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4<sup>th</sup> September 2014

**Community Infrastructure Levy (CIL) Regulations – Regulation 73A**

Dear Steve,

With reference to the above, I write to emphasise the Council's concerns relating to this part of the CIL Regulations. For your ease of reference to previous correspondence we have had in this regard I attach, at Appendix A, a letter exchange between us. I also attach, at Appendix B, an email exchange between my colleague Joseph Ward and Tom Winter and Alison Fairhurst from your department.

The interpretation of Regulation 73A, and in particular whether Regulation 73A (7) (b) (ii) prevents Charging Authorities from securing CIL payments in the form of the provision of infrastructure, is problematic. Whilst the Council is confident this regulation does not prevent securing CIL via infrastructure payments, numerous parties have varying opinions on this matter, meaning that clarification in respect of this matter is of high importance. If this clarification does not come from the CLG then it will be for Examiners, who are clearly not in an as informed position as the CLG, to decide at public Examinations into Charging Schedules.

The impact of this Regulation, restricting the ability to secure infrastructure payments, is significant in relation to both CIL rate setting and infrastructure development processes throughout the UK. CIL Charging Schedules take a number of years to implement; such has been the impact of the incremental impacts of continuous amendments to the legislation and guidance. This issue would not be simply cleared up by further amendments to the Regulations. The impacts of any restrictive interpretation would be felt for a number of years, likely costing Charging Authorities significant CIL revenue and limiting options for infrastructure delivery.

In addition, the Council envisages that legal disputes that could arise from the lack of clarity relating to how Charging Authorities can deliver infrastructure on development sites. It is not as simple to say that these items of infrastructure will be delivered through S106; the three tests in Regulation 122 are not necessarily compatible with delivery of infrastructure that will have a remit wider than just serving the development in question.

The Council proposes that the best way of dealing with this issue would be for the CLG to appear at the further hearing for our public examination, to take place on the 6<sup>th</sup> October 2014, to clarify the intention behind and the interpretation of this regulation. The Council is certain that there would have been a clear intention behind this regulation and having a representative of the CLG appear, would clear up the matter for all Charging Authorities. We would suggest a legal draftsman or solicitor, acting for the CLG, appear but we look forward to your view on this matter and any suggestions you may have.

I look forward to hearing from the department in this matter.

Yours Sincerely,

**Owen Whalley**

Head of Planning and Building Control

CC

Aman Dalvi: Corporate Director of Development and Renewal, LBTH

Anne-Marie Berni: Infrastructure Planning Manager, LBTH

Tom Winter, CLG

Alison Fairhurst, CLG