

BY POST AND EMAIL

CIL Consultation
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5th June 2013

Dear Sirs

LONDON BOROUGH OF TOWER HAMLETS
DRAFT COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE CONSULTATION AND
REVISED PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT

1. INTRODUCTION

This submission is made on behalf of Aldgate Developments in relation to the London Borough of Tower Hamlets (LBTH) consultation on the above documents.

Aldgate Developments currently have a Full Planning Application (LPA Ref:PA/13/00305) submitted with LBTH for:

"Demolition of existing building (BeagleHouse) and construction of a 23 storey mixed-use development comprising 1,940sqm (GIA) of retail /commercial space (Class A1 – A5 use) at ground floor and first floor level with residential accommodation to provide 291 flats (Class C3 use) between the 2nd and 23rd Floors and two basement levels, plus associated car parking, landscaping, plant accommodation, access arrangements and any other works incidental to the application".

LBTH is consulting on its Draft Charging Schedule and Revised Planning Obligations SPD from 22nd April 2013 to 5th June 2013. Our client is looking to LBTH to provide transparent, clear, concise and fair CIL and s106 SPD which will enable the necessary infrastructure be delivered without compromising housing delivery and regeneration in the borough. Our client has not previously lodged comments in respect of either document. Our comments on each document are set out below accordingly.

2. DRAFT CIL CHARGING SCHEDULE

The process for the preparation, consultation, examination and adoption of CIL Charging Schedules is set out in Part 3 of the Community Infrastructure Levy Regulations 2010 (as amended) ('the Regulations'). Regulation 14 sets out that in setting rates in a charging schedule, a charging authority must strike the balance between:



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- (a) the desirability of funding infrastructure from CIL (in whole or in part) the actual and expected estimated total costs of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
- (b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

LBTH appointed BNP Parisbas Real Estate to prepare the evidence base that underpins the proposed CIL (the Community Infrastructure Viability Study March 2013).

LBTH proposes a differential charge across three areas of the Borough in respect of residential development, ranging from £35 to £200 per sqm; Beagle House falls within Zone 1 with a proposed CIL charge of £200 per sqm for residential development and £215 per sqm for office development.

The CIL Regulations recognise the need for flexibility and provide for social housing and charitable relief. In addition there is provision for a charging authority to introduce further discretionary relief for exceptional circumstances (Regulation 55). A charging authority may only grant relief if:

- A charging authority has made relief for exceptional circumstances in its area; and
- A S106 Agreement has been entered into and the charging authority considers that:
 - the cost of complying with the S106 is greater than the CIL;
 - the requirement to pay CIL would have an unacceptable impact on economic viability;
 - the grant relief would not constitute a State aid which is required to be notified to and approved by the European Commission.

In the first instance therefore, the charging authority has the option to make provision for relief for exceptional circumstances. It is noted at appendix 2 that the Council intends to consider applications for exceptional relief on a case by case basis. We support this approach but feel that this section could be expanded to identify criteria that will be applied in order to identify development proposals that warrant exceptional relief.

The proposed CIL rate has been supported by evidence produced by BNP Parisbas dated March 2013. Owing to the key test of Regulation 14(1) it is important that the viability appraisal prepared is fit for purpose. It is clear that at Examination the Charging Schedule will need to be supported by **"relevant evidence"** (Regulation 11(1) (f)/ 19(1) (e)).

The Requirement for a Viability Study

The requirement to justify the Charging Schedule with evidence of viability is outlined by CIL – An Overview paragraphs 25 and 26, which notably also makes reference to setting differential rates. The CLG CIL Guidance (2012) at paragraph 23 refers to taking an "area based approach", further of notable importance paragraph 30 outlines **"charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area"**.

NPPF paragraph 173 outlines the need for 'competitive returns.' The viability exercise must also be aimed to demonstrate the need for flexibility in seeking CIL payments. It should not be assumed that all development can afford to pay or that all development should be charged the same levy. It must also be recognised that in certain circumstances relief may be offered where viability is an issue.

The fundamental premise is that to enable delivery, sites must achieve a credible land value and provide developers the required return on investment, otherwise development will be stifled. This is recognised by the NPPF and is certainly 'in-built' within the CIL Regulations.

BNP Assumptions

As set out above, we consider that a more flexible approach needs to be adopted in order to take account of site specific circumstances. In reality, site specific circumstances will mean that the economics of the development pipeline will vary from the typical levels identified via analysis of the theoretical site typologies. This is inevitable given the varied nature of housing land supply and costs associated with bringing forward development. Therefore, there must be a viability buffer incorporated either into the benchmark land value or elsewhere through the CIL assessment process which would ensure delivery of sufficient housing to meet strategic requirements.

We are aware that many other local authorities are proposing to set CIL rates at a level that allows a viability cushion of between 30% and 60% of the theoretically viable level, to allow for site variation around the average. We therefore question why BNP have set their buffer at 30% and consider that a higher buffer should be established to avoid any risk of stifling development in the borough.

CIL Regulation 122 – Double Counting

With regard to the relationship with Section 106 Agreements, the CIL Charging Schedule should be clear that 'double counting' of Section 106 contributions and CIL is not permitted by law. The key tests of CIL Regulation 122 should therefore be outlined within the supporting documentation. We welcome the publication of the draft SPD 'Revised Planning Obligations' and our comments on where there could be double counting are set below as part of our comments on the draft SPD.

Payments in kind

Regulation 73(1) permits the payment of land in lieu of CIL. This is an interesting tool which could be proactively interpreted where the land in question is provided for infrastructure, for example for open space.

It would not be appropriate for these facilities to be provided to only effectively then 'pay double' through the imposition of additional CIL charges. This would potentially be contrary to both Regulations 122/ 123. An effective 'land in lieu of CIL' mechanism is essential, otherwise larger strategic development would incur disproportionate and unjustified infrastructure costs. The mechanism of payments in kind must result in credible land values being agreed and offset against the levels of potential CIL receipts incurred through the chargeable development. If operated effectively the mechanism could considerably assist with development delivery.

Payment of CIL – Instalments

With regard to the payment of CIL, the Regulations (69B(1)) and CIL – An Overview (paragraphs 45 - 48) are clear that the charging authority has the flexibility to request the timing of the charge and hence to outline the payment procedure. DCLG's consultation on reforms to the Community Infrastructure Levy (April 2013) also highlight that the Government is minded to amend the CIL Regulations further so that all planning permissions (outline and full) are capable of being treated as phased development. However, at present the choice to impose an 'instalments policy' is entirely discretionary to the LPA. We consider that it is imperative that such a policy is outlined at the earliest opportunity. This should cover:

- The commencement of the instalments policy on adoption of CIL;
- The number of instalments that can be made by development size (£ amount and square meter amount);
- The timing of payments post commencement – based on a consideration for build out rates (i.e. longer time periods); and

- The minimum development threshold which instalments would not apply.

We note that the Council proposes to adopt the mayoral instalment policy however developers only have access to certain levels of funding throughout the construction process and this is often dependent on sale volumes, market conditions and lending criteria. The benefit of the Section 106 system (as was), was the ability to negotiate phasing of payments and if necessary renegotiate via a deed of variation. The imposition of CIL effectively removes this flexibility.

It will be larger schemes which generate the greatest CIL payments and as such phasing of payments should be tailored to recognise funding constraints and cash flow of such schemes. The short timescale approach would only be suitable for very small developments in which there was certainty that development would be built very quickly and the funding would be available to pay the CIL charge. Large scale development normally requires significant upfront infrastructure costs to 'unlock' development and the additional early burden of CIL as per the existing payment formula would therefore be very prohibitive.

It is therefore advised that any phasing of CIL payments should accord with the longer build rates expected and on this basis longer timescales for the payment of CIL should be proposed. This would help to 'future proof' the Council's CIL charging schedule and help to ensure that it is aligned with the reforms to the CIL Regulations that the Government is seeking to introduce.

3. REVISED PLANNING OBLIGATIONS SPD

Firstly, we would like to highlight that we fully support the Council's decision to revise their Planning Obligations SPD in parallel with their CIL charging schedule. This joined up process will help to ensure that developers are provided with the clarity they require and will hopefully avoid the potential for double charging.

Whilst we appreciate that the Council's CIL will be the primary mechanism for securing funds towards the delivery of borough wide infrastructure, we consider that there needs to be some flexibility in order to take account of site specific circumstances and opportunities that may arise. CIL is essentially a non-negotiable tariff on development and as highlighted above we feel the exceptions test in the CIL schedule needs to be expanded. With regards to Section 2 in the SPD, the tables setting out the relevant delivery mechanisms provide the clarity that is required however there are a few issues that we would like to highlight as set out below:

- Transport and Highways – Crossrail: The Council have identified that Planning Obligations and CIL will be used to deliver Crossrail. The Mayor's CIL has been adopted and is a tariff that is operating across London to contribute towards the infrastructure that is required to deliver Crossrail. Therefore we consider that further clarity should be provided on the exceptional circumstances when developers will also be required to enter into a s106 agreement to help deliver Crossrail. There is potentially scope for double charging and the SPD should avoid this.
- Public Realm – This section does not take account of instances where a new residential development is proposed close to an existing park or open space. Improvements or management/maintenance contributions to a specific park or open space maybe required to offset the impact arising from a development and we consider that there should be the flexibility to address this matter via a s106 agreement rather than a CIL payment. Aldgate Development's are currently in discussions with TfL and LBTH about potential improvements to Braham Street Park and consider that any improvements proposed should be secured via a s106 agreement so there is certainty that the improvements proposed will be tied to the proposed development.
- Environmental Sustainability – Decentralised Energy: Given the Policy context of Policy 5.5 and 5.6 in the London Plan, we consider that developers will need to deliver on site CHP plants and connect into decentralised energy networks where feasible. With this in mind, we

do not consider that CIL is the correct mechanism for securing delivery of decentralised energy facilities and consider that s106 agreements would be a more appropriate mechanism in this instance.

4. CONCLUSION

We hope the comments set out above help to inform the drafting of the CIL Charging Schedule and the Revised Planning Obligation SPD.

We look forward to confirmation of receipt of the above and that our comments have been registered. If you have any questions or queries relating to any of the points made then please do not hesitate to contact me.