

## **LONDON BOROUGH OF TOWER HAMLETS COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE EXAMINATION –**

### **SUPPLEMENTARY EVIDENCE REQUESTED BY THE EXAMINER**

#### **Transport for London (TfL) / Greater London Authority (GLA) response to the supplementary evidence (ED5.21 and annexes)**

#### **1. Introduction**

- 1.1. TfL/GLA do not consider that the London Borough of Tower Hamlets' (LBTH) charging schedule is supported by appropriate available infrastructure planning and economic viability evidence. The evidence does not demonstrate that the proposed charging rates would not put the overall office development in the North Docklands charging area at risk.
- 1.2. Jones Lang LaSalle (JLL), planning consultants acting on behalf of TfL/GLA, have identified further errors in the supplementary evidence submitted by LBTH for Wood Wharf in North Docklands. Consequently, we have concerns over the robustness of the evidence that attempts to justify the office charging rates in the North Docklands. JLL's full analysis of the supplementary consultation material is presented in Appendix A of this response.
- 1.3. TfL/GLA also consider that the Council's arguments presented in Section 7 of the Supplementary Evidence – '*Crossrail Section 106 Approaches in Central London*', that attempt to justify keeping office rates in North Docklands at the proposed level, are not valid. Section 2 of this response discusses why this is the case.
- 1.4. It is still not clear if the revised viability analysis demonstrates that the Crossrail S106 'top-up' can now be collected in full on office development in North Docklands under the proposed borough CIL rates. Some parts of supplementary evidence supplied by the Council suggest that the Crossrail S106 'top-up' has been included in the viability appraisal as an upfront cost in full (Paragraphs 5.4 and 5.13 of ED5.21), whilst other statements suggest that the Council is not changing its approach to the 'sharing' of the viable development contribution between the Crossrail S106 'top-up' and the borough CIL (Paragraph 1.5 of ED5.21).
- 1.5. In the light of the further analysis carried out by JLL and our querying of the validity of LBTH's arguments regarding Crossrail S106 rates in the Isle of Dogs (IoD) contribution area, TfL/GLA maintain that the office rate in North Docklands should be set to zero, in order not to undermine development viability – unless the Council can provide a clear statement to the effect that the full Crossrail S106 'top-up' will be secured throughout the borough.

- 1.6. TfL/GLA would also like the Examiner to note that we are considering submitting the Leading Counsel's response to William Upton's opinion on 'The use of payments 'in kind' to satisfy the CIL liabilities'. Due to other commitments, however, the Opinion will not be available until the week commencing 15 September 2014 and will be sent to the Examiner in due course. We hope that the Examiner will be agreeable to consider the Opinion as part of the examination.

## **2. Crossrail S106 approaches in central London**

- 2.1. The Council reconfirmed its position of maintaining the approach to the Crossrail Top-Up for offices in North Docklands. The borough still appears to want the developer contributions to be shared between the Crossrail S106 and the borough CIL, because paying both charges in full would lead to development becoming unviable. The Council also stated that the Crossrail S106 rate on office development in the IoD Contribution Area is the highest in London.
- 2.2. The charging rates for office development proposed by the Council allow for the collection of only part of the Mayor's Crossrail S106. It follows that if the Crossrail S106 "top-up" was collected at the full rate this would require a reduction in the proposed Borough CIL rates if development is not to be put at risk. To avoid this, the Borough is proposing an arbitrary reduction in the Crossrail "top-up" on the North Dockland Office market, as per the Examination document ED5.1.
- 2.3. The supplementary work carried out by the Council does not appear to have impacted on the proposed CIL rates. Paragraph 1.5 of ED5.21 states: "The information does not change the overall conclusion that the CIL rates proposed aim to strike what the Council considers is the appropriate balance (under CIL regulation 14)". Paragraph 5.1 states: "Whilst the further appraisals provide some useful information regarding the three strategic sites, the Council considers that the appropriate balance has been struck, and this remains the reasonable option". Indeed, "maintaining the rates as proposed" is the Council's preferred option (ED5.21, page 23).
- 2.4. TfL does not agree with the Council's position and has stated its objection at every stage of the charging schedule consultation period and during the Borough's CIL Examination in Public (EIP) hearing.

## **3. Crossrail S106 rates in IoD Contribution Area**

- 3.1. The methodology used by the GLA/TfL's consultants, Jones Lang LaSalle (JLL), in assessing when it is appropriate to seek a development contribution towards the construction and cost of Crossrail, is set out in the Supplementary

Planning Guidance (SPG) on the Use of planning obligations in the funding of Crossrail and the Mayoral Community Infrastructure Levy (August 2013). SPG lists the following considerations that the Mayor needs to take into account when setting the Crossrail S106 rates:

- Demonstrating a direct relationship between a development and the need for Crossrail;
- Providing the basis to demonstrate that the scale of contribution sought fairly and reasonably relates to the proposed development concerned; and
- Demonstrating that the amount of the contribution sought is directly related to the scale of the impact that the development concerned will have.

3.2. Following this methodology, it was found that office development in Central London (both CAZ and IoD) had the most significant impact on increased transport congestion and cost of crowding.

3.3. Further to this, it was found that growth in the IoD contribution area was particularly dependent upon the provision of additional transport capacity. Levels of employment are expected to grow much faster in IoD than in CAZ and to accommodate this growth, an improved public transport capacity and resilience are needed; Crossrail is crucial in providing both. In view of this, an office development contribution in IoD that is at a higher level than that sought in central London is justified.

#### **4. Policy Justifications**

4.1. TfL would like to stress that all London boroughs are required to have regard to the development charges set by the Mayor. This includes both the Mayoral CIL and the Mayor's policy on the use of planning obligations to help fund Crossrail. Crossrail has been identified by the Mayor as the 'top strategic transport priority for London' (The London Plan, policy 6.4). LB Tower Hamlets will be a direct beneficiary of this project, with a number of stations falling within the borough boundary. The borough's Development Plan Document (DPD) is required to be in conformity with the London Plan.

4.2. The correct approach in applying regulation 14 of the CIL Regulations 2010 (as amended) is to start with the policies of the development plan, and assess the effect of proposed CIL rates over and above these. This means that the borough needs to have regard to both the Mayoral CIL and the Crossrail s106 when setting its own CIL rates. The borough has not done this and instead, treated the Crossrail s106 as a residual that can be reduced to accommodate the borough's own CIL proposals.

- 4.3. The 'sharing' arrangement proposed by the borough is therefore not appropriate. It fails to give sufficient weight to the importance of Crossrail as the 'top strategic transport priority for London' and disregards the guidance on the use of planning obligations. This guidance is based on formal policy and should be given particular weight when boroughs decide to set their CIL rates. Advice received from the Leading Counsel supports the Mayor's (and TfL's) position on this and has been quoted in full in GLA/TfL's responses and statements to previous stages of the borough CIL implementation process.
- 4.4. The effect of the rates published in the borough's Revised Draft Charging Schedule Statement of Modifications (February 2014) is that the borough's proposed office CIL rate in the North Docklands is set at a level which requires a 50% reduction in Crossrail S106 'top-up'.
- 4.5. In putting forward the office CIL rate for the North Docklands, the Borough has failed to strike the appropriate balance called for by the CIL Regulation 14(1).

## **5. Comparison with Other Boroughs**

- 5.1. Appendix R of the supplementary evidence, prepared by the Council at the Examiner's request, summarises the approaches undertaken by the Central London boroughs on accounting for the Crossrail S106 when setting their Borough CILs. All Central London boroughs that are developing/have developed their charging schedules have accounted for both the Mayoral CIL and the Crossrail S106 as a development cost in their financial appraisal before calculating the viable level of their Borough CILs, which in all cases have been set at a level that does not result in a material impact on the Mayor's ability to collect the Crossrail s106 contribution.
- 5.2. The boroughs have not proposed to 'share the pot' of available developer contribution and they have all assumed the correct order of priority when setting their rates, which LB Tower Hamlets did not.

## **6. Conclusion**

- 6.1. In the light of the points discussed above, and JLL's analysis and opinion presented in Appendix A, TfL/GLA maintain that the Council's proposal to 'share the pot' of available developer contributions on office development between the Crossrail S106 contribution and the borough CIL is not appropriate.
- 6.2. TfL would like to draw the Examiner's attention to the justification of higher SPG rates in IoD, the policy context in which the borough CIL rates are set and the existing examples of the relationship between the Mayor's and other boroughs' CILs when considering the Council's proposed office rates in the North Docklands. TfL does not agree with the argument made by the borough

in Section 7 of its Supplementary Evidence to maintain the borough CIL office rates at the proposed level. In our view, this could undermine the viability of office development in North Docklands.

- 6.3. The borough CIL office rate in North Docklands should therefore be revised to zero, unless the Council can affirm that both the Crossrail S106 'top-up' contribution and the proposed borough office CIL rate in North Docklands can be both afforded by the development in full, without affecting its viability.