

Briefing – LBTH CIL Examination

Queen Mary University of London (QMUL)

Proposed Solution to University-led Student Accommodation Matter

June 2014

Proposal to CIL Examiner & LBTH: Reduced Rents Secured Via Section 106 (S106) Agreement

- 1 This Briefing Note sets out a concise summary of the views of Turley and QMUL following the close of the London Borough of Tower Hamlets (LBTH) Community Infrastructure Levy (CIL) draft Charging Schedule Examination. It specifically sets out a recommended solution to the matter of securing a nil rate of CIL for university-led student accommodation development where reduced rents can be safeguarded by LBTH.
- 2 It was recognised and accepted at the Examination by parties present that there constitutes a recognisable difference in viability between University-led and private sector led student accommodation development, with the former being unviable and requiring subsidy and the latter constituting development viable to accommodate a CIL charge.
- 3 The issue of contention then fell to the mechanism by which this could be recognised in the CIL Charging Schedule and appropriately applied within the planning and delivery of such development.
- 4 Turley appealed to the Examiner that it would be prudent, reflective of the viability evidence, and thus in conformity with the CIL Regulations 2010 (as amended) and CIL Guidance (2013 & 2014), for the CIL Charging Schedule to be modified to include a nil CIL rate set for University-led accommodation. It was recommended that this would be defined and regulated by letting rates being held at sub-market levels.
- 5 LBTH contended that it lacks a policy lever to ensure that the rents charged would remain at an affordable level in order to avoid exploitation by private sector providers. This point was a new one, and only arose during dialogue at the Examination.
- 6 In the absence of an immediate solution, LBTH proposed that an Exemptions Policy for exceptional circumstances relief from CIL liability would provide a sufficient mechanism should University-led accommodation trigger a CIL liability if charitable exemption is nullified for any reason.
- 7 Turley and QMUL disagree with the use of an Exemptions Policy as an appropriate primary mechanism for LBTH to utilise. For, it remains that this exposes QMUL to risk on each scheme proposed for development, for the Exemptions Policy is set at the discretion of LBTH and can be introduced, withdrawn or subject to refusal as LBTH sees fit. Turley is also concerned that LBTH may cite the same concerns regarding the safeguarding of sub-market rents leading to refusal of CIL exemption in practice.

- 8 If the Exemptions Policy is withdrawn or an application is refused, this would result in CIL liability at £425 per square metre (of GIA) being charged on a non-negotiable basis for university-led accommodation. As proven, and agreed at Examination, this would render all such development unviable.
- 9 The Examiner agreed that additional material may be submitted following close of the Examination should a solution to this issue be determined. This would be considered by both LBTH and the Examiner before final and formal recommendations are made.
- 10 Subsequently, QMUL has obtained legal advice from solicitors DAC Beechcroft on the matter, and Turley has conducted additional research.
- 11 As a result, it is recommended by Turley, QMUL, and DAC Beechcroft that the following proposal forms a functional mechanism, and thereby an appropriate solution, for consideration by LBTH and the Examiner:
- (i) In order to provide a legally binding mechanism a Section 106 Agreement would be entered into and secured on schemes that proposed restricted rent levels (RPI index linked plus 2% yearly from adoption date).
 - (ii) The restricted rent level should be agreed between LBTH and QMUL. This could draw upon the evidence prepared by BNP Paribas to inform the CIL Charging Schedule, and that submitted by Turley on behalf of QMUL to the Examiner in advance of the CIL Examination. At this time a rent of £158 per week would appear to be an appropriate upper threshold.
 - (iii) The planning obligation should be set for a period of at least 7 years (with 7 years being equivalent to the relevant period for securing CIL charitable relief as set out in the CIL Regulations 2010 [as amended]).
 - (iv) The Section 106 Agreement could include a covenant requiring QMUL to inform LBTH each September of the rent level to be charged for the new academic year. This would enable LBTH to monitor whether the legal agreement continued to be followed.
 - (v) This process would enable a separate CIL rate to be included as a modification to the draft Charging Schedule titled as 'University-led Student Housing' or similar (subject to the above and as appropriate based on QMUL's previous representations).
- 12 It is noted for consideration by the Examiner that, although not yet tested at Examination, Southwark Council has proposed a very similar approach to that proposed above. The Southwark Council CIL process is well advanced, with the draft Charging Schedule (and relevant supporting documents) having been submitted to the Planning Inspectorate for Examination. In addition, the approach above was recommended by Southwark Council's advisors BNP Paribas Real Estate (BNPPRE) in the *Southwark CIL Viability Report* (November 2013).
- 13 With regard to LBTH's reference to a 'policy mechanism' regulating rents, this does not appear to have been adopted by Southwark Council either to date – there is simply reference to a Section 106 Agreement being utilised as appropriate within Policy 8 of the Southwark Core Strategy (2011) and reference is made to this approach within 'Student Housing – University Schemes' within the draft *Section 106 Planning Obligations and Community Infrastructure Levy Supplementary*

Planning Document (SPD) (December 2013), which accompanies the CIL draft Charging Schedule. A similar reference could be added by LBTH to its *Revised Planning Obligations SPD* (March 2013) prior to adoption.

- 14 Turley does not see the above policy position as fundamentally different to that included within Policy DM6 of the LBTH (April 2013) Managing Development Document (DPD), which makes reference to Policy SP02 (7) of the LBTH Core Strategy Development Plan Document (DPD) (September 2010) – both having regard to student housing. Although neither policy specifically makes reference to Section 106 Agreement as a mechanism to obtain planning obligations, this mechanism is not mentioned elsewhere in the documents with regard to securing affordable housing for example. Despite this, LBTH has certainly been using this mechanism for this purpose successfully. Turley does not see why this position would differ with regard to the proposals set out above.
- 15 In conclusion, it is wholly unclear as to why LBTH has been provided with advice by BNPPRE that runs directly contrary to the approach BNPPRE has recommended to Southwark Council on this matter despite all evidence pointing towards the same conclusion.
- 16 It is therefore Turley's advice to the Examiner and LBTH that the 'Southwark model' should be that followed (subject to the points outlined above) in making recommended modifications to the LBTH CIL Charging Schedule.
- 17 Turley would be willing to assist the Examiner or LBTH if further information or commentary is required following consideration of the above recommendations.

Contact

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