

**Infrastructure Planning
Team
London Borough of Tower
Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 1BY**

Dear Sirs

LONDON BOROUGH OF TOWER HAMLETS – COMMUNITY INFRASTRUCTURE LEVY

DRAFT CHARGING SCHEDULE: REPRESENTATIONS OF THE MAYOR OF LONDON

I am writing with the representations of the Mayor of London with regard to your Borough's Community Infrastructure Levy (CIL) draft charging schedule.

As you know, the Mayor approved his own charging schedule in March 2012 and started charging his CIL from 1 April of that year. Under regulation 14(3) of the Community Infrastructure Levy Regulations 2010 (as amended), London boroughs are required to have regard to the rates set by the Mayor. As part of this, we also take account of the Mayor's policy on the use of planning obligations to help fund Crossrail which affects that part of Tower Hamlets that falls within the Central London Contribution Area as shown in the map in Annex 1 to the Mayor's supplementary planning guidance on "Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy". (In essence that is those parts of the Central Activities Zone and of the area within a 1 kilometre radius of Liverpool Street station that fall within the Borough boundary.) The Mayor's policy also affects the entirety of the Isle of Dogs Contribution Area shown in Annex 2 of the same document.

The Mayor also considers borough CIL proposals as they might affect the economic viability of development across their area (part of the test set out in regulation 14(1)) in order to ensure that the objectives and detailed policies in the London Plan (which, of course, forms part of the development plan across Greater London) are not put at risk, in accordance with paragraphs 4, 8 and 21 of the statutory guidance on the CIL published by the Government under section 221 of the Planning Act 2008. The Mayor's role in borough CIL-setting is explained in more detail in the London Plan supplementary planning guidance on "Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy".

The Mayor has carefully considered the Borough's draft charging schedule and the CIL rates it proposes. For the reasons set out below, he considers that it is not supported by appropriate available evidence, that the rates proposed do not adequately take account of the rates set by the Mayor, and that in putting them forward the Borough has failed to apply properly the test set out in regulation 14(1). For these reasons he would urge the Borough to withdraw the draft charging schedule (DCS). If it chooses not to do so, he intends to be represented at the public examination of the draft schedule and will ask the Examiner to reject the DCS.

This letter sets out the basis for the Mayor's objection. It does so by reference to the relevant matters which will be the subject of the public examination:

- Whether the charging schedule has used appropriate available evidence
- Whether in setting its proposed CIL rates, the Borough has properly applied the "appropriate balance" test set out in regulation 14(1)
- Whether in setting its proposed rates, the Borough has properly applied the requirement in regulation 14(3) to take into account rates set by the Mayor in considering the potential effects of the imposition of the CIL on the economic viability of development.

I will deal with each of these in turn.

Appropriate available evidence

It is only possible to draw conclusions about the extent to which a borough's CIL proposals comply with the tests set out in regulation 14 if adequate information is provided. This is particularly important for the Mayor in this case. The London Plan identifies Tower Hamlets as having the largest capacity for new housing of any London borough – table 3.1 on page 83 of the Plan sets out housing provision monitoring targets for 2011-2021, and of the 322,100 homes identified Londonwide 28,850 are ascribable to Tower Hamlets (the average per borough being 9,760). Tower Hamlets also contains all or part of two strategically important opportunity areas identified in the Plan under Policy 2.13, namely:

- The City Fringe, with indicative capacity for 70,000 jobs and 7,000 new homes
- The Isle of Dogs, with indicative capacity for 110,000 jobs and 10,000 new homes.

Opportunity areas are the capital's major reservoirs of brownfield land with significant capacity to accommodate new housing, commercial and other development.

There are two items of evidence mentioned in the statutory guidance which the Borough has simply failed to produce:

- Information about the amounts raised in recent years through section 106 agreements including the extent to which affordable housing and other targets have been met (paragraph 22 of the guidance).
- Evidence showing that the rates proposed will not inhibit development of the London Plan opportunity areas, as these are strategic sites identified in the development plan. The Mayor considers that the section on Strategic Sites in the Viability Study (which considers two sites in each of the identified opportunity areas) is inadequate for these purposes, particularly given the scale of development envisaged in each. These areas could be responsible for at least 59% of the Borough's benchmark housing target, and

there should be more detailed evidence that the rates proposed will not have significant effects on economic viability there.

In addition, there are a number of inaccuracies in the Viability Study (the more important of which are touched on later in this letter). Our professional advisers have also identified significant factual and methodological flaws in the appraisals on which the Viability Study bases its conclusions. Given their technical nature, we will not detail these criticisms in this letter, but we are advised that they are serious errors which further call into question the levels of CIL which the Borough proposes. Our professional advisers would be glad to discuss these issues with those advising the Borough, and in the first instance we would suggest that this would be the most appropriate way to take the matter forward. In the absence of agreement we will refer to them at the public examination.

For these reasons, the Mayor considers that the Borough has not brought forward appropriate available evidence to support its DCS. If these issues are not resolved before the examination, the Mayor will invite the Examiner to reject the DCS on this procedural ground.

The regulation 14(1) test

The Borough has to show that it has struck an appropriate balance between on the one hand, the desirability of using CIL to fund infrastructure required to support the development of its area, and on the other the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area. Applying the principles set out in the National Planning Policy Framework, the statutory guidance makes it clear that this assessment should be carried out by reference to the likely effects on delivery of the development plan (see paragraphs 8 and 29). The Mayor considers that the Borough has failed to address this test adequately.

In particular, the Borough has failed to recognise the importance of Crossrail. The London Plan identifies this as the Mayor's "top strategic transport priority for London" (Policy 6.4), a priority confirmed in policies 6.5 and 8.2. It is worth noting that there are intended to be two Crossrail stations in Tower Hamlets (Whitechapel, which will help underpin development of the City Fringe opportunity area, and Canary Wharf which will be critical to realisation of the potential of the Isle of Dogs as without it there will be limited scope for additional commercial development) and the City Fringe part of the Borough will also benefit from the station at Liverpool Street. Crossrail is therefore not only important in its own right; it is the key to unlocking the development potential of a significantly wider area.

The Mayor has in place arrangements for the use of planning obligations to seek contributions towards the cost of Crossrail, the basis for which is set out in London Plan policies 6.5 and 8.2. This was introduced in accordance with a funding agreement between the Mayor, Transport for London and ministers, and approved by Parliament. The CIL Regulations also recognise the importance of the policy, as it is the sole exception from the provisions of regulation 123 scaling back the use of planning obligations following introduction of the CIL.

As Policy 6.5 suggests, the details of the Crossrail contributions policy are set out in supplementary guidance. Uniquely, the part of the guidance document referred to earlier dealing with planning obligations was scrutinised alongside alterations to the London Plan to introduce the policy at an examination in public in December 2009 (at which Tower Hamlets attended), and the Mayor accepted a number of suggestions for changes to the document made by the Panel. Although the guidance is not formally part of the development plan, it is soundly based on formal policy and the way it was prepared coupled with the extent of ministerial support means that it should be given particular weight. It was brought forward to give effect

to national policy, as the funding arrangements for Crossrail (including this policy) were laid before Parliament during passage of what became the Business Rates Supplements Act 2009. The Mayoral CIL (to which Tower Hamlets must have regard in setting its own CIL) was itself explicitly premised on the assumption that section 106 contributions would provide some £300 million towards the Cost of Crossrail.

In responding to the examination in public, the Mayor acknowledged that following introduction of the Community Infrastructure Levy, he would ensure that developers did not effectively make the same contribution twice under both the Mayor's CIL and s106. He has sought to do this by treating the CIL as a "credit" towards the planning obligation contribution calculated in accordance with the supplementary planning guidance (SPG) in those parts of London where the latter applied. In Tower Hamlets these are that part of the Central London contribution area shown in Annex 1 of the SPG, the Isle of Dogs contribution area shown in Annex 2 and an area within a 1 kilometre radius of Whitechapel station (see Annex 4). The practical result is that in these areas, where the Mayoral CIL payable is less than the amount payable under the planning obligation policy a "top up" will be sought representing the difference between the two amounts.

The Borough's viability consultants propose rates at the highest levels they can justify having allowed a buffer for abnormal costs etc. but only 30% of the Mayor's Crossrail S106. It follows that if the Crossrail S106 "top-up" was collected at the full rate this would require a reduction in the proposed rates if development is not to be put at risk. To avoid this, the Borough is proposing an arbitrary 70% across the board reduction in the Crossrail "top-up". This is likely to have a significant effect on the funding of Crossrail (one estimate is that it could result in the Mayor foregoing at least £40 million), which will affect the arrangements for delivery of Crossrail – in practical terms this would mean either an unfair further burden on other parts of London, or other strategic transport projects in Tower Hamlets being cancelled or delayed to help make up the gap.

The Mayor considers that in taking this approach, the Borough has incorrectly applied the test in regulation 14(1) by disregarding a policy in the development plan which has a vital bearing on the question of the potential effects (taken as a whole) of the proposed CIL rates on economic viability. It has failed to show how this approach could contribute towards the implementation of relevant development plan policies (paragraph 8 of the statutory guidance). It has brought forward rates which could only be set by compromising delivery of London Plan policies 6.5 and 8.2 in a way that recent reports by Examiners considering draft schedules put forward by Mid Devon District Council and the Greater Norwich Development Partnership have suggested does not conform with regulation 14.

The Mayor further considers that the correct approach in applying regulation 14 is to start with the policies in the development plan, including those for affordable housing and other calls on development, and assessing the effects of proposed CIL rates over and above these. This view is supported by paragraph 29 of the statutory guidance. The Borough has not done this; rather it has treated the "Crossrail top-up" as a residual, to be reduced to accommodate their CIL proposals regardless of the extent of congestion a development might cause on the London rail network (the "harm" the Mayor's planning obligations policy is intended to address, and which is a factor in making relevant development acceptable in planning terms). The Borough has therefore failed to apply the regulation 14 test properly.

It is worth noting that the 70% reduction in "Crossrail top-up" is wholly arbitrary. The Borough has brought forward no evidence to justify this figure. Although the Borough did indicate that it would be taking this approach shortly before the DCS was approved for

publication, it has not discussed either the principle or scale of such a reduction or the potential effect it might have on the Crossrail project with the Mayor or with Transport for London. This approach is contrary to the spirit encouraged by paragraph 32 of the statutory guidance.

In summary, the Mayor considers that Tower Hamlets has clearly failed to strike the balance required by regulation 14. The DCS should be either withdrawn or rejected on this ground.

Regulation 14(3)

Regulation 14(3) requires Boroughs to take account of CIL rates set by the Mayor in setting their own. The Borough has failed to do so.

It is common practice in setting CIL rates to allow a buffer between the rates proposed and the maximum that could be sought. This reduces the scope for “shocking” the development market and gives some headroom for exceptional costs in particular cases. As the Borough’s viability study points out, typically a reduction of 30%-50% is allowed.

If the effects of the CIL are to be considered in this way, it is correct in Greater London to look at the combined effect of the Borough rates and that set by the Mayor. That is supported by the wording of regulation 14(3) and paragraphs 29 and 32-3 of the statutory guidance. As is demonstrated for example by Table 1.5.1 of the Borough’s Viability Study, Tower Hamlets have failed to do this. Instead they have tested only their own rate by applying the reduction to the figure left after the Mayor’s rate is subtracted from the potential maximum. The correct approach taking proper account of the Mayor’s CIL rate - by treating it as a development cost as suggested in paragraph 6.4 of the Mayor’s SPG, for example – would result in substantially lower rates

It is worth noting in passing that in most cases even on the Borough’s method of calculation the “buffer” is significantly less than 30%, ranging from 22.2% to 32.5% although no evidence is put forward for why the kind of costs and other factors intended to be covered by the buffer should differ so markedly from one part of the Borough to another (indeed the use of percentages to cover factors probably unlikely to vary much in actual cost terms from place to place could be questioned). Oddly perhaps, the lowest buffer appears to have been allowed for in places where the viability fundamental are at their weakest.

The Mayor considers that the Borough has failed to have proper regard to the Mayoral CIL in striking the balance required by regulation 14. He also considers that the flaw identified here undermines the value of the Viability Study as appropriate available evidence.

We would be glad to discuss these issues with you further. In the meantime I would be grateful if you would note our request to be heard at the public examination and to be notified of the various steps outlined in paragraph 7.2 of your Statement of Representation Procedure.