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To: CIL
Subject: CIL DCS

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

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

Testing the Balance

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

Affordable Housing

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

Planning Obligations

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

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

Differential Uses

9 Regulation 13 only permits differentiation by location and intended use. The recent CIL consultation paper makes it clear (paragraph 21) that it is not open to charging authorities to discriminate on the basis of scale.

10 The Plymouth examination report explains this blunt statement from DCLG. Size can never be used alone as a basis for differentiation. Where there is a clear and unambiguous difference between intended uses then size may, if there is evidence to justify it, be used as a proxy for differentiation between the intended uses. Where there is a clear viability difference between two different intended uses then a size threshold may, if there is evidence to justify it, be used as a proxy for differentiation.

11 In the available evidence to support the DCS there is no analysis whatsoever of whether there is a different intended use either side of the proposed 280 square metre threshold. In the absence of that analysis the CIL charging schedule is clearly flawed.

12 Even if there was an analysis that demonstrated that a store of 279 square metres was different from one of 281 square metres, there is no adequate viability analysis that shows that there is a viability difference between the two stores.

13 As a separate issue, if differentiation is proposed then it has to be on the basis of sensible definitions capable of being understood at the date at which CIL is charged. The Council's definitions are wholly inadequate. It will not be clear at the date at which, for example, a 400 square metre shop is being built (probably as part of a mixed use development) whether it is going to be occupied by a supermarket or another retail use. What rate does the council propose to charge in such circumstances?

14 Again, as a separate issue, the definition of retail warehousing is just silly. It captures the traditional bulky good retail warehouses, but would not cover an out of centre Marks & Spencer.

15 Wherever there is a proposed differentiation, the council has a responsibility to deal with any potential state aid issues. There is no reference in any of the evidence on which the council rely to state aid having been considered.

Geographical zoning boundaries

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

Student Housing

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

Strategic Sites

18 It is useful to see the BNP analysis on the strategic sites. It is good to see that an Argos analysis, rather than a simple residual analysis, has been used. The promoters of the strategic sites will need to test, carefully whether the inputs into that analysis (which do not appear to be available in public) are sensible.

19 However, the analysis appears to indicate that the majority of the strategic sites will not be viable. Given that these are sites which, almost by definition, are integral to the development plan, it is strange that thought has not been given to an alternative CIL approach on these sites.

20 As a broad observation, the strategic site analysis seems to have significantly underestimated the likely "on-site" section 106 obligations that will be required in order to make the sites capable of development.

Duty to Cooperate

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

Conclusion

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