

<b>Ref</b>	<b>Representor (Agent)</b>	<b>Tab Number</b>
CIL_DCS01	Stephen Ashworth	1
CIL_DCS02	James Ball	2
CIL_DCS03	National Grid Property Holdings (PP)	3
CIL_DCS04	Greater London Authority	4
CIL_DCS05	Lanak Square	5
CIL_DCS06	Morisons (Peacock and Smith)	6
CIL_DCS07	Barkantine Management Team	7
CIL_DCS08	Thames Water	8
CIL_DCS09	Canal and River Trust	9
CIL_DCS10	TfL	10
CIL_DCS11	London First	11
CIL_DCS12	Asda	12
CIL_DCS13	One Housing Group (Quod)	13
CIL_DCS14	Environment Agency	14
CIL_DCS15	Redrow (Planning Potential)	15
CIL_DCS16	Bishopsgates Goods Yard (DP9)	16
CIL_DCS17	London and Quadrant (DP9)	17
CIL_DCS18	Berkeley Groupd (Quod)	18
CIL_DCS19	Aldgate Developments (Barton Wilmore)	19
CIL_DCS20	East Thames Group (Barton Wilmore)	20
CIL_DCS21	Queen Mary University (Turley Associates)	21
CIL_DCS22	Express Newspapers (DP9)	22
CIL_DCS23	Gateway Housing Association	23
CIL_DCS24	Housebuilders Consortium (Savills)	24
CIL_DCS25	Sainsburys (Turley Associates)	25
CIL_DCS26	Canary Wharf Group (DP9)	26
CIL_DCS27	London Newcastle (DP9)	27
CIL_DCS28	Travelodge (Turley Associates)	28
CIL_DCS29	MPG St Katherine LP (DP9 )	29
CIL_DCS30	GMV Ten Ltd (GVA )	30
CIL_DCS31	Safestore (GVA)	31
CIL_DCS32	Tameric Investments (GVA)	32
CIL_DCS33	GVA (various clients)	33
CIL_DCS34	Unite (CGMS)	34
CIL_DCS35	Police (CGMS)	35
CIL_DCS36	Aldgate Place (GP) Limited (Deloitte)	36
CIL_DCS37	Downing (Rolfe Judd)	37
CIL_DCS38	English Heritage	38

**From:** Ashworth, Stephen [REDACTED]  
**Sent:** 23 May 2013 15:20  
**To:** CIL  
**Subject:** CIL DCS

I write in a personal capacity. I am not representing anyone with an interest in development in Tower Hamlets. I have been working on CIL for many years, first as Chair of the British Property Federation Working Group on CIL, and then representing the BPF on the DCLG Group that helped develop the 2008 legislation and the subsequent CIL regulations. I have also advised the National Housing Federation on CIL issues.

I have a number of concerns about the approach that is being adopted by the Council.

### **Testing the Balance**

- 1 Regulation 14 requires a balance to be drawn between the desirability of securing funding for infrastructure and the effect that charging CIL will have on the viability of development as a whole. Although there are multiple graphs in the BNP viability analysis that show the effect of various CIL levels, there is no obvious evidence that quantifies this effect in terms of the number of houses, or the level of commercial or other development floorspace that is likely to be affected. Nor is there any analysis of the spatial consequences of the proposed CIL rates – will it have a greater effect in some areas than others and, if so, are there equalities consequences. In the absence of this evidence it is difficult to see how a proper regulation 14 balance can be drawn.
- 2 One of the inputs into the regulation 14 balance is a proper understanding of the cost of the infrastructure “required to support the development of its area”. The Council’s infrastructure analysis does not separate out the infrastructure that is required to support development, and that which is required for other reasons. As an example, a significant part of the education requirement relates to changes in the patterns of living within existing housing stock rather than arising as a consequence of development. The infrastructure cost analysis needs to be substantially amended so that the cost that relates to new development is separately identified.
- 3 There are also anomalies in the way in which non-CIL revenues are anticipated. The £245 million does not take adequate account of the other potential public sector funding through to the end of the time period. It also grossly overstates the likely level of section 106 funding. The BNP analysis assumes (rightly) relatively low levels of future section 106 funding. The infrastructure costing assumes £71 million. The two approaches cannot be reconciled.
- 4 There are also anomalies in the assumed CIL income. The assumption that £39 million will be paid in relation to convenience retail is risible. It implies that there will be 200,000 square metres of convenience/retail warehouse development.
- 5 If the inputs into the balancing exercise are, as I believe, incorrect, then a proper balance cannot be struck.

### **Affordable Housing**

- 6 As noted above, there is no evidence of the effect that CIL will have on the numbers of affordable homes that will be provided. The development plan policy seeks 35-50% affordable housing provision. All of the viability analysis focuses on the 35% level or lower. That is unacceptable. The entire development plan range should be viability tested. While the Council may decide to set a CIL rate that would allow a 35% level of provision, it must understand the number of affordable homes that would be lost compared with the development plan policy aspiration of 50%.

### **Planning Obligations**

- 7 The viability analysis assumes that the Mayoral Crossrail SPG contribution will be 70% of the published rate. There is no adequate explanation for this reduction. In the absence of evidence, it undermines the robustness of the analysis.

## CIL - DCS01

- 8 CLG guidance suggests that councils should benchmark proposed CIL charges against historic section 106 obligation costs. Although there is information in the infrastructure cost documents, there is no apparent testing of likely CIL charges against past section 106 agreements.

**Differential Uses**

- 9 Regulation 13 only permits differentiation by location and intended use. The recent CIL consultation paper makes it clear (paragraph 21) that it is not open to charging authorities to discriminate on the basis of scale.
- 10 The Plymouth examination report explains this blunt statement from DCLG. Size can never be used alone as a basis for differentiation. Where there is a clear and unambiguous difference between intended uses then size may, if there is evidence to justify it, be used as a proxy for differentiation between the intended uses. Where there is a clear viability difference between two different intended uses then a size threshold may, if there is evidence to justify it, be used as a proxy for differentiation.
- 11 In the available evidence to support the DCS there is no analysis whatsoever of whether there is a different intended use either side of the proposed 280 square metre threshold. In the absence of that analysis the CIL charging schedule is clearly flawed.
- 12 Even if there was an analysis that demonstrated that a store of 279 square metres was different from one of 281 square metres, there is no adequate viability analysis that shows that there is a viability difference between the two stores.
- 13 As a separate issue, if differentiation is proposed then it has to be on the basis of sensible definitions capable of being understood at the date at which CIL is charged. The Council's definitions are wholly inadequate. It will not be clear at the date at which, for example, a 400 square metre shop is being built (probably as part of a mixed use development) whether it is going to be occupied by a supermarket or another retail use. What rate does the council propose to charge in such circumstances?
- 14 Again, as a separate issue, the definition of retail warehousing is just silly. It captures the traditional bulky good retail warehouses, but would not cover an out of centre Marks & Spencer.
- 15 Wherever there is a proposed differentiation, the council has a responsibility to deal with any potential state aid issues. There is no reference in any of the evidence on which the council rely to state aid having been considered.

**Geographical zoning boundaries**

- 16 The CLG guidance makes it clear that where differentiation by geographical zone is proposed then "fine grained" evidence is required. I have not seen any adequate evidence that justifies the various boundaries that are proposed.

**Student Housing**

- 17 The viability analysis seems to suggest that, in development plan terms, student housing should make an affordable housing contribution and that, if it does, the proposed CIL rate should be £250. The charging schedule proposes a rate of £425. It would help if there could be an explanation of the council's approach.

**Strategic Sites**

- 18 It is useful to see the BNP analysis on the strategic sites. It is good to see that an Argos analysis, rather than a simple residual analysis, has been used. The promoters of the strategic sites will need to test, carefully whether the inputs into that analysis (which do not appear to be available in public) are sensible.
- 19 However, the analysis appears to indicate that the majority of the strategic sites will not be viable. Given that these are sites which, almost by definition, integral to the development plan, it is strange that thought has not been given to an alternative CIL approach on these sites.
- 20 As a broad observation, the strategic site analysis seems to have significantly underestimated the likely "on-site" section 106 obligations that will be required in order to make the sites capable of development.

**Duty to Cooperate**

CIL-DCS01

- 21 Although the duty to cooperate does not apply directly to the preparation of CIL charging schedules, there is a disappointing lack of reference to the progress that is being made by other adjacent charging authorities, or, critically, to the potential affects of the chosen CIL rates on schemes that have more than local significance.

**Conclusion**

- 22 Depending on the Council's response on these issues, I intend appearing at the CIL examination.



# **Call for Representation Response Form**

**Publication of the Community Infrastructure Levy  
Draft Charging Schedule**

**And**

**Revised Planning Obligations  
Supplementary Planning Document**

**London Borough of Tower Hamlets  
Infrastructure Planning Team  
April 2013**

Representor reference number  
For Internal use only

## Call for Representations Response Form for:

### Community Infrastructure Levy Draft Charging Schedule and Revised Planning Obligations Supplementary Planning Document

If you are unable to use the Tower Hamlets Council's online consultation portal, you can use this form to provide your responses. Please refer to the [Statement of Representations Procedure](#) before completing this form. An electronic version of this form is available from [www.towerhamlets.gov.uk/CIL](http://www.towerhamlets.gov.uk/CIL).

#### About the Consultation

##### Consultation period:

5pm Monday, 22<sup>nd</sup> April 2013 - 5pm Wednesday, 5<sup>th</sup> June 2013

The Council will not be able to consider any representations received after the above consultation period.

Return this Representations Response Form to:

##### Post:

CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2<sup>nd</sup> Floor Mulberry Place  
5 Clove Crescent  
London E14 2BG

##### Email:

[CIL@towerhamlets.gov.uk](mailto:CIL@towerhamlets.gov.uk) with 'CIL DC5' in the subject box.

##### Consultation Portal:

<http://towerhamlets-consult.objective.co.uk/portal>

*Please note: If you send an email, or use the online consultation portal, it is not necessary for you to also send in a hard copy. In addition, copies of representations will not be treated as confidential and they will be made available for public inspection.*

#### What happens next?

Following the receipt of representations on the CIL Draft Charging Schedule within the specific consultation period, the Council will:

- Consider all representations under the requirements set in the relevant legislation
- Summarise the main issues raised by all representations and publish a statement of representations, with original representations on the Council's website

- 
- Submit the CIL Draft Charging Schedule, the relevant evidence and supporting documents to an Independent Examiner

Those making representations on the CIL Draft Charging Schedule have the right to be heard by the Examiner. The Examiner will assess the compliance and appropriateness of the CIL Draft Charging Schedule and its supporting documents.

For the Revised Planning Obligations SPD, where necessary, appropriate revisions to the draft document will be made in light of consultation responses, before it is adopted.

### Section B (1) – Representation to LBTH CIL Draft Charging Schedule

Your representation should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested change(s), as there will not normally be a subsequent opportunity to make further representations based on the original representation at publication stage. After this stage, further submissions will be only at the request of the Examiner, based on the matters and issues he/she identifies for Examination in Public.

#### Questions:

1. Do you have any comments relating to the CIL Draft Charging Schedule and its supporting evidence?

Yes: (Please make sure you refer to the sections or paragraphs, to which your comments relate and provide details by using the box below for your comments. If needed, please continue on a separate sheet of paper.)

No

████████████████████ (98 East Ferry Road, postcode E14 3LL, purely residential) which in the Draft Charging Schedule is currently included in CIL Zone 1 but should be included in CIL Zone 3. As such the boundary of CIL Zone 3 should be moved such that CIL Zone 3 includes our house. This is both appropriate (based on the Tower Hamlets CIL viability report) and easy to achieve (as the property is right next to but outside CIL Zone 3).

#### To move the boundary is appropriate because:

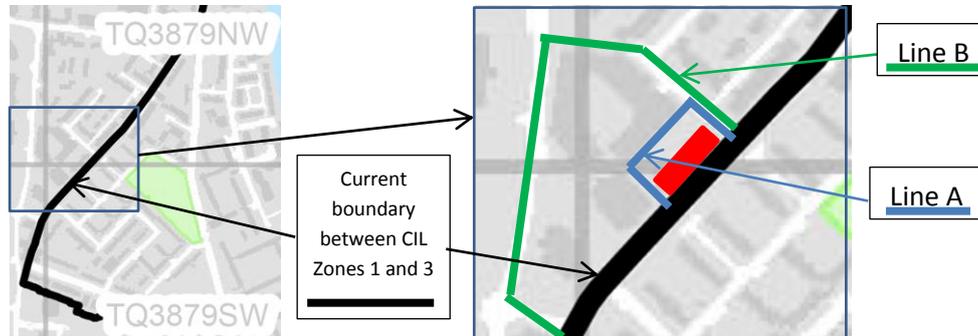
- The Tower Hamlets CIL viability report (Table 1.5.2) states that Cubitt Town (postcode E14 3) should be in Zone 3. ██████████ Cubitt Town, postcode E14 3LL, so therefore based on the report should be in CIL Zone 3
- Individually, the residential value of our house is cheaper than the average for every area across the borough in Table 4.3.1 of the viability report, as follows: of the areas

PLACE	VALUE PER SQ FT	SOURCE
Area 8	700	Average value for area, Table 4.3.1, Viability report
Area 7	650	
Area 6	575	
Area 5	500	
Area 4	470	
Area 3	430	
Area 2	400	
Area 1, including Cubitt Town	380	
<b>Our house</b>	<b>303</b>	<b>Purchase price, Oct 2011 £425,000 for 1403 sq ft</b>

As such, to charge us the highest CIL rate, applying to CIL Zone 1, when we have land of the lowest value (measured in a recent open market purchase) is grossly unfair.

- The difference in charge (£200 in CIL Zone 1 versus £35 in CIL Zone 3, per square metre, per LBTH CIL Draft Charging Schedule Apr 2013[1], page 3) is so large as to deter development. For example, on a 100 sq metre new house the difference would be £16,500, ie £20,000 in Zone 1 versus £3,500 in Zone 3.
- The viability report states (page 4): "CLG guidance requires that charging authorities do not set their CIL at the margins of viability". A CIL Zone 1 charge on my house's land would make development unviable

To move the boundary is very easy because (demonstrated by the diagrams below):



Draft charging schedule Appendix 1 showing referenced squares

Expanded section (including red block showing numbers 98 to 110 East Ferry Rd)

- The current boundary between CIL Zones 1 and 3 goes right in front of the house. It would be very easy to move the boundary either
  - 1) per Line A, which would start to the left of 110 East Ferry Road, head north –west along the boundary of that property, then north east along an access alley behind the 7 houses from 110 to 98 East Ferry Road, then south east along Roffey Street
  - 2) or per Line B, which would head from the boundary on East Ferry Road to Limeharbour, go north along Limeharbour then east along an alley between Limeharbour and Roffey St, then south east along Roffey Street.
- None of the suggested boundaries goes through the middle of potential development sites so both line A or line B could easily be adopted. Several other local authorities have zoning boundaries which are not fixed to roads so LBTH could also easily do this

In summary, it is both completely appropriate and entirely possible to move the boundary between CIL Zones 1 and 3 at the point shown to either Line A or Line B. It would be grossly unfair and inappropriate to leave 98 East Ferry Road within CIL Zone 1.

2. If your representation is seeking a change to the CIL Draft Charging Schedule, do you consider it necessary to attend the Examination in Public?

- Yes, I wish to attend
- No, I do not wish to attend

3. Please tick the box if you would like to be notified of about any of the following:

- If the Draft Charging Schedule has been submitted to an Independent Examination in accordance with section 212 of the Planning Act 2008 (as amended)
- Of the publication of the recommendations of the Examiner and the reasons behind those recommendations
- Of the approval of the Charging Schedule by the Charging Authority (The Council)

**Section B (1) – Representation to LBTH CIL Draft Charging Schedule**

Your representation should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested change(s), as there will not normally be a subsequent opportunity to make further representations based on the original representation at publication stage. After this stage, further submissions will be only at the request of the Examiner, based on the matters and issues he/she identifies for Examination in Public.

**Questions:****1. Do you have any comments relating to the CIL Draft Charging Schedule and its supporting evidence?**

Yes (Please make sure you refer to the sections or paragraphs, to which your comments relate and provide details by using the box below for your comments. If needed, please continue on a separate sheet of paper.)

No

WE (PLANNING PERSPECTIVES LLP) ACT ON BEHALF OF NATIONAL GRID PROPERTY HOLDINGS LTD (NGP), A SUBSIDIARY OF NATIONAL GRID PLC, IN RESPECT OF THEIR SITES IN TOWER HAMLETS. THE SITES ARE:

LEVEN ROAD GASWORKS, POPLAR;  
 MARIAN PLACE GASWORKS, BETHNAL GREEN; AND  
 BOW COMMON GASWORKS, BOW COMMON.

WE ARE IN SUPPORT OF THE COUNCIL'S DECISION TO INCLUDE REGULATION 55 TO 58 OF THE CIL REGULATIONS 2010 (AS AMENDED) TO PROVIDE DISCRETIONARY RELIEF IN 'EXCEPTIONAL CIRCUMSTANCES' ON A CASE BY CASE BASIS AT PARAGRAPH 2.2 OF APPENDIX 2 OF THE SCHEDULE. WE REQUEST THAT THIS PARAGRAPH IS CARRIED FORWARD BY THE INSPECTOR FOR ADOPTION BY THE COUNCIL.

HOWEVER, WE ALSO WOULD LIKE TO REQUEST THAT THE REFERENCE MADE AT PARAGRAPH 1 OF APPENDIX 2, WHICH STATES "APPENDIX 2 DOES NOT FORMALLY CONSTITUTE PART OF THE CIL DRAFT CORE STRATEGY OF THE LONDON BOROUGH OF TOWER HAMLETS", IS REMOVED PRIOR TO THE SUBMISSION OF THE PROPOSED DRAFT CHARGING SCHEDULE FOR EXAMINATION. IN CIRCUMSTANCES WHERE THE COUNCIL HAVE OPTED TO GIVE DISCRETIONARY RELIEF ON A CASE BY CASE BASIS UNDER SECTION 55 TO 58 OF THE CIL REGULATIONS 2010 (AS AMENDED) THIS SHOULD THEREFORE FORMALLY FORM PART OF THE CHARGING SCHEDULE.

CIL-DCS03

**2. If your representation is seeking a change to the CIL Draft Charging Schedule, do you consider it necessary to attend the Examination in Public?**

- Yes, I wish to attend
- No, I do not wish to attend

**3. Please tick the box if you would like to be notified of about any of the following:**

- If the Draft Charging Schedule has been submitted to an Independent Examination in accordance with section 212 of the Planning Act 2008 (as amended)
- Of the publication of the recommendations of the Examiner and the reasons behind those recommendations
- Of the approval of the Charging Schedule by the Charging Authority (The Council)

CIL-DCS03

**Section B (2) – Representation to LBTH Revised Planning Obligations SPD:**

The adoption of a CIL Charging Schedule will have significant implications for how the Council plans for the delivery of infrastructure and secures Planning Obligations from new developments. In order to provide clarity on the Council's approach to the continued use of planning obligations together with the London Borough of Tower Hamlets' CIL, the Revised Planning Obligations SPD will be adopted alongside the CIL Charging Schedule.

**4. Do you have any comments relating to the Revised Planning Obligations Supplementary Planning Document?**

Yes (Please make sure you refer to the sections or paragraphs, to which your comments relate and provide details by using the box below for your comments. If needed, please continue on a separate sheet of paper.)

No

HAVING REVIEWED THE LONDON BOROUGH OF TOWER HAMLETS REVISED PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT (SPD) WE WELCOME THE INCLUSION OF PARAGRAPH 2.6 OF THE SPD WHICH STATES:

*"A NUMBER OF STRATEGIC SITES IDENTIFIED IN THE TOWER HAMLETS MANAGING DEVELOPMENT PLAN DOCUMENT (SUBMISSION VERSION MAY 2010) ALSO HAVE A REQUIREMENT TO PROVIDE ONE OR MORE SPECIFIC PIECES OF INFRASTRUCTURE. THE COUNCIL MAY ACCEPT CIL PAYMENT 'IN-KIND' FOR THESE, SUCH AS THE PROVISION OF LAND".*

THE NATIONAL GRID PROPERTY HOLDING SITES IN TOWER HAMLETS ARE STRATEGIC SITES AND IN CIRCUMSTANCES WHERE THEY HAVE BEEN ALLOCATED TO PROVIDE EDUCATION AND OPEN SPACE THE ACCEPTANCE OF PAYMENTS-IN-KIND, IN THE FORM OF LAND IN LIEU OF CIL IS FULLY SUPPORTED AND IT IS REQUESTED THAT THIS PARAGRAPH IS CARRIED FORWARD IN THE ADOPTED SPD BY THE COUNCIL.

CIL-DCS04

**GREATER LONDON AUTHORITY**  
**Development, Enterprise and Environment**

City Hall  
The Queen's Walk  
London SE1 2AA  
Switchboard: 020 7983 4000  
Minicom: 020 7983 4458  
Web: [www.london.gov.uk](http://www.london.gov.uk)

Ref:  
Date: 4 June 2013

**Infrastructure Planning  
Team  
London Borough of Tower  
Hamlets  
Mulberry Place  
PO Box 55739  
5 Clove Crescent  
London E14 1BY**

Dear Sirs

**LONDON BOROUGH OF TOWER HAMLETS – COMMUNITY INFRASTRUCTURE  
LEVY**

**DRAFT CHARGING SCHEDULE: REPRESENTATIONS OF THE MAYOR OF  
LONDON**

I am writing with the representations of the Mayor of London with regard to your Borough's Community Infrastructure Levy (CIL) draft charging schedule.

As you know, the Mayor approved his own charging schedule in March 2012 and started charging his CIL from 1 April of that year. Under regulation 14(3) of the Community Infrastructure Levy Regulations 2010 (as amended), London boroughs are required to have regard to the rates set by the Mayor. As part of this, we also take account of the Mayor's policy on the use of planning obligations to help fund Crossrail which affects that part of Tower Hamlets that falls within the Central London Contribution Area as shown in the map in Annex 1 to the Mayor's supplementary planning guidance on "Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy". (In essence that is those parts of the Central Activities Zone and of the area within a 1 kilometre radius of Liverpool Street station that fall within the Borough boundary.) The Mayor's policy also affects the entirety of the Isle of Dogs Contribution Area shown in Annex 2 of the same document.

The Mayor also considers borough CIL proposals as they might affect the economic viability of development across their area (part of the test set out in regulation 14(1)) in order to ensure that the objectives and detailed policies in the London Plan (which, of course, forms part of the development plan across Greater London) are not put at risk, in accordance with paragraphs 4, 8 and 21 of the statutory guidance on the CIL published by the Government under section 221 of the Planning Act 2008. The Mayor's role in borough CIL-setting is explained in more detail in the London Plan supplementary planning guidance on "Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy".

**Telephone: 020 7983 4000 Email: [mayor@london.gov.uk](mailto:mayor@london.gov.uk)**

## CIL-DCS04

The Mayor has carefully considered the Borough's draft charging schedule and the CIL rates it proposes. For the reasons set out below, he considers that it is not supported by appropriate available evidence, that the rates proposed do not adequately take account of the rates set by the Mayor, and that in putting them forward the Borough has failed to apply properly the test set out in regulation 14(1). For these reasons he would urge the Borough to withdraw the draft charging schedule (DCS). If it chooses not to do so, he intends to be represented at the public examination of the draft schedule and will ask the Examiner to reject the DCS.

This letter sets out the basis for the Mayor's objection. It does so by reference to the relevant matters which will be the subject of the public examination:

- Whether the charging schedule has used appropriate available evidence
- Whether in setting its proposed CIL rates, the Borough has properly applied the "appropriate balance" test set out in regulation 14(1)
- Whether in setting its proposed rates, the Borough has properly applied the requirement in regulation 14(3) to take into account rates set by the Mayor in considering the potential effects of the imposition of the CIL on the economic viability of development.

I will deal with each of these in turn.

*Appropriate available evidence*

It is only possible to draw conclusions about the extent to which a borough's CIL proposals comply with the tests set out in regulation 14 if adequate information is provided. This is particularly important for the Mayor in this case. The London Plan identifies Tower Hamlets as having the largest capacity for new housing of any London borough – table 3.1 on page 83 of the Plan sets out housing provision monitoring targets for 2011-2021, and of the 322,100 homes identified Londonwide 28,850 are ascribable to Tower Hamlets (the average per borough being 9,760). Tower Hamlets also contains all or part of two strategically important opportunity areas identified in the Plan under Policy 2.13, namely:

- The City Fringe, with indicative capacity for 70,000 jobs and 7,000 new homes
- The Isle of Dogs, with indicative capacity for 110,000 jobs and 10,000 new homes.

Opportunity areas are the capital's major reservoirs of brownfield land with significant capacity to accommodate new housing, commercial and other development.

There are two items of evidence mentioned in the statutory guidance which the Borough has simply failed to produce:

- Information about the amounts raised in recent years through section 106 agreements including the extent to which affordable housing and other targets have been met (paragraph 22 of the guidance).
- Evidence showing that the rates proposed will not inhibit development of the London Plan opportunity areas, as these are strategic sites identified in the development plan. The Mayor considers that the section on Strategic Sites in the Viability Study (which considers two sites in each of the identified opportunity areas) is inadequate for these purposes, particularly given the scale of development envisaged in each. These areas could be responsible for at least 59% of the Borough's benchmark housing target, and

CIL-DCS04

there should be more detailed evidence that the rates proposed will not have significant effects on economic viability there.

In addition, there are a number of inaccuracies in the Viability Study (the more important of which are touched on later in this letter). Our professional advisers have also identified significant factual and methodological flaws in the appraisals on which the Viability Study bases its conclusions. Given their technical nature, we will not detail these criticisms in this letter, but we are advised that they are serious errors which further call into question the levels of CIL which the Borough proposes. Our professional advisers would be glad to discuss these issues with those advising the Borough, and in the first instance we would suggest that this would be the most appropriate way to take the matter forward. In the absence of agreement we will refer to them at the public examination.

For these reasons, the Mayor considers that the Borough has not brought forward appropriate available evidence to support its DCS. If these issues are not resolved before the examination, the Mayor will invite the Examiner to reject the DCS on this procedural ground.

*The regulation 14(1) test*

The Borough has to show that it has struck an appropriate balance between on the one hand, the desirability of using CIL to fund infrastructure required to support the development of its area, and on the other the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area. Applying the principles set out in the National Planning Policy Framework, the statutory guidance makes it clear that this assessment should be carried out by reference to the likely effects on delivery of the development plan (see paragraphs 8 and 29). The Mayor considers that the Borough has failed to address this test adequately.

In particular, the Borough has failed to recognise the importance of Crossrail. The London Plan identifies this as the Mayor's "top strategic transport priority for London" (Policy 6.4), a priority confirmed in policies 6.5 and 8.2. It is worth noting that there are intended to 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 commercial development) and the City Fringe part of the Borough will also benefit from the station at Liverpool Street. Crossrail is therefore not only important in its own right; it is the key to unlocking the development potential of a significantly wider area.

The Mayor has in place arrangements for the use of planning obligations to seek contributions towards the cost of Crossrail, the basis for which is set out in London Plan policies 6.5 and 8.2. This was introduced in accordance with a funding agreement between the Mayor, Transport for London and ministers, and approved by Parliament. The CIL Regulations also recognise the importance of the policy, as it is the sole exception from the provisions of regulation 123 scaling back the use of planning obligations following introduction of the CIL.

As Policy 6.5 suggests, the details of the Crossrail contributions policy are set out in supplementary guidance. Uniquely, the part of the guidance document referred to earlier dealing with planning obligations was scrutinised alongside alterations to the London Plan to introduce the policy at an examination in public in December 2009 (at which Tower Hamlets attended), and the Mayor accepted a number of suggestions for changes to the document made by the Panel. Although the 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. It was brought forward to give effect

## CIL-DCS04

to national policy, as the funding arrangements for Crossrail (including this policy) were laid before Parliament during passage of what became the Business Rates Supplements Act 2009. The Mayoral CIL (to which Tower Hamlets must have regard in setting its own CIL) was itself explicitly premised on the assumption that section 106 contributions would provide some £300 million towards the Cost of Crossrail.

In responding to the examination in public, the Mayor acknowledged that following introduction of the Community Infrastructure Levy, he would ensure that developers did not effectively make the same contribution twice under both the Mayor's CIL and s106. He has sought to do this by treating the CIL as a "credit" towards the planning obligation contribution calculated in accordance with the supplementary planning guidance (SPG) in those parts of London where the latter applied. 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). 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.

The Borough's viability consultants propose rates at the highest levels they can justify having allowed a buffer for abnormal costs etc. but only 30% 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 rates if development is not to be put at risk. To avoid this, the Borough is proposing an arbitrary 70% across the board reduction in the Crossrail "top-up". This is likely to have a significant effect on the funding of Crossrail (one estimate is that it could result in the Mayor foregoing at least £40 million), which will affect the arrangements for delivery of Crossrail – in practical terms this would mean either an unfair further burden on other parts of London, or other strategic transport projects in Tower Hamlets being cancelled or delayed to help make up the gap.

The Mayor considers that in taking this approach, the Borough has incorrectly applied the test in regulation 14(1) by disregarding a policy in the 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. It 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 in a way that recent reports by Examiners considering draft schedules put forward by Mid Devon District Council and the Greater Norwich Development Partnership have suggested does not conform with regulation 14.

The Mayor further considers 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. The Borough has not done this; rather it has treated the "Crossrail top-up" as a 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.

It is worth noting that the 70% reduction in "Crossrail top-up" is wholly arbitrary. The Borough has brought forward no evidence to justify this figure. Although the Borough did indicate that it would be taking this approach shortly before the DCS was approved for

## CIL - DCS04

publication, it has not discussed either the principle or scale of such a reduction or the potential effect it might have on the Crossrail project with the Mayor or with Transport for London. This approach is contrary to the spirit encouraged by paragraph 32 of the statutory guidance.

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

*Regulation 14(3)*

Regulation 14(3) requires Boroughs to take account of CIL rates set by the Mayor in setting their own. The Borough has failed to do so.

It is common practice in setting CIL rates to allow a buffer between the rates proposed and the maximum that could be sought. This reduces the scope for “shocking” the development market and gives some headroom for exceptional costs in particular cases. As the Borough’s viability study points out, typically a reduction of 30%-50% is allowed.

If the effects of the CIL are to be considered in this way, it is correct in Greater London to look at the combined effect of the Borough rates and that set by the Mayor. That is supported by the wording of regulation 14(3) and paragraphs 29 and 32-3 of the statutory guidance. As is demonstrated for example by Table 1.5.1 of the Borough’s Viability Study, Tower Hamlets have failed to do this. Instead they have tested only their own rate by applying the reduction to the figure left after the Mayor’s rate is subtracted from the potential maximum. The correct approach taking proper account of the Mayor’s CIL rate - by treating it as a development cost as suggested in paragraph 6.4 of the Mayor’s SPG, for example - would result in substantially lower rates

It is worth noting in passing that in most cases even on the Borough’s method of calculation the “buffer” is significantly less than 30%, ranging from 22.2% to 32.5% although no evidence is put forward for why the kind of costs and other factors intended to be covered by the buffer should differ so markedly from one part of the Borough to another (indeed the use of percentages to cover factors probably unlikely to vary much in actual cost terms from place to place could be questioned). Oddly perhaps, the lowest buffer appears to have been allowed for in places where the viability fundamental are at their weakest.

The Mayor considers that the Borough has failed to have proper regard to the Mayoral CIL in striking the balance required by regulation 14. He also considers that the flaw identified here undermines the value of the Viability Study as appropriate available evidence.

We would be glad to discuss these issues with you further. In the meantime I would be grateful if you would note our request to be heard at the public examination and to be notified of the various steps outlined in paragraph 7.2 of your Statement of Representation Procedure.

CIL-DCS05

50

RTPI Planning  
Consultancy of the Year



Nathaniel Lichfield  
& Partners  
Planning. Design. Economics.

CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2nd Floor Mulberry Place  
5 Clove Crescent  
London E14 2BG

14 Regent's Wharf  
All Saints Street  
London N1 9RL  
020 7837 4477  
london@nlplanning.com  
nlplanning.com

Date 4 June 2013  
Our ref 12911/IR/FY/4868157v1  
Your ref

Dear Sir/Madam

### London Borough of Tower Hamlets CIL Draft Charging Schedule

On behalf of our client, Lanark Square Ltd., we set out below representations on the London Borough of Tower Hamlets Community Infrastructure Levy Draft Charging Schedule, currently out to consultation until 5 June 2013.

Paragraph 5.1 of the consultation document states that *"the Council intends to charge differential rates of CIL, which are to be determined by the land use of a proposed development (expressed as pounds per square metre) and by the area where a proposed development is situated.."* In the case of residential development, three zones are proposed and the proposed CIL rates per sqm (GIA) of development are £200 for Zone 1, £65 for Zone 2 and £35 for Zone 3. The boundaries of these zones are shown on the Draft Residential Charging Zone Boundaries Map.

We note that the Viability Evidence prepared by BNP Paribas (March 2013) assessed seven areas in terms of existing residential market and the ability to support CIL, for which they identified (i) maximum CIL indicated by appraisals, (ii) maximum CIL net of Mayoral CIL and (iii) suggested CIL after buffer (Table 1.5.1 of the BNP Paribas Viability Assessment). As a result, the Report put forward five levels of CIL, ranging from £35 to £200 as follows: one area at £35 CIL rate (Cubitt Town, Victoria Park, Fish Island, Bow and Mile End); one area at £50 CIL rate (South Bromley-by-Bow, Bow Common and Poplar); one area at £65 CIL rate (Bethnal Green, Globe Town, East Bow, Whitechapel, Stepney and South Isle of Dogs); one area at £95 CIL rate (Shadwell, South Whitechapel, Blackwall (non-riverside) and Leamouth); and three areas at £200 CIL rate ((i) Limehouse & West Isle of Dogs, Shoreditch and Blackwall (riverside); (ii) Spitalfields; and (iii) Canary Wharf, Aldgate, Tower of London and St Katharine's Dock and Wapping). However, these seven areas have subsequently been combined into three CIL zones (with the suggested CIL rates of £35, £65 and £200 respectively), which we do not consider adequately reflects the previously identified variation in housing market areas.

In relation to the proposed CIL Zone 1 (which covers Tower Limehouse and West Isle of Dogs, Shoreditch, Spitalfields, Canary Wharf, Blackwall (waterside), Aldgate, Tower of London and St.

Celebrating 50 years:  
nlplanning.com/50  
justgiving.com/company/nlp

Nathaniel Lichfield & Partners Limited  
14 Regent's Wharf  
All Saints Street  
London N1 9RL

Registered in England No. 2778116  
Regulated by the RICS

Offices also in  
Cardiff  
Leeds  
Manchester  
Newcastle



Katharine's Docks and Wapping), we consider that the residential market across this area is variable and that either the zone should be subdivided to reflect this, or that areas outside the highest value areas should be redesignated as CIL Zone 2.

In regard to the area around Turnberry Quay/Lanark Square and the area to the south of Pepper Street, which is currently included in the southern part of CIL Zone 1, we consider that this area is markedly different from the area further north in CIL Zone 1, focussed on Canary Wharf, Central London and along the River Thames, in terms of residential market; and is in fact more similar to the area of the south of the Isle of Dogs, i.e. CIL Zone 2.

Strutt and Parker LLP, who have undertaken a viability assessment for the recently approved residential led scheme at 1 and 2 Turnberry Quay and 1 and 5 Lanark Square, and have been involved in negotiating the viability position on this scheme (i.e. a real representative example in E14 9) found that, based upon current S.106 and affordable housing requirements, no additional development tax in the form of CIL is sustainable without forcing residential propositions to become unviable. Indeed, the full amount of affordable housing required has been proven to be unsustainable.

Moreover, in the negotiations on the Turnberry Quay/Lanark Square scheme, BNP Paribas confirmed that the office demand in the Turnberry Quay area is poor and that there is poor anticipated demand for such space. It is considered that the introduction of CIL at £200 per sqm for residential development would merely stifle future residential development and blight the Turnberry Quay area.

The BNP Paribas CIL Viability report does not include an analysis of current land values across the Borough, which should have been carried out in order to assess the potential impact upon land values that the proposed CIL charging schedule might have. The Viability Report assumes that average residential values in the E14 9 area are £700 p.s.f. However, within Strutt and Parker's recent viability negotiations with BNP Paribas, they agreed to private residential values of £625 p.s.f. Therefore, for example, on the Turnberry Quay scheme, the £75 difference in private residential values would lead to a £3.45m value over-statement. The residential CIL charge for the proposed scheme would be around £1.03m. Clearly, the value over-statement justifies an ability to sustain the proposed CIL charge but the correct private residential assumption (i.e. £625 p.s.f.) would not.

The Viability Report does not include full development appraisals, which makes it difficult to fully assess the situation. Moreover, BNP Paribas have not indicated what landowner's premium (if any) they have adopted over CUV to drive their assumed Site Value Benchmarks (i.e. the fundamental epicentre around which proposed development viability is assessed). We therefore consider that further information needs to be provided to justify the proposed CIL values.

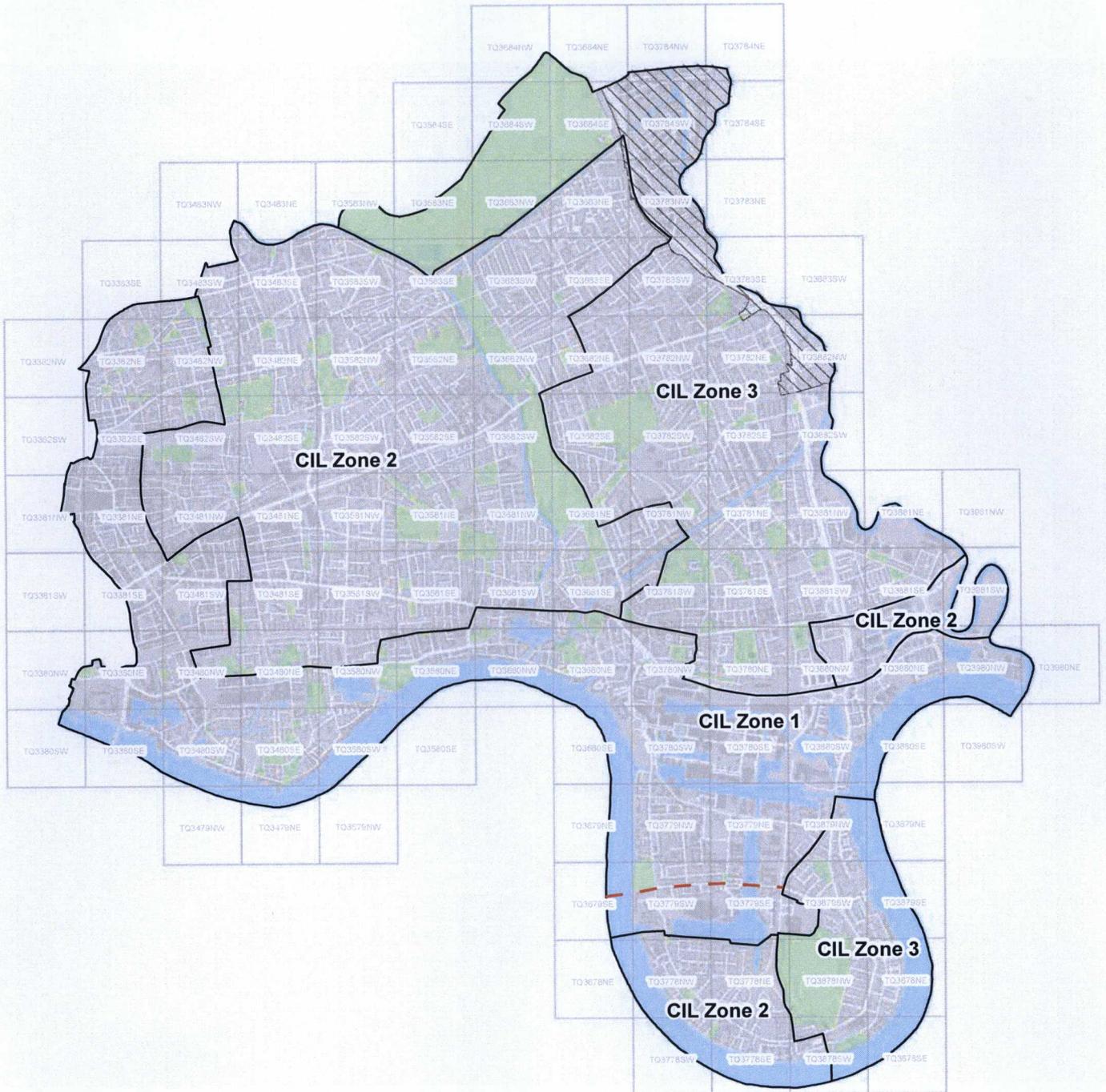
CIL - DCS05



Nathaniel Lichfield  
& Partners  
Planning. Design. Economics.

**Recommendation**

We suggest that the area of Zone 1, as detailed in Table 1.5.2 and shown on the Plan of Draft Residential Charging Zone Boundaries, is amended to exclude the area to the south of Pepper Street including Turnberry Quay/Lanark Square and that this area be included within the CIL Zone 2 at the south of the Isle of Dogs. The proposed revised boundary for CIL Zone 1 is shown on the attached plan (drawing no. IL 12911-007).



**KEY**

Suggested new boundary 



Project Turnberry Quay

Title **Suggested new boundary of CIL Zone 1**

Client Lanark Square Ltd

Date June 2013

Scale 1:26000 @ A3

Drawn by AH

Dr. No. IL12911-007



**From:** [REDACTED]  
**Sent:** 04 June 2013 15:28  
**To:** CIL  
**Cc:** [REDACTED]  
**Subject:** Tower Hamlets Draft Charging Schedule  
**Attachments:** 130603 LB Tower Hamlets DCS CIL rep\_v2.pdf

Dear Sir / Madam

We have been instructed by our client, WM Morrison Supermarkets Plc (Morrison's), to object to Tower Hamlets draft charging schedule, which proposes a CIL rate of: £195/sq m (borough-wide) for convenience-based supermarkets, superstore and retail warehousing (>280 sq m).

The proposed CIL rate is informed by a Viability Study (March 2013) prepared by BNP Paribas. Morrison's have instructed Aspinall Verdi Property and Development Consultants to review the viability study and provide their comments to support this objection. Accordingly, please find attached representations prepared by Aspinall Verdi.

In summary, Aspinall Verdi have recommended that further work and revisions are needed, particularly:

1. The EUV needs to be reconsidered as the most appropriate measure for calculating the surplus for CIL over development land Market Value benchmarks. It is suggested that more weight to the use of benchmark Market Values and site sizes based on urban design principles and site densities.
2. A revised approach to the generic one size retail scheme is recommended. At present, this does not accurately reflect actual store sizes (and thus the associated costs/values) and in any event is different for supermarkets and retail warehousing.
3. In addition to the observations in Table 1 (of the representations), there are additional factors/costs that need to be taken into account depending on the scale of the development. For example:
  - Land assembly costs and holding costs;
  - The additional costs associated with brownfield development (e.g. remediation and site preparation costs);
  - Site specific \$278 and \$106 costs which are often substantial for supermarkets and are likely to be still required in addition to CIL.
  - No allowance has been made for planning fees/costs, these costs can be considerable.
4. Market evidence and rationale for the appraisal inputs is missing and should be provided in order for the rent and yield assumptions to be reviewed in context and the evidence base to be sound.
5. The level of developers' profit should be increased.
6. We would support the use of 12% (not 10%) professional fees given the complexity of such retail schemes.

In our view, the draft CIL charge will put undue additional risk on the delivery of any such proposals and will be an 'unrealistic' financial burden on new large-scale retail development. This, in turn, poses a significant threat to potential new investment and job creation in the local area at a time of economic recession and low levels of development activity. Our client is concerned that a balance has not been found between infrastructure funding requirements and viability and subsequently the suggested charge will have a significant adverse impact on the overall viability of future retail development in the district.

I trust our objection and the attached comments by Aspinall Verdi will be taken into account when finalising the CIL Charging Schedule.

CIL-DCS06

We look forward to the Council's response.

**London Borough of Tower Hamlets – Community Infrastructure Levy Viability Study  
Representation on behalf of W.M. Morrison Supermarkets Plc.****29 May 2013**

This representation has been prepared in response to the consultation launched by London Borough of Tower Hamlets in respect of their CIL Draft Charging Schedule (March 2013) and Community Infrastructure Levy Viability Study by BNP Paribas Real Estate (March 2013).

We note that this is the Draft Charging Schedule stage of consultation. We are instructed by W.M. Morrison Supermarkets Plc. to make representations on their behalf and therefore this representation focuses on convenience/food retailing.

**Introduction**

AspinallVerdi is a niche firm of Chartered Surveyors and Chartered Town Planners specialising in property development and regeneration consultancy. We have direct experience of advising both public and private sector clients with respect to development viability, CIL, S106 and planning gain matters. The firm has a thorough understanding of property markets, valuation, development economics, and delivery.

This representation has been prepared by Ben Aspinall, MRICS MRTPI. Ben is a Director of AspinallVerdi with 20 years experience in the planning and development consultancy sector advising on projects throughout the UK.

This submission has been prepared to support further representations by Peacock & Smith town planning consultants for W.M. Morrison Supermarkets Plc.

For the purposes of these representations we have reviewed the following documents:

1. BNP Paribas Community Infrastructure Levy: Viability Study, March 2013
2. Tower Hamlets Community Infrastructure Levy Draft Charging Schedule, March 2013

**General Comment in respect of CIL and Food Stores**

The interrelationship of CIL and site specific S106 is critical to the commercial viability of larger development and regeneration projects such as food stores. In many cases the food store is linked to a wider development scheme or masterplan involving other uses and infrastructure such as roads. Therefore the preparation and inclusion of infrastructure elements to the Regulation 123 List needs to be clearly defined and understood to avoid double counting (known as 'double-dipping'<sup>1</sup>). Typical 'site specific' S106/S278 costs that will be outwith the Regulation 123 List should be factored into the CIL Viability Modelling.

---

<sup>1</sup> See Paragraph 84-92, pp 21-23, DCLG Community Infrastructure Levy Guidance, December 2012

## CIL-DCS06

London Borough of Tower Hamlets – DCS CIL Rep  
on behalf of W.M. Morrison Supermarkets Plc.

### Specific Comments

The following specific comments have been made referring to the paragraph numbers in the CIL Economic Viability Assessment report.

Item (Paragraph Number)	Comment
<p>Viability Benchmark – HCA and Appeals (paragraphs 3.6 - 3.8)</p>	<p>The HCA guidance and the planning appeal decisions referred to are for specific planning applications and not area-based policy formulation.</p> <p>The planning appeal decisions are all based on a specific planning application on a specific site and therefore the existing use of the site is known. It is therefore entirely possible to appraise the residual value of the site for development and compare this against the existing use value of the site. Assuming that the residual value is greater than the existing use value there will be a commercial incentive for the landowner to release the site for development.</p> <p>However, to apply the same approach to area wide policy formulation is flawed. This approach is too academic and is not how the market actually works in practice (see next comment below).</p>
<p>Local Housing Delivery Group (LHDG) guidance (paragraphs 3.9 - 3.10)</p>	<p>The LHDG report refers to the concept of 'Threshold Land Value' (TLV). We adopt this terminology as it is an accurate description of the important value concept. The report states that 'Threshold Land Value should represent the value at which a typical willing landowner is likely to release land for development.'</p> <p>The LHDG report refers to an approach to benchmarking TLV's which is based on current / existing use value plus a premium. However, this is very ambiguous and has been interpreted out of context. We interpret existing use value and alternative use value as in the LHDG report to be a subset of Market Value as it is not possible to be site specific in a District-wide strategic context. At numerous points throughout the LHDG report it is advocated, that TLV's will need to be 'sense checked' against local market evidence (pages 29, 30, 31, 34, 36, 40).</p> <p>Indeed the report does acknowledge that, 'if resulting Threshold Land Values do not take account [local market knowledge], it should be recognised that there is an increasing risk that land will not be released and the assumptions upon which a plan is based may not be found sound' (page 30 of the report).</p> <p>The consultants have failed to refer to the RICS guidance which superseded the LHDG guidance. The RICS guidance on Financial Viability in Planning was published after the Harman report in August 2012 (the Harman Report was published in June 2012) and it is much more 'market facing' and less academic in its approach. The RICS guidance is grounded in the statutory and regulatory planning regime that currently operates in England and is consistent with the Localism Act 2011, the NPPF and Community Infrastructure Levy (CIL) Regulations 2010.</p> <p>The RICS Guidance defines 'site value' [threshold land value] benchmark, as the Market Value having regard to development plan policies and all other material planning considerations.</p>

## CIL-DCS06

London Borough of Tower Hamlets – DCS CIL Rep  
on behalf of W.M. Morrison Supermarkets Plc.

Item (Paragraph Number)	Comment
	If the economics of development are to be grounded in reality and therefore schemes deliverable the emphasis does have to be on property market evidence. We therefore commend the RICS Guidance.
Reduction in land value (paragraphs 3.11 – 3.13)	We note the comments about a reduction in land value being an inherent part of the CIL concept. This concurs with the RICS guidance referred to above which requires the TLV to be further adjusted to reflect the emerging policy / CIL charging level (RICS Box 8). Note that this goes on that the level of the adjustment assumes that site delivery would not be prejudiced which is a matter of judgement (see below).
Mayoral CIL (paragraphs 4.26 and 5.52)	<p>We note that the Mayoral CIL is included in the total 'surplus for CIL' and therefore has to be deducted from the rate per square metre before applying the 'appropriate balance' reduction for a 'buffer'.</p> <p>We would recommend that the Mayoral CIL be shown explicitly as a cost to the development so that the maximum CIL is shown net of Mayoral CIL. It will therefore be more explicit how much has been deducted to reflect the 'appropriate balance'. This has been shown explicitly in the case of the residential results (Table 8.4.1) but not for the commercial typologies.</p>
Four Benchmark Land Values (paragraphs 4.39 – 4.44)	<p>We note the comment at 4.38 that "current use values should be regarded as benchmarks rather than definitive fixed variables on a site by site basis" however, BNP have then gone on to define a series of 4 Benchmark Land Values which are purely hypothetical and not relevant to how the market actually works in practice.</p> <p>Take for example Benchmark Land Value 4, which refers to the existing use value of community building (including a 20% premium) at £2.99 million (presumably per hectare?) and assuming that a developer wanted to acquire the site for a scheme generating a residual land value of £5 million per hectare – would the Council sell the site for £2.99 million? If it did it would be failing in its duty to get Best Value. This example shows why it is important to sense-check Threshold Land Values to Market Values (per hectare) as recommended by the RICS. (Note that it may be relevant to reflect a discount from MV to reflect emerging CIL (rather than a premium over EUV)).</p> <p>In any event the results of the land value benchmarking should be drawn together and the valuers use their judgement to recommend a single TLV figure (albeit maybe varied by zones) to use within the Economic Viability Appraisals. To use 4 Benchmark Land Values is overly complex, divorced from reality and dilutes the recommendations about the actual maximum CIL rate.</p>
Commercial Development Land Value (paragraph 4.47)	This follows on from the above comments in respect of the residential TLV. In the case of commercial development typologies BNP have assumed that the TLV is derived from the existing use value of the site which is based on the same use as the proposed development. Furthermore, they assume that the existing use is "half the size of the new development, with a lower rent and higher yield reflecting the

## CIL - DCS 06

London Borough of Tower Hamlets – DCS CIL Rep  
on behalf of W.M. Morrison Supermarkets Plc.

Item (Paragraph Number)	Comment
	<p><i>secondary nature of the building.”</i></p> <p>We consider that this approach does not reflect the reality of the market. For example, this approach does not address the circumstance where say a now obsolete industrial site is being acquired for redevelopment for a retail or residential scheme.</p> <p>In reality a developer would need to acquire a site of sufficient size to accommodate the development contemplated (i.e. a retail scheme) – including aspects such as landscaping, circulation and car parking. Allowances therefore should be made using a TLV derived from MV benchmark's for development land and appropriate planning assumptions for site size/density.</p> <p>Furthermore we would challenge the rationale behind applying the rate of 1:1.5 in terms of the building size of the new development. As we have mentioned car parking and other aspects need to be considered. We would recommend that market/scheme evidence be provided to support this assertion. There is no rationale for the percentages of intensification between the existing and proposed floor areas. This seems to be discretionary assumption with no supporting evidence.</p> <p>The approach of applying a lower rent and higher yield for existing uses than for the planned new floor space automatically generates positive viability. Again we would advise a review of this assertion within the context of market reality.</p>
Retail Scheme typologies (Table 4.48.1)	<p>We note that BNP have appraised three retail typologies, namely:</p> <ul style="list-style-type: none"> <li>• 30,000 sqft all other retail (A1-A5) City Fringe and North Docklands</li> <li>• 30,000 sqft all other retail (A1-A5) elsewhere, and</li> <li>• 30,000 sqft convenience based supermarkets and superstores and retail warehousing.</li> </ul> <p>These equate to stores of 2,787 sqm. We note that BNP has recommended a small retail CIL rate of £70 psm in the City Fringe/North Docklands area for schemes of less than 280 sqm. It appears from table 4.48.1 that schemes of this size were not tested as part of the economic viability appraisal and therefore there is no evidence to support the differential rates by size and zone.</p> <p>This also questions the basis therefore upon which £70 psm was selected as a rate in the [higher value] City Fringe/North Docklands areas and whether the rate for convenience retailing generally (over 280 sqm across the District (including the lower values areas)) should also be £70 psm.</p> <p>Within the main body of the report there is no justification for the choice of the 30,000 sqft generic scheme. It would be more appropriate to model two or three options of say, 280 sqm, 1,500 sqm and a larger format of say 5,000+ sqm. This generally would reflect the formats which operators are presently considering.</p>
Retail scheme appraisal assumptions (Table 4.48.1)	<ul style="list-style-type: none"> <li>• There is no property market evidence within the report to support the appraisal value assumptions (rents, yields etc).</li> </ul>

## CIL-DCS06

London Borough of Tower Hamlets – DCS CIL Rep  
on behalf of W.M. Morrison Supermarkets Plc.

Item (Paragraph Number)	Comment
	<ul style="list-style-type: none"> <li>• A base construction cost of £120 psf has been adopted for the convenience food development typology. However, this typology includes retail warehousing which has a build cost substantially less than food supermarkets. It is therefore incorrect to lump retail warehouse typologies in with supermarkets.</li> <li>• Professional fees of 10% have been used. We would recommend the use of 12% given the complexity of retail schemes and the requirements for additional reports (e.g. retail impact assessments etc.)</li> <li>• Profit is set at 20%. We would suggest that the developers profit level for the supermarket typology is increased to 25% on cost based on the: developer's site assembly risk; holding costs and timescales to secure returns can be very long; funding costs and risks where even for prime supermarket developments bank finance is scarce and requires developers to contribute large amounts of equity; planning costs and risks (some of which could be abortive).</li> <li>• The approach and rationale for the existing floorspace and existing rent/yield assumptions is not clear, as discussed above (see paragraph reference 4.47 above). Comparing rents of £6-£10 psf on the existing to £21.50 psf on the new build and a yield of 8% compared to 6.25% on an existing building of half the size will naturally create viability for CIL. This is a completely artificial and contrived scenario and not representative of how the property market works in practice (see above).</li> <li>• Landowner premium – as discussed above we recommend an approach that starts from Market Value and deducts an allowance for emerging planning policy (e.g. CIL) rather than an Existing Use Value + premium approach which is unrealistic. Notwithstanding this it is not clear within the report why supermarket typologies have assumed a 20% landowner premium and not a greater premium. In the case of retail developments where landowners consider that there is prospect of securing developments on their site that yield high value, their aspirations to secure higher land values will be prevalent. Land owners are likely to "hold out" until they have explored their potential returns fully, and may not sell the site if the proposed returns are below their expectations. Also, in many cases landowners have not fully discounted the value of their land following the credit crunch and the land market price correction is still taking place. This is particularly relevant for sites that have the potential for the delivery of retail schemes, where the market remains buoyant. In the case of retail developments, landowners are likely to hold out for the highest value and are unlikely to accept a reduction in their land value for CIL.</li> </ul>
Commercial appraisal results (paragraph 5.12 and Table 5.12.2)	<p>The BNP report gives no explanation as to how, or why, three different Current Use Values (CUV) are used in presenting the results.</p> <p>As described above, in practice, if a landowner is approached by a developer to build a new food store their aspirations as to value will be based on the Market Value of the site derived from the Residual Value of</p>

## CIL-DCS06

London Borough of Tower Hamlets – DCS CIL Rep  
on behalf of W.M. Morrison Supermarkets Plc.

Item (Paragraph Number)	Comment
	<p>the scheme for the new use. The landowner will not sell the site for existing use value, even existing use value + a small [20%] premium, if he thinks that the MV of the site is substantially greater.</p> <p>The Council's consultants need to use their judgement to recommend what the TLV figure is in order to simplify the analysis and reduce the need for purely hypothetical CUV scenarios.</p>
<p>Convenience based supermarkets and superstores and retail warehousing appraisal results (paragraphs 6.30 – 6.33 and chart 6.33.1)</p>	<p>We find the results of the BNP Paribas at chart 6.33.1 to be difficult to interpret and potentially misleading:</p> <ul style="list-style-type: none"> <li>• The chart and discussion about the results do not specify the Threshold Land Value that is applicable. The chart shows various scenarios for three CUV's – but which one is the right one? How does this compare (per hectare or per acre) to actual Market Values of land? (see above)</li> <li>• The analysis does not differentiate by size of scheme – so how has the CIL rate for small retail (&lt;280 sqm) been derived?</li> <li>• Similarly the analysis lumps together supermarkets and retail warehouses which both have significantly different build rates which undermines the reliability of the appraisals.</li> </ul>
<p>Strategic Sites Land Values (Table 7.4.1 and Table 7.11.1)</p>	<p>From the tables presented it is possible to calculate the benchmark land value per hectare on the strategic sites however this exercise has not been done (or at least not presented). These values for development land should then be compared to the four Existing Use benchmarks and three Current Use benchmarks generated above to establish the TLV. This, this exercise does not appear to have been completed.</p>
<p>Commercial conclusions and recommendations (pp 68 – 69)</p>	<p>The conclusion section describes further assumptions in respect of Mayoral CIL and Crossrail S106. We understand (page 68) that BNP have assumed a negotiated Crossrail payment of 70%. What is the basis for this for this reduction? The guidance from both the LHBG and RICS is clear in that the appraisal should take into account the full suite of planning obligations. It appears that this has not been the case in respect of Crossrail which assumes a negotiation. Whilst this may be the case in practice, it is not the basis for establishing CIL which should be policy compliant.</p>
<p>Retail CIL rates (page 69)</p>	<p>It is not clear (e.g. what TLV etc. – see above) how the maximum CIL rates have been derived and we do not support the retail CIL rates proposed.</p> <p>Furthermore, it is not clear how the recommended CIL rates have been derived. The convenience retail generally has been discounted from £310 psm to £195 psm (37%) and the small retail has been discounted from £150 psm to £70 psm (53%). We are not clear how these discounts have been arrived at and indeed there is no appraisal evidence in respect of the small retail typology.</p> <p>The CIL rates for retail require review in light of the comments made within our representations herein.</p>

## CIL - DCS06

London Borough of Tower Hamlets – DCS CIL Rep  
on behalf of W.M. Morrison Supermarkets Plc.

Item (Paragraph Number)	Comment
Appendix 4 Commercial Appraisal Results – Convenience Retail and Retail Warehousing	<p>We note the tabulated Current Use Value assumptions – rent £6-£10 psf, yield 8%, premium 15-20% - but as we have shown above this is meaningless based on a purely manufactured set of assumptions and completely divorced from the property market.</p> <p>We recommend that the aforementioned CUV's are translated into a land price per hectare and compared to the land values required in the context of the strategic sites and other development land. This will provide evidence to base the selection of the [single] TLV (Threshold Land Value).</p>
Appendix 5 – Strategic Site Appraisals	<p>The report states that BNP have used Argus Developer to appraise the strategic sites (paragraph 7.5) however the results presented are not Argus Developer. They appear to be in-house excel models. The Argus models should be made public for comment.</p>

**Table 1 – Draft Charging Schedule – Schedule of Representations for Wm Morrison**

### Summary and Conclusions

We are pleased to have been given this opportunity to comment on the LB Tower Hamlets CIL Draft Charging Schedule.

The work undertaken to date has been substantial, however is unsatisfactory in several areas and missing in some assumptions. Further work and revisions are needed in order to reflect the observations above and particularly:

1. The EUV needs to be reconsidered as the most appropriate measure for calculating the surplus for CIL over development land Market Value benchmarks. We would suggest more weight to the use of benchmark Market Values and site sizes based on urban design principles and site densities.
2. We would recommend a revised approach to the generic one size retail scheme, which does not accurately reflect actual store sizes (and thus the associated costs/values) and in any event is different for supermarkets and retail warehousing.
3. In addition to the observations in Table 1 above, there are additional factors/costs that need to be taken into account depending on the scale of the development e.g.
  - Land assembly costs and holding costs;
  - The additional costs associated with brownfield development (e.g. remediation and site preparation costs);
  - Site specific S278 and S106 costs which are often substantial for supermarkets and are likely to be still required in addition to CIL
  - No allowance has been made for planning fees/costs, these costs can be considerable.

4. Market evidence and rationale for the appraisal inputs is missing and should be provided in order for the rent and yield assumptions to be reviewed in context and the evidence base to be sound.
5. The level of developers' profit should be increased.
6. We would support the use of 12% (not 10%) professional fees given the complexity of such retail schemes.

**Request to be heard at Independent Examination**

We would respectfully request the right to be heard at the Independent Examination in order to make further comment on the CIL charges that Tower Hamlets intends to adopt.

CIL - DCSO7

**Hong Chen**

---

**From:** Antony Lane [REDACTED]  
**Sent:** 04 June 2013 17:38  
**To:** CIL  
**Cc:** [REDACTED]  
**Subject:** Community Infrastructure Levy Submission June 2013

Dear Sirs/Mesdames,

**RE: Community Infrastructure Levy Submission June 2013.  
Levy a percentage of the total floor area created.**

On behalf of myself, and the Barkantine Management Team ([REDACTED]  
[REDACTED], [REDACTED]) I make this submission:

Instead of making a Community Infrastructure Levy on developments in money, it would be more long lasting if the levy was a percentage of the total floor area created. So for example, a development creating 10,000 square metres of floor space could give say 5-10% to the community, say 500-1000 square metres.

The space could be a soundproof basement ideal for a noisy teenagers music club, or a roofgarden for quiet general enjoyment, or anything else fit for purpose and beneficial to the community.

The care and maintenance of the overall structure would have to be the responsibility of the property owners, but any specific material, furnishings or equipment used in that community space would have to be provided by the community or the group responsible.

Yours sincerely

[REDACTED]

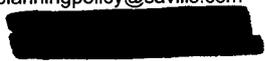
4 June 2013  
Planning Policy Response



Planning Policy

Sent by email: [cil@towerhamlets.gov.uk](mailto:cil@towerhamlets.gov.uk)

Carmelle Bell  
E: [thameswaterplanningpolicy@savills.com](mailto:thameswaterplanningpolicy@savills.com)



Savills,  
Ground Floor, Hawker House  
5-6 Napier Court, Napier Road  
Reading, RG1 8BW

[savills.com](http://savills.com)

Dear Sir / Madam,

**DRAFT PLANNING OBLIGATIONS SPD – SENT ON BEHALF OF THAMES WATER UTILITIES LTD**

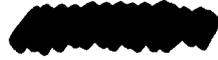
Thames Water Utilities Ltd (Thames Water) Property Services function is now being delivered by Savills (UK) Limited as Thames Water's appointed supplier. Savills are therefore pleased to respond to the above consultation on behalf of Thames Water.

It is our understanding that Section 106 Agreements can not be required to secure water and waste water infrastructure upgrades. However, it is essential to ensure that such infrastructure is in place to avoid unacceptable impacts on the environment such as sewage flooding of residential and commercial property, pollution of land and watercourses plus water shortages with associated low pressure water supply problems.

Therefore Thames Water has encouraged supportive policies within other Local Plan documents such as the Core Strategy and Managing Development Document. They would request the councils support in getting these policies referenced in the emerging neighbourhood plans and other Supporting Planning Documents (SPDs), and were developers cannot demonstrate capacity within the network exists, planning permission is not granted.

I trust the above is satisfactory, but please do not hesitate to contact me if you have any queries.

Yours sincerely



**Carmelle Bell** BA (Hons), MSc  
Town Planning Team

**Hong Chen**

---

**From:** Claire McLean [REDACTED]  
**Sent:** 05 June 2013 08:40  
**To:** CIL  
**Subject:** CIL and Planning Obligations SPD

Dear CIL Team,

Thank you for consulting the Canal & River Trust on these recent publications.

With regard to the draft charging schedule, I can confirm that we have no comments to make.

With regard to the draft revised Planning Obligations SPD, we have the following comments:

**Page 11 - Public Realm**

This section doesn't include canals or waterways. We would like to understand how specific canal environment works that may be required as part of a development would be addressed.

**Page 29 - Biodiversity**

We refer to this statement: "Where it is considered unfeasible for a development to provide adequate on-site biodiversity enhancements, or where projects in nearby open spaces, or enhancements to nearby rivers or water bodies, offer better opportunities to enhance biodiversity and/or access to nature, the council will seek an equivalent financial contribution to off-site projects which will be secured for enhancements which help to deliver the Tower Hamlets Biodiversity Action Plan."

We are keen that for canalside sites, any measures to improve biodiversity that affect our waterways are considered carefully and with the full involvement and cooperation of the Trust's Environment team, to reduce any risk of unsuitable interventions that may adversely affect the operation of working navigations. We are happy to support biodiversity enhancements as we have input to the LBTH Green Grid list of projects.

Please feel free to contact me if I can provide any further information.

Kind regards,

**Claire M<sup>c</sup>Lean**

**Area Planner – Canal & River Trust London**

The Toll House, Little Venice, Delamere Terrace, London W2 6ND

[REDACTED]  
[REDACTED]

Please visit [www.canalrivertrust.org.uk](http://www.canalrivertrust.org.uk) to find out more about the Canal & River Trust and download the "Shaping Our Future" document on the **About Us** page.

Follow [@canalrivertrust](https://twitter.com/canalrivertrust) from the Canal & River Trust on Twitter.

---

The Canal & River Trust is a new charity entrusted with the care of 2,000 miles of waterways in England and Wales. Get involved, join us - Visit / Donate / Volunteer at [www.canalrivertrust.org.uk](http://www.canalrivertrust.org.uk)

Canal & River Trust is a charitable company limited by guarantee registered in England & Wales with company number 7807276 and charity number 1146792. Registered office address First Floor North, Station House, 500 Elder Gate, Milton Keynes MK9 1BB.

Elusen newydd yw Glandŵr Cymru sy'n gofalu am 2,000 o filltiroedd o ddyfrffyrdd yng Nghymru a Lloegr. Cymerwch ran, ymunwch â ni - Ewch i Rhoddion a Gwirfoddoli yn [www.glandwrcymru.org.uk](http://www.glandwrcymru.org.uk)

# Transport for London



Our ref: Cdl/boroughplanning/Tower Hamlets/CIL/  
Draftchargingschedule

London Borough of Tower Hamlets  
Infrastructure Planning Team  
2nd Floor Mulberry Place  
5 Clove Crescent  
London E14 2BG

Transport for London  
Group Planning

Windsor House  
42 – 50 Victoria Street  
London SW1H 0TL

Phone 020 7222 5600  
Fax 020 7126 4275  
www.TfL.gov.uk

5 June 2013

Dear Sir / Madam

## LB Tower Hamlets CIL – Draft Charging Schedule

I refer to the consultation on the draft charging schedule. As you are aware TfL has been working closely with the GLA on the implementation of the Mayor's CIL and reviewing proposed borough CILs. In addition, TfL hopes to work with boroughs on their infrastructure planning, and ensure borough CILs are a means of funding transport infrastructure that is vital to support planned development.

TfL has a common interest with the Mayor in ensuring that borough CILs, when combined with his own, will not threaten development nor the aim of raising £600m for Crossrail. The Mayoral CIL will deliver £300m, and the Mayor is also committed to providing a further £300m to Crossrail to be raised from developer contributions through the use of planning obligations. This formed part of the funding settlement agreed with Government. A substantial proportion of the planning obligation funding is likely to be raised within the London Borough of Tower Hamlets, and by the Wood Wharf development specifically. The boroughs proposed arbitrary 70% reduction is considered contrary to the requirements of regulation 14 and will have a significant effect on the funding of Crossrail. TfL objects to the proposed approach and fully supports the argument set out in more detail within the response on behalf of the Mayor of London.

TfL will not generally support the case for funding strategic transport infrastructure from CIL which it does not regard as important or justified for the delivery of the objectives of the local plan or assist in funding such projects itself.

TfL has been working closely with the GLA in consideration of the LB Tower Hamlets Draft CIL proposals and is aware of the more detailed response that it

**MAYOR OF LONDON**



VAT number 756 2770 08

is providing to the borough. TfL fully supports the issues raised on behalf of the Mayor of London.

In particular, TfL has very grave concerns at the potential financial implications of the approach set out within the Draft CIL and its implications for the funding of Crossrail. This in turn will increase the risk to other strategic transport projects in Tower Hamlets being cancelled or delayed to help make up the gap.

For these reasons TfL would urge the Borough to withdraw the draft charging schedule (DCS). If it chooses not to do so, TfL requests the right to be heard at the Examination in Public stage of the draft schedule in accordance with paragraph 7.1 of your Statement of Representation Procedure, and at which it will ask the Examiner to reject the DCS.

As indicated in the first paragraph TfL wishes to work with boroughs in respect of transport infrastructure and I would refer you to the email from my colleague Michael Johnson to Joseph Ward on 11<sup>th</sup> February in respect of potential schemes. I note that your current Draft Regulation 123 list is very loosely defined and we would be happy to work with you in further detailing the draft regulation 123 list that the CIL guidance now requires to be produced at the CIL examination.

If you would find it helpful, we would be pleased to meet with you to discuss these matters. In the meantime I would be grateful if you would note our request for TfL to be heard at the public examination and to be notified of the various steps outlined in paragraph 7.2 of your Statement of Representation Procedure.

Yours faithfully

Neil Lees  
**Team Manager, Planning Obligations**

[REDACTED]



5 June 2013

CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2nd Floor Mulberry Place  
5 Clove Crescent, E14 2BG

E: [CIL@towerhamlets.gov.uk](mailto:CIL@towerhamlets.gov.uk) with 'CIL DCS' in the subject box

Dear Sir / Madam

### **Tower Hamlets Community Infrastructure Levy Draft Charging Schedule**

I am writing on behalf of London First in relation to the consultation on the London Borough of Tower Hamlets (referred to as the Charging Authority) Community Infrastructure Levy Draft Charging Schedule.

#### **Overview**

London First is a business membership organisation with the mission to make London the best city in the world in which to do business. We represent the capital's leading employers in key sectors such as financial and business services, property, transport, ICT, creative industries, hospitality and retail. Our membership also includes higher education institutions and further education colleges.

London First is concerned the London Borough of Tower Hamlets (referred to as the Charging Authority) has not complied with its legal obligation to strike an 'appropriate balance' between helping to fund necessary infrastructure provision and the potential effects of the imposition of CIL on the economic viability of development across its area (as prescribed in Regulation 14(1)).

We do not believe the Charging Authority has used the most appropriate evidence available to them when setting their CIL rates. London First believes the underlying assumptions used to ascertain land values is flawed and there is no evidence to suggest market testing has taken place, particularly on strategic locations identified in the Charging Authority's Management Development Document. The Charging Authority has not met the requirement, which is set out in statutory guidance, to undertake a comparison of historical data on s.106 receipts that have been achieved in the borough nor their affordable housing delivery in recent years and the impact this will have on the proposed levy rates. From the evidence published, the Charging Authority has assumed a broad brush low level residual s106 rate without any justification whatsoever. It also only assumes a residual rate for residential use and nothing for non-residential use which we believe is not reflective of the market. We therefore question how the Charging Authority can assume a flat rate s.106 charge in addition to the proposed rates across the Borough. The Charging Authority should take a cautious approach to the level of scaling back of s106 for strategic developments.

In our view, the Charging Authority has not taken account of the Mayoral CIL rate (as prescribed in Regulation 14(3) and (4)) when proposing their own levy rates. The proposed levy rates pose a significant risk to development being viable across the charging authority, especially in relation to strategic sites.

The Charging Authority has not complied with the requirements set out in paragraph 9 of the DCLG's Community Infrastructure Levy Guidance issued in April 2013.

London First recommends the Charging Authority halts progressing with its Draft Charging Schedule and restarts the process; starting with developing a more robust evidence base in line with Regulation 14(1).

London First has been informed by its members that the Charging Authority has not undertaken meaningful engagement with the development industry. This is particularly the case when the evidence has been prepared for appraisals for strategic sites. London First is very concerned that its members' views have not been adequately taken in to consideration following representations made to the Preliminary Draft Charging Schedule. The statutory guidance on CIL requires all charging authorities to undertake proper proactive engagement. It is vital the Charging Authority engages with the development industry, particularly if it aspires to achieve its planning policy objectives including the delivery of affordable housing.

London First wishes to reserve its right to be heard at the Examination in Public.

## **Detailed comments**

### ***Economic viability***

The Government has made it clear in the National Planning Policy Framework (NPPF) that charging authorities should develop and test their levy rates alongside their Local Plan. Paragraph 173 & 175 of the NPPF explicitly states that CIL should support and incentivise new development. It also requires local planning policy to pay careful attention to viability and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. Given the clear policy steer to ensure development is viable, London First is concerned that the draft charging schedule has not adequately addressed the NPPF policies as the levy rates proposed by the Charging Authority place a significant additional cost burden on development and in our view discourages development from coming forward. We are unclear how the Development Plan (including the London Plan) has been considered by the Charging Authority in preparing the Draft Charging Schedule. This is particularly important to consider given London Borough of Tower Hamlets has the highest housing targets and job economic forecasts out of all London Boroughs.

The evidence base does not comply with the DCLG Community Infrastructure Levy guidance nor has it followed guidance set out in either the Local Housing Delivery Group (LHDG) Advice of July 2012 or the Royal Institution of Chartered Surveyors Guidance Note of August 2012. London First therefore considers the evidence base is fundamentally flawed.

It is important the Charging Authority can clearly demonstrate that any proposed levy rates are based on clear evidence which reflect the current market conditions. This will necessitate the Charging Authority to undertake market testing of the proposed rates with a clear understanding of how developers and landowners bring forward development. Otherwise, it is clear that the right conclusions cannot be arrived at in setting rates. While there are different approaches used in the industry to assess development viability, the main issue is to comprehend the extent to which market value of land is taken into account. The market value of the land is the major determinant for developers to assess whether a scheme is viable to proceed or not to release land for development. When proposing levy rates, we believe all charging authorities must take in to account the effect it will have on market values on land and ensure this will not impede the ability for the policy objectives to be achieved which are set out in the Development Plan.

We do not believe the Charging Authority has sufficiently tested the proposed levy rates in current market conditions. As stated above, the viability study does not adhere to guidance and is inconsistent in its approach of what the price it assumes developers and landowners will release and buy land at, taking into account policy and appropriate CIL rates in the future. The assumptions made in the viability study is that existing use value plus a premium (EUV+) is a sufficient basis to determine the land value as a singular approach with no evidence to support the conclusions arrived at. No attempt has been made to market sense test the premium adopted and the overall level of land value applied in the viability study. The singularity of approach in the absence of evidence simply does not reflect the market going forward. Furthermore, the charging authority has not undertaken any market or sensitivity testing between the values that have been assumed through EUV+ and the land values that are realistically achievable in the market today. The Charging Authority has not engaged in any market testing with the developers involved with the strategic and allocated sites identified in the Development Plan that has led to a set of proposed levy rates in the Draft Charging Schedule, which we believe are unviable.

London First does not believe the number of generic development appraisals relied upon is in any way sufficient in order to adequately test development schemes that would be coming forward in the Borough. Whilst they may reflect different types of development in various geographical areas, the very limited number of generic development appraisals is wholly inadequate when testing viability in order to set CIL rates in a complex urban area. The evidence, as a result, does not provide a suitable basis for testing marginal sites or the implications on more strategic sites. This is in clear contradiction and does not comply with DCLG and other guidance.

The introduction of CIL has direct implications for the use of S106 planning obligations. The CIL is intended to be used for infrastructure contributions that are identified in the Regulation 123 list. S.106 obligations are primarily for site-specific mitigation and affordable housing. It is not permitted for a charging authority to use s.106 contributions towards infrastructure provision identified on the Regulation 123 list to avoid double charging. Given the strict remit for the use of s.106 contributions, we are concerned how the Charging Authority has set a standard rate for s.106 contributions across the charging area without any clear justification or evidence. Setting a standard s.106 rate is akin to setting a supplementary levy rate which is expressly not the intention of how s.106 contributions should operate under CIL. The Charging Authority needs to justify why a Borough wide s.106 planning obligation has been applied instead of differential rates based on site-specific mitigation, especially in relation to the strategic sites, and affordable housing requirements.

The statutory guidance (paragraph 22) makes it clear that as background evidence, the charging authority should provide information about the level of s.106 planning obligations and affordable housing they have raised in recent years. This information should include the extent to which affordable housing and other targets have been met. The Charging Authority has not undertaken a comparison of historical s.106 receipts they have achieved over recent years (and the extent to which affordable housing policy targets have been met) and how this matches with the proposed levy rates. We suggest the Charging Authority revisits the viability appraisal by reviewing the levels of s.106 contributions and affordable housing that has been historically achieved and clarify why any differences in cumulative planning obligations differ from the proposed levy rates. If the evidence shows an increase in cumulative costs to development (taking account of the proposed levy rates and scaled back planning obligations), the Charging Authority should justify how this is economically viable and sustainable (in line with national planning policy) given the current economic climate where land values are unlikely to change in the short to medium term.

***Appropriate balance test***

London First's primary concern over the draft charging schedule is the Charging Authority's failure to apply the appropriate balance between the need to set the levy at rate(s) which promotes additional investment for infrastructure to support development and the potential economic effect of imposing the levy upon development across their area (as prescribed in paragraph 8 of the CIL Statutory Guidance paper, April 2013).

The Community Infrastructure Levy regulations (Regulation 14(1)) place the balance of these considerations at the centre of the charge-setting process. In our view the Charging Authority has not adequately demonstrated how their proposed levy rate(s) would contribute towards the implementation of their relevant Plan and support the development of their area. Our concern stems from the fact that we believe the Charging Authority has not addressed the requirement to provide a robust evidence base on economic viability and infrastructure planning as prescribed in the April 2013 and December 2012 statutory guidance on CIL. Regulation 14 requires the balance to be drawn between the desirability of securing funding for infrastructure and the effect the levy will have on the viability of development as a whole.

In our view the viability study does not provide any analysis of how the different levy rates will impact on the delivery of different land uses. Also, the viability study does not indicate what the spatial planning consequences will be as a result of the proposed levy rates. Without a detailed assessment of the impacts on land uses and their spatial consequences, we seriously question whether the viability analysis has provided sufficient detail in meeting the requirement set out in Regulation 14.

As part of the test in reaching an appropriate balance, an understanding of the cost of the infrastructure that is required to support development is necessary. However, the infrastructure analysis provided does not separate out the 'required' infrastructure from the more broader infrastructure provisions the Charging Authority would like to see come forward.

The Charging Authority must be able to demonstrate from their evidence base that the proposed levy rates will be viable for the sufficient number and type of developments the Development Plan relies on over the duration of the Plan period. It is unclear how the Charging Authority has developed its proposed rates taking into account the London Plan 2011, Tower Hamlets Core Strategy 2010 and Tower Hamlets Managing Development DPD. Whilst the viability study makes a brief reference to the local policy context in relation to CIL, there is no detailed information on how the proposed rates will impact on the deliverability of the Development Plan particularly in relation to meeting the housing pipeline and borough wide/ area specific policy targets. It is vital the Charging Authority underpins their proposed rates with a clear understanding of the impact it will make to the Development Plan and the cumulative burdens it will consequently have on development.

Given the importance of Crossrail as the "top strategic transport priority" as stated in policies 6.5 and 8.2 of the London Plan 2011, London First believes the Charging Authority has not complied with its requirement set out in Regulation 14(1). There are three designated areas in Tower Hamlets that are identified where the Mayor may seek to negotiate a top up on Mayoral CIL towards Crossrail s.106. The Charging Authority proposes where Crossrail s.106 contributions are applicable, that these rates will be subject to a 70% reduction in the top-up payable. It is unclear from the viability study how the Charging Authority has arrived at the 70% reduction. We can only assume the Charging Authority is seeking to apply this reduction in a bid to ensure their own proposed levy rates do not put development at risk. This is another example where we believe the Charging Authority has not applied Regulation 14(1) correctly in setting their proposed levy rates. This raises serious concerns over the validity of the Draft Charging Schedule in its current format.

**Strategic sites**

A sample of eight strategic sites, taken from the Managing Development DPD, has been analysed in the viability study. We are not clear from the viability study how these eight sites have been selected and would welcome clarification on why these have been chosen. The analysis undertaken fails to cross reference the Charging Authority's Development Plan targets and policy objectives. It is vital this cross referencing is undertaken if we are to ascertain the cumulative burden of policies on the economic viability of each site, which is a requirement under national planning policy.

As stated above, the limited generic development appraisals do not sufficiently address strategic sites contained in the viability study. They are at a very high level and use inputs and assumptions that are not capable of sufficient testing to be in accordance and comply with DCLG Guidance. We strongly urge the Charging Authority to work closely with those developers and landowners responsible for the strategic sites as well as those who have sites on the margins of viability.

**Appropriate evidence**

The legislation (section 211 (7A)) requires a charging authority to use 'appropriate available evidence' to inform their draft charging schedule and that charging authorities need to demonstrate that their proposed levy rates are informed by 'appropriate available' evidence and consistent with that evidence across their area as a whole.

The legislation also requires a charging authority to use appropriate available evidence to 'inform the draft charging schedule'. A charging authority's proposed levy should be reasonable given the available evidence.

Given this legal requirement upon the Charging Authority, we wish to re-emphasise the point that no information has been made available on the amount of s.106 receipts it has received over recent years and how this contributed to the delivery of affordable housing and other targets. Also, we do not think the Charging Authority has collated an appropriate level of detailed evidence to underpin their proposed levy rates. For example, a limited analysis has been undertaken in the viability study on Strategic Sites. We also question the underlying assumptions used to calculate land value and there is no evidence that the Charging Authority has undertaken a robust level of market/ sensitivity testing.

London First believes the Draft Charging Schedule is not underpinned by an appropriate available evidence base and poses a real threat to incentivising new development coming forward under the proposed levy rates. In our view, the Charging Authority must start afresh with their evidence base and recalibrate the proposed levies accordingly. If this is not done, we believe there is a strong case to contest the Draft Charging Schedule at examination on procedural grounds.

**Mayoral CIL**

In our view, the Charging Authority has failed to take in to account the Mayoral CIL rates when setting their own levy rates. Regulation 14(3) and (4) requires all charging authorities in London to take account of the Mayor's CIL rates when proposing their own levy rates.

Statutory guidance requires that charging authorities to not set their CIL at the margins of viability. In response to this, some charging authorities have set their rates at a discount (buffer) to the maximum rate which have ranged between 30% to 50%. The viability study suggests a buffer of circa 30% for Tower Hamlets.

In order to comply with Regulation 14(3) and meet the requirements set out in statutory guidance, it is necessary for the cumulative costs of the Mayoral CIL and the proposed levy rates (set by the charging authority) is fully reflected when calculating the discount rate. Table 1.5.1 clearly shows only include the Borough levy rate has been used to assess the maximum CIL achievable and the suggested CIL rate after the buffer has been applied. It does not take account of the Mayoral CIL rate which in our view is flawed.

If you have any queries regarding our response please contact me using the contact details below.

Yours sincerely

Faraz Baber  
**Executive Director, Policy**  
**London First**

---

**For further information contact:**  
Faraz Baber MRICS MRTPI FRSA  
Executive Director, Policy  
London First  
3 Whitcomb Street, London WC2A 7HA



CIL - DCS 12



Thomas Eggar LLP  
Belmont House Station Way  
Crawley West Sussex RH10 1JA

Telephone +44 (0)1293 742 700  
Facsimile +44 (0)1293 742 999  
DX no. 85715 Crawley

CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2nd Floor Mulberry Place  
5 Clove Crescent  
E14 2BG

**By Email and by Post**

Our ref: PPG/CD/NBG/45119238  
Your ref:

5 June 2013

Dear Sirs

**Community Infrastructure Levy Regulations 2010 (Amended)  
London Borough of Tower Hamlets  
Draft Charging Schedule Consultation  
Response to Consultation on behalf of Asda Stores Limited**

We act for Asda Stores Limited ('Asda') and we write further to our previous representations regarding the Council's Preliminary Draft Charging Schedule. We are pleased to note that some of the key points raised in those representation appear to have been taken on board and are reflected in the Draft Charging Schedule (March 2013) (the 'Charging Schedule').

We are pleased to note that the Council has reduced the proposed charging rate for convenience based supermarkets/superstores and retail warehouses over 280 sqm from £200 to £195. However, we believe that the Council should reduce the charging rate for convenience based supermarkets/superstores and retail warehouses over 280 sqm further. The revised charging rate is still likely to discourage retail development within the Borough.

**The proposal to split small and large (over 280 sqm) convenience based supermarkets and superstores and retail warehouses**

We remain concerned with the Council's decision to apply differing CIL rates to small and large convenience based supermarkets/superstores and retail warehouses. We note that your Draft Charging Schedule relies on the Wycombe District CIL Examination report which explicitly states that "there is nothing in the CIL Regulations to prevent differential rates for retail developments of different sizes, provided they are justified by the viability evidence and differing retail characteristics or zones".

The BNP Paribas Real Estate: Community Infrastructure Levy: Viability Study (March 2013) does not explain or provide evidence that differential rates for retail developments of different sizes are justified. The Viability Study (March 2013) has not shown any specific financial information to warrant the division of CIL charges between small and large convenience based supermarkets/superstores and retail warehouses. As a matter of fact, BNP Paribas only appear to have carried out detailed viability assessments for large scale retail developments (page 32 and Appendix 4 of the Viability Study). Without comparable viability evidence for a range of different sized retail formats, it is extremely difficult to assess whether the size threshold adopted by the Council is appropriate, or even if the size of a retail unit has a direct impact on the viability of the development scheme.

GA: 2554218\_\_1

CIL-DCS12

of a retail unit has a direct impact on the viability of the development scheme.

You will also note from page 7 of the Viability Study (2013), that BNP Paribas refer to convenience based supermarkets and superstores and retail warehousing, however, they do not make any references to the size of the development. In addition, the Viability Study (2013) recommends a CIL rate of £70 per sqm for all other retail developments in the City Fringe and north Docklands locations, regardless of the size of such schemes.

Given the lack of viability evidence supporting the proposed size thresholds the Council's adoption of them could be perceived as a part of a general policy to support smaller units at the expense of larger ones.

### **Section 106 Agreement and Section 278 Agreement - Financial assumptions**

We welcome the Council's decision to develop a Planning Obligations Supplementary Planning Document which will define where Section 106 and CIL will be sought in relation to the delivery of infrastructure. The Council should also take account of the fact that commercial developments will need to make Section 278 payments in addition to CIL and Section 106 payments. The need to make such contributions is really admitted in the draft reg. 123 list and the Draft Charging Schedule which states that the Council wants to ensure that a developer is not charged twice for the provision of the same infrastructure.

By failing to consider properly the potentially large Section 106 and Section 278 costs and the costs of obtaining planning permission (examples of which are set out at Schedule 1 to this letter), when setting the CIL rates the Council has underestimated the true cost of retail developments and artificially inflated the relevant benchmark land values used for the financial viability models. This will, in turn, have inflated the amount of CIL proposed for convenience retail development.

The Department of Local Communities and Government now requires local authorities to produce evidence of the amount of revenue raised by Section 106 contributions in their area – including whether affordable housing and other targets have been met. The proposed CIL levies for any individual sector can then be assessed against the contributions previously received, minus any contributions that developers would still have to pay notwithstanding any CIL payments, to see if they are realistic.

The evidence put forward by the Council does not appear to contain this. It is difficult to see how the Council can be certain that the proposed CIL levy will not prohibit the viability of retail development without having obtained this evidence. Furthermore, the evidence put forward by the Council also does not appear to contain any evidence of the amount of revenue raised by Section 278 agreements.

### **Exceptional Circumstances Relief**

We note that the Council intends to consider exceptional circumstances relief on a case by case basis.

The viability of any particular development scheme is finely balanced and will fluctuate depending on the costs involved in the development and the state of the economy when the development comes forward. By adopting exceptional circumstances relief the Council will have the flexibility to allow strategic or desirable, but unprofitable, development schemes to come forward by exempting them from the CIL charge or reducing it in certain circumstances.

Simply exempting schemes from certain Section 106 obligations is unlikely to be sufficient to counteract the negative impact of the CIL charge, particularly as not all schemes (in particular retail developments) would attract an affordable housing requirement which could

CIL\_DCS 12

be waived. Further, the types of strategic development which are most likely to be of concern to the Council, such as large regeneration or housing schemes, are precisely the types of development which are likely to carry heavy site specific infrastructure costs, which will be funded under Section 106, and are most likely to qualify for exceptional circumstances relief. We therefore urge the Council to adopt it.

### **Proposed Staged Payments Policy and Phased Developments**

We welcome the Council's proposal to introduce a staged payments policy. We should be grateful if the Council would take into account the fact that many major development projects are implemented in phases and ensure that developers are not disadvantaged by submitting an application for full, rather than outline, planning permission.

As set out in our earlier representations regarding the Preliminary Draft Charging Schedule, the Council will be aware that many large scale developments are phased for a number of reasons, most commonly because the revenue generated by the early phases of the development needs to be realised in order to fund the remainder of the scheme.

As planning authorities have often expressed a preference for determining full planning applications where all of the relevant information is available to them, large scale developments are often submitted to the Council as full planning applications, rather than applications for outline permission. If this trend is to continue, allowances will need to be made for the phasing of large scale developments which have been granted full, rather than outline, planning permission.

At present the CIL Regulations allow for staged payments to be linked to the period of time that has passed since commencement, rather than the phase of development achieved. This means that any one staged payment could well fall due before the earlier phases of the scheme have started to generate the revenue required to fund it, rendering the project economically unviable. This puts developers who have applied for full planning permission at a disadvantage, compared to those who have an outline permission, as the charging regime for outline planning permissions makes specific allowances for phased development.

We note that under the CIL Regulations, developers are required to serve a notice of commencement of development on the Charging Authority, but are not required to notify them of the commencement of individual phases of development. This could, however, be easily addressed through the use of planning conditions or, alternatively, planning obligations requested through a Section 106 agreement.

We should be grateful if the Council would take this into account when formulating its staged payments policy, to ensure that developers are not disadvantaged by submitting an application for full, rather than outline, planning permission.

### **Department of Communities and Local Government ('DCLG') CIL Consultation**

The DCLG is currently consulting on regulatory reforms to CIL, which include but are not limited to changes to CIL payments, the relationship between CIL, section 106 agreements and section 278 agreements, and exemption and reliefs.

These proposed changes are likely to affect your Draft Charging Schedule and the Council might want to consider delaying putting the Draft Charging Schedule forward for examination until the DCLG's consultation is concluded and its outcome known.

CIL DCS12

### **Key Suggestions**

We encourage the Council to:

- reconsider distinguishing between small and large (over 280 sqm) convenience based supermarkets/superstores and retail warehousing;
- provide evidence of the amounts raised through section 106 contributions and section 278 contributions;
- adopt an exceptional circumstances policy and incorporate a staged payment policy into the Charging Schedule; and
- defer the submission of its Draft Charging Schedule for examination until the outcome of the DCLG's CIL consultation is known.

## CIL - DCS 12

**Schedule 1****Section 106 Agreements**

The types of contribution that could still feasibly be sought from a retail developer once the Charging Schedule has been adopted include:

- Cost of site-specific highways works: including junction improvements, road widening schemes, new access roads, diversion orders and other highways works;
- Cost of extending the Council's CCTV Network or Public Transport Network to include the scheme (including the costs of creating new bus stops, real time information and providing new bus services to serve the site);
- Monitoring costs of compliance with employment/apprenticeship schemes and travel plans;
- Environmental off-set contributions to mitigate the loss of habitat or greenery caused by the scheme;
- The cost of any remediation and decontamination works to be carried out by the Council on the developer's behalf;
- Payments for town centre improvements intended to mitigate the impact of the development on the town centre or neighbouring areas; and
- The costs incurred by the Council of maintaining any site specific infrastructure required by the development.

**Planning Costs**

The cost of obtaining planning permission from the Council a development scheme can be significant. These are not just limited to the Council's own fees for submitting an application and obtaining pre-application advice, but also include:

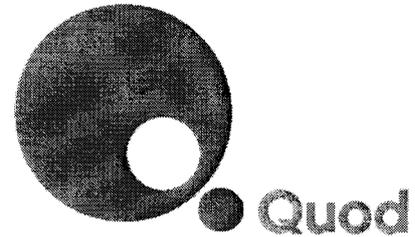
- The professional costs involved in appointing consultants to prepare the application;
- Legal costs involved in negotiating the underlying legal agreements;
- Costs of negotiating appropriate planning conditions and obligations with the Council;
- Consultation costs, particularly for larger schemes which will need to show evidence of early community engagement; and
- If permission is refused, or challenged by an aggrieved third party, the costs of an appeal to the planning inspector or a judicial review challenge in the High Court.

CIL-DCS13

our ref:

email: [REDACTED]

date: 2 June 2013



Anne-Marie Berni  
Team Leader – Development Implementation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2<sup>nd</sup> Floor Mulberry Place  
5 Clove Crescent  
E14 2BG

Dear Ms. Berni,

**LONDON BOROUGH OF TOWER HAMLETS COMMUNITY INFRASTRUCTURE LEVY DRAFT CHARGING SCHEDULE AND DRAFT REVISED PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT**

a) **Introduction**

1. I am writing on behalf of One Housing Group in response to your Draft Charging Schedule (DCS) and associated documents.
2. As you will be aware One Housing Group is one of Tower Hamlets' largest housing providers with nearly 5,000 homes under its management. This includes nearly 2,000 homes in the Barkantine, St. John's, Samuda and Kingsbridge Estates on the Isle of Dogs, which were transferred from the London Borough of Tower Hamlets (LBTH). One Housing Group is also an active developer of mixed tenure developments, which include homes for private sale which subsidise the provision of affordable housing and create mixed and balanced communities.
3. One Housing Group is very worried that the proposed CIL charging levels for residential development, particularly in CIL Charging Zone 1, will put at serious risk the development of the Borough.
4. In particular it is concerned that the approach taken to setting CIL rates does not appear to have considered the potential impact of CIL on social housing estate regeneration and renewal initiatives at all despite them being a corporate priority for the Council, and a major component of the Borough's future delivery of affordable housing.
5. It is strongly of the view that the Council should not submit its Draft Charging Schedule in its current form for examination, and instead should consult further with housing providers and LBTH homes to ensure that the final approach to CIL does not put the future delivery of affordable housing in Tower Hamlets at risk.



**b) Statutory Guidance**

6. Before setting out our detailed concerns it is useful to briefly summarise the key points of the guidance to which local authorities are legally required to have regard which was published in December 2012 and updated in April 2013 to reflect updates to the regulations.

7. In relation to setting rates, Regulation 14 of the 2010 regulations (as amended) requires that a charging authority:

*'must aim to strike what appears to the charging authority to be an appropriate balance between' the desirability of funding infrastructure from the levy and 'the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area'.*

8. It sets out more clearly how the test set out in Regulation 14 should be interpreted and provides more details of the 'appropriate evidence' to which the Charging Authority, and the Inspector at the subsequent examination, should have regard when assessing the impact of proposed charges on viability.

9. This includes requirements to:

- Demonstrate that the proposed CIL charges contribute to the implementation of your relevant local plan (para 8) including impacts on strategic sites and affordable housing achieved (paras 27 and 29); and
- Provide evidence on the levels of Section 106 contributions and affordable housing previously achieved, how much of this will not continue to be required under the CIL regime and therefore the implications for the overall 'pot' left to fund CIL and its implications on development (para 22).

**c) Affordable Housing Context in Tower Hamlets**

10. 40% of homes in Tower Hamlets are social rented, with a further 2% in shared ownership. This is the fourth highest percentage of the 348 local authorities in England and Wales. Over half of these homes are rented from a Registered Provider (RP) - previously colloquially known as Housing Associations or RSLs - the highest in London.

11. Over 13,000 homes were transferred from the Council to RPs in the late 1990s as part of Estate Regeneration Schemes, which includes the estates under One Housing Group's management on the Isle of Dogs.



**d) Estate Regeneration**

12. The Council and RPs have been actively involved in Estate Regeneration schemes for nearly 30 years. Some have involved investment, based on borrowing and grants from Government. There have been an increasing number of large scale estate regeneration projects which involve the Council or RP working with the Homes and Communities Agency (HCA), sometimes in partnership with a private housebuilder, to develop mixed use, multi-tenure schemes in which new private homes are used to cross subsidise the provision of new and/or refurbished affordable homes, and other improvements to the local environment and facilities.

**e) Borough Investment Plan**

13. The Council's Borough Investment Plan (2010) sets out its investment needs and how the Council intends to work with the HCA (now incorporated into the GLA) to practically deliver the investment and regeneration, including delivery of affordable housing, envisaged in the Council's Core Strategy (2010).
14. The Plan highlights the very difficult financial context in which the authority and its partners will be operating and emphasises the difficulties that will be caused by the cuts in central Government funding.
15. It states that:

*"Much of our future work will be focused on getting 'more for less' from Homes and Communities resources and that we use available public sector resources as flexibly and imaginatively as possible."*

16. The map below, extracted from the Investment Plan, shows (shaded in black) the housing estates that are owned and managed by the Council and its partners. They cover a very large part of the Borough.





17. On this basis it concludes that:

*“An important element of this Investment Plan is to skew investment towards land which is in public and social sector ownership which can maximise both financial and social value from available land.”*

18. It highlights the Blackwall Regeneration and Stepney (Ocean Estate) regeneration projects as the two immediate projects that it will seek to deliver through this approach.

**f) Local Plan Policy**

19. CIL Charging Schedules should be “consistent with and support the implementation of up to date Local Plans...and the London Plan”. (Paragraph 4)

20. The London Plan and Tower Hamlets Local Plan documents all identify the delivery of housing and affordable housing as absolute plan priorities and also include specific requirements in relation to the re-provision of homes in Estate Renewal projects.

**g) London Plan**

21. Relevant London Plan policies include:

- Setting Tower Hamlets the highest ten year housing target in London, 28,850 homes, or 2,850 per year to 2021 (Table 3.1);
- Suggesting that Boroughs should seek to meet and exceed these targets by, among other things, intensification, and realising capacity in opportunity and intensification areas (Policy 3.3 E);
- Seeking to ensure “A more balanced mix of tenures should be sought in all parts of London, particularly in some neighbourhoods where social renting predominates and there are concentrations of deprivation” (Policy 3.9 (B));
- Ensuring Opportunity Areas The London Borough of Tower Hamlets contains part of all of three Opportunity Areas“ contribute towards meeting (or where appropriate, exceeding) the minimum guidelines for housing and/or indicative estimates for employment capacity.” Tower Hamlets includes three Opportunity Areas– City Fringe (part), Isle of Dogs, and the Lower Lee Valley (part). Most of the City Fringe and Isle of Dogs Opportunity Areas are in LBTH’s residential charging zone 1;
- Ensuring that the maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential and mixed use schemes – based, where necessary on and independent review of viability (Policy 3.12); and
- Prioritising Affordable Housing in the consideration of planning obligations (Policy 3.12).



#### h) Local Plan

22. Tower Hamlets Local Plan Policies are principally set out in two documents: the Core Strategy adopted in May 2010 (CS), and the Managing Development Document DPD (MDDPD).
23. Relevant CS policies include:
- Policy S07 which sets out the intention to meet the Mayor’s London Plan housing targets described above;
  - Policy SP02 which identifies a target of 43,275 homes, 2,885 per year, from 2010 to 2025. Part of the delivery of this will be through “Working with our housing partners to support the regeneration of housing estates, and ensure that homes are brought up to decent homes standard”. It also sets an overall strategic target for affordable homes of 50% until 2025. This will be achieved “by requiring 35%-50% affordable homes on sites providing 10 new residential units or more (subject to viability)” and “**Securing additional affordable homes from a range of public-sector initiatives directly with Housing Associations as identified in the Housing Strategy.**” As well as bringing long-term vacant properties back into use; and
  - Various policies, including SP11, in relation to Zero Carbon Delivery and S022, Creating Distinct and Durable Places, which specifically highlight requirements for estate regeneration schemes. These are based on a recognition of often ageing stock and maintenance systems and poor quality buildings and public realm. Such requirements are likely to add to obligations for Estate Regeneration projects.
24. Supporting text identifies a number of additional key issues including:
- Three components of the delivery of the housing target, one of which is through public sector initiatives and housing renewal . Under that heading it lists the following initiatives: the Decent Homes Programme, the Ocean Estate Regeneration Programme, the Blackwall Reach Regeneration Programme, and the Borough Investment Plan (described above); and
  - Annex 9, Delivering Placemaking identifies the potential for Estate Renewal across most of the Borough including specifically: Spitalfields, Bethnal Green, Globe Town, Whitechapel, Shadwell, Stepney, Limehouse, Bow, Mile End, Bow Common, Poplar, Poplar Riverside, Blackwall, and Millwall.
25. The MDD provides more detail about the implementation of some of these strategic policies.
26. Policy DM3 re-iterates the Core Strategy’s strategic targets for housing. Specifically in relation to Estate Renewal it requires no net loss of affordable housing except where it is necessary to improve tenure mix or open space or other uses will benefit a regeneration scheme.
27. The supporting text (paragraph 3.10) explicitly acknowledges that market housing is often required to support investment in the social housing stock stating:



*“Within estate regeneration schemes, the level of affordable housing provided within a new development may be varied to facilitate the delivery of market housing where this is demonstrated to be necessary to cross-subsidise improvements to the quality of existing affordable housing.”*

28. The Council is currently consulting on its Affordable Housing SPD (Engagement Version May 2013). This sets out the Borough’s intended approach to affordability, responding to the Government’s introduction of the ‘affordable rent’ product. This includes the target rents for affordable rent and the circumstances in which the Council will continue to seek provision of social rent accommodation. Policy AH1 (b) states that Social Rent will be considered appropriate where estate regeneration schemes are required to replace existing Social Rent units. The implementation of these policies will clearly have significant impacts on assumed affordable housing values.

**i) Impacts of LBTH CIL on Estate Renewal & Affordable Housing Delivery**

29. It is clear from the above that the re-development and/or refurbishment of social housing, currently in the ownership of the Council and RSLs is an essential part of Tower Hamlets’ investment strategy and Local Plan delivery. It also provides a very important component of the Council’s identified supply of affordable housing, with the Ocean Estate (Stepney) and Blackwall Reach (Robin Hood Gardens) identified in corporate and planning policy as key initiatives.

**j) Absence of Appropriate Available Evidence in Relation to Estate Renewal**

30. Given this significance we would have expected LBTH’s Viability Study to have included an assessment of the likely impacts on Estate Renewal initiatives. We would further have expected this to cover both generic housing typologies (Table 4.11.2) and Strategic Site assessments (Section 7). In fact Estate Renewal does not appear to be mentioned at all in the Viability Study.
31. We have reviewed LBTH Housing Supply (identified in the Council’s monitoring report and 5 Year Supply information) and recent planning permissions in Tower Hamlets and identified the following ‘live’ estate renewal projects:
- Holland Estate: 210 homes
  - Bow Trinity (Eric and Trenby Estates): 180 homes
  - Aberfeldy New Village: 342 homes
  - St. George’s Estate: 193 homes
  - Leopold Estate: 370 homes
  - St. George’s Estate: 193 homes
  - Bede Estate: 240 homes
  - Island Gardens Estate: 60 homes
  - Stepney Green (Ocean Estate): 820 homes
  - Blackwall Reach/Robin Hood Gardens Estate: 1,575 homes
32. Two of the 20 strategic sites identified in the Managing Development DPD involve a major component of Estate Renewal. One of these is Blackwall Reach (Site 14) and the other Chrisp Street Town Centre (Site 9).



In addition to these identified sites the CS identifies the potential for other Estate Renewal opportunities across the Borough.

33. Under Section 212 of the Planning Act 2008 the Council is required to use appropriate available evidence to inform the Draft Charging Schedule. The CIL Guidance states that "The sampling should reflect a selection of the different types of sites included in the relevant Plan, and should be consistent with viability assessment undertaken as part of plan-making."
34. The absence of the use of any viability evidence in relation to Estate Renewal schemes means that this requirement is not properly addressed. As Tower Hamlets Council is a partner to most of these projects, it should have direct access to readily available evidence which would allow it to inform the Charging Schedule.

**k) Non-Viability of Recent Estate Renewal Projects**

35. In this regard we have reviewed public reports on the two largest strategic developments identified in the Council's investment plan – Stepney Green (Ocean Estate) and Blackwall Reach. Both of these developments were referred to the Mayor of London and as such were required to have independent viability appraisals which demonstrated that they met the London Plan requirement of providing the maximum affordable housing.
36. The Ocean Estate scheme involves the demolition of 338 homes, to be replaced with 819 new homes. Of the additional homes 74% will be for private sale and will help cross subsidise the replacement and new affordable homes and the refurbishment of existing homes on the Estate. Paragraphs 27 and 28 of the Mayor of London's report into the application confirm that even with this cross subsidy the scheme is unviable and required £43 million gap funding from the HCA, in addition to previous substantial public sector funding.  
  
[http://static.london.gov.uk/mayor/planning\\_decisions/strategic\\_dev/2010/20100202/Ocean\\_Estate\\_report.pdf](http://static.london.gov.uk/mayor/planning_decisions/strategic_dev/2010/20100202/Ocean_Estate_report.pdf)
37. The Blackwall Reach/Robin Hood Gardens development involves the provision of a total of 1,575 homes, to replace an existing 257 homes. Just under 900 of the homes will be private and will cross subsidise the 679 new affordable homes. In addition to this cross subsidy the Council and GLA (and predecessor bodies) have invested £31 million in land acquisition.  
  
<http://www.towerhamlets.gov.uk/idoc.ashx?docid=b8e43ba8-50ce-47c6-9cfb-fcbc9c2cfb32&version=-1>

38. Because the market housing is used to cross-subsidise the affordable renewal project, Estate Renewal schemes do not generate the normal surplus from which CIL could be secured. Section 106 contributions are effectively recycling of other public subsidy. The lack of viability is based on a number of factors:
  - They are required by policy to provide at least equivalent replacement housing;
  - It is required by policy that this is at social housing rent levels;
  - They can require cross subsidy for refurbishment of existing housing;
  - They have high costs of acquisition, usually requiring Compulsory Purchase;



- They have abnormal management costs, including the need for decanting and re-housing;
- They are likely to require significant investment in public realm and open space, particularly child play space, compared to standard developments;
- They can require significant investment in energy efficiency and other low carbon measures, particularly where replacement heating systems are required; and
- Private sale values for homes within an estate renewal scheme can be lower than for stand-alone premium market-led sites.

39. Existing built space that is demolished as part of a scheme can in theory be offset against CIL, but in the case of an estate renewal this will often be very difficult for two reasons. Firstly, such projects tend to be long-term and phased, with each phase treated by CIL as a separate chargeable development. Initial demolition phases cannot be offset against later construction phases as they are separate chargeable developments. Secondly for demolished space to be offset it must meet the occupancy test of having been in use for six of the previous twelve months. Given the complexity of phasing and decanting in estate renewal it will often not be possible to meet this test.

40. Whilst, as LBTH notes in its response to East Thames Housing Group's representations to the Preliminary Draft Charging Schedule, social housing which meets the tests set out in the regulations is eligible for relief, the essential element of the model of Estate Renewal for many of the major schemes in the Borough has been the cross-subsidy of social housing from the profit derived from private housing. The Council itself states, in its Investment Plan, that reduced public sector funding will mean that such models will rely increasingly on private investment. If value uplift is removed as a CIL contribution to Borough infrastructure, it will render such a model unviable with a very significant impact on future affordable housing delivery in the Borough.

#### **l) CIL Viability Assessment and the Isle of Dogs**

41. As noted above, One Housing Group manages four estates on the Isle of Dogs which, like other estates across the Borough, will require significant investment during the current plan period. The Barkantine Estate is in proposed residential Zone 1, the Kingsbridge in Zone 2, St. Johns in Zones 1 and 3, and Samuda in Zone 3. If brought forward for regeneration each of these Estates would face the exceptional costs described above, and the generic cost assumptions in Table 4.46.1 of the Viability Study would be unsafe.

#### **m) Approach to Use of Postcodes and Definition of Charging Zone Boundaries**

42. In addition to higher costs the assumed private development values, and their use to determine proposed charging zones, is opaque and unsafe. Table 8.42 identifies the proposed groupings of postcodes. The postcodes which make up the Isle of Dogs are as follows: E14 3, E14 4, E14 5, E14 8 and E14 9. The table identifies these as being in Zone 1 (we assume reference to E1W 8 should be E14 8), with the exception of E14 3, which is in Zone 3. There are no Isle of Dogs postcodes included in Zone 2, although it is identified as separate area in the charging schedule map. The area on the Isle of Dogs covered by Zone 2 is predominantly also covered by the E14 3 postcode.

CIL\_DCS13

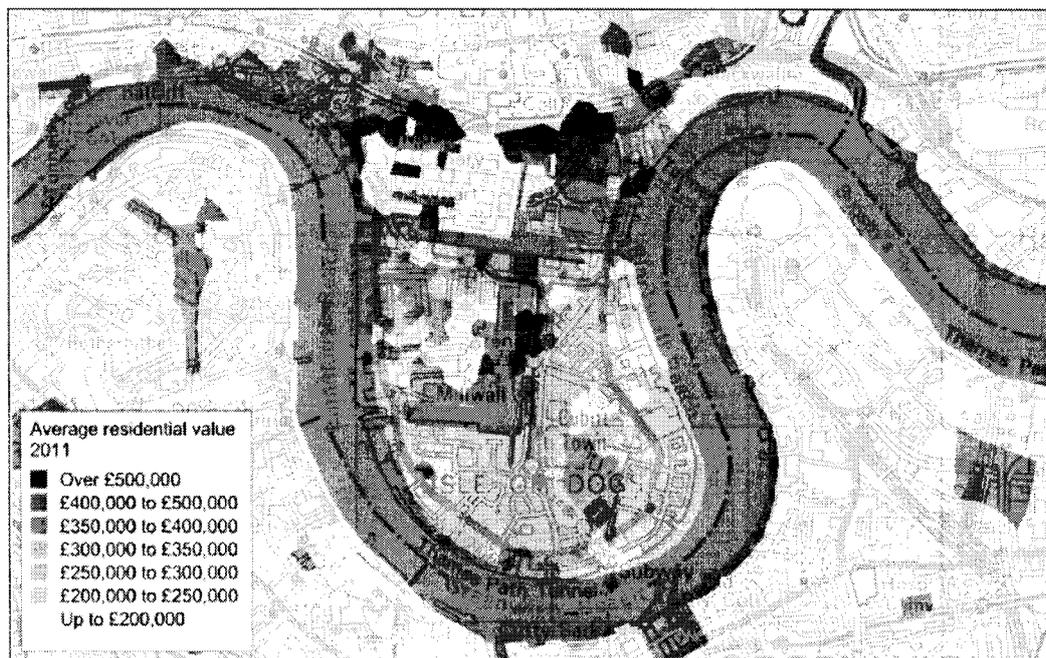


Page 9

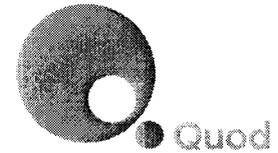
## 43. Paragraph 1.5 states that:

*“Whilst the appraisals were undertaken according to postcode area groups (based on bottom-up research on sales values and rents), further analysis of specific sites has been undertaken to ensure that the boundaries are correctly placed. The boundaries are placed according to the variation in the level of CIL sites in each area can absorb without having a significant impact on development viability taking each area as a whole. The boundaries also have regard to the practicality of divisions between areas (e.g. down the centre of roads, rather than through the middle of development sites).”*

44. This information has not been published, and if further work is available on the viability of specific sites in this area it should be brought forward before the examination. We would note in contradiction to paragraph 1.5 that the Boundary of Zones 1 and 3 passes through the middle of the St. John’s Estate.
45. As highlighted by Savills, in their response to the Council’s Preliminary Draft Charging Schedule on behalf of the Housebuilders Consortium, of which One Housing Group was a member, the use of postcodes in this way is arbitrary and does not reflect actual values. Housing estates on the inner part of the Isle of Dogs have significantly lower values than the northern part of the Island and of those parts that face onto the Docks or the River.
46. This is shown in the map below (re-produced from the original submission). Those areas within Zone 1 (Barkantine and St John’s) share value characteristics with the south and east of the Isle of Dogs as opposed to the higher value areas to the north. Any estate regeneration programmes which introduced new market units would not achieve the higher values as achieved on stand alone sites, and would need to raise long term values in order to secure viability.



CIL - DCS 13

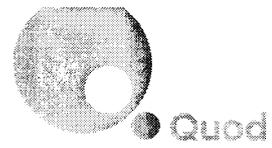


Page 10

**n) Issues for Consideration**

47. On the basis of the assessment described above we suggest that as it currently stands, LBTH has not provided evidence about the impact of its proposed CIL charging schedule in relation to Estate Renewal programmes, which have in the past and are likely to in future, form a significant element of the Council's housing supply, particularly affordable housing.
48. The Council has undertaken neither generic nor site specific viability assessments. Our review of publically available information on the consideration of recent major planning applications for such projects suggests that they require either public subsidy or reductions in obligations to ensure they are viable. Adding a non-negotiable CIL charge to the private component of such developments, which is currently essential to cross subsidise new and improved affordable housing, will mean that they are likely to be unable to meet policy requirements for at least like-for-like replacement for existing homes. This is likely to be an even more significant risk as public funding is reduced.
49. CIL Charging Zone 1 contains many housing estates, including those in which One Housing has an interest on the Isle of Dogs. Such estates have higher development costs and lower housing values than the sub-areas on which the justification for the Zone 1 boundary has been based. The potential for the regeneration of these estates should not be threatened because they are located close to very high value housing.
50. Whilst we welcome the proposal for the Council to allow for Exceptional Circumstances Relief on a case by case basis we would be concerned if this were used as an alternative to setting a proper rate – based on viability evidence. We note that other authorities have proposed low or zero rates for regeneration and estate renewal areas, including LB Wandsworth's adoption of a zero charging zone in Roehampton. We would regard this approach as preferable to the extensive use of reliefs which could be subject to third party challenge.
51. One Housing Group is keen to work with the Council prior to the submission of the Draft Charging Schedule for examination in order to address these issues. They are of the view that modifications are required if it is to have the effect of supporting rather than hindering development in the Borough.
52. It is suggested that the Council may wish to review Viability Assessments produced for its own developments and engage with RPs in the Borough to review impacts on their stock, which makes up about half the Borough's total affordable housing. One Housing would be happy to engage in identifying the inputs and typology for such assessments based on the specific cost issues facing such developments which we have described above.
53. One Housing would also request that the Council consider the charging zone boundaries on the Isle of Dogs to reflect the different values of sites with river/water frontage compared to those inland, based on the available viability evidence.
54. One Housing has worked with the Council for many years and has a long term commitment to Tower Hamlets. It wishes to work with you to ensure that the introduction of CIL does not have the unintended consequence of reducing investment in housing, and particularly affordable housing.

CIL-DCS13

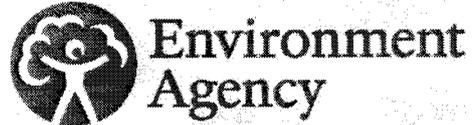


Page 11

Please do not hesitate to contact me if you require further information.

CIL-DCS 14

creating a better place



[REDACTED]  
 London Borough of Tower Hamlets  
 Strategic Planning Team  
 224-226 Tower Bridge Road  
 London  
 SE1 2UP

**Our ref:** NE/2006/100349/OR-02/IS1-L01

**Date:** 5 June 2013

Dear [REDACTED]

**The Community Infrastructure Levy (CIL) Draft Charging Schedule and Draft Planning Obligations SPD.**

Thank you for your consultation on the above latest Draft Charging Schedule and SPD. We welcome the opportunity to further influence and feed into the CIL process.

We are pleased to see in the 2013 CIL Infrastructure Planning and Funding Gap Report that flood mitigation works and installation of sustainable urban drainage systems is identified as a project using the Surface Water Management Plan (SWMP) as source material. We highlighted in our response to the Preliminary Draft in January this year the importance of using CIL as a mechanism to bridge the funding gap for implementing some of the boroughs actions to manage surface water flood risk. We suggest that you continue to work with Ruth Seager, Highways Planning Manager who is leading on the SWMP to fill in the gaps in the costings for the projects as these should be available from the SWMP and it is important to ensure recommendations in your SWMP are taken on board as evidence for infrastructure needed to support development in the borough.

In addition to recommendations from your SWMP, in terms of Flood Risk you should also consider any Tidal Defence Works required in your borough. The newly published Thames Estuary 2100 plan (TE2100) sets out our recommendations for flood risk management for London and the Thames Estuary. Your borough falls within Action Zone 3 'East London'. The Policy Unit for the Isle of Dogs is P5 'to take further action to reduce flood risk beyond that required to keep pace with climate change.' Although the Thames Barrier continues to provide reliable protection to central London against surge tides and the river walls provide protection to low-lying areas, should there be a failure of defences or an extreme event, low-lying areas would flood as shown on the 'at risk' map on page 116. This means a higher standard of protection is needed within the first 25 years of the plan. This could consist of maintenance, enhancement or replacement river defence walls and active structures. For further information please refer to the TE2100 plan <http://www.environment-agency.gov.uk/homeandleisure/floods/125045.aspx>



CIL-DCS14

The Revised Planning Obligations SPD document includes contributions to biodiversity and specifically refers to river enhancements. We support the intention of contribution towards the Tower Hamlets Biodiversity Action Plan, which includes many river related biodiversity improvement actions. We are satisfied that contributions toward these projects will provide biodiversity gains for the river habitats in the area to help achieve Water Framework Directive outcomes.

Please contact me if you have any queries relating to the above response.

Yours sincerely

[Redacted]  
[Redacted]

Direct dial [Redacted]

Direct e-mail [northlondonplanning@environment-agency.gov.uk](mailto:northlondonplanning@environment-agency.gov.uk)

CILDCS15



Planning Regeneration and Development

Magdalen House  
148 Tooley Street  
London SE1 2TU  
T: 020 7357 8000  
F: 020 7357 9865

www.planningpotential.co.uk  
info@planningpotential.co.uk

CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2<sup>nd</sup> Floor Mulberry Place  
5 Clove Crescent  
London E14 2BG

5 June 2013

Our Ref: SS/12/1584

Dear Sir/Madam,

**Draft Charging Schedule – Community Infrastructure Levy Consultation  
– Response submitted on behalf of Redrow Plc**

On behalf of our client, Redrow Plc, please find below representations made in response to the Community Infrastructure Levy (CIL) Draft Charging Schedule consultation. Redrow is one of the UK's leading property developers and an established house builder, with a history of investing in major development schemes within Tower Hamlets. Representations are submitted to safeguard Redrow's future development interests in the borough and help ensure the viability of future investments is not threatened by the Council's emerging CIL charging schedule.

We are generally supportive of the approach taken by the Council but have fundamental concerns regarding certain elements of the Charging Schedule. The representations are primarily directed towards the proposed charging rates for residential development. However, further aspects of the CIL are considered, including the implementation of an instalment policy and a discretionary exceptional circumstances relief.

**Residential Charging Rate**

We support the Council's approach in setting variable rates for CIL, this helps ensure CIL charges are relevant to the infrastructure needs of different development types and accords with the Community Infrastructure Levy Regulations 2010 (as amended). However, we consider the proposed rates for

## Directors:

Helen Cuthbert BSc (Hons) MA MRTPI

Stuart Slatter B-Tech TRP(SA) MRTPI

Claire Temple BA (Hons) Dip TP MRTPI

## Consultant:

Caroline Dawson BA (Hons) DMS MRTPI

## Associates:

Alastair Close BSc (Hons) MRTPI

Rob Scadding BA (Hons) PG Dip MRTPI

Katie Turvey BA (Hons) MA TP MRTPI

Planning Potential is a Limited Company

Registered in England No. 5699244

Registered Office: 35 Ballards Lane, London, N3 1XW

## CIL-DCS IS

residential development to be set too high, particularly that proposed for Zone 1 at £200 per/sqm.

The residential charging rates proposed range from £35 per/sqm in Zone 3, £65 per/sqm in Zone 2 to £200 per/sqm in Zone 1. The difference in the proposed rates across the three zones is significantly broad and do not reflect the actual impact that residential development would have on the infrastructure needs of these different zones. Indeed, little evidence has been presented to show that the demand for infrastructure arising from residential development in Zone 1 would be significantly higher than that within Zones 2 and 3.

Further, in reference to producing Charging Schedules, the CIL Regulations makes it clear that local authorities must find an appropriate balance between revenue maximisation on one hand and the potential for adverse impact upon the viability of development on the other.

The highest tier of the residential charging rates (£200 per/sqm) will most certainly have an adverse impact on land supply and create a significant barrier to delivering homes in the most sustainable locations in the borough. Indeed, the rate is at such a level that it is likely to render sites unviable in many cases. These concerns were voiced to the Council in respect of the previous round of consultation for the Preliminary Draft Charging Schedule. Despite objections from a number of house builders and developers, the proposed residential charging rates have not been reduced. This is despite rates being reduced for other land uses such as retail.

The Council states that the evidence base of the Viability Study (March 2013) suggests there is no need to adjust the residential charging rate. However, there are other important aspects to consider when determining an appropriate charging rate. Indeed, this is acknowledged in the Council's own Viability Study, which recognises that '*CIL rates should not necessarily be determined solely by viability evidence*' (Paragraph 6.3). It is therefore important to consider the representations made by house builders and developers, which clearly suggest that the proposed charging rates for residential development would adversely impact the viability of development in the borough. The need to adjust the residential charging rate is therefore clear and essential for the delivery of housing and the objectives of the Local Plan.

In respect of delivering new housing, the Council has failed to meet annualised targets of the London Plan since 2007/08. Indeed, the latest figures contained within the London Borough of Tower Hamlets Annual Monitoring Report (2011/12) confirms that the Council are still significantly underperforming, delivering only 903 new homes in the period of 2011/12, compared to an annualised London Plan target of 2,885.

There is a recognised shortfall in housing delivery within the borough, falling significantly below housing targets and failing to meet the demands of a growing

# CIL - DCS 15

City. In response to consistent shortcomings, the Council should be encouraging further investment from house builders, not deterring them. We therefore recommend the Zone 1 residential charging rate is reduced accordingly.

## Instalment Policy

We support the Council's decision to enable developers to pay CIL amounts in a number of instalments but strongly object to the implementation of the Mayor of London's Instalment Policy. Indeed, to reduce the burden on developers, the Council is encouraged to develop its own instalment policy. This is an approach taken by a number of charging authorities, allowing for much more flexibility than that of the Mayor of London's approach. For context, the London Mayor's instalment policy is compared with that of Wandsworth Council's in Table 1 below:

	<b>Mayor of London</b>	<b>Wandsworth Council</b>
Any amount up to £100k	No instalments	No instalments
Between £100k-250k	No instalments	2 Instalments
Between 250k-500k	No instalments	3 Instalments
Between 500k -£2m	2 Instalments	4 Instalments
Between £2m - £8m		4 Instalments
Over £8m		4 Instalments

Table 1: Comparison of Instalment Policies

In addition to the restrictive number of instalments offered, it is also important to note that the Mayor's instalment policy requires any CIL amount of up to £500,000, is paid within 60 days of commencement of development. Wandsworth Council's instalment policy on the other hand provides more flexibility required by developers. The amounts and timescales of which CIL is to be paid in line with Wandsworth Council's instalment policy are as follows:

- Amounts less than £100k: Payable within 60 days of commencement of development.
- Amounts between £100k and £250k: £100k payable within 60 days of commencement of development, remaining balance payable within 120 days of commencement of development.
- Amounts between £250k and £500k: £100k payable within 60 days of commencement of development, remaining balance payable in two equal instalments within 120 and 180 days of commencement of development.

## CIL - DCS IS

- Amounts between £500k and £2m: £250k payable within 60 days of commencement of development, remaining balance payable in three equal instalments within 120, 180 and 240 days of commencement of development.
- Amounts between £2m and £8m: £500k payable within 60 days of commencement of development, remaining balance payable in three equal instalments within 180, 360 and 540 days of commencement of development.

Based on the above, for any residential development to benefit from the Mayor's instalment policy in the proposed Zone 2, it would need to comprise of over 7,600sqm of gross external floorspace. Based on an average apartment size of 70sqm, this equates to schemes comprised of approximately 100 apartments. Furthermore, the instalment policy would only be triggered in Zone 3, if a residential development comprised of approximately 200 dwellings. It is certainly clear that the Mayor's instalment policy has been designed with large scale schemes in mind and it certainly doesn't offer the flexibility that is required by a vast majority of developers that will deliver a majority of the boroughs housing needs.

In addition, the Mayor's instalment policy has not been considered or tested by BNP Paribas in the Viability Studies produced for both consultation exercises. Indeed, BNP Paribas have assumed in their worked examples, an instalment policy based on three equal instalments. Although this more flexible approach has been adopted by other charging authorities, it is not the approach being brought forward by Tower Hamlets Council.

We strongly recommend that the Council produces its own Instalment Policy and does not progress with implementing the policy produced by the Mayor of London. Increased flexibility in paying the levy is essential for developers and a Charging Schedule that doesn't offer this, significantly threatens the viability of many development projects, and will have the opposite effect.

### Exceptional Circumstances Relief

We support the Council's decision to consider exceptional relief applications on a case by case basis and allow for necessary reductions of CIL liabilities in cases where there are adverse impacts on viability. However, we strongly encourage the Council to formally publicise confirmation that exceptional relief applications are to be accepted, in accordance with the CIL Regulations. We look forward to seeing this before the Charging Schedule is submitted for examination.

Summary

In preparing the draft charging schedule, the Council have failed to offer the flexibility to ensure the viability of delivering residential development on sites within the borough is not jeopardised. As such, the fundamental principles of local and national policy objectives encouraging sustainable development have been overlooked. The imposition of inordinately inflated CIL charges will simply frustrate potential development opportunities and in some instances dissuade investors entirely. The knock-on consequences of this are potentially very severe in terms of securing the investment needed to deliver new homes within the borough. We strongly encourage the Council to adopt a more positive approach towards development and with future housing delivery in mind. The charging schedule, as currently proposed, fails to find an appropriate balance between securing funding to meet future infrastructure needs and ensuring development and investment within the borough remains viable.

I trust the above will be taken into account and the CIL charging Schedule amended accordingly. I would be most grateful to be kept informed of progress and, in the meantime, please do not hesitate to contact me directly should there be any queries regarding the above.

Yours faithfully,

A large black rectangular redaction box covering the signature of the sender.

**PLANNING POTENTIAL**

CIL - DCS 15

**Section B (1) – Representation to LBTH CIL Draft Charging Schedule**

Your representation should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested change(s), as there will not normally be a subsequent opportunity to make further representations based on the original representation at publication stage. After this stage, further submissions will be only at the request of the Examiner, based on the matters and issues he/she identifies for Examination in Public.

**Questions:**

**1. Do you have any comments relating to the CIL Draft Charging Schedule and its supporting evidence?**

Yes (Please make sure you refer to the sections or paragraphs, to which your comments relate and provide details by using the box below for your comments. If needed, please continue on a separate sheet of paper.)

No

Please refer to attached representations letter, dated 5th June 2013.

CIL - DCSIS

[Empty rectangular box for representation content]

**2. If your representation is seeking a change to the CIL Draft Charging Schedule, do you consider it necessary to attend the Examination in Public?**

- Yes, I wish to attend
- No, I do not wish to attend

**3. Please tick the box if you would like to be notified of about any of the following:**

- If the Draft Charging Schedule has been submitted to an Independent Examination in accordance with section 212 of the Planning Act 2008 (as amended)
- Of the publication of the recommendations of the Examiner and the reasons behind those recommendations
- Of the approval of the Charging Schedule by the Charging Authority (The Council)

CIL - DC SIS

**Section B (2) – Representation to LBTH Revised Planning Obligations SPD:**

The adoption of a CIL Charging Schedule will have significant implications for how the Council plans for the delivery of infrastructure and secures Planning Obligations from new developments. In order to provide clarity on the Council's approach to the continued use of planning obligations together with the London Borough of Tower Hamlets' CIL, the Revised Planning Obligations SPD will be adopted alongside the CIL Charging Schedule.

**4. Do you have any comments relating to the Revised Planning Obligations Supplementary Planning Document?**

Yes (Please make sure you refer to the sections or paragraphs, to which your comments relate and provide details by using the box below for your comments. If needed, please continue on a separate sheet of paper.)

No

CIL-DCS16

Planning Consultants

CDT/jr/DPNF

05 June 2013

CIL Consultation,  
Infrastructure Planning Team,  
London Borough of Tower Hamlets,  
2nd Floor Mulberry Place,  
5 Clove Crescent,  
London  
E14 2BG



100 Pall Mall  
London SW1Y 5NQ

Registered No. 05092507

telephone 020 7004 1700  
facsimile 020 7004 1790

www.dp9.co.uk

Dear Sirs,

**LONDON BOROUGH OF TOWER HAMLETS, COMMUNITY INFRASTRUCTURE  
LEVY, DRAFT CHARGING SCHEDULE  
REPRESENTATIONS OF BISHOPSGATE GOODS YARD REGENERATION  
LIMITED**

I am writing on behalf of Bishopsgate Goods Yard Regeneration Limited ('BGY Regeneration Limited') in relation to the consultation on your Draft Charging Schedule for the proposed Community Infrastructure Levy ('CIL') in the London Borough of Tower Hamlets ('the Council' or 'the Charging Authority').

Hammerson plc and Ballymore jointly own Bishopsgate Goods Yard which is the largest development site in the City Fringe Opportunity Area (as designated in the London Plan (2011)) and is allocated as a strategic site within the Council's Managing Development DPD (April 2013). The site is allocated for substantial development and straddles the administrative boundary with neighbouring London Borough of Hackney. In 2010, the Council, together with Hackney and the Greater London Authority, published Interim Planning Guidance for the site. This Guidance is intended to provide a framework for the future comprehensive development of the site and acts as a material consideration in determining future planning applications. The nature and extent of the Guidance document emphasises the strategic importance of the site and explains the various opportunities and challenges associated with its redevelopment.

As stated previously at the Preliminary Draft Charging Schedule stage, BGY Regeneration Limited would like to work closely with the Council to ensure that proposed CIL rates do not pose a serious risk to the viability and deliverability of Bishopsgate Goods Yard. BGY Regeneration Limited has extensive knowledge of the considerations associated with the viability and deliverability of Bishopsgate Goods Yard which need to be fully taken on-board by the Council.

This letter follows the submission of representations by Bishopsgate Goods Yard Regeneration Limited (as well as separate representations submitted by Hammerson plc and Ballymore) in respect of the Preliminary Draft Charging Schedule ('the January 2013 Representations') which raised a number of significant concerns related to the approach, methodology and evidence underpinning the Council's proposed CIL rates. These concerns mirror those raised by other stakeholders, as set out in the Council's 'PDCS: Summary of Consultation Responses' (April 2013).

CIL-DCS16

Page 2



The Draft Charging Schedule – together with supporting documents: ‘Regulation 123 List’ (March 2013), ‘Infrastructure Planning and Funding Gap Report’ (2013), ‘CIL Viability Study’ (March 2013) – has been reviewed. Significant concerns still remain, largely as set out in the January 2013 representations. Overall, BGY Regeneration Limited is concerned that the response to its representations (as well as the separate representations submitted by Hammerson plc and Ballymore) has been minimal. It is important to note that the Council produced the Draft Charging Schedule without engagement with BGY Regeneration Limited, which is concerning given the need to do so was highlighted and emphasised in the January 2013 representations and given the Council has now prepared a site appraisal specific to Bishopsgate Goods Yard (this is provided at Appendix 5 of the Council’s CIL Viability Study).

On the basis of the evidence put forward by the Council, it is BGY Regeneration Limited’s considered opinion that:

- the Charging Authority has not complied with its legal obligation to strike an appropriate balance between helping to fund necessary infrastructure and the potential effects on the economic viability of development across its area; and
- the Charging Authority has not complied with the requirements set out at paragraph 9 of CLG’s ‘Community Infrastructure Levy: Guidance’ (April 2013).

Attached to this letter are the following enclosures:

- Enclosure A – a summary of BGY Regeneration Limited’s concerns.
- Enclosure B – comments on the strategic site appraisal for Bishopsgate Goods Yard.

It is recognised and appreciated that CIL setting is a complex process and arriving at a rate(s) that is balanced between infrastructure funding and development viability is challenging. However, when the concerns described in Enclosures A and B are taken together, BGY Regeneration Limited consider that the Council’s Draft Charging Schedule is inappropriate and likely to pose a significant risk to development across Tower Hamlets, especially in relation to the strategic sites such as Bishopsgate Goods Yard.

**Given the extent of BGY Regeneration Limited’s outstanding concerns and the extent of further evidence required as per the above recommendations, it is requested that the Draft Charging Schedule is considered afresh and public consultation is re-run.**

BGY Regeneration Limited welcome further dialogue once the Council has had the opportunity to consider these representations.

BGY Regeneration Limited wishes to reserve the right to be heard by the CIL Examiner at the forthcoming Examination.

Yours faithfully,

**CRAIG TABB**

CIL-DCS 16

LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013

**ENCLOSURE A:  
HEADLINE POINTS AND ISSUES**

**1.0 Introduction**

1.1 In January 2013 BGY Regeneration Limited – and separately Hammerson plc and Ballymore – submitted representations to the London Borough of Tower Hamlets ('the Council' or 'the Charging Authority') in respect of the Preliminary Draft Charging Schedule. The January 2013 representations raised a number of fundamental concerns with the evidence underpinning the Preliminary Draft Charging Schedule. These concerns still remain in connection with the Draft Charging Schedule and have not been adequately addressed in the Council's 'PDCS: Summary of Consultation Responses' (April 2013). Set out below is a summary of headline key points and issues following a review of the Draft Charging Schedule and its associated evidence base. It should be read alongside the January 2013 representations.

1.2 **Having reviewed the evidence base issued by the Council to support its Draft Charging Schedule, BGY Regeneration Limited is of the considered opinion that the information provided does not meet the relevant requirements as set out in the CIL Regulations and CIL Guidance: fundamentally the information provided is inappropriate.**

1.3 BGY Regeneration Limited is of this opinion due to the reasons set out below and due to the nature of the comments provided at Enclosure B specifically in relation to Bishopsgate Good Yard.

**2.0 Relationship with National Planning Policy Framework**

2.1 The National Planning Policy Framework ('NPPF') provides important steers in the formulation of CIL charging schedules. It explains that CIL charges should be worked up and tested alongside the Local Plan and, essentially, the CIL should support and incentivise new development. The sites and scale of development identified in Local Plans should not be subject to a scale of obligations and policy burdens that their ability to be developed viably is threatened.

2.2 Paragraphs 173 and 175 of the NPPF are especially relevant:

- Planning policy must not prevent development from being deliverable.
- The viability of sites identified / allocated in the Development Plan should not be put at risk as a result of obligations and policy burdens.

CIL-DCS16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

- CIL charges, where practical, should be prepared and tested alongside the Development Plan.
- CIL should support and incentivise development.

2.3 BGY Regeneration Limited is concerned that the NPPF has not been adequately considered by the Council and that the proposed Draft Charging Schedule, as a significant additional cost burden on development, runs the risk of actively discouraging development.

### 3.0 Compliance with Statutory Guidance

3.1 Charging Authorities are legally required under Section 221 of the Planning Act to have regard to the CLG statutory guidance document – ‘Community Infrastructure Levy: Guidance’ (April 2013 – consolidated version following initial publication in December 2012) – when setting their proposed CIL rates. The Guidance provides detailed guidance in relation to the CIL setting process and contains requirements for Councils and Examiners in establishing whether CIL rates are appropriate.

3.2 The Guidance in good time to allow the Council to take it on-board and be reflected in its approach to the Draft Charging Schedule. There is no evidence that the Guidance has been considered or whether the Council’s CIL evidence base reviewed afresh. This is concerning. BGY Regeneration Limited ask that the Council explain how the Draft Charging Schedule, and in particular the BNPP Viability Study, has had regard to the Guidance and meets its requirements. The Council’s evidence base is likely to need to be updated as a result and consulted upon.

3.3 The main components of the Guidance that BGY Regeneration Limited is concerned have not been taken into account are, as follows:

*“Charging schedules should be consistent with and support implementation of up-to-date Local Plans” (para 4)*

*“...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. As set out in the National Planning Policy Framework in England, the ability to develop viably the sites and the scale of development identified in the Local Plan should not be threatened.” (para 8)*

*“The independent examiner should establish that:*

- *the charging authority has complied with the requirements set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations*

## CIL-DCS16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

- *the charging authority's draft charging schedule is supported by background documents containing appropriate available evidence*
- *the proposed rate or rates are informed by and consistent with, the evidence on economic viability across the charging authority's area; and*
- *evidence has been provided that shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole." (para 9)*

*"The charging authority should set out at examination a draft list of the projects or types of infrastructure that are to be funded in whole or in part by the levy. The charging authorities should also set out those known site-specific matters where section 106 contributions may continue to be sought. The principal purpose is to provide transparency on what the charging authority intends to fund in whole or part through the levy and those known matters where section 106 contributions may continue to be sought" (paragraph 15).*

*"Charging authorities should be able to show and explain how their proposed Community Infrastructure Levy rate (or rates) will contribute towards the implementation of their relevant Plan and support development across their area" (paragraph 21).*

*"As background evidence, the charging authority should also prepare and provide information about the amounts raised in recent years through section 106 agreements. This should include the extent to which affordable housing and other targets have been met" (paragraph 22).*

*"Charging authorities need to demonstrate that their proposed CIL rate or rates are informed by 'appropriate available' evidence and consistent with that evidence across their area as a whole" (paragraph 25).*

*"In addition, a charging authority should sample directly an appropriate range of types of sites across its area in order to supplement existing data, subject to receiving the necessary support from local developers. The focus should be in particular on strategic sites on which the relevant Plan relies and those sites (such as brownfield sites) where the impact of the levy on economic viability is likely to be most significant." (para 27)*

*"Charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area. Charging authorities should show, using appropriate available evidence, including existing published data, that their proposed charging rates will contribute positively towards and not threaten delivery of the relevant Plan as a whole at the time of charge setting and throughout the economic cycle." (para 30)*

*“The Government expects charging authorities will work proactively with developers to ensure they are clear about charging authorities’ infrastructure needs and what developers will be expected to pay for through which route. This is so that there is no actual or perceived ‘double dipping’, with developers paying twice for the same item of infrastructure.” (para 85)*

#### **4.0 Relationship with the Development Plan**

- 4.1 In applying the CIL setting tests contained within both Regulations and Guidance, an understanding of the nature of development proposed across the Charging Authority’s area is vital. This must be derived from the relevant up-to-date Development Plan (including all Development Plan documents).
- 4.2 The Charging Authority’s CIL evidence needs to be able to conclude that the proposed rates will be viable for the sufficient number and type of developments upon which the Development Plan relies over the course of the Plan period.
- 4.3 It is unclear, firstly, how the Development Plan in this case (the London Plan (2011), Tower Hamlets Core Strategy (2010), and Tower Hamlets Managing Development DPD (April 2013) has informed the proposed CIL rates and, secondly, how the proposed rates will impact on the deliverability of the Development Plan (including both Borough-wide and area specific policy targets as well as the Council’s housing pipeline). The BNPP Viability Study briefly refers to local policy context at paragraphs 2.17 to 2.20, but this is light-touch and does not appear to have informed the method or approach associated with the Council’s evidence base: a full and proper understand of the Development Plan and its cumulative burdens on development should be the starting point in accordance with the NPPF.
- 4.4 The main elements of the London Plan directly relevant to the Tower Hamlets CIL charge setting process are:
- A target of 46.4% growth in employment from 2007 to 2031 (Table 1.1). LBTH has the highest target compared to all other Boroughs.
  - A ten year housing target of 28,850 new homes up to 2021 and an annual monitoring target of 2,885 (Table 3.1). Again, LBTH has the highest target compared to all other Boroughs.
  - Sustaining and enhancing the Central Activities Zone and the Isle of Dogs as global strategic centres (Policy 2.10).
  - Maximising affordable housing provision (Policy 3.11).

## CIL\_DCS16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

- Funding Crossrail and other strategically important transport infrastructure (Policy 6.5). Including the Mayor's associated SPG on 'Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy' (April 2013).
  - The designation of two Opportunity Areas (Annex 1):
    - City Fringe – which has an indicative employment capacity of 70,000 new jobs and a minimum new homes target of 7,000.
    - Isle of Dogs – which has an indicative employment capacity of 110,000 new jobs and a minimum new homes target of 10,000.
- 4.5 LBTH has adopted a suite of planning policy and guidance documents that are directly relevant to the Tower Hamlets CIL charge setting process. These include:
- Core Strategy (2010).
  - Managing Development Document (2013).
  - Interim Planning Guidance and Masterplans for a number of strategic sites.
- 4.6 The above planning documents collectively place a cumulative burden on development. This is particularly the case in relation to strategic sites located within the City Fringe and Isle of Dogs Opportunity Areas. It is unclear how the Council how these planning documents have been taken on-board and informed the Council's approach to CIL setting. This would appear to be an important omission in the context of paragraph 174 of the NPPF and paragraphs 8 and 21 of CLG's CIL Guidance.
- 4.7 As explained in the January 2013 representations (paragraphs 3.12-3.24), BGY Regeneration Limited is particularly concerned about the Council's allocated sites since these underpin the vision and policies for Tower Hamlets as set out in the Core Strategy and, in respect of the City Fringe Opportunity Area and Isle of Dogs Opportunity Area, have a bearing on the deliverability of the London Plan.
- 4.8 It is recognised that the Draft Charging Schedule includes reference to and consideration of strategic sites (Chapter 7 and Appendix 5 of the BNPP Viability Study), which comprise a selection of sites allocated in the Managing Development DPD. This is additional information that has been provided since the Preliminary Draft Charging Schedule stage. However, BGY Regeneration Limited is of the strong and considered opinion that the approach to the strategic sites is flawed and inappropriate. Refer to paragraphs 12.1 to 12.9 below.
- 4.9 Overall, BGY Regeneration Limited ask the Council to clarify how the Development Plan has been accounted for in the Council's CIL evidence base. It is not possible to

CIL-DCS16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

understand this from the information currently provided and is a significant omission and one that may well require a different methodology to be applied. The evidence base needs to take full account of the policies and requirements arising from the Development Plan.

## **5.0 Viability Approach/Methodology**

*(NB: the January 2013 representations include, at paragraphs 3.44 to 3.48, a number of important comments in relation to the reliability and appropriateness of the BNPP Viability Study. These comments are not repeated here. It is not clear from the Council's 'PDCS: Summary of Consultation Responses' (April 2013) how these comments have been taken into account. Taken as a whole the comments suggest that the Council cannot ascertain whether or not there is a sufficient margin of viability for the proposed CIL rates to be achieved without putting development at serious risk).*

- 5.1 CIL is a form of tax and, once rates have taken effect within a particular area, it is inherently more rigid and fixed compared to the application of planning policy: it cannot be negotiated to suit particular circumstances. Therefore, coupled with the current economic climate, it is critical that Charging Authorities approach CIL setting with a great deal of caution and ensure rates are based on evidence that reflects the normal circumstances under which development viability is assessed and land is released.
- 5.2 It is essential that CIL rates are based on evidence that considers current market conditions. This is in-keeping with the NPPF (paragraph 173), in linking 'willing sellers' of land, 'competitive returns' and 'willing buyers'. Market testing and understanding how developers/landowners bring development land forward is clearly integral to this. Indeed, the Local Housing Delivery Group publication 'Viability Testing Local Plans' (2012) and the RICS's 'Financial Viability in Planning' Guidance Note both talk about the importance of market testing and market 'sense-checking'.
- 5.3 There is no one set way of assessing development viability and the extent to which Market Value as defined in the RICS's Valuation Standards, Eighth Edition is taken into account varies. The Market Value of land is clearly a central concern for landowners when considering whether or not to release land for development. However, it is not the approach used by Tower Hamlets in the formulation of planning policy where the Current Use Value approach to land has been adopted previously in the affordable housing viability study. We note that the latter study pre-dates the adoption of the NPPF.
- 5.4 CIL is, of course, different. As explained above, it is not planning policy. In this context, BGY Regeneration Limited consider that understanding Market Value, and

## CIL - DCS16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

the effect on the Market of land of the burden of CIL charges, is vitally important in ensuring CIL rates reflect normal circumstances and the considerations associated with bringing Development Plan sites forward.

- 5.5 The Council's Viability Study underpinning the CIL rates demonstrates an inconsistent and unjustified approach in terms of what price it assumes land-owners will bring land forward at. The Study mainly assumes that this will be at the equivalent of Current Use Value plus a percentage premium, but there is no justification for the percentages assumed and very little justification for the adopted current use values. This is not to say that the Current Use Value and Market Value approaches are mutually exclusive, but that in urban locations such as Tower Hamlets, often the two are not aligned and the Current Use Value 'plus' approach is too arbitrary particularly with reference to strategic sites where the Current Use Values are often negligible. Furthermore, there is no market testing or 'sense checking' between the values that have been assumed and land values evident from the market (which could be, and should have been, sourced from land agents and other data sources).
- 5.6 BGY Regeneration Limited are concerned that the Council cannot know what relative effect their CIL rates will or might have in the absence of market testing.
- 5.7 A fundamental component of market testing is thorough engagement with those developers associated with the strategic / allocated sites that underpin the Development Plan. The Draft Charging Schedule has been prepared by the Council void on any engagement with those developers involved in delivering the sites set out in the Council's Managing Development DPD.
- 5.8 In-keeping with the NPPF, BGY Regeneration Limited propose the need for further CIL viability studies which involve market testing and meaningful engagement with the development industry. This needs to be undertaken before anybody is able to appreciate what relative effect the proposed CIL rates may have on the market and delivery of development. Until this occurs, it is BGY Regeneration Limited's opinion that the Council's approach to viability falls short of complying with the NPPF, LHDG and RICS guidance.
- 5.9 Paragraphs 12.1 to 12.9 below provide a more detailed consideration in relation to strategic sites and Enclosure B provides an analysis of the BNPP's inputs into their development appraisal in respect of Bishopsgate Goods Yard.
- 6.0 Residual Section 106 and Section 278 assumptions**
- 6.1 The BNPP Viability Study, which underpins the Council's Draft Charging Schedule, includes a number of standard assumptions in relation to development costs. A central tenet of Government's introduction of CIL is that, to a large extent, it will

CIL - DCS16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

result in a reduction of Section 106 costs. Whether this is true is very much dependent on the circumstances on a site by site basis. However, clearly if a Charging Authority assumes a standard rate across its area then this should be approached with caution and needs to be justified – particularly if it is doing so for the strategic site allocations that underpin the Development Plan.

- 6.2 As set out in the January 2013 representations, BGY Regeneration Limited is concerned that the Council has assumed standard Borough-wide rates for Section 106 (and Section 278) based on no analysis or justification. This is inappropriate for such a fundamental development cost and given its critical relationship with CIL rates.
- 6.3 BGY Regeneration Limited ask that the Council provide justification: for assuming a Borough-wide standard rate, as opposed to a differential rate according to location (e.g. especially in relation to the strategic site allocations); for the level of assumed ‘scaling-back’ of Section 106 rates (pre- and post-Borough CIL taking effect); for the relationship between the standard rate and the infrastructure items the Council expects (derived from its Infrastructure Plan and other evidence e.g. recent example Section 106 Agreements) to be covered by Section 106 in the future versus CIL.
- 6.4 The Draft Charging Schedule – at Appendix 3 – includes the Council’s Draft Regulation 123 List. This is commented on below, but fundamentally the Draft List serves to highlight the inappropriateness of using a broad-brush assumed rate for residual Section 106 and Section 278 in connection with strategic sites (see commentary at paragraphs 8.1 to 8.7 below).
- 7.0 Consideration of recent Section 106 Agreements and Affordable Housing delivery**
- 7.1 The Council has not provided any evidence that considers proposed CIL rates against amounts raised in recent years through Section 106 Agreements and the extent to which affordable housing and other policy targets (e.g. housing supply) have been met. This is a specific requirement of CLG’s ‘Community Infrastructure Levy: Guidance’ (April 2013).
- 7.2 BGY Regeneration Limited suggest it is essential that the Council undertake a thorough review of previous site specific viability appraisals, levels of affordable housing and Section 106 contributions and make clear why any difference when compared to the proposed CIL rates is justified.
- 7.3 Any increased costs need to be approached with serious caution given the current economic climate and that land values are unlikely to adjust in the short to medium term.
- 8.0 Regulation 123 List**

CIL-DCS16

LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013

- 8.1 The Council's Draft Charging Schedule includes (at Appendix 3) a Draft Regulation 123 List. This includes a list of items for which Section 106 may not be required. However, we are concerned (especially in the context of comments above in relation to Section 106 assumptions and comments below in relation to strategic sites) that the implications of the final item on the Draft Regulation 123 List have not been properly considered. The final item states:

*"Unless the need for specific infrastructure contributions are identified in the Planning Obligations Supplementary Planning Document or arises from five or fewer developments, where section 106 arrangements may continue to apply if the infrastructure is required to make the development acceptable in planning terms."*

- 8.2 Firstly, it is not clear how the Council has taken into account the typical costs associated with applying its Planning Obligations Supplementary Planning Document (this is currently the subject of public consultation alongside the Draft Charging Schedule). There is no cross-referencing between the Planning Obligations Supplementary Planning Document and the Draft Charging Schedule (including, most importantly, assumptions made for residual Section 106 and 278 Agreements in the Council's Viability Study).
- 8.3 BGY Regeneration Limited has prepared separate representations to the Council's Planning Obligations Supplementary Planning Document. There are a number of headline issues that these representations raise: principally these relate to how 'those known matters where section 106 contributions may continue to be sought' (CLG Guidance, para 15) has informed the underlying assumptions BNPP has used in formulating the various development appraisals in the Council's CIL Viability Study.
- 8.4 Secondly, the Draft Regulation 123 List allows for Section 106 obligations directly related to making development acceptable in planning terms. This is in accordance with Regulation 122 of the CIL Regulations, but the Council has not considered its implications, which are likely to be substantial. It is a particular concern in relation to strategic sites since typically significant investment in infrastructure is required to both enable and mitigate development.
- 8.5 The Council, in its Viability Study, has made a broad-brush assumption on residential 106 and 278 (as commented on at paragraphs 6.1 to 6.4 above): the same assumption has been made for strategic and non-strategic developments. The inference of the Council's assumption is that future Section 106 will be scaled back significantly once the Charging Schedule comes in to effect for both strategic and non-strategic developments. The Council recognises the need to look separately at the strategic sites (see paragraphs 12.1 to 12.9 below), but worryingly has not sought to understand or consider those known matters at this stage that will be paid for through Section 106 in accordance with Regulation 122.

8.6 It is BGY Regeneration Limited's considered opinion that the Council needs to take a more cautious approach to the 'scaling back' of Section 106 for the strategic sites and look at the likely Section 106 costs for each of the strategic sites appraised in Appendix 5 of the Viability Study. This is because, especially for strategic sites:

- Section 106 (and planning conditions) are to remain the primary means of mitigating the direct impacts of development (it is worthy of note in this regard that the statutory tests for Section 106 planning obligations set in Regulation 122 are in effect the same as those that were provided in guidance in Circular 5/2005).
- Because Section 106 continues to be the means through which direct impacts are mitigated, it follows that Section 106 commitments to infrastructure do not automatically legitimise a reduction in CIL. CIL is not intended to secure the mitigation of impacts from individual developments, so that Section 106 obligations which are necessary for a development (whether by way of money or infrastructure) have little to do with CIL.
- A charging authority should not normally assume that CIL is the appropriate way to provide infrastructure which is likely to be necessary for the development of individual sites or groups of up to 4 sites. Apart from risking double charging for such infrastructure, such an approach also runs risks for the robustness of planning decisions which approve development without securing a commitment to the provision of necessary infrastructure on the assumption that it will be provided through CIL. Planning permissions would be more secure if any necessary commitments were the subject of binding Section 106 obligations i.e. no material change to current circumstances.
- The terms of Regulation 123 make it possible for authorities to continue to seek pooled payments towards a particular infrastructure project, or type of infrastructure from up to five developments. This is to cover the position, for instance, where a small number of developments collectively trigger the need e.g. for a new local school. Such payments for specific infrastructure projects remain legitimate under Section 106 – even if CIL is being charged more generally for 'education' as a type of infrastructure, provided that the specific infrastructure projects are excluded from the Regulation 123 list - and can be useful in enabling developments to come forward hand in hand with necessary infrastructure.
- There are limited circumstances in which CIL can be paid in kind through land or infrastructure. Regulation 73 allows for the payment in kind of CIL but only through the provision of land and the Regulation specifically excludes such arrangements if the land is provided under the terms of a Section 106

CIL-DCS16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

obligation. It is appreciated that CLG is currently considered amendments to the Regulations in this respect.

- 8.7 Overall, in light of the above points, BGY Regeneration Limited consider that the Draft Charging Schedule could pose a serious risk to the viability and deliverability of development, especially the strategic sites.

**9.0 Infrastructure Plan**

- 9.1 The Council has published an 'Infrastructure Planning and Funding Gap Report' (2013). This is a collation of information simply to demonstrate a funding gap and, therefore, a need to charge CIL. What the Council has not undertaken is a proper assessment of the likely balance between CIL and other planning obligations (including Section 106 and Section 278 agreements) required to deliver the Development Plan and, importantly, the strategic sites underpinning the Plan.

**10.0 Relationship with London Borough of Hackney CIL**

- 10.1 The City Fringe Opportunity Area and, more specifically, the Bishopsgate Goods Yard strategic site straddle the administrative boundary between LBTH and the London Borough of Hackney. In 2010 a joint Interim Planning Guidance document was prepared and adopted. One of the main purposes of this document is clearly to ensure a comprehensive and joined-up approach to planning and deliverability issues across Bishopsgate Goods Yard between LBTH, London Borough of Hackney and the Greater London Authority.
- 10.2 The ability for comprehensive development and regeneration to be realised across the City Fringe Opportunity Area and Bishopsgate Goods Yard needs to be safeguarded and must be a primary concern of both LBTH and London Borough of Hackney in setting their respective CILs.
- 10.3 The London Borough of Hackney is currently consulting on its Preliminary Draft Charging Schedule (May 2013). This includes, as evidence base, a Viability Study that – as is the case with LBTH – has been prepared by BNPP. LBTH and London Borough of Hackney must be joined up and consistent in their approach: it cannot be the case that the viability assessment of the City Fringe Opportunity Area and Bishopsgate Goods Yard is artificially separated or divided simply because of administrative boundaries. As it stands BGY Regeneration Limited is concerned that, on the face of the evidence made available by LBTH and London Borough of Hackney, both authorities have not considered the City Fringe Opportunity Area and Bishopsgate Goods Yard as a whole and there are a number of inconsistencies associated with both the basic approach as well as the inputs and assumptions within the Council's viability studies.

CIL - DCS 16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

10.4 The main areas of inconsistency are, as follows:

- The proposed rates relevant to City Fringe Opportunity Area and Bishopsgate Goods Yard: this is especially the case in relation to office use. The London Borough of Hackney Preliminary Draft Charging Schedule proposes a rate of £74 per sqm whereas the LBTH Draft Charging Schedule proposes a rate of £215 per sqm (a difference of over 100%).
- Approach to Bishopsgate Goods Yard: paragraph 7.16 of LBTH's Viability Study concludes the following generally in respect of all strategic sites:

*"In light of the ... findings we recommend that the Council considers maintaining the proposed CIL rates across the Borough as they are not deemed to be of a magnitude that is likely to threaten the development of the strategic sites..."*

Whereas paragraph 6.19 of the London Borough of Hackney Viability Study states:

*"... The Council understands that the site [Bishopsgate Goods Yard] is likely to require extensive decontamination and require significant investment in infrastructure. At the time of drafting this report, these costs have not been quantified. It is therefore likely that the development of this site will be challenging in terms of viability. To protect the viability of this development, the Council could include requirements to decontaminate the site and provide infrastructure as Section 106 obligations, which would then allow an exemption (assuming the costs of complying with the Section 106 obligations were greater than the amount of CIL that would have been payable)."*

BGY Regeneration Limited will be commenting on the above approach in representations to the London Borough of Hackney's Preliminary Draft Charging Schedule (and will provide a copy of these representations to LBTH). But, fundamentally, the above extracts highlight the urgent need for the two authorities to consider the Bishopsgate Goods Yard site as a whole. On one hand LBTH has concluded that the site can accommodate their proposed CIL rates, while London Borough of Hackney has highlighted a potential inability for the site to be viably delivered with the Council's proposed rates owing to substantial site enabling costs.

- There are also a number of variances in the two approaches to the financial modelling, including:

CIL DCS 16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

- The Hackney Viability study includes private residential values for Shoreditch at £700 psf whereas the Tower Hamlets study includes private residential values at £575 psf.
- There is a relatively marginal difference between the Tower Hamlets and Hackney viability studies in regard to residual planning obligations with the Tower Hamlets study including a figure of £1,220 per unit and the Hackney study £1,000 per unit.

10.5 Once appropriate, relevant and, importantly consistent evidence has been prepared specific to City Fringe and Bishopsgate Goods Yard a view can then be taken by each authority as to whether it is appropriate or not to propose a differential rate, separate to other geographical charging zones. The overriding point is that the authorities must work together closely. A mismatch and inconsistency of approach to could have serious implications and would most likely discourage development, counter to the NPPF (where paragraphs 178-181 give guidance on planning strategically across local boundaries and highlight the importance of joint working to meet development requirements that cannot be wholly met within a single local planning area, through either joint planning policies or informal strategies such as infrastructure and investment plans).

#### **11.0 Increase in Office Rate and Relationship with City of London CIL**

- 11.1 As explained at paragraph 4.4, the main components of the London Plan (2011) relevant to LBTH CIL setting include the strategic priorities / enhancement of the Central Activities Zone and the designation of the City Fringe as an Opportunity Area. Annex 1 of the London Plan explains that the Area provides particular scope to support London's critical mass of financial and business services and clusters of other economic activity. It provides a substantial role in contributing to both London's and, more specifically, LBTH's targets for economic growth.
- 11.2 At the Preliminary Draft Charging Stage LBTH proposed a rate for office use in the City Fringe of £125 per sqm. In the Draft Charging Schedule this is now £215 per sqm (an increase of 72 per cent). This substantial change has not been explained and requires justification.
- 11.3 The proposed rate stands at 57 per cent higher than the office rates proposed by the City of London in their Preliminary Draft Charging Schedule (March 2013).
- 11.4 The above needs to be considered by LBTH and, more strategically, by the Greater London Authority. It would appear that there is a risk the approach taken by LBTH for the City Fringe could have strategic policy and spatial planning implications on the London Plan objectives for the Central Activities Zone and City Fringe. BGY Regeneration Limited suggest that this matter is discussed with the Greater London Authority.

## 12.0 Strategic Sites

- 12.1 Chapter 7 of the BNPP Viability Study provides an analysis of strategic sites (the inputs for an appraisal for each site is then provided at Appendix 5 of the Study albeit the appraisal summaries are not provided). The strategic sites make up a selection of those allocated in the Managing Development DPD. Paragraph 7.4 of the Study states that BNPP has run high level appraisals for eight strategic sites. The Managing Development DPD includes twenty allocated sites which are described as:

*“Site allocations have been identified to plan for strategic housing developments (i.e. sites that can provide over 500 new net-additional homes) which will help the borough meet its housing targets and for key regeneration sites. They have also been identified to ensure the borough has the adequate space and capacity for physical, social and green infrastructure to meet the needs of existing and new communities” (para S11).*

- 12.2 There is no explanation or justification for how the eight strategic sites have been selected: it appears arbitrary and there is no cross-referencing to Development Plan targets, policies, objectives).
- 12.3 Table 7.4.1 provides a brief overview of the strategic sites. Nowhere is there a detailed explanation of the actual policy requirements for each of the sites. This is a significant omission as without this there is no way of understanding or testing the cumulative burden of policies on the viability of each site consistent with paragraph 174 of the NPPF.
- 12.4 From Table 7.4.1 it is apparent that all of the strategic sites are currently either wholly or partly owned privately. This is a key point, because in order to ensure the site appraisals are based upon appropriate available evidence and informed by market sense-checking is wholly dependent upon meaningful engagement with the relevant private owners. To BGY Regeneration Limited’s knowledge the appraisals have not benefited from any engagement with site owners. This should have happened at the outset and would have helped prevent the Council consulting on untested and inappropriate evidence. The approach taken by the Council runs counter to paragraph 85 of CLG’s CIL Guidance: there has been no proactive engagement by the Council with those developers relevant to the formulation of the strategic site appraisals.
- 12.5 Paragraph 7.6 of the Study explains, fundamentally, that the appraisal modelling has assumed: the value of the completed development less the development costs exclusive of land. It is unclear how these have been derived. As a general point, if one is to fulfil the requirements of the CIL Guidance (paragraph 27 ) then analysis of strategic sites, if it is to have any meaningful conclusions, cannot be based upon sweeping generic appraisal inputs / assumptions. Paragraph 7.11 is a good illustration

## CIL - DCS16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

of the problem. It explains that BNPP has estimated the existing use values of each of the strategic sites and a generic 20% premium to the value, in addition to a 20% buffer to account for individual site constraints. This is artificial insofar that, as explained above, it does not benefit from engagement with relevant site owners and has not been informed by an analysis of the cumulative policy burden for each site.

- 12.6 At paragraph 7.14 of the BNPP study, reference is made to the exclusion of sites that are unviable prior to the implementation of CIL. That is to say that a development site with a residual land value £1 less than the benchmark land value is unviable. It is not unusual for larger sites to be unviable on a present day basis given the often onerous enabling and exceptional costs that these sites derive. The use of more innovative modelling techniques is being used on a number of larger sites to agree S106 obligations that on a present day basis appear unviable. This approach is supported by the RICS. The imposition of CIL at the proposed rates will inhibit the ability of these sites to come forward. It is not clear as to the number of sites that have been discounted or how unviable they are considered to be.
- 12.7 In respect of paragraph 7.15 and CIL as a percentage of the total development costs, we would agree that on a straight percentage basis the figures appear relatively low. However the analysis doesn't take into consideration that the additional cost is an upfront liability which adds to the funding cost and increases the peak borrowing requirement. The capital amount on the larger sites runs into tens of millions of pounds alongside Crossrail requirements, Mayoral CIL, affordable housing and residual planning obligations. There is a cumulative impact which is not recognised.
- 12.8 As such, we would question the robustness of paragraph 7.16 noting the comments above as an appropriate level of due diligence as not been undertaken in regard the costs of bringing forward the strategic sites.
- 12.9 The appraisals at Appendix 5 are high level summaries. They are difficult to analyse since whilst the individual inputs have been provided the summaries showing the full capital costs and values are excluded and as such it is not possible to understand how the models have been created, albeit we have used the BNPP inputs but derived differing residual outputs. A request has been made to the Council for this information (see letters attached), but it has not been forthcoming. It would be helpful if the Council were to provide a list of all the inputs and outputs for each appraisal so that it is possible for site owners to test these assumptions against their own data and knowledge.
- 13.0 Other**
- 13.1 Mayor of London CIL: the assumptions for the timing of the payment of the Mayoral CIL appear to be incorrect and have not been accurately reflected in the cash-flows of the various site appraisals contained in the Council's Viability Study. Mayoral CIL

CIL - DCS 16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

has not been 'plugged-in' to the appraisals as a development cost, which it is. As a result, the appraisals do not consider the financial impact and demands of the Mayoral CIL on project financing, particularly on cashflow. Also, the appraisals do not take into account the payment structure for the Mayoral CIL as set out in the Draft SPG: 'Use of planning obligations in the funding of Crossrail and the Mayoral Community Infrastructure Levy' (November 2012).

- 13.2 Mayor of London Crossrail tariff: paragraphs 2.9-2.16 of the Viability Study explains that the Mayor's Crossrail tariff has been taken into account. This is not particularly clear from the various appraisals and needs to be clarified.

End.

CIL-DCS16

LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013

**ENCLOSURE B:****STRATEGIC SITE APPRAISAL FOR BISHOPSGATE GOODS YARD**

Appendix 5 of the BNP Paribas 'Community Infrastructure Levy: Viability Study' (March 2013) includes a high level summary appraisal for Bishopsgate Goods Yard. This has not been prepared through any engagement with BGY Regeneration Limited. The appraisal relies upon a series of broad-brush generic inputs and assumptions. These do not provide appropriate evidence. The Council cannot rely upon the summary appraisal as a reflection of the actual circumstances under which the Bishopsgate Goods Yard site would be delivered.

Bishopsgate Goods Yard is an important site both in delivering the objectives of the London Plan (it is located within the City Fringe Opportunity Area) and the LBTH Core Strategy / Managing Development Document (it is allocated as a strategic site and is expected to contribute substantially to housing and job targets). The site benefits from a suite of specific planning policy and guidance in the form of its allocation within the LBTH Managing Development Document and is the subject of Interim Planning Guidance. The site straddles the administrative boundary between LBTH and London Borough of Hackney. It is, therefore, influenced by policies adopted by London Borough of Hackney and underpins their own housing / job targets.

The site allocation provide in the LBTH Managing Development Document is, in summary, as follows: "*A comprehensive mixed use development opportunity required to provide a strategic housing development, a local park, an Idea Store and a district heating facility (where possible). The development will also include commercial floorspace and other compatible uses.*" The indicative development capacity of the site is: up to 2,000 homes, approximately 75,000 to 150,000 sqm of employment, retail and community uses; and approximately 1.8 hectares of publicly accessible open space.

The comprehensive redevelopment of Bishopsgate Goods Yard is dependent on overcoming a number of major constraints and requires significant upfront enabling site preparation and infrastructure costs. A summary of the main site constraints is attached. These need to be taken into account in any appraisal of the site.

Given the strategic nature of the site and associated policy / guidance requirements, Bishopsgate Goods Yard is expected to deliver substantial planning and community benefits (a number of these are explained in the Managing Development Document and within Chapter 4 of the Interim Planning Guidance). The manner in which these benefits will be delivered and their associated costs needs to be taken into account by the Council at the CIL setting stage.

In the context of the above, BGY Regeneration Limited has set out below a number of detailed comments in relation to the BNP Paribas high level appraisal.

CIL - DCS 16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

It is concerning that the strategic appraisals are consistent in terms of their inputs with the 'standard' development appraisals. There is no recognition of the differing dynamics between the two types of development. In particular, there are significant areas of concern related to development type and quantum, development efficiency, core and exceptional build costs and land value. The following table provides a review of the BNP Paribas inputs with comments provided alongside. These comments are provided on a without prejudice basis.

<b>Viability Input</b>	<b>BNPP Assumption</b>	<b>Landowner comments</b>
Site area	Gross 4.24 ha, net 2.44 ha	BGY Regeneration Limited has measured the site and calculated an area of 2.99 ha in Tower Hamlets (including Donovan Land) and 1.2 ha in Hackney. The gross (4.24 ha) figure appears to relate to the LBTH Development Management DPD area. The Council / BNP Paribas need to clarify how the gross site area has been calculated (actually what site boundary does it relate to?).
Density	310 u.p.l.a	How has this been derived? What assumptions has BNP Paribas made to conclude this level of density?
Land use mix	Residential	This does not fit with the site allocation which is mixed use.
Development quantum	560,804 GIA residential	Please can the Council / BNP Paribas clarify how this development quantum has been derived and what assumptions have been made?
Unit mix	19% 1 bed, 47% 2 bed, 34% 3 bed	Please can the Council / BNP Paribas clarify how this development quantum has been derived and what assumptions have been made? A different approach to unit mix appears to have been taken to each of the strategic sites.
Gross to net ratio	85%	A scheme for the Bishopsgate Goods Yard site is unlikely to achieve 85% due to: <ul style="list-style-type: none"> <li>- height / number of cores required;</li> <li>- facilities / reception; and</li> <li>- the first 5 floors will contain minimal residential floorspace due to the East London Line</li> </ul> <p>BGY Regeneration Limited's experience of similar sized developments is between 65% and 70%</p>

CIL-DCS16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

Construction pre sales start	9 months	Based on the current funding climate BGY Regeneration Limited could be required to obtain 40% pre-sales.  Currently BGY Regeneration Limited estimate the sales velocity at circa 150 - 200 units per year. Therefore, BGY Regeneration Limited would need to calculate the estimated timescale and add 3 months for obtaining the marketing collateral.
Private sales rate	£700 psf	No comment.
Affordable Sales rate	£177 psf	This is a reasonable assumption based on LBTH's position on Affordable Rent, GLA caps on intermediate provision affordability and zero grant.
Car parking income	£15,000 per space	This is on the low side and BGY Regeneration Limited consider a £25,000 per space assumption to be more appropriate in this case.
Ground rent income	£4,500 per private dwelling	No comment.
Contingency	5%	No comment.
Private residential profit	20% on value	BGY Regeneration Limited would anticipate that Bishopsgate Goods Yard development as a whole will be looked at on an Internal Rate of Return in basis given the overall development timings to take into account the peak borrowing requirement, significant upfront costs and time weighted risk adjusted return. The profit on value approach used by BNP Paribas does not take into consideration the significant amount of upfront capital required to bring forward a site of this scale and complexity. Banks, property companies and developers would use a pre-finance Internal Rate of Return in order to better evaluate the profitability of capital committed and we would therefore conclude that an Internal Rate of Return in is a more appropriate profit measurement for the strategic sites.
Affordable profit	6% on value	Reasonable (albeit note comment above: the IRR would be adjusted to reflect all property types).
Build costs	£177 per sq ft residential	Based on experience of developments of this nature BGY Regeneration Limited would expect circa £270 - £300 psf. This would be supported by the QS cost estimates and BGY Regeneration Limited's experience on other sites.

CIL-DCS16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

Exceptionals / Abnormals	£6,048,000	BGY Regeneration Limited note that the exceptional costs / abnormals is significantly higher than that assumed by the Council / BNP Paribas. The full cost of abnormals and exceptions cannot be met by either the £6,048,000 figure as included or the BNP Paribas assumed CIL 'buffer' for site specific circumstances. For example, there is a circa £20m liability for East London Line improvements alone.
Marketing	1.5%	Marketing costs for a development of this nature will be 2%. This is supported by BGY Regeneration Limited experience. On top of the 2% an on-site marketing suite is required which BGY Regeneration Limited would estimate at circa £5m.
Sales agent	1%	2% for joint agency instruction is more appropriate in this case.
Sales legal fee	0.25%	Reasonable although could be up to 0.5%.
Letting fee	10%	Joint agency instruction (which is applicable to this scale of development) will be 15%. BGY Regeneration Limited will also need a marketing budget for the commercial letting agents to cover the adverts in the EG, Property Week, brochures and boards, mail shots and launch events for commercial agents.
Professional fees	10%	12% to 14% given various abnormals and complexities associated with the project.

## CIL-DCS16

**LBTH CIL Draft Charging Schedule  
Representations of BGY Regeneration Limited  
5<sup>th</sup> June 2013**

Finance	7%	<p>Cost of finance will be a major issue for this development due to the length of the project.</p> <p>The cost of finance will be much higher, thus the overall average rate will be pushed up.</p> <p>Examples of rate build up:</p> <ul style="list-style-type: none"> <li>- First Draw fee based on total facility - c.1%</li> <li>- Financial repayment fee based on total facility size - c. 1%</li> <li>- Red book valuation</li> <li>- Bank Monitoring fee</li> <li>- Bank legal fees</li> <li>- Interest on Draw amount - c. 6%</li> <li>- Interest on non draw amount - c. 2% (normally 50% of the rate above base)</li> </ul> <p>Total finance cost will be considerably higher than normal (smaller scale development) and a rate of circa 9% would be more realistic.</p>
Planning Obligations (s106 and s278)	£1,220 per unit	Requires an analysis by the Council that is site specific and an understanding of the cumulative burden of planning policies and guidance.
Site Value	CUV of £17,808,000	This figure needs explanation. No reference to NPPF para 173 or requirement to sense check against market evidence.

CIL-DCS16

Yours sincerely,



DP9



CIL-DCS16

Planning Consultants

22 April 2013



Anne-Marie Berni  
 Infrastructure Planning Manager  
 Infrastructure Planning Team  
 London Borough of Tower Hamlets  
 Mulberry Place  
 PO Box 55739  
 5 Clove Crescent  
 London E14 1BY

100 Pall Mall  
 London SW1Y 5NQ

Registered No. 05092507

Telephone 020 7004 1700

Facsimile 020 7004 1790

[www.dp9.co.uk](http://www.dp9.co.uk)

Dear Anne-Marie,

**Consultation on the Community Infrastructure Levy (CIL) Draft Charging Schedule:  
 Request for Argus Summary Appraisals for Wood Wharf and Bishopsgate Goods Yard**

Thank you for your letter of today in relation to the Council's public consultation on its proposed CIL Draft Charging Schedule. We note that this includes an updated Viability Study (March 2013) prepared by BNP Paribas. This Study now includes viability information for Strategic Sites at Chapter 7 and Appendix 5.

DP9 is instructed – alongside development viability specialists DS2 – to undertake a review of the Draft Charging Schedule on behalf of Canary Wharf Group and Bishopsgate Goods Yard Regeneration Limited. We are, therefore, particularly interested in the viability work that BNP Paribas has undertaken for two of the Strategic Sites: Wood Wharf and Bishopsgate Goods Yard.

Appendix 5 of the updated Viability Study includes high level appraisal inputs and a residual land value for each of the Strategic Sites. We request that BNP Paribas and the Council make available copies of the Argus Summary Appraisal printouts that have been used to calculate the residual land values for each of the Strategic Sites, in the same way that they have been provided, for example, in the Viability Study undertaken by BNP Paribas in support of the London Borough of Southwark CIL Draft Charging Schedule. Given the scale and complexity of development allocated to come forward within the Strategic Sites, analysis of the appraisal inputs as currently presented in Appendix 5 of the Viability Study without reference to the cost and value capital amounts that are generated is insufficient to enable a proper analysis of the Council's evidence base.

We trust that the Argus Summary Appraisals for Wood Wharf and Bishopsgate Goods Yard are readily available. We ask that these be issued to us promptly given their importance in determining the nature and content of representations to the Draft Charging Schedule.

Should you have any queries in relation to the content of this letter please do not hesitate to contact Craig Tabb of this office.

CIL-DCS16

Development Consultants



PL/ds  
13 May 2013

Craig Tabb  
Partner, DP9

*By email only*

Dear Craig,

Development Services 2 LLP  
100 Pall Mall  
London SW1Y 5NQ

telephone 020 7004 1760  
facsimile 020 7004 1790

[www.ds2.co.uk](http://www.ds2.co.uk)

**LONDON BOROUGH OF TOWER HAMLETS – COMMUNITY INFRASTRUCTURE  
LEVY (CIL) DRAFT CHARGING SCHEDULE**

Thank you for providing a copy of Anne-Marie Berni's letter of 3<sup>rd</sup> May 2013 in response to DP9's request for additional information (letter of 22<sup>nd</sup> April 2013) relating to the strategic site development appraisals included as part of the BNP Paribas Viability Study (March 2013).

We have recreated the appraisals for Wood Wharf and Bishopsgate Goods Yard using the BNP Paribas inputs as suggested. However, we have not derived the same residual outputs. This is not surprising and could be for a number of reasons. We would anticipate that the variations in residual land value are likely caused by differences in timings, phasing and the inclusion in a number of the appraisals of significant tranches of commercial property income. The timing of all of these has an substantial impact on the costs of funding projects and the subsequent profitability, viability and deliverability of development.

If the appraisal summaries were provided, as has been done by BNP Paribas in the London Borough of Southwark in their equivalent CIL viability assessment, it would allow us to compare the headline costs and values and understand where the variations are in the models.

Therefore, we would be grateful if you would pass on our request for the appraisal summaries and summary cash flows so that we can interrogate the models thoroughly. Please let me know if anything is unclear.

Yours sincerely,

**Pascal Levine MRICS**

Partner, DS2

[Redacted signature block]

CIL-DCS16

Planning Consultants



CDT/jr/DPNF

05 June 2013

CIL Consultation,  
 Infrastructure Planning Team,  
 London Borough of Tower Hamlets,  
 2nd Floor Mulberry Place,  
 5 Clove Crescent,  
 London  
 E14 2BG

100 Pall Mall  
 London SW1Y 5NQ

Registered No. 05092507

telephone 020 7004 1700  
 facsimile 020 7004 1790

www.dp9.co.uk

Dear Sirs,

**REVISED PLANNING OBLIGATIONS SPD – MARCH 2013  
 SUBMISSION OF REPRESENTATIONS BY BISHOPSGATE GOODS YARD  
 REGENERATION LIMITED**

On behalf of Bishopsgate Goods Yard Regeneration Limited ('BGY Regeneration Limited'), we write to submit representations to the above document, as set out below. These representations are to be read alongside those submitted by BGY Regeneration Limited in relation to the Council's CIL Draft Charging Schedule.

Representations:

1. It is explained, on pages 3 and 4 that the purpose and objective of the Draft SPD is to, inter alia: explain the relationship between CIL and Section 106 planning obligations; improve transparency in the priority and calculation of planning obligations; provide a consistent methodology for calculating obligations; provide more certainty to all parties. Overall, the Draft SPD is high-level and broad-brush. It goes some way to assisting developers in understanding the main topics and items that the Council will typically seek to be included within Section 106 or 278 Agreements.
2. The document falls short of providing greater certainty or transparency for the development industry. This is especially the case regarding the relationship between planning obligations and CIL. The 'tick-box' style approach taken in Chapter 2 of the document is over simplified, particularly in respect of the Council's strategic sites. It would appear, for example, that unless a developer is able to transfer land to the Council, then in-kind on-site infrastructure will continue to be secured through planning obligations. The likelihood and complications around transferring land to the Council is not considered and ought to be more fully addressed. This then needs to feed through to the Council's approach and thinking in relation to their CIL setting. In our opinion, payment in kind through the transfer of land is very unlikely to occur – especially for multi-phased mixed use strategic developments – and should not be the Council's base assumption (e.g. see paragraphs 2.13, 2.15, 2.17 and 2.20).
3. Paragraph 1.1 of the document explains that the Council "will consider the combined impact of [Section 106 planning obligations, CIL, planning conditions and Highways Section 278 agreements] ... on development when considering any planning decision." Linked to this the Council addresses, albeit briefly, the matter of development viability at

CIL-DCS16



Page 2

paragraphs 5.14-5.17. What the Council has not done – either as part of the this Draft SPD or the evidence base supporting the CIL Draft Charging Schedule – is consider the anticipated cumulative burden of adopted planning policies on development viability / deliverability (in particular, the strategic sites allocated in the Council’s Managing Development Document) in accordance with paragraph 174 of the NPPF. How does the Draft SPD and the Council’s CIL Draft Charging Schedule relate to the adopted Development Plan and required infrastructure? Chapter 4 of the Draft SPD provides an explanation of the policy and guidance context. It is brief and does not explain the relationship between the Draft SPD and the Council’s infrastructure planning. This is an important omission.

4. The Council’s CIL Draft Charging Schedule has been based on an assumption that the combined cost of Section 106 and Section 278 Agreements will be £1,220 per residential unit (and nil for non-residential uses). How has this assumption been derived? It ought to be a consideration of the likely costs of development complying with the typical planning obligations set out in the Draft SPD. The assumption appears unrealistically low considering the various topics and obligations addressed in the Draft SPD, especially for strategic developments. This needs to be addressed by the Council, both in responding to representations on the Draft SPD and the CIL Draft Charging Schedule.
5. Paragraphs 2.1-2.6 serve to demonstrate that, once LBTH’s CIL has taken effect, there will actually be little change in the approach to – and the ability for the Council to require – Section 106 and Section 278 planning obligations for strategic development. We have highlighted this point in our representations to the Council’s CIL Draft Charging Schedule. The matter needs to be addressed, and further evidence base produced, before the Council adopts the Draft SPD or submits their Draft Charging Schedule for Public Examination.
6. Paragraph 4.3 refers to Circular 05/2005. It states that the Circular “remains relevant to negotiating and administering planning obligations”. Annex 3 of the NPPF provides a list of all documents that have now been deleted. At item 31, this includes Circular 05/2005. The Council appears to have misunderstood the provisions of the NPPF. The Draft SPD needs to be considered afresh and amended accordingly. We note that Circular 05/2005 is referred to a number of times through the document (see, for example, paragraphs 5.1 and 6.2).
7. The document needs to be thoroughly checked: there appear to be a number of basic errors. For example, paragraph 4.16 refers to a summary of two DPD documents, but then only lists the Council’s Managing Development Document. The publication date of the National Planning Policy Framework is noted in various places as 2011. It was adopted and published in 2012. Commentary and explanation of the Council’s Managing Development Document needs to be updated as the document has been adopted.

Overall, the Draft SPD needs to be re-considered by the Council in the context of the above points. This needs to happen alongside a consideration of representations submitted to the CIL Draft Charging Schedule. In our opinion a revised Draft SPD should be made available for comment through a further round of public consultation – this is especially necessary given the Council’s misunderstanding of the position regarding Circular 05/2005. This further round of consultation should occur in advance of the Council submitting their CIL Draft Charging Schedule for Public Examination.

CIL-DCS16



Page 3

As explained in our CIL Draft Charging Schedule representations, we welcome further dialogue once the Council has had the opportunity to consider these representations. Please contact Craig Tabb of this office should you have any queries or wish to discuss the above points.

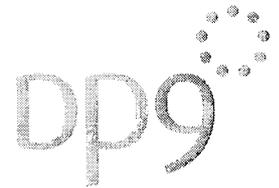
Your faithfully,

A handwritten signature in black ink that reads "DP9".

DP9

Planning Consultants

TJWH/SH/DP3284

5<sup>th</sup> June 2013

CIL Consultation  
 Infrastructure Planning Team  
 London Borough of Tower Hamlets  
 Mulberry Place  
 PO Box 55739  
 5 Clove Crescent  
 London  
 E14 1BY

100 Pall Mall  
 London SW1Y 5NQ

Registered No. 05092507

telephone 020 7004 1700  
 facsimile 020 7004 1790

www.dp9.co.uk

Dear Sirs,

**DRAFT CIL CHARGING SCHEDULE – MARCH 2013**  
**REVISED PLANNING OBLIGATIONS SPD – MARCH 2013**  
**SUBMISSION OF REPRESENTATIONS BY LONDON & QUADRANT HOUSING ASSOCIATION**

On behalf of London & Quadrant Housing Association, we write to submit representations to the above documents.

London & Quadrant are currently in the process of securing a site within the Wapping area of the borough, with a view to delivering its redevelopment for predominantly residential use. The publication of the Draft CIL Charging Schedule for the London Borough of Tower Hamlets (LBTH) is of particular interest to our client, given the potential implications it may have on the redevelopment coming forward on the site.

Following a review of the Draft CIL Charging Schedule (DCS) and the supporting documentation, London & Quadrant are concerned that an appropriate balance has not been struck between the need to fund necessary infrastructure and the potential economic viability of development across the borough; and that the Charging Authority has also not complied with the requirements set out at paragraph 9 of CLG's 'Community Infrastructure Levy: Guidance' (April 2013).

***National Planning Policy Framework***

*“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a*

## CIL - DCS 17



*willing land owner and willing developer to enable the development to be deliverable.” (para 173)*

*“Where practical, Community Infrastructure Levy charges should be worked up and tested alongside the Local Plan. The Community Infrastructure Levy should support and incentivise new development, particularly by placing control over a meaningful proportion of the funds raised with the neighbourhoods where development takes place.” (para 175)*

The above extracts from the National Planning Policy Framework (‘NPPF’) provide a number of important policy steers in the formulation of CIL Charging Schedules. Of particular note:

- Planning policy should be deliverable.
- CIL charges, where practical, should be prepared and tested alongside the Development Plan.
- CIL should support and incentivise development.

The NPPF is therefore clear in that it requires local planning authorities to pay due regard to the implications of any obligations on development. For the majority of sites, particularly those of a strategic nature, CIL is one of the main financial obligations which could impact on viability, affecting the ability of development to come forward and ultimately the delivery of the Development Plan objectives.

### ***Statutory Guidance***

Charging Authorities are legally required to have regard to the CLG statutory guidance document – ‘Community Infrastructure Levy Guidance (April 2013) – when setting their proposed CIL levels.

The statutory guidance provides important detail guiding how Charging Authorities should go about preparing Charging Schedules and the nature of supporting evidence base material that is necessary. The statutory guidance is consistent with the central theme of the NPPF: planning policy should be deliverable and the viability of Development Plan sites should not be put at risk.

Fundamentally, the statutory guidance supports the representations set out below. The following extracts are of particular significance:

*“Charging schedules should be consistent with and support implementation of up-to-date Local Plans” (para 4)*

*“...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. As set out in the National Planning Policy Framework in England, the ability to develop viably the sites and the scale of development identified in the Local Plan should not be threatened.” (para 8)*

*“The independent examiner should establish that:*

CIL\_DCS17



- *the charging authority has complied with the requirements set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations*
- *the charging authority's draft charging schedule is supported by background documents containing appropriate available evidence*
- *the proposed rate or rates are informed by and consistent with, the evidence on economic viability across the charging authority's area; and*
- *evidence has been provided that shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole."* (para 9)

*"In addition, a charging authority should sample directly an appropriate range of types of sites across its area in order to supplement existing data, subject to receiving the necessary support from local developers. The focus should be in particular on strategic sites on which the relevant Plan relies and those sites (such as brownfield sites) where the impact of the levy on economic viability is likely to be most significant."* (para 27)

*"Charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area. Charging authorities should show, using appropriate available evidence, including existing published data, that their proposed charging rates will contribute positively towards and not threaten delivery of the relevant Plan as a whole at the time of charge setting and throughout the economic cycle."* (para 30)

*"The Government expects charging authorities will work proactively with developers to ensure they are clear about charging authorities' infrastructure needs and what developers will be expected to pay for through which route. This is so that there is no actual or perceived 'double dipping', with developers paying twice for the same item of infrastructure."* (para 85)

*"The charging authority's proposed approach to the future use of any pooled section 106 contributions should be set out at examination and should be based on evidence."* (para 89)

### **Representations to LBTH CIL Draft Charging Schedule**

Tower Hamlets has the highest housing targets of any London borough at 28,850 units over a ten year period, as set out in the adopted London Plan. To meet the housing target in the London Plan will ultimately require the delivery of housing on brownfield sites, and it is these sites which are identified in the CLG Guidance as having the potential for their economic viability to be most significantly affected by CIL.

London & Quadrant are concerned that the residential values within the different CIL Zones do not accurately reflect the different residential values across the Borough. It is considered that insufficient evidence has been provided to support the different CIL rates identified within the DCS.

CIL - DCS17



Paragraph 34 of CLG's statutory guidance document explains that Charging Authorities can set differential levy rates for different geographical zones provided that those zones are defined by reference to the economic viability of development within them. The BNPP Viability Study does not adequately explain or justify the link between development viability and different geographical charging zones.

The DCS identifies three different Residential CIL Charging Zones. London & Quadrant does not agree with the boundaries to these zones, nor the large disparity between the rates applicable to these zones and considers they do not reflect the wide variation in values for residential development across the Borough.

The administrative area of Tower Hamlets is a Borough which experiences significant disparities in economic wealth, which is reflected in the value of residential property. Tower Hamlets has some of the poorest areas in London and the UK, yet it is also home to more affluent areas, such as Spitalfields and land adjacent to the River Thames. As a result, there are wide variations in residential values over small areas, with high value and low value pockets throughout the Borough.

London & Quadrant is concerned that the current identification of 3 very broad zones and the large differential in charging rates applicable to them will threaten the viability of development in the less valuable locations within each Zone and it considers that a more detailed assessment is required of price variations in the Borough with the identification of more charging zones and a more diverse charging rate.

#### ***The Regulation 123 List and S106 costs***

The Viability Study makes an assumption in relation to the level of S106 contributions which would be payable by schemes at £1,220 per residential unit. This is a very precise figure and there is no explanation as to how this has been calculated or what infrastructure it could cover.

It is assumed that there must have been some benchmarking against previous S106 costs. The need to undertake an exercise of benchmarking against recent Section 106 obligations has now been recognised by CLG. Paragraph 22 of the new Statutory Guidance explains, at paragraph 22, that "*as background evidence, the charging authority should ... prepare and provide information about the amounts raised in recent years through section 106 agreements. This should include the extent to which affordable housing and other targets have been met.*"

London & Quadrant is concerned that the Council has not considered the S106 costs sufficiently to be certain that the S106 levels would not exceed the £1,220 per unit identified.

In relation to the Regulation 123 list published at Appendix 3, we would make the comment that this is a very generic list and does not provide any clarity on what infrastructure will be provided as part of CIL. It is important that the Regulation 123 list is transparent.

#### **Representations to LBTH Revised Planning Obligations SPD**

In relation to the requirements for energy contributions, our client objects to the requirement that developments not meeting the carbon reduction targets should pay a contribution. There are sites that, due to their physical constraints, will not be able to meet the carbon reduction targets and in these circumstances it is unreasonable to request a 'top-up payment'.

CIL-DCS17



Our client has a similar comment in relation to the proposed obligations for biodiversity. There is no clarity on what threshold levels need to be met before a payment is triggered. Furthermore, the obligations would seem to penalise those sites that, for physical reasons, are not capable of contributing to biodiversity.

The significant missing element of the SPD relates to the actual level of contributions which are being sought. Without these, it is difficult to understand the impact of the obligations on the viability of development and how these relate to CIL. This also relates back to the point made earlier that the £1,220 S106 cost factored into the appraisals is not robust.

### **Conclusion**

Overall, London & Quadrant are concerned that the evidence base presented to underpin the Draft CIL Charging Schedule is not robust and the consequences of adopting the Charging Rates set out within it have not been properly considered. There are two fundamental areas of concern. The first relates to the lack of evidence supporting the CIL rates proposed by the Charging Authority; and the second relates to insufficient weight being given to the implications CIL will have on the viability of development, including the delivery of the Borough's housing targets.

In relation to the Revised Planning Obligations SPD, it is considered that greater clarity is required on when the obligations apply. Fundamentally, the costs of the obligations need to be made clear to understand the impact on viability and to be able to comment in detail.

We look forward to receiving confirmation of receipt of our comments and would ask that we be kept updated of any future changes to either of the documents, and any additional opportunities for further consultation.

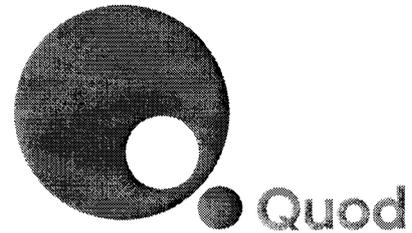
Should you wish to discuss any of our comments, please contact Sam Hine or Tim Holtham of this office.

Yours faithfully,

**DP9**

CIL-DCS18

our ref: TD/Q30311  
email: [REDACTED]  
date: 5 June 2013



[REDACTED]  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2<sup>nd</sup> Floor Mulberry Place  
5 Clove Crescent  
E14 2BG

Dear Ms. Berni,

**London Borough of Tower Hamlets Community Infrastructure Levy Draft Charging Schedule and Draft Revised Planning Obligations Supplementary Planning Document**

**Introduction**

I am writing on behalf of the Berkeley Group in response to your Draft Charging Schedule (DCS) and associated documents. We will refer to the draft Supplementary Planning Document (SPD) on Planning Obligations although we have also prepared separate representations which have been submitted alongside these.

We will set out our comments in detail below but thought that it would be useful to summarise at the outset our key concerns:

- Our principal concern is that the proposed CIL rates for residential and commercial development will threaten the delivery of the sites and scale of development set out in the Local Plan (CIL Guidance paragraph 8);
- That, based on evidence from comparable recent planning permissions, the proposed rates would provide an upward step change in obligations on development, from which current policy already seeks to extract 'maximum' levels of affordable housing tested by site-specific viability assessments. The Council regularly refuses or defers applications at planning committee due to perceived insufficiency of the affordable housing offer;

CIL-DCS18



Page 2

- This will put at risk, not only the development of individual sites, but also the achievement of the Council's targets for affordable housing, a clear priority for the council. The council has deferred or refused 42% of applications since 2010 on the grounds of the proposed level of affordable housing or other obligations and requirements. We will demonstrate that the application of CIL to the recent planning permission for the Goodman's Fields development, would reduce delivery of affordable housing on that site by 55 homes, a fifth. Were this to be mirrored across other sites the Council could put at risk the delivery of up to a 20% of its affordable housing, which is already at levels below the strategic target;
- The Council has not used appropriate available evidence in setting its CIL rates. The Viability Study contains a number of flaws, including how it deals with Mayoral CIL and other London Plan obligations, and through assumptions about large sites and site specific appraisals. When its findings are compared to viability assessments of real sites through the planning process it is clear that it consistently overestimates the amount of 'Residual Value' available for CIL. Despite being required to by the CIL guidance the Council has not undertaken such an assessment itself (paragraph 22);
- That the draft Regulation 123 list and proposed policies on Planning Obligations do not provide sufficient information to judge whether the £1,225 per home Section 106 assumed in the Viability Study is reasonable, or sufficient safeguard that developments would not continue to be subject to ongoing planning obligations at a level that would make them unviable.

The Berkeley Group is of the view that as it currently stands the Draft Charging Schedule should not be approved by an Examiner and would like to reserve its right to appear at any Examination.

The Government's recent announcement in its consultation on the CIL regulations that it proposes to extend the S106 pooling deadline to 2015 we believe offer the Council the opportunity to make a more considered approach. We believe that this would be in the interest of the Council in a Borough which is unusually dependent on large complex sites to achieve its local plan targets, as it is clear that it is such sites that are put at most risk by the implementation of CIL.

### **The Berkeley Group in Tower Hamlets**

In the past four years the Berkeley Group, London's leading residential developer, has delivered 13,000 new homes and commitments to deliver 7,000 affordable homes as well as £245 million in S106 contributions. Each home it delivers sustains 4.5 jobs. It is committed to continue to deliver high quality new homes and create exceptional new places, and is committed to doing so in Tower Hamlets.

CIL-DCS18



Page 3

The Berkeley Group owns London Dock (Site 4) and Goodman's Fields (Site 3) two of the 20 sites which the Council has identified as being critical to achieving its development objectives for the Borough in the Council's recently adopted Managing Development Document DPD (MDD). The group has also recently purchased a site at South Quay Plaza which is in the Millennium Quarter, another of the strategic sites in the DPD (Site 17). Together these three sites have capacity for over 5% of the Council's London Plan 10 year housing target.

Berkeley Group has been working closely with the Council's development management team to bring forward proposals for these sites, and wishes to take a similarly pro-active approach in considering the implications of the Council's proposed CIL charges and implementation of CIL for these and potential future sites in the Borough. You will be aware that we have previously sought to engage on CIL specifically between the closing of the PDCS consultation and the publication of the DCS but the Council has not followed up on such offers.

### **PDCS Representations and the Council's Response**

In our response to the Council's PDCS we suggested that, in response to the revised CIL Guidance (published in December 2012 and subsequently updated in April 2013) the Council needed to undertake the following additional work:

- Demonstrating that the proposed CIL charges contribute to the implementation of your relevant local plan (para 8) including impacts on strategic sites and affordable housing achieved (paras 27 and 29);
- Providing more detail on Infrastructure Planning, both identifying more clearly what residual Section 106 requirements will be, particularly for major sites, and what infrastructure will be funded via CIL (paras 12 to 19);
- Providing evidence on the levels of Section 106 contributions and affordable housing previously achieved, how much of this will not continue to be required under the CIL regime and therefore the implications for the overall 'pot' left to fund CIL and its implications on development; (para 22)
- Further work on the Viability Study in order to respond to these points and more general points on the methodology.

The Council has responded to this, and other representations making similar points, in two ways:

- Producing an updated Viability Study (2013) which includes some site specific appraisals,
- Producing a draft Regulation 123 list and Draft Planning Obligations SPD which is intended to provide re-assurance in relation to residual Section 106 issues.

CIL-DCS18



Page 4

We are pleased that the Council has made such information available as it allows us to make a more detailed response, however this has, if anything, increased our concerns about the potential impacts of the proposed residential and commercial CIL rates on development. Further details of our concerns are set out below.

As far as we are aware the Council has not undertaken any evidence in relation to previously achieved Section 106 contributions and affordable housing delivery. We provide further evidence in relation to this issue below. We would urge the Council if they have not already done so to prepare and consider such evidence themselves.

### **Viability Study**

Our review of the revised (2013) Viability Assessment document suggests that, with the exception of site specific appraisals, there have been very few substantive changes to the previous version with the exception of merging South Isle of Dogs into another residential zone and a small change in assumed hotel rental values.

### **Inputs & Typologies**

Our points made in response to the PDCS therefore still stand. In summary:

- The same generic cost assumptions as those assumed for smaller in-fill developments have been applied to the larger development typologies;
- The study excludes on-site infrastructure, abnormal cost associated to site remediation and decontamination and demolition costs. These costs are also likely to be significantly greater for larger developments, which are typically mixed use and multi-phased and require significant up-front, on-site infrastructure necessary to enable and mitigate development;
- The Viability Study has assumed a 24 month construction period for both the 250 and 400 home types. In Berkeley's experience construction would be much longer and therefore the study has failed to reasonably test the knock-on financing and holding costs attributable to larger developments, which are likely to be more complex in nature;
- The timing of both Mayoral and Tower Hamlets CIL are applied incorrectly. The Mayor's CIL instalments policy is set out in his Supplementary Planning Document on Crossrail. This assumes two payment stages for larger developments; one at 60 days and one at 240 days after commencement. However the Viability Study appears to regard Mayoral CIL as part of the 'residual' rather than being correctly applied as a cost. London Boroughs are required (by regulation 14(3) and (4)) to take into account any Community Infrastructure Levy rates set by the Mayor. In doing this incorrectly LBTH's evidence base is legally deficient;

CIL-DCS18



Page 5

- The appraisals for commercial projects have assumed significant discounts to the Mayor's Crossrail Tariff. There appears to be no basis for this and it would have significant impacts on the viability of such developments;
- Tower Hamlets has stated in the DCS document that it intends to adopt the Mayor's phasing proposals, however the table in Para 4.46.1 assumes a different (and more favourable for viability) phasing of Tower Hamlets CIL payments;
- The study assumes high residential sales rates on the larger developments, seemingly achieved by having more than one outlet and therefore achieving pro-rata far higher sales rates than smaller projects or the sales rate of 5 per month, as reported. This does not reflect Berkeley's experience and does not appear to be evidenced and again, has significant impacts on cashflow and therefore viability; and
- Finally, the typologies also fail to reflect the likely issues facing mixed use projects. The office assessment for the City Fringe assumes a typology of a 30,000 sqft stand-alone office development. In a typical City Fringe mixed use development, retail and commercial floorspace is likely to be brought forward as smaller units which would not benefit from the economies of scale or net rent levels of 'Category A' large floorplate office space. The assessments are therefore likely to overstate the likely CIL achievable from developments of this type and actively penalise the provision of office space in mixed use projects, which is a policy requirement in the Draft Planning Obligations SPD.

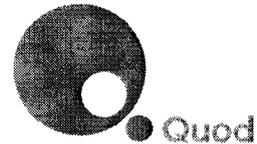
### Site Specific Appraisals

In relation to the Site Specific appraisals, we have a number of concerns. The purpose of such appraisals is to seek to understand whether the high level, Borough-wide, approach accurately reflects the reality of specific sites, and whether larger sites have particular costs which may reduce capacity for CIL and/or other planning obligations.

If they are to be useful they should accurately reflect the issues in relation to the sites covered which is why the CIL guidance suggests the involvement of developers in undertaking such appraisals (para 27). This has not happened on the Berkeley Group sites in relation to the appraisals in the new report.

We have some general concerns about a number of flaws in the appraisals:

- They only cover 8 of the 20 DPD sites – those with specific on site infrastructure requirements, but do not cover the full range of locational or site issues;



- They do not reflect the content of actual developments that will be coming forward – all are likely to be mixed use developments but only the Wood Wharf appraisal contains any element of mixed use;
- Development programmes are not set out, including assumptions on timing of CIL and S106 payments;
- They are not internally consistent with the assumptions on the larger development typologies, for example they assume 10% professional fees, compared to 12% for the larger generic typologies; and
- There is not a proper assessment of the cumulative costs of likely obligations (as set out in para 173 of the NPPF). Some of the on-site requirements are incorrect, for example the Westferry appraisal identifies a Primary, not a Secondary school as required in the MDD, and there appears to be no consideration given to public realm requirements (smaller than a local park), or the energy or biodiversity requirements. On a development of this scale and quality it is highly unlikely that Section 106 and 278 obligations will be as low as £1,225 per home.

We believe that these flaws are likely to result in a significant overstatement in the capacity of these sites to support the proposed levels of CIL. Even on the current assumptions, three of the eight are unable to support the required CIL payments.

#### **Approach to Sites that are Not Viable**

In these cases, as in those for the generic appraisals which are shown to be unviable, the authors of the viability study have suggested that (para 7.6)

“Some schemes would be unviable even if a zero CIL were adopted. We therefore recommend that the Council pays limited regard to these schemes.”

We believe that this is based on a misinterpretation of the guidance which clearly states (CIL Guidance April 2013, para 30) that local authorities should show:

“that their proposed charging rates will contribute positively towards and not threaten delivery of the relevant Plan as a whole at the time of charge setting and throughout the economic cycle.”

This means that viability assessments should not only demonstrate that the type and scale of development set out in the plan can be delivered, but also that key targets central to the delivery of the Plan such as affordable housing can be achieved.

For many of those sites where site specific viability assessments show that they cannot meet all obligations identified in the Plan it is currently common for the Council to negotiate lower levels of affordable housing or other planning obligations. When CIL is introduced this latter element will be non-negotiable which means that levels of affordable housing may be reduced very significantly to secure development viability. It would appear from the Viability Study that this may be common on a high proportion of strategic sites.

CIL - DCS18



Page 7

Indeed paragraph 6.10 of the Viability Study suggests just such an approach, stating:

“The primary purpose of this exercise (*sensitivity tests of different levels of affordable housing*) was to determine whether changes to affordable housing requirements on individual schemes would enable unviable sites to contribute towards infrastructure. The results show positive movement in terms of the viability of CIL rates when affordable housing levels are reduced. While we are not suggesting that the Council should change its affordable housing policies, the exercise demonstrates that the Council’s flexible application of its policy will ensure that CIL will not render development unviable.”

Therefore without CIL being the single element that renders a development unable to meet the full range of planning requirements, it could still materially impact on the Council’s ability to meet its plan targets. It should not be acceptable to rule such developments outside consideration when setting appropriate CIL levels. In our view it is essential for the Council to understand how widespread this might be and how much affordable housing may be foregone as a result, especially in light of the very high priority for affordable housing delivery in the borough.

#### **Evidence from Previous Section 106 Agreements**

In order to understand the magnitude of potential impacts we have reviewed large developments, those with over 75 homes, that have received planning permission in Tower Hamlets since 2009. This includes 23 permissions granted by Tower Hamlets and six by the London Thames Gateway Development Corporation (LTGDC).

They include 11 developments in the proposed LBTH Charging Zone 1, 3 developments in Zone 2, 13 in Zone 3 and 3 in the London Legacy Development Corporation Area. They include five estate regeneration projects in which new private housing is used to subsidise replacement social rented homes.

They are from the Molior database, a commercial database of planning permissions in London, which like any dataset is likely to contain some errors. We have sought to address this by removing permissions which double count (ie detailed phases of outline permissions). Nevertheless there are some flaws are likely to remain, given the complexity of Section 106 agreements. However, in the absence of such work being undertaken by the Council who have all of the source information, this is the best basis on which to make the comparison.

The headline findings from this assessment are:

- Across these developments the Council and LTGDC have achieved 30% gross affordable housing (by unit), on a broadly 70:30 split between social rented and intermediate;
- Net figures will be lower as a large proportion of the social housing on estate regeneration projects will be replacement housing – these projects make up 30% of the total 10,000 homes;

CIL - DCS18



Page 8

- Total Section 106 contributions (excluding affordable housing) equate to £7,600 per home, and £10,800 per private home;
- For LBTH proposed Charging Zone 1, affordable housing is lower than the Borough average at 21%, or 26% if the Leamouth project, approved by LTGDC, is excluded. Average S106 is also lower at £7,500 per dwelling or £9,500 per private dwelling;
- For LTGDC sites, where a tariff approach to S106 was in place, average S106 contributions were slightly higher at around £9,200 per home (£12,900 per private home), with average affordable housing lower at around 28% affordable housing, compared to slightly over 30% in the rest of LBTH (both by unit), and with a lower proportion of social rented housing and higher proportion of intermediate.

Two of the permissions will be liable for Mayoral CIL, and for those two developments the Section 106 contributions are resultantly lower at £4,500 and £5,500 per home (£6,500 and £7,300 per private home).

If we were to conservatively assume that the average private dwelling is 100 sqm (GIA), including ancillary space, then the combined proposed Mayoral and LBTH CIL in Zone 1 would equate to £23,000 per home. In Zone 2 it would be £10,000 and in Zone 3 it would be £7,000. This would be in addition to any residual Section 106 obligations.

This would, subject to any ability to discount demolished or retained floorspace, involve more than a doubling of currently achieved planning obligations.

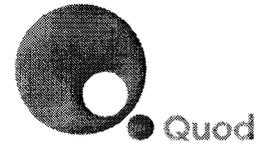
The Mayor of London requires Boroughs to maximise affordable housing (London Plan, policy 3.12) and encourages applicants to submit development appraisals justifying proposed levels which Council's should review. LBTH in their current Planning Obligations SPD (paras 4.14 to 4.17) require such assessments.

We therefore assume that the levels of affordable housing and planning obligations achieved in the developments described above, have been based on the maximum achievable on the basis of open book appraisals. This is supported by a review of available LBTH and Mayoral reports on these applications. The Council has provided no evidence to suggest why such an uplift on existing obligations should be achievable. The obvious consequence, as suggested by the LTGDC sites described above, is that affordable housing will be further reduced below local plan levels.

### **Goodman's Fields**

To illustrate this point we use the example of the Goodman's Fields development. This is a Berkeley Homes Capital project which received planning permission in March 2012, some 9 months before the publication of the LBTH Preliminary Draft Charging Schedule (PDCS).

CIL-DCS18



Page 9

The development includes 920 homes, of which 252 are affordable, a 200 bed hotel, around 8,700 sqm of commercial, retail and leisure floorspace. The Section 106 agreement for the development included total contributions of £7.6 million, equating to around £11,400 per private dwelling. It was supported by an independently tested viability appraisal which demonstrated that the obligations were the maximum affordable by the development.

The Goodmans Fields site is located in the City Fringe Opportunity Area, and in Tower Hamlets' Residential Charging Zone 1, the City Fringe Office Zone and the City Fringe and North Docklands retail zone. If the proposed LBTH Charging Schedule were applied to the development proposals this would equate to a total CIL cost of around £17 million. This would be in addition to £3 million for the Mayor's CIL. There would be likely to be a residual Section 106/278 requirement of at least the £1,225 per home assumed in the viability assessment, which would equate to around £1.1 million. The total obligation would be at least £21 million, compared to a previous total of £7.59 million, an uplift of £13 million. If such obligations were required the development could only be made viable by reducing affordable housing obligations. On the basis of the cost of providing affordable housing in the current appraisal we estimate that the number of homes would be reduced by 55 from 252 to around 200. This would represent a reduction in affordable housing from 28% to 22% (by unit), a loss of nearly a fifth of the total.

This would be a very significant loss in a Borough which prioritises affordable housing delivery and, if replicated across other sites, have a material impact on the Council's ability to deliver its Local Plan and London Plan targets.

### **Impact on Affordable Housing**

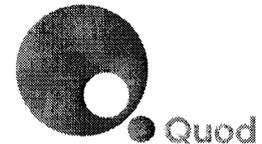
The Council's Local Plan sets a target of 50% affordable homes to 2025, to be achieved through "Requiring 35%-50% affordable homes on sites providing 10 new residential units or more (subject to viability)" (Core Strategy, Policy SP02). The CIL viability study has sought to test the bottom end of this range.

As described above the Council is currently achieving below these levels of affordable housing on major development sites, with around 30% overall, and around 27% for non-estate regeneration projects.

The Council's housing monitoring target for the London Plan is 2,885 homes per year, the highest in London. If the Council achieved its 50% strategic target this would be 1,442 homes, although the current 30% on major sites would equate 865 homes. If this were reduced by CIL at the same rate as for Goodman's Fields (ie a fifth), it would further reduce to around 690 homes per year, or under half of the strategic target.

The Council's Strategic Development Committee has taken a strong line on affordable housing and other requirements, deferring or refusing 42% of major applications since 2010. The application for Goodman's Fields and another major development on the Isle of Dogs were deferred with a request for officers to review viability assessments and ensure that maximum affordable housing was being achieved. This is likely to become more commonplace if CIL reduces affordable housing levels on major developments, thus further threatening delivery of the Local Plan.

CIL-DCS18



Page 10

### **Infrastructure Planning, the Regulation 123 List and Draft Planning Obligations SPD**

The CIL Guidance (December 2012/April 2013) includes some significant additional requirements on local authorities to provide better information on infrastructure planning and in particular on residual obligations after a CIL charge has been adopted.

This reflected concerns that local authorities were assuming a very large scaling back of S106 requirements without providing any evidence or commitment that this would happen. Tower Hamlets' CIL viability study, for example, assumes S106 obligations of £1,225 per home, which is significantly below what is currently required. The Viability Study states (para 4.27) that:

"this was arrived at using appropriately available evidence at the time the Viability Study was last reviewed."

However it provides no description of what this evidence is or was, or how it relates to broader policy requirements.

One of the main purposes of the CIL guidance is to allow developers and other stakeholders to properly understand and make an informed response to an authority's assumptions on Section 106.

The Guidance includes some very specific requirements on local authorities including:

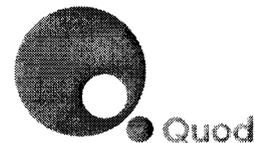
- Setting out a draft list of infrastructure "to provide transparency on what the charging authority intends to fund in whole or part through the levy and those known matters where section 106 contributions may continue to be sought. (para 15);
- Setting out how Section 106 policies will be varied (para 87);
- Work proactively with developers to ensure they are clear about charging authorities' infrastructure needs and what developers will be expected to pay for through which route (para 88); and
- Where the regulation 123 list includes a generic item (such as education or transport), section 106 contributions should not normally be sought on any specific projects in that category. Such site-specific contributions should only be sought where this can be justified with reference to the underpinning evidence on infrastructure planning made publicly available at examination." (para 88)

At present we believe that the Regulation 123 list and Draft SPD fall well short of these requirements.

With regard to the Regulation 123 list we believe that the value of such a list is completely undermined if it simply constitutes a list of generic themes, with a statement at the end that says LBTH may still charge for such items if they meet the tests set out in Regulations 122 and 123 of the CIL Regulations.

Similarly the SPD adds little as, whilst it sets out tables showing the presumed split between Section 106/278 and CIL items it still allows the Council to apply any of them to Section 106 if it deems it required as mitigation.

CIL-DCS18



Page 11

In our view the Council needs to provide proper clarity on what will be required from Section 106 and CIL, relating this back to the Infrastructure Planning work described in the Infrastructure Planning and Funding Gap Report (2013) published alongside the DCS. The report itself notes that:

“The new CIL Guidance (2012) requires that this evidence is directly related to the Draft Regulation 123 list that the Authority is now required to publish for examination.”

To date however there appears to have been no attempt to do this. In our view the Council should review the Schedule identified at Appendix A of the funding gap report and identify precisely and for which sites (and in particular those in the MDD DPD) Section 106 contributions will be required under each heading, and the likely cost of these. This should include public realm and access requirements.

To these it should add the likely costs of the items listed in the Revised Planning Obligations SPD which are already identified as being continued to secured in whole through Section 106:

- Employment and enterprise (with the exception of physical facilities). This equates to £2.60/sqm for construction, with a complicated formula based on likely numbers that will be employed on site for jobs in a completed development;
- Energy/Carbon Reduction Initiatives/measures for all major developments;
- Bio-diversity measures/initiatives for all major developments; and
- Transport improvements required to mitigate the impacts of development (including the full cost of the Mayor’s Cross rail Tariff where appropriate).

The combined costs of these should then be confirmed and, if higher than the current assumption, should be included in the viability assessments. On this basis the Council will be able to confirm the actual requirements in a revised Regulation 123 list and the final draft of the Planning Obligations SPD.

#### **Other Issues**

In addition to the points above the Council’s documentation identifies a number of other specific issues on which we would like to comment.

The DCS in Appendix 2, Paragraph 2.2, identifies that the Council will consider “exceptional relief applications on a case by case basis”. We would support the Council taking up this option but are concerned that it would be useful for the Council to consider setting out, in its SPD, a transparent and objective process for undertaking this, so as to reduce the risk of challenge.

We note that in the *Statement of Consultation Response* the Council notes that such an approach is restricted and limited by State Aid considerations. In this context we would suggest that the Council should not try to use this as a ‘safety valve’ to deal with identified viability issues on large or strategic sites. If such issues can be identified in advance the Council should set a lower or zero rate, and not rely on reliefs which are not automatic.

CIL-DCS18



Page 12

In Section 3 of Appendix 2, the Council states that it will be using the Mayor's instalment policy rather than adopting its own. As we note above this contradicts the approach taken in the Council's viability evidence. We would suggest that the Council may wish to re-consider this approach, particularly for developments with larger CIL payments on which very large early obligations could have a significant impact.

The Draft Planning obligations SPD makes a number of references to 'In-Kind' payment for CIL. We would support this approach and believe that, for strategic sites required to provide infrastructure on site, in kind payment may be one means of ensuring viability of development. The Council should however be aware that under Regulation 73, payment may only be land (and not infrastructure itself) and that this may not 'form part of a planning obligation entered into under S106 of TCPA 1990.' It would therefore be useful for the Council to consider how such transfers might be secured.

### **Conclusion**

The Berkeley Group is pleased that the London Borough of Tower Hamlets has undertaken additional work as part of the development of its CIL charge, including some site specific appraisals and on likely future Section 106 requirements.

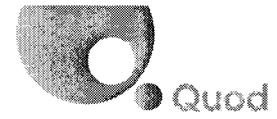
We remain concerned however that the evidence is flawed, particularly in relation to site specific appraisals, and that it is not statutorily compliant in the way it deals with the Mayor's CIL. We also believe that significantly more work is required on the relationship between site specific requirements and CIL in order to understand properly and definitively the balance between the two.

The group is keen to engage with the Council and its advisers to test the implications of some of these issues in the context of the work that is already being taken forward with development management colleagues. We remain concerned that the inflexibility of CIL once implemented will mean that delivery of the local plan, and particularly affordable housing targets, will be threatened by the proposed CIL levels.

We would therefore be happy to provide any further information that might be useful in the next stage of the Council's work, and hope that on this occasion the Council will engage fully with the developers on these issues.

We believe that the Government's stated intention to extend the pooling deadline to 2015 allows an opportunity for the Council to take a considered approach to ensure that the implementation of CIL does not have the unintended consequence of harming development in the Borough.

CIL-DCS18



Page 13

Please do not hesitate to contact me if you require further information.

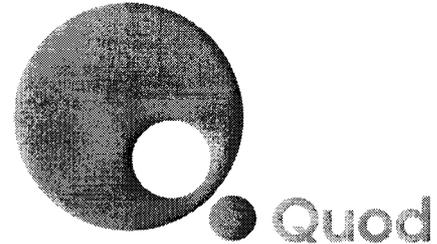
Yours sincerely,

CIL - DCS18

our ref: TD/Q30311

email: [REDACTED]

date: 5 June 2013



CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2<sup>nd</sup> Floor Mulberry Place  
5 Clove Crescent  
E14 2BG

Dear Sir/Madam,

**Draft Revised Planning Obligations Supplementary Planning Document: Consultation**

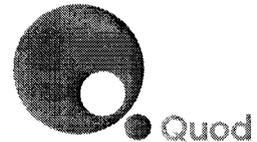
I am writing on behalf of the Berkeley Group in response to your revised draft Revised Planning Obligations SPD. This response should be considered alongside the accompanying representations submitted in relation to your Community Infrastructure Levy Draft Charging Schedule.

We understand that the revised SPD is intended to meet the requirements of the CIL Guidance (2013) in clarifying which obligations will be continued to be required through Section 106, and which infrastructure will be provided by the Council, funded through CIL.

The Guidance includes some very specific requirements on local authorities including:

- Setting out a draft list of infrastructure “to provide transparency on what the charging authority intends to fund in whole or part through the levy and those known matters where section 106 contributions may continue to be sought. (para 15)
- Setting out how Section 106 policies will be varied (para 87)
- Work proactively with developers to ensure they are clear about charging authorities’ infrastructure needs and what developers will be expected to pay for through which route (para 88)
- Where the regulation 123 list includes a generic item (such as education or transport), section 106 contributions should not normally be sought on any specific projects in that category. ***Such site-specific contributions should only be sought where this can be justified with reference to the underpinning evidence on infrastructure planning made publicly available at examination.*** (para 88, our emphasis)

CIL - DCS18



Page 2

In addition the National Planning Policy Framework (NPPF) states:

“...the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.” (para 173)

And,

“(Local planning authorities)... should assess the likely cumulative impacts on development in their area of all existing and proposed local standards, supplementary planning documents and policies that support the development plan, when added to nationally required standards. In order to be appropriate, the cumulative impact of these standards and policies should not put implementation of the plan at serious risk, and should facilitate development throughout the economic cycle.” (para 174)

As noted in our response to the CIL DCS, we do not believe that the current SPD and associated documents yet meet these requirements and that further work is needed, linking the SPD with infrastructure planning and Local Plan policy to ensure that development in the Borough is deliverable.

Our response is further set out below in relation to each section of the draft document.

### **Section 1 Introduction**

The contextual review seems to be incomplete.

It would be useful to make reference here to:

- The National Planning Policy Framework – particularly paragraphs 173 to 177;
- The CIL Regulations: Regulation 122 and 123
- CIL Guidance

As a matter of principle it is the intention of the Government that the introduction of CIL is intended to add certainty and transparency to the planning process, whilst ensuring development is deliverable.

Planning obligations should only be used to meet the tests set out in Regulation 122 of the CIL regulations, but where they are required the development should not be approved unless they are secured.

Therefore whilst there is clearly room for such obligations to be negotiated as part of the planning process to ensure costs are kept to a minimum (NPPF: Para 176), they should not generally be seen as a ‘safety valve’ which can be flexed to ensure development remains viable when CIL has been set at too high a level. It is important that the CIL charge is set an appropriate level, taking into account all other likely obligations, including those for strategic sites.

CIL-DCS18



Page 3

It defeats the object of introducing CIL if developers are subsequently faced with a fixed charge and then a series of negotiable obligations, necessitating the same delays and uncertainties that applied under the previous system.

## **Section 2 Planning Obligations and CIL**

We would suggest that it might be helpful for the 'Regulation 123 list' to be described as "the list of relevant infrastructure", given that a future consolidation of regulations may mean that it ceases to be "Regulation 123".

In relation to the list of relevant infrastructure paragraph 2.3 of your SPD states that

*"This means CIL is an appropriate delivery mechanism for infrastructure which can be anticipated based on a general trend of population growth resulting from development, rather than infrastructure necessitated by a specific scheme which could not have been foreseen."*

If this is the criteria the Council has used then the following lists (paragraph 2.11 to 2.23) are incorrect. The Council has clearly foreseen, and indeed requires from developments, a range of infrastructure which it will continue to expect through Section 106, including school sites, open space and energy centres.

This point goes to the heart of our concerns about the link, or lack of it, between the CIL viability study and infrastructure planning work.

The Council has extensive site specific requirements, identified in the Managing Development Document DPD (MDD), and a series of site specific and other planning guidance, and which is included in the Council's Infrastructure Delivery Plans.

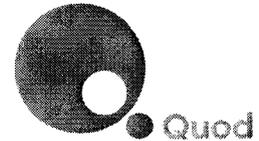
In our view the Council should review the lists of infrastructure it has already produced and identify, at least for the 20 strategic sites in the MDD, the required on site infrastructure that is necessary in planning terms and the cost of that infrastructure, alongside any other policy requirements. This should include transport infrastructure which, alongside affordable housing, forms one of the two most substantial obligations on development. This should be appended to the SPD and cross referenced against the various topic headings in the tick box list.

## **In Kind Contributions of Land**

The SPD states, at paragraph 2.6, states that:

*"A number of the strategic sites identified in the Tower Hamlets Managing Development Plan Document (submission version May 2012) also have a requirement to provide one or more specific pieces of infrastructure. The Council may accept CIL payment 'in-kind' for these, such as the provision of land."*

CIL - DCS18



Page 4

We support this approach as it may be important in enabling the viable delivery of strategic sites. At present under the CIL Regulations (2010 as amended) this can only be through the provision of land (Regulation 73) and must meet certain requirements. The current CLG consultation on further revisions to the regulations suggests that this may be extended to infrastructure itself. However, as things currently stand the Council should delete the words “such as” and replace with “through”.

The Council should be aware that under Regulation 73, this may not ‘form part of a planning obligation entered into under S106 of TCPA 1990.’ It would therefore be useful for the Council to consider mechanisms for how such transfers might be secured, which demonstrate compliance with planning requirements whilst allowing for ‘in kind’ payments.

### **3. Legislative Context**

The legislative context should also include the Planning Act (2008) and the Localism Act (2011) which set the legislative basis for CIL, and also govern its relationship with other powers, including Section 106. The CIL Regulations (2010) provide the secondary legislation governing CIL.

The Planning Act (2008) also allows the Secretary of State to produce statutory guidance to which Councils must have regard, which includes the CIL Guidance (2013) which, as noted above contains extensive reference to the approach to planning obligations and Section 106 agreements and their relationship to CIL.

The sentence at the end of Paragraph 3.3 in relation to pooling is technically incorrect. The regulation actually states that: “A planning obligation may not constitute a reason for granting planning permission”, not that no more than five contributions may be pooled.

### **4. Policy & Guidance Context**

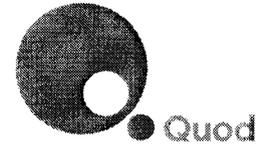
Paragraphs 4.3 and 4.4 should be removed as Circular 5/05 was replaced by the NPPF (see Annex 3, point 31). Reference should instead be made to the relevant NPPF paragraphs listed above (173 to 177).

The Mayor of London’s “Use of Planning Obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy Supplementary Planning Guidance” was published in April 2013 and supercedes the 2010 guidance mentioned in paragraphs 4.7 and 4.8. We are concerned that the ‘tariff requirements’ set out in this guidance have not been properly considered in the Viability Assessment produced as evidence for the CIL Charging schedule.

As the Council is aware its Managing Development Document DPD has now been adopted, which includes a range of obligations and policy requirements including for strategic sites. The Council also has an enormous amount of other site specific policy that is not listed here including for Fish Island, Bishopsgate Goodsyard, Millennium Quarter, Wood Wharf, and Bromley by Bow.

The Council should confirm the extent to which any requirements and obligations contained in these documents will be delivered through Section 106, Section 278 or CIL.

CIL - DCS 18



Page 5

## 5. Negotiating Planning Obligations in Tower Hamlets

We welcome the Council's proposed approach to frontloading negotiation on any planning obligations. It would also be useful to consider in describing this process how the Council will relate this to the implementation of CIL.

Although CIL once adopted is non-negotiable our experience of implementation of major developments where CIL charges are in operation is that the interaction of CIL and Section 106 obligations is a very significant continuing issue.

It requires a major culture change on the part of the Council from a position where the obligations and conditions were all placed on the developer, to one of partnership working to achieve infrastructure investment. The draft SPD does not yet reflect this change.

Key issues include:

- The Council's use of its CIL income in providing infrastructure to support development;
- The use of planning conditions in relation to infrastructure which will be partly or wholly funded by CIL, and infrastructure which is included on the list of relevant infrastructure (Regulation 123 list);
- The legal process for securing 'in kind' contributions of land;
- The process for considering applications for exceptional circumstances relief.

It will be important for the Council to set out an open and transparent process for dealing with such issues to enable development and minimise risks of third party challenge, including on State Aid or procurement grounds.

## 6. Standard Obligations and Charges

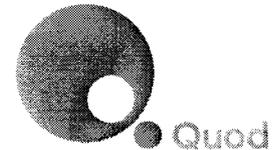
In paragraph 6.2 the reference to Circular 5/2005 should be removed as it has been withdrawn.

Our response to the various proposed standard obligations and charges is listed below.

### Employment, Skills, Training and Enterprise

The Berkeley Group has a strong commitment to ensuring that local people are able to benefit from its developments through access to jobs and business opportunities. We would however question the emphasis of some of the supporting text in the SPD.

As a matter of principle the creation of new jobs and business opportunities is a positive benefit, not an adverse impact which requires mitigation. It would seem perverse to suggest, as the text does, that new jobs have a negative impact as "This adds increased pressure on the Council to provide access for residents to appropriate employment and skills training." Fundamentally it is the role of the public sector – through schools and colleges – to equip people with the skills required to take on opportunities.



Whilst the Council has a policy requirement, in some cases, to secure employment space in development, it should not be the role of the Section 106 agreement to provide unnecessary restrictions on the use of such space or interfere in commercial arrangements with tenants.

### **Transport and Highways**

This section lists a series of obligations that may be placed on developments, particularly larger ones including:

- Section 278 requirements (para 6.13)
- Section 106 agreements for site specific infrastructure (para 6.14)
- Non-financial obligations
- Crossrail CIL

These obligations are potentially very onerous and have not been properly assessed in the Infrastructure and Viability assessments supporting the Council's proposed CIL charges. Where such requirements which carry significant costs are envisaged they should be identified and the Council should confirm what approach it intends to securing these.

### **Re-Statement of Other Policies**

In relation to issues such as Car and Permit Free Agreements, Car Clubs, Electric Vehicle Charging, and Travel Plans, management arrangements for open space, energy initiatives and biodiversity it is not necessary to repeat policy positions but simply state that Conditions or Planning Obligations may be used to secure these where they are required.

## **7. Procedure and Management**

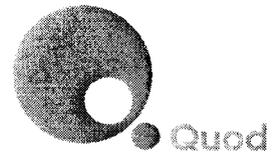
The Berkeley Group agrees that trigger points are required. It believes that in line with para 7.3 trigger points should be based on the nature of the obligation. Given that it is inappropriate that 'commencement of development' should be identified as the preferred trigger point (para 7.4).

This section should also note that, where a Section 106 contribution is paid to the Council, it will only be expended on the relevant item defined in the agreement, that the Council shall report to contributors on the expending of resources and that funds shall be returned to contributors where the Council does not spend them within a certain period.

### **Conclusion**

The introduction of the Community Infrastructure Levy should fundamentally change how Councils approach planning obligations, not just a reduction in their scope, but also the provision of certainty to developers on what is required. It also requires the Council taking on a new role where it shares with developers responsibility for helping secure the delivery of infrastructure to support development.

CIL - DC518



Page 7

We welcome the Council's approach in the SPD to limit those items for which it will pool Section 106, as it will be legally required to do from 2014 (or probably 2015 under the Government's proposed changes) but are concerned that the current draft, when taken in conjunction with the draft list of relevant infrastructure ("Regulation 123 list") does not provide sufficient clarity on what will be required, particularly for large sites.

We are also concerned that the Council does not appear to have given much consideration to how large developments will be taken forward and infrastructure delivered when the CIL charging schedule has been adopted.

We hope that the Council will consider these points and produce an updated draft in advance of any CIL Examination.

If you require any further information please do not hesitate to contact me.

CIL-DES19

BRISTOL  
CAMBRIDGE  
CARDIFF  
EBBSFLEET  
EDINBURGH  
LEEDS  
**LONDON**  
MANCHESTER  
NEWCASTLE  
READING  
SOUTHULL

**BARTON  
WILLMORE** bartonwillmore.co.uk  
7 Soho Square  
London  
W1D 3QB  
T/ 0207 446 6888

**BY POST AND EMAIL**

CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2nd Floor Mulberry Place  
5 Clove Crescent  
E14 2BG

21212/A3/LBTH/AC

5<sup>th</sup> June 2013

Dear Sirs

**LONDON BOROUGH OF TOWER HAMLETS**  
**DRAFT COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE CONSULTATION AND**  
**REVISED PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT**

**1. INTRODUCTION**

This submission is made on behalf of Aldgate Developments in relation to the London Borough of Tower Hamlets (LBTH) consultation on the above documents.

Aldgate Developments currently have a Full Planning Application (LPA Ref:PA/13/00305) submitted with LBTH for:

***"Demolition of existing building (BeagleHouse) and construction of a 23 storey mixed-use development comprising 1,940sqm (GIA) of retail /commercial space (Class A1 – A5 use) at ground floor and first floor level with residential accommodation to provide 291 flats (Class C3 use) between the 2<sup>nd</sup> and 23<sup>rd</sup> Floors and two basement levels, plus associated car parking, landscaping, plant accommodation, access arrangements and any other works incidental to the application".***

LBTH is consulting on its Draft Charging Schedule and Revised Planning Obligations SPD from 22<sup>nd</sup> April 2013 to 5<sup>th</sup> June 2013. Our client is looking to LBTH to provide transparent, clear, concise and fair CIL and s106 SPD which will enable the necessary infrastructure be delivered without compromising housing delivery and regeneration in the borough. Our client has not previously lodged comments in respect of either document. Our comments on each document are set out below accordingly.

**2. DRAFT CIL CHARGING SCHEDULE**

The process for the preparation, consultation, examination and adoption of CIL Charging Schedules is set out in Part 3 of the Community Infrastructure Levy Regulations 2010 (as amended) ('the Regulations'). Regulation 14 sets out that in setting rates in a charging schedule, a charging authority must strike the balance between:



Registered in England  
Number: 0C362692

Barton Willmore LLP  
Registered Office:  
Beausécul Farmhouse  
Bourne Close  
Reading RG31 7JW  
F/ +44 (0)118 963 0001

## CIL DCS19

- (a) the desirability of funding infrastructure from CIL (in whole or in part) the actual and expected estimated total costs of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
- (b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

LBTH appointed BNP Parisbas Real Estate to prepare the evidence base that underpins the proposed CIL (the Community Infrastructure Viability Study March 2013).

LBTH proposes a differential charge across three areas of the Borough in respect of residential development, ranging from £35 to £200 per sqm; Beagle House falls within Zone 1 with a proposed CIL charge of £200 per sqm for residential development and £215 per sqm for office development.

The CIL Regulations recognise the need for flexibility and provide for social housing and charitable relief. In addition there is provision for a charging authority to introduce further discretionary relief for exceptional circumstances (Regulation 55). A charging authority may only grant relief if:

- A charging authority has made relief for exceptional circumstances in its area; and
- A S106 Agreement has been entered into and the charging authority considers that:
  - the cost of complying with the S106 is greater than the CIL;
  - the requirement to pay CIL would have an unacceptable impact on economic viability;
  - the grant relief would not constitute a State aid which is required to be notified to and approved by the European Commission.

In the first instance therefore, the charging authority has the option to make provision for relief for exceptional circumstances. It is noted at appendix 2 that the Council intends to consider applications for exceptional relief on a case by case basis. We support this approach but feel that this section could be expanded to identify criteria that will be applied in order to identify development proposals that warrant exceptional relief.

The proposed CIL rate has been supported by evidence produced by BNP Parisbas dated March 2013. Owing to the key test of Regulation 14(1) it is important that the viability appraisal prepared is fit for purpose. It is clear that at Examination the Charging Schedule will need to be supported by "relevant evidence" (Regulation 11(1) (f)/ 19(1) (e)).

### The Requirement for a Viability Study

The requirement to justify the Charging Schedule with evidence of viability is outlined by CIL – An Overview paragraphs 25 and 26, which notably also makes reference to setting differential rates. The CLG CIL Guidance (2012) at paragraph 23 refers to taking an "area based approach", further of notable importance paragraph 30 outlines "charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area".

NPPF paragraph 173 outlines the need for 'competitive returns.' The viability exercise must also be aimed to demonstrate the need for flexibility in seeking CIL payments. It should not be assumed that all development can afford to pay or that all development should be charged the same levy. It must also be recognised that in certain circumstances relief may be offered where viability is an issue.

The fundamental premise is that to enable delivery, sites must achieve a credible land value and provide developers the required return on investment, otherwise development will be stifled. This is recognised by the NPPF and is certainly 'in-built' within the CIL Regulations.

CIL - DCS 19

**BNP Assumptions**

As set out above, we consider that a more flexible approach needs to be adopted in order to take account of site specific circumstances. In reality, site specific circumstances will mean that the economics of the development pipeline will vary from the typical levels identified via analysis of the theoretical site typologies. This is inevitable given the varied nature of housing land supply and costs associated with bringing forward development. Therefore, there must be a viability buffer incorporated either into the benchmark land value or elsewhere through the CIL assessment process which would ensure delivery of sufficient housing to meet strategic requirements.

We are aware that many other local authorities are proposing to set CIL rates at a level that allows a viability cushion of between 30% and 60% of the theoretically viable level, to allow for site variation around the average. We therefore question why BNP have set their buffer at 30% and consider that a higher buffer should be established to avoid any risk of stifling development in the borough.

**CIL Regulation 122 – Double Counting**

With regard to the relationship with Section 106 Agreements, the CIL Charging Schedule should be clear that 'double counting' of Section 106 contributions and CIL is not permitted by law. The key tests of CIL Regulation 122 should therefore be outlined within the supporting documentation. We welcome the publication of the draft SPD 'Revised Planning Obligations' and our comments on where there could be double counting are set below as part of our comments on the draft SPD.

**Payments in kind**

Regulation 73(1) permits the payment of land in lieu of CIL. This is an interesting tool which could be proactively interpreted where the land in question is provided for infrastructure, for example for open space.

It would not be appropriate for these facilities to be provided to only effectively then 'pay double' through the imposition of additional CIL charges. This would potentially be contrary to both Regulations 122/ 123. An effective 'land in lieu of CIL' mechanism is essential, otherwise larger strategic development would incur disproportionate and unjustified infrastructure costs. The mechanism of payments in kind must result in credible land values being agreed and offset against the levels of potential CIL receipts incurred through the chargeable development. If operated effectively the mechanism could considerably assist with development delivery.

**Payment of CIL – Instalments**

With regard to the payment of CIL, the Regulations (69B(1)) and CIL – An Overview (paragraphs 45 - 48) are clear that the charging authority has the flexibility to request the timing of the charge and hence to outline the payment procedure. DCLG's consultation on reforms to the Community Infrastructure Levy (April 2013) also highlight that the Government is minded to amend the CIL Regulations further so that all planning permissions (outline and full) are capable of being treated as phased development. However, at present the choice to impose an 'instalments policy' is entirely discretionary to the LPA. We consider that it is imperative that such a policy is outlined at the earliest opportunity. This should cover:

- The commencement of the instalments policy on adoption of CIL;
- The number of instalments that can be made by development size (£ amount and square meter amount);
- The timing of payments post commencement – based on a consideration for build out rates (i.e. longer time periods); and

## CIL-DCS19

- The minimum development threshold which instalments would not apply.

We note that the Council proposes to adopt the mayoral instalment policy however developers only have access to certain levels of funding throughout the construction process and this is often dependent on sale volumes, market conditions and lending criteria. The benefit of the Section 106 system (as was), was the ability to negotiate phasing of payments and if necessary renegotiate via a deed of variation. The imposition of CIL effectively removes this flexibility.

It will be larger schemes which generate the greatest CIL payments and as such phasing of payments should be tailored to recognise funding constraints and cash flow of such schemes. The short timescale approach would only be suitable for very small developments in which there was certainty that development would be built very quickly and the funding would be available to pay the CIL charge. Large scale development normally requires significant upfront infrastructure costs to 'unlock' development and the additional early burden of CIL as per the existing payment formula would therefore be very prohibitive.

It is therefore advised that any phasing of CIL payments should accord with the longer build rates expected and on this basis longer timescales for the payment of CIL should be proposed. This would help to 'future proof' the Council's CIL charging schedule and help to ensure that it is aligned with the reforms to the CIL Regulations that the Government is seeking to introduce.

### 3. REVISED PLANNING OBLIGATIONS SPD

Firstly, we would like to highlight that we fully support the Council's decision to revise their Planning Obligations SPD in parallel with their CIL charging schedule. This joined up process will help to ensure that developers are provided with the clarity they require and will hopefully avoid the potential for double charging.

Whilst we appreciate that the Council's CIL will be the primary mechanism for securing funds towards the delivery of borough wide infrastructure, we consider that there needs to be some flexibility in order to take account of site specific circumstances and opportunities that may arise. CIL is essentially a non-negotiable tariff on development and as highlighted above we feel the exceptions test in the CIL schedule needs to be expanded. With regards to Section 2 in the SPD, the tables setting out the relevant delivery mechanisms provide the clarity that is required however there are a few issues that we would like to highlight as set out below:

- **Transport and Highways – Crossrail:** The Council have identified that Planning Obligations and CIL will be used to deliver Crossrail. The Mayor's CIL has been adopted and is a tariff that is operating across London to contribute towards the infrastructure that is required to deliver Crossrail. Therefore we consider that further clarity should be provided on the exceptional circumstances when developers will also be required to enter into a s106 agreement to help deliver Crossrail. There is potentially scope for double charging and the SPD should avoid this.
- **Public Realm –** This section does not take account of instances where a new residential development is proposed close to an existing park or open space. Improvements or management/maintenance contributions to a specific park or open space maybe required to offset the impact arising from a development and we consider that there should be the flexibility to address this matter via a s106 agreement rather than a CIL payment. Aldgate Development's are currently in discussions with TfL and LBTH about potential improvements to Braham Street Park and consider that any improvements proposed should be secured via a s106 agreement so there is certainty that the improvements proposed will be tied to the proposed development.
- **Environmental Sustainability – Decentralised Energy:** Given the Policy context of Policy 5.5 and 5.6 in the London Plan, we consider that developers will need to deliver on site CHP plants and connect into decentralised energy networks where feasible. With this in mind, we

do not consider that CIL is the correct mechanism for securing delivery of decentralised energy facilities and consider that s106 agreements would be a more appropriate mechanism in this instance.

#### 4. CONCLUSION

We hope the comments set out above help to inform the drafting of the CIL Charging Schedule and the Revised Planning Obligation SPD.

We look forward to confirmation of receipt of the above and that our comments have been registered. If you have any questions or queries relating to any of the points made then please do not hesitate to contact me.

Yours faithfully



**GREG PITT**  
Senior Planner

CIL - DCS 20

BRISTOL  
CAMBRIDGE  
CARDIFF  
EBBSFLEET  
EDINBURGH  
LEEDS  
LONDON  
MANCHESTER  
NEWCASTLE  
READING  
SOLI:HULL

**BARTON  
WILLMORE** bartonwillmore.co.uk  
7 Soho Square  
London  
W1D 3QB  
T/ 0207 446 6888

**BY POST AND EMAIL: CIL@towerhamlets.gov.uk**

CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2<sup>nd</sup> Floor Mulberry Place  
5 Clove Crescent  
London  
E14 2BG

21392/A3/AO/AC  
5 June 2013

Dear Sirs

**LONDON BOROUGH OF TOWER HAMLETS**  
**DRAFT CIL CHARGING SCHEDULE CONSULTATION**

**1. INTRODUCTION**

This submission is made on behalf of East Thames Group in response to the above document. East Thames is a Registered Provider and manages a range of homes in Tower Hamlets. In addition to partnering with private developers to deliver much needed new affordable homes, East Thames also promotes mixed tenure development in the borough, where private sale housing provides essential funding for new affordable homes, including estate regeneration schemes. Working with the Council and partners, East Thames has successfully implemented the first phases of the regeneration of the Ocean Estate.

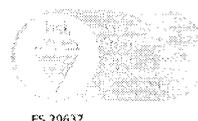
These representations relate specifically to the effect of CIL upon estate regeneration schemes.

LBTH is consulting on its Draft Charging Schedule from 22 April 2013 to 5 June 2013, under Section 16 of the CIL Regulations. Our client is looking to LBTH to provide transparent, clear, concise and fair CIL which will enable the necessary infrastructure to be delivered without compromising housing delivery, and in particular estate regeneration, in the borough.

The process for the preparation, consultation, examination and adoption of CIL Charging Schedules is set out in Part 3 of the Community Infrastructure Levy Regulations 2010 (as amended) ('the CIL Regulations'). Regulation 14 sets out that, in setting rates in a charging schedule, a charging authority must, inter alia, strike the balance between:

- (a) the desirability of funding infrastructure from CIL (in whole or in part), and the actual and expected estimated total costs of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
- (b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

LBTH appointed BNP Paribas Real Estate to prepare the evidence base that underpins the proposed CIL (the Community Infrastructure Viability Study March 2013).



## CIL DCS 20

LBTH proposes a differential charge across three areas of the Borough in respect of residential development, ranging from £35 to £200 per sq.m; Ocean Estate falls within Zone 2 with a proposed charge of £65 sq.m. It is noted at Appendix 2 that the Council intends to consider applications for exceptional relief on a case by case basis. The case studies relied upon by BNP do not consider estate regeneration schemes or enabling development schemes in the general sense.

In short, it is East Thames' submission that the proposed charges in respect of Ocean Estate and estate regeneration schemes cannot be justified having regard to the viability and commercial realities of the nature of this form of development. The stated approach to exceptional relief will not provide sufficient certainty to East Thames and other Registered Providers in promoting estate regeneration schemes within the Borough.

## **2. BNP PARIBAS VIABILITY STUDY**

The proposed CIL rate has been supported by evidence produced by BNP Paribas dated March 2013. Owing to the key test of Regulation 14(1) it is important that the viability appraisal prepared is fit for purpose. It is clear that at Examination the Charging Schedule will need to be supported by **"relevant evidence"** (Regulation 11(1) (f)/ 19(1) (e)).

### **The Requirement for a Viability Study**

The requirement to justify the Charging Schedule with evidence of viability is outlined by CIL – An Overview paragraphs 25 and 26, which notably also makes reference to setting differential rates. The CLG CIL Guidance (2012) at paragraph 23 refers to taking an **"area based approach"**, further of notable importance paragraph 30 outlines **"charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area"**.

NPPF paragraph 173 outlines the need for 'competitive returns'. The viability exercise must also aim to demonstrate the need for flexibility in seeking CIL payments. It should not be assumed that all development can afford to pay or that all development should be charged the same levy. It must also be recognised that in certain circumstances relief may be offered where viability is an issue.

The fundamental premise is that to enable delivery, sites must achieve a credible land value and provide developers the required return on investment, otherwise development will be stifled. This is recognised by the NPPF and is certainly 'in-built' within the CIL Regulations.

### **Viability Buffer**

In reality, site specific circumstances will mean that the economics of the development pipeline will vary from the typical levels identified via analysis of the theoretical site typologies. This is inevitable given the varied nature of housing land supply and costs associated with bringing forward development. Therefore, there must be a viability buffer incorporated either into the benchmark land value or elsewhere through the CIL assessment process which would ensure delivery of sufficient housing to meet strategic requirements.

We are aware that many other local authorities are proposing to set CIL rates at a level that allows a viability cushion of between 30% and 60% of the theoretically viable level, to allow for site variation around the average.

### **Ensuring Flexibility**

*Exceptional Circumstances:* The CIL Regulations recognise the need for flexibility and provide for social housing and charitable relief. In addition, there is provision for a charging authority to introduce further discretionary relief for exceptional circumstances (Regulation 55). A charging authority may only grant relief if:

- A charging authority has made relief for exceptional circumstances in its area; and
- A S106 Agreement has been entered into and the charging authority considers that:
  - the cost of complying with the S106 is greater than the CIL;
  - the requirement to pay CIL would have an unacceptable impact on economic viability; and
  - the grant relief would not constitute a State aid which is required to be notified to and approved by the European Commission.

In the first instance therefore, the charging authority has the option to make provision for relief for exceptional circumstances. This should be expressly provided for as set out below.

### **3. ESTATE REGENERATION**

East Thames has successfully secured the regeneration of a number of existing estates in east London. The model provides for the regeneration (through refurbishment and/ or redevelopment) of existing out dated or out-worn estates to provide for new affordable housing better placed to meet current needs. Such projects are funded, in part, by the provision of private sale units to generate additional capital subsidy to enable the scheme. This has the added benefit of introducing a range and mix tenures into a mono-tenure or biased tenure area.

Under the terms of the prevailing planning policy context (see Managing Development DPD Policy DM3), such schemes are supported provided that there is no net loss of affordable housing. The private sale element will therefore generally represent a net additional increase in floorspace for the purposes of the application of CIL. Whilst the social housing element will, subject to the terms of the regulations, be eligible for social housing relief, and that element of floorspace that replaces existing will be exempt (i.e. on the basis of occupation for 6 months in the preceding 12), the estate regeneration model invariably requires an increase in total floorspace which would generate a liability for CIL. Furthermore, some estates may experience a high level of vacancy and may be unlettable. Such estates may be a priority for regeneration but the viability would be undermined by the imposition of CIL.

An increase in floorspace is required to fund the scheme and hence is enabling development. The imposition of CIL will add a further cost burden to the scheme and thus, put simply, increase the quantum of additional floorspace that is required to enable the scheme to proceed.

The majority of estate regeneration schemes are located within existing urban areas. The capacity of the site to accommodate additional floorspace to fund the scheme and meet the residents' and Council's aspirations and needs has to be finely balanced. In short, without the grant of exceptional relief, many estate regeneration schemes will be placed in jeopardy and will not proceed without additional public subsidy. The grant of further public subsidy to pay CIL appears unjustified.

# CIL-DCS20

East Thames has successfully implemented the first phases of the regeneration of the Ocean Estate pursuant to the planning permission dated 23 March 2010 (LPA Ref. PA/09/02585). It has reached agreement with LBTH to promote the regeneration of Urban Block H with a planning application scheduled to be submitted this summer. Scheme viability is a key consideration for estate regeneration schemes and has been a key component of discussions with the Council. The Council is therefore party to the realities of estate regeneration viability and ought to have had regard to such schemes in publishing its draft charging schedule.

Whilst we acknowledge that it would be impractical for the Council to identify estates as separate geographic areas, it is open to the Council to confirm the approach to estate regeneration schemes and indeed, enabling development, in terms of the consideration of applications for exceptional relief.

Regulation 55 provides for LBTH to identify in the charging schedule the approach to be taken in terms of exceptional relief. The schedule ought to identify that estate regeneration schemes and other forms of enabling development will be granted exemption from CIL where it is demonstrated that the chargeable floorspace is the minimum necessary to enable the scheme to proceed. The existing application procedure provides an effective mechanism for the Council as LPA to consider the merits of the scheme in the public interest.

## **4. EFFECTIVE OPERATION OF CIL**

### **CIL Regulation 122 – Double Counting**

With regard to the relationship with Section 106, the CIL Charging Schedule should be clear that 'double counting' of Section 106 contributions and CIL is not permitted by law. The key tests of CIL Regulation 122 should therefore be outlined within the supporting documentation. We welcome the publication of the draft SPD 'Revised Planning Obligations'. We will submit representations in respect of the revised SPD under separate cover. However, as a general principle it is important that the Council does not seek S106 contributions in respect of schemes that ought to fall within CIL.

### **Payments in Kind**

Regulation 73(1) permits the payment of land in lieu of CIL. This is an interesting tool which could be proactively interpreted where the land in question is provided for infrastructure, for example for open space.

It would not be appropriate for these facilities to be provided to only effectively then 'pay double' through the imposition of additional CIL charges. This would potentially be contrary to both Regulations 122 and 123. An effective 'land in lieu of CIL' mechanism is essential, otherwise larger strategic development would incur disproportionate and unjustified infrastructure costs. The mechanism of payments in kind must result in credible land values being agreed and offset against the levels of potential CIL receipts incurred through the chargeable development. If operated effectively the mechanism could considerably assist with development delivery.

### **Payment of CIL – Instalments**

With regard to the payment of CIL, the Regulations (69B(1)) and CIL – An Overview (paragraphs 45 - 48) are clear that the charging authority has the flexibility to request the timing of the charge and hence to outline the payment procedure. However, the choice to impose an 'instalments policy' is entirely discretionary. East Thames considers that it is imperative that such a policy is outlined at the earliest opportunity. This should cover:

- The commencement of the instalments policy on adoption of CIL.
- The number of instalments that can be made by development size (monetary amount and square metre amount).
- The timing of payments post commencement – based on a consideration for build out rates (i.e. longer time periods).
- The minimum development threshold which instalments would apply (we suggest that this be set as low as possible).

We note that the Council proposes to adopt the mayoral instalment policy (i.e. two instalments for developments with a CIL liability equal to or more than £500,000). However, this does not take account of the complexities of, inter alia, estate regeneration schemes. Developers only have access to certain levels of funding throughout the construction process and this is often dependent on sale volumes, market conditions and lending criteria. The benefit of the Section 106 system (as was), was the ability to negotiate phasing of payments and if necessary renegotiate via a deed of variation. The imposition of CIL effectively removes this flexibility.

The timing of CIL payments is therefore of critical importance, particularly as the definition of chargeable development (Regulation 9) makes it clear that in instances of full planning approval the chargeable development is that as consented in its entirety. Whilst Regulation 9(4) effectively permits a staged payment approach to outline consents (where phasing is proposed), it is normally the practice to only pursue outline (or hybrid) applications for the largest and most complex sites. The majority of planning proposals will still be submitted in full.

The phasing of payments should be tailored to recognise funding constraints and cash flow of all large and/ or complex schemes including estate regeneration schemes. The short timescale approach would only be suitable for very small developments in which there was certainty that development would be built very quickly and the funding would be available to pay the CIL charge. Large scale development normally requires significant upfront infrastructure costs to 'unlock' development and the additional early burden of CIL as per the existing payment formula would therefore be very prohibitive.

It is therefore advised that any phasing of CIL payments should accord with expected build rates and on this basis longer timescales and/ or additional instalments for the payment of CIL should be proposed. Larger applications are in any case required to submit phasing plans with planning applications showing build rate and approximate timescales, and as such this will give the LBTH a level of certainty on when CIL payments can be expected without tying developers to timescales which are too immediate.

It may also be appropriate to define a threshold for larger sites which a bespoke payment method for CIL will be agreed in writing with LBTH through the application process.

## **5. CONCLUSION**

East Thames is committed to providing much needed new homes in Tower Hamlets and working with the Council, has successfully delivered the regeneration of existing estates as well as working with private developers.

East Thames is concerned that as proposed, the draft charging schedule will jeopardise future estate regeneration schemes and that express provision should be made in the schedule as to the approach to be taken in granting exceptional relief.

We look forward to confirmation of receipt of this representation and that it has been registered as duly made. We would also welcome a meeting with LBTH to discussion our position further.

Yours faithfully



**ALEX OWEN**  
Senior Planner

**2. If your representation is seeking a change to the CIL Draft Charging Schedule, do you consider it necessary to attend the Examination in Public?**

- Yes, I wish to attend  
 No, I do not wish to attend

**3. Please tick the box if you would like to be notified of about any of the following:**

- If the Draft Charging Schedule has been submitted to an Independent Examination in accordance with section 212 of the Planning Act 2008 (as amended)  
 Of the publication of the recommendations of the Examiner and the reasons behind those recommendations  
 Of the approval of the Charging Schedule by the Charging Authority (The Council)

BRISTOL  
CAMBRIDGE  
CARDIFF  
EBBSFLEET  
EDINBURGH  
LEEDS  
**LONDON**  
MANCHESTER  
NEWCASTLE  
READING  
SOLIHULL

**BARTON  
WILLMORE**

bartonwillmore.co.uk  
7 Soho Square  
London  
W1D 3QB  
T/ 0207 446 6888

**BY POST AND EMAIL: CIL@towerhamlets.gov.uk**

Director of Planning  
London Borough of Tower Hamlets  
2<sup>nd</sup> Floor Mulberry Place  
5 Clove Crescent  
London  
E14 2BG

21392/A3/AO/AC  
5 June 2013

Dear Sirs

**REVISED PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT  
DRAFT MARCH 2013**

These representations are submitted on behalf of East Thames Group.

We welcome the principle of setting out the Council's approach to Section 106 obligations following the adoption of CIL. However, we are concerned that:

- The SPD proposes to introduce matters that ought to be addressed, where justified, in a DPD;
- Introduces matters that are not justified and do not relate to bona fide planning matters;
- Introduces matters that do not meet the tests set out at CIL Regulations 122 and 123;
- Introduces matters that are already addressed through existing policy documents, such as GLA SPDs.

Specifically, we would wish to make the following comments by way of example:

- *Employment Training and Facilities:* We question the extent to which the draft policy meets the CIL tests and goes beyond matters that fall within the remit of the Council as LPA. The Council appears to acknowledge that the proposed 'policy' at 6.9 may fall foul of competition rules;
- *Travel Plan and related matters:* These can be appropriately addressed through condition;
- *Public Realm:* The requirement to 'maximise' on-site provision without a distinction by area goes beyond the requirements of the development plan and is not justified. The GLA SPD, *Shaping Neighbourhoods: Play and Informal Recreation 2012*, sets out the Mayor's approach and there is no need to duplicate SPDs;
- *Energy:* Again, the GLA SPD: *Sustainable Design and Construction 2006* sets out the Mayor's approach and there is no need to duplicate SPDs;



- *Monitoring:* Explanation and justification of the proposed charges is sought;
- *Trigger Points:* The suggested 'target' trigger points fail to have regard to scheme viability and provision should be made for payment relating to phased occupations. Very rarely is payment upon completion of the S106 justified;
- *Council's Obligations:* Confirmation that the Council will repay any unspent sums with interest after a reasonable period, i.e. 5 years, is sought;
- A number of matters can be addressed through conditions (i.e. travel plans, energy performance) and S106 obligations are not therefore required. If, in principle, the matter that the Council seeks to address does not meet the tests for conditions, we would question whether the Council ought to be seeking S106 obligations;
- We welcome acceptance that all S106 contributions sought are subject to viability testing. The Council should not be specific as to the approach taken save for providing that it is for the applicant to meet the reasonable costs of independent review.

In addition, we would suggest that CIL payment in kind (see para 2.6) can apply to any schemes and not just strategic sites.

Obviously, as a SPD, the document is not subject to independent examination. The only forum for independent review is on appeal pursuant to S78. This places a duty on the Council to introduce a SPD policy regime that meets the relevant tests and does not seek to introduce a 'bottom draw' plan.

Yours faithfully



**ALEX OWEN**  
Senior Planner

**TURLEYASSOCIATES**25 Savile Row  
London  
W1S 2EST: 020 7851 4010  
F: 020 7851 4020

05 June 2013

**Delivered by email**CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2nd Floor Mulberry Place  
5 Clove Crescent  
E14 2BG

Our reference:

Your reference:

Email:  


Dear Sir

**TOWER HAMLETS COMMUNITY INFRASTRUCTURE LEVY  
REPRESENTATIONS ON BEHALF OF QUEEN MARY UNIVERSITY OF LONDON**

On behalf of our client, Queen Mary University of London (QMUL), we have prepared the following representations to the Tower Hamlets' Public Consultation on the Draft Charging Schedule (DCS). In so doing, we have reviewed the DCS and the accompanying Viability Study prepared for the Council by BNP Paribas Real Estate (BNPPRE) (March 2013).

For the most part, university development is not specified in Table 1 of the DCS, thus it falls under the category of 'all other uses' with a Nil CIL charge.

Table 1 of the DCS also indicates that student housing will command a CIL rate of £425 per square metre, which is broadly twice the liability of any other land use.

QMUL notes the reference in paragraph 6.37 of the Viability Study to student accommodation. It refers to there being two markets for student housing; one being private sector and the other being 'unviable' university-led development. It is the latter market in which QMUL operates.

**Viability Assumptions**

As noted, a university has a different financial model from private sector developers, and we specifically draw your attention to the assumptions on rent that have been set out in the Viability Study:

Rental levels are suggested by BNPPRE to be £200 per week during term time. Indeed, third party developers will normally require this level across a 51-week rental term, leading to a £10,000 annual rent.

However, in order to provide affordable accommodation to its students, and ensuring places at QMUL are accessible, in line with the Institution's widening participation commitment, the typical rental level of QMUL is in the order of £130 - £137.50 per week across a 38-week let, leading to an annual rent of some £5,000, i.e. half the private sector level. At present only between 3.5 % to 5% of QMUL students choose to live in purpose built private sector halls, indicating that very low numbers of QMUL students can afford market rents of circa £10,000 per annum.

The knock-on implications of the rental income mean that the capital sum that QMUL can service, from rental income, for either development on exiting QMUL landholdings, or for sites which come to the market which are suitable for student accommodation development is very restricted, and will be unaffordable if QMUL is required to fund the CIL liability (as currently proposed). This would in turn reduce the likelihood of further accommodation being developed by QMUL and offered to students at affordable rates. The College estimates that QMUL schemes would need to increase room rents by circa 15% ie to £150 to £160 a week if CIL was to be charged on QMUL schemes. The College would find it unacceptable to be faced with offering accommodation at two rates, one for rooms free from CIL levy and a higher charge for schemes where CIL had been payable.

The College would remind the Council that it has identified it may wish to develop up to an additional 700 rooms for QMUL students.

Recently QM has been exploring other methods of procuring further student accommodation including working with private sector providers to deliver to QMUL completed schemes for the College to lease, and then operate, from private providers. This model has advantages to the College in terms of risk transfer, but would become unaffordable if such schemes attracted the CIL level. QMUL would therefore ask that consideration be given to the exemption of schemes from CIL which are either to be developed and operated by QMUL or leased by QMUL for a term of 25 years or more.

### **Charitable Status**

Paragraph 6.37 of the Viability Study goes on to state that *"It is noted, however, that when developed, [university-led student accommodation] schemes are likely to be exempt from CIL given the universities' charitable status."* Whilst this note is helpful, it potentially leaves certain ambiguity, which requires clarification.

There may, for example, be a situation where a university cannot, for whatever reason, claim CIL exemption through its charitable status. In such cases, that university would simply not be able to proceed with a development.

Therefore, if it is the intention of both the local planning authority and its advisors – as suggested at paragraph 6.37 – that universities are exempt from CIL liability on student accommodation schemes then we request that such a provision is explicit in the Charging Schedule. It is unsatisfactory, and potentially open to misinterpretation, to only rely on a reference to *'likely'* exemption in a supporting document. There also remains the issue of whether or not such exemption constitutes State Aid.

CIL Regulation 55 states that a charging authority "may grant relief ("relief from exceptional circumstances") from liability to pay CIL in respect of a chargeable development if: it appears to the charging authority that there are exceptional circumstances which justify doing so; and the charging authority considers it expedient to do so".

The CIL Regulations require consideration to be taken into account (when setting rates) of the potential effects of the imposition of CIL on economic viability of development across its area. In light of this background, QMUL considers that it is essential for the Council's Charging Schedule to offer exceptional

circumstances relief so that it can be used in cases where an otherwise acceptable development will not be implemented because of onerous CIL levy rates.

On this basis, we urge that student housing development by a higher education institution be acknowledged as being an exceptional circumstance, and accordingly be granted CIL relief.

### **Representations**

Thus, we request that the following be taken into account prior to finalising the CIL Charging Schedule:

1. That the assumptions stated in the Viability Study be clearly attributed to private sector development. They are clearly not sound when considering development undertaken by a higher education institution.
2. That it is clearly stated in the Charging Schedule that student housing schemes for a university and by a university is exempt from any CIL liability, in line with the intent shown in Paragraph 6.37 of the Viability Study, in accordance with Regulation 55.

If any further information is required then please do not hesitate to contact Christopher Turner in the first instance.

Yours faithfully



**Turley Associates**



CIL - DCS 22

Planning Consultants

JHM/DP3024

04 June 2013

CIL Consultation  
 Infrastructure Planning Team  
 London Borough of Tower Hamlets  
 2nd Floor Mulberry Place  
 5 Clove Crescent  
 London  
 E14 2BG



100 Pall Mall  
 London SW1Y 5NQ

Registered No. 05092507

telephone 020 7004 1700  
 facsimile 020 7004 1790

www.dp9.co.uk

Dear Sirs,

**DRAFT CIL CHARGING SCHEDULE, MARCH 2013  
 REVISED PLANNING OBLIGATIONS SPD – MARCH 2013  
 SUBMISSION OF REPRESENTATIONS BY EXPRESS NEWSPAPERS**

On behalf of Express Newspapers, we write to submit representations to the above documents.

Express Newspapers hold an interest in the Westferry Printworks site on the Isle of Dogs. DP9 submitted representations to the Preliminary Draft Charging Schedule (PDCS) in December 2012. The publication of the Draft CIL Charging Schedule for the London Borough of Tower Hamlets (LBTH) is of particular interest to our client, given the potential implications it may have on the redevelopment coming forward on the site.

We expressed a number of concerns previously in relation to the PDCS, and its compliance with planning policy and statutory guidance. Following a review of the revised CIL Charging Schedule and the supporting documentation, these concerns still remain. On the basis of the evidence put forward by the Council, Express Newspapers considers that:

- An appropriate balance has not been struck between the need to fund necessary infrastructure and the potential economic viability of development across its area; and
- The Charging Authority has not complied with the requirements set out at paragraph 9 of CLG's 'Community Infrastructure Levy: Guidance' (April 2013).

**Background: Planning Context**

***National Planning Policy Framework***

*"Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a*

CIL - DCS 22



willing land owner and willing developer to enable the development to be deliverable.” (para 173)

*“Where practical, Community Infrastructure Levy charges should be worked up and tested alongside the Local Plan. The Community Infrastructure Levy should support and incentivise new development, particularly by placing control over a meaningful proportion of the funds raised with the neighbourhoods where development takes place.”* (para 175)

The above extracts from the National Planning Policy Framework (‘NPPF’) provide a number of important policy steers in the formulation of CIL Charging Schedules. Of particular note:

- Planning policy should be deliverable.
- The viability of sites identified / allocated in the Development Plan should not be put at risk as a result of obligations and policy burdens.
- CIL charges, where practical, should be prepared and tested alongside the Development Plan.
- CIL should support and incentivise development.

The NPPF is therefore clear in that it requires local planning authorities to pay due regard to the implications of any obligations on development. For the majority of sites, particularly those of a strategic nature, CIL is one of the main financial obligations which could impact on viability, affecting the ability of development to come forward and ultimately the delivery of the Development Plan objectives.

### ***LBTH Submission Managing Development DPD***

The Core Strategy sets ambitious targets in terms of the delivery of housing within the Borough over the next 15 years. It requires the delivery of 43,275 units at a rate of 2,885 per year.

Fundamental to the Borough meeting its housing targets, is the delivery of its key strategic sites. Paragraph SA.2 of the emerging MD DPD acknowledges this by stating that:

*‘If these sites were not identified and safeguarded for specific uses, the borough would be at risk of not being able to provide services and facilities for its communities’.*

The Westferry Printworks is a key strategic site, with the potential to deliver a significant number of new houses, including affordable housing. Within the London Plan, the site is located within the Isle of Dogs Opportunity Area which has an indicative employment capacity of 110,000 and a minimum target of 10,000 new homes to be delivered over the plan period. Annex 1 of the London Plan states, ‘...Parts of the area have significant potential to accommodate new homes and there is scope to convert surplus business capacity south of Canary Wharf to housing and support a wider mix of services for residents, workers and visitors...’.

The site is identified for comprehensive redevelopment for a residential-led mixed use development under the recently adopted Managing Development DPD. Following discussions at the Examination into the Managing Development DPD, the Inspector recommended that a



secondary school be provided on the site. Discussions at the Examination indicated that this would require a land take of around 1.5 hectares.

The Westferry Printworks site is of strategic significance in the Borough, and can therefore be considered to be a critical site for the Borough in terms of meeting its strategic housing targets, including the delivery of affordable housing. Therefore the impact of CIL and S106 obligations are particularly pertinent and obligations need to be robustly tested in order not to harm the future delivery of strategic sites for housing and other infrastructure in the Borough.

### ***Statutory Guidance***

Charging Authorities are legally required to have regard to the CLG statutory guidance document – ‘Community Infrastructure Levy Guidance (December 2012) – when setting their proposed CIL levels.

The statutory guidance provides important detail guiding how Charging Authorities should go about preparing Charging Schedules and the nature of supporting evidence base material that is necessary. The statutory guidance is consistent with the central theme of the NPPF: planning policy should be deliverable and the viability of Development Plan sites should not be put at risk.

Fundamentally, the statutory guidance supports the representations set out below. The following extracts are of particular significance:

*“Charging schedules should be consistent with and support implementation of up-to-date Local Plans” (para 4)*

*“...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. As set out in the National Planning Policy Framework in England, the ability to develop viably the sites and the scale of development identified in the Local Plan should not be threatened.” (para 8)*

*“The independent examiner should establish that:*

- the charging authority has complied with the requirements set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations*
- the charging authority's draft charging schedule is supported by background documents containing appropriate available evidence*
- the proposed rate or rates are informed by and consistent with, the evidence on economic viability across the charging authority's area; and*
- evidence has been provided that shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole.” (para 9)*

*“In addition, a charging authority should sample directly an appropriate range of types of sites across its area in order to supplement existing data, subject to receiving the necessary support from local developers. The focus should be in particular on strategic*



*sites on which the relevant Plan relies and those sites (such as brownfield sites) where the impact of the levy on economic viability is likely to be most significant.” (para 27)*

*“Charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area. Charging authorities should show, using appropriate available evidence, including existing published data, that their proposed charging rates will contribute positively towards and not threaten delivery of the relevant Plan as a whole at the time of charge setting and throughout the economic cycle.” (para 30)*

*“The Government expects charging authorities will work proactively with developers to ensure they are clear about charging authorities’ infrastructure needs and what developers will be expected to pay for through which route. This is so that there is no actual or perceived ‘double dipping’, with developers paying twice for the same item of infrastructure.” (para 85)*

*“The charging authority’s proposed approach to the future use of any pooled section 106 contributions should be set out at examination and should be based on evidence.” (para 89)*

## **Representations to LBTH CIL Draft Charging Schedule**

### ***Assessment of Sites***

The Viability Study undertaken by BNP Paribas is based on an assessment of different development typologies which provide hypothetical schemes, including number of units, types and density. Following our representations in December 2012 to the PDCS, we note that BNP Paribas have now undertaken further work on strategic sites. We welcome the fact that a more detailed assessment of strategic sites has been undertaken, but have concerns about the methodology and findings within the BNP Paribas report.

Firstly, we are not clear as to how the 8 strategic sites have been chosen for assessment. There are 20 strategic sites identified within the Managing Development DPD. It is not sufficient to test 8 sites given the importance of all the strategic sites within the Managing Development DPD to the delivery of housing and infrastructure within the Borough. The cumulative impact of CIL needs to be considered across all of the strategic sites.

We note that three of the strategic sites which are the subject of viability appraisals, that include the proposed CIL Charging Rate, are not viable. For those sites that cannot afford to pay the CIL Charging Rate, it is stated at paragraph 7.14 of the BNP Paribas report that adopting a nil rate for CIL on these sites would not result in the developments generating residual land values above the benchmark land value. Whilst this may be the case, the imposition of CIL clearly reduces further the prospects of these strategically important sites coming forward, than if these sites were not subject to CIL. CIL is therefore putting a further financial burden on the development of strategically important sites which in our view is contrary to Paragraph 173 of the NPPF.

Strategic sites are fundamental to the delivery of housing and other infrastructure in the Borough. They are critical to delivering the Council’s housing numbers. Tower Hamlets has the highest housing targets of any London borough at 28,850 units over a ten year period, as set out in the adopted London Plan. To meet the housing target in the London Plan will require the delivery of

CIL - DCS 22



its key strategic sites. The outcome of the BNP Paribas report would suggest that the deliverability of some of these strategic sites will be further harmed.

We note that the viability appraisal in relation to Westferry Printworks has assumed that the site can accommodate a primary school and local park. The appraisal is not consistent with the adopted Managing Development DPD, which allocates the site for comprehensive mixed-use development required to provide a strategic housing development, a secondary school, publicly accessible open space, an expanded leisure facility, a district heating facility (where possible) and other compatible uses.

The provision of a secondary school on the site was the subject of significant debate at the Examination into the Managing Development DPD. The Inspector, recognising the fact that there may be concerns with regard to viability due to the need to accommodate a secondary school on site, recommended that the site allocation be amended to reference this fact and the following text was therefore included in the adopted Managing Development DPD:

*'A new secondary school site takes first priority over all other non transport infrastructure requirements including affordable housing, in relation to the redevelopment of this site, to ensure that it is economically viable and that the new school is provided in a sustainable location to help meet education needs arising across the borough.'*

A secondary school on the site would take around 1.5ha of the site. Added to the requirement to accommodate publicly accessible open space and an expanded leisure facility, which the development is required to provide under the site allocation in the Managing Development DPD, the developable site area would significantly reduce, thereby reducing the overall viability of the future development.

Assuming that the site would accommodate 1.2 ha of publicly accessible open space/expanded leisure centre and 1.5 ha of land for the secondary school, the actual developable area could be around 3.5 ha. Applying BNP Paribas's density figure of 260 units per ha would provide around 900 units, not the 1,186 units that are identified in the appraisal, which translates to a circa 25% reduction in unit numbers. The residual value of the scheme would therefore significantly decrease to the point where even under the BNP Paribas appraisal the development would only be marginally viable, if at all.

We would also seriously question whether the density range of 260 units per ha is a robust assumption. The site has a PTAL rating of 2 according to the TfL Planning Information Database. Indeed, the north eastern part of the site has a PTAL of 1b. According to Table 3.2 of the London Plan 2011, assuming the site lies in an Urban area and would deliver 3.1-3.7 hr/ha, the expected density range for a PTAL 2 site would be 55 to 145 units per ha.

Whilst density levels may exceed the normal range for a PTAL 2 site, a density of 260 units per ha would fall well outside the guidelines in Table 3.2 of the London Plan. In fact it is almost 80% higher than the upper range for the site. The recent RICS guidance note 'Financial Viability in Planning' provides that viability cannot be judged on the basis of an assumption which is contrary to development plan policies.

The discrepancies in the appraisal for Westferry Printworks calls into question the robustness of the Viability Study, and the potential impact that the CIL Charging Rates could have on the delivery of all strategic sites in the Borough. We do not consider the Borough can rely on such high level viability appraisals to test whether its strategic sites can accommodate the levels of

CIL-DCS 22



CIL proposed. Each site is unique and detailed appraisals would be required, in conjunction with the landowner, to form a robust conclusion.

### ***Variations in Residential Values across the Borough***

We previously submitted representations at the PDCS stage, expressing our concern that the residential values within the CIL Zones, do not accurately reflect the different residential values across the Borough. We re-state the representations we previously made below again.

Paragraph 34 of CLG's statutory guidance document explains that Charging Authorities can set differential levy rates for different geographical zones provided that those zones are defined by reference to the economic viability of development within them. The BNPP Viability Study does not adequately explain or justify the link between development viability and different geographical charging zones.

The PDCS identifies three CIL Zones. Express Newspapers does not agree with the boundaries to these zones, nor the large disparity between the rates applicable to these zones and considers they do not reflect the wide variation in values for residential development across the Borough.

The administrative area of Tower Hamlets is a Borough which experiences significant disparities in economic wealth, which is reflected in the value of residential property. Tower Hamlets has some of the poorest areas in London and the UK, yet it is also home to more affluent areas, such as Spitalfields and land adjacent to the River Thames. As a result, there are wide variations in residential values over small areas, with high value and low value pockets throughout the Borough.

CBRE was commissioned by Express Newspapers to provide advice on residential sales values in the Borough, particularly in CIL Zone 1 within which the Westferry Printworks site is located. The note and plan attached at Appendix A illustrates the findings.

In summary, the CBRE work demonstrates that there are wide variations in residential values across CIL Zones and in particular CIL Zone 1. Average new build pricing ranges from £901 per sqft to £465 per sqft within CIL Zone 1, which represents the greatest variation of prices within any of the zones. There are specific areas where higher values are located, for example within the City Fringe. At the lower end of CIL Zone 1, values are more towards £465 per sqft, with St George's Estate, Shadwell and Verdigris, Bethnal Green. To put this in context, BNP Paribas in its viability assessment to inform the MD DPD, identified sales figures of £604 per sqft for the Westferry site, significantly below the higher values achieved elsewhere within the Borough.

With such wide variations in values across Zone 1 and areas in the other proposed zones with higher residential values to our Client's site, and the uniqueness of the socio-economic picture of the Borough, we would question the approach that is being proposed to limit the charging zones to three areas. The Viability Study prepared by BNP Paribas at Table 6.16.1 illustrated 8 zones which we would regard as potentially more appropriate. Express Newspapers is concerned that the current identification of 3 very broad zones and the large differential in charging rates applicable to them will threaten the viability of development in the less valuable locations within each Zone and it considers that a more detailed assessment is required of price variations in the Borough with the identification of more charging zones and a more diverse charging rate. This more detailed assessment, if based upon postcodes, should include within Zone 3 postcode E14 8

CIL - DCS 22



### ***The Regulation 123 List and S106 costs***

The Viability Study makes an assumption in relation to the level of S106 contributions which would be payable by schemes at £1,220 per residential unit. As we previously commented, this is a very precise figure and there is no explanation as to how this has been calculated or what infrastructure it could cover.

We assume that there must have been some benchmarking against previous S106 costs. The need to undertake an exercise of benchmarking against recent Section 106 obligations has now been recognised by CLG. Paragraph 22 of the new Statutory Guidance explains, at paragraph 22, that “as background evidence, the charging authority should ... prepare and provide information about the amounts raised in recent years through section 106 agreements. This should include the extent to which affordable housing and other targets have been met.”

Express Newspapers is concerned that the Council has not considered the S106 costs sufficiently to be certain that the S106 levels would not exceed the £1,220 per unit identified. For key strategic sites such as Westferry Printworks, there is likely to be higher levels of infrastructure and services to be funded. For example, it is not clear at this stage how the secondary school would be delivered on the site and whether this would be a Section 106 or CIL cost. This reinforces our previous point that the appraisals are too generic, and that there are site specific circumstances that need to be considered.

In relation to the Regulation 123 list published, we would make the comment that this is a very generic list and does not provide any clarity on what infrastructure will be provided as part of CIL. It is important that the Regulation 123 list is transparent because as we highlight below, sites such as Westferry Printworks are delivering strategically important infrastructure identified in the Regulation 123 list.

We note in the Revised Planning Obligations SPD that a number of the strategic sites identified in the Managing Development DPD have a requirement to provide one or more specific pieces of infrastructure and that the Council may accept CIL as a payment ‘in-kind’ for these, such as the provision of land. We are not clear as to how such provision has been factored into the overall assessment of requirements for CIL, and what mechanism is in place to allow for land to be taken as a payment ‘in-kind’ for CIL.

For example, in the CIL Infrastructure Planning and Funding Gap Report, the Infrastructure Delivery Plan identifies in Appendix A that there is a need for the provision of 27 FE secondary places required by 2021/2022 at a cost of £81m. Two sites, including the Westferry Printworks site, are allocated to bring forward secondary school provision within the Managing Development DPD. It is not clear how the provision of secondary schools by these sites has been taken into account in the CIL Infrastructure Planning and Funding Gap Report, or how it has been considered within the appraisal reports contained with the Viability Study.

The Westferry site is also specifically required to provide open space, but this is also identified as a Regulation 123 item. The CIL Infrastructure Planning and Funding Gap Report identifies a cost of £16.4m for open space in Appendix A. Again it is not clear how the provision of land by these sites is taken into account in the CIL Infrastructure Planning and Funding Gap Report, or how it has been considered within the appraisal reports contained with the Viability Study.

### **Representations to LBTH Revised Planning Obligations SPD**

CIL-DCS22



The Revised Planning Obligations SPD would benefit from greater clarity on its application in circumstances where provision is provided on site. For example, in relation to the requirement to provide public realm, it should be made explicit that sites allocated to provide public open space in the Development Plan will not be subject to S106 obligations to deliver open space and that such provision will be accepted as an in-kind CIL payment. In 6.19, the text refers to the provision of 'Local Parks'. This term is not consistent with the Managing Development Plan, where the allocations, including the one for Westferry Printworks, refers to the provision of 'publicly accessible open space'. The SPD should be consistent in terminology in order that sites such as Westferry are not providing public open space as well as making a financial contribution towards it.

In relation to the requirements for energy contributions, our client objects to the requirement that developments not meeting the carbon reduction targets should pay a contribution. There are sites that, due to their physical constraints, will not be able to meet the carbon reduction targets and in these circumstances it is unreasonable to request a 'top-up payment'. There is no policy basis upon which to support the approach being taken.

Our client has a similar comment in relation to the proposed obligations for biodiversity. There is no clarity on what threshold levels need to be met before a payment is triggered. Furthermore, the obligations would seem to penalise those sites that, for physical reasons, are not capable of contributing to biodiversity.

The significant missing element of the SPD relates to the actual level of contributions which are being sought. Without these, it is difficult to understand the impact of the obligations on the viability of development and how these relate to CIL. This also relates back to the point made earlier that the £1,220 S106 cost factored into the appraisals is not robust.

### **Conclusion**

As per our previous representations, we are not satisfied that the evidence base presented to underpin the Draft CIL Charging Schedule is robust and the consequences of adopting the Charging Rates set out within it have been properly considered. There are two fundamental areas of concern: the first relates to the lack of analysis of strategic sites and the implications on the viability of development, including the delivery of the Borough's housing and other infrastructure requirements; and, the second relates to the setting of the charging zone boundaries.

In relation to the Revised Planning Obligations SPD, it is considered that greater clarity is required on when the obligations apply and how they relate to sites delivering infrastructure as part of their development. Fundamentally, the costs of the obligations needs to be made clear to understand the impact on viability and to be able to comment in detail.

Express Newspapers would be willing to meet with LBTH to discuss the above concerns further, if this would be of assistance. If you would like to discuss further, please contact Jonathan Marginson at this office.

Yours faithfully,

**DP9**

CIL-DCS22



**Appendix A**

CIL-DCS22

CBRE

## Tower Hamlets - Variation in Residential Sales Values

### Tower Hamlets Residential Pricing

#### Key Summary Points

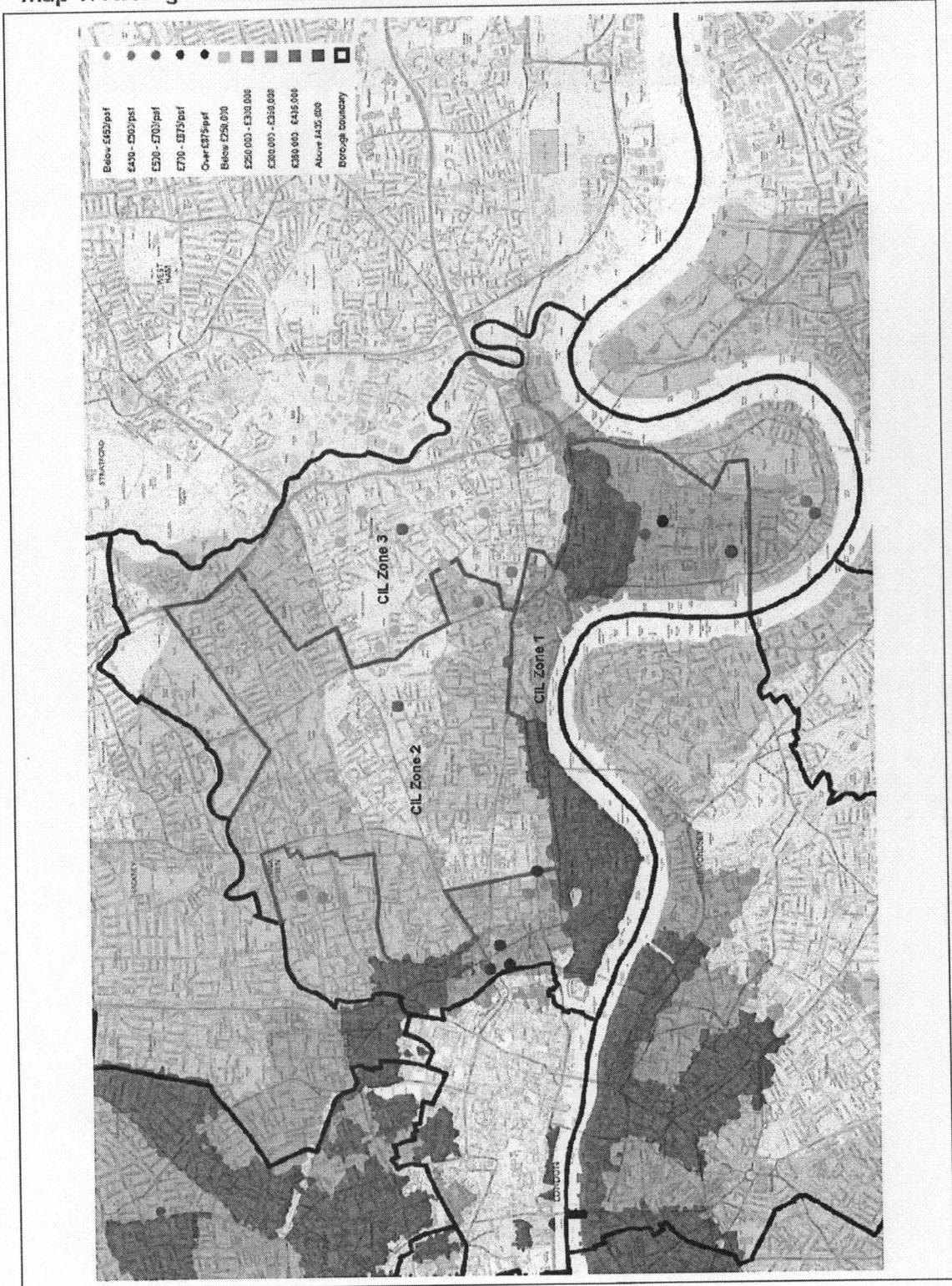
- The shading on Map 1 shows the average value of flats, at postcode sector level, during the period of Q4 2011 to Q3 2012 (predominantly second hand stock) according to the Land Registry.
- Map 1 illustrates the disparity in average residential flat values across Tower Hamlets, with values increasing as you sweep across the borough from the East (£235,000 in Mile End and £245,000 in Bromley-by-Bow) to South West (£612,000 in Canary Wharf and £645,000 in Wapping).
- The dots on Map 1 show the average price per square foot (according to Molior) of schemes which have sold since 2008 and have over 50 private residential units (the one exception being 'Infinity' currently marketing with 8 private residential units). The values range from £901 per square foot (Pan Peninsula) to £355 per square foot (The Square).
- Tables 1, 2 and 3 highlight the variation in new build values across each of the three CIL charging zones. The tables show the scheme with the highest average £ per square foot pricing and the lowest.
- Average new build pricing ranges from £901/sft to £465/sft within CIL Zone 1.
- Average new build pricing ranges from £513/sft to £393/sft within CIL Zone 2.
- Average new build pricing ranges from £602/sft to £355/sft within CIL Zone 3.
- CIL Zone 1 has the greatest variation in new build pricing (a £435/sft difference) with schemes at the top end averaging close to £900/sft and those at the bottom end averaging around £465/sft;
  - Top end of CIL Zone 1 market
    - Pan Peninsula averaging £901/sft located in E14 9
    - Goodman's Field averaging £889/sft located in E1 8
    - One Commercial Street averaging £866/sft located in E1 7
  - Bottom end of CIL Zone 1 market
    - St Georges Estate averaging £465/sft located in E1 8
    - Verdigris averaging £478/sft located in E2 7
    - SpacE1 averaging £479/sft located in E1 1
- The draft CIL zone boundaries as it stands, by charging a set rate within each of the three zones, will therefore affect viability of schemes in different ways, as residential values differ within zones and across zones.

# CIL - DCS 22

CBRE

## Tower Hamlets - Variation in Residential Sales Values

Map 1. Average residential flat values and new build residential values



CIL-DCS22

CBRE

## Tower Hamlets - Variation in Residential Sales Values

Source: Land Registry, Molior

**Table 1. Details of new build residential schemes within CIL Zone 1**

	PAN PENINSULA	ST GEORGES ESTATE - PHASE 2
Postcode	E14 9SL	E1 8HP
Average postcode sector flat value	£401,000	£399,500
Scheme status	Complete	Under construction
Developer	Ballymore Group	Telford Homes Plc
Private units	736	139
Average £/sft	£901	£465

Source: Molior

**Table 2. Details of new build residential schemes within CIL Zone 2**

	CQ LONDON	AXIO
Postcode	E14 7LA	E3 4AX
Average postcode sector flat value	£302,000	£245,000
Scheme status	Complete	Under construction
Developer	A2 Dominion	Luminus Group
Private units	215	87
Average £/sft	£513	£393

Source: Molior

**Table 3. Details of new build residential schemes within CIL Zone 3**

	STREAMLIGHT	THE SQUARE
Postcode	E14 9PE	E14 6NX
Average postcode sector flat value	£401,000	£243,000
Scheme status	Complete	Under construction
Developer	Swan New Homes	One Housing Group
Private units	66	86
Average £/sft	£602	£355

Source: Molior

Page 3

TOWER HAMLETS - VARIATION IN RESIDENTIAL SALES VALUES

CIL-DCS 22

**Section B (1) – Representation to LBTH CIL Draft Charging Schedule**

Your representation should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested change(s), as there will not normally be a subsequent opportunity to make further representations based on the original representation at publication stage. After this stage, further submissions will be only at the request of the Examiner, based on the matters and issues he/she identifies for Examination in Public.

**Questions:**

**1. Do you have any comments relating to the CIL Draft Charging Schedule and its supporting evidence?**

Yes (Please make sure you refer to the sections or paragraphs, to which your comments relate and provide details by using the box below for your comments. If needed, please continue on a separate sheet of paper.)

No

PLEASE SEE ATTACHED LETTER

CIL-DCS22

**2. If your representation is seeking a change to the CIL Draft Charging Schedule, do you consider it necessary to attend the Examination in Public?**

- Yes, I wish to attend
- No, I do not wish to attend

**3. Please tick the box if you would like to be notified of about any of the following:**

- If the Draft Charging Schedule has been submitted to an Independent Examination in accordance with section 212 of the Planning Act 2008 (as amended)
- Of the publication of the recommendations of the Examiner and the reasons behind those recommendations
- Of the approval of the Charging Schedule by the Charging Authority (The Council)

CiL Consultation  
 Infrastructure Planning Team  
 London Borough of Tower Hamlets  
 2<sup>nd</sup> Floor Mulberry Place  
 5 Clove Crescent  
 LONDON  
 E14 2BG

31 May 2013



409-413 Mile End Road  
 London E3 4PB

Residents Only 020 8709 4300

Non-Resident Enquiries 020 8709 4409

Fax 020 8709 4400

enquiries@gatewayhousing.org.uk

www.gatewayhousing.org.uk

Dear Colleagues,

### **CiL – Statement of Representation**

I am writing to you on the behalf of Gateway Housing Association in accordance with s172(2)(b) of the CiL Regulations 2010.

Following a review of the draft charging schedule I would like to make the following points:

1. **Communal Areas:** I understand that even in affordable housing developments the only relief to be sought is in relation to the GIA of the “dwelling” and not the communal areas. On the basis that the charging schedule already discounts plant areas, I would have thought that in the interests of overall scheme viability communal areas associated with the “dwelling” could also be subject to relief when calculating the chargeable amount.
2. **Community spaces:** It is not clear how this will be treated in the documentation. It is not uncommon for mixed tenure housing projects to also deliver community related spaces and on the basis that these can be delivered for charitable uses we would expect qualifying community spaces to attract relief against the CiL when calculating the chargeable amount.
3. **Zone Areas:** Gateway Housing has housing stock right across the Borough. Whilst it is clear that the zoning around Canary Wharf is understandably high, this zone also includes areas of housing that is not materially impacted by the inflated prices associated with the Canary Wharf financial district.

Gateway Housing Association is the new name for Bethnal Green and Victoria Park Housing Association and Labo Housing Association who merged on 31 March 2008



Patron: Baroness Liddin of Bethnal Green  
 Registered name: Gateway Housing Association Limited  
 Registered office: 409-413 Mile End Road, London E3 4PB

Registered with charitable rules with the  
 Financial Services Authority (No. 104138)  
 and the Housing Corporation (No. 10517)

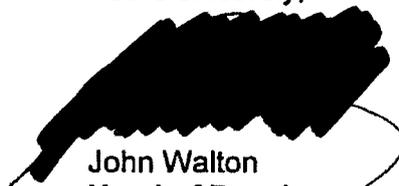
A member of the National Housing Federation

For example, we have stock in Mellish Street off Tiller Road which is listed in zone 1 and yet in terms of land value this would be similar to areas listed in Zone 3 on the Isle of Dogs. We would therefore suggest that the zone differentials are reconsidered on the Isle of Dogs to avoid these CiL charging distortions materially impacting on future housing delivery in these areas.

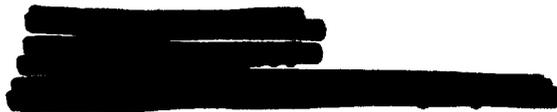
Gateway Housing Association understands that the CiL will simplify the way in which future developments are able to mitigate their local impact and ensure that investment into local infrastructure is capable of meeting the needs of the local community. We are however anxious to work with Tower Hamlets on a charging system that strikes the appropriate balance needed to also enable and increase the future development of affordable housing.

If you require any further information, please do not hesitate to contact me on 020 8709 4322.

Yours sincerely,

A large, irregular black redaction mark covering the signature of John Walton.

John Walton  
Head of Development & Leasehold

A large, irregular black redaction mark covering contact information, likely a phone number and email address.

CIL DCS 24

4 June 2013  
TH CIL Representation Letter 040613



CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2nd Floor Mulberry Place  
5 Clove Crescent  
London  
E14 2BG



Dear Sirs,

**REPRESENTATIONS TO TOWER HAMLETS COMMUNITY INFRASTRUCTURE LEVY (CIL) DRAFT CHARGING SCHEDULE**

Savills has been instructed by Grosvenor, One Housing Group and Telford Homes plc (hereafter The Consortium) to submit representations to the London Borough of Tower Hamlets' Draft Community Infrastructure Levy (CIL) Charging Schedule. In submitting these representations we wish to register our right to be heard by the CIL Examiner at the forthcoming Examination in Public.

**Preliminary Draft Charging Schedule**

Savills submitted detailed representations to the Preliminary Draft Charging Schedule in January 2013. Those representations expressed concern with the proposed CIL, and in particular:

- Sales values
- Zoning boundaries
- Land value assumptions
- Infrastructure costs
- Affordable Housing

The representations also urged the London Borough of Tower Hamlets (LBTH) to reconsider the proposed planning mechanisms to ensure conformity with the CIL Regulations and best practice guidance, focusing on the following:

- Instalments policy
- Exceptional Circumstances Relief
- Payments in Kind/ Land in Lieu or bespoke CIL rates for major development sites
- Infrastructure Planning/ Regulation 123 List

A copy of Savills representations to the Preliminary Draft Charging Schedule is attached to this letter for reference.

**Draft Charging Schedule**

LBTH has now published the Draft Charging Schedule for consultation and Savills now submit the following comments on behalf of The Consortium. LBTH also provided a letter dated 7<sup>th</sup> May 2013 which provided a detailed response to the points raised above.



CIL - DCS 24



### Sales Values

We have provided significant evidence of actual sales values achieved for developments within the Borough, where as BNP have produced a summary table which provides average values for the Borough from EGi and Molior. It is not clear whether these are based upon actual sales values however we would note that Molior does not provide sales values for schemes.

### Zoning Boundaries

We have also provided significant evidence, in the form of heat maps based on Land Registry data, which identifies a number of disparities between the zoning boundaries. We would also note that the zoning boundaries have changed since the previous consultation and there does not appear to be any commentary and evidence as to why the zoning boundary has changed.

### Infrastructure Costs

Our representation at the Draft Stage identified that BNP do not appear to have included an allowance for infrastructure costs in their appraisals, the letter provided by LBTH did not provide a response to this.

### Affordable Housing

You have informed us that BNP have assumed affordable housing values across the site types and locations tested range from £136 per sq.ft to £202 per sq.ft. We do not believe this represents the value that a Registered Provider would pay for affordable housing in Tower Hamlets and would recommend Local Authority seeks confirmation from their preferred Registered Providers to confirm the above.

### Instalments

Savills welcomes the fact that LBTH intends to introduce an instalments policy however it is disappointing that this has not been published alongside the Draft Charging Schedule giving stakeholders an opportunity to comment. Notwithstanding this it is critical that in formulating the instalments policy that funding constraints and cash flow of schemes is recognised, whether applications are submitted in outline, full or hybrid form. Savills therefore advise that the phasing of payments should accord with build out rates. Savills also suggest that a threshold is defined for larger schemes for which a bespoke payment method can be agreed in writing as part of the application process.

### Exceptional Circumstances Relief

The Council has confirmed that they will consider exceptional circumstances relief on a case by case basis

### Payments in Kind/ Land in Lieu

The revised Planning Obligations SPD states that the Council may accept payments in kind.

### Regulation 123

LBTH has now published a Draft Regulation 123 list alongside the Draft Charging Schedule.

We would also note that the Infrastructure Delivery Plan (IDP) has been updated to reflect current infrastructure requirements as requested. There is however no mention of funding from the New Homes Bonus which amounts to £16m for 2013/14 so should be factored in when calculating the funding gap.

CIL - DCS 24



**Conclusion**

Given the above comments The Consortium respectfully urges the London Borough of Tower Hamlets to reconsider its proposed approach to its Community Infrastructure Levy before the Draft Charging Schedule is submitted for Examination, particularly in light of recent Examiner's comments. In submitting these representations we wish to register our right to be heard by the CIL Examiner at the forthcoming Examination in Public.

CIL-DCS 25

**Hong Chen**

---

**From:** [REDACTED]  
**Sent:** 05 June 2013 16:18  
**To:** CIL  
**Cc:** [REDACTED]  
**Subject:** London Borough of Tower Hamlets - CIL Response  
**Attachments:** 130605 Tower Hamlets CIL Objection Letter - Final.pdf; 130605 Objection Letter - Draft.docx

Dear Sir/Madam,

Please see attached our response to the London Borough of Tower Hamlets CIL Draft Charging Schedule, on behalf of Sainsbury's Supermarkets Ltd.

Please can you confirm receipt.

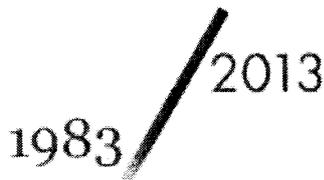
Kind Regards,

[REDACTED]

[REDACTED]

[REDACTED]

[Follow @turleyplanning](#)



30 years of excellence in planning

Think of the environment, please do not print unnecessarily  
This e-mail is intended for the above named only, is strictly confidential and may also be legally privileged. If you are not the intended recipient please do not read, print, re-transmit, store or act in reliance on it or any attachments. Instead, please notify the sender and then immediately and permanently delete it. Turley Associates is a limited company registered in England and Wales Registered No [REDACTED]

CIL - DCS 25

## TURLEYASSOCIATES

25 Savile Row  
London  
W1S 2ES

T: 020 7851 4010  
F: 020 7851 4020

[www.turleyassociates.co.uk](http://www.turleyassociates.co.uk)

Our reference:  
SAIL 1266/BC

Email: 

05 June 2013

### Delivered by post

Infrastructure Planning Team  
London Borough of Tower Hamlets  
2<sup>nd</sup> Floor, Mulberry Place  
5 Clove Crescent  
London  
E14 2BG

Dear Sir/Madam

### COMMUNITY INFRASTRUCTURE LEVY: DRAFT CHARGING SCHEDULE (DCS) CONSULTATION

We act on behalf of our client, Sainsbury's Supermarkets Ltd, in response to publication of the London Borough of Tower Hamlets CIL DCS and would like to take this opportunity to make representations to the consultations.

#### Proposed CIL Rates

##### *Retail Development*

For small retail development less than 280 sq m, the DCS is proposing £70 per sq m within the City Fringe and North Docklands area and a nil chargeable rate elsewhere in the Borough. For convenience-based supermarkets, superstores and retail warehousing over 280 sq m, a higher rate of £195 per sq m is proposed across the Borough (including the City Fringe and North Docklands area) in addition to the adopted Mayoral CIL rate of £35 per sq m. The DCS defines superstores/supermarkets and retail warehousing as the following:

1. Superstore/Supermarket: Shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit.
2. Retail warehousing: Shopping destinations specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for a significant proportion of car-borne customers.

##### *Residential Development*

In regards to residential development, the DCS is proposing three differential rates, including £200 per sq m within Zone 1, £65 per sq m within Zone 2 and £35 per sq m in Zone 3 (in addition to the adopted Mayoral CIL rate of £35 per sq m).

## CIL - DCS 25

2

**Lack of Evidence that Sub-Categories of an Intended Use or Boundaries of Particular Zones are Different**

There is no adequate evidence that the sale of retail goods within a supermarket/superstore and in a retail warehouse are each different intended uses (for Regulation 13 purposes) to the sale of goods from all other use classes (A1-A5). All are retail uses involving the sale of goods to visiting members of the public for their own consumption, with similar operational characteristics. What is the real difference in "intended use" between retail warehousing, supermarkets/superstores and other forms of retailing? Is there really a difference between retail warehousing with selling DIY goods and one selling sports equipment – it appears that the first is charged and the second not. They are all simply shops and should be treated equally.

In regards to residential development, the range of differential rates charged across the borough do not accurately prove that there is a different 'intended use of development' within each of the three identified zones. Whilst they may reflect different types of development in various geographical areas, we propose that a more fine-grained evidenced approach is undertaken to justify the boundaries of each particular zone.

In any event, there is no adequate evidence supporting the charging schedule which justifies the above distinctions being made.

**Lack of Viability Evidence*****Retail Development***

In respect of retail development, the Viability Study (prepared by BNP Paribas Real Estate) considered convenience retail and retail warehousing across the borough, all other Class A1-A5 retail uses within the North Docklands and City Fringe area, and all other retail across the borough. No definitions are provided for this, although the text and appendices indicate that all retail developments have been tested as a 30,000 sq ft (or, 2,787 sq m) net proposal (see Table 4.48.1).

For all retail developments, the study has appraised only hypothetical schemes coming forward across the borough. The commercial assumptions are based on an intensification of the existing use on the site. Our view is that the evidence does not reflect the characteristics of local market conditions or variations in land values across the Borough.

Given the proposed £195 per sq m retail rate for supermarkets, retail warehousing and large format retail uses over 280 sq m, and lower rate of £70 per sq m for all other Class A1-A5 retail uses (below 280 sq m) within the City Fringe and North Docklands area, such differential CIL rates should be adequately supported by "fine grained" evidence. The CIL Study does not provide sufficient evidence on the viability of retail warehousing (and of different types of retail warehousing given that some are charged and others not), supermarket/superstore development and other retail uses.

***Residential Development***

In regards to residential development, the Viability Study has only tested seven scenarios, including three houses on a site area of 0.06ha; a mixed-use scheme comprising 25 houses and flats on a site area of 0.31ha; and five flat typologies, ranging from 6 to 400 units, on a site area of 0.05ha to 1ha (see Table 4.11.2 within the Viability Study).

The residential scenarios are only broad hypothetical assumptions, which do not accurately reflect the appropriate range of local housing availability within each of the seven study areas (see Table 8.4.1 within

CIL DCS 25  
3

the Viability Study). The sampling should reflect a greater selection of the different typologies of strategic residential sites allocated within the Tower Hamlets Local Plan, in line with paragraph 27 of the CIL Guidance (April, 2013).

In addition, the Charging Authority have not proactively engaged in any market testing with the developers involved with the strategic and allocated sites identified in the Development Plan or undertaken any sensitivity analysis between the land values that have been assumed through the Existing Use Value (EUV) and those realistically achievable in the local market. This has led to a set of proposed rates in the DCS which we believe are unviable.

Furthermore, the high-level charges are isolated and do not incorporate any mixed-use elements within the residual assumptions. The recommendations are based upon a number of higher values shown in some of the tested scenarios (see Tables 6.19.1 and 6.19.2 of the Viability Study); however, this does not reflect the overall trend of the results and furthermore the very large variation in results demonstrates the limited utility of strategic level viability testing. The study does not draw a clear link between this evidence and the proposed charges, nor does the DCS.

Whilst the viability study makes a brief reference in relation to the local policy context regarding CIL, there is no detailed information on how the proposed rates will impact on the deliverability of the Development Plan particularly in relation to meeting the housing pipeline and borough wide/area specific policy targets. The Council should re-consider lowering its charging levels for residential development and be more pragmatic about viability.

#### ***CIL Infrastructure Planning and Funding Gap Report***

The Council have calculated over £38 million will be received in the way of CIL income from all convenience retail developments across the borough between 2014 and 2026 and only £15,400 from all other Class A1 to A5 retail uses (see Appendix C of the Infrastructure Planning and Funding Gap Report). The CIL income projection model is built upon the Council's own Planning for Population Change and Growth Model however there is no further justification provided within the main report or method of assessment regarding how this has been calculated.

Sainsbury's urge the Council to provide further clarity on how this over-simplistic and rather excessive projection has been reached, including a full breakdown of the proposed retail floorspace expected over the plan period.

#### **State Aid**

Supermarkets and superstores sell an overlapping range of goods with many other shops. They compete in the same market. The DCS charges a high CIL to larger format retail units (above the 280 sq m threshold) but not to smaller competitors. There is no consideration in the available evidence on the state aid implications of this or whether it is objectively justified, particularly in relation to smaller retail uses outside of the City Fringe and North Docklands area.

Furthermore, it should be remembered that the responsibility for state aid compliance rests on the Charging Authority (paragraph 40 of the CIL Guidance). There is no relevant evidence that demonstrates that the Council have given this issue proper consideration.

CIL-DCS 2S  
4**2013 CIL Reform Consultation**

In addition to the above, on 15 April 2013 the Department for Communities and Local Government (DCLG) began consulting on changes to the CIL regulations. Importantly, the consultation invites responses on whether the Regulations should be rephrased to emphasise that examinations of charging schedules must focus on the robustness of the evidence base and that charging authorities should be 'required' to strike an appropriate balance between funding infrastructure and the potential effects of the levy (rather than 'aim' to strike such a balance).

Furthermore, the evidence should clearly demonstrate how the proposed levy rates will contribute towards the implementation of the Tower Hamlets Local Plan at examination (see paragraph 19 of the DCLG Consultation on CIL further reforms). These nuanced changes would therefore focus more attention on the role of the charging authority in justifying their approach. Subject to consultation responses, the regulations are likely to change. We therefore recommend the Council are mindful of these forthcoming legislative changes in progressing their CIL and so we reiterate our view that further evidence must be given.

**Instalments Policy**

In order for the requirements of CIL not to affect the long-term delivery of retail development within the borough, Sainsbury's consider it essential that the London Borough of Tower Hamlets also prepare and adopt an instalments policy in line with CIL Regulation 69B. If all CIL is payable at the commencement of a development process then that might affect viability. Further clarification will therefore be required within the Charging Schedule so that the financial consequences can be modelled.

**Exceptions Policy**

In addition to adopting an instalments policy, Sainsbury's suggest that the Council also adopt a policy which would allow the Charging Authority to offer discretionary relief from the CIL payments.

Sainsbury's considers it essential that the Council retains the opportunity for such an agreement to be reached in particular circumstances and welcomes the drafting of an exceptions policy in preparation for the next round of consultation.

We trust the above points are helpful and look forward to reviewing the Charging Schedule when published in due course. Please contact Barry Cansfield in the first instance.

CIL - DCS26

Planning Consultants

CDT/jr/DPNF

05 June 2013



CIL Consultation,  
 Infrastructure Planning Team,  
 London Borough of Tower Hamlets,  
 2nd Floor Mulberry Place,  
 5 Clove Crescent,  
 London  
 E14 2BG

100 Pall Mall  
 London SW1Y 5NQ

Registered No. 05092507

telephone 020 7004 1700  
 facsimile 020 7004 1790

www.dp9.co.uk

Dear Sir,

**LONDON BOROUGH OF TOWER HAMLETS, COMMUNITY INFRASTRUCTURE  
 LEVY, DRAFT CHARGING SCHEDULE  
 REPRESENTATIONS OF CANARY WHARF GROUP**

I am writing on behalf of Canary Wharf Group ('CWG') in relation to the consultation on your Draft Charging Schedule for the proposed Community Infrastructure Levy ('CIL') in the London Borough of Tower Hamlets ('the Council' or 'the Charging Authority').

CWG has substantial land and development interest in LBTH. Canary Wharf forms part of the Isle of Dogs as an Opportunity Area (as identified in the London Plan (2011)) and is identified by the Tower Hamlets Core Strategy (2010) and Managing Development Document (2013) as a Preferred Office Location and Major Centre. CWG and its joint venture partners have planning permission to approximately double Canary Wharf's working population over the next 20 years. These sites offer bespoke office buildings designed and constructed to the highest standards of architecture, infrastructure and resilience. CWG is currently preparing a planning application for the comprehensive redevelopment of Wood Wharf. This is located within the Isle of Dogs Opportunity area and is designated by LBTH as a strategic site in its Managing Development Document. It is an important site insofar that it has the potential to deliver a significant proportion of new homes and jobs, underpinning both London Plan and LBTH growth forecasts.

Overall, CWG has extensive experience of market conditions and development viability within LBTH, and has achieved many viable planning consents which have delivered significant development and associated substantial infrastructure contributions.

As stated previously at the Preliminary Draft Charging Schedule stage, CWG is would like to work closely with the Council to ensure that proposed CIL rates do not pose a serious risk to the viability and deliverability of future development, especially that associated with the Opportunity Areas and strategic sites.

This letter follows the submission of representations by CWG in respect of the Preliminary Draft Charging Schedule ('the January 2013 Representations') which raised a number of significant concerns related to the approach, methodology and evidence underpinning the Council's proposed CIL rates. These concerns mirror those raised by other stakeholders, as set out in the Council's 'PDCS: Summary of Consultation Responses' (April 2013).



The Draft Charging Schedule – together with supporting documents: ‘Regulation 123 List’ (March 2013), ‘Infrastructure Planning and Funding Gap Report’ (2013), ‘CIL Viability Study’ (March 2013) – has been reviewed. Significant concerns still remain, largely as set out in the January 2013 representations. Overall, CWG is concerned that the response to its representations has been minimal. It is important to note that the Council produced the Draft Charging Schedule without engagement with CWG, which is concerning given the need to do so was highlighted and emphasised in the January 2013 representations and given the Council has now prepared a site appraisal specific to Wood Wharf (this is provided at Appendix 5 of the Council’s CIL Viability Study).

On the basis of the evidence put forward by the Council, it is CWG’s considered opinion that:

- the Charging Authority has not complied with its legal obligation to strike an appropriate balance between helping to fund necessary infrastructure and the potential effects on the economic viability of development across its area; and
- the Charging Authority has not complied with the requirements set out at paragraph 9 of CLG’s ‘Community Infrastructure Levy: Guidance’ (April 2013).

Attached to this letter are the following enclosures:

- Enclosure A – a summary of CWG’s concerns.
- Enclosure B – comments on the strategic site appraisal for Wood Wharf.

It is recognised and appreciated that CIL setting is a complex process and arriving at a rate(s) that is balanced between infrastructure funding and development viability is challenging. However, when the concerns described in Enclosures A and B are taken together, CWG consider that the Council’s Draft Charging Schedule is inappropriate and likely to pose a significant risk to development across Tower Hamlets, especially in relation to the strategic sites such as Wood Wharf. For this reason, CWG requests the Council undertakes the following: (organised according to the topics set out in Enclosure A):

**Given the extent of CWG’s outstanding concerns and the extent of further evidence required as per the above recommendations, it is requested that the Draft Charging Schedule is considered afresh and public consultation is re-run.**

CWG welcome further dialogue once the Council has had the opportunity to consider these representations.

CWG wishes to reserve the right to be heard by the CIL Examiner at the forthcoming Examination.

Yours faithfully,

**CRAIG TABB**

**ENCLOSURE A:  
HEADLINE POINTS AND ISSUES****1.0 Introduction**

1.1 In January 2013 CWG submitted representations to the London Borough of Tower Hamlets ('the Council' or 'the Charging Authority') in respect of the Preliminary Draft Charging Schedule. The January 2013 representations raised a number of fundamental concerns with the evidence underpinning the Preliminary Draft Charging Schedule. These concerns still remain in connection with the Draft Charging Schedule and have not been adequately addressed in the Council's 'PDCS: Summary of Consultation Responses' (April 2013). Set out below is a summary of headline key points and issues following a review of the Draft Charging Schedule and its associated evidence base. It should be read alongside the January 2013 representations.

1.2 **Having reviewed the evidence base issued by the Council to support its Draft Charging Schedule, CWG is of the considered opinion that the information provided does not meet the relevant requirements as set out in the CIL Regulations and CIL Guidance: fundamentally the information provided is inappropriate.**

1.3 CWG is of this opinion due to the reasons set out below and due to the nature of the comments provided at Enclosure B specifically in relation to Wood Wharf.

**2.0 Relationship with National Planning Policy Framework**

2.1 The National Planning Policy Framework ('NPPF') provides important steers in the formulation of CIL charging schedules. It explains that CIL charges should be worked up and tested alongside the Local Plan and, essentially, the CIL should support and incentivise new development. The sites and scale of development identified in Local Plans should not be subject to a scale of obligations and policy burdens that their ability to be developed viably is threatened.

2.2 Paragraphs 173 and 175 of the NPPF are especially relevant:

- Planning policy must not prevent development from being deliverable.
- The viability of sites identified / allocated in the Development Plan should not be put at risk as a result of obligations and policy burdens.

**LBTH CIL Draft Charging Schedule  
Representations of Canary Wharf Group  
5<sup>th</sup> June 2013**

- CIL charges, where practical, should be prepared and tested alongside the Development Plan.
- CIL should support and incentivise development.

2.3 CWG is concerned that the NPPF has not been adequately considered by the Council and that the proposed Draft Charging Schedule, as a significant additional cost burden on development, runs the risk of actively discouraging development.

### **3.0 Compliance with Statutory Guidance**

3.1 Charging Authorities are legally required under Section 221 of the Planning Act to have regard to the CLG statutory guidance document – ‘Community Infrastructure Levy: Guidance’ (April 2013 – consolidated version following initial publication in December 2012) – when setting their proposed CIL rates. The Guidance provides detailed guidance in relation to the CIL setting process and contains requirements for Councils and Examiners in establishing whether CIL rates are appropriate.

3.2 The Guidance in good time to allow the Council to take it on-board and be reflected in its approach to the Draft Charging Schedule. There is no evidence that the Guidance has been considered or whether the Council’s CIL evidence base reviewed afresh. This is concerning. CWG ask that the Council explain how the Draft Charging Schedule, and in particular the BNPP Viability Study, has had regard to the Guidance and meets its requirements. The Council’s evidence base is likely to need to be updated as a result and consulted upon.

3.3 The main components of the Guidance that CWG is concerned have not been taken into account are, as follows:

*“Charging schedules should be consistent with and support implementation of up-to-date Local Plans” (para 4)*

*“...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. As set out in the National Planning Policy Framework in England, the ability to develop viably the sites and the scale of development identified in the Local Plan should not be threatened.” (para 8)*

*“The independent examiner should establish that:*

- *the charging authority has complied with the requirements set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations*

**LBTH CIL Draft Charging Schedule  
Representations of Canary Wharf Group  
5<sup>th</sup> June 2013**

- *the charging authority's draft charging schedule is supported by background documents containing appropriate available evidence*
- *the proposed rate or rates are informed by and consistent with, the evidence on economic viability across the charging authority's area; and*
- *evidence has been provided that shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole.” (para 9)*

*“The charging authority should set out at examination a draft list of the projects or types of infrastructure that are to be funded in whole or in part by the levy. The charging authorities should also set out those known site-specific matters where section 106 contributions may continue to be sought. The principal purpose is to provide transparency on what the charging authority intends to fund in whole or part through the levy and those known matters where section 106 contributions may continue to be sought” (paragraph 15).*

*“Charging authorities should be able to show and explain how their proposed Community Infrastructure Levy rate (or rates) will contribute towards the implementation of their relevant Plan and support development across their area” (paragraph 21).*

*“As background evidence, the charging authority should also prepare and provide information about the amounts raised in recent years through section 106 agreements. This should include the extent to which affordable housing and other targets have been met” (paragraph 22).*

*“Charging authorities need to demonstrate that their proposed CIL rate or rates are informed by ‘appropriate available’ evidence and consistent with that evidence across their area as a whole” (paragraph 25).*

*“In addition, a charging authority should sample directly an appropriate range of types of sites across its area in order to supplement existing data, subject to receiving the necessary support from local developers. The focus should be in particular on strategic sites on which the relevant Plan relies and those sites (such as brownfield sites) where the impact of the levy on economic viability is likely to be most significant.” (para 27)*

*“Charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area. Charging authorities should show, using appropriate available evidence, including existing published data, that their proposed charging rates will contribute positively towards and not threaten*

*delivery of the relevant Plan as a whole at the time of charge setting and throughout the economic cycle.” (para 30)*

*“The Government expects charging authorities will work proactively with developers to ensure they are clear about charging authorities’ infrastructure needs and what developers will be expected to pay for through which route. This is so that there is no actual or perceived ‘double dipping’, with developers paying twice for the same item of infrastructure.” (para 85)*

#### **4.0 Relationship with the Development Plan**

- 4.1 In applying the CIL setting tests contained within both Regulations and Guidance, an understanding of the nature of development proposed across the Charging Authority’s area is vital. This must be derived from the relevant up-to-date Development Plan (including all Development Plan documents).
- 4.2 The Charging Authority’s CIL evidence needs to be able to conclude that the proposed rates will be viable for the sufficient number and type of developments upon which the Development Plan relies over the course of the Plan period.
- 4.3 It is unclear, firstly, how the Development Plan in this case (the London Plan (2011), Tower Hamlets Core Strategy (2010), and Tower Hamlets Managing Development DPD (April 2013) has informed the proposed CIL rates and, secondly, how the proposed rates will impact on the deliverability of the Development Plan (including both Borough-wide and area specific policy targets as well as the Council’s housing pipeline). The BNPP Viability Study briefly refers to local policy context at paragraphs 2.17 to 2.20, but this is light-touch and does not appear to have informed the method or approach associated with the Council’s evidence base: a full and proper understand of the Development Plan and its cumulative burdens on development should be the starting point in accordance with the NPPF.
- 4.4 The main elements of the London Plan directly relevant to the Tower Hamlets CIL charge setting process are:
- A target of 46.4% growth in employment from 2007 to 2031 (Table 1.1). LBTH has the highest target compared to all other Boroughs.
  - A ten year housing target of 28,850 new homes up to 2021 and an annual monitoring target of 2,885 (Table 3.1). Again, LBTH has the highest target compared to all other Boroughs.
  - Sustaining and enhancing the Central Activities Zone and the Isle of Dogs as global strategic centres (Policy 2.10).

**LBTH CIL Draft Charging Schedule  
Representations of Canary Wharf Group  
5<sup>th</sup> June 2013**

- Maximising affordable housing provision (Policy 3.11).
  - Funding Crossrail and other strategically important transport infrastructure (Policy 6.5). Including the Mayor's associated SPG on 'Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy' (April 2013).
  - The designation of two Opportunity Areas (Annex 1):
    - City Fringe – which has an indicative employment capacity of 70,000 new jobs and a minimum new homes target of 7,000.
    - Isle of Dogs – which has an indicative employment capacity of 110,000 new jobs and a minimum new homes target of 10,000.
- 4.5 LBTH has adopted a suite of planning policy and guidance documents that are directly relevant to the Tower Hamlets CIL charge setting process. These include:
- Core Strategy (2010).
  - Managing Development Document (2013).
  - Interim Planning Guidance and Masterplans for a number of strategic sites.
- 4.6 The above planning documents collectively place a cumulative burden on development. This is particularly the case in relation to strategic sites located within the City Fringe and Isle of Dogs Opportunity Areas. It is unclear how these planning documents have been taken on-board and informed the Council's approach to CIL setting. This would appear to be an important omission in the context of paragraph 174 of the NPPF and paragraphs 8 and 21 of CLG's CIL Guidance.
- 4.7 As explained in the January 2013 representations (paragraphs 3.12-3.24), CWG is particularly concerned about the Council's allocated sites since these underpin the vision and policies for Tower Hamlets as set out in the Core Strategy and, in respect of the City Fringe Opportunity Area and Isle of Dogs Opportunity Area, have a bearing on the deliverability of the London Plan.
- 4.8 It is recognised that the Draft Charging Schedule includes reference to and consideration of strategic sites (Chapter 7 and Appendix 5 of the BNPP Viability Study), which comprise a selection of sites allocated in the Managing Development DPD. This is additional information that has been provided since the Preliminary Draft Charging Schedule stage. However, CWG is of the strong and considered opinion that the approach to the strategic sites is flawed and inappropriate. Refer to paragraphs 10.1 to 10.9 below.

- 4.9 Overall, CWG ask the Council to clarify how the Development Plan has been accounted for in the Council's CIL evidence base. It is not possible to understand this from the information currently provided and is a significant omission and one that may well require a different methodology to be applied. The evidence base needs to take full account of the policies and requirements arising from the Development Plan.

#### 5.0 Viability Approach/Methodology

*(NB: the January 2013 representations include, at paragraphs 3.44 to 3.48, a number of important comments in relation to the reliability and appropriateness of the BNPP Viability Study. These comments are not repeated here. It is not clear from the Council's 'PDCS: Summary of Consultation Responses' (April 2013) how these comments have been taken into account. Taken as a whole the comments suggest that the Council cannot ascertain whether or not there is a sufficient margin of viability for the proposed CIL rates to be achieved without putting development at serious risk).*

- 5.1 CIL is a form of tax and, once rates have taken effect within a particular area, it is inherently more rigid and fixed compared to the application of planning policy: it cannot be negotiated to suit particular circumstances. Therefore, coupled with the current economic climate, it is critical that Charging Authorities approach CIL setting with a great deal of caution and ensure rates are based on evidence that reflects the normal circumstances under which development viability is assessed and land is released.
- 5.2 It is essential that CIL rates are based on evidence that considers current market conditions. This is in-keeping with the NPPF (paragraph 173), in linking 'willing sellers' of land, 'competitive returns' and 'willing buyers'. Market testing and understanding how developers/landowners bring development land forward is clearly integral to this. Indeed, the Local Housing Delivery Group publication 'Viability Testing Local Plans' (2012) and the RICS's 'Financial Viability in Planning' Guidance Note both talk about the importance of market testing and market 'sense-checking'.
- 5.3 There is no one set way of assessing development viability and the extent to which Market Value as defined in the RICS's Valuation Standards, Eighth Edition is taken into account varies. The Market Value of land is clearly a central concern for landowners when considering whether or not to release land for development. However, it is not the approach used by Tower Hamlets in the formulation of planning policy where the Current Use Value approach to land has been adopted previously in the affordable housing viability study. We note that the latter study pre-dates the adoption of the NPPF.

**LBTH CIL Draft Charging Schedule  
Representations of Canary Wharf Group  
5<sup>th</sup> June 2013**

- 5.4 CIL is, of course, different. As explained above, it is not planning policy. In this context, CWG consider that understanding Market Value, and the effect on the Market of land of the burden of CIL charges, is vitally important in ensuring CIL rates reflect normal circumstances and the considerations associated with bringing Development Plan sites forward.
- 5.5 The Council's Viability Study underpinning the CIL rates demonstrates an inconsistent and unjustified approach in terms of what price it assumes land-owners will bring land forward at. The Study mainly assumes that this will be at the equivalent of Current Use Value plus a percentage premium, but there is no justification for the percentages assumed and very little justification for the adopted current use values. This is not to say that the Current Use Value and Market Value approaches are mutually exclusive, but that in urban locations such as Tower Hamlets, often the two are not aligned and the Current Use Value 'plus' approach is too arbitrary particularly with reference to strategic sites where the Current Use Values are often negligible. Furthermore, there is no market testing or 'sense checking' between the values that have been assumed and land values evident from the market (which could be, and should have been, sourced from land agents and other data sources).
- 5.6 CWG is concerned that the Council cannot know what relative effect their CIL rates will or might have in the absence of market testing.
- 5.7 A fundamental component of market testing is thorough engagement with those developers associated with the strategic / allocated sites that underpin the Development Plan. The Draft Charging Schedule has been prepared by the Council void on any engagement with those developers involved in delivering the sites set out in the Council's Managing Development DPD.
- 5.8 In-keeping with the NPPF, CWG propose the need for further CIL viability studies which involve market testing and meaningful engagement with the development industry. This needs to be undertaken before anybody is able to appreciate what relative effect the proposed CIL rates may have on the market and delivery of development. Until this occurs, it is CWG's opinion that the Council's approach to viability falls short of complying with the NPPF, LHDG and RICS guidance.
- 5.9 Paragraphs 10.1 to 10.9 below provide a more detailed consideration in relation to strategic sites and Enclosure B provides an analysis of the BNPP's inputs into their development appraisal in respect of Wood Wharf.
- 6.0 Residual Section 106 and Section 278 assumptions**

**LBTH CIL Draft Charging Schedule  
Representations of Canary Wharf Group  
5<sup>th</sup> June 2013**

- 6.1 The BNPP Viability Study, which underpins the Council's Draft Charging Schedule, includes a number of standard assumptions in relation to development costs. A central tenet of Government's introduction of CIL is that, to a large extent, it will result in a reduction of Section 106 costs. Whether this is true is very much dependent on the circumstances on a site by site basis. However, clearly if a Charging Authority assumes a standard rate across its area then this should be approached with caution and needs to be justified – particularly if it is doing so for the strategic site allocations that underpin the Development Plan.
- 6.2 As set out in the January 2013 representations, CWG is concerned that the Council has assumed standard Borough-wide rates for Section 106 (and Section 278) based on no analysis or justification. This is inappropriate for such a fundamental development cost and given its critical relationship with CIL rates.
- 6.3 CWG ask that the Council provide justification: for assuming a Borough-wide standard rate, as opposed to a differential rate according to location (e.g. especially in relation to the strategic site allocations); for the level of assumed 'scaling-back' of Section 106 rates (pre- and post-Borough CIL taking effect); for the relationship between the standard rate and the infrastructure items the Council expects (derived from its Infrastructure Plan and other evidence e.g. recent example Section 106 Agreements) to be covered by Section 106 in the future versus CIL.
- 6.4 The Draft Charging Schedule – at Appendix 3 – includes the Council's Draft Regulation 123 List. This is commented on below, but fundamentally the Draft List serves to highlight the inappropriateness of using a broad-brush assumed rate for residual Section 106 and Section 278 in connection with strategic sites (see commentary at paragraphs 8.1 to 9.7 below).
- 7.0 Consideration of recent Section 106 Agreements and Affordable Housing delivery**
- 7.1 The Council has not provided any evidence that considers proposed CIL rates against amounts raised in recent years through Section 106 Agreements and the extent to which affordable housing and other policy targets (e.g. housing supply) have been met. This is a specific requirement of CLG's 'Community Infrastructure Levy: Guidance' (April 2013).
- 7.2 CWG suggest it is essential that the Council undertake a thorough review of previous site specific viability appraisals, levels of affordable housing and Section 106 contributions and make clear why any difference when compared to the proposed CIL rates is justified.

**LBTH CIL Draft Charging Schedule  
Representations of Canary Wharf Group  
5<sup>th</sup> June 2013**

- 7.3 Any increased costs need to be approached with serious caution given the current economic climate and that land values are unlikely to adjust in the short to medium term.

**8.0 Regulation 123 List**

- 8.1 The Council's Draft Charging Schedule includes (at Appendix 3) a Draft Regulation 123 List. This includes a list of items for which Section 106 may not be required. However, we are concerned (especially in the context of comments above in relation to Section 106 assumptions and comments below in relation to strategic sites) that the implications of the final item on the Draft Regulation 123 List have not been properly considered. The final item states:

*"Unless the need for specific infrastructure contributions are identified in the Planning Obligations Supplementary Planning Document or arises from five or fewer developments, where section 106 arrangements may continue to apply if the infrastructure is required to make the development acceptable in planning terms."*

- 8.2 Firstly, it is not clear how the Council has taken into account the typical costs associated with applying its Planning Obligations Supplementary Planning Document (this is currently the subject of public consultation alongside the Draft Charging Schedule). There is no cross-referencing between the Planning Obligations Supplementary Planning Document and the Draft Charging Schedule (including, most importantly, assumptions made for residual Section 106 and 278 Agreements in the Council's Viability Study).
- 8.3 CWG has prepared separate representations to the Council's Planning Obligations Supplementary Planning Document. There are a number of headline issues that these representations raise: principally these relate to how 'those known matters where section 106 contributions may continue to be sought' (CLG Guidance, para 15) has informed the underlying assumptions BNPP has used in formulating the various development appraisals in the Council's CIL Viability Study.
- 8.4 Secondly, the Draft Regulation 123 List allows for Section 106 obligations directly related to making development acceptable in planning terms. This is in accordance with Regulation 122 of the CIL Regulations, but the Council has not considered its implications, which are likely to be substantial. It is a particular concern in relation to strategic sites since typically significant investment in infrastructure is required to both enable and mitigate development.
- 8.5 The Council, in its Viability Study, has made a broad-brush assumption on residential 106 and 278 (as commented on at paragraphs 6.1 to 6.4 above): the same assumption has been made for strategic and non-strategic developments. The inference of the

Council's assumption is that future Section 106 will be scaled back significantly once the Charging Schedule comes in to effect for both strategic and non-strategic developments. The Council recognises the need to look separately at the strategic sites (see paragraphs 10.1 to 10.9 below), but worryingly has not sought to understand or consider those known matters at this stage that will be paid for through Section 106 in accordance with Regulation 122.

8.6 It is CWG's considered opinion that the Council needs to take a more cautious approach to the 'scaling back' of Section 106 for the strategic sites and look at the likely Section 106 costs for each of the strategic sites appraised in Appendix 5 of the Viability Study. This is because, especially for strategic sites:

- Section 106 (and planning conditions) are to remain the primary means of mitigating the direct impacts of development (it is worthy of note in this regard that the statutory tests for Section 106 planning obligations set in Regulation 122 are in effect the same as those that were provided in guidance in Circular 5/2005).
- Because Section 106 continues to be the means through which direct impacts are mitigated, it follows that Section 106 commitments to infrastructure do not automatically legitimise a reduction in CIL. CIL is not intended to secure the mitigation of impacts from individual developments, so that Section 106 obligations which are necessary for a development (whether by way of money or infrastructure) have little to do with CIL.
- A charging authority should not normally assume that CIL is the appropriate way to provide infrastructure which is likely to be necessary for the development of individual sites or groups of up to 4 sites. Apart from risking double charging for such infrastructure, such an approach also runs risks for the robustness of planning decisions which approve development without securing a commitment to the provision of necessary infrastructure on the assumption that it will be provided through CIL. Planning permissions would be more secure if any necessary commitments were the subject of binding Section 106 obligations i.e. no material change to current circumstances.
- The terms of Regulation 123 make it possible for authorities to continue to seek pooled payments towards a particular infrastructure project, or type of infrastructure from up to five developments. This is to cover the position, for instance, where a small number of developments collectively trigger the need e.g. for a new local school. Such payments for specific infrastructure projects remain legitimate under Section 106 – even if CIL is being charged more generally for 'education' as a type of infrastructure, provided that the specific infrastructure projects are excluded from the Regulation 123 list - and can be

**LBTH CIL Draft Charging Schedule  
Representations of Canary Wharf Group  
5<sup>th</sup> June 2013**

useful in enabling developments to come forward hand in hand with necessary infrastructure.

- There are limited circumstances in which CIL can be paid in kind through land or infrastructure. Regulation 73 allows for the payment in kind of CIL but only through the provision of land and the Regulation specifically excludes such arrangements if the land is provided under the terms of a Section 106 obligation. It is appreciated that CLG is currently considered amendments to the Regulations in this respect.

8.7 Overall, in light of the above points, CWG consider that the Draft Charging Schedule could pose a serious risk to the viability and deliverability of development, especially the strategic sites.

#### **9.0 Infrastructure Plan**

9.1 The Council has published an 'Infrastructure Planning and Funding Gap Report' (2013). This is a collation of information simply to demonstrate a funding gap and, therefore, a need to charge CIL. What the Council has not undertaken is a proper assessment of the likely balance between CIL and other planning obligations (including Section 106 and Section 278 agreements) required to deliver the Development Plan and, importantly, the strategic sites underpinning the Plan.

#### **10.0 Strategic Sites**

10.1 Chapter 7 of the BNPP Viability Study provides an analysis of strategic sites (the inputs for an appraisal for each site is then provided at Appendix 5 of the Study albeit the appraisal summaries are not provided). The strategic sites make up a selection of those allocated in the Managing Development DPD. Paragraph 7.4 of the Study states that BNPP has run high level appraisals for eight strategic sites. The Managing Development DPD includes twenty allocated sites which are described as:

*"Site allocations have been identified to plan for strategic housing developments (i.e. sites that can provide over 500 new net-additional homes) which will help the borough meet its housing targets and for key regeneration sites. They have also been identified to ensure the borough has the adequate space and capacity for physical, social and green infrastructure to meet the needs of existing and new communities" (para S11).*

10.2 There is no explanation or justification for how the eight strategic sites have been selected: it appears arbitrary and there is no cross-referencing to the Development Plan targets, policies, objectives.

**LBTH CIL Draft Charging Schedule  
Representations of Canary Wharf Group  
5<sup>th</sup> June 2013**

- 10.3 Table 7.4.1 provides a brief overview of the strategic sites. Nowhere is there a detailed explanation of the actual policy requirements for each of the sites. This is a significant omission as without this there is no way of understanding or testing the cumulative burden of policies on the viability of each site consistent with paragraph 174 of the NPPF.
- 10.4 From Table 7.4.1 it is apparent that all of the strategic sites are currently either wholly or partly owned privately. This is a key point, because in order to ensure the site appraisals are based upon appropriate available evidence and informed by market sense-checking is wholly dependent upon meaningful engagement with the relevant private owners. To CWG's knowledge the appraisals have not benefited from any engagement with site owners. This should have happened at the outset and would have helped prevent the Council consulting on untested and inappropriate evidence. The approach taken by the Council runs counter to paragraph 85 of CLG's CIL Guidance: there has been no proactive engagement by the Council with those developers relevant to the formulation of the strategic site appraisals.
- 10.5 Paragraph 7.6 of the Study explains, fundamentally, that the appraisal modelling has assumed: the value of the completed development less the development costs exclusive of land. It is unclear how these have been derived. As a general point, if one is to fulfil the requirements of the CIL Guidance (paragraph 27 ) then analysis of strategic sites, if it is to have any meaningful conclusions, cannot be based upon sweeping generic appraisal inputs / assumptions. Paragraph 7.11 is a good illustration of the problem. It explains that BNPP has estimated the existing use values of each of the strategic sites and a generic 20% premium to the value, in addition to a 20% buffer to account for individual site constraints. This is artificial insofar that, as explained above, it does not benefit from engagement with relevant site owners and has not been informed by an analysis of the cumulative policy burden for each site.
- 10.6 At paragraph 7.14 of the BNPP study, reference is made to the exclusion of sites that are unviable prior to the implementation of CIL. That is to say that a development site with a residual land value £1 less than the benchmark land value is unviable. It is not unusual for larger sites to be unviable on a present day basis given the often onerous enabling and exceptional costs that these sites derive. The use of more innovative modelling techniques is being used on a number of larger sites to agree S106 obligations that on a present day basis appear unviable. This approach is supported by the RICS. The imposition of CIL at the proposed rates will inhibit the ability of these sites to come forward. It is not clear as to the number of sites that have been discounted or how unviable they are considered to be.
- 10.7 In respect of paragraph 7.15 and CIL as a percentage of the total development costs, we would agree that on a straight percentage basis the figures appear relatively low. However the analysis doesn't take into consideration that the additional cost is an

**LBTH CIL Draft Charging Schedule  
Representations of Canary Wharf Group  
5<sup>th</sup> June 2013**

upfront liability which adds to the funding cost and increases the peak borrowing requirement. The capital amount on the larger sites runs into tens of millions of pounds alongside Crossrail requirements, Mayoral CIL, affordable housing and residual planning obligations. There is a cumulative impact which is not recognised.

- 10.8 As such, we would question the robustness of paragraph 7.16 noting the comments above as an appropriate level of due diligence as not been undertaken in regard the costs of bringing forward the strategic sites.
- 10.9 The appraisals at Appendix 5 are high level summaries. They are difficult to analyse since whilst the individual inputs have been provided the summaries showing the full capital costs and values are excluded and as such it is not possible to understand how the models have been created, albeit we have used the BNPP inputs but derived differing residual outputs. A request has been made to the Council for this information (see letters attached), but it has not been forthcoming. It would be helpful if the Council were to provide a list of all the inputs and outputs for each appraisal so that it is possible for site owners to test these assumptions against their own data and knowledge.

#### **11.0 Other**

- 11.1 Mayor of London CIL: the assumptions for the timing of the payment of the Mayoral CIL appear to be incorrect and have not been accurately reflected in the cash-flows of the various site appraisals contained in the Council's Viability Study. Mayoral CIL has not been 'plugged-in' to the appraisals as a development cost, which it is. As a result, the appraisals do not consider the financial impact and demands of the Mayoral CIL on project financing, particularly on cashflow. Also, the appraisals do not take into account the payment structure for the Mayoral CIL as set out in the Draft SPG: 'Use of planning obligations in the funding of Crossrail and the Mayoral Community Infrastructure Levy' (November 2012).
- 11.2 Mayor of London Crossrail tariff: paragraphs 2.9-2.16 of the Viability Study explains that the Mayor's Crossrail tariff has been taken into account. This is not particularly clear from the various appraisals and needs to be clarified.

End.

**ENCLOSURE B:  
STRATEGIC SITE APPRAISAL FOR WOOD WHARF**

Appendix 5 of the BNP Paribas 'Community Infrastructure Levy: Viability Study' (March 2013) includes a high level summary appraisal for Wood Wharf. This has not been prepared through any engagement with CWG. The appraisal relies upon a series of broad-brush generic inputs and assumptions. These do not provide appropriate evidence. The Council cannot rely upon the summary appraisal as a reflection of the actual circumstances under which the Wood Wharf site would be delivered.

Wood Wharf is an important site both in delivering the objectives of the London Plan (it is located within the Isle of Dogs Opportunity Area) and the LBTH Core Strategy / Managing Development Document (it is allocated as a strategic site and is expected to contribute substantially to housing and job targets). The site benefits from a suite of specific planning policy and guidance, particularly relevant is the allocation within LBTH Managing Development Document and the adopted Wood Wharf Masterplan (2003).

The site allocation provide in the LBTH Managing Development Document is, in summary, as follows: *"A comprehensive mixed use development opportunity required to provide a strategic housing development, an Idea Store, a health facility and a district heating facility (where possible). The development will also include a substantial amount of commercial floorspace and other compatible uses."*

The comprehensive redevelopment of Wood Wharf is dependent on overcoming a number of major constraints and requires significant upfront enabling site preparation and infrastructure costs. These need to be taken into account in any appraisal of the site.

Given the strategic nature of the site and associated policy / guidance requirements, Wood Wharf is expected to deliver substantial planning and community benefits (e.g. an Idea Store, health facility, publicly accessible open space, activated waterspace, a new canal link). The manner in which these benefits will be delivered and their associated costs needs to be taken into account by the Council at the CIL setting stage.

In the context of the above, DS2, with the assistance of CWG on a number of the major cost items, has set out below a number of detailed comments in relation to the BNP Paribas high level appraisal.

It is concerning that the strategic appraisals are consistent in terms of their inputs with the 'standard' development appraisals. There is no recognition of the differing dynamics between the two types of development. In particular, there are significant areas of concern related to development type and quantum, development efficiency, core and exceptional build costs and land value. The following table provides a review of the BNP Paribas inputs with comments provided alongside. These comments are provided on a without prejudice basis.

**LBTH CIL Draft Charging Schedule  
Representations of Canary Wharf Group  
5<sup>th</sup> June 2013**

<b>Viability Input</b>	<b>BNPP Assumption</b>	<b>DS2 comment</b>
Site area	Gross 7.26 ha, net 6.46 ha	Gross figure from LBTH Development Management DPD Site Allocation.  Question in regard the approach to deriving net site area. Please can this be clarified by the Council / BNP Paribas? In particular, why has site area for a health facility been removed? Land will not be transferred to the Council for this.
Density	464 u.p.ha	How has this been derived? What assumptions has BNP Paribas made to conclude this level of density?
Land use mix	Residential, commercial and health facility	Site allocation also includes an Idea Store.  As above, question in regard how the provision of a health facility has been accounted for.
Development Quantum	2,960,942 sq ft GIA residential, 2,906,280 sq ft offices and 290,628 sq ft retail	Please can the Council / BNP Paribas clarify how this development quantum has been derived and what assumptions have been made?
Unit mix	10% 1 bed 25% 2 bed 30% 3 bed 35% 4 bed	Please can the Council / BNP Paribas clarify how this development quantum has been derived and what assumptions have been made? A different approach to unit mix appears to have been taken to each of the strategic sites.
Gross to net ratio	82%	Previous scheme sub 65% A typical mixed use scheme would be in the region of 70%.
Private sales rate	£700 psf	Reasonable
Affordable Sales rate	£171 psf	This is a reasonable assumption based on LBTH's position on Affordable Rent, GLA caps on intermediate provision affordability and zero grant

**LBTH CIL Draft Charging Schedule  
Representations of Canary Wharf Group  
5<sup>th</sup> June 2013**

Car parking income	£15,000 per space	On the low side, £25,000 per space is reasonable
Ground rent income	£4,500 per private dwelling	Reasonable
Retail income	£30 psf, 6.25% yield and 18 months' rent free	Reasonable
Office income	£35 psf, 6.25% yield and 18 months' rent free	18 months' rent free is a little light. 24 more reasonable for a short tenure lease, or 36 for longer duration
Contingency	5%	Higher figures have been accepted elsewhere for complicated (strategic) construction projects. Please see comment on construction costs below.
Private residential profit	20% on value	On this multi phased project, with high up-front costs, a 20% unlevered IRR would be more reasonable.
Affordable profit	6% on value	See above for IRR comment for project as a whole.
Commercial property profit	Not stated	See above for IRR comment for project as a whole.
Build costs	£177 per sq ft residential; £200 psf offices; £150 psf retail	The residential costs are significantly below our current experiences of similar sized schemes across London. £220 to £250 psf on the GIA (exclusive of external works) is a more realistic figure once basement areas are considered.
Exceptionals / Abnormals	£14,987,000	This is an inadequately serviced plot, requiring significant investment in bridges, roads, flood defences, utilities, stat connections, water-frontage etc. A figure between £100m and £150m would be more reasonable (before basements).
Marketing	1.5%	2% accepted elsewhere for residential and circa £1.50 psf for retail / offices

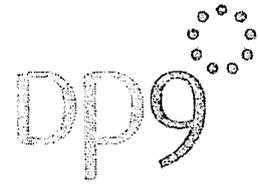
CIL - DCS26

**LBTH CIL Draft Charging Schedule  
Representations of Canary Wharf Group  
5<sup>th</sup> June 2013**

Sales agent	1%	2% for joint agency residential instruction
Sales legal fee	0.25%	Reasonable although up to 0.5%
Letting fee	10%	Joint agency instruction (which is applicable to this scale of development) would be 15%
Professional fees	10%	12% to 14% for strategic development given the inherent complications
Finance	7%	Low for all-in finance costs once arrangement fees and commitment fees are included. However, as above, scheme should be appraised on unlevered IRR
Planning Obligations (s106 and s278)	£1,220 per unit	It requires an analysis that is site specific and an understanding of the cumulative burden of planning policies and guidance
Site Value	CUV of £112m	BNPP figure needs explanation. No reference to NPPF para 173 or requirement to sense check against market evidence

Planning Consultants

22 April 2013



Anne-Marie Berni  
 Infrastructure Planning Manager  
 Infrastructure Planning Team  
 London Borough of Tower Hamlets  
 Mulberry Place  
 PO Box 55739  
 5 Clove Crescent  
 London E14 1BY

100 Pall Mall  
 London SW1Y 5NQ

Registered No. 05092507

Telephone 020 7004 1700  
 Facsimile 020 7004 1790

www.dp9.co.uk

Dear Anne-Marie,

**Consultation on the Community Infrastructure Levy (CIL) Draft Charging Schedule:  
 Request for Argus Summary Appraisals for Wood Wharf and Bishopsgate Goods Yard**

Thank you for your letter of today in relation to the Council's public consultation on its proposed CIL Draft Charging Schedule. We note that this includes an updated Viability Study (March 2013) prepared by BNP Paribas. This Study now includes viability information for Strategic Sites at Chapter 7 and Appendix 5.

DP9 is instructed – alongside development viability specialists DS2 – to undertake a review of the Draft Charging Schedule on behalf of Canary Wharf Group and Bishopsgate Goods Yard Regeneration Limited. We are, therefore, particularly interested in the viability work that BNP Paribas has undertaken for two of the Strategic Sites: Wood Wharf and Bishopsgate Goods Yard.

Appendix 5 of the updated Viability Study includes high level appraisal inputs and a residual land value for each of the Strategic Sites. We request that BNP Paribas and the Council make available copies of the Argus Summary Appraisal printouts that have been used to calculate the residual land values for each of the Strategic Sites, in the same way that they have been provided, for example, in the Viability Study undertaken by BNP Paribas in support of the London Borough of Southwark CIL Draft Charging Schedule. Given the scale and complexity of development allocated to come forward within the Strategic Sites, analysis of the appraisal inputs as currently presented in Appendix 5 of the Viability Study without reference to the cost and value capital amounts that are generated is insufficient to enable a proper analysis of the Council's evidence base.

We trust that the Argus Summary Appraisals for Wood Wharf and Bishopsgate Goods Yard are readily available. We ask that these be issued to us promptly given their importance in determining the nature and content of representations to the Draft Charging Schedule.

Should you have any queries in relation to the content of this letter please do not hesitate to contact Craig Tabb of this office.

CIL - DCS 26

Development Consultants

DS2

PL/ds  
13 May 2013

Craig Tabb  
Partner, DP9

*By email only*

Dear Craig,

Development Services 2 LLP  
100 Pall Mall  
London SW1Y 5NQ  
Telephone 020 7004 1760  
Facsimile 020 7004 1790  
www.ds2.co.uk

**LONDON BOROUGH OF TOWER HAMLETS – COMMUNITY INFRASTRUCTURE  
LEVY (CIL) DRAFT CHARGING SCHEDULE**

Thank you for providing a copy of Anne-Marie Berni's letter of 3<sup>rd</sup> May 2013 in response to DP9's request for additional information (letter of 22<sup>nd</sup> April 2013) relating to the strategic site development appraisals included as part of the BNP Paribas Viability Study (March 2013).

We have recreated the appraisals for Wood Wharf and Bishopsgate Goods Yard using the BNP Paribas inputs as suggested. However, we have not derived the same residual outputs. This is not surprising and could be for a number of reasons. We would anticipate that the variations in residual land value are likely caused by differences in timings, phasing and the inclusion in a number of the appraisals of significant tranches of commercial property income. The timing of all of these has a substantial impact on the costs of funding projects and the subsequent profitability, viability and deliverability of development.

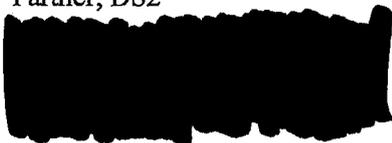
If the appraisal summaries were provided, as has been done by BNP Paribas in the London Borough of Southwark in their equivalent CIL viability assessment, it would allow us to compare the headline costs and values and understand where the variations are in the models.

Therefore, we would be grateful if you would pass on our request for the appraisal summaries and summary cash flows so that we can interrogate the models thoroughly. Please let me know if anything is unclear.

Yours sincerely,

**Pascal Levine MRICS**

Partner, DS2





Yours sincerely,

A handwritten signature, possibly reading "DP9", written in black ink.

DP9

A large, solid black rectangular redaction covering the signature and any text that might have been present below it.

Planning Consultants

CIL - DCS26



CDT/jr/DPNF

05 June 2013

CIL Consultation,  
Infrastructure Planning Team,  
London Borough of Tower Hamlets,  
2nd Floor Mulberry Place,  
5 Clove Crescent,  
London  
E14 2BG

100 Pall Mall  
London SW1Y 5NQ

Registered No. 05092507

telephone 020 7004 1700

facsimile 020 7004 1790

www.dp9.co.uk

Dear Sirs,

**REVISED PLANNING OBLIGATIONS SPD – MARCH 2013  
SUBMISSION OF REPRESENTATIONS BY CANARY WHARF GROUP**

On behalf of Canary Wharf Group, we write to submit representations to the above document, as set out below. These representations are to be read alongside those submitted by Canary Wharf Group in relation to the Council's CIL Draft Charging Schedule.

**Representations:**

1. It is explained, on pages 3 and 4 that the purpose and objective of the Draft SPD is to, inter alia: explain the relationship between CIL and Section 106 planning obligations; improve transparency in the priority and calculation of planning obligations; provide a consistent methodology for calculating obligations; provide more certainty to all parties. Overall, the Draft SPD is high-level and broad-brush. It goes some way to assisting developers in understanding the main topics and items that the Council will typically seek to be included within Section 106 or 278 Agreements.
2. The document falls short of providing greater certainty or transparency for the development industry. This is especially the case regarding the relationship between planning obligations and CIL. The 'tick-box' style approach taken in Chapter 2 of the document is over simplified, particularly in respect of the Council's strategic sites. It would appear, for example, that unless a developer is able to transfer land to the Council, then in-kind on-site infrastructure will continue to be secured through planning obligations. The likelihood and complications around transferring land to the Council is not considered and ought to be more fully addressed. This then needs to feed through to the Council's approach and thinking in relation to their CIL setting. In our opinion, payment in kind through the transfer of land is very unlikely to occur – especially for multi-phased mixed use strategic developments – and should not be the Council's base assumption (e.g. see paragraphs 2.13, 2.15, 2.17 and 2.20).
3. Paragraph 1.1 of the document explains that the Council "will consider the combined impact of [Section 106 planning obligations, CIL, planning conditions and Highways Section 278 agreements] ... on development when considering any planning decision." Linked to this the Council addresses, albeit briefly, the matter of development viability at paragraphs 5.14-5.17. What the Council has not done – either as part of the this Draft SPD or the evidence base supporting the CIL Draft Charging Schedule – is consider the



anticipated cumulative burden of adopted planning policies on development viability / deliverability (in particular, the strategic sites allocated in the Council's Managing Development Document) in accordance with paragraph 174 of the NPPF. How does the Draft SPD and the Council's CIL Draft Charging Schedule relate to the adopted Development Plan and required infrastructure? Chapter 4 of the Draft SPD provides an explanation of the policy and guidance context. It is brief and does not explain the relationship between the Draft SPD and the Council's infrastructure planning. This is an important omission.

4. The Council's CIL Draft Charging Schedule has been based on an assumption that the combined cost of Section 106 and Section 278 Agreements will be £1,220 per residential unit (and nil for non-residential uses). How has this assumption been derived? It ought to be a consideration of the likely costs of development complying with the typical planning obligations set out in the Draft SPD. The assumption appears unrealistically low considering the various topics and obligations addressed in the Draft SPD, especially for strategic developments. This needs to be addressed by the Council, both in responding to representations on the Draft SPD and the CIL Draft Charging Schedule.
5. Paragraphs 2.1-2.6 serve to demonstrate that, once LBTH's CIL has taken effect, there will actually be little change in the approach to – and the ability for the Council to require – Section 106 and Section 278 planning obligations for strategic development. We have highlighted this point in our representations to the Council's CIL Draft Charging Schedule. The matter needs to be addressed, and further evidence base produced, before the Council adopts the Draft SPD or submits their Draft Charging Schedule for Public Examination.
6. Paragraph 4.3 refers to Circular 05/2005. It states that the Circular “remains relevant to negotiating and administering planning obligations”. Annex 3 of the NPPF provides a list of all documents that have now been deleted. At item 31, this includes Circular 05/2005. The Council appears to have misunderstood the provisions of the NPPF. The Draft SPD needs to be considered afresh and amended accordingly. We note that Circular 05/2005 is referred to a number of times through the document (see, for example, paragraphs 5.1 and 6.2).
7. The document needs to be thoroughly checked: there appear to be a number of basic errors. For example, paragraph 4.16 refers to a summary of two DPD documents, but then only lists the Council's Managing Development Document. The publication date of the National Planning Policy Framework is noted in various places as 2011. It was adopted and published in 2012. Commentary and explanation of the Council's Managing Development Document needs to be updated as the document has been adopted.

Overall, the Draft SPD needs to be re-considered by the Council in the context of the above points. This needs to happen alongside a consideration of representations submitted to the CIL Draft Charging Schedule. In our opinion a revised Draft SPD should be made available for comment through a further round of public consultation – this is especially necessary given the Council's misunderstanding of the position regarding Circular 05/2005. This further round of consultation should occur in advance of the Council submitting their CIL Draft Charging Schedule for Public Examination.

As explained in our CIL Draft Charging Schedule representations, we welcome further dialogue once the Council has had the opportunity to consider these representations. Please contact Craig Tabb of this office should you have any queries or wish to discuss the above points.

CIL-DCS26



Page 3

Yours faithfully,

DP9

DP9

CIL - DCS 27

Planning Consultants

OBS/HF/DP2100

5<sup>th</sup> June 2013

CIL Consultation  
 Infrastructure Planning Team  
 London Borough of Tower Hamlets  
 2nd Floor Mulberry Place  
 5 Clove Crescent  
 London  
 E14 2BG

100 Pall Mall  
 London SW1Y 5NQ

Registered No. 05092507

telephone 020 7004 1700

facsimile 020 7004 1790

www.dp9.co.uk

Dear Sirs,

**DRAFT CIL CHARGING SCHEDULE – MARCH 2013**  
**REVISED PLANNING OBLIGATIONS SPD – MARCH 2013**  
**SUBMISSION OF REPRESENTATIONS BY LONDONNEWCASTLE**

On behalf of Londonewcastle, we write to submit representations to the above documents.

Londonewcastle are a major residential and mixed use developer with a number of projects in the Borough. This will therefore have implications on current and future projects.

Following a review of the Draft CIL Charging Schedule (DCS) and the supporting documentation, Londonewcastle are concerned that an appropriate balance has not been struck between the need to fund necessary infrastructure and the potential economic viability of development across the borough; and that the Charging Authority has also not complied with the requirements set out at paragraph 9 of CLG's 'Community Infrastructure Levy: Guidance' (April 2013).

***National Planning Policy Framework***

*“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.” (para 173)*

*“Where practical, Community Infrastructure Levy charges should be worked up and tested alongside the Local Plan. The Community Infrastructure Levy should support and incentivise new development, particularly by placing control over a meaningful proportion of the funds raised with the neighbourhoods where development takes place.” (para 175)*



The above extracts from the National Planning Policy Framework ('NPPF') provide a number of important policy steers in the formulation of CIL Charging Schedules. Of particular note:

- Planning policy should be deliverable.
- CIL charges, where practical, should be prepared and tested alongside the Development Plan.
- CIL should support and incentivise development.

The NPPF is therefore clear in that it requires local planning authorities to pay due regard to the implications of any obligations on development. For the majority of sites, CIL is one of the main financial obligations which could impact on viability, affecting the ability of development to come forward and ultimately the delivery of the Development Plan objectives.

### ***Statutory Guidance***

Charging Authorities are legally required to have regard to the CLG statutory guidance document – 'Community Infrastructure Levy Guidance (April 2013) – when setting their proposed CIL levels.

The statutory guidance provides important detail guiding how Charging Authorities should go about preparing Charging Schedules and the nature of supporting evidence base material that is necessary. The statutory guidance is consistent with the central theme of the NPPF: planning policy should be deliverable and the viability of Development Plan sites should not be put at risk.

Fundamentally, the statutory guidance supports the representations set out below. The following extracts are of particular significance:

*"Charging schedules should be consistent with and support implementation of up-to-date Local Plans" (para 4)*

*"...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. As set out in the National Planning Policy Framework in England, the ability to develop viably the sites and the scale of development identified in the Local Plan should not be threatened." (para 8)*

*"The independent examiner should establish that:*

- *the charging authority has complied with the requirements set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations*
- *the charging authority's draft charging schedule is supported by background documents containing appropriate available evidence*
- *the proposed rate or rates are informed by and consistent with, the evidence on economic viability across the charging authority's area; and*

- *evidence has been provided that shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole.” (para 9)*

*“In addition, a charging authority should sample directly an appropriate range of types of sites across its area in order to supplement existing data, subject to receiving the necessary support from local developers. The focus should be in particular on strategic sites on which the relevant Plan relies and those sites (such as brownfield sites) where the impact of the levy on economic viability is likely to be most significant.” (para 27)*

*“Charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area. Charging authorities should show, using appropriate available evidence, including existing published data, that their proposed charging rates will contribute positively towards and not threaten delivery of the relevant Plan as a whole at the time of charge setting and throughout the economic cycle.” (para 30)*

*“The Government expects charging authorities will work proactively with developers to ensure they are clear about charging authorities’ infrastructure needs and what developers will be expected to pay for through which route. This is so that there is no actual or perceived ‘double dipping’, with developers paying twice for the same item of infrastructure.” (para 85)*

*“The charging authority’s proposed approach to the future use of any pooled section 106 contributions should be set out at examination and should be based on evidence.” (para 89)*

### **Representations to LBTH CIL Draft Charging Schedule**

Tower Hamlets has the highest housing targets of any London borough at 28,850 units over a ten year period, as set out in the adopted London Plan. To meet the housing target in the London Plan will ultimately require the delivery of housing on brownfield sites, and it is these sites which are identified in the CLG Guidance as having the potential for their economic viability to be most significantly affected by CIL.

Londonewcastle are concerned that the residential values within the different CIL Zones do not accurately reflect the different residential values across the Borough. It is considered that insufficient evidence has been provided to support the different CIL rates identified within the DCS.

Paragraph 34 of CLG’s statutory guidance document explains that Charging Authorities can set differential levy rates for different geographical zones provided that those zones are defined by reference to the economic viability of development within them. The BNPP Viability Study does not adequately explain or justify the link between development viability and different geographical charging zones.

The DCS identifies three different Residential CIL Charging Zones. Londonewcastle does not agree with the boundaries to these zones, nor the large disparity between the rates applicable to these zones and considers they do not reflect the wide variation in values for residential development across the Borough.



The administrative area of Tower Hamlets is a Borough which experiences significant disparities in economic wealth, which is reflected in the value of residential property. As a result, there are wide variations in residential values over small areas, with high value and low value pockets throughout the Borough.

Londonewcastle is concerned that the current identification of 3 very broad zones and the large differential in charging rates applicable to them will threaten the viability of development in the less valuable locations within each Zone and it considers that a more detailed assessment is required of price variations in the Borough with the identification of more charging zones and a more diverse charging rate.

### ***The Regulation 123 List and S106 costs***

The Viability Study makes an assumption in relation to the level of S106 contributions which would be payable by schemes at £1,220 per residential unit. This is a very precise figure and there is no explanation as to how this has been calculated or what infrastructure it could cover.

It is assumed that there must have been some benchmarking against previous S106 costs. The need to undertake an exercise of benchmarking against recent Section 106 obligations has now been recognised by CLG. Paragraph 22 of the new Statutory Guidance explains, at paragraph 22, that *“as background evidence, the charging authority should ... prepare and provide information about the amounts raised in recent years through section 106 agreements. This should include the extent to which affordable housing and other targets have been met.”*

Londonewcastle is concerned that the Council has not considered the S106 costs sufficiently to be certain that the S106 levels would not exceed the £1,220 per unit identified.

In relation to the Regulation 123 list published at Appendix 3, we would make the comment that this is a very generic list and does not provide any clarity on what infrastructure will be provided as part of CIL. It is important that the Regulation 123 list is transparent.

### **Representations to LBTH Revised Planning Obligations SPD**

In relation to the requirements for energy contributions, our client objects to the requirement that developments not meeting the carbon reduction targets should pay a contribution. There are sites that, due to their physical constraints, will not be able to meet the carbon reduction targets and in these circumstances it is unreasonable to request a ‘top-up payment’.

Our client has a similar comment in relation to the proposed obligations for biodiversity. There is no clarity on what threshold levels need to be met before a payment is triggered. Furthermore, the obligations would seem to penalise those sites that, for physical reasons, are not capable of contributing to biodiversity.

The significant missing element of the SPD relates to the actual level of contributions which are being sought. Without these, it is difficult to understand the impact of the obligations on the viability of development and how these relate to CIL. This also relates back to the point made earlier that the £1,220 S106 cost factored into the appraisals is not robust.

**Conclusion**

Overall, Londonewcastle are concerned that the evidence base presented to underpin the Draft CIL Charging Schedule is not robust and the consequences of adopting the Charging Rates set out within it have not been properly considered. There are two fundamental areas of concern. The first relates to the lack of evidence supporting the CIL rates proposed by the Charging Authority; and the second relates to insufficient weight being given to the implications CIL will have on the viability of development, including the delivery of the Borough's housing targets.

In relation to the Revised Planning Obligations SPD, it is considered that greater clarity is required on when the obligations apply. Fundamentally, the costs of the obligations need to be made clear to understand the impact on viability and to be able to comment in detail.

We look forward to receiving confirmation of receipt of our comments and would ask that we be kept updated of any future changes to either of the documents, and any additional opportunities for further consultation.

Should you wish to discuss any of our comments, please contact Oliver Sheppard or Holly Farrow of this office.

Yours faithfully,



**DP9**

**TURLEYASSOCIATES**25 Savile Row  
London  
W1S 2EST: 020 7851 4010  
F: 020 7851 4020

www.turleyassociates.co.uk

Our reference:  
TRAL2001

Your reference:

Email:  


5 June 2013

**Delivered by email**CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2nd Floor Mulberry Place  
5 Clove Crescent  
London  
E14 2BG

Dear Sirs,

**LONDON BOROUGH OF TOWER HAMLETS COMMUNITY INFRASTRUCTURE LEVY (CIL): DRAFT CHARGING SCHEDULE (March 2013)**

We act on behalf of Travelodge Hotels Ltd (Travelodge) and write in response to the current consultation being undertaken by the Council in respect of the Community Infrastructure Levy (CIL): Draft Charging Schedule (March 2013).. The next stage in the process is to submit the Draft Charging Schedule for Examination, following consideration of comments to the current consultation. The content of the enclosed representations is focused upon the proposed charging rate for hotel development within the Borough based on the detail contained within the CIL: Draft Charging Schedule (2013) and CIL: Viability Study (2013)

It is also noted that the Council is consulting on its *Planning Obligations Supplementary Planning Document* which seeks to define where S106 will be sought and where CIL will be sought, with respect to the delivery of infrastructure in the Borough.

Travelodge, as a national budget hotel operator, has a clear interest the Borough's proposed CIL charge rates and its impact on the feasibility of delivering development. Throughout the recession, Travelodge has developed new hotels alongside its development partners. However, as well as for other property sectors, development is becoming increasingly difficult and frustrated through the increasing demands of property legislation, planning, availability of funding and now CIL.

Overall Travelodge consider that CIL is an onerous requirement on development projects through its inherent inflexibility. Borough wide CIL charging schedules coming forward, combined with site specific S106 contributions and the already adopted Mayoral Crossrail CIL levy means that hotel development within London will be severely impacted upon and will become unviable in most instances. This includes within the London Borough of Tower Hamlets. In fact, particularly within Tower Hamlets due to the very high rate proposed for hotel development compared to other London Boroughs and hotel development viability generally.

**CIL: Draft Charging Schedule (March 2013)**

Section 5 of the Draft Charging Schedule sets out the 'Rates of CIL' proposed by the Council for the Borough. It is noted that *'the Council intends to charge differential rates of CIL, which are to be determined*

*by the land use of a proposed development (expressed as pounds per square metre) and by the area where a proposed development is situated'.*

The proposed CIL rate per square metre (GIA) of development for hotel use is £210 and it is noted that this is exclusive of the London Mayoral CIL applicable to Tower Hamlets at £35 per square metre. The proposed CIL rate for hotel use is £210 across the whole Borough. However, the text above, taken from the Draft Charging Schedule at paragraph 5.1 states that a differential rate should be applied dependent on where the proposed development is situated. This clearly is not the case in its application to hotel use.

It is considered that additional CIL charging zones should be created for hotel development with corresponding mapping to illustrate the differential rates of CIL charge (and with much lower rates than currently proposed) for hotel development, as is the case for other development uses, such as residential. This would demonstrate that an appreciation of the diverse economic context that exists within the Borough has also been accounted for in respect to hotel development. Leaving the CIL charge rate unchanged across the entire Borough, will most certainly mean in many instances that no development will take place in particular areas, such as areas that are increasingly further from the City fringe.

The CIL Charging Schedule has therefore failed to appropriately consider the economic disparities that exist within the London Borough of Tower Hamlets and has resulted in a single charge rate being proposed across the whole Borough for hotel development. The proposed CIL charge and lack of variation depending on location will be responsible for adversely impacting on hotel development proposals; which is clearly not the intention of CIL.

Further, in Appendix 2, Section 5 'Reporting and Review' it states that '*the Council will keep the operation of the CIL and the position regarding the funding and economic viability evidence under continual review and where necessary, will seek to renew the Charging Schedule in accordance with the latest Government guidance and legislation*'. From this statement it is unclear what is meant by 'continual review'. It is also not clear if this information will be available for public viewing. It is our view that any updated economic viability information informing the Council's position with respect to the viability of development proposals should be made available at an early stage with the development industry. It should also be acknowledged that CIL is not flexible and can only be charged based on an adopted Charging Schedule and any revised rate can only be used if the Charging Schedule is renewed and consulted upon. To avoid the need to renew the Charging Schedule in the very short term, it is considered that the issues raised above and below, with respect to hotel use should be addressed now, based on further and more detailed evidence.

#### **CIL: Viability Study (March 2013)**

The CIL: Viability Study has been prepared by BNP Paribas Real Estate. The Study states that *after allowing for Mayoral CIL, a potential Crossrail top up as well as a buffer, which we consider to be appropriate to deal with site specific factors, we suggest the Council considers a rate of £210 per square metre, for such uses across the Borough.* This confirmed in Table 1.9.1 Proposed CIL rates. From reviewing the Viability Study, it is unclear how the *buffer to deal with the site specific factors* has been calculated or considered. As such we are unable to provide any informed comments on this, other than requiring this to be transparent in its application to the proposed CIL charge rate.

The most fundamental issue with the Viability Study and in fact the Charging Schedule is the rate charged for hotel development as this has not been informed by appropriate evidence and by undertaking an appropriate number of viability appraisals,

Table 4.48.1 'commercial appraisal assumptions for each use' sets out the viability consultant's development assumptions. This information has then been used to inform the viability appraisals for use classes. On immediate review of this table with respect to hotel use, it is evident that the rent per square foot assumed for the single hotel appraisal undertaken is significantly more (between 80%-100% more) than what is achievable for Travelodge (and most likely other budget hotel operators) across the Borough. The rate adopted is seemingly for a City Fringe location; however, even then this is still in the order of 60% higher than is realistic for Travelodge in such locations. The rental assumption adopted is not therefore realistic or achievable in practice for any location across the Borough and is therefore not helpful in informing an appropriate CIL charge rate for the Borough. The other assumptions adopted for hotel development are reasonable.

What is noted further is that although it may be useful to undertake discussions with local agents and work from assumptions in respect of these commercial inputs, it would be of greatest benefit to inform commercial appraisals with information provided directly by developers and operators that will deliver development. Gathering an appropriate evidence base to inform CIL charging schedules is being advocated by the Government, in DCLG's latest consultation '*Consultation on Community Infrastructure Levy (CIL) Further Reforms*'. These also require a charging authority to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy on economic viability of development across an area.

It is Travelodge's view that the evidence base test needs to ensure that in preparing a charging schedule for hotel development that the charging authority has:

- a) Undertaken a number of hotel economic viability appraisals, adjusting the various assumptions as appropriate (to provide for sensitivity testing), and to undertake assessments for hotel schemes in different locations across the Borough; and
- b) Engaged with the hotel development sector to gather market information to input into the viability assessments.

This clearly has not been undertaken.

From reviewing the hotel appraisals undertaken, it is also unfortunate that Appendix 4 does not include the two viability appraisals for hotel use as intended; instead including the second hotel development appraisal "Hotel (2)" twice. It is assumed that a Hotel (1) appraisal has also been undertaken but to what its contents may comprise is unknown. What is also unknown is how this appraisal has informed the proposed CIL charge rate for hotels and where the location of this hotel is within Tower Hamlets.

As per the assumptions noted above, the Hotel (2) appraisal included in Appendix 4 comprises a budget hotel appraisal but its location within Tower Hamlets is on the City fringe. As the appraisal is located on the City fringe it represents the highest values and is not representative of the budget hotel market across the whole of Tower Hamlets. Further, as noted above, the assumptions made in the appraisal are not a real representation of what a budget hotel operator could achieve even in this City fringe location. The use of a single hotel appraisal in this way skews appraisal results significantly and cannot be considered as an appropriately tested evidence base to inform CIL for hotel use. What is also concerning is the lack of evidence for Hotel (1) appraisal, what this hotel type comprises and its location within the Borough.

Overall it is considered that the hotel appraisal that is included within the Study is questionable for the reasons explained and cannot alone inform the CIL charge for hotel development across the Borough; more evidence and viability testing of a greater number of schemes is required.

**Conclusion**

Overall, CIL should not worsen viability and prejudice development. To enable a charging authority to fully understand the potential effects of a hotel levy on the economic viability of development, a greater number of hotel comparables need to be appraised and with hotel sector input. The supporting text to the Draft Charging Schedule states that a differential CIL rate should be applied dependent on where the proposed development is situated. This is clearly not the case with respect to hotel use. Proposing a CIL charge rate for hotels at £210 across the entire borough will not serve to provide funding for infrastructure as this rate will prevent hotel development coming forward and therefore will not achieve the aim of CIL.

We would welcome the opportunity to further discuss with the Council and its consultant's viability inputs with respect to hotel development within the London Borough of Tower Hamlets.

I trust that these representations will be taken into account in advance of submitting the CIL Charging Schedule for examination. We also request to appear at the Examination.

Yours faithfully

A large black rectangular redaction box covering the signature of Kiran Ubbi.

**Kiran Ubbi**  
**Planner**

CIL - DCS 29

Planning Consultants

CEMc/HF/DP2874

5<sup>th</sup> June 2013

CIL Consultation  
 Infrastructure Planning Team  
 London Borough of Tower Hamlets  
 2nd Floor Mulberry Place  
 5 Clove Crescent  
 London  
 E14 2BG

100 Pall Mall  
 London SW1Y 5NQ

Registered No. 05092507

telephone 020 7004 1700

facsimile 020 7004 1790

www.dp9.co.uk

Dear Sirs,

**DRAFT CIL CHARGING SCHEDULE – MARCH 2013**  
**REVISED PLANNING OBLIGATIONS SPD – MARCH 2013**  
**SUBMISSION OF REPRESENTATIONS BY MPG ST KATHARINE LP**

On behalf of MPG St Katharine LP, we write to submit representations to the above documents.

MPG St Katharine are the owners of St Katharine Docks.

Following a review of the Draft CIL Charging Schedule (DCS) and the supporting documentation, MPG St Katharine are concerned that an appropriate balance has not been struck between the need to fund necessary infrastructure and the potential economic viability of development across the borough; and that the Charging Authority has also not complied with the requirements set out at paragraph 9 of CLG's 'Community Infrastructure Levy: Guidance' (April 2013).

***National Planning Policy Framework***

*“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.” (para 173)*

*“Where practical, Community Infrastructure Levy charges should be worked up and tested alongside the Local Plan. The Community Infrastructure Levy should support and incentivise new development, particularly by placing control over a meaningful proportion of the funds raised with the neighbourhoods where development takes place.” (para 175)*

CIL-DCS 29



The above extracts from the National Planning Policy Framework ('NPPF') provide a number of important policy steers in the formulation of CIL Charging Schedules. Of particular note:

- Planning policy should be deliverable.
- CIL charges, where practical, should be prepared and tested alongside the Development Plan.
- CIL should support and incentivise development.

The NPPF is therefore clear in that it requires local planning authorities to pay due regard to the implications of any obligations on development. For the majority of sites, particularly those of a strategic nature, CIL is one of the main financial obligations which could impact on viability, affecting the ability of development to come forward and ultimately the delivery of the Development Plan objectives.

### ***Statutory Guidance***

Charging Authorities are legally required to have regard to the CLG statutory guidance document – 'Community Infrastructure Levy Guidance (April 2013)' – when setting their proposed CIL levels.

The statutory guidance provides important detail guiding how Charging Authorities should go about preparing Charging Schedules and the nature of supporting evidence base material that is necessary. The statutory guidance is consistent with the central theme of the NPPF: planning policy should be deliverable and the viability of Development Plan sites should not be put at risk.

Fundamentally, the statutory guidance supports the representations set out below. The following extracts are of particular significance:

*"Charging schedules should be consistent with and support implementation of up-to-date Local Plans" (para 4)*

*"...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. As set out in the National Planning Policy Framework in England, the ability to develop viably the sites and the scale of development identified in the Local Plan should not be threatened." (para 8)*

*"The independent examiner should establish that:*

- *the charging authority has complied with the requirements set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations*
- *the charging authority's draft charging schedule is supported by background documents containing appropriate available evidence*
- *the proposed rate or rates are informed by and consistent with, the evidence on economic viability across the charging authority's area; and*

## CIL-DCS 29

- *evidence has been provided that shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole.*” (para 9)

*“In addition, a charging authority should sample directly an appropriate range of types of sites across its area in order to supplement existing data, subject to receiving the necessary support from local developers. The focus should be in particular on strategic sites on which the relevant Plan relies and those sites (such as brownfield sites) where the impact of the levy on economic viability is likely to be most significant.”* (para 27)

*“Charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area. Charging authorities should show, using appropriate available evidence, including existing published data, that their proposed charging rates will contribute positively towards and not threaten delivery of the relevant Plan as a whole at the time of charge setting and throughout the economic cycle.”* (para 30)

*“The Government expects charging authorities will work proactively with developers to ensure they are clear about charging authorities’ infrastructure needs and what developers will be expected to pay for through which route. This is so that there is no actual or perceived ‘double dipping’, with developers paying twice for the same item of infrastructure.”* (para 85)

*“The charging authority’s proposed approach to the future use of any pooled section 106 contributions should be set out at examination and should be based on evidence.”* (para 89)

### **Representations to LBTH CIL Draft Charging Schedule**

The Council’s Viability Study underpinning the CIL rates demonstrates an inconsistent and unjustified approach in terms of what price it assumes land-owners will bring land forward at. The Study mainly assumes that this will be at the equivalent of Current Use Value plus a percentage premium, but there is no justification for the percentages assumed and very little justification for the adopted current use values. This is not to say that the Current Use Value and Market Value approaches are mutually exclusive, but that in urban locations such as Tower Hamlets, often the two are not aligned and the Current Use Value ‘plus’ approach is too arbitrary particularly with reference to strategic sites where the Current Use Values are often negligible. Furthermore, there is no market testing or ‘sense checking’ between the values that have been assumed and land values evident from the market (which could be, and should have been, sourced from land agents and other data sources).

MPG St Katharine LP is concerned that the Council cannot know what relative effect their CIL rates will or might have in the absence of market testing.

Paragraph 34 of CLG’s statutory guidance document explains that Charging Authorities can set differential levy rates for different geographical zones provided that those zones are defined by reference to the economic viability of development within them. The BNPP Viability Study does not adequately explain or justify the link between development viability and different

CIL-DCS29



geographical charging zones. MPG St Katharine considers that the defined zones do not reflect the wide variation in values for development across the Borough.

### ***Residual S106 costs and Section 278 Assumptions***

The BNPP Viability Study, which underpins the Council's Draft Charging Schedule, includes a number of standard assumptions in relation to development costs. A central tenet of Government's introduction of CIL is that, to a large extent, it will result in a reduction of Section 106 costs. Whether this is true is very much dependent on the circumstances on a site by site basis. However, clearly if a Charging Authority assumes a standard rate across its area then this should be approached with caution and needs to be justified – particularly if it is doing so for the strategic site allocations that underpin the Development Plan.

Further justification should be provided for assuming a Borough-wide standard rate, as oppose to a differential rate according to location, for the level of assumed 'scaling-back' of Section 106 rates (pre- and post-Borough CIL taking effect); for the relationship between the standard rate and the infrastructure items the Council expects (derived from its Infrastructure Plan and other evidence e.g. recent example Section 106 Agreements) to be covered by Section 106 in the future versus CIL.

### ***Regulation 123 List***

The Draft List serves to highlight the inappropriateness of using a broad-brush assumed rate for residual Section 106 and Section 278.

We would make the comment that this is a very generic list and does not provide any clarity on what infrastructure will be provided as part of CIL. It is important that the Regulation 123 list is transparent.

### **Representations to LBTH Revised Planning Obligations SPD**

In relation to the requirements for energy contributions, our client objects to the requirement that developments not meeting the carbon reduction targets should pay a contribution. There are sites that, due to their physical constraints, will not be able to meet the carbon reduction targets and in these circumstances it is unreasonable to request a 'top-up payment'.

Our client has a similar comment in relation to the proposed obligations for biodiversity. There is no clarity on what threshold levels need to be met before a payment is triggered. Furthermore, the obligations would seem to penalise those sites that, for physical reasons, are not capable of contributing to biodiversity.

The significant missing element of the SPD relates to the actual level of contributions which are being sought. Without these, it is difficult to understand the impact of the obligations on the viability of development and how these relate to CIL. This also relates back to the point made earlier that the £1,220 S106 cost factored into the appraisals is not robust.

### **Conclusion**

Overall, MPG St Katharine LP are concerned that the evidence base presented to underpin the Draft CIL Charging Schedule is not robust and the consequences of adopting the Charging Rates

CIL - DCS 29

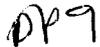
set out within it have not been properly considered. There are two fundamental areas of concern. The first relates to the lack of evidence supporting the CIL rates proposed by the Charging Authority; and the second relates to insufficient weight being given to the implications CIL will have on the viability of development.

In relation to the Revised Planning Obligations SPD, it is considered that greater clarity is required on when the obligations apply. Fundamentally, the costs of the obligations need to be made clear to understand the impact on viability and to be able to comment in detail.

We look forward to receiving confirmation of receipt of our comments and would ask that we be kept updated of any future changes to either of the documents, and any additional opportunities for further consultation.

Should you wish to discuss any of our comments, please contact Caroline McIntyre or Holly Farrow of this office.

Yours faithfully,



**DP9**

CIL - DES 30

Our ref:

5 June 2013

CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2nd Floor Mulberry Place  
5 Clove Crescent  
E14 2BG



10 Stratton Street  
London W1J 8JR  
T: +44 (0)8449 02 03 04  
F: +44 (0)20 7911 2560

[gva.co.uk](http://gva.co.uk)

Dear Sirs

### REPRESENTATIONS ON THE DRAFT CIL CHARGING SCHEDULE

Thank you for providing us with the opportunity to comment on the Draft CIL Charging Schedule. These representations are submitted on behalf of GMV Ten Ltd in the context of the implemented planning permission ref. PA/08/02709 and any future proposals on this site.

These representations follow those made on 21 December 2012 in respect of the preliminary draft charging schedule (submitted on behalf of Commercial Estates Group).

We note that the intention of CIL is to provide developers with more certainty about the costs associated with a development. It is acknowledged that the monies collected through CIL will be used to fund the local infrastructure that is required to support new development and growth in the Borough and this is welcomed.

Furthermore, we note that CIL will replace s106 agreements as the primary tariff based system to secure some or all of the funds necessary to provide infrastructure to support the sustainable development of the borough. The ongoing use of s106 agreements to secure the provision of affordable housing and site specific infrastructure and requirements is acknowledged.

We also understand that the borough's proposed levels of CIL have been tested in combination with its other planning requirements, including the provision of affordable housing. In this regard, Paragraph 5.3 of the Draft Charging Schedule states that in establishing the CIL rates, "a policy compliant affordable housing provision of 35% was assumed". We would point out, however, that both London Plan and the borough's own Local Development Framework policies make it clear that the requirement to provide the maximum reasonable provision of affordable housing in developments is "subject to viability" and that a policy compliant level of affordable housing can therefore be as low as 0% where it is demonstrated as not being viable for development to provide more. We therefore recommend that Paragraph 5.3 of the Draft Charging Schedule should be amended to read:

**"In establishing the rates, set out in the table below, a policy compliant target level of affordable housing of 35% was assumed."**

As stated in the NPPF, development should not be subject to such a scale of obligations and policy burdens that its ability to be developed viably is threatened. To ensure viability, it is stated in the NPPF that the costs of any requirements likely to be applied to development, such as requirements for affordable housing and infrastructure contributions, should, when taking account of the normal

## CIL - DCS 30

cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. Specifically, the NPPF states that CIL should "support and incentivise new development".

The latest Department of Communities and Local Government (DCLG) guidance on CIL, published December 2012, states that "charging authorities should avoid setting a charge right up to the limits of viability across the vast majority of sites in their area". Regulation 14 of the Community Infrastructure Levy Regulations 2010 similarly states that charging authorities, in setting levy rates, "must aim to strike what appears to the charging authority to be an appropriate balance between" the desirability of funding infrastructure from the levy and "the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area".

Acknowledging all of the above in the context of the Hertsmere House redevelopment and the viability of any future development proposals that come forward, it is noted that CIL (both borough CIL and Mayoral CIL) is the top 'slice' cost on development and is non-negotiable. Whilst the appropriate time to test the viability of any development proposal for the site will be at the planning application stage, it is noted that in order to ensure that development remains viable whilst meeting its CIL requirements, it is other obligations, including the provision of affordable housing that may need to be reduced to below the target policy level of 35%.

Increasing the supply of housing and, in particular, affordable housing is one of the top priorities of the borough. The majority of developments within the borough are already at the 'margins of viability', with the level of Section 106 contributions and other obligations, such as affordable housing secured. This is evidenced by the number of residential schemes, for example, where the maximum amount of affordable housing that can be provided falls below the borough's policy targets.

We commented in December 2012 that the proposed Borough CIL rates were particularly high when compared to the existing Section 106 regime and this remains the case, despite the reduction to some of the rates (such as the hotel charge). Whilst the viability of any scheme will need to be tested through a future planning application, it is noted that there will be little flexibility for the borough to negotiate to secure its key priorities, including affordable housing, because of the need for development to first meet its CIL requirements before other obligations can be considered.

We look forward to receiving confirmation that these representations have been received. We reserve the right to make further representations during any subsequent consultation periods and to attend the Examination in Public, as necessary.

Yours faithfully

GVA

**GVA**  
**Acting on behalf of GMV Ten Ltd**



CIL\_DCS 31

Our ref:

5 June 2013

CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2nd Floor Mulberry Place  
5 Clove Crescent  
E14 2BG



10 Stratton Street  
London W1J 8JR  
T: +44 (0)8449 02 03 04  
F: +44 (0)20 7911 2560

[gva.co.uk](http://gva.co.uk)

Dear Sirs

### REPRESENTATIONS ON THE DRAFT CIL CHARGING SCHEDULE

Thank you for providing us with the opportunity to comment on the Draft CIL Charging Schedule. These representations are submitted on behalf of Safestore.

Safestore owns a 1.4 ha site located in Whitechapel and which is currently in storage use. Since July 2011, Safestore has engaged with LBTH in relation to the future development of the site and the wider Whitechapel. This has been through engagement in the preparation of the adopted Managing Development Document, and more recently, through pre-application discussions relating to the future development of the site and its potential identification as a major opportunity site in the emerging Whitechapel Masterplan.

The advice received from officers to date has been supportive of proposals for the residential led mixed use redevelopment of the site and identifies the potential for it to contribute significantly to the successful future development of Whitechapel. Safestore is therefore currently undergoing a site marketing process to secure a development partner to help it to deliver this opportunity. It is envisaged that a planning application will be submitted towards the end of the year.

It is within this background and context that the following representations are made.

We note that the intention of CIL is to provide developers with more certainty about the costs associated with a development. It is acknowledged that the monies collected through CIL will be used to fund the local infrastructure that is required to support new development and growth in the Borough and this is welcomed.

Furthermore, we note that CIL will replace s106 agreements as the primary tariff based system to secure some or all of the funds necessary to provide infrastructure to support the sustainable development of the borough. The ongoing use of s106 agreements to secure the provision of affordable housing and site specific infrastructure and requirements is acknowledged.

We also understand that the borough's proposed levels of CIL have been tested in combination with its other planning requirements, including the provision of affordable housing. In this regard, Paragraph 5.3 of the Draft Charging Schedule states that in establishing the CIL rates, "a policy compliant affordable housing provision of 35% was assumed". We would point out, however, that both London Plan and the borough's own Local Development Framework policies make it clear that the requirement to provide the maximum reasonable provision of affordable housing in developments is "subject to viability" and that a policy compliant level of affordable housing can

## CIL - DCS 31

therefore be as low as 0% where it is demonstrated as not being viable for development to provide more. We therefore recommend that Paragraph 5.3 of the Draft Charging Schedule should be amended to read:

**“In establishing the rates, set out in the table below, a policy compliant target level of affordable housing of 35% was assumed.”**

As stated in the NPPF, development should not be subject to such a scale of obligations and policy burdens that its ability to be developed viably is threatened. To ensure viability, it is stated in the NPPF that the costs of any requirements likely to be applied to development, such as requirements for affordable housing and infrastructure contributions, should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. Specifically, the NPPF states that CIL should “support and incentivise new development”.

The latest Department of Communities and Local Government (DCLG) guidance on CIL, published December 2012, states that “charging authorities should avoid setting a charge right up to the limits of viability across the vast majority of sites in their area”. Regulation 14 of the Community Infrastructure Levy Regulations 2010 similarly states that charging authorities, in setting levy rates, “must aim to strike what appears to the charging authority to be an appropriate balance between” the desirability of funding infrastructure from the levy and “the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area”.

Acknowledging all of the above in the context of the Safestore site in Whitechapel and the viability of any future development proposals that come forward, it is noted that CIL (both borough CIL and Mayoral CIL) is the top ‘slice’ cost on development and is non-negotiable. Whilst the appropriate time to test the viability of any development proposal for the site will be at the planning application stage, it is noted that in order to ensure that development remains viable whilst meeting its CIL requirements, it is other obligations, including the provision of affordable housing that may need to be reduced to below the target policy level of 35%.

Increasing the supply of housing and, in particular, affordable housing is one of the top priorities of the borough. The majority of developments within the borough are already at the ‘margins of viability’, with the level of Section 106 contributions and other obligations, such as affordable housing, secured. This is evidenced by the number of residential schemes, for example, where the maximum amount of affordable housing that can be provided falls below the borough’s policy targets. The Safestore site in Whitechapel is located in the borough’s CIL Charging Zone 2 (where residential development is charged at £65 per sqm) and whilst the viability of any scheme will need to be tested through a future planning application, it is noted that there will be little flexibility for the borough to negotiate to secure its key priorities, including affordable housing, because of the need for development to first meet its CIL requirements before other obligations can be considered. Similarly, it is noted that where the proposed rate of £425 per sqm for student housing identified across all charging zones in the borough, and including Whitechapel, is adopted, then this will be likely impact heavily on the viability of schemes incorporating student house and make it less likely that other infrastructure and affordable housing priorities can be delivered.

We look forward to receiving confirmation that these representations have been received. We reserve the right to make further representations during any subsequent consultation periods and to attend the Examination in Public, as necessary.

CIL - DCS 31

Yours faithfully

GVA

**GVA**

Acting on behalf of Safestore

CIL - DCS 32

Our ref:

5 June 2013

CIL Consultation  
 Infrastructure Planning Team  
 London Borough of Tower Hamlets  
 2nd Floor Mulberry Place  
 5 Clove Crescent  
 E14 2BG



10 Stratton Street  
 London W1J 8JR  
 T: +44 (0)8449 02 03 04  
 F: +44 (0)20 7911 2560

[gva.co.uk](http://gva.co.uk)

Dear Sirs

### REPRESENTATIONS ON THE DRAFT CIL CHARGING SCHEDULE

Thank you for providing us with the opportunity to comment on the Draft CIL Charging Schedule. These representations are submitted on behalf of Tameric Investments.

These representations follow those made on 21 December 2012 in respect of the preliminary draft charging schedule (submitted on behalf of various clients).

We note that the intention of CIL is to provide developers with more certainty about the costs associated with a development. It is acknowledged that the monies collected through CIL will be used to fund the local infrastructure that is required to support new development and growth in the Borough and this is welcomed.

Furthermore, we note that CIL will replace s106 agreements as the primary tariff based system to secure some or all of the funds necessary to provide infrastructure to support the sustainable development of the borough. The ongoing use of s106 agreements to secure the provision of affordable housing and site specific infrastructure and requirements is acknowledged.

We also understand that the borough's proposed levels of CIL have been tested in combination with its other planning requirements, including the provision of affordable housing. In this regard, Paragraph 5.3 of the Draft Charging Schedule states that in establishing the CIL rates, "a policy compliant affordable housing provision of 35% was assumed". We would point out, however, that both London Plan and the borough's own Local Development Framework policies make it clear that the requirement to provide the maximum reasonable provision of affordable housing in developments is "subject to viability" and that a policy compliant level of affordable housing can therefore be as low as 0% where it is demonstrated as not being viable for development to provide more. We therefore recommend that Paragraph 5.3 of the Draft Charging Schedule should be amended to read:

**"In establishing the rates, set out in the table below, a policy compliant target level of affordable housing of 35% was assumed."**

As stated in the NPPF, development should not be subject to such a scale of obligations and policy burdens that its ability to be developed viably is threatened. To ensure viability, it is stated in the NPPF that the costs of any requirements likely to be applied to development, such as requirements for affordable housing and infrastructure contributions, should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and

CIL-DCS32

willing developer to enable the development to be deliverable. Specifically, the NPPF states that CIL should "support and incentivise new development".

The latest Department of Communities and Local Government (DCLG) guidance on CIL, published December 2012, states that "charging authorities should avoid setting a charge right up to the limits of viability across the vast majority of sites in their area". Regulation 14 of the Community Infrastructure Levy Regulations 2010 similarly states that charging authorities, in setting levy rates, "must aim to strike what appears to the charging authority to be an appropriate balance between" the desirability of funding infrastructure from the levy and "the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area".

Acknowledging all of the above in the context of any future redevelopment proposals for Glengall Bridge that come forward, it is noted that CIL (both borough CIL and Mayoral CIL) is the top 'slice' cost on development and is non-negotiable. Whilst the appropriate time to test the viability of any development proposal for the site will be at the planning application stage, it is noted that in order to ensure that development remains viable whilst meeting its CIL requirements, it is other obligations, including the provision of affordable housing that may need to be reduced to below the target policy level of 35%.

Increasing the supply of housing and, in particular, affordable housing is one of the top priorities of the borough. The majority of developments within the borough are already at the 'margins of viability', with the level of Section 106 contributions and other obligations, such as affordable housing secured. This is evidenced by the number of residential schemes, for example, where the maximum amount of affordable housing that can be provided falls below the borough's policy targets.

We commented in December 2012 that the proposed Borough CIL rates were particularly high when compared to the existing Section 106 regime and this remains the case, despite the reduction to some of the rates (such as the hotel charge). Whilst the viability of any scheme will need to be tested through a future planning application, it is noted that there will be little flexibility for the borough to negotiate to secure its key priorities, including affordable housing, because of the need for development to first meet its CIL requirements before other obligations can be considered.

We look forward to receiving confirmation that these representations have been received. We reserve the right to make further representations during any subsequent consultation periods and to attend the Examination in Public, as necessary.

Yours faithfully



**GVA**  
Acting on Tameric Investments

**[gva.co.uk](http://gva.co.uk)**

CIL DCS 33

Our ref:

5 June 2013

CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2nd Floor Mulberry Place  
5 Clove Crescent  
E14 2BG



10 Stratton Street  
London W1J 8JR  
T: +44 (0)8449 02 03 04  
F: +44 (0)20 7911 2560

[gva.co.uk](http://gva.co.uk)

Dear Sirs

### REPRESENTATIONS ON THE DRAFT CIL CHARGING SCHEDULE

Thank you for providing us with the opportunity to comment on the Draft CIL Charging Schedule. These representations are submitted on behalf of various clients GVA act for in the Borough.

These representations follow those made on 21 December 2012 in respect of the preliminary draft charging schedule (submitted on behalf of various clients).

We note that the intention of CIL is to provide developers with more certainty about the costs associated with a development. It is acknowledged that the monies collected through CIL will be used to fund the local infrastructure that is required to support new development and growth in the Borough and this is welcomed.

Furthermore, we note that CIL will replace s106 agreements as the primary tariff based system to secure some or all of the funds necessary to provide infrastructure to support the sustainable development of the borough. The ongoing use of s106 agreements to secure the provision of affordable housing and site specific infrastructure and requirements is acknowledged.

We also understand that the borough's proposed levels of CIL have been tested in combination with its other planning requirements, including the provision of affordable housing. In this regard, Paragraph 5.3 of the Draft Charging Schedule states that in establishing the CIL rates, "*a policy compliant affordable housing provision of 35% was assumed*". We would point out, however, that both London Plan and the borough's own Local Development Framework policies make it clear that the requirement to provide the maximum reasonable provision of affordable housing in developments is "*subject to viability*" and that a policy compliant level of affordable housing can therefore be as low as 0% where it is demonstrated as not being viable for development to provide more. We therefore recommend that Paragraph 5.3 of the Draft Charging Schedule should be amended to read:

**"In establishing the rates, set out in the table below, a policy compliant target level of affordable housing of 35% was assumed."**

As stated in the NPPF, development should not be subject to such a scale of obligations and policy burdens that its ability to be developed viably is threatened. To ensure viability, it is stated in the NPPF that the costs of any requirements likely to be applied to development, such as requirements for affordable housing and infrastructure contributions, should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and

## CIL DCS 33

willing developer to enable the development to be deliverable. Specifically, the NPPF states that CIL should "support and incentivise new development".

The latest Department of Communities and Local Government (DCLG) guidance on CIL, published December 2012, states that "charging authorities should avoid setting a charge right up to the limits of viability across the vast majority of sites in their area". Regulation 14 of the Community Infrastructure Levy Regulations 2010 similarly states that charging authorities, in setting levy rates, "must aim to strike what appears to the charging authority to be an appropriate balance between" the desirability of funding infrastructure from the levy and "the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area".

Acknowledging all of the above in the context of any future development proposals that come forward, it is noted that CIL (both borough CIL and Mayoral CIL) is the top 'slice' cost on development and is non-negotiable. Whilst the appropriate time to test the viability of any development proposal for the site will be at the planning application stage, it is noted that in order to ensure that development remains viable whilst meeting its CIL requirements, it is other obligations, including the provision of affordable housing that may need to be reduced to below the target policy level of 35%.

Increasing the supply of housing and, in particular, affordable housing is one of the top priorities of the borough. The majority of developments within the borough are already at the 'margins of viability', with the level of Section 106 contributions and other obligations, such as affordable housing secured. This is evidenced by the number of residential schemes, for example, where the maximum amount of affordable housing that can be provided falls below the borough's policy targets.

We commented in December 2012 that the proposed Borough CIL rates were particularly high when compared to the existing Section 106 regime and this remains the case, despite the reduction to some of the rates (such as the hotel charge). Whilst the viability of any scheme will need to be tested through a future planning application, it is noted that there will be little flexibility for the borough to negotiate to secure its key priorities, including affordable housing, because of the need for development to first meet its CIL requirements before other obligations can be considered.

We look forward to receiving confirmation that these representations have been received. We reserve the right to make further representations during any subsequent consultation periods and to attend the Examination in Public, as necessary.

Yours faithfully



**GVA**  
**Acting on behalf of various clients**

**[gva.co.uk](http://gva.co.uk)**

CIL-DCS34

**BY POST AND EMAIL** [CIL@towerhamlets.gov.uk](mailto:CIL@towerhamlets.gov.uk)

Ref: [REDACTED]

address: [REDACTED]  
dial: [REDACTED]

CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2nd Floor Mulberry Place  
5 Clove Crescent  
E14 2BG

5 June 2013

Dear Sirs

**COMMUNITY INFRASTRUCTURE LEVY - DRAFT CHARGING  
SCHEDULE (DCS)  
REPRESENTATIONS ON BEHALF OF UNITE GROUP PLC**

I write in respect of the above on behalf of my client UNITE Group PLC (hereafter 'UNITE'). The opportunity to comment upon the proposed reforms is welcomed. Firstly we provide some background to UNITE by way of an introduction and then we move on to provide representations on specific questions provided at Annex A of the consultation document.

**Introduction**

By way of background, UNITE are the UK's leading provider of purpose built student accommodation with 42,000 student bedspaces supporting the university and higher education network across the UK. With approximately 8,000 bedspaces in London.

UNITE are concerned the Draft Charging Schedule (DCS) further refinement in order to more accurately reflect the current economic position and ensure that student accommodation development remains viable, particularly when compared to alternative land uses and mindful of the overall element student accommodation contributes to the delivery of the Tower Hamlets Local Plan.

**Policy Background**

These representations are supported by relevant planning policy within the National Planning Policy Framework (NPPF), the Community Infrastructure Levy Regulations 2010 (as amended), the Community Infrastructure Levy Guidance (CLG, April 2013), Proposed CIL Regulation Amendments (CLG March 2013) and the LBTH Local Plan (Core Strategy Adopted February 2012 and Development Management Policies March 2013).



140 London Wall  
London EC2Y 5DN

Tel: 020 7583 6767  
Fax: 020 7583 2231

[www.cgms.co.uk](http://www.cgms.co.uk)

Offices also at:  
Birmingham, Cheltenham,  
Dorset, Edinburgh,  
Kettering, Manchester,  
Newark

## **Government Guidance and Strategic Planning Policy**

### *National Planning Policy Framework (March 2012)*

NPPF paragraph 175 requires the LPA to ensure CIL should "support and incentivise new development" and this reflects the Housing Growth Agenda and Ministerial Statement of 6 September 2012.

### *National Policy – CLG Statutory Guidance (April 2013)*

Department for Communities and Local Government (CLG) have issued updated Statutory Guidance (SG) regarding the Community Infrastructure Levy (CIL). Paragraph 4 requires the charging authority to consider relevant national planning policy (including the NPPF) when drafting a charging schedule.

Paragraph 8 confirms a balanced judgement between the introduction of CIL and its impact upon development is required and that in meeting this test LPAs must have regard to NPPF (Paragraph 173-177) demonstrating the ability to implement the development objectives of the Local Plan should not be threatened.

Paragraph 21 requires the charging authority to demonstrate how the proposed CIL rate(s) will contribute towards the implementation of the development plan and support development across their area. It further requires that the potential effects of the proposed levy on the economic viability of development.

Paragraph 22 notes the background viability evidence should provide information regarding the level of development contributions previously raised through comparable S106 agreements.

The policy context set out immediately above confirms the detailed approach required by LPAs to account for development viability when preparing draft Charging Schedules.

### *Proposed Amendment to CIL Regulations (March 2013)*

Paragraph 19 of the proposed amended CIL regulations seeks a more evidence-based approach at examination. This is supported by UNITE as the requirement to demonstrate how the rates contribute towards implementation of the relevant plan will ensure that a more positive approach is adopted, particularly regarding housing supply (including student accommodation).

### *CLG – Clarification of Student housing*

- Housing research by the CLG confirms purpose built flats should be included in overall housing supply, as a form of specialist accommodation, meeting a specific housing need.
- This was clarified in Parliament by the Housing Minister in December 2011.

### *Adopted London Plan 2011*

- The London Plan was adopted in July 2011.
- Policy 3.8(B) identifies a number of specialist housing needs across London and requires local authorities in both a plan-making and development control capacity to account for all forms of housing need.

CIL - DCS 34

LBTH CIL  
Draft Charging Schedule  
5 June 2013

---

- Criterion (h) is of specific relevance and requires Local Authorities to account for strategic and local student accommodation need and to ensure the capacity for conventional homes is not compromised through this provision.

*GLA Adopted Housing Supplementary Planning Guidance (SPG, November 2012)*

This document was adopted by the GLA in November 2012 and confirms: -

- Student accommodation is a specialised form of housing;
- And as such, it is exempt from the detailed residential standards set out in the draft Housing SPG.

Further, paragraph 3.1.50 of the draft Housing SPG states: -

*"In considering LDF policy approaches to, and proposals for new student accommodation, boroughs should not constrain provision which meets strategic as well as local needs."*

### **Local Development Plan**

*LB Tower Hamlets Core Strategy*

This document was Adopted in 2010 and supports the provision of student accommodation. It states (Policy SP02 (7a)) that the Council will provide for the needs of specialist housing by: -

- (i) focusing student accommodation supporting the London Metropolitan University at Aldgate or locations with high public transport accessibility (PTAL 5 to 6);
- (ii) focusing student accommodation supporting Queen Mary University in close proximity to the University.

LB Tower Hamlets Managing Development DPD

This document was adopted in April 2013 and reflects the area-based restriction with regard to student accommodation supply, in order that student accommodation is expected to be delivered within proximity to London Metropolitan University and Queen Mary University. This potentially includes delivery of student accommodation within CIL Charging Schedule Zone 2.

### **Representations to Draft Charging Schedule (DCS)**

The DCS proposes a disproportionately high student accommodation CIL rate when compared with alternative land uses and does not account for the CIL impact upon scheme viability. This will limit supply of student accommodation, which impacts upon the wider housing delivery agenda. UNITE therefore object to the draft Charging Schedule (DCS).

Two principal issues are identified:

1. Impact Upon Scheme Viability; and
2. Impact Upon Delivery of Development Plan

Each issue is referred to in turn below.

CIL - DCS 34

LBTH CIL  
Draft Charging Schedule  
5 June 2013

---

### *1. Impact Upon Scheme Viability*

The DCS assumes a student accommodation rental value of £200p/w over a 41-week annual period, and a £225p/w rental level for 10 weeks per annum (summer let). With regard to student accommodation, no evidence is provided to justify the blanket £200p/w (term time) rental level and similarly no evidence is provided to justify a higher non-term rental period.

The DCS confirms a significant drop in achievable scheme value between Charging Schedule Zones 1 and 2. Rental levels around Zone 2 are reduced over the higher rates achievable within Zone 1, which impacts significantly upon scheme value and viability. A single levy of £425/sq.m for student accommodation cannot therefore be relied upon where market values have not been tested across the zone boundary, particularly where evidence for residential accommodation confirms a significantly reduced CIL rate is viable when comparing Zones 1 and 2.

Mindful that the Adopted Development Plan dictates student accommodation to defined areas within Zones 1 and 2, it is necessary to ensure the proposed CIL rate reflects this. The Council have adopted this approach in dealing with the proposed CIL rate for hotel accommodation. Paragraph 6.38 of the LBTH Viability Study confirms minor changes to rental values or commercial yield significantly impacts upon scheme viability and its ability to support a CIL payment. The Council therefore amended the proposed hotel Levy from £425/sq.m to £210/sq.m.

Paragraph 175 of the NPPF requires the Council to demonstrate the proposed CIL rate contributes to the positive implementation of the plan, including an assessment of how the proposed rate is balanced across various development sectors. Reliance upon a single levy without regard to variations in rental levels achieved (and therefore scheme value) conflicts with the NPPF and cannot therefore be supported.

Mindful of the approach adopted by the Council in determining CIL impact upon hotel development viability within the borough, it is considered that a reduced single-tier levy for student accommodation is proposed. Paragraph 37 of the SG (April 2013) also confirms with regard to differential rates that charging authorities should seek to avoid undue complexity and that Charging Schedules should not impact disproportionately on particular sectors or specialist forms of development.

The Inspector Report regarding the LB Brent Draft CIL Charging Schedule further highlights the requirement to avoid an unnecessarily complex charging schedule. He states: -

"The evidence in the VS also shows that the differences in CIL rates by uses are significantly greater than their geographic variation across the Borough. Using both geographic zones and uses would lead to an excessively complicated charging schedule."

A simplified approach is therefore necessary, accounting for scheme viability and ensuring development is not prejudiced, in accordance with the Government Growth Agenda and Ministerial Statement. Appendix 4 of the Council Viability Assessment confirms a maximum student accommodation CIL of £250/sq.m (inclusive of Mayoral CIL) is viable where an element of affordable housing is provided through student accommodation schemes. This represents a significant reduction over the proposed CIL rate and demonstrates how a minor reduction in scheme value impacts upon a viable CIL rate for student accommodation and

dependent upon individual site circumstance. A reduced single-tier rate is therefore appropriate which will account for scheme viability across the borough and ensures the Council can demonstrate this element of the development plan can be delivered.

Mindful of the relevant national policy within the NPPF and the SG, the proposed student accommodation CIL levy is unjustified and fails to reflect national planning policy. A significantly reduced single-tier rate for student accommodation is therefore required.

## *2. Impact Upon Delivery of Development Plan Objectives*

Setting an unjustified and disproportionately high CIL rate for student accommodation will prejudice delivery of this specialist accommodation need. London Plan Policy 3.8 confirms the role purpose built student accommodation has within the overall housing market in London and Core Strategy Policy SP02 (7) confirms student accommodation meets identified specialist housing need in the borough. Setting a CIL rate without justification of the scheme value prejudices delivery of this specialised accommodation, directly conflicting with the NPPF and undermining CIL Regulation 14.

Paragraph 175 of the NPPF requires the Council to demonstrate the proposed CIL rate contributes to the positive implementation of the plan. This is reflected within the CLG Statutory Guidance (SG) at Paragraph 8 which requires the Council to demonstrate how the proposed rate will contribute to the delivery/ implementation of the development plan. The draft levy upon student accommodation at £425/sq.m fails to justify the rental levels / scheme value achievable and in comparison with alternative land uses, is disproportionately high. Student accommodation developers are effectively priced out of a competitive site acquisition market. This will prejudice delivery of purpose built student accommodation and is contrary to the aims of NPPF Paragraph 175 and SG Paragraph 8.

Comparison of typical payment under S106 for student accommodation schemes previously approved by the Council against the equivalent scheme CIL level, further undermines the likely delivery of student accommodation. This assessment is required under Paragraph 22 of the SG and has not been undertaken by the Council. A recent relevant example of a student led scheme at 438-490 Mile End Road (PA/09/01916) comprising 7788sq.m student accommodation. The S106 agreement confirmed a total financial contribution of £2.25million.

The same scheme would attract a CIL payment of £3.30million. This represents an increase of 32% which cannot be justified mindful of the economic context and the Government Growth Agenda. Further, students generally place less pressure upon borough/ public infrastructure as most universities provide on-site health/ sports and education (e.g. library) facilities. Notwithstanding the Council Infrastructure requirement set out in Regulation 123 List, the 32% increase in contributions cannot be justified mindful of the reduced requirement for infrastructure from students. A reduced CIL rate for students (mindful of viability above) would also assist in justifying a reasonable comparison with S106 contributions.

## Conclusion

Purpose built student accommodation has a positive impact on housing supply thorough meeting an identified specialised housing need. The impact of CIL upon scheme viability requires consideration within the context of the Government Growth Agenda. The proposed CIL rate for student accommodation in LB Tower Hamlets is not justified by an appropriate evidence base and does not reflect relevant national policy. UNITE therefore object to the proposed £425/sq.m levy and are mindful of the following specific issues: -

1. No justification/ evidence for the scheme value (rental level) is provided.
2. No consideration is given to student accommodation within lower value areas.
3. A high proportion of the anticipated student accommodation delivery is directed to Charging Zone 2 which is characterised by lower values.
4. The Council have reduced the proposed CIL rate for hotel accommodation mindful of the disparity in values across the borough.
5. A consistent approach is necessary. A simplified single-tier levy reflecting scheme value across the borough is supported in other adopted charging schedules.
6. It is therefore necessary to adopted a similar approach for student accommodation.
7. The Council viability assessment confirms that minor variations in scheme value triggers a significantly reduced maximum viable CIL rate. This demonstrates a reduced levy is necessary in order to comply with the NPPF and SG.
8. A reduced single-tier levy for purposed built student accommodation will ensure the Council can demonstrate positive implementation of the development plan and that delivery would not be prejudiced.
9. This approach also ensures no disproportionate impact upon one specific development sector occurs, in accordance with the SG.

Therefore a single-tier reduced levy for purpose built student accommodation is require, ensuring a consistent approach and that the adopted Charging Schedule reflects the NPPF and the SG.

I trust this is in order and will be taken into account prior to submission of the DCS to the Inspectorate. Please do not hesitate to contact either Matthew Roe or myself should you have any queries.

CIL - DCS35

**Data protection**

Information provided in this form will be used fairly and lawfully and the Council will not knowingly do anything which may lead to a breach of the Data Protection Act 1998.

**Data Protection Act 1998**

The personal information collected on this form will be processed on computer to provide and manage the information or service that you have requested. For further details regarding your privacy please see our Privacy Statement at:

[http://www.towerhamlets.gov.uk/lgs/801-850/826\\_data\\_protection\\_act.aspx](http://www.towerhamlets.gov.uk/lgs/801-850/826_data_protection_act.aspx).

**Section A – Personal Information**

	Personal details	Agent details (if applicable)
Title		█
First name		█
Surname		█
Job title (if relevant)		██
Organisation (if relevant)		CgMs LTD
Address line 1		140 LONDON WALL
Address line 2		LONDON
Address line 3		
Address line 4		
Postcode		EC2Y 5DN
Telephone number		████████████████████
E-mail address		██

CIL-DCS 35

**Section B (1) – Representation to LBTH CIL Draft Charging Schedule**

Your representation should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested change(s), as there will not normally be a subsequent opportunity to make further representations based on the original representation at publication stage. After this stage, further submissions will be only at the request of the Examiner, based on the matters and issues he/she identifies for Examination in Public.

**Questions:****1. Do you have any comments relating to the CIL Draft Charging Schedule and its supporting evidence?**

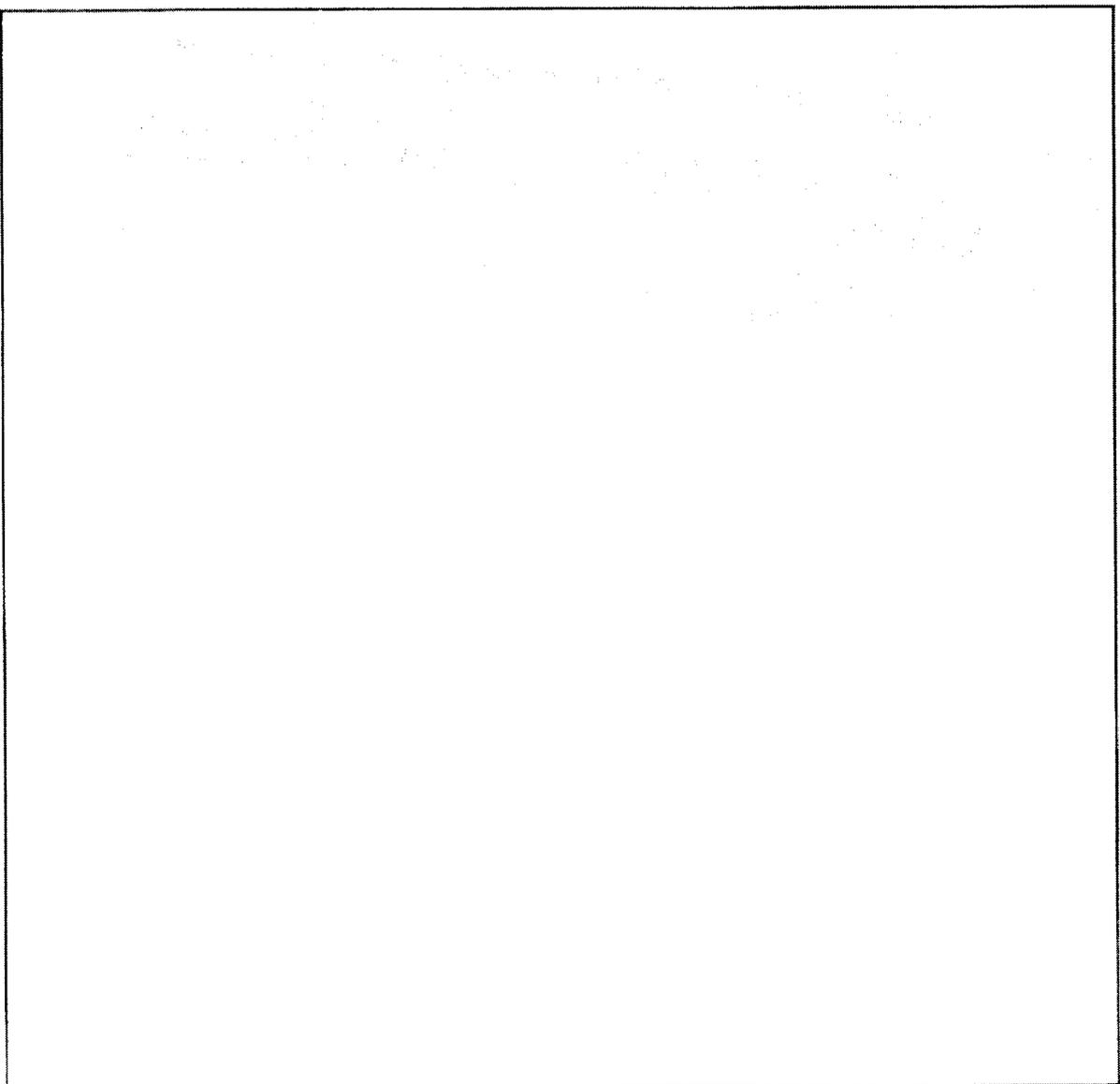
Yes (Please make sure you refer to the sections or paragraphs, to which your comments relate and provide details by using the box below for your comments. If needed, please continue on a separate sheet of paper.)

No

It is acknowledged and welcome that police facilities that are defined as infrastructure in the IDP which require public subsidy are by definition not able to support a CIL charge. However where police facilities, when sought for use solely as offices, would be subject to the CIL charge despite still performing a policing role requiring a public subsidy.

The Council's response to our earlier representation on this matter is that 'excluding office space based on the likely or possible intended occupier would be difficult to implement in the current regulatory framework'. However this has been achieved elsewhere such as in Brent for example where the now adopted charging schedule refers to 'police facilities' as being subject to zero charge. Outside of London the adopted Bristol Charging Schedule refers to 'development by the emergency services for operational purposes' as being exempt. It is therefore possible to include an exemption and this should be incorporated into the revised charging schedule.





**2. If your representation is seeking a change to the CIL Draft Charging Schedule, do you consider it necessary to attend the Examination in Public?**

Yes, I wish to attend

No, I do not wish to attend

**3. Please tick the box if you would like to be notified of about any of the following:**

If the Draft Charging Schedule has been submitted to an Independent Examination in accordance with section 212 of the Planning Act 2008 (as amended)

Of the publication of the recommendations of the Examiner and the reasons behind those recommendations

Of the approval of the Charging Schedule by the Charging Authority (The Council)

**Section B (2) – Representation to LBTH Revised Planning Obligations SPD:**

The adoption of a CIL Charging Schedule will have significant implications for how the Council plans for the delivery of infrastructure and secures Planning Obligations from new developments. In order to provide clarity on the Council's approach to the continued use of planning obligations together with the London Borough of Tower Hamlets' CIL, the Revised Planning Obligations SPD will be adopted alongside the CIL Charging Schedule.

**4. Do you have any comments relating to the Revised Planning Obligations Supplementary Planning Document?**

Yes (Please make sure you refer to the sections or paragraphs, to which your comments relate and provide details by using the box below for your comments. If needed, please continue on a separate sheet of paper.)

No

S106

Paragraph 2.12 of the draft Revised Planning Obligations SPD highlights that following the introduction of CIL the intention is the Council will cease to mitigate the impact of development on the boroughs community facilities through S106.

The heading 'Community Facilities' specifically highlights multi-use community facilities, youth facilities, leisure centres and idea stores, libraries and archives as being subject to CIL. Other forms of typical community related facilities have standalone categories namely education and health facilities which are also proposed to be subject to CIL rather than S106.

It is considered that more clarity is required in relation to how community facilities that are not listed, such as policing facilities, will be accommodated.

In relation to S106 and policing there are instances where this would be more appropriate. As you are aware provision for policing and supporting the MOPAC objectives are a key requirement at national, regional and local levels in order to ensure that safe and secure communities are developed. Development that results in the net increase in residents or other floorspace may increase the need for police services. In this regard the MOPAC are mindful that potentially significant additional development may come forward in Tower Hamlets, through the introduction of new uses and the intensification of development activity. The scale of development may therefore increase demands on police resources which can be delivered through on-site provision through S106 agreements since it would be consistent with the statutory tests namely i. necessary; ii. directly related and iii. fairly and reasonably related in scale and kind.

The type of contributions that may be sought would essentially relate to the following:

1. the provision of on-site policing facilities where considered appropriate in the form of a front counter, safer-neighbourhood team base or combination of the two;

2. the MOPAC utilise Airwave which is a national digital trunked radio service. Given the scale and proximity of certain buildings in close proximity to police facilities this could impact upon the functionality of existing Airwave coverage, with possible disruption to coverage on service. Thus the existing Airwave equipment may require upgrading as a result of the proposed development.

In relation to CIL and policing we look forward to further meetings / discussions in relation to bringing the Council's evidence up to date, as set out in the Summary of Consultation Responses.

**Signature:**



**Date:**

05/06/2013

CIL - DCS 36

**Deloitte.**

Deloitte LLP  
 Athene Place  
 66 Shoe Lane  
 London  
 EC4A 3BQ  
 United Kingdom

Tel: +44 (0) 20 7007 9000  
 Fax: +44 (0) 20 7583 1198  
[www.deloitte.co.uk](http://www.deloitte.co.uk)

CIL Consultation  
 Infrastructure Planning Team  
 London Borough of Tower Hamlets  
 2nd Floor Mulberry Place  
 5 Clove Crescent  
 London E14 2BG

**By email only: [CIL@towerhamlets.gov.uk](mailto:CIL@towerhamlets.gov.uk)**

5 June 2013  
 Our ref: LNH/ JA

Dear Sir / Madam

### **Community Infrastructure Levy Draft Charging Schedule**

On behalf of our client, Aldgate Place (GP) Ltd, we are pleased to submit representations to the London Borough of Tower Hamlets CIL Draft Charging Schedule (DCS), which has been published for consultation until 5 June 2013.

Deloitte Real Estate has been instructed by Aldgate Place (GP) Ltd to provide consultancy advice in relation to the Council's DCS and to review the Viability Studies dated October 2012 and March 2013 prepared by BNP Paribas. Aldgate Place (GP) Ltd welcomes the opportunity to comment on the Council's CIL.

#### **Context and background**

As the Council is aware, British Land and Barratt Homes (of Aldgate Place (GP) Ltd) are supportive of development in Tower Hamlets however there is a concern about the proposed CIL charges and the impact these will have in hindering development coming forward in a strategically important part of London.

By way of background, Deloitte Real Estate is an industry expert on CIL. We advised and appeared at Examination in Public on behalf of Huntingdonshire District Council at their CIL Examination on 6 & 7 March 2012; the successful levy was adopted on 1 May 2012. We continue to work closely with local authorities on CIL and so we are well placed to offer our comments on viability and the proposed CIL charges.

Deloitte LLP is the United Kingdom member firm of Deloitte Touche Tohmatsu Limited ("DTTL"), a UK private company limited by guarantee, whose member firms are legally separate and independent entities. Please see [www.deloitte.co.uk/about](http://www.deloitte.co.uk/about) for a detailed description of the legal structure of DTTL and its member firms. Real estate services regulated by RICS. Deloitte LLP is a limited liability partnership registered in England and Wales with registered number OC302675 and its registered office at 2 New Street Square, London EC4A.



### **Preliminary Draft Charging Schedule Consultation Responses**

Firstly we wish to comment on the changes that have occurred in the proposed rates from PDCS to DCS stage. We have reviewed the Summary of PDCS Consultation Responses dated April 2013, and we note that a number of queries were raised during the PDCS consultations that do not appear to have been appropriately or adequately addressed.

The Council has made a statement in respect of the changes to the proposed commercial CIL rates. This answer is repeated a number of times in the Consultation Responses regardless of questions posed:-

*"The Council has updated its viability evidence and several of the proposed CIL rates have been adjusted for non-residential uses to ensure the introduction of CIL positively enables the local Core Strategy objectives to be delivered, by striking an appropriate balance between the need to fund infrastructure and the impact of CIL on economic viability of development, when taken as a whole across the borough."*

Having reviewed the supporting viability evidence dated October 2012 and March 2013, we can confirm that the Council has not updated its viability evidence in respect of the non-residential uses. Indeed, there is only one change from table 4.48.1 of the two viability reports which would actually serve to reduce the viability of hotel development from PDCS to DCS.

In addition, the Council held a drop-in session on 1 May 2013 which we attended on behalf of our client, and where we queried a number of areas of concern, in particular, why the office rates have been separated into three zones rather than two (City Fringe, North Docklands, Rest of the Borough), and why the rate for the City Fringe zone had increased from £125 psm to £215 psm. We queried what new evidence had been found to support this increased rate given that we are party to marketing evidence which demonstrates that office development is not viable in this location. BNP Paribas claimed that they had found new evidence on values to support this increased rate.

Having reviewed the viability reports supporting the PDCS and the DCS, we can confirm that there has been no new evidence in BNP Paribas's commercial appraisal assumptions. The information provided at the drop-in session therefore appears to be unsubstantiated. In addition, we believe that the repeat responses to the PDCS Consultation did not address the individual questions posed. The responses did not therefore duly consider the important comments raised.



For reference, the Council's proposed CIL rates are:

Use	Proposed CIL rate (£ per sq m)		
	Zone 1	Zone 2	Zone 3
Residential	£200	£65	£35
Student Housing		£425	
Hotel		£210	
Offices	City Fringe	North Docklands	Rest of Borough
	£215	£100	£0
Small retail (280 sq m or less)	£70	£70	£70
Convenience based		£195	
All other uses		Nil	

We wish to raise our concerns over a number of the Council's proposed CIL charges, in particular:

- Residential Zone 1 (£200 psm)
- Small Retail (£70 psm)
- Offices (£215 psm in City Fringe)

For the purpose of this letter, we have focussed on the latest supporting viability evidence prepared by BNP Paribas dated March 2013 and we wish to highlight areas of concern in the supporting viability evidence.

#### The Examiner's Tests

At Examination in Public, the appointed Examiner would require the Council to address the following three questions:-

- 1. Is the charging schedule supported by background documents containing appropriate available evidence?*
- 2. Is the charging rate informed by and consistent with the evidence?*
- 3. Does the evidence demonstrate that the proposed charge rate(s) would put the overall development of the area at serious risk?*

We do not believe that the Council, in proposing its DCS CIL rates has satisfied these questions and we have set out below our comments.

# Deloitte.

## Methodology

A summary of BNP Paribas's viability assumptions is set out in detail in Tables 4.46.1 and Table 4.48.1 of its Viability Report dated March 2013.

The methodology adopted by BNP Paribas for assessing the ability of new development to support CIL is based on the following broad calculation:

$$\begin{aligned} & \text{Residual Land Value (RLV) of the completed development} \\ & \text{less Benchmark Land Value (BLV, assumed by BNP Paribas to be Current use value + landowner} \\ & \quad \text{premium)} \\ & = \text{Total Surplus or Deficit available for CIL (divided by sq m of the development to arrive at £psm).} \end{aligned}$$

This would set a maximum CIL level for a scheme, allowing no viability 'cushion' or flexibility, nor appropriately allowing for finance on CIL, which would be needed if it was treated as a development cost.

Clearly if the appraisal result (RLV) does not exceed the Benchmark Land Value (BLV), there will be no scope for CIL. There are a number of concerns we have in relation to the RLV (i.e. the value of the site based on redevelopment), and the BLV (i.e. the return for the landowner). If the BLV is set too low and is not appropriately evidenced, it will falsely reflect a situation where existing landowners are expected to release land at the BLVs, however, in fact they will not, and future development will be stifled. We deal with BLVs separately below, however, in the first instance we have commented on the assumptions underpinning the RLVs.

## Residential CIL Rate

The CIL Statutory Guidance dated December 2012 sets out under point 29 that the Charging Authority should "show that the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole. They should also take into account other development costs arising from existing regulatory requirements, including taking account of any policies on planning obligations in the relevant Plan (in particular those for affordable housing and major strategic sites)."

LBTH Core Strategy (2010): Strategic Objective 7 sets out the Council's vision to deliver housing growth to meet housing demand in accordance with London Plan housing targets, including an overall strategic target for affordable homes of 50% until 2025. Policy SP02 states that this will be achieved by:

*"Requiring 35%-50% affordable homes on sites providing 10 new residential units or more (subject to viability)"*

BNP Paribas has tested seven residential 'site types', two of which do not include affordable housing as they are below the threshold. The remaining five site types have only been tested based on 35% affordable housing. We believe that affordable housing requirements should have been sensitivity tested across the range, and those results used to inform the proposed CIL rates. We do not believe the Council has followed the CIL Statutory Guidance, and the recommended CIL rates are therefore higher than is viable, taking into account policies in the relevant Plan.



### **Small Retail (280 sq m or less)**

The BNP Paribas viability evidence concludes that retail development outside of the City Fringe and North Docklands is unable to support a CIL charge, however, a CIL charge of £70 psm can be levied on small retail space of 280 sq m or less in the City Fringe and North Docklands.

The BNP Paribas assumptions on retail use (for new build space of 280 sq m or less) include a rental value of £30psf with 2 years rent free and a 6.25% yield for all new build A1 – A5 use classes.

There are limited comparable schemes in the area however evidence from agents suggests that new schemes in the City Fringe are likely to attract a varied mix of retail tenants including local newsagents and cafés with rents ranging from £16 psf to £30 psf. On this basis, we believe that an average rent of £30psf is not appropriate nor reflective of the current market and the types of occupiers anticipated to come forward in these market areas. In addition, the mixed local tenant profile would also attract a higher yield of 6.5%.

### **Office**

The BNP Paribas viability evidence concludes that office development in the City Fringe is able to support a CIL charge of £215 psm. This recommendation is based on RLVs which include the following assumptions for new build offices: £35 psf headline rent, 24 months rent free / void, and 5.75% yield.

### Rents

We have set out below our evidence and experience of promoting a site within the City Fringe for offices throughout the period 2001 – 2011. Details are set out below:-

The site we refer to was granted planning permission in 2007 for three separate office buildings with maximum floorplates of 14,000 sq ft. The scheme failed to attract a pre-let, and major pre-lets are essential to secure funding for construction. There was a further planning permission in 2009, again for office use with maximum floorplates of 45,000 sq ft. Although this created larger floorplates, the layout was different and construction costs were significantly higher than for a regular building of the same size. This scheme also failed to attract a prelet. We note the hypothetical office appraisal prepared by BNP Paribas is for a building of 30,000 sq ft.

The site we refer to was purchased in 2001 and was promoted for offices for over 10 years. Both planning schemes mentioned above were offered to the market at the minimum viable rent, based on nil land value (£35 per sqft). This was equivalent to a 30% discount on the City Core and was similar to other competing office locations, such as Canary Wharf, King's Cross Central and Paddington. Some 35 interested parties, with requirements ranging from 30,000 sqft to 1 million sqft, considered and rejected the site, including at the peak of the last market cycle. Of those organisations that gave a reason for rejecting the site, over 80% identified location as the main reason. Over half of the interested parties chose alternative premises in the City Core and Canary Wharf. Around a quarter decided not to move or have an ongoing requirement. The remainder selected alternative locations across London and the South East.

The market for occupiers is highly competitive. A contraction in financial services and the public sector has led to a period of consolidating and relocations are rare. Professional services and TMT occupiers are increasingly considering established locations such as the City Core and Canary Wharf, as well as emerging locations with improved transport links.

# Deloitte.

The evidence above illustrates the challenge in achieving rents of £35 psf, even with sites with planning permission. In addition, if an occupier was to accept a 10 year term they would expect to receive in the region of 21-24 months rent free, with a further void in income required to reflect the marketing void period.

## Investment Yields

In terms of assumptions on yield, the lease term that BNP Paribas has assumed in its analysis is unclear. A 10 year lease with a break at year five, or a ten year lease with no break to a strong covenant will affect the appropriate yields adopted.

On the basis of the questionable rental market, and the likely requirement to provide flexible terms and a tenant break clause at year 5 of a standard 10 year term, we believe the office yields should reflect 6.25% - 6.50%.

## **Benchmark Land Value Evidence Base**

We have concerns in relation to the assessment and application of the BLVs. The BLVs are intended to reflect the price a landowner can expect to receive for their land. There are a number of different guidance notes and legislation such as the NPPF on what could constitute a BLV. The NPPF states that "To ensure viability... [there should be]... competitive returns to a willing landowner and willing developer to enable the development to be delivered." The NPPF's intent is to ensure that BLVs are not simply driven by planning obligations and policy, but rather should bear a relation with local market comparables. In addition, the RICS 'Financial Viability in Planning' Guidance Note is supportive of a market value approach.

For ease of reference, we have set out below our understanding of how BNP Paribas has assessed the BLVs. Notably, the BLVs used within the viability study differ, depending on whether the Residential or Commercial CIL rates are being derived and so there is an inconsistency in the approach taken. We deal with the BLVs used to derive the Residential CIL rates below.

RESIDENTIAL CIL	BLV 1	BLV 2	BLV 3	BLV 4
Existing use	Office	Office	Industrial	Community
Source	BNP PARIBAS	BNP PARIBAS	BNP PARIBAS	BNP PARIBAS
CUV	Low value offices	Lower value offices	Low value industrial	Low value community
Landowner premium	20%	20%	20%	20%
Final BLV	£6.3 million per acre	£4 million per acre	£2.1 million per acre	£1.2 million per acre

Firstly, the BLV assessments have been based on hypothetical current uses, trading at low rents with refurbishments costs and significant voids. We are of the view that in isolation the resultant BLVs are significantly lower than the figures that land will transact at and therefore do not represent "a willing landowner".

# Deloitte\*

It is apparent to us that the BLVs have not been confirmed with agents active in the market, and there is therefore no appropriate evidence to substantiate BNP Paribas's assumption that landowners in the market are prepared to sell at such discounted prices. Using these BLVs in order to set CIL will undoubtedly stifle development coming forward. The BLVs are underestimated and therefore artificially allow for more CIL than is viable without stifling development.

There appears to be no weight given to the type of land likely to come forward for development in the borough and the likely land values expected to be achieved by landowners. There appears to be equal weighting granted to office, industrial and community use sites and a presumption that landowners will accept these BLVs as appropriate values in order to release their land. There also does not appear to be any weighting given to the very low value community land in informing the CIL charges, and what planning allocation may be granted to such sites. There has also been no reference made to residential land values.

As a basic principle, an existing building, even if vacant will have an inherent value which will be reflected in its investment value and any hope value for achieving a higher value use. In addition, DCLG's recent proposals for relaxation of planning rules for change of use from offices to residential further strengthen the arguments for higher BLVs than those shown above.

We have set out below market evidence in relation to local land values in the borough. (Source: Molior).

Address	Detail	Date	Price
Goodman's Field, Leman Street	(A) Full planning permission for the development of a 250 bedroom hotel (Use Class C1), 164 residential units (Use Class C3) with ancillary gym/swimming pool (857sqm GEA), 1,758m <sup>2</sup> (GEA) of ground floor commercial/leisure floorspace (Use Classes A1 - A5, B1a, D1 and D2) all to be provided in a single block and a basement of 18,447m <sup>2</sup> (GEA) incorporating 253 car parking spaces, cycle parking and including ancillary facilities (storage, management facilities and plant) with access, landscaping, surface car parking and related infrastructure and engineering works. (B) outline planning permission for a mixed use development (with all matters reserved except for access) comprising up to 700 residential units (Use Class C3), up to 6,891m <sup>2</sup> (GEA) of ground floor commercial/leisure floorspace (Use Classes A1 - A5, B1a, D1 and D2), vehicular/ pedestrian/cycle accesses and related infrastructure and engineering works.	December 2010	£60m for 2.22 ha  £10.9 million / acre
Avant Garde, 32-34 Bethnal Green Road	Demolition of existing building and erection of two buildings ranging from 4 to 25 storeys in height to provide 3,434 sqm of commercial floorspace within use class A1, A2, A3, A4, B1, B8, D1 & D2 and 360 residential units (comprising of 32 x studios, 135 x 1 bed, 116 x 2 bed, 65 x 3 bed, 7 x 4 bed, 5 x 5 bed), car parking, bicycle parking, refuse /recycling facilities, access, public amenity space and new public space.	November 2007	£25.18 m for 0.55 ha  £18.6 million / acre
61-75 Alie Street; 16-17 Plough Street 20 Buckle Street	Demolition of existing buildings and erection of two buildings of 7 and 28 storeys to provide 235 residential units, A1/A3 (retail/restaurant/cafe) floor space and B1 (Business), formation of associated car and cycle parking and highway access, hard and soft landscaping and other works associated to the redevelopment of the site] to allow submission of details either prior to occupation or following demolition rather than prior to commencement.	July 2011	£15.3m for 0.193 ha  £32 million / acre
52-58 Commercial Road	Redevelopment of site to provide a total of 136 x 1, 2 and 3 bedroom flats including 38 affordable units and six live/work units, 25 parking spaces, storage and plant space in the basement, café (A3), retail (A1), health	October 2006	£12.1m for 0.13 ha

# Deloitte.

	club (D2) and office space (B1) on the ground floor along with six reinstated car parking spaces from the social housing west of Gower's Walk, offices, flats and live / work units on the second and third floors, offices, flats, live/work units and a health club on the third floor and flats on all of the floors above.		£37 million / acre
City Quarter, 99 Leman Street	40 residential dwellings (refurbishment)	September 2005	£10.4m for 0.11 ha  £38 million / acre
14-20 Alie Street	Erection of a basement plus six storey building to provide commercial uses (Use Classes A1, A2, A3, B1 or D1) at part lower ground floors and 31 residential units above (13x1, 9x2, 9x3 beds).	October 2007	£4.2m for 0.03 ha  £56 million / acre
111-120 Whitechapel High Street & One Commercial Road	Erection of a building comprising basement plus 23 storey building (with roof terrace) providing (i) parking, plant and 755m <sup>2</sup> of Class A1, A2 or A3 (retail, office and food and drink) uses at basement level; (ii) 1,367m <sup>2</sup> of either Class A1, A2, A3, D2 (retail, food and drink, and leisure) uses on the ground floor; (iii) 1,609m <sup>2</sup> of either Class A1, A2, A3, B1, D1 (retail, food and drink, offices or leisure (D2) uses on the first floor; (iv) 8,430m <sup>2</sup> of offices (Class B1) on the 2nd to 6 <sup>th</sup> floors; and (v) 217 residential units on the 7th to 22nd floors, together alterations to the entrance of the Aldgate Station Underground Station	Jan 12	£38.9m for 0.11ha  £143 million / acre

There is clearly a wide range of land values ranging from £10 million to £143 million per acre. The sites will vary in density, date of transaction and level of affordable housing provision and other s106 contributions, however, it is apparent that landowners are not willing to sell their sites for less than £10 million per acre for residential use (which is the CIL use being tested utilising the above BLVs).

Indeed, Deloitte Real Estate is currently marketing a site in Whitechapel E1, London Borough of Tower Hamlets of 3.5 acres in size and the guide price is £40 million, equating to a sales price of £11.4 million per acre.

In relation to the BLVs used for commercial testing, we would comment that there are a number of inconsistencies in approach which have not been justified or explained, notably:

- Percentage of net additional floorspace ranging from 30% - 50% with 30% and 35% adopted for two differing office appraisals
- Landowner premiums of 15% in some instances and 20% in other instances

## Other Key Issues

### Viability Buffer

In any CIL setting process, it is important to ensure a suitable 'viability cushion' or buffer is allowed to account for unforeseen circumstances. In particular, we note that the BNP Paribas appraisals have omitted a number of costs which could severely affect site viability. We would usually expect the viability buffer to reflect the uncertainty in market conditions over time and unforeseen additional costs, however a number of costs have been omitted in the BNP Paribas appraisals such as abnormal costs, basement



works, car parking costs, Mayoral CIL, s106 Crossrail Tariff, sustainability costs, affordable housing, etc. On this basis, we would request to see a re-run of the appraisals with known costs included, or alternatively a sufficient viability buffer to account for these additional costs.

The BNP Paribas viability report states that a recommended buffer of 30% from the 'maximum' CIL rates should be applicable to London Borough of Tower Hamlets. There is a twofold point here: firstly, we do not believe that a 30% buffer is a sufficient 'viability cushion', particularly as it has been used to allow for a number of known costs. Secondly, despite the descriptive text of the Viability Study suggesting a 30% buffer is recommended for this borough; in fact, BNP Paribas has only allowed for a buffer of between 22% - 25% in setting its recommended CIL rates (see Table 1.5.1. of the March 2013 Viability Study).

#### **Instalment Policy**

It is unclear if and how an instalment policy has been tested in terms of viability. Instalment policies affect viability as CIL is a development cost which is payable on commencement of development and attracts finance costs much as any other development cost. We believe it will be taken into consideration by an Examiner and we wish to understand what assumption has been made on this and whether any difference in approach has been made for the residential and commercial CIL charges, and if so, the reason why. If no instalment policy has been tested, we would recommend that the viability buffer is further increased as the maximum CIL charges would assume that CIL is payable on completion of development which thereby overestimates the quantum of CIL.

In addition point 3.2 of Appendix 2 of the DCS makes reference to adopting the same instalment policy as that which may be proposed for Mayoral CIL. It is unclear if this instalment policy has been tested in terms of viability.

#### **Mayoral CIL and Crossrail s106 Tariff**

It is unclear how Mayoral CIL has been accounted for in the appraisals. We disagree that this cost should be netted off at the end of the appraisal rather than inputted as a known development cost.

We disagree with the approach taken to the Crossrail s106 charge. Geographically, much of the borough will fall within the Central London Charge Zone or the Isle of Dogs Charge Zone, and therefore the following charges will apply:

Central London Charge Zone	Isle of Dogs Charge Zone
Office £140 psm	Office £190 psm
Retail £90 psm	Retail £121 psm
Hotels £61 psm	Hotels £84 psm

There does not appear to be any allowance within the 'viability buffer' to account for these additional obligations which will be required of developers. Taking, for example, the maximum CIL charge for offices of £300 psm, and deducting Mayoral CIL of £35 psm, leaves a viability buffer of only £65 psm if adopting the BNP Paribas recommended office CIL charge of £200 psm. Clearly a viability buffer of £65psm is insufficient to cover the Crossrail s106 Obligation of £140 psm within the Central London Charge Zone, and this allows for no viability cushion for a number of additional costs such as sustainability requirements, abnormal costs, changes in market conditions, and affordable housing in line with Council policy.



### **Purchaser's Costs**

There are instances where the viability report contradicts itself, and indeed where it refers to different inputs which are not then incorporated into the viability appraisals, for example, point 4.25 refers to stamp duty and acquisition costs of 5.8% (4% stamp duty, 1% agents fees and 0.8% acquisition fees).

Either BNP Paribas has missed out VAT on fees or has misrepresented or misunderstood its own 5.8%. Notwithstanding this, the appraisals at Appendix 4 actually show purchaser's costs at 5.75% which are therefore insufficient and inconsistent with the report. This error may also be present in the residential appraisals, however insufficient information has been provided in order to comment appropriately.

### **Exceptional Circumstances Relief**

We would request to understand whether the Council is electing ECR in its borough and we are supportive of this.

### **CIL as a Development Cost**

CIL is a development cost which is payable on commencement of development and attracts finance costs much as any other development cost. We can see no evidence that CIL has been appropriately incorporated into the appraisals, but rather that that it is an output of the appraisal assumptions and this leads us to question whether sufficient deductions have been made to the maximum CIL output to ensure finance charges are taken into account.

### **Build Costs**

Paragraphs 4.12 and 4.50 set out the build costs assumption used for the residential and commercial appraisals, respectively. BNP Paribas has relied upon BCIS in its assumption on build costs. We do not believe the use of BCIS is an appropriate index for London Boroughs, particularly as the sample of tenders for actual schemes in London sourced from BCIS is limited. The range of residential build costs adopted by BNP Paribas is £95psf to £131psf. We would question whether these build costs are reflective of the London market, in particular, as a limited allowance has been granted for external works at 15%.

We have evidence of build costs around £230 psf for mixed use schemes, albeit this is inclusive of some external works. We would expect costs for external works in London to be significantly higher than those adopted by BNP Paribas. For example, car parking spaces are often provided at basement level in London and no allowance has been made for car parking costs. In addition, although the descriptive text in the Viability Report suggests a 15% allowance has been made for external works (see 4.13 - 4.19), the commercial appraisals at Appendix 4 only provide an allowance of 10% for external works. The appraisals are therefore inconsistent with the viability report and the cost allowances are insufficient as compared to actual scheme evidence provided above.

### **Summary**

We believe the number of points highlighted above is sufficient to call into question the credibility of the proposed CIL charges. In summary we wish to raise the following comments:

- We are concerned by the responses provided at PDCS stage and the drop-in session which do not adequately address the concerns raised.
- We request to see at least one residential appraisal which sets out the exact calculations used to arrive at the RLVs.



- We can see no evidence that sensitivity testing for CIL has been done based the affordable housing policy range of 35% - 50%.
- We believe retail rents have been overestimated and we have provided appropriate evidence to the contrary.
- We believe the assumptions in relation to new build offices are incorrect and we have provided appropriate evidence to the contrary.
- Critically, the BLVs adopted within the viability study have not been market tested and significantly underestimate the level of land value required for a "willing landowner". Again, evidence has been provided which should be considered.
- The viability buffer is insufficient to deal with both known and unknown additional costs.
- We request to understand if and how an instalment policy has been tested in terms of viability.
- CIL is a development cost which attracts finance as any other development cost.
- Fundamental inputs such as purchaser's costs are incorrect and insufficient in the appraisals.
- We believe the build costs are not reflective of new build developments in London and we have provided evidence to the contrary.

We request that the Council reconsiders its viability evidence and the comments we have provided, in particular in relation to BLVs, to ensure landowners receive an appropriate return for their land and that development is not stifled in this borough.

In addition, we wish to understand how the charging authority intends to prioritise, capture and spend CIL in the borough in a manner which does not delay development coming forward.

We wish to work collaboratively with the Council in resolving these issues and in ensuring the revised Charging Schedule takes into consideration the comments that we have made.

Yours faithfully

A blacked-out signature, likely of Lindy N. Howard, used to redact the name and contact information of the signatory.

Lindy N. Howard  
for Deloitte LLP

CIL-DCS 37

PD/P4638  
05 June 2012

CIL Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2nd Floor Mulberry Place  
5 Clove Crescent  
E14 2BG

Dear Sir or Madam

**Tower Hamlets Community Infrastructure Levy (CIL) Draft Charging Schedule – March 2013**

We write on behalf of our client, Downing, to make a representation to LB Tower Hamlet's Community Infrastructure Levy (CIL) Draft Charging Schedule.

***Background***

Downing are a very experienced provider of student accommodation and have built and managed over 5,000 student bedrooms in UK cities, including London, Manchester and Newcastle over the last 15 years. They have earned many awards for the architectural quality of their schemes, the standard of accommodation they deliver for their students and their ability to deliver schemes that integrate well with the existing communities, often improving and creating further investment in the areas they have developed in.

Due to the favourable location of the Borough in terms of proximity and accessibility to many of London's educational institutions and its currently deficient provision of student accommodation, Downing are currently investigating the potential for student developments in this area.

***Proposed CIL Rate for Student Accommodation***

It is proposed in LB Tower Hamlet's draft charging schedule to set a Borough-wide rate of £425 per square metre for student accommodation. Our client has significant concerns over the level of this proposed charge and the apparent lack of flexibility in its application. It is our client's view that once in place this proposed CIL levy rate will serve as a significant impediment to the delivery of new student accommodation, and particularly high quality new student accommodation, in this Borough.

We note that BNP Paribas (BNPP) undertook an assessment of the economic viability of proposed CIL rates in Tower Hamlets on behalf of the Council (most recently in March 2013). In this assessment they have undertaken commercial appraisals for each use. For student accommodation they identify that student housing in the Borough generates sufficient surplus residual values to absorb a CIL of up to £692 per square metre and that after allowing for a buffer for site-specific factors a rate of £425 per square metre (exclusive of Mayoral CIL) is considered appropriate.

Architecture Planning Interiors

[Redacted signature block]

[Redacted signature block]

[Redacted signature block]

CIL DCS 37

LB Tower Hamlets – CIL Draft Charging Schedule  
 05 June 2013

As a company highly experienced in the development and management of student accommodation throughout the country our client has reviewed the commercial appraisals for student housing set out in Appendix 4 of the Viability Report prepared by BNPP. This has led to the following observations:

- BNP Paribas have used a major student development of 500 units for their appraisal. This would be very much at the upper end of the scale of student developments and would therefore not accurately reflect the existing use values and build costs associated with smaller and medium sized student proposals. Given that the Council are proposing to apply the same CIL levy for student accommodation across the Borough it is considered appropriate that a more medium-scaled student development should be used as a case study to establish the appropriate CIL rate;
- The assumption of 20% over the existing use value for the landowner premium appears very low and would not reflect the likely land costs for a large development site in some of the Borough's more attractive locations. Given the ability of the site to accommodate up to 500 student units, landowners would undoubtedly have a much larger valuation for their landholding;
- Table 4.48.1 (Commercial appraisal assumptions for each use) states that a total floor area of 30,000 sq. ft will be used for the appraisal of student housing. However, this is not consistent with the Development Appraisal in Appendix 4 which relates to a development of 500 student units. Using the existing floorspace of 49,875 sq. ft, which is stated as 35% of the new floorspace, it is assumed that BNPP have used a total new floor area of 142,500 sq. ft for the 500 units. This needs to be clarified;
- On the basis of the above BNPP have allowed for 285 sq. ft for each student unit within the scheme, which it is assumed also includes all ancillary areas to facilitate the development. As a provider of high quality and spacious living accommodation for students, Downing believes that the appraisals should allow for a minimum of 30 square metres per student unit within a development (322 sq ft). Applying the construction costs used by BNPP in the appraisal this would lead to an additional build cost of £3.3m, thereby reducing the Residual Land Value;
- Table 4.48.1 (Commercial appraisal assumptions for each use) states that the existing floorspace for the Development Appraisal will be taken as 30% of the proposed new floorspace. However, this is inconsistent with the Development Appraisal which uses 35% and should be consistent;
- A term-time occupancy rate of 98% has been used for the appraisal although it is also stated in brackets in the same assessment sheet in Appendix 4 that a 95% occupancy rate is used. As 95% is the more generally accepted industry standard rate it is requested that this is applied to the appraisal which will have a consequent impact on the Gross Development Value;
- A 52 week academic year (42 week term-time and 10 week summer time) has been used when it is common practice to use a 51 week period with a 9 week summer period;
- Whilst the term-time rent of £200 per week for student units is largely reflective of the schemes that have been developed in the borough to-date there is a drive by local authorities and student developers to provide 'more affordable' student accommodation to meet the demand from UK/EU based students. This would therefore support a reduction in the term-time rent

LB Tower Hamlets – CIL Draft Charging Schedule  
 05 June 2013

- from £200 to £190 that would have a consequent impact on the Gross Development Value for the proposed scheme;
- An operating cost of £2,100 per unit is applied which is more reflective of a high density and high value student accommodation scheme and is not indicative of the higher operating costs associated with smaller student accommodation schemes;
  - No allowance has been made for third party costs which are particularly prevalent in London e.g. Rights of Light/Section 106 Agreement/Party Wall Costs. These would not be covered within the Professional Fees;
  - The assumptions state a contingency of 5%, but I cannot see where this has been allowed for within the appraisal;
  - BNPP has assumed a developer profit rate of 20% in their calculation of development costs. It is acknowledged that this is an industry standard when completing viability toolkit assessments. However, we would point out to the Council that in the current economic climate, banks (and other lenders/funders) are highly unlikely to fund new development unless a minimum 25% developer profit can be guaranteed, thereby further limiting the Residual Land Value;
  - The net additional floorspace figure of 92,625 sq. ft (8,600 sq. m) assumes that the existing floorspace can be discounted on the basis that it has been occupied for 6 of the last 12 months prior to the scheme being approved. This is not always the case which will have a significant impact on the affordable CIL levy rate per square metre

The Development Appraisal for student housing undertaken by BNPP in Appendix 4 of their assessment has enabled the Council to establish that the developers of student accommodation can viably pay a CIL levy up to £692 per sq. metres or £425 when a buffer of site-specific factors has been taken into account. However, in addition to the technical observations from Downing set out above, there are considered to be a number of reasons why this artificially inflated levy is not appropriate and would create a financial imposition on new student housing that would be detrimental to the viability of such schemes.

*Lack of Adequate Evidence Base to Support CIL Rate*

Whilst BNP Paribas have extensively applied sensitivity testing to the calculation of an appropriate CIL levy for residential development, it is considered that a deficient level of analysis exists in relation to the calculation of an appropriate levy for student developments.

Regulation 14 of the current CIL Regulations states the charging authority "*must aim to strike what appears to the charging authority to be an appropriate balance*" between the desirability of funding infrastructure from the levy and the potential effects of the levy rates on the economic viability of development across its area. However, the latest reforms to the CIL Regulations seek to take this a step further by stating "*to assist the examiner in reaching a view as to whether the correct balance has been reached*" it is proposed that charging authorities should be required to carry out an evidence-based test "*to strike an appropriate balance that they will need to justify through evidence at the examination*".

CIL - DCS 37

LB Tower Hamlets – CIL Draft Charging Schedule  
 05 June 2013

Paragraph 22 of the updated Statutory Guidance (SG) regarding the Community Infrastructure Levy (CIL) in April 2013 notes that such background viability evidence should include providing information regarding the level of development contributions previously raised through comparable S106 agreements. Paragraph 21 of the SG also requires the charging authority to demonstrate how the proposed CIL rates will contribute towards the implementation of the development plan and support development across their area.

Paragraph 8 of the updated SG confirms a balanced judgement between the introduction of CIL and its impact upon development is required and that, in meeting this test, local authorities must have regard to the NPPF. Paragraph 173 of the NPPF states:

*“To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”*

It is our view that the calculation of the student CIL rate by BNPP is based extensively on misguided commercial assumptions with a distinct lack of any detailed evidence base such as an analysis of previous financial contributions raised through section 106 contributions. This thereby results in a levy rate for student accommodation which is grossly inconsistent with historical financial contributions for such uses in the Borough and will impact significantly on the economic viability of student developments, which is contrary to the objectives of the CIL Regulations and the NPPF.

Further to this, in line with paragraph 175 of the NPPF which requires the local authorities to ensure CIL should “*support and incentivise new development*”, it is important for local authorities to demonstrate how the rates contribute towards implementation of the relevant plan to ensure that a more positive approach is adopted, particularly regarding housing supply (including student accommodation).

The currently proposed CIL rate will ensure that student accommodation schemes will be stifled within the Borough as student developers will be unable to compete with purchase offers from office or residential developers who do not have to accommodate such a high CIL rate in their Residual Land Value. Alternatively if no other offers are made to the landowners they will be encouraged to land-bank until a more favourable offer is made, as the student developer will be unlikely to meet their valuation.

The Tower Hamlets CIL should not be used as a means of deterring certain forms of development in the Borough which the excessively high levy for student accommodation appears to suggest. The opportunity exists through planning policy to restrict student uses in certain locations throughout the Borough should the Council deem it appropriate. It will also be necessary to demonstrate that proposals for student accommodation are meeting a demonstrated need in the Borough.

It is our client’s view that the Council has underestimated the impact of CIL upon the viability / deliverability of new development within Tower Hamlets and will therefore hinder rather than promote the development of student accommodation in the Borough. On this basis we would therefore request that the local authority further assesses the method through which the proposed student CIL rate has been devised to ensure that an appropriate detailed evidence base is presented at examination to justify the charge.

LB Tower Hamlets – CIL Draft Charging Schedule  
 05 June 2013

### Affordable Housing

Policy DM6 of the recently adopted LBTH Managing Development DPD states that if a student proposal is not tied to a specific third level institution then it will be subject to affordable housing policies. The Development Appraisals carried out by BNP Paribas identified that when affordable housing requirements are incorporated into the Residential Land Value the sample student development of 500 units would only be able to accommodate a CIL of £250 per square metres (£187 with a 25% buffer excluding the Mayoral CIL).

Given our client's experience of high uncertainty on the part of third level institutions in committing to a specific student development at the planning application stage, it is quite likely that the developer will be required to demonstrate compliance with the affordable housing requirement for most emerging student schemes in the Borough. This means that developers will be required to meet the £425 per square metre CIL rate and affordable housing requirements. This will create the undesirable requirement to agree a significantly reduced or non-existent affordable housing provision/contribution with the Council to be able to afford the CIL levy.

As an alternative, should the Council consider the £425 per sq. m levy to be appropriate, differential rates could be applied whereby the currently proposed CIL rate would apply to student developments that have been successfully able to link with third level institutions and a lower rate would apply to those which are not able to demonstrate such a link at pre-planning stage.

### Potential for differential rates for student CIL levy

Our clients understand and complement the Council's intended approach to introduce different CIL rates for residential development within certain locations within Tower Hamlets. However, it is not clear why a similar approach does not appear to have been considered with regard to student development given that such forms of accommodation will also be influenced by similar market forces such as land values and accessibility to services.

It is stated in the March 2013 viability appraisal by BNPP that "*the ability of residential schemes to make CIL contributions varies depending on area and the current use of the site.*" It is submitted that the same applies with regard to student accommodation. There are significant variations in existing land use values between different parts of the Borough, with values in Canary Wharf and City Fringe with the highest values and the areas to the east achieving lower values.

Notwithstanding our client's view that the student levy is currently significantly inflated and unrealistic we would contend that the wholesale application of the levy across the entire Borough will completely inhibit the potential for smaller scale student proposals on sites outside of the main regeneration areas as well as the potential for student accommodation to be considered as a complementary element of a larger mixed use proposal. A greater flexibility in the use of the Tower Hamlets CIL charge is therefore required in our view.

### Impact on Infrastructure

Another consideration relevant in the assessment of an appropriate rate for the student accommodation levy is its relationship to the delivery of infrastructure in the Borough. The proposed reforms to the CIL regulations require charging authorities to provide a list of new or improved infrastructure needed to mitigate the impact of development. We would contend that student

LB Tower Hamlets – CIL Draft Charging Schedule  
05 June 2013

accommodation, unlike other uses such as residential, generates very little pressure on existing facilities such as education or health and it could therefore be argued that a substantial percentage of the costs to be accumulated through the application of the CIL charge would not directly benefit or mitigate the impact of student development. There is therefore strong justification for a reduction in the levy rate on this basis.

***Options Available to the Council regarding CIL Rate for Student Accommodation***

Based on the above, we believe that further work is required to be undertaken by the Council before an appropriate student CIL rate can be devised as follows:

- Re-examine the methodology for calculating the student CIL rate so that it includes a more detailed evidence base to support the proposed levy. This should include financial contributions agreed through section 106 agreements and an examination of the CIL rate against state policies and objectives within the development plan so that an appropriate level of liability can be applied that still enables high quality student schemes to come forward;
- Further assess the implications of student developments meeting affordable housing requirements by potentially applying differential rates to student developments that are specifically linked to third level institutions and those that are not in a position to confirm such a link at pre-planning stage;
- Introduce different Levy Charge Zones for student accommodation with a higher rate for sites within the Borough's main growth centres (particularly City Fringe which is the focus for regeneration and growth)

We would urge the Council to consider the above representation to ensure that the introduction of CIL does not critically impact upon the delivery of new student accommodation within the Borough. We would be grateful if you could keep us informed of any further developments or consultations in relation to the draft CIL Charging Schedule and the Council's Local Development Framework.

I trust that the above is of assistance and we look forward to receiving your response to our comments above in due course. In the meantime, please do not hesitate to contact me should you wish to discuss our representation.

CIL DCS 38

**From:** [REDACTED]  
**Sent:** 11 June 2013 11:16  
**To:** [REDACTED]  
**Subject:** Consultation on Tower Hamlets' CIL Draft Charging Schedule  
**Importance:** High

English Heritage

Dear Joseph

Thank you for consulting English Heritage on the above document, and note that the date for comments has now closed. However I do hope you will still be able to accept the following comments as we note that based upon the details provided it appears that our previous comments (copy letter attached) have not been addressed.

With this in mind we have concentrated our comments on the Revised Planning Obligations SPD Cabinet Draft March 2013. In particular we are keen to ensure that as part of the Borough's positive strategy on conserving and enhancing the historic environment (NPPF para 126) that the SPD recognises the value of investing in the historic environment as one of the key objectives e.g. on par with the public realm and public art. For example there could be circumstances that development proposals could have an impact upon the significance of heritage assets and in some cases cause harm. Where this is justified in accordance with the NPPF (section 12) then we would seek to ensure that s106 agreements and CIL can be used to mitigate the harm caused (e.g. upon the setting of a heritage asset which contributes to its significance, such as a listed building or upon the asset itself such as in a conservation area). In addition through the delivery of CIL as part of transport/highways improvements or public realm schemes, there is an opportunity to enhance where present the significance of heritage assets - e.g. as part of delivering the management plan of a conservation area.

The current document is silent on this potentially rewarding issue. We would therefore urge you to make reference in the document on the need to conserve and enhance the historic environment as part of the s106 and CIL approaches. This could be expressed in terms of identifying the need for direct action, where the significance of a heritage asset is affected or as a result of delivering other infrastructure within a historic environment. Details can then be articulated as part of the Threshold and Contribution requirements, in terms of the following. Where the significance of a heritage asset is identified as being affected, especially where it is harmed (subject to it being

justified in line with the NPPF) then this could act as a trigger for contributions to mitigate the impact. In addition the contributions requirements could state that the Council will seek contributions towards improving the condition of heritage assets, especially where they are at Risk (as identified on the EH Heritage at Risk Register) in proximity to the proposed development.

I hope these comments are useful and we look forward to seeing how they will be addressed and incorporated into the emerging SPD.

If you wish to discuss any of the points raised then do get back to me.

CIL DCS 38

CIL - DCS 38



ENGLISH HERITAGE

Infrastructure Planning Team  
London Borough of Tower Hamlets  
Mulberry Place  
PO Box 55739  
5 Clove Crescent  
London E14 1BY

Your Ref:

Our Ref:

[Redacted reference numbers]

Date: 2<sup>nd</sup> January 2013

Dear Sir/Madam

**London Borough of Tower Hamlets  
Community Infrastructure Levy – Preliminary Draft Charging Schedule**

Thank you for consulting English Heritage on the London Borough of Tower Hamlets' Community Infrastructure Levy (CIL) Draft Charging Schedule. As the Government's Statutory Advisor on the Historic Environment, English Heritage is pleased to comment on this document.

English Heritage recognises the importance of Community Infrastructure Levy as a source of funding to deliver the infrastructure necessary to support the Borough's development.

However, we are concerned that the application of a local CIL charge on developments could have an impact upon the significance and/or viability of regenerating heritage assets. For example, it is recognised that when calculating the appropriate level of charge for CIL that the economic viability of development needs to be considered. Many of the sites that do come forward either contain heritage assets or are part of a heritage asset (e.g. conservation area) or will have an impact upon the setting of heritage assets. With this in mind we would seek to ensure that the calculations proposed consider their impact upon the significance of heritage assets, in the context of the level of development required to be delivered to make schemes viable.

More importantly we would suggest that where sites include Heritage at Risk Assets that the charging schedule offers discretionary relief from the need to make a CIL payment. This approach would reflect CIL Regulations (2010), paragraphs 55 - 58, which provides for charging authorities to offer discretionary relief from CIL for a chargeable development in exceptional circumstances. Our argument is that by offering this relief the heritage-led

[Redacted signature block]

*Please note that English Heritage operates an access to information policy. Correspondence or information which you send us may therefore become publicly available*

CIL - DCS 38

regeneration of these valued and in need assets could be brought back into active re-use. This approach would also help deliver the National Planning Policy Framework's requirement for a positive strategy for the conservation and enjoyment of the historic environment including heritage assets most at risk (paragraph 126)

We hope that these comments prove useful in finalising the Draft Charging Schedule and look forward to discussing any of the points raised prior to an EIP.

In the meantime, English Heritage would strongly advise that the local authority's conservation staff are involved throughout the preparation and implementation of the Draft Charging Schedule as they are often best placed to advise on; local historic environment issues and priorities; sources of data; and, consideration of options relating to the historic environment.

Finally, it must be noted that this advice is based on the information provided by you and for the avoidance of doubt does not affect our obligation to advise you on, and potentially object to any specific development proposal which may subsequently arise from this or later versions of the Draft Charging Schedule, and which may have adverse effects on the historic environment.