

## London Borough of Tower Hamlets

### Community Infrastructure Levy Schedule Examination

#### Main issues and questions for the Examination

##### Introduction

- 1 This paper expands on the objections made to the draft CIL charging schedule on the 23 May 2013 (the Main Objection), and the response to the revised CIL charging schedule (the Additional Objection) made on the 28 November 2013. The paper concentrates on the issues highlighted by the Examiner.
- 2 As usual in CIL examinations, the charging authority has provided only a limited response to the Main Objection and the Additional Objection. There are, however, two key structural points to note:
  - (a) the charging authority can only, properly, rely on the evidence available to them, and used by them, at the date at which the draft CIL charging schedule was submitted for examination. Properly, the examination is to consider whether the charging schedule, as proposed, was supported by the evidence as at the date of submission. Evidence prepared later cannot be taken into account;
  - (b) the charging authority have differentiated by use and by area. Doing so requires them to produce clear and cogent justification that shows that there are genuine differences in use between the uses in different charging bands, and that there are viability justifications for the differentiations, both by use and by area. The CLG guidance on CIL makes clear that, as a matter of policy, this requires fine grained evidence. As a matter of law there has to be a clear justification for differentiation, failing which there is a real risk that the differential charges will operate as a state aid. This puts an evidential burden on the charging authority.

##### General matters 1: Is the evidence on infrastructure costs adequate to enable an appropriate balance to be struck?

- 3 Regulation 14 requires a balance to be struck between the desirability of CIL funding of infrastructure and the effect that the imposition of CIL will have on development. A balance can only be properly struck if the charging authority has clear and robust evidence on the need for infrastructure funding and the effect that particular levels of CIL will have on the levels of development likely to be brought forward.

- 4 In response to the question this note identifies problems with both sides of the balance -- the relevant infrastructure cost and the effect on development plan requirements for affordable housing.

*Infrastructure costs*

- 5 As noted in the Main Objection, the infrastructure cost evidence is inadequate as a basis for an appropriate balancing exercise. In order for a balance properly to be struck, there needs to be a clear analysis of the total infrastructure cost that CIL might be used to fund. On the evidence provided there are a series of flaws. In particular:

- (a) there is no real distinction between the infrastructure that is required to meet the changing and growing demands of the existing population of LBTH (and those residing outside LBTH but working there) and the infrastructure required to "*support development*". The Regulation 14 test should only have regard to the infrastructure required to support development. Evidence of the relevant infrastructure cost is not available;
- (b) there is an inadequate analysis of the likely funding sources, apart from CIL, that will be used to pay for the relevant infrastructure. The Regulation 14 exercise requires a clear understanding of the total cost of all infrastructure "*taking into account other actual and expected sources of funding*". This requires a detailed understanding of the levels of non CIL revenue and capital that are likely to be used to fund infrastructure. That evidence is not available;
- (c) the funding gap between the identified infrastructure cost, and the amount that CIL will contribute, is large. There is no realistic prospect of the gap being bridged. The consequence is either that the local planning authority will have to consent development without any comfort that infrastructure will be provided -- which would be inconsistent with the development plan and suggests that development will not be permitted to proceed -- or infrastructure requirements will have to fall. If the former, then that should clearly be stated; if the latter, then the diminished level of infrastructure that will, genuinely, be funded has to be quantified. There is no adequate evidence on the deliverability of infrastructure.

*Affordable Housing*

- 6 An important component of the Regulation 14 balance is to understand effects of the proposed CIL level on the viability of development as a whole. This requires a genuine analysis of the impact of CIL on development flows. For the purposes of making the point this note concentrates on affordable housing, although the charging authority's problem is not limited to that land use.

- 7 As indicated in the Main Objection, there is no quantified analysis of the likely effect of the proposed CIL rates on affordable housing. At the very least, there should have been an analysis of the number of affordable homes that would have been provided if CIL had been modelled at a rate that allowed the upper end of the affordable housing planning policy range to be met (i.e. at 50%). That figure could then have been compared with the number of affordable homes that are likely to be secured on the basis of the present modelling. There is no quantified evidence of the effect so it is difficult to understand how a balance can properly be drawn.
- 8 It may be argued that, with a higher CIL rate, market housing development will not come forward. That appears to be the thrust of the argument in the charging authority's response to objections. There is, however, no evidence to prove that assumption. It also fails to recognise that if viability is, genuinely, on any scheme then levels of affordable housing can be negotiated when planning applications come forward or, in some circumstances, after planning permission has been granted.
- 9 The real danger with the present approach is that it makes a 35% affordable housing figure the effective upper level of affordable housing provision on most schemes. As well as undermining the charging authorities ability to strike a proper balance acting in this way usurps the role of the local plan in setting affordable housing policy.

Question 9: Strategic sites, residential development rates and office development rates

- 10 As indicated in the Main Objection, the financial modelling of the effect of CIL on the opportunity areas and strategic sites is inadequate. In particular, there is:
- (a) a failure to understand or cost the full "on site" infrastructure costs, including funding, associated with the developments;
  - (b) the assumed programmes for delivering the developments are optimistic if not unrealistic;
  - (c) given the strategic importance of the sites, a different "risk profile" should have been adopted. There should, effectively, have been a "double buffer", with CIL being set with a sufficient margin for comfort to accommodate all eventualities. If the fear is that this somehow "undercharges" major development the local planning authority could when determining planning applications potentially look at mechanisms like deferred affordable housing or deferred Mayoral Crossrail contribution obligations in order to make sure that development makes a full and equitable contribution towards social infrastructure costs.

Question 12: Are the retail charging rates and zone boundaries consistent with the available evidence

- 11 The Council have not adequately differentiated supermarkets/superstores/retail warehouses as a different use, in the context of Tower Hamlets, from any other retail use. In order to differentiate there needs to be fine grained and local evidence. There is no adequate evidence available.
- 12 In any event, the proposed charging schedule effectively differentiates by scale by referring to large scale operations. As the CLG consultation paper leading up to the most recent amendments to the CIL regulations indicated (paragraph 22), differentiation by scale is outside the scope of the Regulations which set the framework for this CIL charging schedule.
- 13 Perhaps most importantly the definitions are an inadequate basis for determining a CIL charge. In particular:
- (a) At what point does a shop become one where a weekly food shopping trip can take place? Is that a food shopping trip for a pensioner or for a family? What if, as is increasingly happening, people are making multiple trips to shops for their food requirements? What charge will be levied if, at the outset, it is not known what level of food will be sold from a store?
  - (b) The definition of retail warehousing seems to be aimed at bulky goods retail warehousing. Is the intention that clothing and footwear stores, which would be more viable, are not to be charged?
- 14 Where CIL is proposed it is important that those likely to be charged are clear about their liability. The proposed definitions are unclear; a lack of clarity borne more out of a desire to charge supermarkets and retail warehouses to the fringes of viability than by any clear analysis of differences in retail use.

**Stephen Ashworth  
Dentons UKMEA LLP**