

PD/P4658  
12 August 2013

CIL Consultation July/Aug 2013  
Planning Regeneration and Enterprise  
Lambeth Council  
1<sup>st</sup> Floor Phoenix House  
10 Wandsworth Road  
London SW8 2LL

Dear Sir or Madam

**Lambeth Community Infrastructure Levy (CIL) Charging Schedule (Draft) – June 2013**

We write on behalf of our client, Downing, to make a representation to LB Lambeth'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. This is soon to be complemented by over 650 additional student bed spaces in Lambeth where Downing have secured planning permission for student developments at 30-60 South Lambeth Road in Vauxhall and land adjacent to 202 Lambeth Road in Waterloo.

Downing 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 further student developments in the Borough. This is consistent with the target for non-self contained accommodation in Lambeth set out within the London Plan (the second highest in London).

***Proposed CIL Rate for Student Accommodation***

The Lambeth draft CIL charging schedule continues to propose a Borough-wide rate of £360 per square metre for student accommodation despite a number of student providers expressing significant concern in representations on the preliminary draft charging schedule about the impact of this levy on the viability of future student developments. It continues to be our client's view that the proposed CIL charge for student accommodation, and the general lack of flexibility in its application, will place a significant burden upon new student schemes within the Borough and will most likely

**Architecture Planning Interiors**

Old Church Court, Claylands Road, The Oval, London SW8 1NZ

T 020 7556 1500

[www.rolfe-judd.co.uk](http://www.rolfe-judd.co.uk)

DD [REDACTED]  
E [REDACTED]

Lambeth – CIL Draft Charging Schedule  
12 August 2013

represent a complete impediment to the delivery of new student accommodation, and particularly more affordable forms of student accommodation, whilst the levy is in place. The basis for this assertion is set out below.

#### Use of EUV + Premium in Viability Appraisal

In the response to the previous representation on the preliminary draft charging schedule the Council note that the borough wide rate for student accommodation is supported by viability information, aimed at ensuring that student accommodation can still be delivered. The Council state that their technical advisors have modelled the CIL student accommodation, on typical development coming forward in Lambeth, and adjoining inner London Boroughs. However, as acknowledged in the response to the previous representation, the existing use value is based on a typical Vauxhall scenario of low value secondary office space or other similar building. A premium of 20% has then been added to establish a likely purchase price for the property.

The viability appraisal shows that the sample test site within Vauxhall has the ability to accommodate up to 500 student units. It is on this basis that we consider the assumptions regarding existing use value plus premium to be significantly underestimated. Our client's experience of negotiating land sales in regeneration areas such as Vauxhall and Waterloo indicates that land owners are much more aware of the value of their sites, often carrying out detailed financial appraisals for particularly uses, and have a much higher expectation of land value. In a situation where an existing redundant office site has the potential to accommodate up to 500 units it would be extremely rare that you would be in a position to purchase a site based on EUV or indeed EUV + 20% premium as land owners will be seeking to sell their property based on a much higher alternative land use value.

Devising a scenario that generates such a low existing use value contributes to an artificially inflated Residual Land Value. Our client believes that this has contributed to an unrealistically high proposed CIL charge for student accommodation in Lambeth which would be detrimental to the viability of such schemes. It is therefore considered appropriate that a higher premium of 50% should be added to the Existing Use Value to act as a more accurate representation of land value to ensure that student providers remain competitive with developers of other land uses.

#### Setting appropriate rent levels for viability appraisal

The viability appraisal of student accommodation carried out by BNP Paribas has inputted a weekly student rent during the academic year of £200. The Council have stated in their response to representations on the preliminary draft charging schedule that there is considerable evidence from other central London boroughs that student rents of £200 per week are readily achievable. Whilst this may be the case it is requested that a number of examples should be provided by the Council to support this view so that an appropriate comparison can be made in respect of land value and construction cost.

Notwithstanding this, the viability appraisal should be based on what is likely to be an affordable rent in future student developments due to changing market conditions and not what rental levels have been achieved during an unprecedented period of growth in the student accommodation sector. The outlook of the property market remains uncertain and the strong rental performance in the student accommodation sector over the last decade has been due to limited supply and rising interest from overseas students.

Lambeth – CIL Draft Charging Schedule  
12 August 2013

As noted by the Council in their response to our previous representation, even during the depths of the housing market recession, banks were happily funding student housing schemes due to the lack of sales risk. However, this lending environment is now changing. Banks are now more cautious in lending to student developers which is due in part to increased sales risk for developers as part of the large requirement throughout London for student housing has been filled by developments completed over the last few years.

The market for student accommodation for overseas students is generally built in locations which achieve the highest rental values. This is now felt to have been predominantly catered for in Lambeth by constructed or pipeline student schemes in the highly accessible regeneration areas of Vauxhall and Waterloo. There is therefore currently a drive by many student providers, including Downing, to provide more affordable accommodation for students in the market to meet the demand from UK/EU students. This need is compounded by the anticipated impact of higher tuition fees on affordability.

On this basis, the average rent for student accommodation has the potential to drop significantly as the drive to provide cheaper/more affordable accommodation grows. The implementation of a CIL levy of £360 per sq. m for student accommodation would mean that more affordable student developments would be restricted from coming forward as rents would be required to continue to be artificially inflated to make the scheme viable. This is directly contrary to the objectives of the CIL Regulations which sets out that charging authorities are required to strike a balance between the desirability of meeting infrastructure costs from development and the effects of the levy upon economic viability of development across their area.

A further consideration with regard to future rental levels in the changing policy position for student developments in LB Lambeth. Policy H7 of the emerging Draft Lambeth Local Plan 2013 requires the applicant for new student accommodation to provide evidence to the Council that the proposed rental levels for the student accommodation are supported by a linked HEI(s). Kings College London (KCL) confirmed in their representation on the preliminary draft charging schedule that the weekly rates in KCL residences are significantly below £200 per week. Given that KCL have indicated their desire to collaborate with private student providers to continue to provide student accommodation at a subsidised and sub-market rent they are highly unlikely to enter into any nominations agreement with a private student provider at pre-planning stage which provided for the rental levels set out in the viability appraisal prepared by BNP.

To determine a more accurate assessment of the impact of CIL levy rates upon the future delivery of student accommodation it is considered that further analysis of existing and likely future rental levels achieved is necessary in response to changing market conditions and the implementation of emerging local planning policy. The viability evidence in respect of student accommodation cannot be used to justify the proposed CIL at this stage. Primary legislation Section 211(7a) of the Planning Act 2008 (introduced by S144 (2) of the Localism Act 2011) requires the charging authority to use "*appropriate available evidence*" to inform the preparation of a charging schedule.

#### Importance of ensuring student development remains competitive

The Council suggest in their response to the previous representations that student developers should be able to factor the CIL liability into their appraisal when bidding for a site. However, this fails to consider that student providers will be in competition to purchase the site with other developers of other land uses.

Lambeth – CIL Draft Charging Schedule  
12 August 2013

A fundamental implication of the high proposed CIL charge for student accommodation is that it severely impacts on the ability of a student accommodation provider to compete with developers of other land uses, particularly residential and hotel use, which are not bound by such inflexible financial constraints as the CIL. The reality is therefore that the CIL would serve as a means of deterring student accommodation from coming forward in the Borough which is not the intention of the CIL Regulations.

The current proposed CIL rates suggest for example that student accommodation is effectively £95 per sq. m more valuable as a land use than residential accommodation and £110 per sq. m more valuable than hotel use (£360 versus £250 per sq. m). However, a hotel developer was recently in a position to substantially outbid other competitors to purchase the Hercules House development site at Lambeth North despite what was believed to be a competitive bid from our client to provide student accommodation on the site. It is also understood that the Bondway redevelopment site in Vauxhall, which was originally purchased for the development of student accommodation, is now subject to emerging proposals for a residential scheme due to the high residential values being achieved in that area.

Further evidence of the inability of student providers to remain competitive in the market can be found in an article from the Estates Gazette on 10<sup>th</sup> August 2013 (see attached in Appendix 1) which quotes figures from EGI's London Residential Research team that shows that applications for student beds in the first half of 2013 is nearly half the number applied for in the same period in 2012. The article references feedback from student accommodation agents who claim that the fall in potential new schemes coming through is down to increased competition for land purchases from residential developers. The student accommodation agents, Deloitte Real Estate, have noted that house builders are now in a much more favourable position than they have been in previous years and that the introduction of the Community Infrastructure Levy could further deter some student investors from the sector.

The introduction of the CIL rate of £360 per sq. m as an additional financial constraint to purchasing sites will ensure that there is a significant disincentive to student development coming forward. This would appear contrary to the Council's assertion in response to previous representations that it is *"not seeking to use CIL as a means of deterring student housing"* and *"considers that student housing is sufficiently viable to absorb the proposed rate"*.

#### Differential rates

Notwithstanding our 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 Lambeth CIL charge is therefore required in our view.

The Council state in their response to our previous representation that the approach of using differential rates for student accommodation could lead to "unnecessary complexity." However, it is not clear why such an approach was not considered to be overly complex with regard to other uses such as residential and hotel use where it was recognised that such developments outside Vauxhall and Waterloo will attract lower capital values.

Lambeth – CIL Draft Charging Schedule  
12 August 2013

The viability exercise carried out for residential accommodation sought to apply different site conditions and land values for different areas of the Borough to establish the levels of affordability in different areas. This has resulted in the proposed introduction of differential CIL rates for residential development ranging from £50 to £265 depending on location. It was also considered appropriate to apply a differential rate of £100 to £250 for hotel development depending on location. 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.

In their assessment of the viability of student accommodation the Council's technical advisors have simply taken a sample case of 500 student beds being provided on a hypothetical site in Vauxhall, a designated high density regeneration area with exceptionally high land values. However, there needs to be recognition from the Council that not all schemes are going to be located in the Vauxhall area or other designated regeneration areas and that in order to encourage student development to still come forward in other parts of the Borough there needs to be an accompanying consideration of viability for such schemes in those locations.

The Council and many local communities have often intimated their desire to avoid 'studentification' in particular areas of the Borough and that students should be integrated more successfully into a more diverse local community. This desire would appear contrary to the narrow approach taken in the viability appraisal.

The Council confirmed in their response to previous representations that they are not seeking to use CIL as a means of deterring student housing as it feels that student housing is sufficiently viable to absorb the proposed rate. However, it is difficult to comprehend how a CIL rate of £360 per square would ensure that proposals for student accommodation, particularly those outside the regeneration areas, could continue to remain competitive against residential and hotel developers who only have to take into account a CIL charge of as low as £50 and £100 respectively in certain parts of the Borough.

If the Council are basing their CIL rate for student accommodation at £360 per sq. m then it considered appropriate that evidence should at least be supplied to developers which shows that differential rates have been considered and that it has not influenced the ability of student developments to afford such a CIL rate across the Borough.

#### Addressing Student Housing Need

In their response to our previous representation the Council have queried what measure has been used to determine our assertion that there is a significant 'shortfall' in student accommodation in the Borough.

In response it should be remembered that the London Plan 2011 states that there could be a requirement for 18,000-27,000 additional bed spaces over the 10 years to 2021. Furthermore, according to research carried out by Savills as part of the planning application for the recently approved student development by Downing at 'Land adjacent to 202 Lambeth Road' (see Student Needs Assessment prepared by Savills which can be viewed on Council website in application ref: 13/01343/FUL), there is a very large demand for student accommodation in Lambeth yet the level of purpose-built accommodation only amounts to 437 bed spaces (3.7% of the total students known to

Lambeth – CIL Draft Charging Schedule  
12 August 2013

be residing in the Borough at 11,963). This indicates that the vast majority of students are living in private rented or HMO accommodation in the Borough

It is acknowledged that there are 3,102 purpose-built bed spaces in the pipeline within the Borough but even if all of these schemes came forward there would still be significant shortfall of c. 8,424 bed spaces (or 70% of full-time student numbers) which will not significantly relieve the pressure on the private rented/HMO sector.

There is clear evidence to support the development of additional student accommodation within Lambeth as there remains a substantial deficiency in such accommodation. This substantial shortfall in student provision in the Borough is also placing significant pressure on the private rented / HMO sector to try and meet demand.

Purpose-built student housing schemes play an important role in the function of the housing market by freeing up privately rented housing stock for general use and reducing the need for some households to seek inclusion on housing waiting lists to access a property which is affordable to them. The lack of available cheaper purpose-built student accommodation will ensure that UK and European students will continue to rely on the private rented market. An implication of this trend is that private market rents will continue to be inflated by student "over-occupation" of properties which impacts on the affordability of the housing market for the rest of the population.

#### Mitigation of the impact of student accommodation

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 draft charging schedule states that the local authority firstly needs to demonstrate that new or improved infrastructure is needed to mitigate the impact of planned development. The CIL information booklet published by the Council to accompany the CIL draft charging schedule also states that *"new building projects are required to pay a fair share towards the infrastructure needed"*.

The Council have justified a higher CIL on the basis that student accommodation does not incur affordable housing costs and consequently has much greater scope to absorb CIL than conventional residential schemes. However, this ignores the fact that student accommodation, unlike other uses such as residential, generates very little pressure on key infrastructure such as education or health facilities and the application of the CIL charge would not directly benefit or mitigate the impact of student development.

When this argument was made in our representation on the preliminary draft charging schedule the Council responded by noting that this is not relevant to rate setting which is based on viability and not the burden created by a development. Notwithstanding our view expressed earlier in this representation that the viability appraisal has established too high a Residual Land Value for student accommodation, this response would appear to suggest that student accommodation schemes are being unreasonably exploited to fulfil CIL financial targets.

As demonstrated within Downing's scheme at 30-60 South Lambeth Road, where a swimming pool is being provided for public use, our client is more than committed to paying a fair level of CIL to provide what is required in terms of infrastructure within the community. However, the proposed CIL charge would appear disproportionate and prevents them from being able to reasonably compete for sites and meet the demand for student housing within the borough.

Lambeth – CIL Draft Charging Schedule  
12 August 2013

Impact of CIL on nomination agreements between universities and student providers

Kings College London have indicated in their representation on the preliminary draft charging schedule that they may at a future date seek to deliver student accommodation, at reduced rate below current market rates, with a partner body without charitable status. However, they have confirmed that the proposed CIL charge of £360 per square metre would severely prejudice any such joint venture with private student providers from taking place.

This raised significant concern for our client given that the Draft Lambeth Local Plan 2013 proposes the introduction of a new policy (Policy H7) which requires the applicant for new student accommodation to provide evidence to the Council of a linkage with one or more higher education institution (HEI) in Lambeth, or within a reasonable travelling distance of Lambeth, funded by the Higher Education Funding Council for England. This evidence must include confirmation that the proposed rental levels for the student accommodation are supported by the linked HEI(s). The supporting text for this policy confirms that "*speculative development of student housing will not be supported.*"

As a student accommodation developer our client is keen to work with Universities and providing what they require (i.e. cheaper student accommodation). However, as KCL are raising clear concern about the impact of the proposed student CIL rate on their ability to deliver their own student accommodation product then they are highly unlikely to be willing to enter into a nominations agreement with a private developer at pre-planning stage. This will in turn prevent any student developments from coming forward in the Borough as applicants will not be able to demonstrate to the satisfaction of the Council during the planning application process that the accommodation is linked with an HEI.

As suggested by KCL it would therefore be entirely appropriate for the Council and their technical advisors to carry out an additional viability appraisal where student accommodation is provided by a private student developer in partnership with an educational institution with charitable status, where the accommodation will be offered at sub-market rents.

The Council have acknowledged that the proposed CIL rate will potentially create viability issues for any such student accommodation proposal. However, they have requested that KCL provide more information about how a student accommodation scheme would be secured without charitable status, and the overall significance of the scheme in size and scope, before it could consider how a charging CIL on the proposed rates would impact on such a student accommodation scheme. This seems unnecessary given that Policy H7 of the Council's emerging Local Plan 2013 sets out how student developments could be linked to a University through a legally binding nomination agreement into perpetuity. Significance, size and scope of such development are also considered unimportant and the critical input to such assessments is lower rental level, which lowers value which in turn lowers profit.

Lambeth – CIL Draft Charging Schedule  
12 August 2013

#### Exceptional Discretionary Relief

Our client welcomes the proposed introduction in the draft charging schedule of the use of exceptional discretionary relief on viability grounds, which is in accordance with Section 55 of the CIL Regulations. Such relief would have to be sought by developers and agreed by the Council subject to the three statutory test set out in CIL regulations, namely:

- The cost of complying with S 106 planning obligations is greater than the chargeable amount by the developer;
- There is an unacceptable impact on the economic viability of development: and,
- The grant of relief would not constitute state aid

Use of an exceptions policy enables the charging authority to avoid rendering sites with specific and exceptional cost burdens unviable. However, as set out in the DCLG's proposed reforms to the CIL Regulations document published in April 2013, this form of relief has yet to be used in practice as it has not proved possible for any individual developments to meet all of the three tests above.

The DCLG are therefore considering removing or adjusting the requirement for there to be a section 106 agreement which is higher than the levy liability, given there may be exceptional circumstances where this is not the case. This is seen as a positive move as it will allow the Council greater discretion to grant exceptional circumstance relief. We would therefore request that the Council seek to remain informed of any such potential reforms to the CIL Regulations prior to the adoption of any final Lambeth charging schedule.

#### ***Options Available to the Council regarding CIL Rate for Student Accommodation***

It is our client's view that the Council has underestimated the impact of CIL upon the viability / deliverability of new development within Lambeth and will therefore hinder rather than promote the development of student accommodation in the Borough. Based on the above representation, we would urge the Council to consider the above options to ensure that the introduction of CIL does not critically impact upon the delivery of new student accommodation within the Borough:

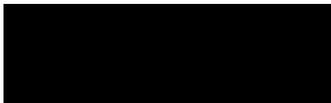
- To update the viability appraisal for student accommodation by increasing the premium on existing use value by 50% to ensure student providers remain competitive in the property market;
- to substantially reduce the proposed Levy to similar levels to residential and hotel use. Whilst the scale of liability would still impact upon scheme viability, this level of liability would still enable appropriate high quality student schemes to come forward that offer an affordable form of purpose-built accommodation for the student market;
- to introduce different Levy Charge Zones for student accommodation with a higher rate for sites within the Borough's main growth centres (particularly Waterloo and Vauxhall – which are the focus for regeneration and growth); and
- to introduce a different CIL rate for student housing developments which are linked to a University through a legally binding nomination agreement into perpetuity

Lambeth – CIL Draft Charging Schedule  
12 August 2013

As noted within our introduction, 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.

Yours faithfully



**Rolfe Judd Planning**

cc  Downing

**Appendix 1 - Article from the 10<sup>th</sup> August edition of the Estates Gazette**

## Student beds lost in housebuilder land grab

JOANNA BOURKE

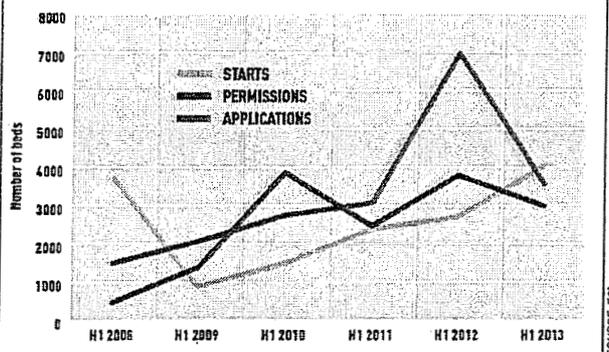
Bullish housebuilders buying London land have caused a slump in the number of student beds set to be delivered in the capital.

Figures from EGI's London Residential Research team show that applications for a total of 3,560 student beds were submitted in the capital in the six months to 30 June 2013, nearly half the 6,974 lodged in the same period in 2012.

The research also shows that permissions for new beds have dropped to 2,990 compared with 3,784 a year earlier.

But starts on site have hit a six-year high, reflecting increasing numbers of applications in previous years, with construction starting on some 4,050 new

LONDON'S STUDENT BED PIPELINE



SOURCE: EGI

beds in the first half of 2013.

Student accommodation agents claim that the fall in potential new schemes coming through is down to increased competition for land purchases

from residential developers.

Chris Baldwin, head of student accommodation at Deloitte Real Estate, said: "Housebuilders are in a much more favourable position than

they have been in previous years and are now more hungry for opportunities."

He added that the community infrastructure levy could deter some investors from the sector - six London boroughs are proposing CIL rates above £10,000 per bed.

The fall could hinder government ambitions announced last month in its International Education: Global Growth and Prosperity report, which outlined plans to attract 90,000 extra overseas university students by 2018.

Roger Lown, director and head of student housing at GVA, said: "These students will all need somewhere to live, increasing demand for purpose-built student housing."

## Luxury plan for Palace neighbour

Property developer Mike Spink and Evans Randall are working up plans for what would be the closest private home to Buckingham Palace.

The joint venture has bought the 125-year leasehold on 3 Carlton Gardens, SW1, from the Crown Estate for around £65.5m. It plans to redevelop the 16,000 sq ft Grade-II listed office property into a four-storey luxury family home that could cost more than £140m.

James Cooksey, head of St James's Portfolio at the Crown Estate, said: "This supports our long-term vision for St James's, which we see not just as a destination for business, retail and dining, but also as a place to live."

Spink made his name buying country estate Park Place near Henley-on-Thames, Oxfordshire, for £42m and redeveloping it into a mansion, which he sold to Russian billionaire Andrey Borodin for £140m.

The sale of the estate in 2011 was the most expensive house sold in Britain. Knight Frank acted for the Crown Estate.



## Aziz's PRS plan cleared for ex-council offices

Asif Aziz's Criterion Capital is steadily building a private rented residential portfolio, with the addition of 100 new flats this week.

The firm, owner of the Trocadero in Piccadilly, W1, has been given the go-ahead to turn the 55,000 sq ft former council offices in Slough town centre into a 100-flat scheme.

The flats will be built within Wellington House, which is situated above the Queensmere shopping centre in the Berkshire town.

The development forms part of Criterion's wider masterplan for the redevelopment of the Queensmere and Observatory shopping centres. That project will create 861 homes.

Michael Hughes, head of development at Criterion, said: "Our strategy is to build a portfolio of residential assets that we can let to the private rented sector."

Last month Criterion bought a 140-home scheme in Thurrock, Essex, and launched a 138-home development in Surrey Quays, SE16.



**/O=LONDON BOROUGH OF LAMBETH/OU=COMPUTER CENTRE/CN=RECIPIENTS/CN=IMOI**

**From:** Smith, Lucy [Lucy.Smith@southwark.gov.uk]  
**Sent:** 12 August 2013 14:03  
**To:** LambethCILconsultation  
**Cc:** julian.alexander@nhs.net; Trouton, Alex; Therese Fletcher; Wallis Ruth (NHS SOUTHWARK CCG); Malcolm.Souch@hudu.org.uk; Lim, Jin  
**Subject:** Response to CIL consultation

Dear Colleague,

I am sending in a very brief response to your CIL consultation on behalf of the Public Health directorate.

We note the current delivery plan does not include the remaining Brixton and Stockwell NRCs and primary care provision in Clapham Park and Crown Dale. No costs are identified for a primary care centre in Waterloo. There will be a need to invest in existing premises eg. Nine Elms Vauxhall, to meet population increase and this should be clearly stated in the plan. The cross boundary issue with Elephant and Castle developments (regen of Heygate and Aylesbury) needs to be born in mind.

The plan seems to adequately plan for other infrastructure that would support health and wellbeing; parks and open spaces, public realm, sports and leisure, transport etc.

It is not clear from the documents what the process will be for local people to be involved in deciding how CIL income will be spent. We know there is some very good work going on (eg. in Loughborough Junc) to engage residents in the development of neighbourhood plans and previously the council promoted local project banks which were funded through s106. We should very much like to see this co-operative approach being the norm. We know that when local people have a say in their immediate neighbourhood it can help to improve their general feeling of wellbeing and life satisfaction as well as foster social networks between different community groups.

The 'Regulation 123 List' sets out in broad terms what CIL will be spent on eg. health facilities. We anticipate a role for the Health and Wellbeing Board in ensuring there is a process and governance arrangements to prioritise projects, deal with requests for funding and allocate CIL.

We trust this is a useful response and look forward to ways in which the Public Health dept can continue to assist with decisions on planning and regeneration in Lambeth.

Best wishes,

Lucy

Lucy Smith  
Public Health Manager - Mental Wellbeing  
Lambeth & Southwark Public Health Directorate  
London Borough of Southwark  
1<sup>st</sup> Floor, Hub 2  
PO Box 64529  
London  
SE1 5LX

Address for finding office location - 160 Tooley St, SE1 2TZ

Email - [lucy.smith@southwark.gov.uk](mailto:lucy.smith@southwark.gov.uk)  
Tel - 020 7525 7530  
Mobile - 07733 307 539

Please note my usual days of working are Monday, Tuesday and Thursday.

The email you received and any files transmitted with it are confidential, may be covered by legal and/or professional privilege and are intended solely for the use of the individual or entity to whom they are addressed. If you have received this in error please notify us immediately. If you are not the intended recipient of the email or the person responsible for delivering it to them you may not copy it, forward it or otherwise use it for any purpose or disclose its contents to any other person. To do so may be unlawful. Where opinions are expressed in the email they are not necessarily those of Southwark Council and Southwark Council is not responsible for any changes made to the message after it has been sent.

---

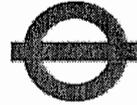
This email has been scanned by the BT Assure MessageScan service  
The service is delivered in partnership with Symantec.cloud

For more information please visit <http://www.globalservices.bt.com>

---

---

# Transport for London



Our ref: Cdl/boroughplanning/Lambeth/CIL/  
Draftchargingschedule

CIL Consultation  
Planning Regeneration & Enterprise  
London Borough of Lambeth  
1st Floor, Phoenix House,  
10 Wandsworth Road,  
London SW8 2LL

Transport for London  
Group Planning

Windsor House  
42 – 50 Victoria Street  
London SW1H 0TL

Phone 020 7222 5600  
Fax 020 7126 4275  
www.TfL.gov.uk

12 August 2013

Dear Sir / Madam,

## **Lambeth Community Infrastructure Levy Draft Charging Schedule**

I am writing on behalf of both the Mayor and Transport for London in response to the London Borough of Lambeth's Community Infrastructure Levy Draft Charging Schedule Consultation.

As you are aware, TfL has been working closely with the GLA on the implementation of the Mayor's CIL and reviewing proposed borough CILs. TfL has a common interest with the Mayor in ensuring that borough CILs, when combined with his own, will not threaten development nor the aim of raising £600m for Crossrail. The Mayoral CIL will deliver £300m, and the Mayor is also committed to providing a further £300m to Crossrail to be raised from developer contributions through the use of planning obligations. This formed part of the funding settlement agreed with Government.

In addition, TfL is working closely with your borough in delivering the funding package for the Northern Line Extension project, which will support the regeneration of the Vauxhall Nine Elms Battersea Opportunity Area (VNEB OA). TfL is grateful for the funding commitment provided by your borough with regards to the contribution of s106 and CIL income towards the NLE.

We are pleased to note that the Mayor's CIL has been taken into account in bringing forward your Borough's proposals, as required by regulation 14(3) of the Community Infrastructure Levy Regulations 2012 (as amended). However before we can say that this test has been met in full we would be grateful for your confirmation that the rates you are proposing will not put delivery of your Borough's affordable housing policies and those in the London Plan at risk and so would not be open to challenge on the grounds identified by the examiner who considered the draft Mid Devon District Council CIL charging schedule (see in particular paragraphs 13-14 of his report, PINS reference PINS/Y1138/429/11). We would be glad to discuss this point with you further.

We also note that the boundary of CIL charging zones has been revised from the Preliminary Draft Charging Schedule stage. These now fairly reflect the economic development likely to occur in the Vauxhall Square area of VNEB OA and the CIL rates that can be supported without challenging the development's viability.

I would be grateful if you could note our and the Mayor's requests to be notified of submission of your draft charging schedule for examination, publication of the examiner's recommendation and approval of the charging schedule. We would also request that we be heard at any public examination that is held into your draft schedule in accordance with regulation 21 of the Community Infrastructure Levy Regulations 2010, in particular to address the question of compliance with regulation 14(3).

I look forward to continuing to work with you in taking your CIL proposals forward.

Yours faithfully

**Neil Lees**

**Team Manager, Planning Obligations – Borough Planning**

Email: [neillees@tfl.gov.uk](mailto:neillees@tfl.gov.uk)

Telephone : 020 3054 7015



**SOUTHBANK  
CENTRE**

DCS-Rep-018

**National  
Theatre**

9 August 2013

CIL Consultation July/Aug 2013  
Planning Regeneration & Enterprise  
London Borough of Lambeth  
1st Floor, Phoenix House  
10 Wandsworth Road  
LONDON  
SW8 2LL

To: [lambethCILconsultation@lambeth.gov.uk](mailto:lambethCILconsultation@lambeth.gov.uk)

Buy email and by post

Dear Sirs,

**Lambeth Community Infrastructure Levy – Consultation on Draft Charging Schedule**

We are writing on behalf of Southbank Centre, British Film Institute and the National Theatre. This letter contains our representations in response to Lambeth Council's consultation on the Community Infrastructure Levy ("CIL") Draft Charging Schedule.

Southbank Centre, together with the National Theatre and the British Film Institute, submitted representations on the Preliminary Draft Charging Schedule earlier this year. Those representations explained that the proposed Charging Schedule would have some potentially significant impacts on the South Bank area; and that this was of particular concern in view of the Council's policy support for the improvement of this area of international importance. Enhancement of the cultural and arts facilities on the South Bank is heavily reliant on cross-funding from commercial development, which would be subject to CIL.

The risk of adopting a Charging Schedule that includes the South Bank is that the scale of commercial development would have to increase in order for the same amount of funding to be made available to cross-fund the improvements to arts and cultural facilities that are so urgently required. This is a particular risk in view of the proposed rate of £115 per square metre for retail development.

Despite some recent amendments to the CIL Regulations, their effect remains unclear in relation to complex multi-use developments by charitable institutions. It is likely that this ambiguity will continue for some years until the regime is better established, and that some questions will not be finally resolved until they are tested before the courts.

This uncertainty acts as a disincentive to the making of positive investment decisions for the enhancement of arts and cultural facilities on the South Bank. Our clients' previous representations therefore proposed that the Charging Schedule should apply a nil rate for development in the South Bank Cultural Area.

Lambeth Council has stated in its consultation response that the Council considers a zero rate charging zone for the South Bank should be avoided, for three reasons:

1. that this risks constituting a state aid;
2. that it would potentially set an adverse precedent; and
3. that Southbank Centre, British Film Institute and National Theatre may benefit from charitable exemption, or alternatively that CIL payments could be recycled into the regeneration of the area as a community infrastructure project in its own right.

We do not agree with the first and second reasons summarised above and we note that the Council has presented no evidence in support of either contention. Nevertheless, we will not make further comments on those issues at this stage and will instead focus in these representations on the Council's third reason.

After our previous representations were made, Southbank Centre and Lambeth Council engaged in further discussions regarding the availability of the exemption for charities pursuant to Regulation 43 of the CIL Regulations. In turn, Lambeth Council has had discussions with Andrew Barry-Purcell at the Greater London Authority about the same issue.

Those discussions followed the production of a note by Herbert Smith Freehills on 5 April 2013 setting out the basis on which the charitable exemption under Regulation 43 would apply to Southbank Centre's proposed Festival Wing development, which is now the subject of a planning application to Lambeth Council.

The conclusion reached by Lambeth Council was that:

*"Clearly there are reasons why charitable exemption would potentially apply for any enabling retail/restaurant uses in a permitted scheme, including the fact that less than a fifth of the development would be in use for proposed restaurant/retail use, meaning that the development overall would qualify for charitable exemption on the basis that it was wholly or mainly for charitable purposes."*

Furthermore, it was confirmed that:

*"Lambeth Council has conferred with the GLA, and certainly at an officer level, there is a joint agreement that a pragmatic approach to granting exemption under Regulation 43 would seem sensible."*

These statements were made subject to the need for an assessment against the specific details of any submitted planning application, but both Lambeth Council and the GLA are of the view that the provisions of Regulation 43 are reasonably clear.

In its consultation response to our previous representations, Lambeth Council also said that it is committed to work with South Bank cultural organisations to find an appropriate solution to avoid the refurbishment and expansion of cultural facilities, and required enabling development, to be adversely affected by CIL.

We welcome Lambeth Council's confirmation that developments on the South Bank will qualify for the exemption for charities provided under Regulation 43. Whilst we understand it will of course be necessary for an application to be made for the exemption in relation to specific development proposals, we place reliance on Lambeth Council's assurances that our concerns over the apparent ambiguities in the regulations do not present any barrier to the availability of the exemption in relation to the type of developments carried out on the South Bank, including the current Festival Wing proposals and the forthcoming proposal to develop a new National Film Centre on part of the Hungerford Car Park site as well as associated development of BFI Southbank.

We also place reliance on Lambeth Council's express commitment to work with Southbank Centre and BFI to finding an appropriate solution to avoid the refurbishment and expansion of cultural facilities, and required enabling development, to be adversely affected by CIL. This commitment should not be limited to "enabling development" in the strict planning sense of that term however, and should extend to all supporting development that is proposed in order to generate funding towards the cost of arts and cultural facilities on the South Bank.

No objections have been made to the contents of the note prepared by Herbert Smith Freehills dated 5 April 2013 in relation to the exemption for charities. Our understanding is therefore that both Lambeth Council and the GLA agree with the contents of that note in principle.

In reliance on these matters, our clients are proceeding on the basis that the charitable exemption will be applied to their developments, and that no CIL will be payable. They therefore accept that it is not necessary for there to be a nil rate for development in the South Bank Cultural Area. If, however, Lambeth Council disagrees with our summary of their position as set out above, or if there is any other risk that charitable exemption will not be applied to developments of the nature proposed on the South Bank, then we reserve the right to make further representations objecting to the Draft Charging Schedule and in support of a nil rate, and would wish to appear at the examination in public for that purpose.

We wish to make the following further representations on the Draft Charging Schedule and supporting documents:

1. Our understanding is that arts and cultural uses do not fall within any of the development types specified in the Draft Charging Schedule (i.e. residential, hotel, office, industrial, retail and student accommodation). Arts and cultural development (and any ancillary uses) will therefore be subject to a nil rate, which we support and agree with.
2. The South Bank Cultural Area falls within the "Waterloo and Vauxhall Office Area" and a charge of £125 per square metre will therefore apply to office development in the South Bank Cultural Area. We do not object to this proposed charge, but wish to understand how it will be applied to flexible use planning permissions. For example, the current Festival Wing planning permission proposes a flexible use of Class D2 and/or Class B1 for some parts of the development. This is to enable the floorspace in question potentially to be used initially for Class B1 purposes but with a view that it then reverts in due course to Class D2 use once sufficient funds have been generated. Whilst it is expected, for the reasons set out above, that CIL would not be payable in any case because the development would qualify for the exemption for charities, clarification is sought from Lambeth Council as to how the CIL Charging Schedule would otherwise apply to such flexible use permissions.
3. We understand that the "retail" rate is intended to cover all Class A uses and would therefore be payable in relation to floorspace within Class A3 (restaurants and cafés), Class A4 (drinking establishments) and Class A5 (hot food takeaways) as well as Class A1 (shops). This ought to be clarified in the Charging Schedule to avoid any uncertainty in future.
4. We welcome and support the inclusion of Cultural Facilities in Lambeth Council's Initial Draft CIL Regulation 123 List as among the types of infrastructure to be funded in whole or in part by CIL. This is consistent with Lambeth Council's consultation response that CIL payments received from commercial developments could be recycled back into redevelopment projects on the South Bank in order to "neutralise the impact of CIL on overall project viability". However, the Draft Regulation 123 List currently defines cultural facilities as being "publicly owned or controlled theatres, cultural / arts centres, including Southbank Centre". It is not clear whether the requirement for public ownership or control relates to all such facilities or just to theatres. Neither Southbank Centre, British Film Institute or the National Theatre are publicly owned or controlled and we request that this qualification is removed, to avoid this category of infrastructure being unduly restricted or subject to any future dispute or legal challenge.
5. We also welcome and support the inclusion in Lambeth Council's Infrastructure Delivery Plan of Southbank Centre's Festival Wing proposals in the Cultural Facilities category of infrastructure projects in Lambeth (Schedule A, page 36). The Plan refers to a funding gap of £90 million, which will be closed through commercial loans supported by the income from cafés and restaurants, grants from trusts and foundations, gifts from individuals and possible contributions from CIL. We agree with the proposal to apply CIL revenues towards this project subject to planning permission being granted.
6. Under the heading Parks and Open Spaces, the Infrastructure Delivery Plan also refers to the extension to Southbank Centre on the western side of the Hungerford rail bridge for cultural and retail uses and the conversion of the south side of the car park to provide an expanded Jubilee Gardens (Schedule A, page 20). It is noted that this is currently indicated as not being CIL eligible.

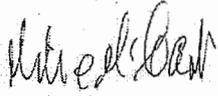
The Infrastructure Delivery Plan does not currently include BFI's proposals for a new National Film Centre on part of the Hungerford Car Park site, which will also include associated development of BFI Southbank. BFI request that this project is included in the Infrastructure Delivery Plan on the basis that, whilst the majority of funding for this significant cultural project will be raised by BFI through various fundraising means including the sale of existing BFI assets, it may also necessitate contributions from CIL. The actual funding details are not yet available as the project is at an early feasibility stage although BFI is confident at the current time that the scheme is broadly deliverable. It is important to include this project in the Infrastructure Delivery Plan to ensure it is eligible to apply CIL revenues towards the project at the appropriate stage. The suggested wording for inclusion of this project in the Infrastructure Delivery Plan is attached.

On the basis that the Council agrees to include this project in the Infrastructure Delivery Plan it will be necessary to amend the wording relating to the Hungerford car park site under the heading Parks and Open Spaces

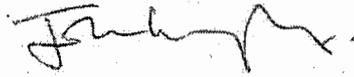
7. We note that Lambeth Council is planning to publish a revised section 106 supplementary planning document in August / September this year. In view of the relationship between infrastructure funding and provision through planning obligations and through CIL, we reserve the right to make further representations once the revised SPD is published.

We request that Lambeth Council takes these representations into account when finalising the Draft Charging Schedule and supporting documents before submitting them for examination.

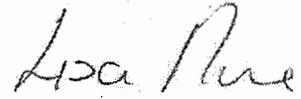
Yours faithfully



**Mike McCart**  
**Director of Partnerships and Policy**  
Southbank Centre



**John Langley**  
**Director of External**  
**Relationships and Partnerships**  
National Theatre



**Lisa Rowe**  
**Head of Procurement, Projects**  
**and Business Performance**  
British Film Institute



