

Representation to LBTH CIL RDCS Supplementary Evidence

Queen Mary University of London (QMUL)

Student Housing Matters

September 2014

Introduction

- 1 This representation is submitted in response to the consultation on the London Borough of Tower Hamlets (LBTH) Community Infrastructure Levy (CIL) Revised Draft Charging Schedule (RDCS) supplementary evidence requested by the Examiner.
- 2 The representation has been prepared by Turley on behalf of Queen Mary University of London (QMUL). The representation specifically addresses the matters relating to student housing.

Student Housing – Separate Rate for University-led Schemes

- 3 Within section 14 of the document prepared by LBTH (the CIL Charging Schedule Examination Supplementary Evidence Requested by the Examiner, dated 30th July 2014) it is accepted that university-led student accommodation could not support the CIL rate proposed in the RDCS.
- 4 Additional viability evidence, absent until now, has been prepared by BNPPRE and corroborates the position set out by QMUL in previous representations. The LBTH document incorporates this within Appendix X.
- 5 Firstly, and on this basis alone, QMUL would ask the Examiner to consider again whether this can constitute an ‘appropriate balance’ under CIL Regulation 14? It is QMUL’s view that it cannot.
- 6 Secondly, LBTH states that it cannot follow the recommended modification to the RDCS set out by QMUL to resolve this issue; by introducing a legally binding mechanism via a Section 106 Agreement to secure restricted rent levels on proposed university-led student housing schemes.
- 7 Separate, independent, legal opinion supports QMUL’s assertion that LBTH could use this mechanism. Moreover, LBTH does not specifically dispute that this mechanism could be used. LBTH merely points back, again, to the same reason being that a policy basis has not (yet) been adopted. QMUL does not see this as a robust justification for LBTH’s stance on the matter.
- 8 QMUL would reiterate to the Examiner that BNPPRE has recommended this very approach to student housing within the Southwark CIL RDCS, which has recently undergone Examination.
- 9 Southwark Council has justified this position for the very reasons set out by QMUL in previous representations to the LBTH CIL RDCS Examination – namely viability and concern regarding the scope and application of charitable exemption from CIL.

- 10 It is QMUL's view that Southwark Council is proposing QMUL's recommended approach, based upon advice from BNPPRE, despite Southwark Council not having a specific adopted policy basis. This clearly represents completely conflicting advice from BNPPRE.
- 11 The Examiner has recently (August 2014) published his Interim Findings to the Southwark CIL RDCS Examination (see Appendix 1 to this representation for reference). Critically, the Examiner does not question the principle of the approach proposed, nor does the Examiner find that the proposed approach falls outwith the CIL Regulations – despite Southwark Council's CIL RDCS being subject to the same transition measures as the LBTH CIL RDCS Examination.
- 12 Moreover, QMUL wishes to highlight to LBTH, and the Examiner, the increasing number of consents for private rented sector (PRS) (i.e. 'build to rent') proposals and developments across London (and nationally). Turley has first-hand experience of such development. Despite local planning policy not including specific stipulations, this has not precluded Section 106 legal agreements restricting proposed schemes to PRS accommodation for fixed periods (e.g. 5 years).
- 13 It is the view of QMUL that, with regard to the *principle*, there is no substantive difference, which would preclude LBTH following the same approach with university-led student housing schemes.
- 14 On the basis set out above, and a lack of robust response or justification from LBTH, QMUL remains firmly of the opinion, and requests to the Examiner, that the CIL rate for university-led student housing should be modified to reflect a nil-rate within the LBTH CIL RDCS.

Student Housing – Build Costs & Buffer

- 15 Within section 12 of the document prepared by LBTH, LBTH specify that student housing build costs were altered between the publication of the CIL Draft Charging Schedule (DCS) and the publication of the RDCS.
- 16 LBTH state that this decision was based on further research and evidence prepared by BNP Paribas (BNPPRE). LBTH point to Appendix V as providing the underpinning evidence to support this decision.
- 17 Appendix V highlights that student housing build costs were reduced from £1,937.52 per sq m (£180 per sq ft) to £1,423 per sq m (£132 per sq ft). The latter is utilised in viability assessment to underpin the RDCS.
- 18 QMUL questions the basis on which BNPPRE decided to set the build costs so far above BCIS, and then subsequently revert to BCIS.
- 19 To QMUL the substantial shift in costs suggests that BNPPRE had additional scheme specific cost evidence, which was subsequently put aside when revising the viability evidence to underpin the RDCS. If the original build costs had been utilised alongside the other amendments within the latter viability appraisals, it is QMUL's view that BNPPRE's concluded maximum CIL rate would be far lower.
- 20 In section 13 of the document prepared by LBTH, LBTH advises that a decision was made to allow for the reduction in the buffer for student housing from 35% (as applied in the DCS and PDCS) to 31.34% as applied within the RDCS. LBTH advises that the purpose is to maintain consistency in the CIL rate proposed.

- 21 However, the viability appraisals underpinning the RDCS clearly demonstrate a reduction in viability of this use to contribute to CIL – despite the substantial reduction in build costs.
- 22 Therefore, if consistency was maintained in the level of buffer (back from the proposed maximum CIL rate) between the DCS (and preliminary DCS) and the RDCS, this would further reduce the maximum CIL rate from that currently proposed within the RDCS for student housing.
- 23 It is therefore QMUL's view that BNPPRE has altered a number of key assumptions and sources within the viability evidence in an attempt to justify the acceptability of maintaining the same (extremely high) CIL rate between the DCS and RDCS. This casts significant doubt on the robustness of the approach and principles applied.

Contact

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September 2014

**Appendix 1: Southwark Council CIL RDCS Examination –
Interim Findings by the Examiner (August
2014)**

CDEIP13
EXAMINATION OF THE
SOUTHWARK COUNCIL COMMUNITY INFRASTRUCTURE LEVY
REVISED DRAFT CHARGING SCHEDULE (RDCS)
DECEMBER 2013

INTERIM FINDINGS BY THE EXAMINER

To:
The Director of Planning
Southwark London Borough Council

Dear Mr Bevan

Introduction

1. Following the public hearing which I conducted on 29-30 July 2014, I set down below my Interim Findings in the light of all the written and oral representations for and against the approval of the RDCS.
2. In summary, I consider that evidence of viability put forward by the Council is insufficiently robust to support the RDCS or show that the CIL is set at a level that will not put the overall development of the Borough at risk.
3. These Interim Findings are essentially for the Council at this stage but there will, of course, need to be further public consultation and debate in connection with any additional work the Council decides to undertake.
4. The options now available to the Council are set out below with reasons.
5. To comply with the relevant legislation, it should be evident that the RDCS aims to strike what appears to be an appropriate balance between helping to fund necessary new infrastructure and the

potential effects on the economic viability of development across the Borough.

6. The basis for the Examination is the submitted RDCS of December 2013 [*Document CDCIL1*], replacing the earlier Draft Charging Schedule [*CDCIL2*].
7. I have taken into account all of the documentation submitted with the RDCS, including the Viability Study (VS) [*CDE1*], all of the Original Representations [*CDCIL9*] and the responses to them by Southwark Council officers [*CDCIL5-I*]. I am conducting the Examination with strict reference to the submitted RDCS and the related VS. However, where representations duly made to the RDCS rely upon representations to the previous Draft Charging Schedule, I have also take these into account [*CDCIL5-H*], together with further documentary evidence provided by the Council after the submission of the RDCS for examination [*CDEIP5, CDCIL7, CDE2, CDEIP2, CDEIP2 Addendum, CDEIP8-11*].
8. I note that the Council has now published a revised Local Development Scheme committing itself to a review of the RDCS within three years. [*CDEIP12*]
9. Certain Representors objecting to the RDCS on grounds of inadequate evidence offered to provide further data in advance of or at the Hearing. This was declined in favour of proceeding with discussion on the information available without delay. However, such information could be taken into account as part of further engagement with stakeholders, depending on the Council's response to these Interim Findings.
10. I have taken into account that the Council has not served notice that it will offer Exceptional Circumstances Relief from CIL and has indicated that it has no intention of doing so.
11. It is claimed on behalf of local organisations and individuals concerned to promote local developments that the RDCS consultation process,

involving mainly the Council website and stakeholder workshops, failed to enable local participation. However, there is nothing to indicate that the Council failed to undertake full consultation in accordance with its Statement of Community Involvement, as reported in its Statement of Consultation [CDCIL5].

12. The Council proposes a relatively complex series of 19 individual charging rates in seven categories over three charging Zones.
13. Zone 1 comprises an area of the Thames South Bank in the north west corner of the Borough including the Bankside, Borough and London Bridge Opportunity Areas (OA). Zone 2 consists of most of the rest of the Borough to its southern boundary beyond Dulwich but excludes the central area between Camberwell and Peckham which comprises Zone 3. Zone 2 includes the Elephant and Castle OA and the Canada Water OA and Action Area (AA). The Peckham and Nunhead AA is within Zone 2 and the Aylesbury AA is within Zone 3.

Available Evidence

Infrastructure Planning Evidence and the Need for a CIL

Local Planning Policy and Funding Gap

14. I am satisfied that Southwark Council has achieved adopted Local Plan coverage of the Borough and has shown a funding gap that justifies CIL.

Viability Evidence

The Viability Study [VS]

15. The VS was based on development appraisals using a standard residual land value (RLV) method for 50 sample sites and two hypothetical scenarios, of which the majority appropriately relate to the OAs and AAs where most development is expected to occur. It is not necessary for the sample sites to be directly aligned to actual developments or proposals and they generally appear to relate to

individual developments reasonably expected to take place under the adopted Local Plan. There is a realistic variety and combination of type and scale of residential, student residential, retail, office, hotel and industrial uses spread through the sample.

16. Aside from a question of whether up-front payments for land and their funding are properly included as development costs, the numerical calculations within the viability assessments themselves are unchallenged in the written representations. At the Hearing it was accepted that these land costs are, in practice, correctly included, with the existing use value deducted from the residual value.
17. Where the VS is questioned, dispute largely surrounds the suitability of the assessments and their results for setting rates for the majority of planned development in the OAs and AAs in the amounts and combinations of uses set down in the adopted and emerging elements of the Local Plan.
18. Notably, where a site contains a mixture of development type, the VS includes separate assessments for each use but without consideration of the viability of the site as whole. A more holistic approach is taken by the Canada Water viability assessments.

Viability Assessment Methodology

19. I therefore first consider, in broad terms, the methodology of viability and rate setting adopted by the Council and its consultants in the light of the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) and other established guidance on financial viability testing. In the following paragraphs I summarise the relevant provisions of that policy and guidance.
20. The NPPF promotes the provision of the infrastructure necessary to support Local Plans and seeks to ensure their viability and deliverability, including a competitive return to willing developers and land owners.

21. In support of that central aim, PPG on CIL requires the Council to show and explain, by way of a robust evidence base, how its proposed CIL rates will contribute towards the implementation of its Local Plan and support development across the Borough. This should be drawn from 'appropriate available evidence', albeit it is recognised that available data is unlikely to be fully comprehensive. The Council needs to demonstrate that their proposed Revised Draft CIL rates are consistent with that evidence across the Borough as a whole.
22. PPG states, in addition, that a charging authority should directly sample a range of sites across its area, reflecting the different types of development included in the Local Plan, and that sampling should be consistent with viability assessments undertaken in preparing the Local Plan. The PPG states that this exercise will require support from local developers and should focus on strategic sites on which the Local Plan relies, and on those sites where the impact of the levy on economic viability is likely to be most significant, such as brownfield sites.
23. Where differential rates are proposed, PPG indicates that more fine-grained sampling on a higher proportion of total sites may need to be undertaken to help estimate charging zone boundaries. Finer-grained sampling is also likely to be necessary where differential rates are proposed between categories or scales of intended use.
24. With respect to the crucial considerations of land or site value and developer return in viability assessments, PPG makes clear that values should be informed by comparable, market-based evidence and that returns will vary significantly between projects, according to size and risk profile, such that comparable schemes or data sources should be reflected wherever possible.
25. Further advice is contained respectively in the Harman and RICS guidance. The former supports the use of RLV methodology over a market value approach. This matter has now been debated in many CIL schedule examinations, including that of the London Mayoral CIL Schedule, with the conclusion that the RLV approach is to be preferred

and there is no convincing evidence that any different methodology should be used. This is because a purely market value approach risks building in assumptions of current policy rather than helping to inform the potential for future policy costs.

26. Importantly, however, the Harman guidance points out that, on large complex sites, there are intrinsic and essential additional costs of land assembly and planning promotion outside the activities on which developer returns are based. It further states that reference to market values can still provide a useful 'sense check' on the Benchmark Land Value (BMLV), input to the viability assessment model, at which a willing developer is likely to release land for development and that special consideration needs to be given to the manner in which BMLV is treated for larger scale sites promoted in the Local Plan.
27. The RICS guidance defines Site Value as equating to market value, but assuming that the value has regard to development plan policies and other material planning considerations. With respect to CIL viability testing, it is assumed that values are adjusted as necessary to reflect emerging policy and CIL charges. The RICS guidance asserts that the singular use of current use value (CUV) plus a margin, or Existing Use Value (EUV) plus a premium as used in this case, does not reflect the market and that margins are arbitrarily applied. For this reason, the RICS guidance supports the use of market value as reflecting alternative use. This is consistent with the acknowledgement by the NPPF that willing sellers should receive competitive returns.
28. There does not appear to be anything essentially contradictory between these two sets of guidance. Nevertheless, where RLV is used to determine viability, the results need to be sense checked against market evidence, especially where the delivery of the Local Plan is dependent upon the viability of large scale, strategic developments, such as that planned for the OAs and AAs of Southwark. That is not to say, as seems to be implied by some Representors, that projects planned within AAs and OAs should be separately defined as strategic

development and given special treatment or charged lower rates for that reason alone. The central consideration, applied across the entire Borough, is whether the appropriate balance has been struck in terms of the relevant legislation and guidance quoted above.

29. The Council VS is appropriately focussed on the RLV of development sampled mainly within the OAs and AAs of the Borough. Although these are not directly aligned to actual developments they appear to represent a reasonable range and distribution of type and scale of development both previously experienced and planned for the future across the Borough.
30. The VS correctly takes into account the policy requirement for an average 35% affordable housing and Code for Sustainable Level 4 in residential development, an allowance for section 106 planning obligations supported by records of past receipts [*CDCIL7 Appendix 1*]and contributions to Crossrail, as well as the statutory £35 Mayoral CIL applicable to all development in the Borough.
31. The VS disregards sites assessed as unviable with or without CIL being charged. This is shown to be appropriate in the light of further sensitivity testing indicating that, whereas some sites could be brought into viability by reducing their affordable housing contribution below the policy requirement, they would otherwise be unviable irrespective of CIL.
32. The Zone boundaries are informed both by residential site values and 'heat mapping' of house prices and notably are largely unchallenged, save with respect to one section of the boundary between Zones 1 and 2, considered separately below.
33. CIL rates are set pragmatically well below the average notional capacity of the tested sites to accommodate a CIL charge allowing for a reasonable 'buffer', usually over 40%. The area-specific viability analyses also adopt an RLV approach which is essentially consistent with that of the Borough wide VS and provide a degree of market testing, mainly for the Canada Water AA. So far in all these respects,

the Council methodology and approach to viability assessment is broadly compliant with established national policy and guidance.

34. However, assessments within VS for sites in the OAs and AAs relate simply to component land uses within those areas without consideration of their necessary interrelationship in the implementation of the respective AAPs as a whole. Whilst it would be impractical to charge a 'mixed use' rate, many of the relatively large scale developments in the OAs and AAs will include a combination of uses of varying viability where some degree of cross-subsidy will occur in practice. Much of the data input to the site assessments within the VS are therefore questioned by Representors on grounds that the scale, nature and extended timescale of the developments concerned give rise to a high level of investment risk justifying greater allowances for developer profit, professional fees etc than have been assumed.

Bench Mark Land Value

35. In particular, it is asserted by Representors that calculated BMLVs are not reflective of recorded market transactions, which can be up to four times greater in practice. The Council relies for CUV on the 2010 rating list with an antecedent valuation date of 2008, being thus dated by 6 years, during time which land values have generally risen. Rateable value is generally taken by the Council as a proxy for sales value, including in compulsory purchase negotiations. This is challenged by Representors on the basis that land does not necessarily change hands at rateable value. At the same time, Representors failed to include alternative land value evidence in their formal consultation responses, only offering additional information later in the consultation and examination processes. Nevertheless, in the context of CIL, it is reasonable and consistent with recognised guidance to expect direct market comparison to sense check results.
36. In the absence of such direct comparison with actual transactions, it is impossible to form a clear conclusion on this point, in particular where development is likely to involve relatively high investment risk due to

its large scale and extended timescale for implementation. The Council points out that the Local Plan is not generally dependent on individual sites representing more than 5% of planned development Borough-wide. Even so, these sites need to be viewed in combination with respect to whether the provisions of the relevant AAP can be viably met.

Building Costs

37. The building costs input to the viability assessments are also broadly criticised by stakeholders as being too low for the local market. The Council does show that the costs used are RICS Building Costs Information Service (BCIS) rates weighted for Southwark. These rates include a 15% allowance for external (as distinct from abnormal) costs over the rates applicable when the VS of November 2013 was prepared [CDEIP9]. Similar build cost levels were input to the Elephant and Castle Section 106 Tariff Development Viability Study of December 2011 and appear realistic for that date. However, there is merit in criticism that the BCIS data is limited in scope and related to relatively modest, low-rise developments, whilst the rates used do not appear to have been compared with actual prices, especially given the likely effect of subsequent market inflation. An exception is the rates related to building height assumed in connection with the Elephant and Castle Study [CDE7 Table 4.9.1] but this only partly obviates the shortcoming of the VS.
38. As for abnormal costs, these are clearly not included in the 15% allowance over BCIS rates and the Council considers them to be sufficiently covered by an overall 5% contingency figure, given some non-standard costs are known and taken into account within individual site assessments. However, it is not clear from a review of those assessments how the 5% figure is supported in practice, in the absence of any breakdown of construction costs. As a result, the degree to which abnormal costs are likely to be incurred, especially on urban brownfield sites, is uncertain.

Developer Profit

39. There is conflicting evidence of assertion as to the appropriate level of developer profit allowed in the VS and its manner of calculation. The Council maintains that the widely accepted 20% profit on cost (6% for affordable housing) is conservative compared with its own experience of rates of 15 to 17.5%, whilst developers insist that the proper approach is to calculate profit on Internal Rate of Return (IRR) amounting to higher percentages, especially for the large scale development planned for OAs and AAs on grounds of higher risk. There is no clear basis to resolve these differences on the available evidence.

Gross-Net Ratio

40. The VS broadly assumes an 85% gross-net ratio of built development to site area, whereas it is claimed by Representors that, for large scale, urban, often relatively high rise developments, a figure of 70% is more realistic. In connection with retail developments, for example, the Council relies on secondary uses within pedestrian areas to increase development efficiency in relation to land use. The Council does not expect further very high rise buildings to be constructed within the scope of the current Local Plan. However, on balance overall, it appears that the assumed gross-net ratio of 85% is likely to over-estimate development efficiency.

Analysis of VS Results as the basis for setting Revised Draft Rates

41. Although the sample sites are broadly representative of development across the Borough, the results of assessments are subdivided between three Zones. Within individual categories of development, the capacity to accept CIL varies widely. Referring, for example, to the tabulated maximum residential CIL rates in the VS [*CDE1 Table 6.8.1*], the highest rate of £400 psm for Zone 1 does allow a generous buffer below the lowest maximum figure of £693 and the average of £718 psm. However, that average is derived from an effective sample

of only two sites in Zone 1 which cannot reliably be taken to represent the CIL capacity of Zone 1 as whole.

42. The lesser residential rate of £200 for Zone 2 is better justified in terms of the sample size of 18 sites but results vary from a negative value of more than minus £5,000 to a maximum capacity in excess of £3,000. Even discounting these extremes and other negative values that could indicate unviability irrespective of CIL, the reduced sample remains so varied as to be unreliable as the basis of the average maximum value of £900, even compared with the revised draft rate of £200 which still exceeds the maximum positive values in two cases.
43. Many of the commercial rates are based on equally diverse results over smaller samples where a simple average cannot reliably be taken to indicate a viable CIL level. As a general view, it appears that at least some finer-grained sampling is desirable, in terms of PPG.

Market Testing

44. Some market testing has been undertaken by way of viability analyses of the Canada Water AAP [CDE3-4]. These controversially use rateable value as a proxy for CUV and assume a profit of 20% on cost rather than IRR but they realistically take into account the RDCS rates together with specific construction costs and address holistically the mix of development projected within the AAP.
45. Importantly however, the purpose of these analyses was not directly related to the RDCS but to the viability of the AAP. The Council admits that the viability of the AAP is shown as marginal and cites predicted positive economic trends coupled with improved project cash flow due to the necessary phasing of development over time. Be that as it may, the evidence is that the viability of the AAP is dependent upon an increase in development values above present levels or a reduction in affordable housing contributions, contrary to policy and practice. Moreover, there are no detailed assessments to support the reported results and no indication of any degree of viability 'headroom' or 'buffer' and no reference to risk profile. Overall, the market testing

evidence put forward by the Council lacks transparency and is inadequate to support the RDCS.

46. Whilst PPG makes clear that the available evidence cannot be expected to be fully comprehensive, it does not appear to be appropriate to base an assessment of the RDCS on available evidence with the shortcomings I have identified. However, before framing any final conclusion or recommendation it is necessary to consider certain of the individual rates and other matters in more detail.

Residential Rates and the Private Rented Sector

47. Further to the general consideration of residential rates above, there is strong support in the representations for separate consideration of the private rented sector (PRS) on grounds that this is encouraged in planning policy as an important element of housing supply to serve an increasing demand from those who are unable to afford private ownership but who do not qualify for affordable housing.
48. However, there is no distinction in planning policy between the PRS and other areas of the open market. Given that CIL is allied to the delivery of planning policy and in the absence of any impediment to properties transferring from the PRS to private ownership, there appears to be no scope for a differential rate to be set for PRS housing, even allowing that there is evidence that it is potentially less viable than housing for sale.

Student Housing Rates

49. There is local objection to the relatively modest level of the direct let student housing rate of £100 compared with higher rates charged in other London Boroughs. The Council points out that Southwark is the only London Borough with a policy requirement for an affordable contribution within student housing developments. This reduces their maximum capacity for CIL, as the VS demonstrates[CDE1 Table 6.14.1]. Direct comparison with rates elsewhere is therefore

precluded and objection to the Southwark rate on this ground is unfounded.

50. Other questions are related to nomination student housing and are largely a matter of implementation of the RDCS in terms of whether the maximum rent of £168 should be regarded as an average and whether it would be capped or index linked to RPI or CPI, the former being favoured by Representors without dissent by the Council. There was no dispute and the Council should put forward minor amendments to the CIL Schedule to clarify the definition of maximum rent.

Hotel Rates

51. The VS bases the two rates for hotel development (£250 psm in Zone 1 and £125 psm in Zones 2-3) on a limited number of sites with planning permission showing widely varying values of maximum CIL. It is asserted that values per room are very much higher in the north of the Borough, including Zone 1, than in the south, in a range of £65,000 to £250,000 [CDE1 para 6.36 and Table 6.36]. Although a substantial differential between central and suburban hotels is unsurprising, these figures are not well supported by such transactional data as is available. The main objection, from budget hotel operators, is that the rate of £125 for all except Zone 1 fails to recognise the further variation in values across Zones 2 and 3, with only sites relatively close to the boundary of Zone 1 having been assessed and none toward the southern edge of the Borough.
52. It is further claimed that the examples taken fail to reflect the room size standards set by various budget hotel companies of up to 24sqm net or 34sqm gross, whereas the Council bases its assessments on actual planning permissions granted.
53. It is not practical to differentiate between types of budget or luxury hotel operation which can change within a permitted use. Moreover, in those examples assessed within Zones 2 and 3 the lower rate is well below the maximum CIL capacity of any type of hotel.

54. In view of the wide gradation in value from north to south, the evidence base would benefit from a larger number of example sites better distributed about the Borough, with closer attention to room size and gross-net ratios. On balance however, the hotel rates appear to be sufficiently conservative to be justified on the evidence.

Retail Rates

55. The Council now proposes modifications to the RDCS to clarify the description of destination retail development as including car parking provision and deleting reference to car parking provision in sui generis uses akin to retail. These modifications are uncontroversial in themselves.
56. Concern regarding the Revised Draft retail rates surrounds the higher rate of £250 psm for destination retail developments, defined as comprising large shopping centres, malls and supermarkets. These are identified together as invariably providing car parking and involving high volume sales and high unit rents and values but often lower initial land costs due to the use of brownfield sites, such as former industrial areas.
57. In addition to questions related to site typology and viability input data including BMLV and build costs mentioned above, it is suggested by retail stakeholders that this definition is erroneous and that the limited sample of two malls (Sites 29 and 34b) and three supermarkets (Sites 50-52) is insufficient to determine an appropriate single rate for both single unit supermarkets and multi-unit shopping centres.
58. It was confirmed at the Hearing, with particular reference to Site 34b, that the VS does not make specific allowance for the construction cost of car parking on grounds that this element of destination retail development is nil-rated. However, it is reasonable that this cost should be attributed to the retail development itself, especially as it is likely to generate little or limited operational return. It is also reasonably pointed out by Representors that the gross-net ratio of single-unit supermarkets is higher (at around 90%) than for shopping

centres (at around 70%). This is said to be due to significant areas of public space within their overall site limits, which is only partially occupied by secondary users such as cafes and stalls. The Council assumption of higher rents and values is also refuted.

59. Overall, taking account of the disregard of car park build costs in at least one assessment, the likely discrepancy in gross-net ratio and questions over rent and values, the sample of only two malls and three supermarkets appears too small as a basis for defining both typologies as destination retail developments subject to a single CIL rate double that of other retail uses.
60. By comparison, the lower rate of £125 psm for other retail is not substantially challenged. However, there is a proposition that retail development below 280 square metres (sqm) should be nil-rated, citing other London CIL Schedules, in the interest of promoting local shopping provision. Treating the Southwark RDCS on merit however, the VS assesses a wide range of retail operations, including some well below that size threshold. Any development below 100sqm is not liable for CIL in any event, whilst there is potential that many developments would reuse existing floorspace, also not subject to CIL. On the available evidence, the case for a differential zero rate for retail development below 280sqm is not made out in this case.

All Other Uses Rate

61. There are objections from statutory infrastructure providers, specifically of sewage and water facilities and fire stations, that it is illogical and inappropriate for the £30 psm All Other Uses rate to be charged against such publicly funded development, especially in the absence of any policy to apply Exceptional Circumstances Relief.
62. There is also local objection on principle to the All Other Uses rate being charged for community facilities such as public halls, youth clubs or child care facilities, especially given the £35 psm Mayoral CIL is already charged on all development.

63. The Council points out that many such users would be charities exempt from CIL, whilst many community facilities such as libraries are nil-rated in any event.
64. However, there is no separate assessment for the All Other Uses rate which appears arbitrarily set. Equally, there is no specific evidence from Representors that there would be an unacceptable impact on development viability. The Council therefore relies on its judgement that, on balance, such a rate is justified, including by comparison with higher 'other uses' rates charged elsewhere. However, on merit, the All Other Uses rate in this case is unsubstantiated.

Zone Boundaries

65. Notwithstanding the range of concerns discussed above, the definition of the boundaries between the three charging zones is largely unchallenged and objections are mainly focussed on the Revised Draft rates within them.
66. It is claimed for one Representor that the boundary between Zone 1 and Zone 2 along Union Street, between Blackfriars Road and Southwark Bridge Road, should be modified. It is proposed that a narrow strip of development, some 13m to 25m deep between the north side of the road and the face of the viaduct supporting the main railway line west of London Bridge Station, be transferred from Zone 1 to Zone 2.
67. There is a visible difference in character between the two sides of Union Street and the redevelopment of the north side with new uses of relatively high density and value is not precluded. However, the heat mapping of the area is not distinct with regard to any variation in land values across Union Street. Given the limited range of sites sampled in Zone 1 and the substantial difference in residential CIL between Zones 1 and 2, there is logic in the proposition that this constrained strip of land, partly severed from the rest of Zone 1, be subject to the lower charge.

68. More broadly, in the event that differential rates were justified for development within AAs and OAs, this might have implications for amending zone boundaries as an alternative. On the current evidence however, it is only the detailed definition of the boundary between Zones 1 and 2 along the length of Union Street which would need to be reconsidered.

Other Matters

69. Further representations seek relief from CIL for developments under 1000sqm. However there is no basis in evidence for such a distinction, given sites were assessed in a range of sizes, including many well below that threshold.

Overview and Options available to the Council

70. I have noted the comments made by the Council at the Hearing that:
- i. there is recorded inflation of 30% in residential sales values and only 12.5% in build costs since 2012, implying a net improvement in viability on these figures alone if the VS were to be re-run;
 - ii. many of the projected residential sites in the AAs are already approved;
 - iii. CIL never amounts to more than 5% of development project cost in Zone 1, 3% in Zone 2 and 1% in Zone 3;
 - iv. in practice, a proportion of existing floorspace is reused within redevelopment and exempt from CIL, improving overall project viability; and
 - v. the sites assessed in the VS were limited to a number judged adequate having regard to the proportionate deployment of limited financial resources.

71. However, the factor of inflation in sales values over build costs does not, by itself, weigh strongly in favour of approving the RDCS because land values are also likely to have risen. Notwithstanding these general considerations, it is necessary for me to base my assessment of the legal compliance and viability of the RDCS on the basis of the available viability evidence.
72. I have concluded above that the general approach of the Council viability testing of the RDCS based on RLV is appropriate and pragmatically seeks to set rates allowing reasonably generous viability buffers below average maximum CIL rates.
73. However, I have further concluded that:
- i. there is significant uncertainty as to whether several of the data input to the viability assessments are appropriate, in particular with respect to BMLV, construction costs, abnormal costs, contingencies, developer profit and gross-net ratios;
 - ii. maximum CIL rates are set on the basis of a small sample of site assessments per zone by averaging widely varying results;
 - iii. the VS does not directly assess the combinations of development required to implement the adopted Local Plan with respect to the AAs and OAs;
 - iv. market testing of the Canada Water AAP is not directly related to the RDCS, includes questionable BMLV and construction costs and fails to demonstrate a viability buffer or risk profile;
 - v. the distinction between destination and other retail development is not clearly made out, even with the proposed modifications to those definitions;
 - vi. the All Other Uses rate is not supported;
 - vii. the hotel rates should be better justified;

- viii. the definition of maximum rent for nomination student housing should be clarified;
 - ix. the boundary of Zones 1 and 2 along Union Street should be reconsidered; and finally
 - x. If market testing of the CIL rates charged in AAs and OAs were to imply a differential rate for the type of development required there, this may have wider implications for the definition of zone boundaries.
74. These shortcomings of the evidence base do not necessarily mean that the charge rates are unsupported. However, there is insufficient evidence currently before me to justify, in particular, the residential rates, the All Other Uses rate or the destination retail rate.
75. For all the foregoing reasons, the VS as submitted is insufficient to enable me to decide whether or not the RDCS is robustly founded on appropriate available evidence. Without additional information I am unable to conclude that the Council has adequately shown and explained how the RDCS contributes to the implementation of the Local Plan, or that it supports development across the Borough, as required by law and guidance.
76. On legal requirements I would have to conclude that, whilst the RDCS complies with the Act and the Regulations in respect of statutory process, public consultation and consistency with the adopted Local Plan, it does not comply with national policy and guidance and is not supported by an adequate financial appraisal.
77. Accordingly, there are now three options open to the Council in terms of PPG CIL Guidance (para 038)
78. **Option 1** – if, notwithstanding the concerns I have set out above, the Council remains confident that the RDCS can be justified, to consider undertaking or commissioning additional viability work to improve the

robustness of the evidence base in all the respects discussed above but in particular to:

- i. enlarge the sample of sites assessed sufficient to enable reliable average values to be calculated for each zone;
 - ii. extend the degree to which the VS is market-tested, especially with regard to BMLV, construction costs, abnormal costs, contingencies, developer profit and gross-net ratios assumed within the OAs and AAs assessed as a whole;
 - iii. support the designation of the Zone 1-Zone 2 boundary between Union Street and the railway viaduct;
 - iv. support the distinction between destination and other retail development, including with reference to the inclusion of car parking and the related modifications to the RDCS proposed by the Council [*CDEIP8*];
 - v. justify the All Other Uses rate;
 - vi. better support the hotel rates with reference to the hotel typologies assessed; and
 - vii. clarify the maximum rent for nomination student housing by way of modifications to the definition in the RDCS.
79. Such work should involve further engagement with stakeholders to establish, as far as possible, common ground regarding input data to viability assessments and data sources for market testing, as well as further formal public consultation on any fresh evidence, whether or not any modifications are proposed to the RDCS as a result.
80. **Option 2** – withdraw the RDCS under Section 212(11) of the 2008 Act.
81. **Option 3** – take no further action and accept a likely recommendation that the RDCS be rejected.

82. In any event, the Council is requested to provide an immediate response within two weeks of the date of these Interim Findings, indicating as far as possible how it intends to proceed and, if choosing Option 1, indicate within one calendar month of the date of these Interim Findings the timescale over which such additional work would be undertaken.
83. For the time being the Examination remains open and I shall decide in due course whether any fresh evidence can be considered in writing or whether a further hearing is necessary.
84. In the unlikely event that I receive no response from the Council within one calendar month from the date of these Interim Findings, I shall complete and deliver my Report on the evidence currently before me.

B J Sims

Examiner

26 August 2014