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

12 August 2013

Dear Sirs

**CIL Draft Charging Schedule**

We act on behalf of British Telecommunications plc, owners of Keybridge House in Vauxhall which they are proposing to redevelop for a predominantly residential scheme. A planning application is due to be submitted imminently and is due to be determined before the LB Lambeth CIL commences charging. Nevertheless, our clients have significant concerns about the level of CIL charging rate proposed by Lambeth and its likely impact on residential development within the Borough, and particularly in the Vauxhall Area of Zone A (within which Keybridge House is located).

The outputs of BNP's modelling for this location are summarised at Tables 6.14.1 and 6.14.2 of the April 2013 Viability study. They conclude that based on a policy compliant 70/30 split of affordable between rented and intermediate, the proposed CIL is not viable at 40% affordable on any of the four site-types considered i.e. including sites with existing community buildings. Of particular concern is that on lower value office sites, perhaps the most typical typology in this location, the proposed CIL is not viable at any of the affordable housing bands tested, although at 10% affordable there would be a maximum viable CIL rate of £180 per sq m.

Significant concessions on affordable housing (or other planning obligations) will clearly be required to render development viable; but even taking this into account it is difficult to understand why BNP consider that a charging rate of £250 per sq m is appropriate.

The position adopted by BNP appears to be that if development is not viable then it is of no importance as to what level of CIL is attached to it. However, this is entirely inconsistent with the line taken elsewhere with zero rates being set for retail and industrial as well as for offices outside the Vauxhall and Waterloo office area.

It must be anticipated that the CIL rates adopted within Lambeth will be in place for some time – given the process which needs to be gone through to change the rates (other than automatically through index linking), Councils cannot be expected to make changes on a regular basis.

That being the case, setting a CIL rate which could render such a high proportion of sites unviable means that even if growth in sales values is experienced it will still be a very long time before development is capable of supporting the proposed CIL rates within the Vauxhall area.

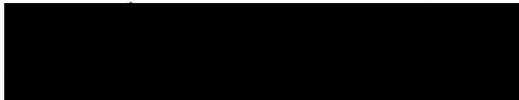
It is clear that by setting rates at the proposed level, the Council is not achieving an appropriate balance between revenue maximisation and the potentially adverse impact on the viability of development. As evidenced by the figures produced by the Council's own consultants, the vast majority of scenarios within the

Vauxhall area of Zone A are not capable of supporting a charge of £250 per sq m. This certainly cannot be considered to be in line with the requirements of the Regulations.

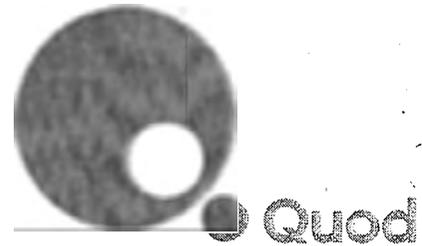
Accordingly we would urge the Council to separate Vauxhall out from the Waterloo area of Zone A and set a significantly lower CIL which may be capable of allowing a reasonable proportion of sites within Vauxhall to come forward viably rather than being sterilised for the foreseeable future.

Our clients would wish to be kept informed as to the Council's progress through the CIL adoption process and reserves the right to present evidence at the Examination in Public.

Yours faithfully



our ref: TD/Q30300  
email: [REDACTED]  
date: 12 August 2013



Clive Fraser,  
CIL Consultation  
Planning Regeneration & Enterprise Division  
Housing Regeneration and Environment  
LB Lambeth, Phoenix House, 1<sup>st</sup> Floor  
10 Wandsworth Road  
London, SW8 2LL

Dear Clive,

### Lambeth CIL Draft Charging Schedule

#### Introduction

I am writing on behalf of the Berkeley Group to make representations in relation to the Consultation on your Draft Charging Schedule for the Community Infrastructure Levy in Lambeth. As you are aware we have made representations previously to the Preliminary Draft Charging Schedule (PDCS).

It is worth re-stating that two Berkeley Group companies, St James and St George PLC have land interests in the Vauxhall/Nine Elms/Battersea (VNEB) Opportunity Area. For St James, these include Hampton House and Eastbury House. In addition, St. George has interests at St George Wharf. As London's leading residential developer, the Berkeley Group has a long-term interest in the viability of development in the Borough.

Berkeley wishes to continue its collaborative relationship with Lambeth Council and other partners in the area. In particular to ensure that the combined weight of obligations and policy requirements set out in the Council's Core Strategy and emerging Local Plan (notably affordable housing); the Vauxhall Supplementary Planning Document which has been adopted since the publication of the PDCS; and the revised Supplementary Planning Guidance on Planning Obligations do not threaten the viability of development in a location that is essential for the delivery of both Lambeth Council's and Mayor of London's strategic objectives.

We welcome the further work that has been undertaken by the Council, and the publication of a Draft Regulation 123 list and imminent consultation on the Revised Planning Obligations SPD, which provide more clarity on the Council's intended approach. We remain concerned, however, that the Council has not demonstrated properly the impacts on viability of development in the Borough, and that the proposed approach to planning obligations is not consistent with either the viability assessment or the CIL regulations. Our comments on Planning Obligations relate to the draft document approved by Cabinet. We are aware that a specific consultation on that document begins today and St James will respond separately to that consultation on the broader issues it raises.

We set out our comments in further detail below.



### **Viability of Development in Vauxhall Nine Elms Area**

The Council's Viability Report notes (para 2.2) that such high level viability assessments can only act as a 'general guide'. One of the main purposes of the Government's revised Guidance, published in December 2012 (updated in April 2013), was to tie CIL and the viability assessment process, into the realities of the delivery of the Local Plan. We are, therefore, disappointed that the Council has chosen not to undertake any further site-specific testing on the basis that no single site accounts for more than 5% of its housing supply (para 2.22).

As we noted in our original representations the Council is very dependent on housing delivery in the north of the Borough, and has a relatively small number of identified development sites which constitute a substantial proportion of the housing pipeline.

Several of these sites, as noted in paras 2.16 to 2.19 of the Viability Report, have recent planning permissions and have been subject to viability assessments. The Council has stated that recently consented developments have paid S106 tariffs which are comparable to the proposed CIL rates. Our own assessment of consented schemes, based on the data available to us, suggests that these developments have not been achieving contribution levels similar to those that would be required from CIL, and that viability issues have meant that they cannot deliver the quantum and mix of affordable housing sought by policy in full.

We would therefore encourage the Council to apply the proposed CIL rates, using the current Regulation 40 formula and not approximations, to these developments and compare the combined weight of obligations against what was identified as affordable in their site-specific viability assessments. Our view is that this will demonstrate that the Council would not achieve the proposed levels of CIL together with 40% affordable housing. In these circumstances, where CIL is non-negotiable, it will be affordable housing that is reduced, which we are aware would be a significant issue for Council members.

Such an outcome is already implied by the Viability Report. This demonstrates that, for Development Typology 6, which is probably the closest to the typical development in the VNEB area, the proposed CIL rate will not be achieved for any developments with current office uses on site (which is typical in the area) unless affordable housing is significantly reduced, along with the proportion of it that is rented. Even for buildings in warehousing uses, affordable housing would need to be delivered at a reduced level, with public land being the only current use type that can deliver the proposed CIL rates (see Tables 6.14.1 and 6.14.2).

We note that the Council, in its response to the Berkeley Group's original representations, states that:

**"if setting the CIL on the basis of always securing 40% affordable housing, the CIL rate would have to be nil in most parts of the Borough" (Lambeth PDCS – Consultation Response Schedule 2013).**

This being the case, it is important for the Council to be explicit about what proportion of affordable housing is likely to be foregone as a result of the proposed CIL charges.

We do not believe that it is possible for the Council to demonstrate that it has struck the correct balance between the need for infrastructure funding and the impacts on development across the area, if it cannot demonstrate the scale of the potential impact on development in the Vauxhall Nine Elms area, which is not only a priority location in Lambeth's Core Strategy, but also an Opportunity Area in the London Plan (2011).

#### **Regulation 123 List and Draft Planning Obligations SPD**

We welcome the fact that the Council has, as requested, produced a draft 'List of Relevant Infrastructure (Regulation 123)' and is consulting (as of today) on its Draft Planning Obligations SPD. This allows the opportunity to consider whether planning obligations are likely to be significantly scaled back as assumed by the Viability Study, which includes provision of £1,000 per dwelling for residual Section 106/278 requirements.

We regard the scope of the draft Regulation 123 list as appropriate although we are concerned about the wording that reads "the Council will not normally seek planning obligations". We believe that this is not in accordance with Regulation 123 of the CIL regulations as it presents developers with a level of uncertainty that the CIL process is intended to avoid.

Regulation 123 defines the list as

**"a list of infrastructure projects or types of infrastructure that intends to be, will be or may be, wholly or partially funded from CIL".**

It goes on to state that:

**"A planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligations provides for the funding or provision of relevant infrastructure".**

An item therefore either is or is not an item of relevant infrastructure, and the Council should not seek to blur this definition.

We do not believe that the version of the Draft SPD on Planning Obligations which was submitted to the Council's cabinet is consistent with: the intention to scale back obligations; the Draft Regulation 123 list; or, in some cases, the CIL regulations themselves. This was raised as a significant concern in Berkeley's initial representations given the comprehensive list of infrastructure requirements set out in the Vauxhall SPD (January 2013). It should be noted that every item on the infrastructure list in the Table on page 77 of that document is identified as potentially forming part of a Section 106 obligation.

It is clear that in relation to items 5C: Community Facilities and 5D: Transport in the Draft Planning Obligations SPD, where they refer to schemes or clusters of schemes which may be liable to additional obligations, it is in Vauxhall and Waterloo (which both have area-specific SPDs) that such requirements are likely to apply. It is also very likely that such obligations will be required but the Council has made no attempt to cost them or incorporate assumptions about these costs in the Viability Report for the purposes of setting CIL.

In addition to this, as far as we can tell from the evidence provided, there is currently no commitment to 'ring-fence' CIL contributions, as suggested in the Vauxhall SPD, to pay for the essential items of infrastructure listed in paragraph 7.38 of that document. There is therefore a significant risk that developers in that area pay CIL for infrastructure that is identified in an SPD as essential but that their contributions go to fund provision elsewhere in the Borough and could also be required to provide for, or contribute to, on site provision in the area.

This re-emphasises the need for the Council to demonstrate clearly how infrastructure will be delivered in the VNEB area, how the use of CIL will be prioritised, and what the likely actual obligations on developments will be. We note that Wandsworth Council in their representations to the PDCS suggest that the viability study did not provide a sufficient evidence base in relation to the VNEB area.

In the absence of such an assessment, all of the items in the Vauxhall SPD should be included in the Regulation 123 list and the Council should remove from Sections 5C and 5D of the SPD any references to financial contributions or other obligations that could equate to more than £1,000 per residential unit.

As well as these specific concerns in relation to the VNEB area, we also have some more general concerns about the proposed scope of the SPD, and in particular its continuing proposed use of 'ready-reckoners' and 'tariff' type approaches to the negotiation of planning obligations. We believe that such an approach is inconsistent with the need, under Regulation 122 of the CIL regulations, for obligations to be necessary, directly related to the development, and fairly and reasonably related in scale or kind to the development.

In these circumstances, the Council may wish to scale back requirements in Section 5B to those which are genuinely related to developments, mainly those in items 5B1 and 5B4, which is where developers can in any case add most value. As a general point, in the spirit of scaling back planning obligations, the Council may wish to consider making the document more concise and focussing on the key heads.

### **Conclusion**

The Berkeley Group welcomes the opportunity to respond to the Council's DCS and associated documents. It recognises that the Council has a difficult balance to strike in securing infrastructure investment whilst facilitating development. It acknowledges that much collaborative working has been undertaken, particularly in the VNEB area, to plan for infrastructure delivery with local landowners and developers.

It remains concerned however that the potential cumulative impact of CIL with other obligations will put at risk the development of the area, and in particular the delivery of affordable housing which has always been a particular concern for the Council. We would strongly encourage the Council to undertake a more thorough reconciliation of proposed charges against actually achieved obligations and affordable housing in the area and also define and test any additional obligations that may be required through the Vauxhall and Planning Obligations SPDs.

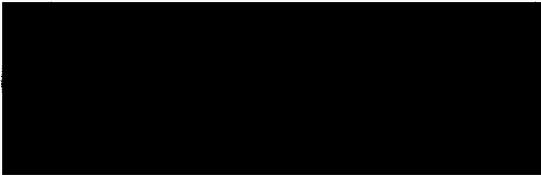


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Berkeley Group would be happy to provide any further information that might be useful and engage with the Council to address these practical issues. If the Council chooses to progress to Examination on the basis of the current DCS, Berkeley would like to reserve the right to be represented at the hearing.

Please do not hesitate to contact me if you require further information.

Yours Sincerely



Director

cc: [Redacted] (St George Plc)  
[Redacted] (St James)



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

From: DAVID and/or FAITH BOARDMAN [boarfam@btinternet.com]  
 Sent: 12 August 2013 16:34  
 To: LambethCILconsultation  
 Cc: [REDACTED]  
 Subject: Kennington Association response to Lambeth's further CIL Consultation

Dear Sirs

This is the response of the Kennington Association to Lambeth's further consultation on the draft CIL Charging Schedule of XXXX June 2013. We responded on 9 November 2012 to Lambeth's original consultation on a draft CIL Schedule. "the earlier KA response".

**Key points of the earlier KA Response, *Lambeth's subsequent Draft and our current views***

- Infrastructure totals are padded with items such as the Thames Tideway Tunnel, which are fully funded without any prospect of being a call on CIL funds - *We welcome the exclusion of "padded" items such as the Tunnel from the Schedule totals.*
- Extend the viability comparators to include the dense luxury development along the riverside - *we see no sign that Lambeth has done this (Table 4.3.1 in the April 2013 BNP Paribas assessment cuts off at £10,656 per sq m in Waterloo, £8,213 in Vauxhall, while Table 4.10.2 assesses no denser than 500 units per hectare), thereby underestimating the leviability capacity of the river frontage of the VNEB area - the strictures in our earlier response still apply. Failing to assess the viability of developments with densities of 1200 units per hectare or more, some with realisations of £1300 per sq ft (£13,650 per sq m), makes the calculation of leviability capacity incomplete and unsound.*
- Kennington misplaced on maps to below Oval - *Kennington still misplaced on maps, though zone descriptions adjusted*
- CIL zoning for residential purposes around Vauxhall should distinguish riverside from hinterland, and charge the former at higher rates -
  - *some rezoning for Vauxhall, with a residential Zone A, covering Waterloo and the whole of the Vauxhall SPD area, charged at £265 per sq m*
  - *charging maps unclear whether lower Lambeth strip element of VNEB OAPF is part of Zone A or Zone B*
- ***No sense in charging the lower Lambeth strip as Zone A - should be Zone B. While £265 might be apt for VNEB hinterland, inadequate viability assessment (see above) means that it grossly undercharges the profitable riverside. Boundaries and rates here should be rethought with realistic viability assessment***
- proposed charge of £125 per sq m for office development in Waterloo and Vauxhall risks discouraging development and job creation - *Lambeth has taken no notice (we note incidentally that while the informal consultation pack shows the "Waterloo and Vauxhall Office Area" on a map, this is omitted from the actual Draft CIL Charging Schedule, on which the consultation is formally taking place) - the strictures in our earlier response still apply, reinforced by the comparative information ref going office CIL charges from other boroughs now available and exhibited at the consultation seminar,*

*(Wandsworth £100, Southwark £100). The 8,000 jobs promised Lambeth from the VNEB OAPF are slow in coming forward, and Lambeth should not charge more than £75 per sq m.*

- *Extend the retail charge of £115 per sq m for superstores of over 2,500 sq m to incremental development that takes an existing store over the 2,500 sq m limit - ignored. Given the desire to support local shopping centres in the draft Local Plan, which we support (while having reservations about the methods proposed), and given the difficulty in regulating out of centre and edge of centre retail development, which are squeezing the life out of retail centres such as Kennington, we now think that all retail development outside local shopping centres, as zoned blue on the Plan proposals map, should be charged with £115 per sq m CIL*
- *Further analysis of CIL versus S106 tariff for a selection of sites should inform the decision on the "meaningful proportion" of CIL for local retention - ignored. In the absence of analysis, we continue to argue for a proportion of at least one third.*
- *"Open book arrangements" for any viability study purporting to justify any application for discretionary relief - Lambeth now proposes wider availability of such relief, but ignores suggested transparency. Our original criticism of "confidential" viability studies stands.*
- *Assurance sought that, absent a joint charging schedule with another borough, all CIL revenues will be spent in Lambeth - no such assurance given. We renew our request for this assurance, particularly as regards the £7.3 m promised to TfL on account of the Northern Line Extension*

  
Chair  
Kennington Association Planning Forum

  
12 August 2013

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**From:**   
**To:** lambethcilconsultation@lambeth.gov.uk  
**Sent:** Friday, 9 November 2012, 16:26  
**Subject:** Kennington Association response to Lambeth's CIL Consultation

Dear Sirs

I attach a response on behalf of the Kennington Association to the London Borough of Lambeth's consultation on its Preliminary Draft Charging Schedule. If there are any queries on this response, I would be happy to explain our points, and can be contacted as follows



Tel 07771 567 698

Kind regards

  
Chair

Kennington Association Planning Forum

8 November 2012

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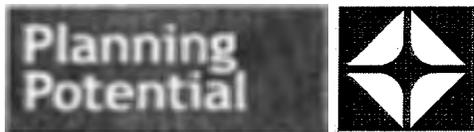
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CIL Consultation July/Aug 2013,  
Planning Regeneration and Enterprise,  
Lambeth Council, 1st floor Phoenix House,  
10 Wandsworth Road,  
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SW8 2LL

9 August 2013.

Our Ref: 1584

Dear Sir/Madam,

**Lambeth CIL Draft Charging Schedule: response submitted on behalf of Redrow PLC**

On behalf of our client, Redrow PLC, please find below representations made in response to the Lambeth CIL Draft Charging Schedule consultation.

Redrow is one of the UK's leading property developers and an established house builder, with a history of investing in major development schemes across London. Representations are submitted to safeguard Redrow's future development interests in the borough and help ensure the viability of future investments is not threatened by the Council's emerging CIL charging schedule.

Whilst we are supportive of the approach taken by the Council in general, we have fundamental concerns regarding certain elements of the Draft Charging Schedule. The representations respond to the proposed charging rates for residential development and recommendations are made for the implementation of an instalment policy and discretionary exceptional circumstances relief.

**Residential Charging Rate**

An essential component of the CIL Regulations is to ensure that the proposed charging schedule rates are viable. The Community Infrastructure Levy: An overview (CLG, May 2011) explains in paragraph 23 that:

"Charging authorities wishing to introduce the levy should propose a rate which does not put at serious risk the overall development of their area. They will need to draw on the infrastructure planning that underpins the development strategy for their area".

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Charging authorities should use evidence to strike an appropriate balance between the desirability of funding infrastructure through CIL and the potential effects, taken as a whole, of the levy on the economic viability of development across their area. Whilst it is for the charging authority itself to decide where to strike that balance, this "balance" has to be considered alongside other policy considerations contained in the Local Plan, the Mayoral CIL and any scaled back Section 106 planning obligations.

We support the Council's approach in setting variable rates for CIL. This approach helps ensure CIL charges are relevant to the infrastructure needs of different development types and accords with the Community Infrastructure Levy Regulations 2010 (as amended). However, it is a concern that the proposed charges are set at a level that could have an unacceptable negative impact on the economic viability of development, which is contrary to the objectives of the CIL Regulations and the NPPF. We consider the proposed rates for residential development to be set too high, particularly the rate proposed for Zone A at £265 per square metre.

The residential charging rates proposed range from £50 per sq m at the lower rate, to £150 at the intermediate rate and £265 at the higher rate. The difference in the proposed rates across the three zones is broad. It does not reflect the actual impact that residential development would have on the infrastructure needs of the different zones. Indeed, little evidence has been presented to demonstrate demand for infrastructure arising from residential development in Zone A would be significantly higher than that within Zones B and C.

Adjustment of the residential charging rate is considered essential for the delivery of housing and the objectives of the Local Plan. Specifically, we are concerned that the highest tier of the residential charging rates (£265 per sq m) will adversely impact on land supply and create a significant barrier to delivering homes in the most sustainable locations in the borough. Indeed, the rate is at such a level that it might render sites unviable. Therefore we recommend the Zone A residential charging rate is reduced. In this regard we would urge the Council to undertake further viability assessment work on the impacts on development of the proposed residential CIL charges. Our client would be happy to provide input to this process.

#### Instalment Policy

The timing of CIL payments is of critical importance to the ability of developers to bring forward development. The CIL Regulations allow CIL charging authorities to put in place policies for the payment of CIL in instalments to the charging authority, rather than requiring full payment upon commencement of development. Within the current economic context it is considered appropriate to introduce this level of flexibility.

To reduce the burden on developers, the Council is encouraged to develop its own instalment policy. While we note that although the Council Lambeth has stated that it will consider introducing an instalment policy in due course, we question the decision not to consult on a staged payments policy at this stage.

Increased flexibility in paying the levy is essential for developers because they only have access to certain levels of funding through the construction process. This is dependant on sale volumes, market conditions and lending criteria. Significant upfront costs often apply to unlock development. If Lambeth introduces a charging schedule that does not offer flexibility and the ability to pay in instalments, this is likely to threaten the deliverability of development projects.

A number of other charging authorities have adopted an instalment approach and allowed for greater flexibility than is already provided by the Mayor of London's approach. By way of an example, the London Mayor's instalment policy is compared with that of Wandsworth Council's in Table 1 below:

	<b>Mayor of London</b>	<b>Wandsworth Council</b>
Any amount up to £100k	No instalments	No instalments
Between £100k-250k	No instalments	2 Instalments
Between 250k-500k	No instalments	3 Instalments
Between 500k -£2m	2 Instalments	4 Instalments
Between £2m - £8m		4 Instalments
Over £8m		4 Instalments

Table 1: Comparison of Instalment Policies

Wandsworth Council's instalment policy provides flexibility required by developers. The amounts and timescales of which CIL is to be paid in line with Wandsworth Council's instalment policy are as follows:

- Less than £100k: Payable within 60 days of commencement of development.
- Amounts between £100k and £250k: £100k payable within 60 days of commencement of development, remaining balance payable within 120 days of commencement of development.
- Amounts between £250k and £500k: £100k payable within 60 days of commencement of development, remaining balance payable in two equal instalments within 120 and 180 days of commencement of development.
- Amounts between £500k and £2m: £250k payable within 60 days of commencement of development, remaining balance payable in three equal instalments within 120, 180 and 240 days of commencement of development.

- Amounts between £2m and £8m: £500k payable within 60 days of commencement of development, remaining balance payable in three equal instalments within 180, 360 and 540 days of commencement of development.

We urge Lambeth Council to introduce its own instalment policy to allow the phasing of payments in recognition of funding constraints, the cash flow of development and the build rates expected. Any instalment policy should cover the following:

- The commencement of the instalment policy on adoption of CIL;
- The number of instalments that can be made by development size;
- The timings of payments post commencement – based on timeframes which have regard to availability of capital and average build rates; and
- The minimum development threshold which instalments would not apply (this should be set as low as possible).

In bringing forward a staged payments policy, we urge the Council to take into account the practical issues associated with the fact that many major development projects are implemented in phases. Consideration should be given to allow for the phasing of large scale developments which have been granted full as well as outline planning permission.

Although the Council states that "sites delivered over long periods of time can be structured so that there are a number of phases, each with their own CIL liability", flexibility through staged payments is sought to ensure that development proposals are not restricted and to ensure the viability and long-term delivery of residential development is not affected within the borough.

### S106

It is also requested that Council brings forward its Draft Section 106 on Planning Obligations as soon as possible. Within this consideration should be made for issues which will affect the implementation of CIL, including making an allowance for payment of CIL by instalment as discussed above.

### Exceptional Circumstances Relief

Given the importance of ensuring that the levy does not prevent otherwise desirable development, the CIL Regulations provide for discretionary relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay the levy. We welcome the Council's proposal to include provisions to consider exceptional relief applications on a case by case basis to allow for necessary reductions of CIL liabilities in cases where there would otherwise be an unacceptable impact on economic viability.

Regulation 55 (as amended by the 2011 Regulations) confirms a charging authority may grant relief ("exceptional circumstances") from liability to pay CIL in respect of chargeable development if: (a) it appears to the charging authority that there are exceptional circumstances which justify doing so; and (b) the charging authority considers it expedient to do so. However exceptional circumstances relief can only be granted where-

- a) The LPA has opted to make exceptional circumstance relief
- b) A planning obligation under S106 has been entered into; and
- c) The Charging Authority considers that the cost of complying with the planning obligation is greater than the CIL amount payable and it would have an unacceptable impact upon economic viability.

Regulation 56 requires the Council to publish their intention to offer exceptional circumstances relief prior to implementing CIL.

Mindful of the current and forecast future economic climate and likely downward pressure on rental levels, it is considered necessary for the Council to offer this relief, thereby allowing a degree of flexibility for applicable schemes.

#### Summary

We strongly encourage the Council to adopt a more positive approach towards development and with future housing delivery in mind. The draft charging schedule fails to find an appropriate balance between securing funding to meet future infrastructure needs and ensuring development remains viable. Inflated CIL charges would simply frustrate potential development opportunities. In some instances this may dissuade investors entirely. The knock-on consequences of this are potentially very severe in terms of securing necessary investment to deliver new homes within the Borough. As a result, local and national policy objectives to encourage sustainable development have been overlooked.

In addition to requesting lower CIL levels for residential development, we urge the Council to bring forward measures in relation to payment instalments and discretionary relief, as noted above.

We trust the above comments will be taken into account in finalising the CIL Charging Schedule for Lambeth. We would be most grateful to be kept informed of progress. In the meantime, please contact us should there be any queries regarding the above.

Yours faithfully,



**PLANNING POTENTIAL**





**BY POST AND EMAIL ([lambethCILconsultation@lambeth.gov.uk](mailto:lambethCILconsultation@lambeth.gov.uk))**

Our Ref: AE/CW/14491

(email address: [REDACTED])

Direct dial: [REDACTED]

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12 August 2013

Dear Sirs

**LB LAMBETH COMMUNITY INFRASTRUCTURE LEVY –  
DRAFT CHARGING SCHEDULE (DCS)  
REPRESENTATIONS ON BEHALF OF UNITE GROUP PLC**

I write in respect of the above on behalf of my client UNITE Group PLC (hereafter 'UNITE') and further to the letter of representation submitted in respect of the Preliminary Draft Charging Schedule in November 2012. Whilst it is acknowledged that LB Lambeth intend to introduce discretionary relief (where applicable) the proposed levy of £360/sq.m for student accommodation remains unjustified does not positively reflect delivery of key Core Strategy objectives. The proposed Draft Charging Schedule (DCS) levy for student accommodation is therefore objected to by UNITE. This letter initially sets out the policy background before detailing the principal areas of objection. A conclusion is then provided.

**Policy Background**

These representations are supported by relevant planning policy within the National Planning Policy Framework (NPPF), the Community Infrastructure Levy Regulations 2010 (as amended), the Community Infrastructure Levy Statutory Guidance (CLG, April 2013) and Proposed CIL Regulation Amendments (CLG March 2013).

**Government Guidance and Strategic Planning Policy**

*National Planning Policy Framework (March 2012)*

NPPF paragraph 175 requires the LPA to ensure CIL should "support and incentivise new development" and this reflects the Housing Growth Agenda and Ministerial Statement of 6 September 2012. Various other NPPF Policies are referred within the statutory guidance.

### *National Policy – CLG Statutory Guidance (April 2013)*

Department for Communities and Local Government (CLG) have issued updated Statutory Guidance (SG) regarding the Community Infrastructure Levy (CIL). Paragraph 4 requires the charging authority to consider relevant national planning policy (including the NPPF) when drafting a charging schedule.

Paragraph 8 confirms a balanced judgement between the introduction of CIL and its impact upon development is required and that in meeting this test LPAs must have regard to NPPF (Paragraph 173-177) demonstrating the ability to implement the development objectives of the Local Plan should not be threatened.

Paragraph 21 requires the charging authority to demonstrate how the proposed CIL rate(s) will contribute towards the implementation of the development plan and support development across their area. It further requires that the potential effects of the proposed levy on the economic viability of development.

Paragraph 22 notes the background viability evidence should provide information regarding the level of development contributions previously raised through comparable S106 agreements.

The policy context set out immediately above confirms the detailed approach required by LPAs to account for development viability when preparing draft Charging Schedules.

### *Proposed Amendment to CIL Regulations (March 2013)*

Paragraph 19 of the proposed amended CIL regulations seeks a more evidence-based approach at examination. This is supported by UNITE as the requirement to demonstrate how the rates contribute towards implementation of the relevant plan will ensure that a more positive approach is adopted, particularly regarding housing supply (including student accommodation).

### *CLG – Clarification of Student housing*

- Housing research by the CLG confirms purpose built flats should be included in overall housing supply, as a form of specialist accommodation, meeting a specific housing need.
- This was clarified in Parliament by the Housing Minister in December 2011.

### *Adopted London Plan 2011*

- The London Plan was adopted in July 2011.
- Policy 3.8(B) identifies a number of specialist housing needs across London and requires local authorities in both a plan-making and development control capacity to account for all forms of housing need.
- Criterion (h) is of specific relevance and requires Local Authorities to account for strategic and local student accommodation need and to ensure the capacity for conventional homes is not compromised through this provision.

### *GLA Adopted Housing Supplementary Planning Guidance (SPG, November 2012)*

This document was adopted by the GLA in November 2012 and confirms: -

- Student accommodation is a specialised form of housing;
- And as such, it is exempt from the detailed residential standards set out in the draft Housing SPG.

Further, paragraph 3.1.50 of the draft Housing SPG states: -

*"In considering LDF policy approaches to, and proposals for new student accommodation, boroughs should not constrain provision which meets strategic as well as local needs."*

### **Local Development Plan and Guidance**

#### *LB Lambeth Core Strategy*

This document was Adopted in 2010 and generally reflects the strategic policy approach toward student accommodation delivery, supporting this across the borough as an identified specialist housing need, being mindful of the wider requirement to deliver conventional housing.

#### *LB Lambeth Local Plan DPD*

This document was published in draft in April 2013 and proposes an increasingly restrictive approach to student housing delivery in the borough by limiting student accommodation on sites which have potential for delivering conventional residential. This is considered an overly restrictive approach, and representations have been submitted accordingly.

### **Representations to Draft Charging Schedule (DCS)**

The DCS proposes a disproportionately high student accommodation CIL rate when compared with alternative land uses and does not fully account for the CIL impact upon scheme viability. Whilst the Council intends to introduce Discretionary Relief (on restricted grounds) the Viability Assessment undertaken on behalf of the Council remains unaltered, despite representations submitted in November 2012. UNITE therefore object to the Draft Charging Schedule (DCS). These representations should be read alongside the earlier draft.

The following concerns within the Council's Viability Assessment in respect of student accommodation remain:

1. Rental level assumption
2. Relationship with development plan and s106
3. Comparison with conventional residential development
4. Discretionary Relief

Each issue is referred to in turn below.

#### *1. Rental Level Assumption*

Representations submitted in November 2012 demonstrate that the headline average rental level used to determine scheme viability within the development appraisals is not justified through market analysis.

Evidence submitted to the examination will demonstrate that the £200p/w (term) and £230p/w (vacation) rental levels used to benchmark student accommodation viability is not supported for future student accommodation schemes within the borough. This undermines the viability assumption made in respect of student accommodation schemes, and in turn, the ability to account for the proposed CIL rate of £360/sq.m.

Mindful of the impact on viability, this will prejudice delivery of student accommodation, contrary to Paragraph 21 of the SG, which specifically requires the LPA to demonstrate how the proposed levy will assist the implementation of the development plan objectives. Detailed market analysis currently being reviewed on behalf of UNITE will demonstrate protected reduced rental levels (from the unjustified figure used within the viability appraisal) have a direct impact upon scheme viability and therefore delivery. Further, purpose built student accommodation has a positive impact on housing supply through meeting an identified specialised housing need, therefore potentially meeting wider London Plan and Core Strategy objectives. This is reflected within the officer's report to committee in respect of student accommodation scheme at 30-60 South Lambeth Road (LPA Ref:11/04181/FUL). It states "*London's universities make a significant contribution to its economy and labour market and it is important that their attractiveness and potential growth is not compromised by inadequate provision for new student accommodation.*" An excessive CIL charge prejudices delivery of these objectives.

As a result the proposed charging levels for student accommodation cannot be supported as (a) the rental level used to determine overall viability is unjustified, and (b) delivery of student accommodation to meet the Council's future development plan objectives regarding housing delivery (and GLA objectives) is prejudiced.

## 2. Relationship with S106

Despite clear guidance from CLG to ensure proposed levy does not derail the local plan objectives and that the levy should be proportionate with existing S106 contributions, the DCS does not reflect this. Specifically, the DCS fails to comply with Paragraph 22 of the Statutory Guidance (SG) published by the CLG in April 2013 which requires proposed levy rates to reflect the levels of financial contribution generated under S106. The proposed levy at £360/sq.m results in a disproportionately higher obligation for student accommodation schemes than currently required. Lambeth currently operate a 'tariff' approach to planning obligations with the student accommodation set at £40/sq.m.

The imposition of a disproportionate increase in financial contributions Paragraph 175 of the NPPF requires the Council to demonstrate the proposed CIL rate contributes to the positive implementation of the plan, including an assessment of how the proposed rate is balanced across various development sectors. This is echoed within the CLG Statutory Guidance (SG) at Paragraph 8. Whilst a balanced approach has been adopted by the Council in respect of convention residential (referred in greater detail below) and hotel development, a similar assessment in respect of student accommodation is not made. The DCS therefore fails to comply with the NPPF and the SG in this regard.

The viability assessment prepared on behalf of the Council fails to account for on-site infrastructure provision made under S106 and which have represented a significant element of various student schemes within the borough. For example,

Spring Gardens, Vauxhall, (LPA Ref 11/04510/FUL) secured incubator business units, local landscaping and a new community facility building, in addition to c£380,000 financial contribution. The approval at 30-60 South Lambeth Road (LPA ref 11/04181/FUL) incorporated a public swimming pool and gymnasium facility, both for public use, in addition to c£300,000 S106 contributions requested by Lambeth Council (Excluding GLA requirements).

Such a failure potentially represents a 'double-counting' of payment for infrastructure provision. Incorporating an appropriate assumption within the viability testing for on-site infrastructure through S106 is essential for a robust viability assessment and will have a negative impact upon the viability buffer within the scheme appraisal. A reduced headline CIL rate for student accommodation would satisfactorily address this issue and in accordance with Paragraph 30 of the SG, would ensure that the rate is not set at the margins of viability. As drafted, this element of the DCS is also contrary to SG paragraph 21 (demonstration how the CIL rate will assist in implementation of plan objectives). Setting a CIL rate without full justification of various inputs determining scheme values prejudices delivery of this specialised accommodation, directly conflicting with the NPPF and undermining CIL Regulation 14.

### *3. Comparison Between Student and Conventional Housing*

Paragraph 175 of the NPPF requires the Council to demonstrate the proposed CIL rate contributes to the positive implementation of the plan, including an assessment of how the proposed rate is balanced across various development sectors. This is echoed within the CLG Statutory Guidance (SG) at Paragraph 8.

Further, Paragraph 37 of the SG (April 2013) also confirms with regard to differential rates that charging authorities should seek to avoid undue complexity and that Charging Schedules should not impact disproportionately on particular sectors or specialist forms of development.

Paragraph 6.39 of the Council's viability assessment makes a brief comparison with conventional housing. It notes the proposed rate does not disproportionately impact upon student housing as such schemes "are typically more viable than general residential due to the absence of any requirement for affordable housing". This approach is flawed as provision of affordable housing under the S106 regime is subject to individual scheme viability. Flexibility therefore exists to reduce the level of S106 contribution in this regard, offsetting any impact of CIL. This flexibility regarding individual scheme viability cannot be harboured for student accommodation. A disproportionate impact upon student accommodation schemes therefore exists, contrary to the SG.

### *4. Discretionary Relief*

The principle of allowing an element of discretionary relief for qualifying schemes is supported by UNITE, however it is considered the definition of how the three statutory tests will be applied. In particular the situations where the Charging Authority considers "that the cost of complying with the planning obligation is greater than the chargeable amount payable in respect of the chargeable development" (s.55 of the CIL Regulations (2010) as amended). Student accommodation that is tied to specific rental levels through a S106 Agreement (either through a partnership scheme with a Higher Education Institution) is less likely to be able to viably accommodate a disproportionate CIL rate. Discretionary

relief applicable upon this basis would allow delivery of this type of accommodation, meeting identified specialist need.

### **Conclusion**

Purpose built student accommodation has a positive impact on housing supply thorough meeting an identified specialised housing need. The impact of CIL upon scheme viability requires consideration within the context of the Government Growth Agenda. The proposed CIL rate for student accommodation in LB Lambeth is not justified by an appropriate evidence base and does not reflect relevant national policy. UNITE therefore object to the proposed £360/sq.m levy and are mindful of the following specific issues: -

1. No consideration is given to emerging/ future likely rental levels and assessment of risk in developing student accommodation.
2. The Council viability assessment confirms that minor variations in scheme value / yield significantly impacts upon scheme viability and its ability to support a CIL payment. This demonstrates a reduced levy is necessary in order to comply with the NPPF and SG.
3. An increased viability buffer for student accommodation schemes is therefore necessary.
4. This approach also ensures no disproportionate impact upon one specific development sector occurs, in accordance with the SG.
5. The proposed increase over the current financial contribution under S106 for student schemes is disproportionate and excessive.
6. The approach to discretionary relief should be clarified.

Therefore a further reduction in the student accommodation levy within the adopted Charging Schedule is required in order to reflect the NPPF and the SG.

I trust this is in order and will be taken into account prior to submission of the DCS to the Inspectorate. Please do not hesitate to contact either Matthew Roe or myself should you have any queries.

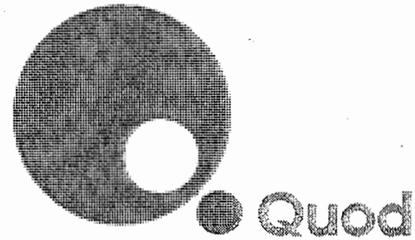
Yours faithfully



  
**Senior Associate Director**

c.c UNITE Group PLC

our ref: SB/Q30314  
email: [REDACTED]  
date: 12 August 2013



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Dear Mr. Fraser,

**LB LAMBETH COMMUNITY INFRASTRUCTURE LEVY DRAFT CHARGING SCHEDULE CONSULTATION (JUNE 2013) AND DRAFT REVISED S106 PLANNING OBLIGATIONS SPD**

**Introduction**

I am writing on behalf of Braeburn Estates Limited Partnership (Braeburn Estates) in response to your Draft Charging Schedule (DCS) and associated documents, published for consultation in June 2013. We will also refer to the Council's Draft revised s106 planning obligations Supplementary Planning Document (SPD) (July 2013, due to be published for public consultation in August 2013) although we will prepare further separate representations on this document.

As you will be aware, the Council made a resolution to grant consent to Braeburn Estates planning (LPA application ref. 12/04708/FUL) and associated applications for the redevelopment of the Shell Centre, Waterloo.

The mixed-use development will be one of the largest ever investments in the Borough comprising offices, residential, retail, leisure/community uses located within eight new buildings and basement. This includes:

- Up to 877 homes including affordable housing
- 76,043m<sup>2</sup> of office floorspace including a new headquarters building for Shell
- Up to 5,986m<sup>2</sup> of retail floorspace
- Up to 2,557m<sup>2</sup> of community/leisure floorspace
- Provision of new public realm and landscaping within the development, including: new public square incorporating water feature; additional tree planting; new pedestrian through routes, including additional routes between York Road and Belvedere Road



We are pleased that the Council has responded to our formal comments from the previous round of consultation and those made at the workshops that have been held. In particular we support the proposed single charging zone for Waterloo and Vauxhall, reflecting the higher existing use values in the Waterloo part of the area, and the decision to allow for Exceptional Circumstances relief. We note that the Council has published a draft revised S106 Planning Obligations SPD and Regulation 123 list which enables us to consider whether appropriate safeguards are in place to ensure S106 obligations are scaled back.

Braeburn Estates do however continue to have significant concerns about both the Draft Charging Schedule and the approach taken in the Regulation 123 list and Draft revised s106 Planning obligations SPD.

We will set out our comments in detail below but thought that it would be useful to summarise at the outset our key points:

- Our principal concern is that the proposed CIL rates for residential and commercial development will threaten the delivery of the sites and scale of development set out in the Local Plan (CIL Guidance paragraph 8);
- That the Council has not followed CIL Guidance in relation to undertaking site specific assessments or in properly identifying recently achieved Section 106 obligations or affordable housing delivery and comparing that to the levels of obligations that would be required from the same developments if the proposed DCS were to be applied to them;
- This will put at risk, not only the development of individual sites, but also the achievement of the Council's targets for affordable housing, a clear priority for the council. The proposed rate for office development will put Lambeth at a further competitive disadvantage with other central London authorities all but one of whom now have lower proposed CIL rates for this use than north Lambeth. This will put at risk Lambeth's ambitions to achieve growth, and potentially have wider financial impacts in relation to business rate retention
- That the draft Regulation 123 list and the Draft revised s106 planning obligations SPD are inconsistent with one another, the CIL regulations and the Government's CIL Guidance.

Braeburn Estates is of the view that as it currently stands the Draft Charging Schedule should not be approved by an Examiner and would like to reserve its right to appear at any Examination.

### **Extant Schemes**

The Council appears to have disregarded potential impacts on strategic developments which already have planning permission in setting its CIL rates. However, it is typical for large scale, complex, phased developments to be revised, not only through Section 73 applications, which are only liable for CIL on any uplift, but also new applications and drop ins. Under current regulations these would be fully CIL liable. The Council should not therefore assume that developments that have been granted planning permission prior to the adoption of the Charging Schedule will never be liable for CIL, when there is a good chance they

might be in whole or part. The Council should therefore have such developments in mind when considering appropriate rates and viability.

### **Preliminary DCS Representations and the Council's Response**

The key points raised in our previous representations (November 2012) on the Council's Preliminary DCS Consultation were:

- The delivery of development at Waterloo is critical to the achievement of both Lambeth Council's and Mayor of London targets for homes and jobs. CIL charging rates should not jeopardise the delivery of schemes in this area. At present, charging rates are considered to be of a level that would put development at risk;
- There is a clearly defined list of sites which comprise the development pipeline which will secure the delivery of housing and job targets. As such the Council should undertake specific viability testing of those sites;
- The Council needs to demonstrate that the impact of the combined weight of expected developer contributions, including CIL, does not jeopardise the viability of key sites; and
- General concerns regarding the inputs to the viability appraisal which are not considered to be reflective of 'real-life' development circumstances.

The Council has responded to this, and other representations making similar points, in three ways:

- By merging the Vauxhall and Waterloo charging zones with a single rate at the level that had previously been proposed for Vauxhall (£265 per square metre)
- Producing an updated Viability Study (2013) but not addressing any of the site specific concerns on the basis that 'Lambeth has no strategic sites',
- Producing a draft Regulation 123 list and Draft revised s106 Planning Obligations SPD which is intended to provide re-assurance in relation to residual Section 106 issues.

We are pleased that the Council has made such information available as it allows us to make a more detailed response, however this has, if anything, increased our concerns about the potential impacts of the proposed residential and commercial CIL rates on development. Further details of our concerns are set out below.

As far as we are aware the Council has not provided any evidence in relation to previously achieved Section 106 contributions and affordable housing delivery.

### **Viability Study**

Our review of the revised (2013) Viability Assessment document suggests that have been few if any substantive changes to the previous version, despite the publication in December 2012 of the new CIL Guidance.

Our points made in response to the PDCS therefore still stand. In summary:

- The construction period for larger sites, at 24 months, does not reflect the reality of large complex sites and includes no planning period, or pre-commencement lead in. The impact of this has very significant impacts on early investment costs and cashflow, particularly for phased developments. In addition we assume that the 4 month sales period for the 'Type A' sites set out in paragraph 4.46.1 is a typographical area, but it has been carried forward into the updated study. This again has a potentially significant impact on the conclusions, but it is not possible to check as the details set out in the Annex are only output sheets;
- Costs for complex sites are underestimated, particularly in relation to demolition and external works. If an appropriate allowance is included for site preparation and the external work allowance is increased to a more appropriate level for larger sites (for example typology 6) this will materially impact the reported surplus available for CIL.
- The impact of the payment of Mayoral CIL is not properly assessed. We assume following the response to our previous representations that Mayoral CIL payments are dealt with in the same way as Lambeth CIL payments. This would suggest that that Mayoral CIL payments for larger schemes are identified as three payments at 1, 12 and 24 months. In fact the Mayor's adopted instalment policy, for a development on the scale of the Shell Centre, is for two instalments, at 60 days and 240 days. It is a requirement for Boroughs to take the Mayor's CIL into account and this has not been done properly to date.

The combination of these factors, if properly assessed, would significantly reduce the notional maximum CIL charges set out in the report.

### **Site Specific Appraisals & Evidence**

It is recognised by all parties in the CIL setting process, including the Council and its advisers, that high level generic appraisals of the type used in the CIL Viability Study are at best a broad guide to viability, and cannot reflect the diversity of sites 'on the ground'. This is the ostensible reason that, for example, the Viability Study does not include 'abnormal costs', although they are common to many of the larger complex sites, particularly those adjacent to or above transport infrastructure as is the case in much of North Lambeth.

This is why the CIL Guidance suggests that Councils should undertake site specific sampling, and it is worth quoting the relevant paragraph (27) in full:

*"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. In most instances where a charging authority is proposing to set differential rates, they will want to undertake more fine-grained sampling (of a higher percentage of total sites), to identify a few data points to use in estimating the boundaries of particular zones, or different categories of intended use. The sampling should reflect a selection of the different types of sites included in the relevant Plan, and should be consistent with viability."*

This does not say that Councils should only assess strategic sites; and nor does it say that in order for a site to be considered 'strategic' it must account for 5% of the housing supply. In this context it should also be noted that sites such as the Shell Centre, Elizabeth House and Waterloo Station, could be considered strategic sites in terms of their ability to deliver commercial floorspace as well.

The Council clearly does rely on the Waterloo and Vauxhall areas for the delivery of the Plan targets as a whole, and as Opportunity Areas they are also strategic locations in a London context. Despite this the Council has undertaken no site specific assessments *"where the impact of the levy on viability is likely to be most significant"* and, as far as we are aware, has not sought to engage with developers and landowners on such appraisals.

To illustrate the point, the Council has recently resolved to grant permission for two major developments with a large commercial office component in the Waterloo area, Braeburn's development at the Shell Centre and the neighbouring Elizabeth House. Appraisals for these developments, to which the Council has access, demonstrate that they could not support obligations at anything like the rate proposed in the DCS. In our opinion the Council should place great weight on the findings of these assessments which constitute 'appropriate available evidence' as set out in the CIL legislation and Guidance, as opposed to abstract and generic assessments for typologies that, as far as we are aware, have been brought forward nowhere in the Borough.

To compound this problem the Council appears to have also disregarded the requirement set out in Paragraph 22 of the Guidance 22 to:

***"prepare and provide information about the amounts raised in recent years through section 106 agreements. This should include the extent to which affordable housing and other targets have been met."***

We are aware that the Council has required developers across the Vauxhall and Waterloo areas to undertake independently verified viability assessments of their proposals to demonstrate that affordable housing has been maximised. The CIL Viability Study makes reference to having reviewed some of its inputs against these studies. However the Council does not appear to have undertaken the straightforward task of applying the proposed rates set out in the Draft Charging Schedule, applying the formula in CIL Regulation 40 to these developments, in order to sense check whether the emerging rates are of a similar order of magnitude. In the case of the Shell Centre permission we can demonstrate that if the proposed

CIL rates had been applied the development would not have been viable. We understand that this is the case with a significant number of other developments in the north of Lambeth.

It is for these reasons we believe that the Council has not, as required, considered appropriate available evidence in proposing its CIL charge, and without a clear understanding of the implications for the delivery of real pipeline developments in strategic locations, it cannot demonstrate that it has struck the appropriate balance between the need for CIL funding and the impact on the delivery of the scale and types of development set out in the Local Plan.

### **Infrastructure Planning, the Regulation 123 List and Draft Revised s106 Planning Obligations SPD**

The CIL Guidance (December 2012/April 2013) also includes some significant additional requirements on local authorities to provide better information on infrastructure planning and in particular on residual obligations after a CIL charge has been adopted.

This reflected concerns that local authorities were assuming a very large scaling back of S106 requirements without providing any evidence or commitment that this would happen. Lambeth's CIL viability study, for example, assumes S106 obligations of £1,000 per home, which is significantly below what is currently required.

One of the main purposes of the CIL guidance is to allow developers and other stakeholders to properly understand and make an informed response to an authority's assumptions on Section 106.

The Guidance includes some very specific requirements on local authorities including:

- Setting out a draft list of infrastructure *"to provide transparency on what the charging authority intends to fund in whole or part through the levy and those known matters where section 106 contributions may continue to be sought"*. (para 15);
- Setting out how Section 106 policies will be varied (para 87);
- 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 (para 88); and
- Where the regulation 123 list includes a generic item (such as education or transport), section 106 contributions should not normally be sought on any specific projects in that category. Such site-specific contributions should only be sought where this can be justified ***with reference to the underpinning evidence on infrastructure planning made publicly available at examination.***" (para 88)

At present we believe that the Regulation 123 list and Draft revised s106 Planning Obligations SPD fall well short of these requirements.

With regard to the Regulation 123 list we believe that the scope of the list is correct but that the use of the phrase "Lambeth Council will not *normally* seek planning obligations" would undermine the purpose of the list. In fact our view is that, because of this, the proposed list is not consistent with Regulation 123 of the CIL regulations which does not allow the Council to seek to lay the basis for exceptions in this way.

Our concerns about this are amplified by the approach taken to the Draft revised s106 Planning Obligations SPD. This revised SPD is intended to support the 'scaling back' of planning obligations, but at 70 pages long is nearly as extensive as the current document. We will provide our detailed comments on the Draft revised s106 SPD under separate cover, but in relation to CIL, sections 5C (Community Facilities) and 5D (Transport) are of most concern.

The Council has included most relevant items in these areas on its Draft Regulation 123 list. However the SPD appears to be seeking to retain the ability to require obligations for major sites or clusters of sites, which it deems, through the use of formulae or required assessments, to have a significant impact. From a review of planning policy it is clear that the bulk of such likely requirements would fall on the Waterloo and Vauxhall areas, which are subject to a Draft and an Adopted area based Supplementary Planning Document respectively which include extensive infrastructure requirements.

The Draft revised s106 planning obligations SPD and the two area specific SPD's all contain lists of potential infrastructure requirements with no clarity as to the cases when such items will be required and impacts on viability and other obligations such as affordable housing. The draft Local Plan adds to this confusion. We would welcome it if Lambeth took the opportunity to rationalise these documents and be much clearer about what will be required where and when and how it will be paid for. The Council has referred to its intention to produce Local Infrastructure Plans, but this clarity is required prior to the examination of the CIL rates and not afterwards.

If the Council wishes to secure Section 106 obligations in relation to these issues it is required to bring that evidence to the examination, and to account for the potential costs in setting its CIL charges (see paragraph 88 of the Guidance). The Council has not provided such evidence to date, nor has it undertaken any site specific appraisals or included any costs (above token ones) in its Viability Study. It should therefore either provide this evidence or remove most of sections Sections 5C and 5D.1 and 2 of the Draft revised s106 planning obligations SPD prior to the examination. More generally the Council should test the proposed scope of obligations against the Regulation 122 tests, as there are a number, particularly in Section 5B, which would be unlikely to be considered necessary or directly related to development in most cases.

The document would merit from being significantly shortened to cover what the likely scope and key heads of terms for Section 106 agreements might be, as it goes into unnecessary detail and in a number of areas simply repeats policy which is set out elsewhere in Lambeth's Local Plan documents.

### **Conclusion**

Braeburn Estates welcomes the opportunity to respond to the consultation on the Draft CIL Charging Schedule, the revisions to the proposed charging zones in the north of the Borough and decision to allow for Exceptional Circumstances relief. We do however continue to have major concerns about the potential impacts of CIL on development in the north of Lambeth, and the approach proposed in the Regulation 123 list and Draft revised s106 Planning Obligations SPD.



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We are keen to continue to be engaged in this process, and look forward to working with you to ensure that CIL is used as a tool to support the achievement of the Council's objectives for Waterloo and does not hinder development.

If you require further information or clarification please do not hesitate to contact me.

Yours sincerely,

[Redacted signature]

[Redacted name]

Director



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12<sup>th</sup> August 2013

Dear Sirs

**Re:Lambeth CIL Draft Charging Schedule consultation**

Thank you for your consultation letter dated 1<sup>st</sup> July 2013.

**Introduction**

Network Rail is the 'not for dividend' owner and operator of Britain's railway infrastructure, which includes the tracks, signals, tunnels, bridges, viaducts, level crossings and stations - the largest of which we also manage.

**Network Rail's position**

- Network Rail believes that it should be exempt from CIL or its developments classified as payments in-kind;
- Network Rail is seeking further clarification on the definition of buildings in CIL regulations. Stations are open-ended gateways to rail infrastructure and should not be treated as buildings and lineside structures used to operate the railway should be classed as railway infrastructure;
- Network Rail would like clarification on whether its developments over 100 m<sup>2</sup> undertaken using our Permitted Development Rights will be CIL liable;
- Given that CIL can be used to fund sub regional infrastructure projects, we hope that railways will be specifically mentioned, alongside roads, as a potential beneficiary of CIL in the regulations.

Given that Network Rail is a not for dividend company whose profits are reinvested in the network, this represents the direct loss of railway investment. However, as an optional, locally set charge, the precise impact of CIL on Network Rail is very difficult to quantify.

We believe that charging CIL on gross internal floor space is disproportionate given that it will encompass very minor as well as major projects. For example, the



installation of a Disability Discrimination Act compliant covered footbridge at a station would add 110 m<sup>2</sup> to floor space.

The way in which our revenue requirement from access charges (paid by train and freight companies) is calculated deducts expected income from developments. Revenue from these developments is then retained by Network Rail and used exclusively to fund its capital investment programme. Network Rail's regulatory assessment makes forecasts of the revenue which Network Rail will receive from this source.

Indeed, Network Rail has obligations to maintain and improve the UK rail network; and maximise returns from land and property no longer required by the rail industry for reinvestment into the railway infrastructure.

Network Rail would therefore require additional funding through the current periodic review by the Office of Rail Regulation, which will set Network Rail's outputs, revenue requirement and access charges for CP4, or some form of regulatory re-opener to address the issue of the CIL.

- the case for an exemption

Given this threat to Network Rail's revenue from CIL, Network Rail very much hopes that it will be granted an exemption for its developments or, as an infrastructure provider, the regulations will treat them as payments in-kind. Network Rail believes it has strong grounds for such an exemption.

Yours Sincerely

██████████

Town Planning Technician  
Network Rail

EK/1732A/36(12Aug13)LBLambeth

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 SW8 2LL

12 August 2013

Dear Sir or Madam,

**LB LAMBETH COMMUNITY INFRASTRUCTURE LEVY: PRELIMINARY DRAFT CHARGING SCHEDULE JULY 2013.**

With reference to the above and on behalf of our client, Wm Morrison Supermarkets plc ('Morrisons'), we write to thank you for providing us with an opportunity to comment on the above document. Morrisons is a major food and grocery superstore retailer which operates a store at Streatham High Street.

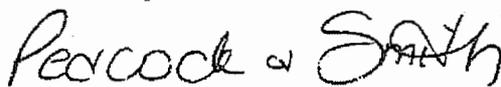
On behalf of our client, we object to the proposed CIL rate for retail development (over 2,500 sq m) of £115 per sq.m the Borough. We are gravely concerned about the viability of the proposed CIL rates for new retail developments. Levies of this level are likely to have a significant adverse impact on the overall viability of future large-scale retail developments, particularly when taking into account other costs for local infrastructure works and other contributions required as part of typical S106 agreements (such as highway works which are typically expensive to ensure large scale retail developments function well).

We consider that the proposed charge will put undue risk on the delivery of food retail proposals, and will be an unrealistic financial burden which is likely to pose a significant threat to potential new investment and job creation in the Borough, particularly at a time of economic recession and low levels of development activity.

In this regard, our client has reviewed the Preliminary Draft Charging Schedule and supporting documentation from a viability perspective, given their expertise in this field. Please see the enclosed representation which provides specific comments.

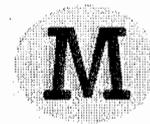
If you have any queries, please contact Ed Kemsley at the address above.

Yours faithfully

  
 PEACOCK & SMITH

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**MORRISONS**

07 August 2013

**London Borough of Lambeth – Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS)**

**Introduction**

For the purposes of these representations we have reviewed the following documents:

1. Community Infrastructure Levy – Charging Schedule (Draft), London Borough of Lambeth, June 2013
2. Community Infrastructure Levy: Viability Study, BNP Paribas, April 2013

We are concerned primarily with retail and large retail development in this representation. Clearly the CIL rates should not stymie economic development, jobs and growth.

**Representation**

<b>Methodology – Benchmark Land Values/Threshold Land Values</b>
<p>BNP Paribas adopt an approach whereby the “input land cost” in the assessment of CIL Viability is calculated using the basis as described in Chapter 3. At Chapter 4 further commentary and explanation is given with respect to the actual calculation of the benchmark land values. It is interesting to note the following</p> <ol style="list-style-type: none"><li>1. That the residential analysis BNP Paribas have selected 4 different land (existing) uses to test a range of different benchmark land values.</li><li>2. However with the commercial developments they have departed from this approach and have set out an approach at Para 4.47. In their own words it is stated that “We have appraised a series of <i>hypothetical</i> commercial developments”.</li></ol> <p>We believe that when it comes to the retail assessment in particular (it applies to the other commercial uses too) that there must be an assessment of benchmark land values which reflect a range of other land uses. The approach adopted is inappropriate and designed to create a gap between existing land values and potential future ones and thus justify higher rates of CIL.</p> <p>To explain this further the spatial context of LB Lambeth must be considered. It is an inner London Borough which is already densely developed (there are no Greenfield development sites). As such any large retail development will occur on land which may have a wider range of pre-existing uses such as retail, roadside (e.g. petrol filling station, showrooms) and residential (including on upper floors). Therefore to take the approach at paragraph 4.47 “....assumes that the existing building is half the size of the new development, with a lower rent and higher yield reflecting the secondary nature of the building.” is unrealistic and designed to produce a higher degree of viability.</p> <p>The approach taken here ignores expressly that any landowner whom is selling land where a site has development potential will wish to share in the prospective “hope” value. This is exceptionally high in locations across London and therefore once again we consider that this hypothetical approach ignores market reality. We do note the “Landowner Premium” figure at table 4.40.1 at 15-20% and consider that this is an arbitrary allowance added to an already depressed figure.</p> <p>This approach is clearly inappropriate and unfairly weighted to create the impression that the existing use value is low and as such the potential CIL that can be levied will be significant.</p> <p>We will make further comments on how the approach taken makes an overly optimistic assessment of CIL.</p>



MORRISONS

**Mayoral CIL – Para 4.25**

We note the comments that the Mayoral CIL has not formed part of the analysis. We consider that this is an omission as any reader may construe the analysis and findings as what the actual CIL payable could be. It would be preferable for this to have been taken into account in the appraisals and work such that the figures presented at “net of CIL”.

It must also be borne in mind that the Mayoral CIL is payable all or in part during the development phase of larger developments as such costs would be financed in the normal way. The analysis does not therefore take into account these additional costs and as such overstate the CIL level proposed.

**Section 278 and S106 Costs – Para 4.26**

It is noted that an allowance has been made in the residential assessments but has been omitted from the commercial assessments. It is highly probable that with Large Retail (and other commercial developments) that local S106 and 278 costs would be incurred – particularly in the spatial context of LB Lambeth. This is a significant weakness in this assessment of CIL and must be rectified.

An allowance must be made for larger developments which would reflect such costs.

**Table 4.48.1 Commercial Appraisal Assumptions for Each Use**

We have specific comments on the assumptions made

1. **Market information and comparable evidence** – there is neither market information nor comparable evidence presented to support the assumption made in terms of the rent assumed. We would expect that rental levels will vary across the Borough as there is a great variation in residential and commercial property values. For instance the value that an operator may pay in West Norwood would not be the same as that paid in Vauxhall and Waterloo? There appears to be no cognisance of this in the work presented. The existing use levels of rents are unrealistically too low – adopting a rental range of £7-£10 psf for retail accommodation in Vauxhall or Waterloo is undervaluing properties significantly.
2. **Commercial Build Costs** – BNP Paribas have not made explicit the dates and types of development that they have based their construction cost assumption. We have referred to BCIS ourselves ( 27/7/13 LB Lambeth – Hypermarkets/supermarkets) and consider that the assumed level is too low the median figure is consistent with that which BNP have selected, but the upper quartile (£1,685 psm and highest £2,243) indicate the wider variation in costs. We would recommend that the cost level is reviewed and the level increased by a minimum of 10%.
3. **Demolition Costs** – an assumption has been made for the entire assessment that these costs will be £5.00 per square foot. We consider that these costs are too low given the very congested and developed nature of LB Lambeth. Costs of demolition (which will need preliminaries and costs possibly of closing footpaths and highways and supporting adjoining structures) will be significant and we would consider that this figure must be changed to a minimum of £10.00 per square foot.
4. **Profit (% of costs)** – profit has been assumed at 20% on cost. This is too low. Given the complexities of land assembly, planning and other development and market risks a developer would be seeking to secure a minimum of 20% on Gross Development Value. The returns proposed here are too low and again intended to produce an optimistic level of CIL

**Retail Development – Para 6.34**

The consultants acknowledge the “recycling of sites”. The question here is how is the methodology they have adopted reflects this?? The assessment of the existing use value is undervaluing the assets that would in reality be acquired and re-developed.

As stated the approach is designed to over emphasise the level of CIL payable and this could have significant impacts on restricting investment in growth and jobs across the Borough.



**MORRISONS**

#### **Development Appraisals – Large Retail**

There are a number of issues which we consider need to be addressed with respect to the development appraisals – some of these have already been mentioned.

1. Allowance for S278/S106 – for large retail such allowances need to be made for localised costs
2. Mayoral CIL – this should be accounted for in these appraisals
3. Demolition Costs – we have already commented on this above and this needs to be increased
4. Site Works/Preparation – there is no allowance for abnormal costs of development which are likely in an urban area like Lambeth where development will occur on previously developed land. Costs of diversions, ground stability, archaeology and decontamination are all relevant and highly probable costs for a developer. None of these have been allowed for.
5. Finance Timescales – the finance has been calculated for a period of 18 months. This is wholly unrealistic for a large retail development. Site assembly, town planning, demolition, site preparation and then construction can take several years. Basically once again the assumption being made is too optimistic. The finance on the land cost needs to be lengthened as a minimum.
6. Developer's Profit – this must be amended to 20% of Gross Development Value.

#### **Summary**

A number of critical points have been made above which require urgent attention. Otherwise LB Lambeth will seriously prejudice development and investment which will lead to growth and employment generation.

The methodology and approach taken has a number of weaknesses which we have set out. Fundamentally we the circumstances of place have not been applied to this assessment, for instance

- Mayoral CIL
- Local S106/S278 requirements
- Density of existing development – resulting in complex and expensive development
- Understating the current use value – the consultants are proposing a site can be acquired for between £155,691 and £465,476 in respect of a 30,000 sq ft retail development. To put this in context the average price for a single residential property in Lambeth is £405,533 (BBC Website – Jan to March 2013). Clearly this approach is unrealistic in its approach.

The assessment needs review such that the local factors are properly reflected otherwise the CIL will prevent future development.