2. If your representation is seeking a change to the CIL Draft Charging Schedule, do you consider it necessary to attend the Examination in Public?

☑ Yes, I wish to attend

☐ No, I do not wish to attend

3. Please tick the box if you would like to be notified of about any of the following:

☑ If the Draft Charging Schedule has been submitted to an Independent Examination in accordance with section 212 of the Planning Act 2008 (as amended)

☑ Of the publication of the recommendations of the Examiner and the reasons behind those recommendations

☑ Of the approval of the Charging Schedule by the Charging Authority (The Council)

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21392/A3/AO/AC
5 June 2013

Dear Sirs

LONDON BOROUGH OF TOWER HAMLETS
DRAFT CIL CHARGING SCHEDULE CONSULTATION

1. INTRODUCTION

This submission is made on behalf of East Thames Group in response to the above document. East Thames is a Registered Provider and manages a range of homes in Tower Hamlets. In addition to partnering with private developers to deliver much needed new affordable homes, East Thames also promotes mixed tenure development in the borough, where private sale housing provides essential funding for new affordable homes, including estate regeneration schemes. Working with the Council and partners, East Thames has successfully implemented the first phases of the regeneration of the Ocean Estate.

These representations relate specifically to the effect of CIL upon estate regeneration schemes.

LBTH is consulting on its Draft Charging Schedule from 22 April 2013 to 5 June 2013, under Section 16 of the CIL Regulations. Our client is looking to LBTH to provide transparent, clear, concise and fair CIL which will enable the necessary infrastructure to be delivered without compromising housing delivery, and in particular estate regeneration, in the borough.

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 CIL Regulations'). Regulation 14 sets out that, in setting rates in a charging schedule, a charging authority must, inter alia, strike the balance between:

(a) the desirability of funding infrastructure from CIL (in whole or in part), and 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 Paribas 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 sq.m; Ocean Estate falls within Zone 2 with a proposed charge of £65 sq.m. It is noted at Appendix 2 that the Council intends to consider applications for exceptional relief on a case by case basis. The case studies relied upon by BNP do not consider estate regeneration schemes or enabling development schemes in the general sense.

In short, it is East Thames' submission that the proposed charges in respect of Ocean Estate and estate regeneration schemes cannot be justified having regard to the viability and commercial realities of the nature of this form of development. The stated approach to exceptional relief will not provide sufficient certainty to East Thames and other Registered Providers in promoting estate regeneration schemes within the Borough.

2. BNP PARIBAS VIABILITY STUDY

The proposed CIL rate has been supported by evidence produced by BNP Paribas 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 aim 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.

Viability Buffer

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.

Ensuring Flexibility

Exceptional Circumstances: 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; and
  - 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. This should be expressly provided for as set out below.

3. ESTATE REGENERATION

East Thames has successfully secured the regeneration of a number of existing estates in east London. The model provides for the regeneration (through refurbishment and/ or redevelopment) of existing out dated or out-worn estates to provide for new affordable housing better placed to meet current needs. Such projects are funded, in part, by the provision of private sale units to generate additional capital subsidy to enable the scheme. This has the added benefit of introducing a range and mix tenures into a mono-tenure or biased tenure area.

Under the terms of the prevailing planning policy context (see Managing Development DPD Policy DM3), such schemes are supported provided that there is no net loss of affordable housing. The private sale element will therefore generally represent a net additional increase in floorspace for the purposes of the application of CIL. Whilst the social housing element will, subject to the terms of the regulations, be eligible for social housing relief, and that element of floorspace that replaces existing will be exempt (i.e. on the basis of occupation for 6 months in the preceding 12), the estate regeneration model invariably requires an increase in total floorspace which would generate a liability for CIL. Furthermore, some estates may experience a high level of vacancy and may be unlettable. Such estates may be a priority for regeneration but the viability would be undermined by the imposition of CIL.

An increase in floorspace is required to fund the scheme and hence is enabling development. The imposition of CIL will add a further cost burden to the scheme and thus, put simply, increase the quantum of additional floorspace that is required to enable the scheme to proceed.

The majority of estate regeneration schemes are located within existing urban areas. The capacity of the site to accommodate additional floorspace to fund the scheme and meet the residents' and Council's aspirations and needs has to be finely balanced. In short, without the grant of exceptional relief, many estate regeneration schemes will be placed in jeopardy and will not proceed without additional public subsidy. The grant of further public subsidy to pay CIL appears unjustified.

East Thames has successfully implemented the first phases of the regeneration of the Ocean Estate pursuant to the planning permission dated 23 March 2010 (LPA Ref. PA/09/02585). It has reached agreement with LBTH to promote the regeneration of Urban Block H with a planning application scheduled to be submitted this summer. Scheme viability is a key consideration for estate regeneration schemes and has been a key component of discussions with the Council. The Council is therefore party to the realities of estate regeneration viability and ought to have had regard to such schemes in publishing its draft charging schedule.

Whilst we acknowledge that it would be impractical for the Council to identify estates as separate geographic areas, it is open to the Council to confirm the approach to estate regeneration schemes and indeed, enabling development, in terms of the consideration of applications for exceptional relief.

Regulation 55 provides for LBTH to identify in the charging schedule the approach to be taken in terms of exceptional relief. The schedule ought to identify that estate regeneration schemes and other forms of enabling development will be granted exemption from CIL where it is demonstrated that the chargeable floorspace is the minimum necessary to enable the scheme to proceed. The existing application procedure provides an effective mechanism for the Council as LPA to consider the merits of the scheme in the public interest.

4. EFFECTIVE OPERATION OF CIL

CIL Regulation 122 – Double Counting

With regard to the relationship with Section 106, 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'. We will submit representations in respect of the revised SPD under separate cover. However, as a general principle it is important that the Council does not seek S106 contributions in respect of schemes that ought to fall within CIL.

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 and 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. However, the choice to impose an 'instalments policy' is entirely discretionary. East Thames considers 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 (monetary amount and square metre amount).
- The timing of payments post commencement – based on a consideration for build out rates (i.e. longer time periods).
- The minimum development threshold which instalments would apply (we suggest that this be set as low as possible).

We note that the Council proposes to adopt the mayoral instalment policy (i.e. two instalments for developments with a CIL liability equal to or more than £500,000). However, this does not take account of the complexities of, inter alia, estate regeneration schemes. 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.

The timing of CIL payments is therefore of critical importance, particularly as the definition of chargeable development (Regulation 9) makes it clear that in instances of full planning approval the chargeable development is that as consented in its entirety. Whilst Regulation 9(4) effectively permits a staged payment approach to outline consents (where phasing is proposed), it is normally the practice to only pursue outline (or hybrid) applications for the largest and most complex sites. The majority of planning proposals will still be submitted in full.

The phasing of payments should be tailored to recognise funding constraints and cash flow of all large and/ or complex schemes including estate regeneration 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 expected build rates and on this basis longer timescales and/ or additional instalments for the payment of CIL should be proposed. Larger applications are in any case required to submit phasing plans with planning applications showing build rate and approximate timescales, and as such this will give the LBTH a level of certainty on when CIL payments can be expected without tying developers to timescales which are too immediate.

It may also be appropriate to define a threshold for larger sites which a bespoke payment method for CIL will be agreed in writing with LBTH through the application process.

5. CONCLUSION

East Thames is committed to providing much needed new homes in Tower Hamlets and working with the Council, has successfully delivered the regeneration of existing estates as well as working with private developers.

East Thames is concerned that as proposed, the draft charging schedule will jeopardise future estate regeneration schemes and that express provision should be made in the schedule as to the approach to be taken in granting exceptional relief.

We look forward to confirmation of receipt of this representation and that it has been registered as duly made. We would also welcome a meeting with LBTH to discussion our position further.

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21392/A3/AO/AC
5 June 2013

Dear Sirs

REVISED PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT DRAFT MARCH 2013

These representations are submitted on behalf of East Thames Group.

We welcome the principle of setting out the Council's approach to Section 106 obligations following the adoption of CIL. However, we are concerned that:

- The SPD proposes to introduce matters that ought to be addressed, where justified, in a DPD;
- Introduces matters that are not justified and do not relate to bona fide planning matters;
- Introduces matters that do not meet the tests set out at CIL Regulations 122 and 123;
- Introduces matters that are already addressed through existing policy documents, such as GLA SPDs.

Specifically, we would wish to make the following comments by way of example:

- *Employment Training and Facilities:* We question the extent to which the draft policy meets the CIL tests and goes beyond matters that fall within the remit of the Council as LPA. The Council appears to acknowledge that the proposed 'policy' at 6.9 may fall foul of competition rules;
- *Travel Plan and related matters:* These can be appropriately addressed through condition;
- *Public Realm:* The requirement to 'maximise' on-site provision without a distinction by area goes beyond the requirements of the development plan and is not justified. The GLA SPD, Shaping Neighbourhoods: Play and Informal Recreation 2012, sets out the Mayor's approach and there is no need to duplicate SPDs;
- *Energy:* Again, the GLA SPD: Sustainable Design and Construction 2006 sets out the Mayor's approach and there is no need to duplicate SPDs;

- *Monitoring:* Explanation and justification of the proposed charges is sought;

- *Trigger Points:* The suggested 'target' trigger points fail to have regard to scheme viability and provision should be made for payment relating to phased occupations. Very rarely is payment upon completion of the S106 justified;

- *Council's Obligations:* Confirmation that the Council will repay any unspent sums with interest after a reasonable period, i.e. 5 years, is sought;

- A number of matters can be addressed through conditions (i.e. travel plans, energy performance) and S106 obligations are not therefore required. If, in principle, the matter that the Council seeks to address does not meet the tests for conditions, we would question whether the Council ought to be seeking S106 obligations;

- We welcome acceptance that all S106 contributions sought are subject to viability testing. The Council should not be specific as to the approach taken save for providing that it is for the applicant to meet the reasonable costs of independent review.

In addition, we would suggest that CIL payment in kind (see para 2.6) can apply to any schemes and not just strategic sites.

Obviously, as a SPD, the document is not subject to independent examination. The only forum for independent review is on appeal pursuant to S78. This places a duty on the Council to introduce a SPD policy regime that meets the relevant tests and does not seek to introduce a 'bottom draw' plan.