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CIL Consultation
Infrastructure Planning Team
London Borough of Tower Hamlets
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Dear Sir / Madam

Tower Hamlets Community Infrastructure Levy Draft Charging Schedule

I am writing on behalf of London First in relation to the consultation on the London Borough of Tower Hamlets (referred to as the Charging Authority) Community Infrastructure Levy Draft Charging Schedule.

Overview

London First is a business membership organisation with the mission to make London the best city in the world in which to do business. We represent the capital's leading employers in key sectors such as financial and business services, property, transport, ICT, creative industries, hospitality and retail. Our membership also includes higher education institutions and further education colleges.

London First is concerned the London Borough of Tower Hamlets (referred to as the Charging Authority) has not complied with its legal obligation to strike an 'appropriate balance' between helping to fund necessary infrastructure provision and the potential effects of the imposition of CIL on the economic viability of development across its area (as prescribed in Regulation 14(1)).

We do not believe the Charging Authority has used the most appropriate evidence available to them when setting their CIL rates. London First believes the underlying assumptions used to ascertain land values is flawed and there is no evidence to suggest market testing has taken place, particularly on strategic locations identified in the Charging Authority's Management Development Document. The Charging Authority has not met the requirement, which is set out in statutory guidance, to undertake a comparison of historical data on s.106 receipts that have been achieved in the borough nor their affordable housing delivery in recent years and the impact this will have on the proposed levy rates. From the evidence published, the Charging Authority has assumed a broad brush low level residual s106 rate without any justification whatsoever. It also only assumes a residual rate for residential use and nothing for non-residential use which we believe is not reflective of the market. We therefore question how the Charging Authority can assume a flat rate s.106 charge in addition to the proposed rates across the Borough. The Charging Authority should take a cautious approach to the level of scaling back of s106 for strategic developments.

In our view, the Charging Authority has not taken account of the Mayoral CIL rate (as prescribed in Regulation 14(3) and (4)) when proposing their own levy rates. The proposed levy rates pose a significant risk to development being viable across the charging authority, especially in relation to strategic sites.

The Charging Authority has not complied with the requirements set out in paragraph 9 of the DCLG's Community Infrastructure Levy Guidance issued in April 2013.

London First recommends the Charging Authority halts progressing with its Draft Charging Schedule and restarts the process; starting with developing a more robust evidence base in line with Regulation 14(1).

London First has been informed by its members that the Charging Authority has not undertaken meaningful engagement with the development industry. This is particularly the case when the evidence has been prepared for appraisals for strategic sites. London First is very concerned that its members' views have not been adequately taken in to consideration following representations made to the Preliminary Draft Charging Schedule. The statutory guidance on CIL requires all charging authorities to undertake proper proactive engagement. It is vital the Charging Authority engages with the development industry, particularly if it aspires to achieve its planning policy objectives including the delivery of affordable housing.

London First wishes to reserve its right to be heard at the Examination in Public.

Detailed comments

Economic viability

The Government has made it clear in the National Planning Policy Framework (NPPF) that charging authorities should develop and test their levy rates alongside their Local Plan. Paragraph 173 & 175 of the NPPF explicitly states that CIL should support and incentivise new development. It also requires local planning policy to pay careful attention to viability and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. Given the clear policy steer to ensure development is viable, London First is concerned that the draft charging schedule has not adequately addressed the NPPF policies as the levy rates proposed by the Charging Authority place a significant additional cost burden on development and in our view discourages development from coming forward. We are unclear how the Development Plan (including the London Plan) has been considered by the Charging Authority in preparing the Draft Charging Schedule. This is particularly important to consider given London Borough of Tower Hamlets has the highest housing targets and job economic forecasts out of all London Boroughs.

The evidence base does not comply with the DCLG Community Infrastructure Levy guidance nor has it followed guidance set out in either the Local Housing Delivery Group (LHDG) Advice of July 2012 or the Royal Institution of Chartered Surveyors Guidance Note of August 2012. London First therefore considers the evidence base is fundamentally flawed.

It is important the Charging Authority can clearly demonstrate that any proposed levy rates are based on clear evidence which reflect the current market conditions. This will necessitate the Charging Authority to undertake market testing of the proposed rates with a clear understanding of how developers and landowners bring forward development. Otherwise, it is clear that the right conclusions cannot be arrived at in setting rates. While there are different approaches used in the industry to assess development viability, the main issue is to comprehend the extent to which market value of land is taken into account. The market value of the land is the major determinant for developers to assess whether a scheme is viable to proceed or not to release land for development. When proposing levy rates, we believe all charging authorities must take in to account the effect it will have on market values on land and ensure this will not impede the ability for the policy objectives to be achieved which are set out in the Development Plan.

We do not believe the Charging Authority has sufficiently tested the proposed levy rates in current market conditions. As stated above, the viability study does not adhere to guidance and is inconsistent in its approach of what the price it assumes developers and landowners will release and buy land at, taking into account policy and appropriate CIL rates in the future. The assumptions made in the viability study is that existing use value plus a premium (EUV+) is a sufficient basis to determine the land value as a singular approach with no evidence to support the conclusions arrived at. No attempt has been made to market sense test the premium adopted and the overall level of land value applied in the viability study. The singularity of approach in the absence of evidence simply does not reflect the market going forward. Furthermore, the charging authority has not undertaken any market or sensitivity testing between the values that have been assumed through EUV+ and the land values that are realistically achievable in the market today. The Charging Authority has not engaged in any market testing with the developers involved with the strategic and allocated sites identified in the Development Plan that has led to a set of proposed levy rates in the Draft Charging Schedule, which we believe are unviable.

London First does not believe the number of generic development appraisals relied upon is in any way sufficient in order to adequately test development schemes that would be coming forward in the Borough. Whilst they may reflect different types of development in various geographical areas, the very limited number of generic development appraisals is wholly inadequate when testing viability in order to set CIL rates in a complex urban area. The evidence, as a result, does not provide a suitable basis for testing marginal sites or the implications on more strategic sites. This is in clear contradiction and does not comply with DCLG and other guidance.

The introduction of CIL has direct implications for the use of S106 planning obligations. The CIL is intended to be used for infrastructure contributions that are identified in the Regulation 123 list. S.106 obligations are primarily for site-specific mitigation and affordable housing. It is not permitted for a charging authority to use s.106 contributions towards infrastructure provision identified on the Regulation 123 list to avoid double charging. Given the strict remit for the use of s.106 contributions, we are concerned how the Charging Authority has set a standard rate for s.106 contributions across the charging area without any clear justification or evidence. Setting a standard s.106 rate is akin to setting a supplementary levy rate which is expressly not the intention of how s.106 contributions should operate under CIL. The Charging Authority needs to justify why a Borough wide s.106 planning obligation has been applied instead of differential rates based on site-specific mitigation, especially in relation to the strategic sites, and affordable housing requirements.

The statutory guidance (paragraph 22) makes it clear that as background evidence, the charging authority should provide information about the level of s.106 planning obligations and affordable housing they have raised in recent years. This information should include the extent to which affordable housing and other targets have been met. The Charging Authority has not undertaken a comparison of historical s.106 receipts they have achieved over recent years (and the extent to which affordable housing policy targets have been met) and how this matches with the proposed levy rates. We suggest the Charging Authority revisits the viability appraisal by reviewing the levels of s.106 contributions and affordable housing that has been historically achieved and clarify why any differences in cumulative planning obligations differ from the proposed levy rates. If the evidence shows an increase in cumulative costs to development (taking account of the proposed levy rates and scaled back planning obligations), the Charging Authority should justify how this is economically viable and sustainable (in line with national planning policy) given the current economic climate where land values are unlikely to change in the short to medium term.

Appropriate balance test

London First's primary concern over the draft charging schedule is the Charging Authority's failure to apply the appropriate balance between the need to set the levy at rate(s) which promotes additional investment for infrastructure to support development and the potential economic effect of imposing the levy upon development across their area (as prescribed in paragraph 8 of the CIL Statutory Guidance paper, April 2013).

The Community Infrastructure Levy regulations (Regulation 14(1)) place the balance of these considerations at the centre of the charge-setting process. In our view the Charging Authority has not adequately demonstrated how their proposed levy rate(s) would contribute towards the implementation of their relevant Plan and support the development of their area. Our concern stems from the fact that we believe the Charging Authority has not addressed the requirement to provide a robust evidence base on economic viability and infrastructure planning as prescribed in the April 2013 and December 2012 statutory guidance on CIL. Regulation 14 requires the balance to be drawn between the desirability of securing funding for infrastructure and the effect the levy will have on the viability of development as a whole.

In our view the viability study does not provide any analysis of how the different levy rates will impact on the delivery of different land uses. Also, the viability study does not indicate what the spatial planning consequences will be as a result of the proposed levy rates. Without a detailed assessment of the impacts on land uses and their spatial consequences, we seriously question whether the viability analysis has provided sufficient detail in meeting the requirement set out in Regulation 14.

As part of the test in reaching an appropriate balance, an understanding of the cost of the infrastructure that is required to support development is necessary. However, the infrastructure analysis provided does not separate out the 'required' infrastructure from the more broader infrastructure provisions the Charging Authority would like to see come forward.

The Charging Authority must be able to demonstrate from their evidence base that the proposed levy rates will be viable for the sufficient number and type of developments the Development Plan relies on over the duration of the Plan period. It is unclear how the Charging Authority has developed its proposed rates taking into account the London Plan 2011, Tower Hamlets Core Strategy 2010 and Tower Hamlets Managing Development DPD. Whilst the viability study makes a brief reference to the local policy context in relation to CIL, there is no detailed information on how the proposed rates will impact on the deliverability of the Development Plan particularly in relation to meeting the housing pipeline and borough wide/ area specific policy targets. It is vital the Charging Authority underpins their proposed rates with a clear understanding of the impact it will make to the Development Plan and the cumulative burdens it will consequently have on development.

Given the importance of Crossrail as the "top strategic transport priority" as stated in policies 6.5 and 8.2 of the London Plan 2011, London First believes the Charging Authority has not complied with its requirement set out in Regulation 14(1). There are three designated areas in Tower Hamlets that are identified where the Mayor may seek to negotiate a top up on Mayoral CIL towards Crossrail s.106. The Charging Authority proposes where Crossrail s.106 contributions are applicable, that these rates will be subject to a 70% reduction in the top-up payable. It is unclear from the viability study how the Charging Authority has arrived at the 70% reduction. We can only assume the Charging Authority is seeking to apply this reduction in a bid to ensure their own proposed levy rates do not put development at risk. This is another example where we believe the Charging Authority has not applied Regulation 14(1) correctly in setting their proposed levy rates. This raises serious concerns over the validity of the Draft Charging Schedule in its current format.

Strategic sites

A sample of eight strategic sites, taken from the Managing Development DPD, has been analysed in the viability study. We are not clear from the viability study how these eight sites have been selected and would welcome clarification on why these have been chosen. The analysis undertaken fails to cross reference the Charging Authority's Development Plan targets and policy objectives. It is vital this cross referencing is undertaken if we are to ascertain the cumulative burden of policies on the economic viability of each site, which is a requirement under national planning policy.

As stated above, the limited generic development appraisals do not sufficiently address strategic sites contained in the viability study. They are at a very high level and use inputs and assumptions that are not capable of sufficient testing to be in accordance and comply with DCLG Guidance. We strongly urge the Charging Authority to work closely with those developers and landowners responsible for the strategic sites as well as those who have sites on the margins of viability.

Appropriate evidence

The legislation (section 211 (7A)) requires a charging authority to use 'appropriate available evidence' to inform their draft charging schedule and that charging authorities need to demonstrate that their proposed levy rates are informed by 'appropriate available' evidence and consistent with that evidence across their area as a whole.

The legislation also requires a charging authority to use appropriate available evidence to 'inform the draft charging schedule'. A charging authority's proposed levy should be reasonable given the available evidence.

Given this legal requirement upon the Charging Authority, we wish to re-emphasise the point that no information has been made available on the amount of s.106 receipts it has received over recent years and how this contributed to the delivery of affordable housing and other targets. Also, we do not think the Charging Authority has collated an appropriate level of detailed evidence to underpin their proposed levy rates. For example, a limited analysis has been undertaken in the viability study on Strategic Sites. We also question the underlying assumptions used to calculate land value and there is no evidence that the Charging Authority has undertaken a robust level of market/ sensitivity testing.

London First believes the Draft Charging Schedule is not underpinned by an appropriate available evidence base and poses a real threat to incentivising new development coming forward under the proposed levy rates. In our view, the Charging Authority must start afresh with their evidence base and recalibrate the proposed levies accordingly. If this is not done, we believe there is a strong case to contest the Draft Charging Schedule at examination on procedural grounds.

Mayoral CIL

In our view, the Charging Authority has failed to take in to account the Mayoral CIL rates when setting their own levy rates. Regulation 14(3) and (4) requires all charging authorities in London to take account of the Mayor's CIL rates when proposing their own levy rates.

Statutory guidance requires that charging authorities to not set their CIL at the margins of viability. In response to this, some charging authorities have set their rates at a discount (buffer) to the maximum rate which have ranged between 30% to 50%. The viability study suggests a buffer of circa 30% for Tower Hamlets.

In order to comply with Regulation 14(3) and meet the requirements set out in statutory guidance, it is necessary for the cumulative costs of the Mayoral CIL and the proposed levy rates (set by the charging authority) is fully reflected when calculating the discount rate. Table 1.5.1 clearly shows only include the Borough levy rate has been used to assess the maximum CIL achievable and the suggested CIL rate after the buffer has been applied. It does not take account of the Mayoral CIL rate which in our view is flawed.

If you have any queries regarding our response please contact me using the contact details below.