in paragraph 2.8 of *ED2.4 Draft Planning Obligations SPD*) are minimal, negotiable and will apply variably to different developments. Where applicable, these financial contributions would equate to maximum 16% of the allowance made for residential development (£193 per unit) and 18% of the allowance made for commercial development (£9.69 per sq. m).

4.3 The approach adopted by Tower Hamlets has been adopted by numerous other Charging Authorities who have had their Charging Schedules approved at an Examination. This is a point explicitly acknowledged in the Examination reports for Merton[3] and Newham[4].

5 Are the build and other development costs used in the viability appraisals realistic?

5.1 The build costs used in the viability appraisals were derived from the Building Cost Information Service (BCIS) which also provides a weighting for Tower Hamlets (see paragraphs 4.13 – 4.22 and paragraph 4.51 of *ED2.2: Viability Study - Revised Draft Charging Schedule*). This BCIS data reflects the most comprehensive analysis of build costs and as such is the most appropriate basis for a borough wide viability assessment.

5.2 It is not appropriate nor practical to establish build costs on a site by site basis for the strategic exercise of setting a CIL; it is acknowledged that the design of individual developments will result in different build costs. The appraisal methodology therefore reflects a balanced approach. In the case of the important strategic sites, not only do the rates applied assume a 25% buffer, a further buffer of 20% has been applied to the Existing Use Value of the strategic site appraisals. This is in order to account for unknown factors and individual site constraints, such as build costs that may be higher than BCIS data. However, the effect of increased build costs is not linear, as there is a relationship between build costs and sale values achievable that should not be ignored – increases in build costs may result in higher sales values.

5.3 The other development costs used in the viability appraisal were derived using market knowledge and analysing comparable transactional evidence. Where developers of strategic sites have submitted appropriate information the appraisals have been updated (see paragraphs 2.25 – 2.27 of *ED2.8: Summary*

[3] Paragraph 13 of Merton's CIL Examination Report
[4] Paragraph 12 of Newham's Examination Report

of Consultation Responses to the Draft Charging Schedule); however, the extent of submission of evidenced information by developers has been limited.

6 Is it of significance that the phasing of CIL payments assumed in the appraisals is different from that which has been suggested will be actually applied?

6.1 Paragraph 4.34 of *ED2.2 Viability Study – Revised Draft Charging Schedule* highlights that a sensitivity analysis has been undertaken of the phasing of CIL payments; the Mayoral CIL Instalments Policy has been tested. The result of which was only a marginal impact on viability so the difference is not significant.

6.2 The CIL Regulations 2014 amendments provide for both full and outline permissions to be broken into phases for the purposes of CIL. Each phase can then be treated as a separate chargeable development; any instalment policy is applied to that phase. This provide for CIL payments to be staggered over a longer period of time for those schemes with a longer development period.

7 What is the justification for basing the maximum CIL Levels on CUV2 for other retail and hotels but CUV3 for supermarkets/superstores/retail warehousing?

7.1 The CUV rate attached to each use, 'Reflects poor quality second hand space of same use, low optimisation of site…' as set out in table 4.48.2 of *ED2.2 Viability Study – Revised Draft Charging Schedule.* Therefore, it is the rate that the CUV level reflects that is important and comparison across use classes is not a useful way of analysing the suitability of different CUV levels adopted.

7.2 No evidence has been submitted to suggest that the CUVs adopted are not typical of sites that would come forward for development, in relation to the area and use in question.

8 Are there errors in the viability assessments which undermine their relevance as appropriate available evidence?

8.1 No evidence has been submitted to suggest that any errors detected in the viability assessments would not have resulted in changes to the rates nor affected the ability of consultees to make submissions in relation to any of the consultations.

8.2 The changes to the viability study since the publication of the PDCS are a result of the refinement of the best practice approach to CIL rate setting as opposed to errors.

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

9 What would the likely effect of the proposed CIL rates be on (a) Opportunity Areas; (b) Strategic Sites; and (c) delivery of the Whitechapel Masterplan?

9.1 The starting point for setting the CIL rates, and for identifying the infrastructure demand, is the development plan. This comprises *ED4.1: Tower Hamlets: LDF Core Strategy* and *ED4.2: Tower Hamlets: Managing Development Document,* and the London Plan. The requirements of the Development Plan are reflected in the appraisal assumptions in *ED2.2: Viability Study - Revised Draft Charging Schedule*.

9.2 The Council has sought to charge a modest CIL which represents a small proportion of the development value (see Table 8.9.1 in *ED 2.2.*) to ensure that delivery is not prejudiced in these area. In addition, the Council has, in line with Community Infrastructure Levy Guidance (2013, paragraph 27), undertaken additional testing of key sites across the borough. The assessment of these strategic sites shows that the CIL represents a modest proportion of their development costs (see Table 7.16.1 in *ED 2.2.*)

9.3 The likely effect of the proposed CIL rates on (a) the Opportunity Areas and (c) the delivery of the *Whitechapel Masterplan (ED5.8),* has been analysed in the Viability Appraisals in a general sense. The fact that there are several Opportunity Areas in Tower Hamlets, and that there is a *Whitechapel Masterplan (ED5.8),* does not apply additional characteristics that can be accounted for in viability appraisals. Therefore, the Council considers that the CIL rates would have no adverse effect on Opportunity Areas or the *Whitechapel Masterplan (ED5.8)*. In relation to (b) Strategic Sites, the viability appraisals account for the characteristics of the Development Plan and the appropriate individual characteristics of the sites themselves, so that the CIL rates proposed will not affect the delivery of these sites.

Do the scenarios tested adequately represent development likely to occur on Strategic Sites, Opportunity Areas and as part of the Whitechapel Masterplan?

9.4 The Council has tested a number of specific sites to comply with the requirements of the *CIL Guidance 2013* (paragraph 27). A total of eight sites, all allocated within *ED4.2 – Tower Hamlets: Managing Development Document,* were tested. They represent a range of development likely to come forward on the strategic sites throughout the borough. In addition, six of the eight sites tested are located within Opportunity Areas and again reasonably reflect development likely to come forward in these areas. Whilst none of the eight sites tested fall within the boundaries of the Whitechapel Masterplan *(ED5.8)*, the strategic sites tested reflect a diverse range of different development scenarios that may come forward across the borough including in the Whitechapel Masterplan area (see *ED5.8 Whitechapel Masterplan*).

9.5 In addition, it is worth noting that the whole of the Masterplan area falls outside of the zone where charges for office and retail development apply, and that the vast majority of the area falls in residential charging zone 2 (£65 per sq. m). We have necessarily focused on areas where it has been especially important to test the CIL impacts of variable rates and where requirements for on-site infrastructure have been identified. Furthermore it is noted that the *Whitechapel Masterplan (ED5.8)* was only adopted in December 2013, two months after the publication of the Revised Draft Charging Schedule.

Are the assessments of Strategic Sites sufficiently specific?

9.6 The assessments of the Strategic Sites have been prepared to reflect development plan requirements, the individual characteristics of the site in question and, where substantive evidence has been presented, amended to reflect representations submitted by developers of these sites. Please refer to paragraph 2.25 of ED2.8 *Summary of Consultation Responses to the Draft Charging Schedule* which outlines where the appraisal inputs in *Viability Study - Revised Draft Charging Schedule (ED2.2)* update those in the *Viability Study - Draft Charging Schedule Version (ED1.2)* to reflect evidence, where provided by the developers.

9.7 For a strategic exercise, such as CIL rate setting, a balance must be struck in respect of how specific the appraisals of strategic sites should be. The developer will have control over the design of the development which will directly affect the build costs and sales values of the particular development. Unless a developer submits detailed information relating to the development as a whole, so all aspects of the development can be accounted for, in the appraisals; only typical assumptions are generally appropriate to use. Please refer to the response to question 5 above for further related information.

9.8 Indeed, a number of additional risk mitigation measures have been accounted for in the strategic site appraisals to ensure the delivery of Strategic Sites, such as: -

- Specific likely abnormal costs, such as decontamination, have been included (see Appendix 6 of *Viability Study - Revised Draft Charging Schedule (ED2.2))*
- An additional 20% on top of the 20% premium assumed on Existing Use Value has been added to account for individual site constraints and unknown factors (paragraph 7.12 of *Viability Study – Revised Draft Charging Schedule (ED2.2)*)
- The financial contribution equivalent to the CIL In Kind provision has not been offset (see Appendix 6 of CIL *Viability Study , August Schedule (ED2.2))*
- The appraisals assume that no existing floorspace exists that would be eligible to be offset against the final contribution (paragraph 5.8 and Table 8.9.1 of *Viability Study – Revised Draft Charging Schedule (ED2.2)*)

Are the assumptions regarding ongoing s106 payments for strategic sites realistic?

9.9 The assumptions are reasonable and realistic. Only certain elements of the ongoing S106 payments can be defined, as these will be site specific and depend on the development form. It would not be practical to establish these as part of the CIL rate setting process. Instead a residual section 106 allowance is assumed (see Hearing 1, Question 4 above). There is no reason to suggest that the strategic sites would incur proportionately higher ongoing S106 payments (as distinct from other costs - such that have been accounted for). Furthermore, no detailed evidence has been submitted that clarifies the site specific elements of ongoing S106 payments for any of the strategic sites. As such, the ongoing S106 payment assumptions for strategic sites mirror those used for the generic appraisals.

9.10 In addition, the Strategic Site Appraisals reduce the developable land area to account for provision of on-site social infrastructure where required in line with *ED 4.2: Tower Hamlets: Managing Development Document*. This is consistent with the approach in set out in paragraphs 2.4 and 2.10 of *Draft Planning Obligations SPD - Revised Draft Charging Schedule (ED2.4)* which identifies that the Council may accept CIL payments in-kind to deliver identified community facilities.

Is it realistic to expect Strategic Sites to be developed with post-CIL IRRs of around 13%?

9.11 The Internal Rate of Return (IRR) is a measure of profitability of investments (in this case a property development) that takes account of returns spread out over a longer period of time. Technically, it is the discount rate at which the net present value of the cash flows of an investment equals to zero. A post-CIL IRR of 13% reflects IRRs being achieved for development being brought forward in London (see paragraph 7.15 of *Viability Study – Revised Draft Charging Schedule (ED2.2))*). Bishopsgate Goodsyard Regeneration Limited question this; but the Berkeley Group (CIL_MIQ05, page 3), while questioning the IRR; do acknowledge that sites in London have been developed at similar IRR's. However, it is the comparison of the scheme's profitability/IRR with and without CIL that is the most significant consideration and not the comparison of IRR vs Profit on Cost/Gross Development Value (GDV) - see *Table 7.13.1 in Viability Study – Revised Draft Charging Schedule (ED2.2)* for an analysis of the effect of CIL on IRR.

9.12 Furthermore, the Council has acknowledged the additional risks in assessing the strategic sites in appraisals. The buffer of 25% has been incorporated in the rate setting, as well as an additional 20% (on top of the 20% premium assumed) on Existing Use Value to account for individual site constraints and unknown factors. A 5% contingency and, where appropriate, other abnormal costs (such as decontamination) have also been separately accounted for.

9.13 The approach to adopting a 13% IRR as opposed to one closer to say 20% (as contended by some parties who responded to the *Main Issues and Questions for the Examination (ED5.5)* including Bishopsgate Goods Yard Regeneration Limited, Canary Wharf Group and Londonewcastle (CIL_MIQ11 – 13)) is supported by the rates of return allowed for by the City of London[5]; which has been adopted and assumes that 14% IRR is an acceptable benchmark for developer's profit. It is also worth noting that for schemes where IRR is the most appropriate measure of return, that the scheme will come forward over a long period of time and growth in relation to sales values will be accounted for in viability appriasals.

Does the evidence on CIL as a percentage of total Strategic Site Development Costs indicate that CIL would not put the overall development of the area at risk?

9.14 *Viability Study – Revised Draft Charging Schedule (ED2.2*) demonstrates that, in respect of strategic sites, CIL constitutes only a small percentage of development costs (see Table 7.16.1 in particular). This means that it is unlikely to be the overriding factor in terms of development viability and thus unlikely to put the overall development of the area at risk. Fluctuations in other costs such as build costs or sales values, which it should be noted have not been challenged, have a much higher impact on scheme viability. For example, Land Registry data on house price increases between Q1 2012 (when the evidence supporting the Preliminary Draft Charging Schedule was established) and Q4 2013 (which is the latest data) indicate that sales values for new build property in Tower Hamlets have, on average, increased by approximately 26% in this period. Please refer to *ED5.9: Land Registry Sales Value Data* which sets out the impact of the increases in sales values in more detail.

Does the viability assessment of the tested strategic sites indicate that the overall development of the area would not be put at risk by CIL?

9.15 CIL and the full demands of the development plan have been accounted for when testing strategic sites and the other generic appraisals. This indicates that the overall development of the area would not be put at risk by CIL. The Wood Wharf, Bishopsgate Good's Yard, Westferry Printworks and London Dock sites have all been found to be viable after accounting for CIL (see *Viability Study – Revised Draft Charging Schedule (ED2.2*) paragraph 7.15). Where a site has been found not to be viable, CIL has not been the overriding factor making the development unviable. Abnormal costs such as decontamination and the decant of Gas Works constitute the overriding factors, and make such sites unviable, before the consideration of CIL (see *Viability Study – Revised Draft Charging Schedule (ED2.2*) paragraph 7.15).

[5] Refer to paragraph 8 of the City of London's Examination Report

If you consider that a change to the schedule is necessary what rate/zone boundary would be appropriate?

9.16 The Council does not consider that any changes to the rates/ zone boundaries are necessary.

10 Are the residential charging rates and zone boundaries informed by and consistent with the available evidence?

10.1 Yes, the residential charging rates and boundaries have been developed following an analysis of average achieved sales values on new build property in different postcode areas throughout the borough. Please refer to paragraph 1.5 of *ED2.2: Viability Study - Revised Draft Charging Schedule*.

What would the likely effect of the proposed CIL rates be on the provision of affordable housing and achieving the Core Strategy target of 50% affordable homes? Is the use of a 35% affordable housing requirement in the viability assessments appropriate and compliant with Core Strategy policy SP02? Do the rates take appropriate account of cross-subsidy of affordable housing by private sales?

10.2 The viability assessments seek to account for the requirements of *ED4.1: Tower Hamlets: LDF Core Strategy* policy SO2 which require 35 – 50% affordable housing subject to viability. The 35% minimum affordable housing requirement has been used, as the basis to assess the setting of the CIL rates, as this most accurately reflects the levels achieved on market led schemes which represent the majority of new supply (see *paragraph 2.4 of the Section 106 Report (ED2.5)*).

10.3 It is interesting to see the effect of including a 50% requirement in the viability analysis. The Council has undertaken a sensitivity analysis for this (see Appendix 2 of *Viability Study – Revised Draft Charging Schedule (ED2.2))* and this demonstrates that in most cases the schemes are not viable irrespective of the imposition of any CIL. Accordingly, a level of 35% affordable housing has been used as the reasonable basis for determining CIL rates. A similar approach was taken in neighbouring Newham[6], which has received approval.

10.4 In the context of estate renewal schemes, the rates do take account of cross-subsidy of affordable housing by private sales as both affordable and private housing are appropriately accounted for in the same appraisals. Please refer to paragraphs 3.6 to 3.7 of *ED3.2: Regulation 19 - Consultation Statement* for further information.

[6] Paragraph 16 of Newham's CIL Examination Report

Do the rates take adequate account of difficulties in offsetting existing floorspace in major regeneration schemes where occupancy tests may not be met?

10.5 The difficulties in taking account of offsetting existing floorspace in major regeneration schemes have been reduced. The provisions of the updated CIL Regulations extend the occupancy tests relating to the offsetting of existing floorspace. The regulations allow a discount for space occupied for six months of the past three years, which will assist major regeneration schemes and the difficulties of meeting occupancy tests.

10.6 In any case, the viability appraisals that have been used here assume no discount of existing floorspace is possible and the rates have been set on this basis. This therefore adequately accounts for any difficulties in offsetting existing floorspace in major schemes.

Are Cubit Town (E14 3) and the south of Pepper Street areas in the appropriate zones?

10.7 Cubitt Town (E14 3) and the south of Pepper Street areas are in the correct residential charging zones. The boundaries have been formed following an analysis of average achieved sales values on new build property in different postcode areas throughout the borough (see paragraph 1.5 of *Viability Study – Revised Draft Charging Schedule (ED2.2)*). The rate proposed is appropriate considering the average achieved sales values in the Cubitt Town area. Please refer to Row 15, page 3, of *ED2.9: Detailed Consultation Responses to the Draft Charging Schedule (October 2013).*

10.8 Paragraph 3.34 of *ED3.2: Regulation 19 - Consultation Statement* provides further information relating to the appropriateness of the south of Pepper Street in respect of the zone it is in.

Does the evidence on CIL as a percentage of total residential scheme value indicate that CIL would not put the overall development of the area at risk?

10.9 This evidence on CIL as a percentage of total residential scheme value, referred to in table 8.9.1 of *ED2.2: Viability Study - Revised Draft Charging Schedule*, indicates that CIL is a small amount in the context of a residential development scheme. As such, it is unlikely to be the overriding factor that would render a development unviable.

If you consider that a change to the schedule is necessary what rate/zone boundary would be appropriate?

10.10 The Council does not consider that any changes to the rates/ zone boundaries are necessary.

11 Are the office charging rates and zone boundaries informed by and consistent with the available evidence?

11.1 The office charging rates and boundaries reflect available evidence on viability of office schemes. The boundaries were established through the testing of typical development schemes throughout the borough. An assessment of market transactions for each of the defined zones was then applied to generic appraisals, which established the appropriate CIL rates for each area. Most office development is anticipated in the Central Activities Zone or a Tower Hamlets Activity Area, as directed by *ED4.1 Tower Hamlets: LDF Core Strategy* which identifies these areas as more appropriate for commercial uses. However, the basis for the charges is the viability evidence rather than the policy areas which define the exact boundaries.

11.2 The existing evidence referred to in paragraph 11.1 above supports the proposed office rate. Furthermore, it should be noted that the viability of commercial schemes has improved with the market[7], and in this context the CIL rates proposed are reasonable.

11.3 One area where these increased values would make a significant difference is to the appraisal of the North Docklands area. We have produced a further appraisal based on the characteristics of the current market (please refer to *ED5.10: Additional Appraisal Evidence – Office)*. The appraisal finds that a maximum CIL rate of £540 per sq. m for offices is viable before accounting for the Crossrail SPG charge and a buffer. This is well above the value assessed in the RDCS, which proposed a CIL rate in this area of £50 per sq. m, based on a maximum CIL rate of £167 per sq. m. Clearly, on the basis of the latest evidence, the rate set is reasonable, if not rather more conservative. Also, this appraisal shows that both the Tower Hamlets CIL rate and the full Crossrail SPG 'Top-Up' can both be accommodated for office schemes in the North Docklands area.

11.4 TfL suggests a series of alternative assumptions for a Wood Wharf appraisal in their response to *ED5.5: Main Issues & Questions for the Examination*. It is set out in paragraph 1.7.8 of (CIL_MIQ10) that the assumptions are incorrect. Please refer to the 'JLL Sensitivity' appraisal in *ED5.10: Additional Appraisal Evidence – Office* which is an appraisal which reflects the assumptions set out in the response by TfL. This appraisal demonstrates that, on the basis of the assumptions the Council has adopted, the CIL rates as proposed are reasonable.

11.5 In addition, a further appraisal has been prepared in direct response to a query raised by TfL (see CIL_MIQ10 paragraph 2.4) relating to the size of the notional development scheme tested for commercial schemes. Please refer to the 'Size Sensitivity' appraisal in *ED5.10: Additional Appraisal Evidence – Office* which demonstrates that the scale of the scheme is not relevant, as the assumptions are fixed and changes to the scale will not result in changes to the proposed CIL rate.

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[7] Refer to CBRE's *Central London Leasing Report Q1 2014,* Colliers' *Q1 2014 Office Report,* Knight Frank's *Office Research April 2014*, Savills' *Central London Offices Report 28 April 2014* and Promis' market information for offices in the North Docklands

Is the "sharing" of the maximum viable CIL level for office development in North Docklands between Tower Hamlets CIL and the Crossrail s106 "top up" appropriate and does it accord with the Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy SPG (April 2013)? What would be the likely effect on office development in North Docklands and on Crossrail?

11.6 The Council has accounted for the full Crossrail SPG payment in all relevant CIL rates, with the exception of the North Docklands office rate where, if the full 'Top Up' is payable, wholly office development is generally not viable (see paragraph 4.55 of *Viability Study – Revised Draft Charging Schedule (ED2.2)*). In this instance the Council has shared the viable CIL payment between the Crossrail SPG payment and the Council's CIL to arrive at its proposed rate. This "sharing" assumption has rather been overtaken by the recent increase shown in market values, as set out in *ED5.10 - North Docklands Further Office Appraisal (Market Assumption Update)* and discussed above.

11.7 The Council does not agree with the legal analysis of the situation provided by the Greater London Authority (GLA) in their Counsel's Opinion. The Council does not contest the importance of Crossrail as a strategic piece of infrastructure, and has taken proper account of the Mayoral CIL. But the Crossrail SPG does not have the same legal status, and it needs to be applied in the light of each development's own viability issues and the other infrastructure priorities that arise. The legal framework is addressed in the Counsel's Opinion (William Upton) (see *ED5.11: Opinion on Crossrail SPG*), which forms part of the Council's response to this issue. This has been prepared directly in response to the GLA's submissions.

11.8 The Council considers the assumption of "sharing" the maximum viable level of CIL is a reasonable one and accords with the *Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy SPG (ED4.3)* which sets out impact, rather than viability driven, indicative charges that make specific provisions for mixed use schemes and therefore dictates how the Mayoral CIL and the Crossrail SPG levy interact.

11.9 The approach of "sharing" is reflective of the fact that the only schemes likely to deliver office development in the North Docklands will be mixed use ones, providing significant residential accommodation. For example, the two schemes in the North Docklands which constitute site allocations in *ED4.2 Tower Hamlets: Managing Development Document* are ones which propose the provision of significant housing development and thus a full top up would not be payable in any case, and, as demonstrated in Appendix 6 of *Viability Study – Revised Draft Charging Schedule (ED2.2)*, would be able to viably accommodate the full top-up applicable.

11.10 Given the schemes proposed to come forward are mixed use ones, the cross subsidy of such schemes means that the "sharing" approach will have no effect on office development or in relation to the monies collected via the Crossrail SPG.

11.11 Please refer to paragraph 3.8 to 3.11 of *ED3.2: Regulation 19 - Consultation Statement* and paragraphs 2.6 to 2.9 of *ED2.8 Summary of Consultation Responses to the Draft Charging Schedule* for more detail.

Is the Thomas More Square area in the appropriate zone?

11.12 Thomas More Square is in the appropriate zone. The commercial charging rates and boundaries have been formed following advice from BNP Paribas Real Estate's City office Agency team and an analysis of the average capital values that would be achieved on new build office space in this location. The information provided by Land Securities relates to rents achieved on existing second hand office stock, which would not come forward for development unless the higher rents were achieved. A rational land owner will not redevelop an office building, unless they can reasonably expect to achieve a significant uplift in rent levels.

If you consider that a change to the schedule is necessary what rate/zone boundary would be appropriate?

11.13 No change to the rate or zone boundary is considered necessary.

Hearing Session 3 – Retail, Hotel and Student Housing Development Rates

12 Are the retail charging rates and zone boundaries informed by and consistent with the available evidence?

12.1 The retail charging rates and boundaries reflect available evidence on viability of retail schemes. The boundaries were established through the testing of typical development schemes in conjunction with location specific viability characteristics; established using market transactions (see Table 4.48.1 of the *Viability Study – Revised Draft Charging Schedule (ED2.2))*. The variations in the results of the appraisals dictated the boundary locations and also the rates chargeable. Most retail development is anticipated in the Central Activities Zone or a Tower Hamlets Activity Area, as directed by *ED4.1 Tower Hamlets: LDF Core Strategy* which identifies these areas as more appropriate for commercial uses. However, the basis for the charges is the viability evidence rather than the policy areas which define the boundaries.

Is the differentiation of rates by use and location supported by the evidence?

12.2 The differentiation of rates by use is justified on the basis of the different use characteristics of supermarkets, superstores and retail warehousing development. The rates for convenience based supermarkets, superstores and retail warehousing development are consistent with the available evidence (see paragraphs 6.31 to 6.34 of *Viability Study – Revised Draft Charging Schedule (ED2.2)* and also summarised in paragraphs 2.38 – 2.40 of *ED2.8: Summary of Consultation Responses to the Draft Charging Schedule (October 2013)*). The rates were set by accounting for the typical characteristics of such a scheme in viability appraisals, please refer to Appendix 5 of *Viability Study – Revised Draft Charging Schedule (ED2.2).*

12.3 Stephen Ashworth *(CIL_MIQ01)* queries the sufficiency of local evidence to differentiate between the types of retail use and suggests the definitions are inadequate for determining the CIL charge; or for offering clarity about liability. The Council considers that the supermarkets/ superstores and warehouses have different characteristics (making it clear when the charge will be levied) and different levels of viability to other retail justifying making the distinction. However, based on the characteristics of this use as identified in paragraphs 6.31 to 6.34 of *Viability Study – Revised Draft Charging Schedule (ED2.2)*, the Council considers that the definition of supermarkets and of superstores should more accurately include reference to car parking for consistency. As such, the definition would likely be: -

- Convenience supermarkets/superstores are defined as shopping destinations in their own right where weekly food shopping needs are met, <u>cater for a significant proportion of car-borne customers</u>, and which can also include non-food floorspace as part of the overall mix of the unit.

- Retail warehousing is defined as shopping destinations specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for a significant proportion of car-borne customers.

Is there evidence to justify supermarkets/superstores/retail warehouses as being a different use to other retail?

12.4 There is evidence to justify the difference, set out in paragraph 6.32 of *Viability Study – Revised Draft Charging Schedule (ED2.2)* which describes the factors which differentiate supermarkets, superstores and retail warehouses from other retail. In addition paragraphs 6.34, 6.36 and 6.37 of *ED2.2* (note: these have been updated by *ED3.5 Statement of Modifications*) set out the CIL rates viable for 'other' retail and for supermarkets, superstores and retail warehouses. The different characteristics of supermarkets, superstores and retail warehouses distinguish their use from that of 'other retail'. Accordingly, a differential rate can be set.

If you consider that a change to the schedule is necessary what rate/zone boundary would be appropriate?

12.5 The Council does not consider changes are necessary but recommends that the Examiner considers an amendment to the definition of the rate for Retail warehousing and supermarkets/ superstores, as set out in paragraph 12.3 above.

13 Is the hotel charging rate informed by and consistent with the available evidence?

13.1 The hotel rates have been informed by market transactions (the assumptions used are set out in table 4.48.1 of *the CIL Viability Study – Revised Draft Charging Schedule (ED2.2)*).

Has a sufficient number/range of appraisals been undertaken?

13.2 According to the London Development Database, only one hotel development was completed in Tower Hamlets in the period between 01/04/2010 and 31/03/2014. Hotel development represents a limited proportion of the development pipeline and specific targets are not reflected in the development plan. This demonstrates how few hotels are delivered in Tower Hamlets and justifies the number of appraisals undertaken in the viability appraisal. Without a volume of transactional data there is a no basis for a number of different viability appraisals.

Do the appraisals (and thus the rates) take appropriate account of the budget hotel sector?

13.3 Yes, one of the appraisals in the Viability Study is for a budget hotel occupier. Moreover, it is this appraisal that has been used to set the Hotel CIL rate generally (see *Viability Study – Revised Draft Charging Schedule (ED2.2)*).

13.4 Travelodge *(MIQ15)* suggests that the value assumptions used by the Council are incorrect. However, the Council's assumptions in the *CIL Viability Study – Revised Draft Charging Schedule (ED2.2)*) are reasonable. Transactional data for hotels *is* low relative to other uses, so additional testing of these assumptions has been undertaken to confirm that the rates proposed remain reasonable in the context of the current market. Please refer to *ED5.14: Additional Appraisal Evidence – Hotels*. Evidence relating to market transactions (please see the Estates Gazette Interactive, Focus data and the Travelodge East India Brochure in *ED5.14*) supports the additional testing.

13.5 Two further hotel appraisals, based on recent transactions of budget hotels in Tower Hamlets have been undertaken in response to Travelodge's response *(CIL_MIQ15)* to the main issues and questions, which asserts that the appraisals undertaken do not undertake an adequate range of budget hotels. These appraisals are set out in *ED5.14: Additional Appraisal Evidence – Hotels* and confirm that assumptions used in the *Viability Study – Revised Draft Charging Schedule (ED2.2)* are appropriate (and even conservative) and demonstrate that the CIL rates proposed are reasonable. In addition, the brochure relating to the transaction for Travelodge Bethnal Green identifies that Travelodge's assumptions for transactions in this part of the borough, as stated in *CIL_MIQ15*, are historic and are likely to be higher today.

13.6 These appraisals reflect the rents established in comparable transactions and allow for reduced build costs in line with the costs borne by Travelodge elsewhere (Please see *ED5.14: Additional Appraisal Evidence – Hotels*); for example, a Travelodge was developed in north London in July 2010 at a build cost of £1,032 per square metre before external works (for which the viability appraisals make a separate allowance). The BCIS 'General Cost Index' has increased by 6% over the intervening period, so the base cost assumed have been increased by 6% to £1,094 per square metre.

Is there evidence to justify variations in the hotel rate in different zones of the borough?

13.7 The *Viability Study – Revised Draft Charging Schedule (ED2.2*) includes two appraisals which the Council considers are representative of development likely to come forward in the borough. The additional testing as set out in paragraph 13.5 confirms that the rates proposed are reasonable and applicable across the borough.

If you consider that a change to the schedule is necessary what rate/zone boundary would be appropriate?

13.8 No change to the rate or zone boundary is considered necessary

14 Is the Student Housing rate informed by and consistent with the available evidence?

14.1 Yes, all of the assumptions made in the viability study have been based on prevailing policy and market evidence; at the time the student appraisals were undertaken (October 2012), *ED5.15: Student Accommodation Market Evidence* provides further market evidence and suggests the rents and term lengths used in the appraisals are reasonable and even conservative.

14.2 It is worth noting that the Charging Authority, who have had its rate approved at Examination, with the most similar viability characteristics to Tower Hamlets is Islington[8] and they have set a similar rate to Tower Hamlets (£400 per sq. m).

Is a single rate for student housing across the borough appropriate and supported by the evidence?

14.3 The Council has sought to avoid undue complexity and has set a single rate across the whole of its area for student housing development. Rents achievable for student accommodation in Tower Hamlets (comparable to other centrally located London boroughs) are around £200 per week, whilst those in the city fringe area are able to achieve higher rents as noted in paragraph 6.39 of the *Viability Study – Revised Draft Charging Schedule (ED2.2)*). The Council has set the rate based on the lower end of these rent assumptions and included a 35% buffer to the maximum CIL rate (page 73 of the *Viability Study – Revised Draft Charging Schedule (ED2.2)).*

Is a single rate for both university-funded and market-led student housing appropriate and justified by the evidence?

14.4 The Council has limited any variations to its Charging Schedule to that of use and area, in line with the CIL Regulations as amended to 2013. The Council acknowledges that with university-funded schemes – where rents and term length are lower - the charge would not be viable at the rate proposed (see paragraph 6.39 of the *Viability Study – Revised Draft Charging Schedule (ED2.2)*). However, the Council's understanding is that university-led schemes are exempted on the basis of the charitable status of universities. Therefore, the rate has been established based on market led student housing.

Should the schedule make clear that student housing developed for a university by the university are exempt from CIL, or is it appropriate to rely on the general exemption for developers with charitable status?

14.5 The CIL Regulations provide for development by developers with charitable status. It is unclear whether separating university funded and market-led student housing (which the same use but different developers) would comply with the requirements for setting differential rates as stated in Regulation 13 of the CIL Regulations 2010 (as amended). As this is the case, it is appropriate to rely on the charitable status exemption, and a note that this includes universities with charitable status.

[8] Paragraph 3, Islington CIL Examination Report

Has appropriate account been taken of affordable housing requirements in the student housing rate?

14.6 The Council's records show that no student accommodation development in its Borough has provided a contribution to affordable housing, due to the combined policy and viability constraints. The rate set reflects prevailing policy and reflects the typical student development that would come forward in the borough (please see table 4.48.1 of *Viability Study – Revised Draft Charging Schedule (ED2.2)*).

14.7 The Council's requirement for the provision of affordable housing is limited to those instances where the accommodation is not providing accommodation specifically for accredited colleges and universities (see Policy DM6 Student Accommodation in *Tower Hamlets: Managing Development Document (ED4.2)*). Accordingly, affordable housing contributions have not been factored into appraisals as unlike for general housing this requirement will not always apply.

If you consider that a change to the schedule is necessary what rate/zone boundary would be appropriate?

14.8 The Council does not consider any changes are necessary.