

PD/P4638
05 June 2012

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

Tower Hamlets Community Infrastructure Levy (CIL) Draft Charging Schedule – March 2013

We write on behalf of our client, Downing, to make a representation to LB Tower Hamlet's Community Infrastructure Levy (CIL) Draft Charging Schedule.

Background

Downing are a very experienced provider of student accommodation and have built and managed over 5,000 student bedrooms in UK cities, including London, Manchester and Newcastle over the last 15 years. They have earned many awards for the architectural quality of their schemes, the standard of accommodation they deliver for their students and their ability to deliver schemes that integrate well with the existing communities, often improving and creating further investment in the areas they have developed in.

Due to the favourable location of the Borough in terms of proximity and accessibility to many of London's educational institutions and its currently deficient provision of student accommodation, Downing are currently investigating the potential for student developments in this area.

Proposed CIL Rate for Student Accommodation

It is proposed in LB Tower Hamlet's draft charging schedule to set a Borough-wide rate of £425 per square metre for student accommodation. Our client has significant concerns over the level of this proposed charge and the apparent lack of flexibility in its application. It is our client's view that once in place this proposed CIL levy rate will serve as a significant impediment to the delivery of new student accommodation, and particularly high quality new student accommodation, in this Borough.

We note that BNP Paribas (BNPP) undertook an assessment of the economic viability of proposed CIL rates in Tower Hamlets on behalf of the Council (most recently in March 2013). In this assessment they have undertaken commercial appraisals for each use. For student accommodation they identify that student housing in the Borough generates sufficient surplus residual values to absorb a CIL of up to £692 per square metre and that after allowing for a buffer for site-specific factors a rate of £425 per square metre (exclusive of Mayoral CIL) is considered appropriate.

Architecture Planning Interiors

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As a company highly experienced in the development and management of student accommodation throughout the country our client has reviewed the commercial appraisals for student housing set out in Appendix 4 of the Viability Report prepared by BNPP. This has led to the following observations:

- BNP Paribas have used a major student development of 500 units for their appraisal. This would be very much at the upper end of the scale of student developments and would therefore not accurately reflect the existing use values and build costs associated with smaller and medium sized student proposals. Given that the Council are proposing to apply the same CIL levy for student accommodation across the Borough it is considered appropriate that a more medium-scaled student development should be used as a case study to establish the appropriate CIL rate;
- The assumption of 20% over the existing use value for the landowner premium appears very low and would not reflect the likely land costs for a large development site in some of the Borough's more attractive locations. Given the ability of the site to accommodate up to 500 student units, landowners would undoubtedly have a much larger valuation for their landholding;
- Table 4.48.1 (Commercial appraisal assumptions for each use) states that a total floor area of 30,000 sq. ft will be used for the appraisal of student housing. However, this is not consistent with the Development Appraisal in Appendix 4 which relates to a development of 500 student units. Using the existing floorspace of 49,875 sq. ft, which is stated as 35% of the new floorspace, it is assumed that BNPP have used a total new floor area of 142,500 sq. ft for the 500 units. This needs to be clarified;
- On the basis of the above BNPP have allowed for 285 sq. ft for each student unit within the scheme, which it is assumed also includes all ancillary areas to facilitate the development. As a provider of high quality and spacious living accommodation for students, Downing believes that the appraisals should allow for a minimum of 30 square metres per student unit within a development (322 sq ft). Applying the construction costs used by BNPP in the appraisal this would lead to an additional build cost of £3.3m, thereby reducing the Residual Land Value;
- Table 4.48.1 (Commercial appraisal assumptions for each use) states that the existing floorspace for the Development Appraisal will be taken as 30% of the proposed new floorspace. However, this is inconsistent with the Development Appraisal which uses 35% and should be consistent;
- A term-time occupancy rate of 98% has been used for the appraisal although it is also stated in brackets in the same assessment sheet in Appendix 4 that a 95% occupancy rate is used. As 95% is the more generally accepted industry standard rate it is requested that this is applied to the appraisal which will have a consequent impact on the Gross Development Value;
- A 52 week academic year (42 week term-time and 10 week summer time) has been used when it is common practice to use a 51 week period with a 9 week summer period;
- Whilst the term-time rent of £200 per week for student units is largely reflective of the schemes that have been developed in the borough to-date there is a drive by local authorities and student developers to provide 'more affordable' student accommodation to meet the demand from UK/EU based students. This would therefore support a reduction in the term-time rent

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from £200 to £190 that would have a consequent impact on the Gross Development Value for the proposed scheme;

- An operating cost of £2,100 per unit is applied which is more reflective of a high density and high value student accommodation scheme and is not indicative of the higher operating costs associated with smaller student accommodation schemes;
- No allowance has been made for third party costs which are particularly prevalent in London e.g. Rights of Light/Section 106 Agreement/Party Wall Costs. These would not be covered within the Professional Fees;
- The assumptions state a contingency of 5%, but I cannot see where this has been allowed for within the appraisal;
- BNPP has assumed a developer profit rate of 20% in their calculation of development costs. It is acknowledged that this is an industry standard when completing viability toolkit assessments. However, we would point out to the Council that in the current economic climate, banks (and other lenders/funders) are highly unlikely to fund new development unless a minimum 25% developer profit can be guaranteed, thereby further limiting the Residual Land Value;
- The net additional floorspace figure of 92,625 sq. ft (8,600 sq. m) assumes that the existing floorspace can be discounted on the basis that it has been occupied for 6 of the last 12 months prior to the scheme being approved. This is not always the case which will have a significant impact on the affordable CIL levy rate per square metre

The Development Appraisal for student housing undertaken by BNPP in Appendix 4 of their assessment has enabled the Council to establish that the developers of student accommodation can viably pay a CIL levy up to £692 per sq. metres or £425 when a buffer of site-specific factors has been taken into account. However, in addition to the technical observations from Downing set out above, there are considered to be a number of reasons why this artificially inflated levy is not appropriate and would create a financial imposition on new student housing that would be detrimental to the viability of such schemes.

Lack of Adequate Evidence Base to Support CIL Rate

Whilst BNP Paribas have extensively applied sensitivity testing to the calculation of an appropriate CIL levy for residential development, it is considered that a deficient level of analysis exists in relation to the calculation of an appropriate levy for student developments.

Regulation 14 of the current CIL Regulations states the charging authority “*must aim to strike what appears to the charging authority to be an appropriate balance*” between the desirability of funding infrastructure from the levy and the potential effects of the levy rates on the economic viability of development across its area. However, the latest reforms to the CIL Regulations seek to take this a step further by stating “*to assist the examiner in reaching a view as to whether the correct balance has been reached*” it is proposed that charging authorities should be required to carry out an evidence-based test “*to strike an appropriate balance that they will need to justify through evidence at the examination*”.

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Paragraph 22 of the updated Statutory Guidance (SG) regarding the Community Infrastructure Levy (CIL) in April 2013 notes that such background viability evidence should include providing information regarding the level of development contributions previously raised through comparable S106 agreements. Paragraph 21 of the SG also requires the charging authority to demonstrate how the proposed CIL rates will contribute towards the implementation of the development plan and support development across their area.

Paragraph 8 of the updated SG confirms a balanced judgement between the introduction of CIL and its impact upon development is required and that, in meeting this test, local authorities must have regard to the NPPF. Paragraph 173 of the NPPF states:

“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.”

It is our view that the calculation of the student CIL rate by BNPP is based extensively on misguided commercial assumptions with a distinct lack of any detailed evidence base such as an analysis of previous financial contributions raised through section 106 contributions. This thereby results in a levy rate for student accommodation which is grossly inconsistent with historical financial contributions for such uses in the Borough and will impact significantly on the economic viability of student developments, which is contrary to the objectives of the CIL Regulations and the NPPF.

Further to this, in line with paragraph 175 of the NPPF which requires the local authorities to ensure CIL should “*support and incentivise new development*”, it is important for local authorities to demonstrate how the rates contribute towards implementation of the relevant plan to ensure that a more positive approach is adopted, particularly regarding housing supply (including student accommodation).

The currently proposed CIL rate will ensure that student accommodation schemes will be stifled within the Borough as student developers will be unable to compete with purchase offers from office or residential developers who do not have to accommodate such a high CIL rate in their Residual Land Value. Alternatively if no other offers are made to the landowners they will be encouraged to land-bank until a more favourable offer is made, as the student developer will be unlikely to meet their valuation.

The Tower Hamlets CIL should not be used as a means of deterring certain forms of development in the Borough which the excessively high levy for student accommodation appears to suggest. The opportunity exists through planning policy to restrict student uses in certain locations throughout the Borough should the Council deem it appropriate. It will also be necessary to demonstrate that proposals for student accommodation are meeting a demonstrated need in the Borough.

It is our client’s view that the Council has underestimated the impact of CIL upon the viability / deliverability of new development within Tower Hamlets and will therefore hinder rather than promote the development of student accommodation in the Borough. On this basis we would therefore request that the local authority further assesses the method through which the proposed student CIL rate has been devised to ensure that an appropriate detailed evidence base is presented at examination to justify the charge.

Affordable Housing

Policy DM6 of the recently adopted LBTH Managing Development DPD states that if a student proposal is not tied to a specific third level institution then it will be subject to affordable housing policies. The Development Appraisals carried out by BNP Paribas identified that when affordable housing requirements are incorporated into the Residential Land Value the sample student development of 500 units would only be able to accommodate a CIL of £250 per square metres (£187 with a 25% buffer excluding the Mayoral CIL).

Given our client's experience of high uncertainty on the part of third level institutions in committing to a specific student development at the planning application stage, it is quite likely that the developer will be required to demonstrate compliance with the affordable housing requirement for most emerging student schemes in the Borough. This means that developers will be required to meet the £425 per square metre CIL rate and affordable housing requirements. This will create the undesirable requirement to agree a significantly reduced or non-existent affordable housing provision/contribution with the Council to be able to afford the CIL levy.

As an alternative, should the Council consider the £425 per sq. m levy to be appropriate, differential rates could be applied whereby the currently proposed CIL rate would apply to student developments that have been successfully able to link with third level institutions and a lower rate would apply to those which are not able to demonstrate such a link at pre-planning stage.

Potential for differential rates for student CIL levy

Our clients understand and complement the Council's intended approach to introduce different CIL rates for residential development within certain locations within Tower Hamlets. However, it is not clear why a similar approach does not appear to have been considered with regard to student development given that such forms of accommodation will also be influenced by similar market forces such as land values and accessibility to services.

It is stated in the March 2013 viability appraisal by BNPP that *"the ability of residential schemes to make CIL contributions varies depending on area and the current use of the site."* It is submitted that the same applies with regard to student accommodation. There are significant variations in existing land use values between different parts of the Borough, with values in Canary Wharf and City Fringe with the highest values and the areas to the east achieving lower values.

Notwithstanding our client's view that the student levy is currently significantly inflated and unrealistic we would contend that the wholesale application of the levy across the entire Borough will completely inhibit the potential for smaller scale student proposals on sites outside of the main regeneration areas as well as the potential for student accommodation to be considered as a complementary element of a larger mixed use proposal. A greater flexibility in the use of the Tower Hamlets CIL charge is therefore required in our view.

Impact on Infrastructure

Another consideration relevant in the assessment of an appropriate rate for the student accommodation levy is its relationship to the delivery of infrastructure in the Borough. The proposed reforms to the CIL regulations require charging authorities to provide a list of new or improved infrastructure needed to mitigate the impact of development. We would contend that student

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accommodation, unlike other uses such as residential, generates very little pressure on existing facilities such as education or health and it could therefore be argued that a substantial percentage of the costs to be accumulated through the application of the CIL charge would not directly benefit or mitigate the impact of student development. There is therefore strong justification for a reduction in the levy rate on this basis.

Options Available to the Council regarding CIL Rate for Student Accommodation

Based on the above, we believe that further work is required to be undertaken by the Council before an appropriate student CIL rate can be devised as follows:

- Re-examine the methodology for calculating the student CIL rate so that it includes a more detailed evidence base to support the proposed levy. This should include financial contributions agreed through section 106 agreements and an examination of the CIL rate against state policies and objectives within the development plan so that an appropriate level of liability can be applied that still enables high quality student schemes to come forward;
- Further assess the implications of student developments meeting affordable housing requirements by potentially applying differential rates to student developments that are specifically linked to third level institutions and those that are not in a position to confirm such a link at pre-planning stage;
- Introduce different Levy Charge Zones for student accommodation with a higher rate for sites within the Borough's main growth centres (particularly City Fringe which is the focus for regeneration and growth)

We would urge the Council to consider the above representation to ensure that the introduction of CIL does not critically impact upon the delivery of new student accommodation within the Borough. We would be grateful if you could keep us informed of any further developments or consultations in relation to the draft CIL Charging Schedule and the Council's Local Development Framework.

I trust that the above is of assistance and we look forward to receiving your response to our comments above in due course. In the meantime, please do not hesitate to contact me should you wish to discuss our representation.