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Sent by Email

Dear Sir / Madam

LB Havering CIL | Draft Charging Schedule Consultation
Representation on behalf of LSREF3 Tiger Romford S.À.R.L. (c/o Ellandi LLP)

Williams Gallagher Town Planning Solutions Ltd (Williams Gallagher) is instructed by LSREF3 Tiger Romford S.À.R.L., owners of the Mercury Shopping Centre in Romford Town Centre, to review and provide comment on the Havering Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS) which has been made available for comment until 1 October 2018.

In doing so, we have had regard to the following documents (alongside the DCS itself):

- Preliminary Draft Charging Schedule (PDCS) and Supporting Evidence (2015)
- Infrastructure Delivery Plan (ERM, March 2018)
- CIL Viability Assessment (BNP Paribas, July 2018)
- CIL Infrastructure Funding Gap Report (Inner Circle Consulting, August 2018)
- CIL Draft Regulation 123 List (LB Havering, August 2018)
- Proposed Submission Version of the Havering Local Plan (March 2018)
- Adopted Core Strategy and Development Control Policies (2008)

From the outset, we should note that whilst we fully welcome the opportunity to comment on the proposed rates, we do have certain reservations about this consultation being undertaken on the basis of a Draft Charging Schedule (DCS), despite there having been a significant passing of time since the Council's Preliminary Draft Charging Schedule (PDCS) was published for consultation in March / April 2015. Since this time, there have been a number of updates to the evidence base (notably the BNP Paribas Viability Report) resulting in a series of amendments to and an uplift in rates (particularly in respect of residential development).

Whilst we note and acknowledge that the CIL Regulations do not specify how local authorities should consult upon CIL (NPPG Para 030 Reference ID: 25-030-20140612), we are concerned that LB Havering's decision to proceed with consultation at a DCS stage (as opposed to a revised PDCS stage) may prejudice those with interests in the Borough. Indeed, the Council has, in effect, only given consultees a 6-week window in which to review, comment on and prepare representations to a Charging Schedule that is significantly different to that consulted upon previously and one that is now based on a brand new set of viability evidence.

In view of the above, we respectfully request that interested parties be given a further opportunity to provide comment on the rates before the Schedule is submitted for Examination.

Background to Representation

By way of background, Ellandi is responsible for the day to day asset management of the Mercury Shopping Centre ('the Centre') on behalf of LSREF3 Tiger Romford S.À.R.L. It is also tasked (through its Future Places initiative) with promoting of x2 development sites ('the Sites') adjacent to the Centre, namely the 'Car Park Site' to the immediate north east of the Centre and the 'Wilkinson Site' located to the immediate south of the Centre, to the south west of the Car Park Site. The development proposals for the Sites seek to retain the car park, improve the retail offer and develop residential units above.

We have recently indicated to the Council (through recent consultations associated with the Proposed Submission Version of the Local Plan / Local Plan Examination) that the Sites have capacity to accommodate 800+ residential units – based on a scheme that is policy compliant and deliverable but will of course be subject to further refinement. The Sites have the potential to be brought forward during the first half of the Plan period and are located in the Romford Strategic Development Area (RSDA) as identified in the emerging Local Plan (where at least 4,750 homes will be built over the first 10 years of the Plan period).

In summary, the Sites present a significant opportunity for meeting the regeneration aspirations of the emerging Local Plan and will assist in meeting the Borough's overarching housing needs. We are keen to work constructively with LB Havering to ensure that the Sites can effectively contribute towards the Borough's housing supply in an area that has been identified as appropriate for major regeneration and will thus contribute to the regeneration of the Town Centre.

This representation follows a detailed representation submitted on our client's behalf in April 2015 in respect of the LB Havering's CIL PDCS consultation[1].

Purpose of Representation

The purpose of this representation is not to oppose CIL – it instead seeks to ensure that sufficient time is given to comment on the proposed rates and to ensure that they are adopted based on robust evidence and a collective interest to deliver well planned, viable and feasible development in the Borough.

In preparing this representation, we have had regard to Regulation 14 (1) of the CIL Regulations 2010 (as amended) which establishes the key test against which the Charging Schedule is to measured. This states that:

"In setting rates (including differential rates) in a charging schedule, a charging authority must strike an appropriate balance between:

- *a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and*
- *b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area."*

Essentially, the above confirms that the CIL must not threaten the delivery of the development plan – a point also highlighted by the Planning Practice Guidance (PPG) (Paragraph 009 Reference ID: 25-009-20140612) which states that:

[1] Williams Gallagher is owned and managed by Matthew Williams and Heather Gallagher who previously advised Ellandi LLP (Ellandi) through Savills (UK) Ltd (Savills) – representations were submitted on Ellandi's behalf by Savills in respect of the PDCS consultation on 10 April 2015.

"The levy is expected to have a positive economic effect on development across a local plan area. When deciding the levy rates, an appropriate balance must be struck between additional investment to support development and the potential effect on the viability of developments."

The PPG goes on to indicate that the balance referred to at Regulation 14 (1) is at the centre of the charge-setting process and that:

[….] charging authorities should be able to show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan and support development across their area. As set out in the National Planning Policy Framework in England (Paragraphs 173-177), the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened".

Please note that in submitting this representation, we are only commenting on particular key areas. The lack of reference to other parts of the evidence base / CS cannot be taken as agreement with them and our client reserves the right to make further comments upon the evidence base in respect of future consultations and at the Examination stage.

Infrastructure to be Funded Through CIL

The LB Draft Regulation 123 List sets out the Council's approach to delivering funding infrastructure using CIL money and funding infrastructure secured through planning obligations. This is presented in a table which sets out:

- the types of infrastructure that the Council will fund using CIL (Column 1);
- the types of infrastructure that the Council will fund using planning obligations rather than CIL (Column 2); and
- specific infrastructure needed to support development in Romford and Rainham and Beam Park that the Council will fund using planning obligations rather than CIL (Column 3).

The Council indicates that it will, or may, spend CIL on part or all of the cost of provision, improvement, replacement, operation or maintenance of the infrastructure, as listed in Column 1, to support development in Havering. It goes on to state that the inclusion of infrastructure types in this column does not imply priority, or that the Council will spend CIL on every item, or not spend CIL on other unlisted items.

It is indicated at Column 1 that the following will be funded through CIL:

- libraries;
- sport and leisure;
- emergency services;
- cultural facilities;
- green infrastructure;
- public realm (including built environment and street scene);
- health and well-being.

Columns 2 and 3 set out items not expected to be covered by the Regulation 123 List – these will instead be negotiated as planning obligations (secured through Section 106 and other powers). These include:

- transport infrastructure necessary to support new development;
- public art;
- a community care hub in Romford;
- utilities (including the diversion of public utility main cables, sewers and gas mains;

- flood defense / protection measures.

Other matters not covered by the Regulation 123 List for which funding will be sought from developers through planning obligations include:

- affordable housing (35% - Draft Policy 4 of the Proposed Submission Version of the Local Plan);
- S278s for highway schemes (including junction improvements, safety improvements and re-instatements);
- training programmes or employment support;
- job brokerage;
- securing employment premises;
- waste management;
- provision of on-site renewable energy equipment;
- carbon reduction projects
- electric vehicle charging
- mitigating the impact of development on air or water quality;
- enhancements to bio-diversity and geodiversity;
- preservation of historic assets;
- measures to secure safer environments;
- travel plans and car clubs;
- on-site / off-site green space and play space;
- energy efficiency; and
- renewable energy.

Draft Charging Schedule

The following proposed rates are of particular interest to our client owing to their existing operation (the Mercury Shopping Centre) and its aspirations to redevelop adjacent sites (namely the Car Park Site and the Wilkinson Site – see above):

- Zone A (North) Residential: £125 per sqm;
- Retail Supermarkets, Superstores and Retail Warehouses (> 280 sqm GIA): £175 per sqm; and
- All Other Retail (A1 – A5) - £50 per sqm

As we highlight above, and in respect of residential development in the north (including Romford), we note that the proposed rates are significantly higher than those proposed within the PDCS which was published for consultation in 2015:

- Open Market Residential North of the A1306: £70 per sqm (PDCS, 2015)

The thresholds for requiring CIL for / definitions of the types of retail development also differ:

- Retail Supermarkets, Superstores and Retail Warehouses (> 2,000 sqm GIA): £175 per sqm (PDCS, 2015); and

- Retail (< 2,000 sqm GIA) in Metropolitan, District and Local Centres as defined in the Havering Core Strategy: £50 per sqm (PDCS, 2015)

The rationale for the uplift in residential rates (as cited in the BNP Paribas Viability Report) would appear to be that since LB Havering published its PDCS for consultation in February 2015, based on viability evidence detailed in a report produced by ERM dated October 2014, sales values have increased, which has been partially offset by an increase in build costs. The net result is a degree of improvement in viability and increased capacity to contribute towards local infrastructure.

The BNP Report goes on to state that:

"Our testing indicates that an increase in the PDCS rates with respect to residential can be accommodated in most cases and will have a relatively modest impact on residual land values. The application of CIL is unlikely to be an overriding factor in determining whether or not a scheme is viable. When considered in context of total scheme value, the recommended CIL rates will be a modest amount, typically accounting for between 2.3% and 3.8% of value and will therefore not adversely impact on the viability of development in the Borough. Where it is not possible to pass the cost of increased CIL rates back to the landowner through a reduction in land value (for example, due to high existing use values), the increase will have a modest impact on affordable housing levels that can be delivered. It is worth noting that some schemes would be unviable even if a zero CIL were adopted. We therefore recommend that the Council pays limited regard to these schemes as they are unlikely to come forward unless there are significant changes to main appraisal inputs".

In respect of commercial uses (which includes retail uses), the BNP Report concludes that its testing indicates that whilst economic circumstances have changed since the PDCS viability testing was undertaken, there remains a case in viability terms to levy the proposed charges; however, any increase in these charges could render commercial developments unviable.

The proposed CIL rates in the BNP Viability Report (Table 1.8.1) are replicated in the DCS published for consultation.

Key Observations

Having reviewed DCS and the various documentation / evidence that underpins this, we wish to make the following observations:

- As articulated above, we are concerned that LB Havering's decision to proceed with consultation at a DCS stage (as opposed to a revised PDCS stage) will prejudice those with interests in the Borough. The Council has, in effect, only given consultees a 6 week window in which to review, comment on and prepare representations to a Charging Schedule that is significantly different to that previously consulted upon and one that is now based on a brand new set of viability evidence. The timescales allowed for comment are simply insufficient to enable the relevant parties to make comment and to establish the implications for the viability of schemes within the Borough.

- We note that the BNP Paribas Viability Report has focused much of its attention on the appraisal of a series of residential development typologies in order to establish their ability to accommodate CIL. This is to be welcomed given the pressing need to deliver housing in the Borough and the associated emphasis on housing delivery in the adopted and emerging Local Plan.

  However, as is so often the case, the attention given to other uses (namely commercial uses) is severely lacking. To elaborate:

  - In respect of retail development, we note that only two typologies have been modelled / tested to establish the proposed CIL rates for Retail Supermarkets, Superstores and Retail Warehouses and All Other Retail (A1 – A5) as follows:

    - Supermarkets and Retail Warehousing – 10,753 sqft (999 sqm)
    - All Other Retail (A1 – A5 + Sui Generis Akin to Retail) – 2,470 sqft (230 sqm)

  - No explanation has been put forward by BNP as to how why these particular typologies have been modelled and indeed whether or not they mirror the type of development that is envisaged by the existing and emerging Local Plan.

  - It is also concerning to note that BNP is recommending a CIL rate of £50 per sqm for <u>all</u> retail development across the Borough (Classes A1 – A5) when only one development scenario has been tested (a development comprising 230 sqm – location unspecified) to establish whether this rate is achievable. The same concern applies to the proposed rate of £175 per sqm for Retail Supermarkets, Superstores and Retail Warehouses which would apply to schemes over 280 sqm – again, this figure has been arrived at having tested only one scenario – a 999 sqm retail warehouse (again, location unspecified and also without regard to the fact that retail warehousing, superstores and supermarkets attract very different values).

  - Clarity is also required as to which developments would be liable for the proposed £175 per sqm charge as there is simply insufficient explanation as to what the Council / BNP regards to be a retail supermarket, superstore and / or retail warehouse and how this terminology is relevant to schemes upwards of 280 sqm (it is very difficult to see how a unit comprising, for example, 281 sqm could be regarded as a retail supermarket / superstore and / or warehouse). The ambiguous nature of the wording results in a considerable degree of uncertainty as to what format of retail development would be liable for this charge (and indeed whether it would apply to all locations including the RSDA). (NB this comment is made despite the ** definition set out under the DCS at Page 4)

  - Lastly, and in respect of the proposed retail rates, we note that larger schemes for redevelopment in the town centre are likely attract on-site Section 106 costs (as illustrated in the Draft Regulation 123 List) – these do not appear to have been accounted for in the BNP appraisals.

The lack of attention to the appraisal of commercial development in the BNP appraisal and the ambiguous terminology used to define retail floorspace that would be liable for CIL in the DCS is concerning and provides us with insufficient comfort that the proposed CIL rates will not put at risk retail development within the RDSA, in accordance with the existing and emerging Local Plan.

- Referring to the rates to be applied to residential development in Zone A, we note that that BNP has appraised ten typologies which reflect different densities and types of development across the Borough and that these have been tested having regard to the Council's emerging 35% affordable housing requirement (Draft Policy 4).

  The typology of most relevance to the type of development envisaged in the RSDA is that of Typology 10 which comprises 435 flats on a site comprising 1 hectare. We of course welcome the inclusion of this typology as it is most reflective of the development aspirations of our client. We do however note that the 'policy-on' appraisal of this typology (i.e. allowing for 35% affordable housing) appears to be missing from the appendices of the BNP report. It is however summarised in the main report which indicates that this typology is unviable with the imposition of CIL.

  This reflects the conclusions of our client who (supported by a development viability specialist) has undertaken its own ('policy-on') high level assessment of the impact of CIL on its own development aspirations on the sites adjacent to the Mercury Shopping Centre (to include just over 800 units). This appraisal indicates that the proposed CIL rate would have the effect of reducing developer profit to below an acceptable level (i.e. below the 20% profit margin adopted by BNP).

  The fact that both Typology 10 is showing as unviable with the application of CIL is not unsurprising given BNP's commentary at Para 6.14:

  "Viability is also identified as being challenging on the higher density schemes. As expected, schemes tested with higher levels of affordable housing and measured against higher benchmark land values also show reductions in viability. However, as identified above, the

imposition of CIL at a zero level on such schemes will not make them viable, rather other factors (i.e. sales values, build costs or benchmark land values) would need to change to make them viable".

Whilst we acknowledge this is an approach often employed by BNP (i.e. it takes the view that limited regard is paid to sites that would be unviable even if a zero CIL were adopted as they are unlikely to come forward unless there are significant changes to main appraisal inputs), we are concerned because this approach applies to most residential development in the RSDA.

Indeed, it is understood that over 5,300 homes are anticipated to be delivered on large sites in the RSDA across the Plan period which accounts for approximately 30% of the Borough's housing target. Disregarding these sites and applying CIL regardless of whether or not they are viable seems to us somewhat careless when it is clear that these sites are critical to the delivery of the Borough's housing targets.

BNP should be challenged on this approach and provide evidence to the contrary that it will not undermine the delivery of housing targets in the RSDA.

- Lastly, clarity is sought as to whether the BNP appraisal has properly accounted for the level of Section 106 that is likely to be required for residential schemes (we note it has applied a figure of £2,000 per unit however there is no justification to support this - we would expect at the very least an analysis of recent approvals / S106 agreements to establish whether this amount is realistic). Our concern is that whilst income from the CIL rate will cover 'big ticket' items such as highways and education, the list of other infrastructure to be funded through Section 106 / other mechanisms is extensive. It is also unclear from the consultation documentation as to whether proper consideration has been given to the pooling restrictions on these big ticket items to ensure that these can be funded through CIL.

Conclusion

Whilst we do not object to the imposition of CIL, you will note we have expressed a series of concerns in regard to the proposed rates and the evidence base that supports these rates.

We would invite LB Havering / BNP Paribas to address these concerns at its earliest convenience. Until such time, we are unable to conclude that the evidence put forward is sufficient to establish whether or not the proposed CIL rate will put overall development in the Borough at risk.

We look forward to confirmation of receipt of these representations. Please do contact the undersigned should you have any queries.

Yours sincerely

[redacted]