

# Technical Representation in respect of London Borough of Lambeth Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS) consultation

Prepared on behalf of:

**Olympian Homes, London**

March 2020

# Contents

---

1.	Representations	2
----	-----------------	---

---

# 1. Representations

## Introduction

### Purpose

- 1.1 Acting on behalf of Olympian Homes, London ('OH'), Turley has prepared the following written representation to the London Borough of Lambeth ('LBL') Community Infrastructure Levy ('CIL') Draft Charging Schedule ('DCS') and supporting evidence base, which has been published for consultation until Friday 13<sup>th</sup> March 2020.
- 1.2 The purpose of this written representation is to highlight to LBL technical objections and legislative compliance issues in relation to the proposed CIL charges set out in the CIL DCS and the technical viability evidence base utilised to inform and underpin the CIL DCS.
- 1.3 Should LBL continue to place reliance on the CIL DCS and technical evidence base without resolving the issues identified within this representation then OH will have no alternative to proceed to challenge the soundness of the CIL DCS and its evidence base beyond this representation and at Examination in Public ('EIP') before the appointed Examiner.

### Role of Olympian Homes in Delivering LBL's Local Plan

- 1.4 OH is promoting land at 12-20 Wyvil Road, Nine Elms, Battersea, SW8 2SU within the 'Draft Revised Lambeth Local Plan Proposed Submission Version January 2020' (hereafter 'DRLLP PSV'), which was published for consultation in January 2020.
- 1.5 The site provides the potential for a high density Co-Living development.

### Representation to LBL CIL DCS

- 1.6 The focus of the representation is with regard to the "Local Plan and CIL Viability Review" (hereafter 'LPCVR') as prepared by BNP Paribas ('BNPPRE') and published in December 2019.
- 1.7 The LPCVR was commissioned by LBL to test the propensity of set updated CIL charging rates alongside the proposed policy positions, and to inform LBL's drafting of policies, within the DRLLP PSV.

### Policy-on Rate Setting

- 1.8 The NPPF requires that Plans are deliverable<sup>1</sup>. Plans are only 'sound' if they are effective, by being demonstrably deliverable over the plan period, and consistent with national policy<sup>2</sup>.

---

<sup>1</sup> MHCLG (2019) National Planning Policy Framework ('NPPF'): paragraph 16(b)

<sup>2</sup> MHCLG (2019) National Planning Policy Framework ('NPPF'): paragraphs 16(c) – 16(d)

- 1.9 The NPPF also requires that Plans clearly set out the contributions expected from development and that such policies should not undermine the deliverability of the plan<sup>3</sup>.
- 1.10 Planning Practice Guidance (PPG) for CIL<sup>4</sup> requires that the available evidence base for a charging schedule must be robust, prepared in accordance with PPG<sup>5</sup> and national planning policy<sup>6</sup>, and must ensure that the charging authority can demonstrate that the proposed rates will positively contribute to implementation of the relevant Plan and support development across the area<sup>7</sup> in accordance with the regulatory requirements (notably Regulation 14[1])<sup>8</sup>.
- 1.11 PPG also confirms plan makers should undertake site-specific viability assessment for sites that are critical to delivering the strategic priorities of the relevant Plan<sup>9</sup>.
- 1.12 LBL has neither prepared nor published viability evidence that either:
- (i) demonstrates that the proposed CIL DCS rates will positively contribute to implementation of the relevant Plan<sup>10</sup>; or
  - (ii) tests the financial viability of major sites critical to the delivery of the relevant Plan.
- 1.13 PPG requires that, *“charging schedules should be consistent with, and support the implementation of, up-to-date relevant Plans”*<sup>11</sup>.
- 1.14 PPG requires that development costs, including *“any policies on planning obligations in the relevant Plan, such as policies on affordable housing and identified site-specific requirements for strategic sites”*, should be taken into account when setting CIL rates – particularly those on strategic sites or brownfield land<sup>12</sup>. It is the responsibility of authorities to create realistic and viable charging schedules<sup>13</sup>.
- 1.15 PPG on CIL also confirms that CIL evidence should be prepared in accordance with PPG on viability, and specifically that the policy requirements for developer contributions are deliverable<sup>14</sup>. PPG for Viability (‘PPGV’) requires that viability assessment at the plan making stage should ensure policies are realistic and the total cumulative cost will not undermine deliverability of the relevant Plan<sup>15</sup>. Moreover, policy requirements

---

<sup>3</sup> MHCLG (2019) National Planning Policy Framework (‘NPPF’): paragraph 34

<sup>4</sup> MHCLG (2019) PPG CIL

<sup>5</sup> MHCLG (2019) PPG CIL: Paragraph: 010 Reference ID: 25-010-20190901

<sup>6</sup> MHCLG (2019) National Planning Policy Framework (‘NPPF’) (2019)

<sup>7</sup> MHCLG (2019) PPG CIL: Paragraph: 010 Reference ID: 25-010-20190901

<sup>8</sup> Community Infrastructure Levy Regulations 2010 (as amended)

<sup>9</sup> MHCLG (2019) PPG CIL: Paragraph: 026 Reference ID: 25-026-20190901

<sup>10</sup> LBR (2015) Redbridge Local Plan 2015 – 2030

<sup>11</sup> MHCLG (2019) PPG CIL: Paragraph: 011 Reference ID: 25-011-20190901

<sup>12</sup> MHCLG (2019) PPG CIL: Paragraph: 021 Reference ID: 25-021-20190901

<sup>13</sup> MHCLG (2019) PPG CIL: Paragraph: 015 Reference ID: 25-015-20190901

<sup>14</sup> MHCLG (2019) PPG CIL: Paragraph: 015 Reference ID: 25-015-20190901

<sup>15</sup> MHCLG (2019) PPGV: Paragraph: 002 Reference ID: 10-002-20190509

(including CIL) should be clear for the industry so that they can be accurately accounted for in the price paid for land<sup>16</sup>.

- 1.16 Finally, PPG is clear that cumulative policy costs (including CIL rates)<sup>17</sup> should not be set on the basis that they necessitate a site-specific financial viability case to be made to demonstrate divergence from adopted policy within the relevant plan<sup>18</sup>.
- 1.17 However, the results of the viability testing set out within Table 6.24.1 of the LPCVR in respect of Co-Living development (but also in respect of results relating to Build-to-Rent and general residential development) demonstrate that development is unable to comply with the policy requirement for provision of 35% affordable housing in many cases, as well as meeting the proposed CIL charging rates in the CIL DCS.
- 1.18 Moreover, it does not appear that an appropriate or justified buffer 'back from the margin of viability' is applied in accordance with PPG CIL, at CIL rates that will enable the scale, typologies and volume of development to be viably delivered without placing the adopted relevant Plan at risk.
- 1.19 On the basis of LBL's own evidence LBL's supply of land required to meet housing growth (and accelerate delivery) will be unable to meet the proposed residential CIL DCS rates alongside provision of 35% affordable housing.
- 1.20 LBL should note that this is an issue that was recently considered in detail during the Brighton & Hove CIL Examination over the spring-autumn 2019 period.
- 1.21 During the Examination Hearing the Examiner was clear that the CIL viability evidence must be prepared and CIL rates set on a 'policy on' basis, inclusive of a 'buffer'.
- 1.22 Thereby CIL liability should only be applied (via appropriate rates) where site typologies (and most importantly strategic site allocations or other sites critical to the delivery of the relevant Plan) are demonstrated to be viable and have sufficient 'headroom' to accommodate a CIL charge after meeting all the applicable policies in the relevant Plan.
- 1.23 This culminated in the Examiner specifically requesting the preparation of further viability evidence by the charging authority to reflect this, and the charging authority subsequently proposing modification of the CIL DCS to adjust the proposed CIL rates commensurately. The latter modifications were publicly consulted upon from 17 July to 11 September 2019, with the Examiner's Report published in February 2020.
- 1.24 In summary, the cumulative expectation of PPG is that CIL viability evidence must be prepared, and proposed CIL charging rates must be set on a 'policy on' basis. Rates must not be set at a level that risks undermining the policies within, and deliverability of, the relevant Plan. There is a high risk that this will be a necessity if the current proposed CIL rates set out within the CIL DCS are adopted.

---

<sup>16</sup> MHCLG (2019) PPGV: Paragraph: 001 Reference ID: 10-001-20190509

<sup>17</sup> MHCLG (2019) PPGV: Paragraph: 001 Reference ID: 10-001-20190509

<sup>18</sup> MHCLG (2019) PPGV: Paragraph: 002 Reference ID: 10-002-20190509

- 1.25 For the reasons stated above, it is OH's opinion that LBL is repeating the same errors in respect of the proposed residential rates within the CIL DCS. The CIL DCS is therefore deemed fundamentally unsound.
- 1.26 The LPCVR does not provide an appropriate evidence base upon which to find the charging rates in the CIL DCS sound.
- 1.27 In particular, OH considers that housing Policy H13 (Large Scale Purpose-Built shared living) Part B of the DRLLP PSV has not been effectively assessed in accordance with the NPPF and the PPGV. Neither the draft DRLLP PSV policies nor the CIL DCS can therefore be considered justified or sound. This poses a risk to the deliverability of the DRLLP PSV.
- 1.28 Other technical matters of representation are set out under the following subheadings.

### **Other Technical Inputs & Matters**

#### **Up-to-date Market Evidence**

- 1.29 BNPPRE's previous LPCVR dated July 2018 contains much of the supporting information to underwrite appraisal input assumptions, which is subsequently referred to in the December 2019 LPCVR.
- 1.30 OH considers that the 2019 LPCVR is lacking in appropriate and up-to-date evidence to underpin current market assumptions for use in viability testing.
- 1.31 OH advocates that the 2019 LPCVR should be a standalone document for ease of use and should include all the appropriate information and up-to-date market evidence, which informs the appraisal outputs/results.

#### **Residential Development Scenarios**

- 1.32 Paragraph 4.1 of the LPCVR states that 29 development typologies on sites across the Borough have been appraised. These are said to represent the sites that LBL expects to see come forward over the lifetime of the new Local Plan. These uses are tabled at 4.1.1. However, there is only one Co-Living typology tested, which is on a small site of 0.13ha for 300 units. There are two types of Student Accommodation by comparison. OH consider this is not representative of thorough testing and requests that the Co-Living typology is tested more thoroughly by applying a range of different site areas and densities representative of comparable schemes brought forward across London.

#### **Site Typology Details & Gross to Net Measurements**

- 1.33 In the 2018 LPCVR at Appendix 2 - Sites Details, Gross to Net measurements are included referencing Site 18 which is the Co-Living typology, and we assume this has been taken forward and adopted for the 2019 LPCVR. This is set at a Gross to Net ratio of 80% which is an inappropriate basis for Co-Living schemes which incorporate higher provision of communal and amenity facilities, which require greater floorspace than typical 'market sale' residential developments. OH contends that Gross to Net efficiency for Co-Living developments is more typically at 70%-75%.
- 1.34 The LPCVR should re-test the Co-Living site typologies at efficiencies of both 70% and 75%.

### **Co-Living Typology Appraisal Inputs**

- 1.35 BNPPRE has not provided any evidence to underwrite the following:
- Room size of 25m<sup>2</sup>
  - Rental level of £452/m<sup>2</sup> applied borough-wide
  - 5% investment yield
  - 12 month rent free period
- 1.36 It is also unstated in the LPCVR as to whether operating cost deductions have been applied to gross rents as would be deemed appropriate and necessary under a Co-Living model.
- 1.37 On the basis that CIL rate setting must be underpinned by appropriate available evidence, OH considers the absence of such evidence from the LPCVR as rendering it, and the CIL DCS, as unsound.
- 1.38 BNPPRE and LBL must transparently set out the underpinning evidence to support the input assumptions utilised for this typology.

### **Benchmark Land Values (BLVs)**

- 1.39 PPGV states explicitly that BLVs should, *“...be informed by market evidence including current uses, costs and values wherever possible”*<sup>19</sup>.
- 1.40 PPGV subsequently requires plan makers to:
- “...establish a reasonable premium to the landowner for the purpose of assessing the viability of their plan. This will be an iterative process informed by professional judgement and must be based upon the best available evidence informed by cross sector collaboration. For any viability assessment data sources to inform the establishment the landowner premium should include market evidence...”*<sup>20</sup>
- 1.41 Crucially, PPGV confirms that the BLVs set must reflect the *“...reasonable expectations of local landowners”*<sup>21</sup>.
- 1.42 There is no evidence within the LPCVR of local market analysis to inform the BLVs applied within viability testing. On the above basis, the LPCVR is flawed and fails to provide a sound evidence base for justifying the relevant draft policies within the DRLLP PSV.
- 1.43 BNPPRE state at paragraph 4.37 *“We have arrived at a broad judgement on the likely range of benchmark land values. On previously developed sites the calculations assume that the landowner has made a judgement that the current use does not yield an optimum use of the site ...”*.

---

<sup>19</sup> MHCLG (2019) PPGV: Paragraph: 014 Reference ID: 10-014-20190509

<sup>20</sup> MHCLG (2019) PPGV: Paragraph: 016 Reference ID: 10-016-20190509

<sup>21</sup> MHCLG (2019) PPGV: Paragraph: 016 Reference ID: 10-016-20190509

1.44 BNPPRE go on to include a table of BLVs, stating at paragraph 4.39 that:

*“Sites will be in various existing uses and for the purposes of the study, we have adopted a range of benchmark land values from £2.5 million to £75 million per gross hectare, inclusive of any premium deemed to be required to incentivise release of land for development. This range is informed by our analysis of benchmark land values in submitted viability appraisals over the last two years.”*

1.45 This approach has no basis in appropriately analysed evidence. There is no further analysis of *“premium deemed to be required”*.

1.46 Unless BNPPRE produce local evidence of transaction prices (re-weighted as necessary) in accordance with PPGV, then OH is of the strong opinion that BLVs for development sites must be increased within the LPCVR in order to avoid landowners from being disincentivised to dispose of land for development.

1.47 This is inconsistent with the judgement handed down by Holgate J in *Parkhurst Road Ltd v Secretary of State for Communities and Local Government and Anor* (2018) in which Holgate J confirms that application of an arbitrary premium in excess of the EUV is unsatisfactory in reflecting the workings of the market, and which has been subsequently reflected in PPGV.

1.48 It is unclear from the LPCVR whether the process of setting the premium in excess of the EUV has reflected the iterative process required within PPGV. No market evidence is presented within the LPCVR in order to demonstrate that the BLVs are reasonable and realistic. It is requested that such evidence is provided in order to demonstrate that the methodology for setting the BLVs within the LPCVR is sound and based upon appropriate available evidence for stakeholder review.

#### **Abnormal/Exceptional Costs**

1.49 The LPCVR has not allowed for abnormal costs within viability testing of residential site typologies. Paragraph 4.35 states the following:

*“...Our analysis therefore excludes exceptional costs, as to apply a blanket allowance would generate misleading results. An ‘average’ level of costs for abnormal ground conditions and some other ‘abnormal’ costs is already reflected in BCIS data, as such costs are frequently encountered on sites that form the basis of the BCIS data sample.”*

1.50 For generic typology testing, the exclusion of an abnormal cost allowance can be regarded as appropriate.

1.51 However, if doing so it is essential that:

(a) The viability testing (and application of policy costs thereafter) includes a sufficient buffer back from the margins (i.e. maximum limits) of viability. This will ensure that viability testing results and conclusions/recommendations are not presented at levels that risk rendering development sites unviable when subject to the introduction of abnormal works costs.



- (b) The BLVs are increased to represent the serviced land values (i.e. assuming that abnormal costs have already been met through works undertaken by the landowner prior to disposal for development).
- 1.52 Such costs cannot be accommodated by the landowner if adopting BLVs that reflect a “raw material view” operating on a ‘EUV plus’ basis as doing so would risk reducing land values to remove a suitable incentive for disposal.
- 1.53 The exclusion of abnormal costs from the viability appraisals will markedly overstate the appraisal results – given that abnormal works can be costly and will frequently be incurred early in a sites development (hence having a more pronounced cashflow impact).
- 1.54 If the LPCVR is to exclude abnormal costs, then suitable flexibility must be introduced within the wording of policies within the DRLLP PSV to provide recourse to site-specific viability assessment at the application stage such that where sites are impacted by abnormal costs, this constitutes a valid justification for reductions in the level of affordable housing (or tenures/unit mix) in order for schemes to be delivered on a viable basis.

#### **Construction Costs**

- 1.55 The LPCVR summarises the construction cost inputs applied to site typologies within appraisals at paragraph 4.13 on p.29.
- 1.56 It is noted that BNPPRE places reliance on RICS BCIS to provide base construction costs for development typologies. There are several issues arising in respect of this reliance:
- There is no copy of the RICS BCIS data (even in summary) to provide proof of the accuracy of the figures reported.
  - The base date for the costs utilised are not stated within reporting. It is therefore impossible to establish whether the costs and revenues are determined over a consistent timescale. For example, it appears that the same costs were adopted in BNPPRE’s previous 2018 assessment, which suggests a failure to update the costs in line with inflation to represent the current market.
  - It is unclear how the data has been interpreted, and utilised, in order to be applied to taller / higher density buildings.

#### **Accessibility Standards**

- 1.57 The costs of meeting accessibility standards utilised in the LPCVR, and set out in paragraph 4.17 on p.30, are predicated on a 2014 publication. The costs require indexing using RICS BCIS All-in TPI to present day, or these will be under-represented in viability testing.

#### **Electric Vehicle Charging Points**

- 1.58 In the Adopted Local Plan, Policy T7 clearly states the Council will require electric vehicle charging points to be provided on all new major developments. Policy T6 of the London Plan also sets out this requirement. Recent published Government research has placed

this cost at an average of £976 per charging point<sup>22</sup>. It is not stated in the LPCVR whether this cost is incorporated. It should be incorporated in accordance with Plan policy requirements.

### **Section 106 (S106) Planning Obligations**

- 1.59 Paragraph 4.25 of the LPCVA confirms that the site typology viability appraisals (for generic sites) incorporates a notional sum of £1,900 per residential unit towards S106 planning obligations alongside CIL liability. The LPCVR states that *“This assumption is based on median figures from a range of S106 agreements identified by the Council. The actual amounts will of course be subject to site-specific negotiations when schemes are brought forward through the development management process.”*
- 1.60 Paragraph 4.26 goes on to state *“In addition to the allowances above, our appraisals include an allowance for Section 278 works of £1,000 per residential unit and £15 per square metre for commercial developments.”*
- 1.61 PPG is clear that development costs, including *“any policies on planning obligations in the relevant Plan, such as policies on affordable housing and identified site specific requirements for strategic sites”*, should be taken into account when setting CIL rates – particularly those on strategic sites or brownfield land<sup>23</sup>.
- 1.62 PPG also confirms that:
- “Local authorities should ensure that the combined total impact of such requests does not undermine the deliverability of the plan (see paragraph 34 of the National Planning Policy Framework for details).”<sup>24</sup>*
- 1.63 LBL is required to record and report on planning obligations secured and should therefore have accurate records of sums paid on major developments across the borough. This data should be presented comprehensively, with a calculated rate per residential unit for each development, and published transparently for stakeholder review and in order to underpin the rates applied in the LPCVA.

### **Finance Costs**

- 1.64 OH note that BNPPRE have included finance at 6%, which is based on an assumption of 100% debt finance. OH consider this to be low. Within the current lending market traditional lenders are funding senior debt up to a maximum of 65% loan to cost at typical base rate of circa 4 – 4.5%, plus entry (arrangement) fees, exit fees and bank management/monitoring costs throughout the loan period (2% - 3% of loan sum).
- 1.65 Developers are therefore required to source equity investment, mezzanine or bridging finance to secure the remaining development funding necessary to deliver the scheme. Typical rates of return in the current market range from 8% - 20%, which is significantly

---

<sup>22</sup> DFT (July 2019) Electric Vehicle Charging in Residential and Non-Residential Buildings

<sup>23</sup> MCHLG (2019) PPG CIL: Paragraph: 020 Reference ID: 25-020-20190315

<sup>24</sup> MHCLG (2019) PPG CIL: Paragraph: 166 Reference ID: 25-166-20190901

more expensive than senior debt and reflects the higher risk posed to lenders (due to representing only a second or third charge on the project).

- 1.66 OH therefore considers, on this basis, that a blended debit rate of 6.5% should be applied across 100% of land and construction costs.

#### **Developer Profit**

- 1.67 Whilst it is not specifically stated in the LPCVR, it is assumed that a developer profit of 18% of gross development value (GDV) on open market units is applied to the Co-Living typology, with a reduced profit of 6% of GDV for affordable units.

- 1.68 Given Co-Living operates on a rental model, which does not result in a transaction to an Registered Provider at a lower risk, it is unclear as to why BNPPRE has proceeded to apply the approach utilised to this typology.

- 1.69 Further clarification and supporting evidence should be provided by BNPPRE and LBL in this respect.

#### **Development Programme & Cashflow**

- 1.70 Paragraph 57 of the NPPF confirms that transparency in the preparation of all viability assessments is essential. It states:

*“All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.”*

- 1.71 PPGV elaborates on the NPPF by confirming the importance of transparency for improving data availability and accountability:

*“Any viability assessment should follow the government’s recommended approach to assessing viability as set out in this National Planning Guidance and be proportionate, simple, transparent and publicly available. Improving transparency of data associated with viability assessment will, over time, improve the data available for future assessment as well as provide more accountability regarding how viability informs decision making.”<sup>25</sup>*

- 1.72 The 2019 LPCVR is inconsistent with both the NPPF and PPGV in this respect for it is extremely difficult for stakeholders to determine with certainty which appraisals in Appendix 5 of the LPCVR relate to each typology under the various scenarios assessed.

#### **Growth Scenario**

- 1.73 Chapter 4 of the LPCVR makes reference to a ‘growth scenario’, with the assumptions set out in Table 4.4.1 on p.17.

- 1.74 Given the present uncertainty over the UK economy, and housing market, it is considered misleading to present such a scenario – particularly where this simply projects an annualised level of growth in perpetuity. The property market, and wider

---

<sup>25</sup> MHCLG (2018) PPGV: Paragraph: 010 Reference ID: 10-010-20180724

economy, is inherently cyclical. Hence, a projection of ongoing growth will be misrepresentative and risks setting unrealistic expectations.

- 1.75 Equally, it is unclear as to the justification for the rates of revenue and cost growth adopted. For example, RICS BCIS All-in TPI forecasts 25% growth in construction costs over the next five years (to the end of 2024), equating to 5% per annum, yet BNPPRE proposes to only apply 2.5% per annum, which will understate the costs of development applied in testing.
- 1.76 It is recognised that BNPPRE caveat the growth scenario analysis as ‘indicative’, yet it is considered that no weight should be applied to this analysis given its significant limitations.

### **Conclusions**

- 1.77 This representation has set out OH’s objections to LBL’s CIL charges set out in the CIL DCS. The objections relate to a series of technical deficiencies and matters of non-compliance with relevant Government guidance and the CIL Regulations 2010 (as amended).
- 1.78 OH is of the view that the CIL DCS will fail to demonstrate that it has met the essential requirements of CIL Regulation 14. Specifically, it is of major concern that the proposed residential CIL rates within the CIL DCS will prevent or delay development and will pose a threat to the delivery of the relevant Plan. Resultantly, the CIL DCS will not “strike an appropriate balance” between funding infrastructure and economic viability across the charging area.
- 1.79 If the CIL charging rates (adopted or proposed) are a contributing factor precluding residential development being delivered in accordance with the adopted policies within the relevant Plan (e.g. in respect of affordable housing provision), then the adopted CIL charging rates should actually be reduced via this review process, rather than increased based on LBL’s own viability evidence base.
- 1.80 OH requests that LBL revisit the issues identified, update the underpinning viability evidence base to resolve the existing deficiencies, and move to reduce the proposed CIL rates for residential development typologies by utilising the flexibility accorded within PPG in setting rates (e.g. spatially, by relevance to strategically important sites, by scale, or by typology) prior to submitting the CIL DCS to PINS for independent examination. At present the CIL DCS is unsound and should not be adopted.