

London Borough of Tower Hamlets CIL schedule examination

Statement of GLA/Mayor of London

Hearing Session 1 – General Matters

- 1.1 The Mayor proposes to use this matter 1 statement to address the main issues identified by the Examiner for consideration at the EiP¹. These are:
1. **Is the charging schedule supported by background documents containing appropriate available infrastructure planning and economic viability evidence?**
 2. **Are the charging rates informed by and consistent with the evidence?**
 3. **Does the evidence demonstrate that the proposed charge rates would not put the overall development of the area at risk?**
- 1.2 Issues of detail which the Examiner raises in his questions 1 to 7 (infrastructure costs/land values/buffers/s106 payments/build & development costs/phasing/use values/errors) are dealt with extensively in the matter 1 statement prepared by Transport for London. TfL's statement draws on detailed analysis by their consultants, Jones Lang LaSalle. Both statements should be read together.
- 1.3 The Examiner's issue 3 goes to the heart of the main concern consistently raised by the Mayor at each stage of the Borough's preparation of its proposed CIL charging schedule² – that in failing to meet the full requirements of the CIL Regulations, the Borough in proposing its CIL charge rates is actively putting at risk the delivery of key development plan policies (in both the London Plan and its own Core Strategy) and thus placing the overall development of the area at risk.
- 1.4 CIL Regulation 14(1) requires charging authorities in setting CIL rates to strike an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects of the imposition of CIL on the economic viability of development in their area.
- 1.5 CIL Guidance explains what constitutes an 'appropriate balance'. This is set out in paragraph 8 of the April 2013 CIL Guidance and again in section 2.2 of the February 2104 CIL Guidance: "in meeting the requirements of regulation

¹ *Main Issues and Questions for the Examination* – EiP document ED5.5

² Mayor of London's response to LBTH CIL preliminary draft charging schedule 2 January 2013; Mayor of London's response to LBTH CIL draft charging schedule 4 June 2013; Mayor of London's response to LBTH CIL revised draft charging schedule 2 December 2013; and Mayor of London's response to LBTH CIL proposed modifications to revised draft charging schedule 10 March 2014

14(1), charging authorities should show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant Plan and support the development of their area”³.

- 1.6 In section 38(2) of the Planning and Compensation Act 2004, the ‘development plan’ in London is defined as the spatial development Strategy (the London Plan) and development plan documents for the area in question.
- 1.7 The relevance of the London Plan to borough CIL levy setting is further underlined in paragraph 4 of the April 2013 Guidance (“Charging schedules should be consistent with and support implementation of up-to-date Local Plans in England ... and the London Plan in London”) and section 22 of the February 2014 guidance (“Charging authorities should set a rate which does not threaten the ability to develop viably the sites and scale of development identified in the relevant Plan (the Local Plan in England ... and the London Plan in London”).
- 1.8 London Plan policy 6.5 (Funding Crossrail and other strategically important transport infrastructure) identifies the importance of Crossrail to London’s economic regeneration and sets a framework for securing funding contributions towards the costs of funding Crossrail – both through the Mayoral CIL and through planning obligations required in certain defined circumstances. The Mayor’s written responses to the various consultation stages of the Borough’s CIL elaborates further.
- 1.9 This policy has a long history of being subject to public examination, being found sound by examining inspectors and panels, and incorporation into the London Plan – as set out below.
- 1.10 London Plan policy 6.5 was originally put forward by the Mayor as new policy 3C.12A in a May 2009 alteration to the 2008 edition of the London Plan. It was subject to an EiP in December 2009 (at which, uniquely, the accompanying SPG – Use of Planning Obligations in the Funding of Crossrail – was also considered by the Panel), and the Crossrail alterations were formally published/adopted as forming part of the London Plan in July 2010.
- 1.11 The policy was also examined at the Draft Replacement London Plan EiP in the autumn and summer of 2010 and published by the Mayor as part of the London Plan in July 2011. Minor modifications to the policy were proposed as part of the Revised Early Minor Alterations to the London Plan (REMA), which went to EiP in November 2102 and were published by the Mayor as formally part of the London Plan in October 2103.
- 1.12 The policy, in its current form, is not proposed to be altered through the draft Further Alterations to the London Plan (FALP), which was subject to public

³ Para 8 of the April 2103 CIL Guidance is quoted here, but the wording is similar in section 2.2 of the February 2104 CIL Guidance

consultation January to April 2014 and will go to public examination in September 2014.

- 1.13 In the Mayor's view, the Borough has failed to give sufficient weight to the importance of Crossrail. Policy 6.4 identifies this as the Mayor's top strategic transport priority for London, a priority also confirmed in London Plan policies 6.5 and 8.2.
- 1.14 Crossrail is of course also of fundamental importance to Tower Hamlets. There will be two Crossrail stations in Tower Hamlets; Whitechapel – which will help underpin development of the City Fringe opportunity area – and Canary Wharf – which will be critical to realisation of the potential of the Isle of Dogs as without it there will be limited scope for additional development. The City Fringe part of the Borough will also benefit from the station at Liverpool Street.
- 1.15 The Crossrail SPG was revised following the publication of the Mayor's CIL charging schedule in April 2012 (this followed the Mayoral CIL EiP held in autumn 2011), and published, following public consultation, in April 2013 as 'Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy'⁴.
- 1.16 Although this guidance is not formally part of the development plan, it is soundly based on formal policy and the way it was prepared coupled with the extent of ministerial support means that it should be given particular weight.
- 1.16 The provisions of the SPG provide that developers do not have to 'pay twice' in locations liable for both the Mayor's CIL and S.106 obligations. In Tower Hamlets these are that part of the Central London contribution area shown in Annex 1 of the SPG, the Isle of Dogs contribution area shown in Annex 2 and an area within a 1 kilometre radius of Whitechapel station (see Annex 4 of the SPG). The practical result is that in these areas, where the Mayoral CIL payable is less than the amount payable under the planning obligation policy, a 'top up' will be sought representing the difference between the two amounts.
- 1.17 In North Docklands, the Borough is proposing an office CIL rate (£50 per sqm) which explicitly requires an arbitrary 50% reduction in the Crossrail S.106 top-up (£75 per sqm rather than £155 per sqm). This restriction is likely to have a significant effect on the amount of Mayor's S106 collected from the borough and on the overall funding of Crossrail. A conservative estimate by TfL of the loss, based on the Wood Wharf development alone, is between £22m-£30m.
- 1.18 The Mayor submits that in taking this approach, the Borough has incorrectly applied the test in regulation 14(1) by disregarding a policy in the

⁴ <http://www.london.gov.uk/priorities/planning/mayoral-community-infrastructure-levy>

development plan which has a vital bearing on the question of the potential effects (taken as a whole) of the proposed CIL rates on economic viability.

- 1.19 The Borough has failed to show how this approach could contribute towards the implementation of relevant development plan policies (paragraph 8 of the statutory guidance). It has brought forward rates which could only be set by compromising delivery of London Plan policies 6.5 and 8.2. The recent reports by Examiners considering draft schedules put forward by Mid Devon District Council and the Greater Norwich Development Partnership support the Mayor's view that this approach does not conform with CIL regulation 14.
- 1.20 The Mayor further submits that the correct approach in applying regulation 14 is to start with the policies in the development plan, including those for affordable housing and other calls on development, and assessing the effects of proposed CIL rates over and above these. This view is supported by paragraph 29 of the statutory guidance (April 2013).
- 1.21 The Borough has not done this; rather it has treated the "Crossrail top-up" as the residual, to be reduced to accommodate their CIL proposals regardless of the extent of congestion a development might cause on the London rail network (the "harm" the Mayor's planning obligations policy is intended to address, and which is a factor in making relevant development acceptable in planning terms). The Borough has therefore failed to apply the regulation 14 test properly.
- 1.22 The Mayor has sought the advice of Leading Counsel on this issue. The opinion of Paul Brown QC was appended to the Mayor's letter of 10 March 2014 giving his response to the proposed modifications. The Mayor urges the Examiner to consider this opinion in full, and in particular the point made in paragraph 11 of the QC's opinion:

In essence, LBTH's approach treats the Crossrail section 106 policy as if it were a minor, and therefore dispensable, component of the London Plan. In view of the national significance of Crossrail, and the priority given to both the London Plan, I do not consider it is open to LBTH to treat the Crossrail policies of the London Plan in this way. Rather, as set out in the Mayor's letter of 4 June 2013, objecting to LBTH's original proposals, the correct approach (supported by paragraph 29 of the CLG guidance) is to start with the policies of the development plan, and assume that these are themselves "development costs" which should be taken into account when assessing the impact of CIL on viability.

- 1.23 In summary, the Mayor considers that Tower Hamlets has clearly failed to strike the appropriate balance required by CIL regulation 14. The RDCS should be either withdrawn or rejected on this ground.