



Community Infrastructure Levy Charging Schedule Examination

Supplementary Evidence Requested by the Examiner

30 July 2014

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1. Introduction and Overall Context

Introduction

- 1.1 London Borough Tower Hamlet's CIL Examination hearings were held between 28th May and 30th May 2014. During the hearings, the Examiner sought clarification on a number of issues (set out in documents *ED5.18*¹ and *ED5.19*² which are letters exchanged between the Examiner and the Council) and invited the Council to provide some further information.
- 1.2 The document sets out this further information required for consideration by the Examiner and for comment by participants of the Examination. This document will be the subject of a five week consultation commencing on the **8th August 2014 and closing on the 12th September 2014**. If the Examiner deems that a further hearing session is required then this will likely be held on the 6th October 2014.
- 1.3 Sections 2 to 14 of this document, and the accompanying appendices, cover the following topics: -
- The Borough's Development Targets and Opportunity Areas (section 2);
 - The potential use of in-kind CIL payments and the implications of this for the Regulation 123 List (section 3);
 - Further comment on the possible comparisons with the Trafford Metropolitan Borough Council's Charging Schedule and Examination Report (section 4);
 - Further appraisal of the sites at Bishopsgate Goods Yard, Wood Wharf and Westferry Printworks and the options for them (section 5);
 - The Impact of the CIL rates on the provision of affordable housing (section 6);
 - The Crossrail Section 106 approaches that have been used in central London Boroughs (section 7);
 - Further information on the submitted Viability Appraisals: the Current Use Values (section 8), Hotel Yields and further Hotel Appraisals (section 9 and 10), the differentiation between types of Retail (section 11), and Student Housing (Build Costs information, the recommended buffer, and the possible separate rate for University-led Schemes) (sections 12 to 14).
- 1.4 It should also be noted that, since the hearing was adjourned, the Government replaced the CIL Guidance published in February 2014 with an online version in June 2014. Whilst the June 2014 version does contain some changes, it is not considered that these will make any material difference to the issues related to the setting of the CIL rates for Tower Hamlets. This latest Guidance relates to the CIL Regulations as amended in 2014. Any statements in the Guidance need to be read in the light of the fact that this is an examination of a Charging Schedule under the earlier version of the CIL Regulations, as provided for in the transitional provisions.

¹ [ED5.18: The Council's Post Hearing Letter to the Examiner](#)

² [ED5.19: The Examiner's Post Hearing Letter to the Council](#)

Overall Context

- 1.5 This further information will assist in understanding the reasons for the rates set out in the Revised Draft Charging Schedule (RDCCS) (*ED2.1*³), which were updated by the Councils Statement of Modifications (*ED3.5*⁴). The information does not change the overall conclusion that the CIL rates proposed aim to strike what the Council considers is the appropriate balance (under CIL Regulation 14). The Council has been particularly conservative in its approach, in line with the obligation of fairness as a public authority.
- 1.6 As requested by the Examiner, the Council has endeavoured to provide options to facilitate further discussion and submissions, and to assist in the decision making process. These options illustrate the likely effects that would be required in respect of the CIL rates proposed and the impacts upon the Regulation 123 list. This document also sets out the Council's opinion in respect of how to proceed in respect of matters such as setting the Hotel rates and differential rates for both student housing and retail development.

³ [ED2.1: Revised Draft Charging Schedule](#)

⁴ [ED3.5: Statement of Modifications](#)

2. Development Targets and Opportunity Areas

- 2.1 This section has been prepared to supplement a document presented by the Council at the Examination Hearing. This document (“The SHLAA and Site Allocations joined table” attached at Appendix A) sets out the relationship between the sites allocated in the Development Plan and:
- Tower Hamlets’ housing delivery target;
 - Tower Hamlets’ Strategic Housing Land Availability Assessment (SHLAA), which is an assessment of sites over 0.25 HA which can deliver housing;
 - London Plan identified Opportunity Areas.
- 2.2 As explained at the examination hearing. The purpose behind this was to help illustrate the reasons for the Council’s approach to choosing and assessing sites to support the CIL rates proposed in the RDCS.
- 2.3 The Council is aware that the related information about where these sites are located, and what they are expected to provide, is set out in a number of documents. We have therefore prepared a map (attached at Appendix B) which shows:
- The locations of all Managing Development Document (MDD) (*ED4.2*⁵) site allocations;
 - Which of the allocated sites have been selected for individual viability appraisals;
 - The indicative London Plan Opportunity Area boundaries
 - CIL charging zone boundaries;
 - The boundary of the London Legacy Development Corporation.

Additionally, a summary table is provided at Appendix C which shows the capacity, status and infrastructure requirements for each of the 20 allocated sites.

Housing Delivery Target

- 2.4 The London Plan (2011) forecasts employment growth in Tower Hamlets to grow from 227,000 to 301,000 over the period 2011-2031. This represents an additional 74,000 jobs. The draft Further Alterations to the London Plan (FALP) (2014) would revise this figure down to 26,000 additional jobs. However, an upward revision in the borough’s housing delivery target, as proposed in the SHLAA, would place considerable strain on the borough’s infrastructure resources.
- 2.5 Tower Hamlets’ Core Strategy (2010) (*ED4.1*⁶) aspires to deliver **43,275** new homes (equating to **2,885** per year) between 2010 and 2025. This figure reflects the minimum housing delivery target set out in the London Plan 2008 (as amended 2011). The minimum housing delivery target proposed in the draft FALP (2014) would increase the borough’s target by 36%. This would establish a new minimum 10 year housing delivery target (2015-2025) of

⁵ [ED4.2: Tower Hamlets: Managing Development Document](#)

⁶ [ED4.1: Tower Hamlets: LDF Core Strategy](#)

39,314 (or **3,931** homes per year). The FALP target is informed by the SHLAA (2013). An upward revision in the borough's housing delivery target as proposed would place considerable strain on the borough's infrastructure resources.

- 2.6 The 2013 SHLAA identified that 534 sites which were suitable for housing development across the borough and which were likely to come forward for redevelopment between 2013 and 2036. The total housing capacity identified was **43,244** homes, as modelled by the Greater London Authority's (GLA) SHLAA methodology. **37%** of the identified capacity is on sites which benefit from a planning permission.

Site Allocations and Opportunity Areas

- 2.7 The Council's MDD (*ED4.2*) (2013) (pages 83 - 155) allocated 20 sites in total 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 (*ED4.1*)(2010). Strategic Sites include sites capable of accommodating over 500 new net-additional homes, key regeneration sites, and sites designated to provide land for specific infrastructure use. The number of homes or amount of commercial floorspace to be provided is not prescribed – although for some sites an indicative range is included.
- 2.8 The Council does not consider that any individual site allocation is critical to the delivery of the Local Plan. The MDD site allocations represent approximately **43%** of the total housing capacity of Tower Hamlets' SHLAA (2013). **28%** of this capacity is on sites which benefit from a planning permission. Of the 20 allocated sites, 15 are assessed by the SHLAA methodology as single opportunity sites. The remaining 5 sites are aggregations of opportunity sites. Millennium Quarter (Site 17) and Marsh Wall East (Site 20), for example, both include 12 individual opportunity sites, some of which benefit from a planning permission. No whole single opportunity site accounts for more than **4.34%** of the borough's housing capacity. No single opportunity site which does not benefit from a planning permission accounts for more than **2.74%** of the borough's housing capacity. Paragraph 27 of the CIL Guidance 2013⁷ requires there be a focus on demonstrating the viability of strategic sites "*upon which the relevant Plan relies*".
- 2.9 The draft Further Alterations to the London Plan identifies Opportunity Areas which have significant capacity to accommodate growth. The indicative boundaries of Opportunity Areas in Tower Hamlets are shown in Appendix B. The Opportunity Areas relevant to Tower Hamlets (based on Further Alterations to the London Plan, 2013 Table A1.1, page 298) are:
- Isle of Dogs (410 ha), which is identified as having an employment capacity of 110,000 and capable of accommodating a minimum of 10,000 new homes

⁷ [Community infrastructure levy: guidance](#)

- City Fringe (901 ha), which is identified as having an employment capacity of 70,000 and capable of accommodating minimum of 8,700 new homes
- Lower Lee Valley (1,400 ha, which includes the Olympic Legacy area), which is identified as having an employment capacity of 111,000 and capable of accommodating a minimum of 10,000 new homes

2.10 These opportunity areas, with the exception of the Isle of Dogs Opportunity Area, extend beyond Tower Hamlets to include adjacent local planning authority areas. Opportunity Area boundaries are indicative and no Opportunity Area Planning Framework (OAPF) currently exists for the Isle of Dogs. The indicative boundaries used by the GLA in the SHLAA methodology have been used in the Council’s analysis of the Opportunity Areas in Tower Hamlets. In addition, the Opportunity Area for the City Fringe – identified in the Draft City Fringe OAPF - is likely to be reviewed and expanded in the near future in accordance with the Draft City Fringe / Tech City Opportunity Area Planning Framework (2014).

2.11 Notwithstanding this lack of clarity on the boundaries, a broad estimate of the likely housing capacity identified in the SHLAA (2013-2036) which falls within indicative Opportunity Areas is set out in Table 1 below. It demonstrates that growth is anticipated primarily in these opportunity areas but not exclusively. Approximately **22%** of SHLAA sites are outside indicative opportunity areas. A significant proportion of this growth is expected in the Lower Lea Valley area much of which is within the Council’s lowest charging area for residential development:

Table 1: SHLAA Capacity in Opportunity Areas

Opportunity Areas	SHLAA Capacity	Percentage
Not within indicative opportunity area boundary	9,582	22%
Within indicative revised City Fringe Opportunity Area boundary	7,863	18%
Within indicative Isle of Dogs Opportunity Area boundary	14,895	34%
Within Lower Lea Valley OAPF boundary	10,904	25%
Total	43,244	100%

2.12 The Council does not consider that the existence of Opportunity Areas within the Tower Hamlets Charging Authority should result in the setting of a lower rate. A site that is located within an Opportunity Area has no additional viability burdens compared to sites located outside of Opportunity Areas.

The Site Allocations Tested in the Viability Study

- 2.13 The generic appraisals which have informed the rate setting process are based on the values and development typologies most likely to occur across the borough. These viability appraisals have been supplemented with viability testing of prudently selected site allocations, in accordance with the CIL Guidance 2013.
- 2.14 The Council's Summary of Consultation Responses to the Draft Charging Schedule (ED2.8⁸) (October 2013, paragraph 2.22) highlighted that the Council has tested the viability of eight site allocations across the borough. In order to test the CIL rates, the Council focused on sites where viability might be most challenging. These sites were drawn from across the three proposed residential charging zones and within each of the indicative opportunity areas. Appendix C identifies the reasons why specific site allocations were or were not tested. The sample includes:
- Sites with a capacity of 500 or more units;
 - Individual sites with policy requirements to accommodate social infrastructure;
 - Sites likely to have more extended build out periods;
 - Sites likely to have significant abnormal costs or constraints.
- 2.15 Millennium Quarter (site allocation 17) and Marsh Wall (site allocation 20) were excluded as these allocations include multiple sites (each include 12 opportunity sites individually identified in the SHLAA 2013) and are unlikely to be subject to the more extended construction programmes that will characterise the sites of focus. In addition, these site allocations are not required to provide or accommodate on-site social infrastructure.
- 2.16 The Site Allocations which were excluded from viability testing were excluded for one of the following reasons:
- Sites that benefited from a planning permission;
 - Sites which were complete or under construction;
 - Sites which were not allocated as strategic housing sites;
 - Sites not now expected to come forward within the Council's Local Plan period;
 - Sites not allocated to provide or accommodate on-site strategic infrastructure.
- 2.17 The appraisals assumptions applied to the Draft Charging Schedule, March 2013, were as tested at the MDD Examination in Public, which was held between the 18th and 21st September 2012. Amendments were made in line with consultation responses to the appraisals that supported the RDCS and included:
- Adoption of internal rate of return as a measure of profit for these sites;
 - Including abnormal costs where specified by developers;
 - Increasing the professional fees from 10% to 12%.

⁸ [ED2.8: Summary of Consultation Responses to the Draft Charging Schedule \(October 2013\)](#)

- 2.18 These appraisals all assumed that the full CIL would be paid and that on site social infrastructure requirements e.g. Idea stores, schools and health facilities would be provided in kind as provided for under the Community Infrastructure Levy Regulations (2014 as amended, assumed to be land in kind under the 2013 regulations). This (in theory) allows for the Council to accept infrastructure or land payments, in lieu of cash payments, to discharge a CIL liability. This is stated in the Draft Planning Obligations Supplementary Planning Document (*ED2.9*⁹) and reflected in the Regulation 123 list within the RDCS (*ED2.1*¹⁰).
- 2.19 In order to take a conservative approach, the appraisals reduced the developable land area to account for this. However, no value is specifically attributed to these in-kind infrastructure or land payments on the basis that it is encompassed in the value of CIL payments and will vary depending on the final form agreed and whether a facility is delivered; or land is provided to be used for the relevant purpose.

⁹ [ED2.4: Draft Planning Obligations SPD - Revised Draft Charging Schedule](#)

¹⁰ [ED2.1: Revised Draft Charging Schedule](#)

3. The Use of In-Kind CIL Payments, the Implications for the Regulation 123 List and Residual S106 Assumptions Made

In Kind CIL Payments and the Regulation 123 List

- 3.1 The Council intends to accept in-kind CIL payments in line with the CIL Guidance 2014 and as provided for in the CIL Regulations 73 and 74. An In Kind Payments Policy will be prepared to allow for this.
- 3.2 The main purpose of providing social infrastructure as part of the site allocations for the strategic sites within the borough is to support the development of the Tower Hamlets Area. It was not included in order to mitigate the impact of their particular development, i.e. make the development acceptable in planning terms. As a result, this infrastructure is included in the Regulation 123 list, and is intended to be funded (in whole or in part) by the use of CIL monies, and not by the use of planning obligations.
- 3.3 The Council's intention to accept in-kind payments is in accordance with the statutory purpose of the CIL, as stated in the Planning Act 2008¹¹ that:
- a. *“the overall purpose of CIL is to ensure that costs incurred in providing infrastructure to support the development of an area can be funded (wholly or partially) by owners or developers of land” (S.205(2))*
 - b. *“the authority that charges CIL are required to “apply it, or cause it to be applied, to funding infrastructure” (S.216(1))*
- 3.4 The Council has received Counsel advice in relation to this issue which discusses the different legal interpretations. This advice is attached at Appendix D. This confirms that there is still considerable scope for in-kind infrastructure payments to be made, even if the stricter interpretation of regulation 73A is adopted. At this stage, of setting the CIL rate, the rate itself will not be affected by whether there is in-kind provision or not – the CIL liability will still need to be calculated in the normal way.
- 3.5 In addition, the Council has received the email attached at Appendix E from the Department for Communities and Local Government (CLG) which the Council considers supports its position on the ability of the Council to accept in-kind payments for infrastructure.
- 3.6 On this basis, no change would be necessary to the Regulation 123 list. However, to provide clarity on the acceptability of these measures, it is proposed that an in kind policy be included in the Planning Obligations SPD, or adopted alongside it.
- 3.7 If however, the Examiner were minded to agree with the representations put forward by the developers of strategic sites which propose that in-kind CIL payments are inappropriate to deliver on site social infrastructure, the

¹¹ <http://www.legislation.gov.uk/ukpga/2008/29/introduction>

Regulation 123 List would have to be amended. The infrastructure requirements detailed in the MDD site allocations would be excluded from the Regulation 123 list and secured as planning obligations through S106. This brings significant challenges due to the restrictive pooling arrangements and it is also not in the spirit of seeking to adopt a CIL for the major part of infrastructure provision. Please refer to Appendix F(1) which sets out the Regulation 123 list in this instance.

- 3.8 Viability issues relating to the Wood Wharf, Bishopsgate Goods Yard and Westferry Printworks sites, which are set out in detail in section 5 below, may mean that in order to secure the infrastructure allocated to be provided on these sites, that these sites must be excluded from the Regulation 123 List. This depends on the Examiner's view regarding whether this is an appropriate.
- 3.9 Please refer to Appendix F(2) which sets out the proposed Regulation 123 List in the event that no CIL can viably be charged on the Wood Wharf, Westferry Printworks or Bishopsgate Goods Yard sites.

Residual S106 Assumptions

General

- 3.10 Appendix L sets out the residual S106 assumptions made in respect of the Wood Wharf, Bishopsgate Goods Yard and Westferry Printworks sites at the different stages of the rate setting process.

Benchmarking Exercise and S106 Allowance for Further Appraisals

- 3.11 In respect of the appraisals carried out that supported the RDCS, and the further appraisals set out in section 5 of this document, the residual S106 assumptions made were £1,220 per residential unit and £5 per sq. ft for commercial space.
- 3.12 These assumptions were made because it is difficult for the Council to make assumptions relating to site specific contributions such as Highways or Carbon Offsetting as these S106 heads of terms require a very detailed analysis of a scheme being proposed, and will likely constitute the majority of S106 payable after the implementation of CIL. Therefore, an appropriate assumption, comparable to those adopted by other Charging Authorities, has been adopted.
- 3.13 The Council considered the most appropriate exercise to undertake, to test if the Residual S106 assumptions made are appropriate, is to compare the actual amount secured on the Wood Wharf scheme (which was granted permission by the Council's Strategic Development Committee on the 21st July 2014) with the amount that would be payable for that scheme if the assumptions of £1,220 per residential unit and £5 per sq. ft for commercial space were applied.

- 3.14 When assuming an LBTH CIL world, only the Heads of Terms that will remain once CIL has been implemented have been accounted for in this assessment and in Table 3 below. This is set out in set out in *ED2.4: Draft Planning Obligations SPD - Revised Draft Charging Schedule*¹².

Table 2 – Application of Residual S106 Assumptions to Wood Wharf Indicative Scheme

			Total
No. of Residential Units	3,104	£1,220 per unit	£ 3,786,880
Commercial Floor space (sq. ft)	3,026,643	£5 per sq. ft	£15,133,215
Total			£18,920,095

Table 3 – Actual S106 payable for Wood Wharf indicative scheme assuming a CIL World

Actual financial contributions secured for S106 HOT's, assuming CIL is implemented	Amount
Enterprise & Employment	£ 4,244,364
Off-setting carbon emissions	£ 4,059,000
Transport improvements	£ 10,720,000
Monitoring (2%)	£ 380,467
Total	£ 19,403,831

- 3.15 In terms of benchmarking, it is clear from Tables 2 and 3 above that the S106 assumptions adopted are appropriate due to the fact that the application of these assumptions results in a very similar amount of S106 that would be payable on the actual indicative Wood Wharf scheme, assuming the implementation of CIL and that in-kind payments can be accepted.

¹² [ED2.4: Draft Planning Obligations SPD - Revised Draft Charging Schedule](#)

4. Trafford Metropolitan Borough Council's Charging Schedule and Examination Report

- 4.1 In the Council's hearing sessions, the Examiner requested that the Council consider the implications of Trafford's CIL Examination. The Council does not consider the outcomes of Trafford's CIL examination to be relevant, or applicable enough, to CIL rate setting in Tower Hamlets given LBTH's inner London context, the scale of the strategic sites in question and the very different set of viability characteristics and constraints. What was the appropriate conclusion for Trafford and its particular circumstances, and its more limited Regulation 123 list, would not be appropriate for Tower Hamlets. The paragraphs below outline the circumstances for the adoption of Trafford's CIL.
- 4.2 The Trafford Community Infrastructure Levy was approved, subject to modifications by the Examiner on 31st January 2014. One of the modifications was to reduce the base rate charge for apartment development to £0 across the borough, including sites located within their five Strategic Locations identified in the Core Strategy.
- 4.3 In order to monitor development for future review of CIL and to ensure affordable housing is delivered on-site in these locations, Trafford Council had adopted an Exceptional Circumstances Policy¹³ so they could offer relief to developments in the Strategic Locations only in a limited set of circumstances in accordance with the CIL regulations 2010 (as amended). The Council would consider adopting an exceptional circumstances policy for the three strategic sites stated in section 5 below.
- 4.4 Trafford Council also adopted an Infrastructure payments policy, which allowed developers to pay either "in kind" with land or to provide infrastructure (as stated in the Regulation 123 list) in lieu of a CIL payment.
- 4.5 Paragraph 12 of Trafford's Examiner's Report¹⁴ (Appendix G) indicates that Trafford Council refined its Regulation 123 List, before its Charging Schedule was submitted for examination, 'to set out more specifically a range of major projects which would be funded from CIL receipts'. The Council does not consider that it needs to amend its Regulation 123 List to set out a more specific list of projects in this way. The options for the Council's Regulation 123 list are set out in section 3 above and comply with the relevant CIL Regulations. The manner in which the Council's Regulation 123 list options have been constructed is to ensure that CIL can be flexibly used to reflect the ever changing needs of the borough.

¹³ [Trafford MBC's Exceptional Circumstances Relief Statement](#)

¹⁴ [Trafford MBC's Examiner's Report Inspectors Final Report](#)

5. Bishopsgate Goods Yard, Wood Wharf and Westferry Printworks – Options

- 5.1 The Council was asked by the Examiner to provide some options in respect of how to treat the Wood Wharf and Bishopsgate Goods Yard sites. The Council has decided to treat Westferry Printworks in the same manner due to its similar viability characteristics, as set out in section 5.3 below. The options are discussed at the end of this section.
- 5.2 It should be noted that, in order to ensure this exercise is as fully informed as possible, the Council requested that the owners/developers of the Wood Wharf and Bishopsgate Goods Yard sites release their scheme specific viability information. This request was denied.
- 5.3 In order to inform these options, further viability appraisals of the Wood Wharf, Westferry Printworks and Bishopsgate Goods Yard sites have been undertaken. It was appropriate to undertake further appraisals of these sites due to the fact they comprise a combination of unique characteristics, which are that: -
- They are required under the local plan to provide items of social infrastructure as part of their development;
 - They are likely to accommodate particularly ‘high rise’ development, resulting in a lower gross to net ratio in terms of income generating floorspace;
 - They will have multiple abnormal costs such as decontamination and needing to account for construction next to water bodies or a train station;
 - They have long build out periods so are exposed to greater risks in terms of construction and finance, as well as achieving a return over a longer period.
- 5.4 The assumptions and variables used in these further appraisals have generally been derived using submissions made by representors. Some assumptions and variables have been made to ensure the appraisals take full and exhaustive account of the Development Plan. Appendix H sets out the assumptions that have been adopted for this set of appraisals. For instance, and simply for the purposes of these appraisals, it has been assumed that the full Mayoral CIL and SPG payments would be made.
- 5.5 In order to ensure that the appraisals, attached at Appendix I, are as realistic as possible, the assumptions are, where possible, based on publicly available planning documents as well as market research and knowledge. Appendix J sets out the detailed floor area assumptions for these sites.
- 5.6 A brief summary and analysis of the appraisals undertaken is set out below, followed by some options in respect of the 3 strategic sites. Please refer to Appendix L which provides a context in respect of the different schemes and appraisals undertaken for these 3 sites.

Summary of Appraisals Undertaken

- 5.7 The results of a series of 'core' appraisals undertaken to attempt to establish the suitability of the CIL rates proposed are set out in Table 4 below. These appraisals account for different levels of affordable housing, including using 35% (as in the main appraisals) and 25% (to test the level of affordable housing agreed in relation to the Wood Wharf scheme approved in July 2014). The affordable housing contribution has been assessed on a floor area basis as opposed to a habitable rooms basis. This is because it enables a simpler analytical process and removes the imposition of another estimated assumption (i.e. an assumption of how many habitable rooms the flats accommodate). In any case, assessing on a floor area basis constitutes a more conservative option that would generally result in an affordable housing contribution, in terms of habitable rooms, of slightly higher than 35%.
- 5.8 These appraisals have been undertaken both with and without CIL, so that the impact of its imposition can be fully understood. These appraisals have also been tested with and without growth assumptions to reflect market inflation. It is normal to use growth assumptions in schemes with long build out periods. This helps assess the impact of assuming growth on a scheme's IRR. The growth applied is explained further in the footnote to Table 4 below and set out in more detail in Appendix M.
- 5.9 The results of these appraisals are set out in Table 4 below, and they are discussed in more detail in relation to the options proposed, which are set out in paragraph 5.16 onwards below. We have ensured that the labelling of the 'Core' appraisals carried out (and set out in Appendix I) accord with our labelling in Table 4 below, so that the full appraisal that relates to an output result in Table 4 below can be easily referred to.
- 5.10 Further 'supplemental' appraisals have been carried out testing different levels of affordable housing (ranging from 6% to 20%, depending on the site) to assist a 'trial and error' exercise that has been undertaken to help establish what level of affordable housing a scheme can accommodate if accounting for a full CIL and aiming for a specific IRR output. The results of this exercise are set out in rows 1 and 2 of Table 5 below. They have not been included in Table 4 as well in order to avoid an overly complex report, but both the 'core' and 'supplemental' appraisals carried out are contained within Appendix I so they can be reviewed and appropriately scrutinised.
- 5.11 The analytical exercises undertaken are explained in more detail in paragraphs 5.14 – 5.15 below and are discussed in relation to each proposed option.
- 5.12 For clarity, these Appendices relate to the additional appraisals as follows:

Appendix H: This document sets out the assumptions adopted when testing the three sites.

Appendix I: These documents provide the core and supplementary appraisals carried out. Each one of the core appraisals in this appendix accords to one of the scenarios in the 'Appraisal undertaken' column of Table 4 below, so it can be easily referred to and scrutinised.

Appendix J: These spreadsheets set out the detailed floor areas used in the further appraisals.

- 5.13 For the purposes of these appraisals, it has been assumed that the full Mayoral CIL and SPG payments would be made. If the pot was split more fairly, this would affect the viability in respect of the Wood Wharf scheme. As previously discussed, some of the money in the 'pot' could be used to pay the Borough's CIL. In addition, any other overall changes to the rates as proposed would also affect the viability of these schemes so this should be borne in mind.

Table 4 –Summary Results of Further Appraisals

Appraisal undertaken	Wood Wharf	Comments	Bishopsgate Goods Yard	Comments	Westferry Printworks	Comments
Scenario 1: Assumptions: - <ul style="list-style-type: none"> • 35% Affordable Housing • Full CIL • No Growth 	4.39% IRR	Development would be considered unviable.	2.48% IRR	Development would be considered unviable.	-5.75% IRR	Development would be considered unviable.
Scenario 2: Assumptions: - <ul style="list-style-type: none"> • 35% Affordable Housing • Zero CIL • No Growth 	5.17% IRR	Borough CIL equivalent to IRR of 0.61%	3.32% IRR	Borough CIL amounts to IRR of 0.84%	-4.72% IRR	Borough CIL amounts to IRR of 1.03%
Scenario 3: Assumptions: - <ul style="list-style-type: none"> • 35% Affordable Housing • Full CIL • Growth* 	10.87% IRR	Allowing for growth improves the viability of the development considerably.	14.52% IRR	Allowing for growth improves the viability of the development considerably.	8.96% IRR	Allowing for growth improves the viability of the development considerably.
Scenario 4: Assumptions: - <ul style="list-style-type: none"> • 25% Affordable Housing • Full CIL • No Growth 	6.21% IRR	Development considered unviable both with and without CIL.	5.13% IRR	Development considered unviable both with and without CIL.	-1.65% IRR	Development considered unviable both with and without CIL.
Scenario 5: Assumptions: - <ul style="list-style-type: none"> • 25% Affordable Housing • Zero CIL • No Growth 	7.17% IRR	Borough CIL equivalent to IRR of 0.96%	6.15% IRR	Borough CIL amounts to IRR of 1.02%	-0.47% IRR	Borough CIL amounts to IRR of 1.18%

Scenario 6: Assumptions: - <ul style="list-style-type: none"> • 25% Affordable Housing • Full CIL • Growth* 	14.85% IRR	Allowing for growth improves the viability of the development considerably.	18.99% IRR	Allowing for growth improves the viability of the development considerably.	13.38% IRR	Allowing for growth improves the viability of the development considerably.
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*BNP Paribas Real Estate have undertaken an assessment of the growth in sales values in the London Borough of Tower Hamlets using the Land Registry website (available from January 1995 and up until April 2014). This notional growth has been adjusted by including inflation in build costs as identified by the BCIS database over the corresponding period. BNP Paribas Real Estate's calculations identify an average annual growth of sales values of 8.24% and a 3.34% average annual increase in build costs. These growth figures have been factored into the appraisals to assess the likely viability of the sites tested over the delivery of the developments.

Analysis

5.14 Table 5 below sets out the results of multiple analytical exercises that were undertaken to establish the impact of CIL on Wood Wharf, Bishopsgate Goods Yard and Westferry Printworks. These exercises involved:

1. Testing the impact of CIL on a scheme's Internal Rate of Return (IRR)

- This involved testing a scheme with a full CIL and testing the same scheme but assuming no CIL. The difference in IRR between these two appraisals equates to the impact of the imposition of CIL and helps to establish whether removing CIL would make the development viable.
- Please refer to row 4 of Table 5 below which demonstrates that where a scheme assumes 35% affordable housing and no growth, that CIL will not change a scheme's IRR by more than 1.03%.

2. Testing the amount of extra affordable housing that could be delivered if no CIL was applied

- This was an exercise that helped to identify the amount of affordable housing potentially lost as a result of the imposition of CIL. It assists in determining the impact of the imposition of CIL as proposed upon the Development Plan. This exercise involved reducing the level of affordable housing in the appraisals that included CIL (scenario 1 in Table 4 above) until the IRR equated to the appraisal that excluded CIL (scenario 2 in Table 4 above).
- The results of this exercise are set out in row 1 of Table 5 below which shows that the imposition of CIL may result in a reduction of between 2.51% and 4.29% affordable housing provision, depending on which site is being appraised. Please refer to Appendix P for the calculations for this exercise.

3. Establishing what percentage of Net Development Value (NDV) the proposed CIL constitutes

- This helps to provide a context in relation to the relative impact of CIL. The results of this exercise are set out in row 3 of Table 5 below and demonstrate that CIL equates to no more than 1.87% to 2.53% of NDV, depending on the site.

4. Establishing the impact of assuming growth in the appraisals

- This assesses the impact on IRR of assuming a growth rate. The results of this exercise are set out in row 4 of Table 5 below and show that the application of a growth rate results in the increase to the IRR of a minimum 6.48% and a maximum of 13.91%, depending on the scheme.

5.15 The results of the above described analysis are discussed in more detail when considered in relation to the options proposed.

Table 5: Further Appraisal Analysis

	Analysis	Wood Wharf	Comments	Bishopgate Goods Yard	Comments	Westferry Printworks	Comments
General Analysis							
1	<ul style="list-style-type: none"> Full CIL Growth* Aim for 13% IRR Output = Level of Affordable Housing	29.92% AH	Level of Affordable Housing provision at which the development is viable assuming an aim IRR of 13%.	38.40% AH	Level of Affordable Housing provision at which the development is viable assuming an aim IRR of 13%.	25.95% AH	Level of Affordable Housing provision at which the development is viable assuming an aim IRR of 13%.
2	<ul style="list-style-type: none"> Full CIL Growth* Aim for 20% IRR Output = Level of Affordable Housing	12.44% AH	Level of Affordable Housing provision at which the development is viable assuming an aim IRR of 20%.	22.44% AH	Level of Affordable Housing provision at which the development is viable assuming an aim IRR of 20%.	6.59% AH	Level of Affordable Housing provision at which the development is viable assuming an aim IRR of 20%.
Using Scenarios 1, 2 and 3							
3	Affordable Housing reduction required (from 35%) to accommodate CIL.	-4.29%	A drop in AH of circa 4% would allow for the Borough CIL.	-3.17%	A drop in AH of circa 3% would allow for the Borough CIL.	-2.51%	A drop in AH of circa 2.5% would allow for the Borough CIL.
4	Impact of CIL on scheme IRR (using scenarios 1 and 2 in Table 4 above).	-0.78%	The imposition of CIL has a minimal upon the IRR of a scheme.	-0.84%	The imposition of CIL has a minimal upon the IRR of a scheme.	-1.03%	The imposition of CIL has a minimal upon the IRR of a scheme.
5	Borough CIL as % of Net Development Value (Scenario 1).	1.87%	CIL forms a small part of the overall development costs.	2.21%	CIL forms a small part of the overall development costs.	2.53%	CIL forms a small part of the overall development costs.
6	Impact of Assuming Growth on IRR (using scenarios 1 and 3 in Table 4 above).	+6.48%	When assuming growth over the life of the scheme, the IRR is increased by circa 6%.	+11.2%	When assuming growth over the life of the scheme, the IRR is increased by circa	+13.91%	When assuming growth over the life of the scheme, the IRR is increased by circa 14%.

					11%.		
Using Scenarios 4, 5 and 6							
7	Impact of Assuming Growth on IRR (using scenarios 4 and 6 in Table 4 above).	+8.64%	Assuming Growth has a significant impact upon the scheme's IRR.	+13.86%	Assuming Growth has a significant impact upon the scheme's IRR.	+15.03%	Assuming Growth has a significant impact upon the scheme's IRR.

Option 1: Maintain the CIL Rates as Proposed in the RDCS (and updated in the Statement of Modifications)

- 5.16 Whilst the further appraisals provide useful information regarding the three strategic sites, the Council considers that the appropriate balance has been struck, and this remains the reasonable option. The reasons for this are as follows, and are set out in more detail below: -
- Guidance states that the appraisals of strategic sites used to inform a CIL should be consistent with appraisals undertaken to support the Local Plan, and that the appraisals undertaken are consistent.
 - The Council's affordable housing policy affords flexibility and negotiation so a rate setting process should consider this.
 - The impact of maintaining the rates as proposed has a significantly lower adverse impact upon the objectives of the Development Plan, as opposed to zero rating these sites.
 - The CIL rates as proposed would constitute a very low proportion of a scheme's Net Development Value so it is unlikely to be the overriding factor in respect of the viability of a scheme.
- 5.17 The Council considers that the appraisals of the strategic sites undertaken as part of *ED2.2: Viability Study - Revised Draft Charging Schedule*¹⁵ (refer to Appendix 6) are the most appropriate to use to ensure the rates proposed are appropriate in relation to strategic sites and therefore proposes to maintain the current rate proposals.

Reasons for Maintaining the Rates as Proposed

- 5.18 The reasons for maintaining the rates as proposed are set out below: -

Reason 1: Guidance in Respect of Scope of Appraisals

- 5.19 Paragraph 27 of the CIL Guidance 2013 states in relation to the testing of strategic sites: -

"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."

- 5.20 The appraisals that inform the DCS and RDCS are consistent with the appraisals undertaken to support the Council's Managing Development Document (*ED4.2*).
- 5.21 Paragraph 7.2 of *ED2.2*¹⁶ explains that the viability appraisals undertaken for and appended to that document were derived from the appraisals BNP Paribas Real Estate undertook on behalf of the Council in preparation for the adoption of its MDD (*ED4.2*). The appraisals were

¹⁵ [ED2.2: Viability Study - Revised Draft Charging Schedule - Appendices](#)

¹⁶ [ED2.2: Viability Study - Revised Draft Charging Schedule](#)

originally updated (as published at the DCS stage) to reflect changes in the market. The appraisals were subsequently updated, at the RDCS stage, to reflect specific comments by developers and accommodate a further conservative approach.

- 5.22 The appraisals undertaken to form the Council's Evidence Base for the MDD can be found attached in Appendix K.
- 5.23 The further appraisals undertaken at this stage, as described in paragraphs 5.1 – 5.13 above, utilise a refined methodology that accommodates the unique characteristics of these sites and have been provided to provide context to the CIL examination to help explore options in terms of how to treat these sites.
- 5.24 To provide the Examiner with some context in respect of the different schemes, that have been the subject of a relevant planning application and/or appraisals for the three sites in question, a document has been prepared and is attached at Appendix L.

Reason 2: Affordable Housing Policy Flexibility: 'Subject to Viability'

- 5.25 To provide context, Tower Hamlets is subjected to the highest housing targets in London. The next authority in the list is required to provide some 35% less than Tower Hamlets. This pressure is applied by the London Mayor, through the London Plan.
- 5.26 Paragraph 29 of the CIL Guidance 2013 states that Charging Authorities must: -
- “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...”*
- 5.27 The Council has taken account of 35% affordable housing in its viability appraisals used to inform the CIL rates. However, it is difficult to reflect the flexibility of the Council's affordable housing policy (policy SP02 of *ED4.1: Tower Hamlets: LDF Core Strategy*), which contains the term 'Subject to Viability', in these appraisals. This 'Subject to Viability' element of the affordable housing policy affords flexibility to negotiate the level of affordable housing down from 35% if other benefits of a development outweigh the failure of that site to contribute the required amount of affordable housing provision. A good example of this is the recently permitted Wood Wharf scheme, which has been granted permission by the Council's Strategic Development Committee. The level of affordable housing to be provided on the scheme is defined as 25%, in current market conditions, and can rise to 40% if the value of the scheme increases. This is summarised in paragraph 2.5 of the Strategic Development Committee Report, which is attached at Appendix N. This level of affordable housing has also been accepted

by the GLA (and no reduction in the level of Mayoral CIL and SPG has been made).

5.28 The application of the 'subject to viability' clause in policy SP02 means that the implications of the Council maintaining its CIL rates as proposed for the 3 sites in question is that, in the event that at the time the scheme applies for planning permission, the combined impact of the 35% affordable housing policy and the CIL liability (proposed as existing) make the scheme unviable, then the level of affordable housing required to be provided could be reduced. The extent of the required reduction is set out in row 3 of Table 5 above. This will enable the holistic requirements of the development plan to be accounted for, rather than an individual element such as affordable housing. The flexibility in this policy needs to be accounted for in setting the CIL as a 35% assumption is highly conservative and cautious.

5.29 It is worth noting that Plymouth City Council's viability evidence accounted for a lower level of affordable housing than set out in its Local Plan, which states that '*on qualifying developments of 15 dwellings or more, at least 30% of the total number of dwellings should be affordable homes, to be provided on site without public grant (subject to viability assessment)*'. When referring to the fact that Plymouth City Council (PCC) achieves on average 15% affordable homes on qualifying developments, paragraph 32 of the Examiner's report¹⁷ (Appendix O) states:

Since this is the reality of what is being achieved, PCC has given greater weight to scenarios with a 15% level of affordable housing in setting the CIL charges.

5.30 The Examiner goes on to state in paragraph 37 of his report, when referring to the decision to set the CIL on the basis of 15% affordable housing:

I see no reason to defer CIL in these circumstances

5.31 Tower Hamlets has historically achieved an average of 30% affordable housing delivery on private led schemes (Please refer to paragraph 2.4 of *ED2.5: S106 Report - Revised Draft Charging Schedule*¹⁸). As can be seen, the imposition of CIL would still allow for affordable housing provision of between 30.71% and 32.5% on these schemes, assuming they were otherwise viable. Please refer to Appendix P for further information. This is still above the average amount of affordable housing achieved.

5.32 The Council considers that the CIL rates as proposed can be viably accommodated on the three sites in question, due to the flexibility in

¹⁷ [Plymouth CIL Examiner's Report](#)

¹⁸ [ED2.5: S106 Report - Revised Draft Charging Schedule](#)

the Council's affordable housing policy. For example, row 1 of Table 5 above demonstrates that where a full CIL is accommodated and the aim IRR is 13%, that affordable housing of between 25.95% and 38.4% can be delivered on these 3 schemes. It should be noted that the minimum provision of 25.95% affordable housing would be higher than the amount actually achieved in relation to the Wood Wharf scheme.

- 5.33 The Council does not consider that treating its affordable housing policy as flexible as an abandonment of its policy, it is merely giving greater consideration to the reality that affordable housing contributions can be reduced by negotiation, to ensure much needed infrastructure requirements are also met.

Impact Upon Development Plan

- 5.34 The Council considers that charging the CIL rates as proposed on the three sites in question would, in accordance with paragraph 29 of the guidance, '*not threaten delivery of the relevant Plan as a whole*'. The only adverse impact on the Development Plan is a minimal one in relation to the delivery of affordable housing. However, not charging the rates as proposed would result in a far greater impact upon the delivery of infrastructure, required to support the delivery of the Development Plan as a whole.
- 5.35 To refer back to the tests in Regulation 14, setting the CIL rates as proposed on the three sites in question would not have a significant effect (taken as a whole) on the economic viability of development in the Charging Authority's area. The term 'taken as a whole' is stated in CIL Regulation 14(1) and implies that the viability of individual sites is not a material consideration in CIL rate setting if the impact of the CIL rates is not significant in respect of the delivery of the Development Plan. Given the imposition of CIL is minimal in respect of the affordable housing levels that must be reduced to account for it, setting the rates as proposed, appears to the charging authority, to strike the appropriate balance between the desirability of funding from CIL and the potential effects on viability of development across the area.
- 5.36 An analysis, contained in Appendix P, has been undertaken which assesses the impact on affordable housing provision due to the imposition of CIL, as well as analysing the total contribution these sites will make to the Council's projected CIL income up to the end of the Council's Core Strategy, and the impact of imposing a zero rate on these sites.
- 5.37 The analysis set out in Appendix P demonstrates that the imposition of CIL may lead to a reduction of 121 affordable housing units, which equates to 0.56% of the affordable housing target. It also demonstrates that, where the projected CIL funding uses the development assumptions contained in the Council's development trajectory, not charging a CIL on the 3 sites in question would lead to a minimum

reduction in funding for infrastructure of £45m, which equates to 21% of the projected CIL funding over the plan period. Where the value of CIL is based upon the scale of development set out in the further scheme appraisals, the loss to the Council would equate to approximately £76m. This clearly detracts from the intention and rationale for seeking to adopt a CIL in the first place of funding infrastructure required to support the development of the Council's area.

- 5.38 Clearly, imposing the CIL as proposed on the 3 sites in question has a relatively more positive impact upon the delivery of infrastructure than it has a negative impact in respect of delivery of affordable housing. Any negative impact would not be significant enough to affect the Council's ability to meet its housing targets. This is one of the reasons why the Council considers it appropriate to maintain the rates as proposed.

Impact Upon Scheme Viability

- 5.39 Row 5 of Table 5 above demonstrates that CIL constitutes a very small amount of a scheme's value. This means it is unlikely to be the overriding factor in respect of the viability of the scheme.

Option 2: Zero Rate Wood Wharf, Bishopsgate Goods Yard and Westferry Printworks

- 5.40 Rows 1 and 2 of Table 4 above demonstrate that where 35% policy compliant affordable housing must be accounted for in a viability appraisal, that the schemes are unviable even without the inclusion of CIL. Representations have been made on the basis that the office rate on these sites should be reduced to zero. If so, the regulation 123 list would need to be amended accordingly to ensure that the infrastructure required for these 3 sites is mainly funded through section 106 payments.
- 5.41 The Council believes that a zero rate on these sites would not be appropriate. The reasons for this are already discussed under Option 1 above. In addition, as the imposition of CIL makes little difference to the viability of these sites, it is clear that they are not appropriate evidence on which to base the CIL rates. The Council is also required to use an area-based approach, which involves a broad test of viability across their area as the evidence base to underpin their charge.

Option 3: Amend Rates to Accord with Financial Contribution Secured on Wood Wharf Planning Application

- 5.42 There is one further piece of evidence regarding viability available that is also relevant, from the Wood Wharf planning permission process. Whilst the details of the viability assessment remain confidential, the outputs of that process are known. The total financial contribution for planning obligations (or their financial equivalent) was agreed of £42,001,904 for the Indicative Scheme that was considered (see the

report to committee, attached at Appendix O). A full contribution to the Mayoral CIL and SPG Crossrail requirements has also been assumed, totalling £61 million. If there is an increase in value of the development, this will allow for a greater contribution to the provision of affordable housing (and will not affect the level of the other s.106 contributions).

5.43 When applying the CIL rates as proposed to this Indicative Wood Wharf scheme, the total CIL contribution (not accounting for a discount due to in use existing floorspace) would be £81,760,577.60. Accounting for the discount due, this would become £79,542,262 and the Crossrail contributions would remain the same. A residual s106 contribution of £19,403,831m would also be expected (please refer to page 8 of Appendix L).

5.44 Therefore, if assuming a CIL world, the likely amount available for CIL would equate to £22,598,073. This amount is established by reducing the total financial contribution agreed as part of the Wood Wharf scheme (£42,001,904) by the amount that would remain under S106 in a CIL world (£19,403,831). This equates to 28% of the likely CIL liability for this scheme (assuming no discount for existing floorspace) if the Council had its CIL in place at the time of application. As it has been established that a financial contribution of £22,598,073 can be viably accommodated on Wood Wharf then the rates as proposed on this site could be reduced by approximately 72% to establish a CIL rate that did not adversely affect the viability of the development (in current market conditions).

5.45 The rates would be as follows: -

Table 6 – Alternative Rates

Use	CIL Rates Proposed	Recalibrated CIL Rate (Reduced by circa 72%)
Residential	£ 200	£ 56.82
Office	£ 50	£ 14.21
Retail	£ 70	£ 19.89
Convenience	£ 120	£ 34.09
Hotel	£ 180	£ 51.14
Student Housing	£ 425	£120.74

5.46 In the event that a floorspace discount was accounted for, the rates as proposed would be slightly higher as the S106 payment for the scheme would constitute a higher percentage of the CIL that would likely be sought.

5.47 The Council contends that the rates set out in Table 6 above have already been established as viable for the Wood Wharf scheme due to

the planning application viability process. Due to the similarities in respect of viability issues between the Wood Wharf, Bishopsgate Goods Yard and Westferry Printworks sites (please refer to paragraph 5.1 above), the Council considers that the same rationale could be applied to all three of the sites.

- 5.48 The Council considers that this option is not suitable and maintains that the rates as set out in its RDCS (updated in the Council's *Statement of Modifications* (ED3.5¹⁹)) are indeed appropriate.

¹⁹ [ED3.5: Statement of Modifications](#)

6. Affordable Housing Impacts

- 6.1 The Council was asked by the Examiner to provide a sensitivity analysis in respect of the change in the percentage of affordable housing that could viably be provided as a consequence of charging the proposed CIL rates.
- 6.2 The results of this analysis can be found in Appendix Q and conclude that the proposed residential CIL rates will on average represent an opportunity cost of between 2.5% and 3.5% in terms of the affordable housing that could be provided instead, depending on whether existing floorspace is accounted for. Section 5 also sets out the opportunity cost of CIL in respect of the provision of affordable housing on Wood Wharf, Westferry Printworks and Bishopsgate Goods Yard.

7. Crossrail Section 106 Approaches in Central London

- 7.1 The central London Boroughs for which the Crossrail Section 106 SPG (April 2013) is relevant have published CIL proposals having accounted for this guidance in setting their CIL rate. Appendix R, prepared with GLA/ TfL sets out the approaches taken by the relevant Charging Authorities.
- 7.2 It should be noted that no other Central London authority is impacted by the Isle of Dogs Contribution Area rates, which are by far the highest in London (for example, the office rate for the Isle of Dogs is £190 per sq. m whereas it is £140 per sq. m in the Central London Area) – and similar viability concerns have been absent from consideration by other charge setting authorities. The issue arising where the indicative tariffs proposed by the Mayor of London in the SPG effectively sweeps the pot – contrary to London Plan and Local Plan objectives - is limited to the Isle of Dogs Area. It is probable that the implementation of the Crossrail SPG, which provides for discounts for mixed use developments, and improved market conditions will render the sharing of the viable sum between the Council CIL and the Crossrail Section 106 top up unnecessary.
- 7.3 The Council's approach is designed to ensure a balance is struck between raising revenue to fund local and regional infrastructure needs and as such the Council proposes to maintain its approach to the Crossrail Top-Up for offices in North Docklands.

8. Current Use Values

- 8.1 The Council was asked by the Examiner to provide a note relating to clarification of the CUVs adopted in the CIL rate setting process. This note is set out in Appendix S.

- 8.2 The reasons for updates to the CUVs adopted are to reflect changes in the types of sites most likely to come forward for development. In addition, updates to other viability inputs resulted in changes to viability positions in respect of sites, making a scheme with a given CUV unviable irrespective of CIL. If the scheme was unviable irrespective of CIL then it wouldn't come forward for development. Therefore, it is not a useful scenario to use to assist in setting a CIL rate.

9. Hotel Yields

- 9.1 The Council was asked by the Examiner to provide a note relating to Hotel yields achieved throughout London. This note is set out in Appendix T.

- 9.2 This note confirms that the yield adopted in the viability appraisals for hotels is reasonable and indeed lower yields are achieved throughout London in comparable location so it could be argued that a lower yield could have been adopted.

10. Hotel Appraisals

10.1 The Council was asked by the Examiner to undertake the following further hotel appraisals: -

- An appraisal of the Ibis hotel using £26 per sq. ft.
- An appraisal of the Bethnal Green Travelodge using information provided by Travelodge.

10.2 For completeness, two additional budget hotel appraisals have been undertaken to update the Premier Inn and Coriander Avenue Travelodge appraisals submitted in *ED5.14: Additional Appraisal Evidence – Hotel²⁰*. The information contained within these appraisals is based upon the information provided by Travelodge.

10.3 An analysis of the appraisals, supporting evidence and the appraisals themselves can be found in Appendix U. The results of these appraisals justify the Hotel CIL rate as proposed.

²⁰ [ED5.14: Additional Appraisal Evidence – Hotel](#)

11. Differentiation between Types of Retail

11.1 The Council has identified separate rates for:

- Retail (except convenience supermarkets, superstores and retail warehousing) and;
- Convenience supermarkets, superstores and retail warehousing supermarkets

11.2 The Council considers that the proposed approach to set rates by “different intended uses” of retail developments is justified by the Council’s Viability Study (*ED2.2*²¹) (Updated by document *ED3.5* Appendix 1²²). The Viability Study provides not only the viability appraisals, but also a list of underlying factors (paragraph 2.8), including:

- Availability of car parking;
- The operational economics of supermarkets and superstores;
- High rents and the value ascribed by investment markets with lower yields being applied;
- The large sites for such developments often having lower existing use values.

11.3 The type of retail offer in supermarkets, superstores and retail warehousing typically serves a wider catchment area than other types of retail uses. Therefore, they are likely to have greater transport and environmental impacts caused by the need to travel, particularly by car.

11.4 It is in the Council’s view that a combination of the factors, together with economic viability evidence have contributed to the different characteristics of supermarkets, superstores and retail warehouses, which helps to distinguish their use from that of ‘other retail’.

11.5 The Council proposes that the definition for convenience supermarkets and superstores be amended to include explicit reference to car-borne customers for consistency, see document *ED5.7*²³, paragraph 12.3.

11.6 In London, it is noteworthy that five of sixteen adopted CIL charging schedules have set differential rates within retail uses, since 2012. For example, London Borough of Merton proposed two rates for retail warehouses, superstores and other retail regardless size. They made the distinction by defining:

- The purpose of the destinations; and
- The provision of car parking facilities.

²¹ [ED2.2: Viability Study - Revised Draft Charging Schedule](#)

²² [ED3.5: Statement of Modifications - Appendix 1](#)

²³ [ED5.7: LBTH CIL - Tower Hamlets’ Response to Main Issues and Questions](#)

- 11.7 The Examiner²⁴ was satisfied with the Council's overall approach and allowed them to propose amendments to the definition for superstores, providing further clarity on distinctive uses within the retail use class.
- 11.8 The Council is clear on the regulatory requirements for setting differential rates under the CIL Regulations (2010), and has set differential rates based on different characterises of use (like LB Merton) rather than by reference to sizes of development. However, it is notable that the Examination Report (May 2014), which approved the CIL Charging Schedule of the London Borough of Lambeth²⁵, acknowledged the principle of setting up differential rates by scale under the 2014 CIL Regulations (Amendments), despite Lambeth's Draft Charging Schedule falling under the pre 2014 amended CIL Regulations.

²⁴ [LB Merton CIL Examiner's Report](#)

²⁵ [LB Lambeth CIL Examiner's Report](#)

12. Student Housing Build Costs

- 12.1 The Council was asked by the Examiner to provide further information on the changes to the student accommodation build costs adopted in the viability assessments supporting the Draft Charging Schedule and the Revised Draft Charging Schedule. This note is set out in Appendix V.

- 12.2 The changes to the build costs are a result of further research undertaken by BNP Paribas on the Council's behalf and changed appropriately as part of the consultation process.

13. Student Housing Buffer

- 13.1 The choice to adopt a buffer has been taken to ensure compliance with paragraph 30 of the CIL Guidance 2013, which states 'Charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area'. To address this, the Council have reduced all of its CIL rates by a minimum of 25% from the maximum CIL that could be charged.
- 13.2 The size of this buffer varies across some charges with different viability across areas for certain rate; the focus has been on ensuring that is equal to or above 25%. Where the viability characteristics have varied significantly across areas, for example in relation to residential development, the Council have identified different rates by area and applied this buffer to those rates.
- 13.3 The rate set at the DCS stage (and the PDCS stage) accommodated a 35% buffer. Even with additional testing undertaken at the Revised Draft Charging Schedule stage in response to consultation responses, these did not have a significant change and allowed for 31.34% (still in excess of 25%).
- 13.4 The decision to adopt a slightly higher buffer for student accommodation reflects the uncertainty in modelling the levels of affordable housing that may be required – while acknowledging it is unlikely to be required given the criteria defined in the policy (See policy DM6 of *ED4.2: Tower Hamlets: Managing Development Document*²⁶). A lack of certainty over the degree to which CIL or affordable housing can be balanced against one another also supported adopting a slightly buffer for this rate.
- 13.5 Accordingly, it was considered appropriate to retain the existing rates identified at the DCS stage as the changes were minimal and still allow for a sufficient margin to ensure the rate is not set at the margin of viability.
- 13.6 Reducing the buffer to 25% would result in a rate of £465.

²⁶ [ED4.2: Tower Hamlets: Managing Development Document](#)

14. Student Housing: Separate Rate for University Led Schemes

- 14.1 Queen Mary University London (QMUL) have submitted a proposal in relation to the mechanism for securing a separate rate for University led schemes, let to students at a discount to the market rent. This submission can be found in Appendix W.
- 14.2 The Council's interpretation of the submission by QMUL is that the Council could ensure that the development delivers accommodation below market rent, by obliging the developer to do so in a Section106 agreement.
- 14.3 One issue for the Council is that it does not consider it has a policy basis for entering into such an agreement. Neither the Council's Local Plan nor the adopted London Plan encourage the delivery of student accommodation below market rent.
- 14.4 Another issue for the Council is that differential rates may (under the 2013 regulations which apply in this case) only be set on the basis of location or use. The Council does not consider that student accommodation let at a discounted rent constitutes a different use.
- 14.5 In conclusion, the Council considers the principal for and the mechanism to set a separate rate for University led discounted rent schemes to be outside the remit of the Council's Local Plan and the CIL Regulations.
- 14.6 In the event that the Examiner was to find that a separate rate can be applied, the Council has undertaken a viability appraisal (attached at Appendix X), to demonstrate that in the event a separate rate of this sort is deemed appropriate, that a nil rate would be suitable for university led discounted rent student accommodation development schemes. However, the Council feels it is more appropriate to deal with this as and when the matter arises, as a matter of discretionary charitable relief, as it is the intention of the CIL Regulations to deal with this kind of issue.