

CEMc/HF/DP2874

5th June 2013

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Dear Sirs,

DRAFT CIL CHARGING SCHEDULE – MARCH 2013
REVISED PLANNING OBLIGATIONS SPD – MARCH 2013
SUBMISSION OF REPRESENTATIONS BY MPG ST KATHARINE LP

On behalf of MPG St Katharine LP, we write to submit representations to the above documents.

MPG St Katharine are the owners of St Katharine Docks.

Following a review of the Draft CIL Charging Schedule (DCS) and the supporting documentation, MPG St Katharine are concerned that an appropriate balance has not been struck between the need to fund necessary infrastructure and the potential economic viability of development across the borough; and that the Charging Authority has also not complied with the requirements set out at paragraph 9 of CLG's 'Community Infrastructure Levy: Guidance' (April 2013).

National Planning Policy Framework

“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites 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. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.” (para 173)

“Where practical, Community Infrastructure Levy charges should be worked up and tested alongside the Local Plan. The Community Infrastructure Levy should support and incentivise new development, particularly by placing control over a meaningful proportion of the funds raised with the neighbourhoods where development takes place.” (para 175)



The above extracts from the National Planning Policy Framework ('NPPF') provide a number of important policy steers in the formulation of CIL Charging Schedules. Of particular note:

- Planning policy should be deliverable.
- CIL charges, where practical, should be prepared and tested alongside the Development Plan.
- CIL should support and incentivise development.

The NPPF is therefore clear in that it requires local planning authorities to pay due regard to the implications of any obligations on development. For the majority of sites, particularly those of a strategic nature, CIL is one of the main financial obligations which could impact on viability, affecting the ability of development to come forward and ultimately the delivery of the Development Plan objectives.

Statutory Guidance

Charging Authorities are legally required to have regard to the CLG statutory guidance document – 'Community Infrastructure Levy Guidance (April 2013)' – when setting their proposed CIL levels.

The statutory guidance provides important detail guiding how Charging Authorities should go about preparing Charging Schedules and the nature of supporting evidence base material that is necessary. The statutory guidance is consistent with the central theme of the NPPF: planning policy should be deliverable and the viability of Development Plan sites should not be put at risk.

Fundamentally, the statutory guidance supports the representations set out below. The following extracts are of particular significance:

"Charging schedules should be consistent with and support implementation of up-to-date Local Plans" (para 4)

"...charging authorities should show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant Plan and support the development of their area. As set out in the National Planning Policy Framework in England, the ability to develop viably the sites and the scale of development identified in the Local Plan should not be threatened." (para 8)

"The independent examiner should establish that:

- *the charging authority has complied with the requirements set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations*
- *the charging authority's draft charging schedule is supported by background documents containing appropriate available evidence*
- *the proposed rate or rates are informed by and consistent with, the evidence on economic viability across the charging authority's area; and*

- *evidence has been provided that shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole.” (para 9)*

“In addition, a charging authority should sample directly an appropriate range of types of sites across its area in order to supplement existing data, subject to receiving the necessary support from local developers. The focus should be in particular on strategic sites on which the relevant Plan relies and those sites (such as brownfield sites) where the impact of the levy on economic viability is likely to be most significant.” (para 27)

“Charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area. Charging authorities should show, using appropriate available evidence, including existing published data, that their proposed charging rates will contribute positively towards and not threaten delivery of the relevant Plan as a whole at the time of charge setting and throughout the economic cycle.” (para 30)

“The Government expects charging authorities will work proactively with developers to ensure they are clear about charging authorities’ infrastructure needs and what developers will be expected to pay for through which route. This is so that there is no actual or perceived ‘double dipping’, with developers paying twice for the same item of infrastructure.” (para 85)

“The charging authority’s proposed approach to the future use of any pooled section 106 contributions should be set out at examination and should be based on evidence.” (para 89)

Representations to LBTH CIL Draft Charging Schedule

The Council’s Viability Study underpinning the CIL rates demonstrates an inconsistent and unjustified approach in terms of what price it assumes land-owners will bring land forward at. The Study mainly assumes that this will be at the equivalent of Current Use Value plus a percentage premium, but there is no justification for the percentages assumed and very little justification for the adopted current use values. This is not to say that the Current Use Value and Market Value approaches are mutually exclusive, but that in urban locations such as Tower Hamlets, often the two are not aligned and the Current Use Value ‘plus’ approach is too arbitrary particularly with reference to strategic sites where the Current Use Values are often negligible. Furthermore, there is no market testing or ‘sense checking’ between the values that have been assumed and land values evident from the market (which could be, and should have been, sourced from land agents and other data sources).

MPG St Katharine LP is concerned that the Council cannot know what relative effect their CIL rates will or might have in the absence of market testing.

Paragraph 34 of CLG’s statutory guidance document explains that Charging Authorities can set differential levy rates for different geographical zones provided that those zones are defined by reference to the economic viability of development within them. The BNPP Viability Study does not adequately explain or justify the link between development viability and different



geographical charging zones. MPG St Katharine considers that the defined zones do not reflect the wide variation in values for development across the Borough.

Residual S106 costs and Section 278 Assumptions

The BNPP Viability Study, which underpins the Council's Draft Charging Schedule, includes a number of standard assumptions in relation to development costs. A central tenet of Government's introduction of CIL is that, to a large extent, it will result in a reduction of Section 106 costs. Whether this is true is very much dependent on the circumstances on a site by site basis. However, clearly if a Charging Authority assumes a standard rate across its area then this should be approached with caution and needs to be justified – particularly if it is doing so for the strategic site allocations that underpin the Development Plan.

Further justification should be provided for assuming a Borough-wide standard rate, as oppose to a differential rate according to location, for the level of assumed 'scaling-back' of Section 106 rates (pre- and post-Borough CIL taking effect); for the relationship between the standard rate and the infrastructure items the Council expects (derived from its Infrastructure Plan and other evidence e.g. recent example Section 106 Agreements) to be covered by Section 106 in the future versus CIL.

Regulation 123 List

The Draft List serves to highlight the inappropriateness of using a broad-brush assumed rate for residual Section 106 and Section 278.

We would make the comment that this is a very generic list and does not provide any clarity on what infrastructure will be provided as part of CIL. It is important that the Regulation 123 list is transparent.

Representations to LBTH Revised Planning Obligations SPD

In relation to the requirements for energy contributions, our client objects to the requirement that developments not meeting the carbon reduction targets should pay a contribution. There are sites that, due to their physical constraints, will not be able to meet the carbon reduction targets and in these circumstances it is unreasonable to request a 'top-up payment'.

Our client has a similar comment in relation to the proposed obligations for biodiversity. There is no clarity on what threshold levels need to be met before a payment is triggered. Furthermore, the obligations would seem to penalise those sites that, for physical reasons, are not capable of contributing to biodiversity.

The significant missing element of the SPD relates to the actual level of contributions which are being sought. Without these, it is difficult to understand the impact of the obligations on the viability of development and how these relate to CIL. This also relates back to the point made earlier that the £1,220 S106 cost factored into the appraisals is not robust.

Conclusion

Overall, MPG St Katharine LP are concerned that the evidence base presented to underpin the Draft CIL Charging Schedule is not robust and the consequences of adopting the Charging Rates

set out within it have not been properly considered. There are two fundamental areas of concern. The first relates to the lack of evidence supporting the CIL rates proposed by the Charging Authority; and the second relates to insufficient weight being given to the implications CIL will have on the viability of development.

In relation to the Revised Planning Obligations SPD, it is considered that greater clarity is required on when the obligations apply. Fundamentally, the costs of the obligations need to be made clear to understand the impact on viability and to be able to comment in detail.

We look forward to receiving confirmation of receipt of our comments and would ask that we be kept updated of any future changes to either of the documents, and any additional opportunities for further consultation.

Should you wish to discuss any of our comments, please contact Caroline McIntyre or Holly Farrow of this office.

Yours faithfully,



DP9