London Borough of Tower Hamlets CIL schedule examination

Statement of GLA/Mayor of London

Hearing session 2 – strategic sites, residential development rates and office development rates

9. What would the likely effect of the proposed CIL rates be on (a) Opportunity Areas; (b) Strategic Sites; and (c) delivery of the Whitechapel Masterplan?

- **Do the scenarios tested adequately represent development likely to occur on Strategic Sites, Opportunity Areas and as part of the Whitechapel Masterplan?**
- **Are the assessments of Strategic Sites sufficiently specific?**
- **Are the assumptions regarding ongoing s106 payments for strategic sites realistic?**
- **Is it realistic to expect Strategic Sites to be developed with post-CIL IRRs of around 13%?**
- **Does the evidence on CIL as a percentage of total Strategic Site Development Costs indicate that CIL would not put the overall development of the area at risk?**
- **Does the viability assessment of the tested strategic sites indicate that the overall development of the area would not be put at risk by CIL?**
- **If you consider that a change to the schedule is necessary what rate/zone boundary would be appropriate?**

9.1 The Mayor requests that the Examiner considers the session 2 statement from Transport for London (TfL) in respect of the answers to the Examiner's question 9.

10. Are the residential charging rates and zone boundaries informed by and consistent with the available evidence?

- **What would the likely effect of the proposed CIL rates be on the provision of affordable housing and achieving the Core Strategy target of 50% affordable homes? Is the use of a 35% affordable housing requirement in the viability assessments appropriate and compliant with Core Strategy policy SP02? Do the rates take appropriate account of cross-subsidy of affordable housing by private sales?**

10.1 The Mayor remains concerned that the Council has not had due regard to the potentially negative effect of its proposed CIL on achieving its overall strategic target for affordable housing of 50%, as set out in Core Strategy SP02.

10.2 It is the Mayor's view that in so doing, the Borough has failed to take full account of the impact of its proposed residential CIL rate on the implementation of a key component of its local plan, as required by CIL regulation 14(1)

10.3 Core Strategy policy SP02 recognises that the achievement of this strategic target relies in part upon securing additional affordable homes from public sector initiatives with housing associations. The supply of affordable homes from this source will be largely influenced by the viability of individual affordable housing and estate regeneration schemes. The factors affect the viability of such schemes are wide ranging and complex but will typically rely on a level of public subsidy in the form of grant and often cross-subsidy from the sales of private housing.

10.4 The evidence proffered by the Borough in support of its proposed CIL rates does not take appropriate account of the impact these would have on the cross-subsidy of affordable housing by private sales and, in turn, the impact on the overall supply of affordable housing anticipated under SP02.

10.5 The Borough in its October 2013 response to this issue stated: "*It is acknowledged that given the current economic climate, lack of grant funding and the requirement of Estate Renewal Schemes to ensure the replacement of the existing units and in particular social rented accommodation, many schemes incorporating private units are being developed by housing associations in order to assist in the delivery of more affordable units. However, some schemes may still benefit from grant.*"

10.6 This response raises concerns in three regards:

- It fails to quantify the impact of the proposed CIL rates on the level of cross-subsidy forthcoming for housing associations relying on this to support the viability of their affordable housing schemes;

- It implies that the use of cross subsidy is a discretionary response by housing associations to the factors listed but in practice under the current programme the GLA expects all affordable housing providers (except very small and specialist providers) to include cross-subsidy from open market housing, for rent and/or sale, as part of their bids for grant in order to ensure value for money and boost housing delivery across all tenures[1]. The assessment of the level of cross-subsidy included will be a key consideration in determining what, if any, level of grant they receive and any unduly detrimental effect on this level of cross subsidy owing to the proposed CIL may have a knock on effect on the attractiveness of bids for sites in the borough and the level any grant funding secured; and

[1] See the Mayor's Housing Covenant : 2015-18 Programme, GLA 2013, paragraph 124.

- The final sentence notes that grant may still be available, but this cannot be assumed for all sites. Where it is assumed, grant may be insufficient to mitigate the loss of cross-subsidy attributable to the detrimental impact of the proposed CIL. The Borough cannot expect GLA grant subsidy to bear the brunt of any financial detriment to developing housing associations arising from its proposed CIL rates and has not put forward appropriate evidence on this matter.

10.7 The Mayor notes that the Borough has received detailed representations from some of the housing associations developing additional affordable housing in the borough, and wishes to draw the Examiner's attention to these in considering this matter. These representations also cover factors pertinent to this matter, including the accuracy of the Borough's viability evidence and the geography of the proposed charging zone boundaries – see below.

10.8 For the Examiner's ease of reference these representations are:

- CIL_DCS13: Quod on behalf of One Housing Group
- CIL_DCS17: DP9 on behalf of London and Quadrant Housing Association
- CIL_DCS20: Barton Wilmore on behalf of East Thames Group
- CIL_DCS23: Gateway Housing Association
- CIL_DCS24: Savills on behalf of Grosvenor, One Housing Group and Telford Homes

10.9 It is hoped that the Borough will proffer further justification in support of the proposed CIL rate in the context of its development plan. At present, however, the Borough in setting the proposed charging rates has not taken appropriate account of the impact these will have on the supply of affordable housing from public sector initiatives with housing associations.

10.10 In the Mayor's view, this constitutes a failure to have due regard to Core Strategy SP02 in setting the proposed CIL rate, and therefore a failure to fully comply with CIL regulation 14.

11. Are the office charging rates and zone boundaries informed by and consistent with the available evidence?

- **Is the 'sharing' of the maximum viable CIL level for office development in North Docklands between Tower Hamlets CIL and the Crossrail s106 'top up' appropriate and does it accord with the *Use of Planning Obligations in the Funding of Crossrail and the Mayoral CIL SPG (April 2013)?* What would be the likely effect on office development in North Docklands and on Crossrail?**

11.1 In addition to that set out below, the Mayor requests that the Examiner considers the session 2 statement from Transport for London (TfL) in respect of the answers to the Examiner's question 11.

Office CIL rates in North Docklands and the impact on Crossrail funding

11.2 The Borough and BNP released a Revised Draft Charging Schedule in February 2014 which revised downwards the proposed rates for City Fringe offices (from £120 to £90 per sq m), North Docklands offices (from £60 to £50 per sq m), Convenience Supermarkets, Superstores and Retail Warehousing (from £135 to £120 per sq m) and Hotels (£210 to £180 per sq m).

11.3 For North Docklands offices a new possible maximum CIL rate of £167 per sq m was proposed based on CUV1. The 25% buffer is described in this edition of the evidence as dealing with site specifics resulting in a maximum rate of £125 per sq m being chargeable. BNP have then recommended to the Borough a rate of £50 per sq m to be set[2].

11.4 The appraisals provided by BNP annexed to the February 2014 revision were altered from both March and an August 2014 edition insofar as the calculation of the maximum CIL rate was derived differently.

11.5 The calculations now put the land value in as a development cost which appears to be based on CUV3 at £1,595,734 – yet the proposed maximum CIL rate was based on CUV1 as described in the narrative and detailed in the Maximum CIL rates per square meter table.

11.6 When calculating the maximum CIL rate payable however, our consultants Jones Lang LaSalle do not understand the methodology used in arriving at the figure of £167 per sq m described in the narrative and detailed in the Maximum CIL rates per square meter table since the CIL rate computed in the development appraisal 5 indicates a CIL rate payable of -£26 per sq ft. This is not explained.

11.7 There is no justification for this change in approach, nor for the rationale of adopting one CUV figure for the land value and calculating the CIL rate against a lower value.

11.8 The Mayor also wishes to draw the Examiner’s attention to the broad points made by the Mayor in his session 1 statement on the legitimacy of the proposed office rates for North Docklands. The essence of the Mayor’s case is as follows:

- CIL regulation 14(1) requires the charging authority to strike ‘an appropriate balance’
- CIL Guidance explains that this process includes showing how proposed CIL rates contribute towards the implementation of the charging authority’s relevant Plan and support the development of their area
- The development plan for Tower Hamlets includes the London Plan

[2] See ‘Community Infrastructure Levy (CIL) Revised Draft Charging Schedule Statement of Modifications February 2014’ page 7.

- London Plan 6.5 identifies the importance of Crossrail and provides for planning obligations to contribute towards its funding
- This policy is well established and has been tested at three EiPs
- The accompanying SPG makes provision to avoid developers having to contribute to Crossrail funding 'twice'– the S.106 'top up'
- Tower Hamlet's proposed CIL rate in North Docklands is set at a level which requires a 50% reduction in Crossrail S.106 top up (the "sharing")
- This will have a siginificant effect on Crossrail funding – a loss of £22-30 million for Wood Wharf alone.
- This is arbitrary and not justified – the cost of complying with this important development plan policy should not be treated as a residual for the purposes of CIL rate setting.
- This view is supported by CIL Guidance paragraph 29.
- In putting forward the office CIL rate for North Docklands, the Borough has failed to strike the appropriate balance called for by CIL regulation 14.
- Leading Counsel endorses the Mayor's view.

Office CIL rates in the City Fringe and the impact on Crossrail

11.9 As with North Docklands, the size of the properties (to be developed or in existing use) are not representative of properties in the area.

11.10 The appraisals 1-10 attached to the August 2013 BNPPRE viability evidence showed on the face of it that no Borough CIL could be afforded.

11.11 Another version is attached to the Statement of Modification. Although the text refers to comparisons with CUV1 (see paragraph 2.4) the table headed 'City Fringe Jan '14' sets out appraisals which use CUV3 (i.e. £1,789,694). However, the appraisals appear to completely exclude the Mayor's S106 Crossrail obligation and exclude interest on land.

11.12 Jones Lang LaSalle have recast Appraisal 5 inserting the Mayoral S106 rate for offices in Tower Hamlets inclusive of the Mayoral CIL. This showed CIL at the level proposed by LBTH makes the appraisal unviable. Using CUV2 as the comparative benchmark land value, the resultant residual land value is £1,318,120, which is lower than the CUV2 benchmark, suggesting that the Borough CIL should not be levied at the rate proposed.

11.13 JLL's own research of the secondary City Fringe offices market suggests that office rental levels used for the current use values are incorrect. No supporting evidence has been provided by BNP. If we include CUVs based on the £20 psf, the Mayor's S106 is at risk even if the Borough set the office rate at zero. Please note that the BNP CUV calculation is not mathematically correct.