

LONDON BOROUGH OF LAMBETH
LONDON BOROUGH OF LAMBETH CIL EXAMINATION
STUDENT ACCOMMODATION CIL RATES

Kings College London have submitted an illustrative draft planning condition in respect of student accommodation let at submarket rents.

It reads as follows:

"The floorspace hereby permitted for use as student accommodation shall be let and maintained for student residential accommodation during University term-times at rents which are not more than X % of prevailing open market rental levels for comparable accommodation available in the vicinity let on similar terms. Prior to first occupation of the building hereby permitted, details of the rental to be charged to student occupants will be submitted to and approved by the Local Planning Authority acting reasonably, and the accommodation shall not be occupied during University term-times otherwise than in accordance with any approval given.

REASON : In order to ensure that the building is maintained in use at a submarket rental level so that it continues to be eligible for the relief from community infrastructure levy available to the applicant in respect of the building hereby permitted."

Lambeth submits that such a condition is unenforceable because it is contrary to advice provided in "Circular 11/95: Use of conditions in planning permission". The Circular at paragraph 97 states that "conditions should not normally be used to control matters such as tenure, price or ownership".

An exception is the provision of affordable housing when such a condition should "make clear the nature of the restriction by referring to criteria set out in the relevant local plan policy".

However, affordable housing is invariably secured by the use of an agreement under Section 106 Town and Country Planning Act 1990. This is for a number of reasons including.

1. Sections 106.s are entered into by agreement between the developer and the local planning authority. This distinguishes them from conditions which are imposed by the LPA. They cannot be appealed against within a 5 year period.
2. Section 106 agreements are easily enforceable by injunction (rather than breach of condition notice).

Accordingly even if the draft condition in respect of student housing were enforceable, it is not the route that an LPA would use to secure submarket rent student accommodation.

One of the tests in Circular 11/95 is that a condition must “relevant to planning”. The reason for the draft condition above is stated to be that it enables the building to be eligible for relief from CIL. That is not a planning reason, it is a commercial reason which benefits the developer.