Hong Chen

From:	[redacted]
Sent:	05 June 2013 16:18
To:	CIL
Cc:	[redacted]
Subject:	London Borough of Tower Hamlets - CIL Response
Attachments:	130605 Tower Hamlets CIL Objection Letter - Final.pdf; 130605 Objection Letter - Draft.docx

Dear Sir/Madam,

Please see attached our response to the London Borough of Tower Hamlets CIL Draft Charging Schedule, on behalf of Sainsbury's Supermarkets Ltd.

Please can you confirm receipt.

Kind Regards,

[redacted]

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Dear Sir/Madam

COMMUNITY INFRASTRUCTURE LEVY: DRAFT CHARGING SCHEDULE (DCS) CONSULTATION

We act on behalf of our client, Sainsbury's Supermarkets Ltd, in response to publication of the London Borough of Tower Hamlets CIL DCS and would like to take this opportunity to make representations to the consultations.

Proposed CIL Rates

Retail Development

For small retail development less than 280 sq m, the DCS is proposing £70 per sq m within the City Fringe and North Docklands area and a nil chargeable rate elsewhere in the Borough. For convenience-based supermarkets, superstores and retail warehousing over 280 sq m, a higher rate of £195 per sq m is proposed across the Borough (including the City Fringe and North Docklands area) in addition to the adopted Mayoral CIL rate of £35 per sq m. The DCS defines superstores/supermarkets and retail warehousing as the following:

1. Superstore/Supermarket: Shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit.

2. Retail warehousing: 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.

Residential Development

In regards to residential development, the DCS is proposing three differential rates, including £200 per sq m within Zone 1, £65 per sq m within Zone 2 and £35 per sq m in Zone 3 (in addition to the adopted Mayoral CIL rate of £35 per sq m).

Lack of Evidence that Sub-Categories of an Intended Use or Boundaries of Particular Zones are Different

There is no adequate evidence that the sale of retail goods within a supermarket/superstore and in a retail warehouse are each different intended uses (for Regulation 13 purposes) to the sale of goods from all other use classes (A1-A5). All are retail uses involving the sale of goods to visiting members of the public for their own consumption, with similar operational characteristics. What is the real difference in "intended use" between retail warehousing, supermarkets/superstores and other forms of retailing? Is there really a difference between retail warehousing with selling DIY goods and one selling sports equipment – it appears that the first is charged and the second not. They are all simply shops and should be treated equally.

In regards to residential development, the range of differential rates charged across the borough do not accurately prove that there is a different 'intended use of development' within each of the three identified zones. Whilst they may reflect different types of development in various geographical areas, we propose that a more fine-grained evidenced approach is undertaken to justify the boundaries of each particular zone.

In any event, there is no adequate evidence supporting the charging schedule which justifies the above distinctions being made.

Lack of Viability Evidence

Retail Development

In respect of retail development, the Viability Study (prepared by BNP Paribas Real Estate) considered convenience retail and retail warehousing across the borough, all other Class A1-A5 retail uses within the North Docklands and City Fringe area, and all other retail across the borough. No definitions are provided for this, although the text and appendices indicate that all retail developments have been tested as a 30,000 sq ft (or, 2,787 sq m) net proposal (see Table 4.48.1).

For all retail developments, the study has appraised only hypothetical schemes coming forward across the borough. The commercial assumptions are based on an intensification of the existing use on the site. Our view is that the evidence does not reflect the characteristics of local market conditions or variations in land values across the Borough.

Given the proposed £195 per sq m retail rate for supermarkets, retail warehousing and large format retail uses over 280 sq m, and lower rate of £70 per sq m for all other Class A1-A5 retail uses (below 280 sq m) within the City Fringe and North Docklands area, such differential CIL rates should be adequately supported by "fine grained" evidence. The CIL Study does not provide sufficient evidence on the viability of retail warehousing (and of different types of retail warehousing given that some are charged and others not), supermarket/superstore development and other retail uses.

Residential Development

In regards to residential development, the Viability Study has only tested seven scenarios, including three houses on a site area of 0.06ha; a mixed-use scheme comprising 25 houses and flats on a site area of 0.31ha; and five flat typologies, ranging from 6 to 400 units, on a site area of 0.05ha to 1ha (see Table 4.11.2 within the Viability Study).

The residential scenarios are only broad hypothetical assumptions, which do not accurately reflect the appropriate range of local housing availability within each of the seven study areas (see Table 8.4.1 within the Viability Study). The sampling should reflect a greater selection of the different typologies of strategic residential sites allocated within the Tower Hamlets Local Plan, in line with paragraph 27 of the CIL Guidance (April, 2013).

In addition, the Charging Authority have not proactively engaged in any market testing with the developers involved with the strategic and allocated sites identified in the Development Plan or undertaken any sensitivity analysis between the land values that have been assumed through the Existing Use Value (EUV) and those realistically achievable in the local market. This has led to a set of proposed rates in the DCS which we believe are unviable.

Furthermore, the high-level charges are isolated and do not incorporate any mixed-use elements within the residual assumptions. The recommendations are based upon a number of higher values shown in some of the tested scenarios (see Tables 6.19.1 and 6.19.2 of the Viability Study); however, this does not reflect the overall trend of the results and furthermore the very large variation in results demonstrates the limited utility of strategic level viability testing. The study does not draw a clear link between this evidence and the proposed charges, nor does the DCS.

Whilst the viability study makes a brief reference in relation to the local policy context regarding CIL, there is no detailed information on how the proposed rates will impact on the deliverability of the Development Plan particularly in relation to meeting the housing pipeline and borough wide/area specific policy targets. The Council should re-consider lowering its charging levels for residential development and be more pragmatic about viability.

CIL Infrastructure Planning and Funding Gap Report

The Council have calculated over £38 million will be received in the way of CIL income from all convenience retail developments across the borough between 2014 and 2026 and only £15,400 from all other Class A1 to A5 retail uses (see Appendix C of the Infrastructure Planning and Funding Gap Report). The CIL income projection model is built upon the Council's own Planning for Population Change and Growth Model however there is no further justification provided within the main report or method of assessment regarding how this has been calculated.

Sainsbury's urge the Council to provide further clarity on how this over-simplistic and rather excessive projection has been reached, including a full breakdown of the proposed retail floorspace expected over the plan period.

State Aid

Supermarkets and superstores sell an overlapping range of goods with many other shops. They compete in the same market. The DCS charges a high CIL to larger format retail units (above the 280 sq m threshold) but not to smaller competitors. There is no consideration in the available evidence on the state aid implications of this or whether it is objectively justified, particularly in relation to smaller retail uses outside of the City Fringe and North Docklands area.

Furthermore, it should be remembered that the responsibility for state aid compliance rests on the Charging Authority (paragraph 40 of the CIL Guidance). There is no relevant evidence that demonstrates that the Council have given this issue proper consideration.

2013 CIL Reform Consultation

In addition to the above, on 15 April 2013 the Department for Communities and Local Government (DCLG) began consulting on changes to the CIL regulations. Importantly, the consultation invites responses on whether the Regulations should be rephrased to emphasise that examinations of charging schedules must focus on the robustness of the evidence base and that charging authorities should be 'required' to strike an appropriate balance between funding infrastructure and the potential effects of the levy (rather than 'aim' to strike such a balance).

Furthermore, the evidence should clearly demonstrate how the proposed levy rates will contribute towards the implementation of the Tower Hamlets Local Plan at examination (see paragraph 19 of the DCLG Consultation on CIL further reforms). These nuanced changes would therefore focus more attention on the role of the charging authority in justifying their approach. Subject to consultation responses, the regulations are likely to change. We therefore recommend the Council are mindful of these forthcoming legislative changes in progressing their CIL and so we reiterate our view that further evidence must be given.

Instalments Policy

In order for the requirements of CIL not to affect the long-term delivery of retail development within the borough, Sainsbury's consider it essential that the London Borough of Tower Hamlets also prepare and adopt an instalments policy in line with CIL Regulation 69B. If all CIL is payable at the commencement of a development process then that might affect viability. Further clarification will therefore be required within the Charging Schedule so that the financial consequences can be modelled.

Exceptions Policy

In addition to adopting an instalments policy, Sainsbury's suggest that the Council also adopt a policy which would allow the Charging Authority to offer discretionary relief from the CIL payments.

Sainsbury's considers it essential that the Council retains the opportunity for such an agreement to be reached in particular circumstances and welcomes the drafting of an exceptions policy in preparation for the next round of consultation.

We trust the above points are helpful and look forward to reviewing the Charging Schedule when published in due course. Please contact Barry Cansfield in the first instance.