
Report to the Council of the London Borough of Tower Hamlets

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an Examiner appointed by the Council

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT LONDON BOROUGH OF TOWER HAMLETS COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for Examination on 11 February 2014

Examination hearings held on 28, 29 and 30 May and 6 October 2014

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Non-Technical Summary

This report concludes that, subject to modification, the London Borough of Tower Hamlets Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. The Council has sufficient evidence to support the modified schedule and can show that the levy is set at a level that will not put the overall development of the area at risk.

Four modifications are needed to meet the statutory requirements. These can be summarised as follows:

- Reducing the North Docklands area rate for offices to nil to ensure that CIL does not result in an inappropriate reduction in funding secured through the Mayor of London's SPG.
- For the sake of clarity and to provide for fair and transparent implementation, including in the schedule a more detailed definition of Convenience Supermarket/Superstores and Retail Warehousing.
- Setting a nil rate for Student Housing let at below market rent.
- Setting a nil rate for all development in Tower Hamlets within the boundaries of the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock allocated sites as defined in the *Tower Hamlets Local Plan Managing Development Document*.

The specified modifications recommended in this report are based on matters discussed during the public hearing sessions.

Introduction

1. This report contains my assessment of the London Borough of Tower Hamlets Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance.
2. References in this report to the "CIL Guidance" are to the Department of Communities and Local Government's (DCLG) *Planning Practice Guidance – Community Infrastructure Levy* which post-dates and has regard to the Community Infrastructure Levy (Amendment) Regulation 2014. However, as the guidance itself notes, changes to rate setting and Examination processes made by the 2014 Regulations do not apply to authorities, such as Tower Hamlets, who had published a draft charging schedule before the Regulations came into force. Consequently, where of specific relevance, I have also referred to DCLG's *Community Infrastructure Levy Guidance* of April 2013.
3. To comply with the relevant legislation the local charging authority has to submit what it considers to be a charging schedule which sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the area. The basis for the Examination, on which hearing sessions were held on 28-30 May and 6 October 2014, is the submitted Revised Draft Schedule and the

accompanying Statement of Modifications of 11 February 2014. The Revised Draft Schedule was published for public consultation on 21 October 2013 and the Statement of Modifications was the subject of consultation between 11 February and 11 March 2014.

4. The Council proposes a rate for residential development, across three zones, of £35, £65 and £200 per sq m. For offices the proposed rate is £90 per sq m in the City Fringe area and £50 per sq m in the North Docklands area with a nil charge in the rest of the Borough. A Borough-wide charge of £120 per sq m is proposed for Convenience Supermarkets, Superstores and Retail Warehousing with all other retail to be the subject of a £70 per sq m charge in the City Fringe area and the North Docklands area and a nil charge in the rest of the Borough. For Hotel and Student Housing uses the Council proposes a Borough-wide charge of £180 per sq m and £425 per sq m respectively. All other uses are proposed to be subject to a nil charge.

Is the charging schedule supported by background documents containing appropriate available evidence?

Infrastructure Planning Evidence

5. The *Tower Hamlets Core Strategy Development Plan Document 2025 (CS)* was adopted in September 2010 and the *Managing Development Document (MDD)* in April 2013. At the heart of the Core Strategy's vision is the concept of "reinventing the hamlets". The Foreword to the plan identifies that, despite ongoing successes, the Borough still faces some difficult challenges; foremost of which is the need to ensure there are sufficient good quality affordable homes for families. It goes on to state that continuing to improve education and skills as well as providing opportunities for employment and enterprise remains another high priority. The MDD sets out the detailed planning policies and 20 site allocations designed to achieve the CS's vision. Section 3 of the document, which details the site allocations, indicates that they have been identified using the *Infrastructure Delivery Plan (IDP)* of 2009 and the 2012 IDP Update. The 2012 IDP Update informed the production of the 2013 *Infrastructure Delivery Schedule*.
6. The *Infrastructure Delivery Schedule* identifies that some 200 projects are CIL eligible, 120 of which have been costed. The projects cover 19 categories of infrastructure; Transport and Connectivity, Primary Education and Secondary Education being the three most significant in terms of cost. The total cost of the 120 costed projects is around £528.65m of which it is anticipated £151.4m will be funded by non-CIL sources. This leaves an aggregate funding gap of £377.25m. A number of concerns are raised about the Draft Reg 123 list, which sets out the projects/types of infrastructure which the Council intends to fund through CIL. I refer to possible changes to the Reg 123 list in connection with the proposed modification to the CIL rates on large allocated sites. However, beyond that, as the CIL guidance indicates, the Reg 123 list is essentially not a matter for consideration in the Examination.
7. There is some criticism of the accuracy of the infrastructure planning evidence. However, the CIL guidance recognises that there may be some uncertainty in this regard, particularly in pinpointing other infrastructure funding sources, and I am satisfied that the evidence is appropriately robust. It is also argued

that a distinction should be made between infrastructure necessary to support development and that necessary to meet the changing and growing demands of the existing population of the Borough. However, it seems to me that it is, in effect, impossible to separate the two: much new development in Tower Hamlets is likely to be used by the Borough's existing residents as part of their changing and growing demands.

8. The *CIL Infrastructure Planning and Funding Gap Report* (October 2013), as updated by Appendix 3 of the February 2014 Statement of Modifications, projects that CIL, if introduced as proposed by the Council, would generate £199.75m in the period to 2026/27, although allowing for reduced CIL liability for existing floorspace, it would be likely to generate in the order of £164.8m. Either way, the figures demonstrate the need to levy CIL, that CIL would be likely to make a significant contribution towards meeting the aggregate funding gap but that it would not generate more income than is needed to fund infrastructure in the Borough. Tower Hamlets is not unusual in terms of CIL income being unlikely to fully meet the aggregate funding gap and it appears to me that there is nothing in the relevant regulations which require an authority in such circumstances to set out the implications of this.

Economic Viability Evidence

9. The Council commissioned BNP Paribas Real Estate to prepare a *CIL Viability Study* which informed its Preliminary Draft Charging Schedule of November 2012. In response to consultation the March 2013 Draft Charging Schedule was published, supported by the *March 2013 CIL Viability Study*, and then in October 2013 a Revised Draft Charging Schedule, supported by the *August 2013 CIL Viability Study*, was published for consultation. In submitting the Revised Draft Schedule for Examination in February 2014 the Council also proposed and consulted on a Statement of Modifications, reducing a number of the proposed CIL charges.
10. In essence the *August 2013 CIL Viability Study* compares the residual land values of a range of types of development likely to come forward in Tower Hamlets to a range of benchmark land values. It identifies that if a development incorporating a given level of CIL generates a higher value than the benchmark land value then it can be judged that that level of CIL will be viable. Residual land value is calculated by deducting all the development's costs (including CIL) and the developer's profit from the forecast value of the completed scheme.
11. For residential development the study identifies seven, postcode-based, market areas for which average sales values per sq m are assumed. Seven types of residential development (ranging from a scheme of three houses up to one of 400 flats) are appraised against four benchmark land values (higher value secondary office space, lower value secondary office space, lower value secondary industrial space and community building space). Amongst other costs of development the appraisals include the Mayoral CIL, an estimate of residual s106 costs and a 35% affordable housing requirement in line with the minimum basic requirement of policy SP02 of the CS.
12. The study similarly appraises a range of commercial developments, based on research into rents achieved and how they vary by location across the

Borough. It is assumed that commercial development will take place on existing commercial sites, falling into one of three existing uses of a specific current use value (CUV). As the appraisals have been refined and updated the CUV employed has, in some cases, varied. This has been a somewhat confusing aspect of the development of the CIL schedule from the Preliminary Draft through to the Revised Draft and there is criticism that this represents manipulation of the appraisals to demonstrate that CIL would be viable. However, at the 6 October hearing the Council confirmed that the appraisals employ the highest value CUV at which, without CIL, a development would be viable. The CUV has therefore, in some cases, changed between the various stages of production of the schedule as the viability of development, irrespective of CIL, has altered. To my mind it is sensible to appraise development against the highest CUV at which it would be viable without CIL: if a development is not viable even without CIL it is unlikely that it would come forward.

13. Having regard to the representations to the contrary, I also agree with the Council that benchmark land values and current use values (which in the study appraisals are subject to a landowner premium as an incentive for the site to come forward for development) are a more appropriate basis on which to appraise CIL viability than historic market values. Historic market values will have been affected by the wide variety of circumstances applicable at the time and these may have changed or may no longer be relevant. Moreover, historic market values will not have been influenced by CIL as they are likely to be if and when CIL is in place. It is also sensible for the appraisals to assume that new commercial development will have higher rents and lower yields than that existing on the site: if this were not to be the case, once again development would be unlikely to come forward.
14. The *August 2013 CIL Viability Study* (partly updated in support of the Statement of Modifications) identifies maximum CIL rates at which residential development would be viable across the seven market areas, which to reduce complexity are combined into three postcode-based zones (1, 2 and 3). For offices and retail (except convenience supermarkets, superstores and retail warehousing) maximum CIL rates are identified for the City Fringe area, North Docklands area and the rest of the Borough. A maximum viable CIL charge across the Borough is identified for convenience supermarkets, superstores and retail warehousing, hotels, student housing and all other uses.
15. CIL guidance advises that charging rates should not be set right at the margins of viability and consequently the Council considers it appropriate to reduce the maximum viable CIL levels by 25% (slightly higher for student housing) to act as a buffer against unforeseen events or costs. Whilst noting that some parties believe a larger buffer is necessary (and question why the buffer has changed over time), given the generally detailed nature of the appraisals in the viability study, a 25% buffer is to my mind sufficient to ensure that, even accounting for unforeseen factors, most development likely to come forward in the Borough would not be made unviable by the proposed CIL charges, modified as I have recommended. The Council's proposed charges, set out in the February 2014 Statement of Modifications (summarised in paragraph 4 above), are based on the maximum CIL charges and the buffer.

16. In response to updated guidance published by the Department of Communities and Local Government (since further updated and incorporated in its *Planning Practice Guidance*), the viability study specifically appraises the effect of CIL on the viability of development on eight of the 20 site allocations set out in the 2013 *Managing Development Document*. For all sites the study analyses CIL as a percentage of development costs and for the four largest sites (Bishopsgate Goods Yard, London Dock, Wood Wharf and Westferry Printworks) it indicates each scheme's Internal Rate of Return (IRR) achieved, assuming CIL were and were not to be charged. For development of the four smaller sites the study simply identifies the difference between the residual land value and the viability benchmark.
17. In connection with the appraisals of the large sites in particular, a number of the assumptions used were criticised in response to the consultation on the Draft and Revised Draft Charging Schedule and at the May 2014 hearing sessions. In response the Council commissioned updated appraisals of three of the four sites, using revised assumptions, which were submitted as Supplementary Evidence in July 2014. At the 6 October hearing the Council confirmed that the revised appraisals now form the basis of its justification for its proposed CIL charges. The Supplementary Evidence includes a number of other revised appraisals and a range of analysis although it does not fundamentally alter the approach of the *August 2013 CIL Viability Study*.
18. It has been argued that evidence prepared by the Council after submission of the schedule for Examination cannot be taken into account. However, it is not unusual for Examiners to consider supplementary evidence prepared after submission of the schedule and it appears to me that there is nothing in the relevant regulations or guidance which prevents this.
19. The appraisal work has been criticised for not specifically assessing development in Opportunity Areas or in the Whitechapel Masterplan Area. Opportunity Areas derive from the *London Plan* and they cover about two-thirds of the Borough, cutting across the postcode-based development value areas identified in the viability study. Whilst identified as areas for growth they do not, in Tower Hamlets at least, give rise to any specific burdens on development and it is envisaged that, the identified site allocations aside, most development within Opportunity Areas would come forward as individual residential or commercial schemes as appraised in the viability study. In the light of this the viability of development in Tower Hamlets is likely to be much more influenced by the development value area in which it is located (as appraised by the viability study) than its location inside or outside an Opportunity Area.
20. Moreover, there is no convincing evidence to suggest that development likely to come forward in response to the Whitechapel Masterplan would be significantly different from the range of residential and commercial development appraised by the viability study. Consequently, notwithstanding the fact that Opportunity Areas have been specifically appraised in preparing the CIL schedule in at least one London Borough, the Tower Hamlets economic viability evidence is not materially undermined by it not specifically appraising development in, and outside, the Opportunity Areas and the Whitechapel Masterplan area.

Conclusion

21. Even following the publication of the Council's Supplementary Evidence there remains considerable objection to a number of the CIL rates proposed by the Council. However, primarily, the objections relate to the way in which the evidence has been interpreted by the Council and the assumptions it has relied on in doing so. These points are considered in detail below in relation to each of the proposed CIL rates and result in my recommendation of modifications to the draft schedule. However, this aside, the Revised Draft Charging Schedule is supported by detailed evidence of infrastructure needs and the economic appraisal evidence itself (as updated by the July 2014 Supplementary Evidence), which has been used to inform the schedule, is proportionate, appropriate and in most cases robust.

Are the charging rates informed by and consistent with the evidence?

CIL Rates for Residential Development

22. The *August 2013 CIL Viability Study* contends that, without harming the viability of most residential development, CIL could be levied at £200 per sq m in Zone 1, £65 per sq m in Zone 2 and £35 per sq m in Zone 3. The three zones are based on extensive research into variations in residential sales values across the Borough. It makes sense for the appraisals to assume an average of the range of values achieved in each zone and the buffer, which reduces the maximum CIL rate which would be viable in each zone to the actual proposed rate, will ensure that most below-average value developments would remain viable with CIL in place.
23. The relevant appraisals assume that for residential development of 10+ units 35% affordable housing would be provided, which is the minimum requirement of the 35% - 50% (subject to viability) range set out in policy SP02 of the Core Strategy. It is also higher than the 30% figure which the Council's *Section 106 Report* indicates was, on average, actually achieved on market-led residential schemes in the period from 1 October 2007 to 31 March 2013. The sensitivity analysis undertaken as part of the appraisal demonstrates that if 50% affordable housing were to be assumed many residential developments would not be viable irrespective of CIL. Indeed the *Section 106 Report* identifies that no market-led scheme has exceeded 45% affordable housing provision.
24. There are arguments that, in order to ensure that CIL does not undermine the delivery of affordable housing, 50% provision should be assumed in the appraisals. However, within the range of the maximum and minimum figures set out in CS policy SP02, I consider it appropriate for the Council to be able to balance the delivery of affordable housing and other infrastructure through new residential development. If the 50% affordable housing requirement were assumed, it is likely that little or no CIL could be viably charged on residential development but it is also likely that on many, or even most, developments 50% affordable housing would not in any case be achieved. In contrast, the appraisals demonstrate that (other than on large allocated sites, considered below) if a 35% affordable housing requirement is assumed (which is higher than the average figure achieved in recent years) it is feasible that both this level of affordable housing and a worthwhile CIL contribution towards other

infrastructure can be achieved on most residential development.

25. Consequently, although it is set in the context of a strategic target of 50% of new homes being affordable, given that policy SP02 sets 35% as the minimum requirement for sites with more than 10 residential units (subject to viability), this is an appropriate assumption on which to base CIL charges and is one which would not threaten developing viably the scale of development identified in the Core Strategy.
26. There is evidence that some residential properties in the part of Cubitt Town proposed to be located in Zone 1 have values much closer to those typical of the, lower value, Zone 3. However, these are existing properties (which as they stand would not be subject to CIL). The Council's contention that any new residential development in this area would be highly likely to be smaller but of a higher quality is a persuasive one. Consequently, the assumption that the value (per sq m) of new residential development in Cubitt Town would be higher than that of some existing property in this area is sound.
27. It is also argued that the Lanark Square area, proposed to be located in Zone 1, has more in common with the southern area of the Isle of Dogs which is located in Zone 2. However, the evidence submitted by the representor does not support this: whilst the quoted £625 per sq ft value is below the average assumed value for Zone 1, it is well in excess of the minimum £575 sq ft value. The 25% buffer by which the maximum viable CIL rates have been reduced to the actual proposed CIL rates should ensure that development of below-average value in a particular zone remains viable with CIL in place. Moreover, given that property values can vary markedly over a short distance, there is no inherent flaw in the schedule proposing that, in places, Zones 1 and 3 will abut each other, without the "buffer" of an intermediate Zone 2.
28. Estate regeneration schemes, which frequently rely on cross-subsidy from private sales, have not been specifically appraised in the viability study. However, given that the extent of grant funding is likely to be the crucial factor in determining the overall viability of such schemes and that this is likely to vary significantly from scheme to scheme, an appraisal of even a range of estate regeneration schemes would be unlikely to assist in identifying the likely impact of CIL, the affordable housing units within such schemes in any case being the subject of mandatory social housing relief. Concern is also raised about potential difficulties in offsetting existing built-space against CIL, particularly in estate renewal schemes. The operation of the offsetting scheme is not directly a matter for consideration as part of the Examination. However, given that the residential scheme appraisals have not assumed any such offsetting (Para 10.6 of the Council's *Response to the Main Issues and Questions for the Examination*) I am satisfied that the CIL rates are appropriate, even if, in reality, no offsetting were to be possible on a specific scheme.
29. In conclusion, other than in respect of large site allocations which are considered below, the CIL rates for residential development are informed by and consistent with the evidence.

CIL Rates for Office Development

30. The *August 2013 CIL Viability Study* (as updated by the January 2014 Appendix 1) contends that, without harming the viability of most office development, CIL could be levied at £90 per sq m in the City Fringe area and £50 per sq m in the North Docklands area. A nil rate is proposed for offices in the rest of the Borough. Outside the North Docklands area the CIL rate allows for payment of the full Crossrail s106 "top-up", in accordance with the *Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy SPG* (April 2013). However, if the full Crossrail "top-up" were to be assumed for office development in the North Docklands area, the study identifies that development would not be viable with the levying of a Tower Hamlets CIL at any level. In the light of this the Council's proposed £50 per sq m rate for this area assumes that the available "headroom" in development to fund the Crossrail "top up" and the Borough's CIL is shared between the two.
31. It appears to me that, although, the relevant Regulations and Guidance include provisions and advice which relate to this matter, they do not unequivocally indicate how this particular issue should be addressed. Nobody at the hearings contended otherwise.
32. Regulation 123 of the CIL Regulations 2010 (as amended) prohibits the pooling of funding to a particular project or type of infrastructure from five or more planning obligations in an area in which a CIL schedule has been adopted. However, Regulation 123(4) specifically excludes Crossrail from this provision, the effect of which is to uniquely enable the pooling of funding for this project through planning obligations. In April 2013 the Mayor of London adopted the *Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy Supplementary Planning Guidance* (SPG). With reference to *London Plan* policy 6.5, the SPG sets out proposals for the securing (ie pooling), through planning obligations, of contributions towards the construction costs of Crossrail in connection with certain types/locations of new development. Indicative levels of charge per sq m are set out varying by type of development (office, retail and hotels) and by location (central London, Isle of Dogs and the rest of London). Whilst the rate for offices in the Isle of Dogs (which includes North Docklands) is the highest, the SPG justifies in some detail why the various rates are necessary to make development acceptable in planning terms.
33. As the Council points out, the status of the Crossrail s106 "top-up" is different from that of the Mayoral CIL. Nonetheless, paragraph 29 of the April 2013 CIL Guidance states that in proposing a levy rate charging authorities should take into account development costs arising from existing regulatory requirements, including taking account of any policies on planning obligations in the relevant plan. This is echoed in the current *Planning Practice Guidance*. For Tower Hamlets the *London Plan* is part of the relevant plan and thus its policy in respect of planning obligations for Crossrail (as detailed in the above mentioned SPG) is a regulatory requirement which Tower Hamlets Council must take into account in proposing its CIL rates.
34. It can be argued that "take into account" does not necessarily mean that a CIL charge must always and absolutely allow for the full cost of every planning

obligation requirement. Indeed, as indicated above, I consider it appropriate for Tower Hamlets to flex its planning obligation requirements in respect of affordable housing, within the range set out in the Core Strategy, to enable it to strike a balance between the provision of affordable housing and other infrastructure. In effect, this enables the Council to, within certain limits, decide how to share the likely available funding between CIL and affordable housing.

35. However, I consider that it is inappropriate for the Council to seek to adopt the same approach with the Crossrail s106 "top-up". Unlike, the affordable housing requirements, which are set out in Tower Hamlets' own Core Strategy, the Crossrail "top-up" requirement derives from policy 6.5 of the *London Plan*, the most strategic level document of the relevant plan in Tower Hamlets (with which Core Strategies in London must be in general conformity). In essence, whilst it may be acceptable for Tower Hamlets to pragmatically "flex", to some degree, its own planning obligation requirements to secure CIL on new development, it would be inappropriate for it to seek to do so with the pre-existing, adopted planning obligation requirements of another body, particularly given that, in this case, it relates to a pooled planning obligation regime which the CIL Regulations specifically and uniquely permit. I reach this conclusion notwithstanding the "room for pragmatism" in CIL rate setting encouraged by the CIL guidance.
36. There is disagreement over the amount of funding which would actually be lost to Crossrail as a result of the Council's proposed £50 per sq m CIL charge for offices in North Docklands, although at most it would be likely to be a relatively small proportion of the total funding secured through the s106 "top-up". Moreover, bearing in mind the "subject to viability" consideration of paragraph 3.34 of the SPG, it is the case that, even without CIL, there is no guarantee that all office developments in North Docklands would pay the full s106 "top-up" rate. However, notwithstanding this, the Council's ability to "flex" its own planning obligation requirements to secure CIL should not extend to the already adopted planning obligation requirements of other bodies.
37. The Council points out that office schemes in North Docklands are likely to be part of mixed-use developments which, overall, would be viably able to pay both the proposed CIL office rate and the full Crossrail s106 "top-up". In the run-up to the May hearings it was also argued (Doc ED5.10) that, contrary to the findings of the *August 2013 CIL Viability Study* (as updated by the February 2014 Statement of Modifications, Appendix 1), evidence of the improving economy indicates that even non-mixed use office developments in North Docklands would be viably able to pay the full Crossrail s106 "top-up". However, there may well be office only, or primarily office, developments in North Docklands. Furthermore, so as to ensure that development is assessed on a consistent basis and to avoid selective advantage, it is not appropriate to base the rates for general office development in one area of the borough on different assumptions about the state of the economy from that used in other areas.
38. I recognise that if a nil rate were to be set for offices in North Docklands to allow for the full "top-up" it is, in reality, likely that there would be schemes which could have viably paid both the Borough CIL and the full "top-up" but

which would not do so - eg mixed use schemes or even some office only developments, bearing in mind the buffer by which the maximum viable CIL rate has been reduced to the Council's proposed rate. However, this argument could be applied to any development and any proposed CIL rate: there will almost certainly be individual developments which, in reality, could viably pay more CIL than the rate levied. Nonetheless, it is important to set CIL rates based on a broad test of viability across uses and areas. That for Tower Hamlets (ie the *August 2013 CIL Viability Study* as updated by the Statement of Modifications Appendix 1) indicates that office development in North Docklands would not viably be able to pay the proposed Tower Hamlets CIL and the full Crossrail "top-up".

39. Moreover, the Tower Hamlets CIL charge would be mandatory and fixed whereas the s106 "top-up" is variable subject to an individual development's viability. Consequently, in connection with Tower Hamlets proposed CIL charges outside North Docklands, the Mayor/Greater London Authority (GLA) must take the risk that they will have to forego all or part of the Crossrail s106 "top-up" if the economy performs worse than anticipated and thus development is less viable than forecast. Therefore, I consider it would be highly inappropriate to expect the Mayor/GLA to also have to take the risk that office development in North Docklands will, in reality, be more viable than indicated in the *August 2013 CIL Viability Study* and Appendix 1 Update and will thus be able to viably pay the full "top-up".
40. Reference is made to the February 2010 *Report of the Panel into the London Plan Crossrail Alterations* and in particular the statement in paragraph 6.6 about Crossrail not "sweeping the pot". However, the paragraph states that it is "if contributions to such facilities [ie affordable housing and other infrastructure] are necessary to make the development acceptable in terms of local or site impact mitigation....there can be no questions of Crossrail "sweeping the pot"". It is then explained that this is because if the necessary facilities cannot be funded the development would be unacceptable and should not be permitted. Moreover, if the development does not go ahead s106 "top-up" funding for Crossrail would not be secured anyway. With this in mind it is clear to me that, with CIL in place in Tower Hamlets, the "contributions to such facilities" sensibly relates not to CIL, but to the affordable housing and other residual s106 obligations which would be necessary to make the development acceptable in planning terms. In the case of a development not being able to viably pay the Tower Hamlets CIL and the full affordable housing, other residual s106 obligation and Crossrail s106 "top-up" requirements, a balance would need to be struck across all but the CIL, thus ensuring that the Crossrail s106 "top-up" does not "sweep the pot".
41. The Panel's reasoning for Crossrail not "sweeping the pot" is to avoid the consequent refusal of permission for schemes not viably able to provide the necessary related infrastructure facilities. However, a scheme could not reasonably be refused planning permission because it does not make a contribution to infrastructure through CIL when, for viability reasons, a nil rate has been set for such development. Therefore, it follows that CIL cannot fall within the "pot" which the Panel identified should not be "swept" by the Crossrail s106 "top-up".
42. Consequently, to ensure that in striking an appropriate balance the Tower

Hamlets CIL schedule appropriately takes account of the provisions of policy 6.5 of the *London Plan* and the relevant SPG, as set out in the CIL Guidance, it is necessary to set a nil rate for offices in the North Docklands area.

Modification **EM1** is thus needed. Whilst this modification is necessary as a direct result of the Crossrail s106 "top-up" issue it would, nonetheless, nullify more general concerns raised about the viability of office development in the North Docklands area if subject to the £50 per sq m CIL charge.

43. It is argued that, on the basis that its office rentals are not comparable with other sites within the City Fringe area, Thomas More Square should be excluded from the City Fringe. However, the boundary of the area has been set with regard to average values for new build office space in this location, and I have seen no detailed evidence to suggest that this is inaccurate or an inappropriate assumption.
44. In conclusion, in order to take appropriate account of policy 6.5 of the *London Plan* and the *Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy SPG*, it is necessary to modify the schedule to set a nil rate for offices in the North Docklands area. That aside, and other than in respect of large site allocations considered below, the CIL rates for offices are informed by and consistent with the evidence.

CIL Rates for Retail Development

45. The *August 2013 CIL Viability Study* (as updated by the January 2014 Appendix 1) contends that, without harming the viability of most retail development, CIL could be levied at £120 per sq m across the Borough for convenience supermarkets, superstores and retail warehousing and at £70 per sq m in the City Fringe and North Docklands areas for all other types of retail development.
46. In response to contentions that the two categories of retail development are not different uses (nor allow for practical, fair and transparent implementation of the schedule), the Council has proposed wording (set out in para 12.3 of its *Response to the Main Issues and Questions for the Examination*) to more clearly define the nature of convenience supermarket/superstores/retail warehousing – primarily that they are shopping destinations which cater for a significant proportion of car borne customers. The CIL guidance indicates that use, in respect of CIL, is not tied to the classes of development in the Town and Country Planning Act (Use Classes) Order 1987 but that the Order provides a useful reference point. The Order distinguishes as different uses premises used for the sale of hot food for consumption on the premises from those which are used for the sale of hot food off the premises. Similarly, in my view, shopping destinations which are designed to enable many or most customers to arrive, and take home their purchases, by car can readily be distinguished at the planning application stage, and are a different use in CIL terms, from retail development which is not so designed. However, to provide clarity and to ensure effective and fair implementation of CIL in Tower Hamlets, it is necessary to include the Council's more detailed definition in the schedule itself. Modification **EM2** is thus necessary.
47. In the absence of any detailed evidence indicating why it is flawed, the viability study's assumption that new retail development in Tower Hamlets will

take place on land already in retail use, with a building of significant size, is appropriate. Moreover, the study identifies that there is a material difference between the level of CIL which would be viable at Convenience Supermarkets, Superstores and Retail Warehousing in the City Fringe and North Docklands areas, as opposed to in the rest of the Borough, and with that which would be viable in connection with other types of retail development across the Borough as a whole. The basis of this is the research into variation in retail rents across the Borough (Paragraph 4.49 and Table 4.48 of the *August 2013 CIL Viability Study*) which is a suitably fine-grained approach to evaluation. Consequently, the varying rates would not result in selective advantage.

48. Since the appraisals are based on current economic circumstances (at the time of their preparation) it is appropriate that current build costs are also used, rather than forecasts of build cost inflation in the future. I am satisfied that the appraisals' assumptions about retail rents, profit and professional fees reflect a realistic average and the buffer, by which the maximum viable CIL rates have been reduced to the proposed CIL rate, will ensure that the majority of retail development would remain viable with CIL in place.
49. As with office development it is argued that, on the basis that its retail rentals are not comparable with other sites within the City Fringe area, Thomas More Square should be excluded from this area. However, the boundary of the area has been set with regard to average values for new build retail space in this location, and I have seen no detailed evidence to suggest that this is inaccurate or an inappropriate assumption.
50. In conclusion, other than in respect of large site allocations considered below, the CIL rates for retail development are informed by and consistent with the evidence. However, to ensure clarity and fair and transparent implementation of CIL, it is necessary to more clearly define the two retail uses in the schedule.

CIL Rate for Hotel Development

51. The *August 2013 CIL Viability Study* (as updated by the January 2014 Appendix 1) contends that, without harming the viability of most development, CIL could be levied at £180 per sq m across the Borough for hotels.
52. In response to criticism that budget hotels were not adequately appraised, the Council submitted, as part of its Supplementary Evidence, an appraisal of the Bethnal Green Travelodge using information provided by Travelodge. The appraisal shows that, even assuming CUV 1, the proposed £180 per sq m rate (not £210 per sq m as referred to in Travelodge's 12 September 2014 representation) would not prejudice the viability of this scheme. Moreover, I agree with the Council that the actual previous use of the site of this scheme is more reflective of CUV2, which would allow for a maximum CIL charge of £389 per sq m – more than double that which the Council is proposing. The Supplementary Evidence also includes a revised appraisal of an Ibis hotel, using a £26 per sq ft, instead of £20.59 per sq ft, rent. With maximum viable CIL rates of between £213 and £672 per sq m (dependent on CUV), this demonstrates that the £180 per sq m CIL rate would not undermine the viability of this scheme either. Bearing in mind that the proposed rate is reduced by 25% from the maximum level of CIL demonstrated to be viable, I

am not persuaded that any of the other detailed criticisms of the assumptions used in the hotel appraisals would be likely to significantly undermine the viability of this CIL rate for most hotel development across the borough. Consequently, the Supplementary Evidence corroborates the conclusions of the *August 2013 CIL Viability Study*.

53. In conclusion, other than in respect of large site allocations considered below, the CIL rate for hotel development is informed by and consistent with the evidence.

CIL Rate for Student Housing Development

54. The *August 2013 CIL Viability Study* contends that, without harming the viability of most development, CIL could be levied at £425 per sq m across the Borough for student housing for which a market rent is charged. That this rate is by far the highest proposed in Tower Hamlets and that, unlike rates for other uses, it has not been reduced since earlier stages of the preparation of the schedule is not evidence that it would render student housing schemes unviable.
55. The reduction in the assumed build costs for student housing to £137 per sq ft (in the *August 2013 CIL Viability Study*) from £180 per sq ft in earlier appraisals is questioned. However the submitted Building Cost Information Service (BCIS) data (rebased for Tower Hamlets and up to date at the time of the *August 2013 CIL Viability Study*) shows a mean build cost of £137 per sq ft, albeit that the highest of the range of costs is approximately £244 per sq ft. Nonetheless, it makes sense to base the appraisals on average (mean) build costs at the time of the appraisal. There is no specific evidence to indicate that the Council has other, more appropriate, evidence on build costs which it chose to ignore in adopting the BCIS build cost. The maximum viable CIL rate resulting from this appraisal has been reduced by a buffer of approximately 30% which should ensure that most student housing schemes with above-average build costs remain viable even with the levying of the proposed CIL rate. There is no persuasive evidence that a 35% buffer, as originally proposed for student housing, is fundamental to ensuring CIL is viable for market rent student accommodation.
56. Comparison is made with the use of BCIS data in the preparation of the London Borough of Southwark CIL Schedule. However, Tower Hamlets is a different Borough for which, as explained above, I have seen no persuasive evidence that build costs are not soundly based. Moreover, whilst the proposed "direct let" student housing CIL rate in Southwark is significantly lower than that proposed in Tower Hamlets, I understand that Southwark has different affordable housing requirements, in connection with student housing, from other London Boroughs.¹

¹ In Tower Hamlets policy DM6 of the *Managing Development Document* sets out the requirement for an unspecified proportion of affordable housing in connection with student housing, except for such schemes providing accommodation exclusively for accredited colleges/universities. At the 6 October hearing session Council officers stated that, as far as they are aware, no affordable housing has been secured in connection with a student housing scheme in Tower Hamlets.

57. The appraisals for student housing, submitted by a representor in challenging the proposed CIL rates, demonstrate that in Aldgate a CIL charge of up to £533 per sq m would be viable. That this represents only a 20% buffer over the proposed £425 per sq m CIL charge does not indicate that the proposed rate is inappropriate: the 30% or so buffer applied by the Council to the maximum CIL rate identified as viable represents a cautious approach given that that appraisal cannot represent every possible circumstance. It is inevitable that there will be a different buffer between the maximum CIL which is shown to be viable and the proposed £425 per sq m CIL rate on an appraisal with different assumptions (including in this case a £180 per sq ft build cost). Whilst the Mile End appraisal indicates a maximum viable CIL rate below the proposed £425 per sq m CIL rate, there is little to justify its combination of relatively high assumed rent (only £20 per week less than at Aldgate), the £180 per sq ft building costs and the 35% existing floor space assumption.
58. Appendix X of the Council's Supplementary Evidence indicates that the proposed £425 per sq m CIL charge (or indeed any CIL charge) would render unviable a student housing scheme providing accommodation at below market value rents, as is developed for their own students by some academic institutions. It is argued that, where such accommodation is developed by private sector firms on behalf of the institutions, it may be difficult or impossible to secure Charitable Relief on the CIL charge and that, as the Council is not obligated to provide it, there is no certainty that Exceptional Circumstances Relief could be secured for such a development. Consequently, it is contended that a nil rate should be set for student housing led by an academic institution and let at below market rents as secured by a s106 planning obligation.
59. The Council contends that it has no policy basis on which to require by planning obligation the provision of student accommodation at below market rent. However, Core Strategy policy SP02 (7) states that the Council will "provide for the specialist housing needs of the borough through (a) working with the borough's universities to enable the appropriate provision of student accommodation that meets identified needs....". It would be highly unlikely that a university would seek to provide accommodation for its students at below market rent unless there is an identified need for it. Thus, it seems to me that, in the light of policy SP02 the Council could require an obligation to ensure that student accommodation proposed to be let at below market rent is secured as such.
60. It is also suggested that below market rent student accommodation is not a use distinct from that let at market rents. However, bearing in mind that in the CIL context uses are not confined to those defined in the classes of the Town and Country Planning Act (Use Classes) Order 1987, I conclude that a development designed (and controlled by planning obligation) to meet identified housing needs can be a different use from development not so designed.
61. Given that the evidence clearly identifies that any CIL charge would be highly likely to render unviable below-market rent student housing and that it is not guaranteed that Charitable or Exceptional Circumstances Relief would apply to such development, I conclude that it is necessary to modify the schedule to set a nil rate for this use. Modification **EM3** is therefore necessary.

62. In conclusion, in view of the evidence demonstrating that a CIL charge for student housing let at below market rents would not be viable, it is necessary to modify the schedule to set a nil rate for this type of development. For other types of student housing, other than in respect of allocated sites considered below, the CIL rate for student housing is informed by and consistent with the evidence.

CIL Rates for Development on Allocated Sites

63. Whilst the CIL Guidance indicates that an area-based approach, involving a broad test of viability across their area, should be employed it also advises that in preparing its evidence an authority should directly sample a range of sites focussing on strategic sites on which the plan relies. The Tower Hamlets *Managing Development Document* sets out 20 site allocations, which paragraph SA.1 of the document states "have been allocated as part of the positive planning process to make sure the borough has the infrastructure needed to support the anticipated level of growth set out in the Core Strategy....". The *August 2013 CIL Viability Study* appraised the proposed CIL rates on indicative schemes likely to come forward on eight of these sites – four smaller sites and four large sites (Bishopsgate Goods Yard, London Dock, Wood Wharf and Westferry Printworks).
64. Many of the assumptions used in the appraisal of development on the four large sites in the *August 2013 CIL Viability Study* have been challenged by a number of parties and, in response, the Council produced revised appraisals of three of these sites (Bishopsgate Goods Yard, Wood Wharf and Westferry Printworks), with a number of altered assumptions, in its Supplementary Evidence. Whilst a smaller number of detailed assumptions are still, to some extent, disputed, I concur with the agreed view of the parties at the 6 October hearing session, that, either way, these would be unlikely to have a significant effect on the viability of the schemes. Given that it assesses the large allocated sites on a consistent basis (subject to my comments in paragraph 76 below) I am satisfied that the Supplementary Evidence is appropriate available evidence.
65. The Council has prepared the revised appraisals on the assumption that it would accept in-kind infrastructure CIL payments as provided for in 2014 CIL (Amendment) Regulations 73 and 74, the effect of which is to reduce the size of the residual s106 payments otherwise likely to be necessary for the allocated sites. A number of parties have strongly argued that in-kind infrastructure payments are not feasible in the context of the Tower Hamlets large allocated sites, given the precise wording of the relevant regulations. This is a matter for the courts to determine. Moreover, it was agreed at the 6 October hearing session that, given the scale of the likely in-kind infrastructure payments², whether or not such payments are feasible is unlikely to be crucial in determining the viability of the large allocated site

² At the 6 October hearing the Council argued that, based on the recently approved planning application, a £14.9m in-kind infrastructure payment is realistic for the indicative Wood Wharf scheme. This equates to only 29% of the proposed £50.1m Tower Hamlets CIL charge for that scheme, assuming 25% affordable housing, (Supplementary Evidence Appendix H, Scenario 4). It would represent an even smaller proportion of the CIL charge for a scheme providing a lower level of affordable housing.

schemes. Consequently, there is little point in me speculating on the likelihood of such payments actually occurring in the Tower Hamlets context.

66. The Supplementary Evidence indicates that, irrespective of the application of the proposed CIL charges, and allowing for either 35% or 25% affordable housing provision, the tested Bishopsgate Goods Yard, Wood Wharf and Westferry Printworks allocated site schemes would show Internal Rates of Return (IRR) of between a minimum of -5.75% and a maximum of 7.17% (Scenarios 1, 2, 4 and 5 of Table 4). It is generally agreed that at such IRRs the developments would be unlikely to come forward.
67. On the basis that, considering current economic circumstances alone, these schemes would be unlikely to come forward whether or not CIL were to be charged, and with reference to the likely very long build-out periods for these large allocated site schemes, the Council's Supplementary Evidence also appraises the schemes assuming economic growth. Whilst noting the argument that appraisals should solely consider current economic circumstances, to my mind the Council's approach makes sense. Under current, or worsening, economic circumstances the allocated site schemes would be very unlikely to come forward whether or not the proposed CIL charges were levied, but it is important to understand the likely effects of CIL on the likelihood of the developments coming forward if improved economic circumstances in the future are assumed, bearing in mind that such developments are likely to take place over an extended period.
68. However, I agree with the view that, because there is a great deal of uncertainty about economic growth (and its impact on the wide ranging aspects of the costs and revenue of development), development would only be likely to come forward on the assumption of improved economic circumstances in future years if the scheme's IRR were considerably higher than the 13% the Council has argued is indicative of viability. With this in mind, and having regard to the representations on this particular point, I consider that, assuming economic growth, a minimum IRR of 20% is likely to be indicative of that necessary for a scheme to come forward.
69. Line 2 of Table 5 of the Supplementary Evidence demonstrates that, assuming economic growth and the full proposed CIL charges, the three appraised allocated site schemes would be likely to achieve an IRR of 20% only if the affordable housing requirement were to be "flexed" below the 35-50% requirement of the Core Strategy – to 12.44% for Wood Wharf, 22.44% for Bishopsgate Goods Yard and 6.59% for Westferry Printworks.
70. As explained above it is appropriate for the Council to assume affordable housing provision at the lower, 35%, figure set out in the Core Strategy. However, whilst having regard to the proportion of affordable housing actually achieved in recent years (*Section 106 Report*), I am not persuaded that it would be appropriate to "flex" affordable housing requirements without limitation. Paragraph 4.4 of the supporting text of Core Strategy policy SP02 states that "In some instances exceptional circumstances may arise where affordable housing requirements need to be varied". At the hearings the Council indicated that this refers to a varying below the minimum 35% requirement of policy SP02. However, the paragraph goes on to explain that even where a robust financial statement is provided demonstrating

conclusively why planning policies cannot be met, "there should be no presumption that such circumstances will be accepted, if other benefits do not outweigh the failure of a site to contribute towards affordable housing provision".

71. As Table 5 demonstrates, even assuming economic growth, development on the three allocated sites would only be likely to come forward (ie at a minimum IRR of 20%) if affordable housing requirements were to be reduced significantly below both the 35-50% standard requirement of CS policy SP02 and the 30% figure which the Council has, on average, achieved in recent years. At Westferry Printworks this (6.59%) would be less than a fifth of the normal minimum 35% requirement and at Wood Wharf this (12.44%) would be less than half the minimum 25% affordable housing which has recently been secured on the pre-CIL approved planning application on this site.
72. Whilst, in connection with the CIL Examination, the Council has intimated that such levels of affordable housing would be acceptable (and it argues that effects on the delivery of the plan overall would be minimal), the supporting text (paragraph 4.4, as detailed above) of the relevant adopted policy (SP02) gives far less comfort to developers of the large allocated sites that very low affordable housing contributions would, in the future and in reality, be acceptable to the Council. This is particularly so when read in the context of the Core Strategy's Foreword which indicates that its foremost challenge is the need to ensure there are sufficient good quality affordable homes for families. Moreover, the Council's Opening Statement at the 6 October hearing session made reference to the anticipated population growth in Tower Hamlets of around 20% in the next 12 years and the Borough's significant deprivation and problems of overcrowding – ranked second nationally. If higher affordable housing contributions were to be required in connection with development on the large allocated sites (although potentially still below the 35-50% set out in CS policy SP02), the IRRs achieved would fall below the 20% likely to be necessary to ensure that the developments come forward, given the underlying assumption of economic growth.
73. In the context of the above it seems to me that there is a reasonable likelihood that, in reality, in connection with the development of the large allocated sites the Council would require higher affordable housing contributions than Table 5 indicates would be viable (ie would result in a 20% IRR assuming growth and the payment of CIL). Table 5 also indicates that on the large allocated sites the proposed Borough CIL equates to a relatively small level of affordable housing provision. Thus, if the Council were to require a level of affordable housing provision higher, even by a relatively small degree, than those set out in paragraph 69, the non-variable CIL charge would be likely to render the development unviable. Consequently, I conclude that in connection with development on Wood Wharf, Bishopsgate Goods Yard and Westferry Printworks sites the evidence does not support the proposed CIL charges which are relevant to each of the appraised developments.
74. Like with many developments, the CIL charges proposed by the Council would represent a relatively small part of both overall development costs and

development value on these large allocated sites³. Nonetheless, the charge would, in a material way, reduce the schemes' IRRs: whilst the Supplementary Evidence refers to CIL resulting in a reduction of IRR of in the order of 1%, this is 1 percentage point, which represents 5% of a 20% IRR and, obviously, an even greater percentage of a smaller IRR. As such I conclude that the proposed CIL charges could be determinative of whether or not one or more of the large allocated site schemes would be likely to come forward.

75. The exact mix of uses on the large allocated sites would only be determined at planning application stage and, dependent upon the precise mix, it is in theory possible that some form of development on the sites would be viable with the proposed CIL charges (eg one which were to be primarily a superstore and/or student housing). The matter of selective advantage if a nil rate were to apply to the large allocated sites therefore needs to be considered. However, given the detailed requirements for the sites set out in the MDD, it is highly unlikely that a development which the evidence suggests would be viable with the proposed CIL charges would come forward and secure planning permission. Consequently, I conclude that by setting a nil rate for all uses on these sites it could be reasonably ensured that CIL would not undermine the viability of development likely to come forward and that this would be highly unlikely to represent selective advantage to development on these sites.
76. The *August 2013 CIL Viability Study* differentiates between four large and 16 smaller allocated sites, the former including Wood Wharf, Bishopsgate Goods Yard, Westferry Printworks and London Dock. Whilst London Dock has not been appraised in the Supplementary Evidence, the *August 2013 CIL Viability Study* indicates that its IRR would be comparable with the other large sites and, based on what I have read and heard, the characteristics of development there is likely to have more in common with the large sites than the smaller ones. I am satisfied that this is appropriate available evidence on which to base a rate for this site and consequently conclude that, notwithstanding that development of the site has planning permission and is under construction, London Dock should also be subject to a nil CIL rate for all development. Modification **EM4**, to set a nil rate for all development in Tower Hamlets within the boundaries of the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock allocated sites (as set out in the *Managing Development Document*) is therefore necessary.
77. Nobody has argued that all 20 allocated sites should be the subject of a nil CIL rate, and whilst there is some suggestion that it might be appropriate to extend this to more than the four sites listed above, no detailed evidence to support this in connection with any specific sites has been provided. Again based on what I have read and heard, I conclude that the smaller allocated sites are generally of a much less complex nature than the four large ones,

³ The Council refers to paragraph 27 of the Examiner's Report on Trafford Council CIL Charging Schedule. Whilst the Examiner describes CIL representing 1.1% - 2.4% of GDV as "reasonable and acceptable" this calculation, which concerns the CIL rate for housing alone, is described as a "further health check" on rates which the Examiner has already found to be "well-conceived". Consequently, in the context of my finding that in Tower Hamlets there would be a reasonable likelihood of CIL rendering unviable development on large allocated sites, similar 'CIL as a percentage of GDV' calculations are not necessarily demonstration of the reasonableness or acceptability of the proposed CIL rates.

with fewer or no requirements for infrastructure provision as part of them. Whilst I note that, at the time of the *August 2013 CIL Viability Study*, three of the four smaller sites appraised were not viable irrespective of CIL, there is no evidence to indicate that should economic circumstances improve the proposed CIL charges would be likely to make these developments unviable. Consequently, there is not an evidential basis to include the smaller allocated sites in my recommendation of a nil rate for all development at the large sites.

78. The Council believes that none of the large allocated sites are critical to the delivery of the Core Strategy and Appendix C of the Supplementary Evidence indicates that, in terms of housing, the largest of these is anticipated to comprise only 3.79% of the overall capacity for housing identified in the Tower Hamlets Strategic Housing Land Availability Assessment. It is also the case that, in respect of rate setting, the schedule is subject to the CIL (Amendment) 2013 No. 982 Regulations which require the Council to aim to strike **what appears to it 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.
79. However, under the heading "What is meant by the appropriate balance" the April 2013 DCLG CIL Guidance (published in the light of the 2013 Regulations) identifies that CIL should not threaten the ability to develop viably the sites and scale of development identified in the Local Plan. This advice is echoed in the *National Planning Policy Framework*. Moreover, there would be little point in the Regulations permitting rates to vary by geographical area and the guidance encouraging appraisal of the viability of CIL on individual strategic sites, if it were not to be an intention of the guidance that different rates should be considered for such sites if the evidence points toward this. In the light of this it would be inappropriate (and would not be striking an appropriate balance) to set a CIL charge which would be reasonably likely to render unviable development of one or more of the largest of 20 allocated sites set out in the *Managing Development Document*. Moreover, the evidence indicates that, in the circumstances outlined in paragraph 73, there is a reasonable likelihood of CIL rendering unviable not just one, but all of the large site allocation schemes. Aside from providing housing (and Appendix C indicates that together the four sites would account for nearly 10% of the total (SHLAA identified) potential supply of new housing in Tower Hamlets), a significant amount of commercial development is envisaged and, as referred to above, the Foreword of the Core Strategy identifies that providing opportunities for employment and enterprise is a high priority.
80. I appreciate the Council's concern that, notwithstanding possible consequent changes to its Regulation 123 list, a nil charge for the four large allocated sites could cause difficulties in securing the infrastructure that the MDD identifies is necessary as part of development on these sites (and which would be likely to have wider benefits). As such it is argued that a nil rate would result in the Development Plan not being delivered and that an appropriate balance would not be achieved. However, I have concluded that there is a reasonable likelihood of the charges proposed by the Council rendering development of the four sites unviable, in which case the developments would be highly unlikely to come forward and, thus, neither the necessary infrastructure nor

any CIL payment in respect of the site would be delivered anyway.

81. Whilst it might not represent an appropriate balance to set a nil rate for all development across the whole of the borough to ensure the economic viability of the four large allocated sites, I am satisfied that it would do so to set a nil rate for development on the sites themselves given their importance to the delivery of the plan. Moreover, planning permission has been granted for schemes on two of the sites (London Dock, on which work has commenced, and Wood Wharf) which, inevitably, require provision of the appropriate infrastructure necessary for the schemes to have gained consent. In reality, therefore, it seems highly unlikely that, on these two sites at least, the necessary infrastructure will not be secured, notwithstanding the recommended modifications to the CIL schedule.
82. The Council has referred to its intention to operate an Exceptional Circumstances Relief policy. However, based on the appraisals specifically undertaken in connection with CIL, I have found that there is a reasonable likelihood that CIL would render unviable development of the four large allocated sites. In the light of this it would, thus, not be an exceptional circumstance if it were to be shown that a specific proposal for development of one or more of these sites would be rendered unviable by CIL. Consequently, it would be inappropriate to rely on Exceptional Circumstances Relief, which the Council could withdraw at any time, as justification for the proposed CIL rates.
83. The setting of a nil rate for all development in Tower Hamlets within the boundaries identified in the MDD for Bishopsgate Goods Yard, Wood Wharf, London Dock and Westferry Printworks would inevitably make the CIL schedule more complex. However, it would not be excessively complicated and, whilst guidance discourages undue complexity, this is not a good reason to set a rate which would result in the reasonable likelihood of CIL rendering development on these sites unviable.
84. Although the Council has strongly argued that its proposed rates are appropriate, the Supplementary Evidence sets out a possible option of a recalibration of the proposed CIL rates for the large allocated sites based on the total financial (and financial equivalent) contributions through planning obligations which have actually been achieved on the recently approved Wood Wharf scheme. It is stated that the planning application process has established that these contributions can be viably accommodated on the scheme.
85. However, there is little evidence to demonstrate that the economics of the specific planning application at Wood Wharf can be appropriately applied to possible developments at the other large allocated sites, the precise details of which are not known. Moreover, and fundamentally, whilst the CIL Guidance does not require the use of the valuation models and methodologies which are available to help authorities prepare their evidence for CIL, it states that they may find it helpful in defending their levy rates if they do. The appraisal of the large allocated sites set out in the *August 2013 CIL Viability Study* (as revised by the Supplementary Evidence) is based on such a valuation model and, as detailed above, it demonstrates that there is a reasonable likelihood of development on these sites being rendered unviable by the proposed CIL

rates. To cast that evidence aside, and to instead seek to justify CIL rates based solely on the planning obligations secured in connection with one planning application, would be most inappropriate.

86. In conclusion the proposed CIL rates are not consistent with the evidence insofar as they would apply to development likely to come forward on the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock allocated sites, in accordance with the *Managing Development Document*. Thus, for the reasons set out above, the schedule should be modified to set a nil rate for all development on these sites.

Does the evidence demonstrate that the proposed charge rates would not put the overall development of the area at serious risk?

87. For the reasons explained above there is a reasonable likelihood that the proposed charge rates would render unviable development on the four large allocated sites (Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock). Furthermore, bearing in mind that it is based on the inappropriate assumption of the "flexing" of the requirements of the Mayor's *Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy SPG*, the proposed office rate in the North Docklands area would put at risk office development in this area. The evidence also demonstrates that student housing let at below-market rents would be rendered unviable by any level of CIL. Taken together, I therefore conclude that the charge rates proposed by the Council would put the overall development of the area at serious risk.
88. However, assuming that the CIL scheduled is modified in accordance with my recommendations, the evidence suggests that most development likely to come forward in Tower Hamlets would remain viable with CIL in place. Thus, CIL would be unlikely to put the overall development of the area at serious risk.

Conclusion

89. Rapidly changing economic circumstances have been a feature of the period during which the Council has sought to develop its CIL schedule. However, my report is based on the detailed viability evidence as set out in the *August 2013 CIL Viability Study* and updated in connection with the February 2014 Statement of Modifications and the July 2014 Supplementary Evidence. Other, more anecdotal, evidence about improved economic conditions, is not an appropriate basis on which to make recommendations about the schedule. However, it may point to the desirability of a fully-evidenced early review of the schedule.
90. Whilst the recommended modifications would be likely to result in less income from CIL than has been forecasted by the Council in the *CIL Infrastructure Planning and Funding Gap Report* (October 2013), as updated by Appendix 3 of the February 2014 Statement of Modifications, I consider that if implemented in an unmodified form there is a reasonable likelihood that development on the large allocated sites would be rendered unviable by CIL. As such neither the development nor CIL income associated with it would be achieved.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule (modified as recommended) complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedule (modified as recommended) complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

91. In the light of the above, and having regard to all other matters raised in writing and at the hearing sessions, I conclude that subject to the modifications set out in the Appendix the London Borough of Tower Hamlets Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

Malcolm Rivett

EXAMINER

This report is accompanied by: Appendix (attached) – Modifications that I specify so that the Charging Schedule may be approved.

Appendix – Modifications

In respect of modifications **EM1**, **EM2**, **EM3** and **EM4** modify Table 1 of the Community Infrastructure Levy (CIL) Revised Draft Charging Schedule Statement of Modifications, February 2014 to be as follows:

Table 1 Proposed Rates

Development Type	Proposed CIL Rate Per sq m (GIA) of Development			
	Zone 1	Zone 2	Zone 3	Large Allocated Sites*****
Residential	£200	£65	£35	Nil
Offices	City Fringe	North Docklands	Large Allocated Sites	Rest of Borough
	£90	Nil	Nil	Nil
Retail (Except Convenience Supermarkets/ Superstores* and Retail Warehousing**)	£70	£70	Nil	Nil
Convenience Supermarkets/ Superstores* and Retail Warehousing**	Borough Wide, except Large Allocated Sites			Large Allocated Sites
	£120			Nil
Hotel	Borough Wide, except Large Allocated Sites			Large Allocated Sites
	£180			Nil
Student Housing Let at Market Rents***	Borough Wide, except Large Allocated Sites			Large Allocated Sites
	£425			Nil
Student Housing Let at Below Market Rents****	Borough Wide, except Large Allocated Sites			Large Allocated Sites
	Nil			Nil
All Other Uses	Borough Wide			
	Nil			

-* Convenience Supermarkets/Superstores are defined as shopping destinations in their own right, where weekly food needs are met, catering for a significant proportion of car-borne customers, and which can also include non-food floorspace as part of the overall mix of the unit.

-** Retail Warehousing is defined as 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.

-*** Student housing not falling with the definition at **** below.

-**** Student housing let at below market rents, to meet an identified need, secured by a s106 planning obligation.

-***** Large Allocated Sites are defined as the sites, within Tower Hamlets, contained within the boundaries of the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock allocated sites as set out in the *Tower Hamlets Local Plan Managing Development Document*.

Also in respect of modification **EM4** modify Appendix 1: Draft Residential Charging Zone Boundaries and Appendix 2: Draft Office & Retail (except Convenience Supermarkets, Superstores and Retail Warehousing) Charging Zones to define a "Large Allocated Sites" Area/Zone to include the boundaries of the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock allocated sites (within Tower Hamlets) as set out in the *Tower Hamlets Local Plan Managing Development Document*.