

Planning and Borough Development

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Executive Director for Planning and Borough Development

Jonathan Bore

Head of Forward Planning

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21st July 2014

Please ask for: Jonathan Bore

Dear Mr Staddon,

Examination of the Royal Borough of Kensington and Chelsea's Community Infrastructure Levy (CIL)

Thank you for your latest letter dated 7 July in response to our letter on 2 July. We are grateful to you for suggesting a way forward and offering further advice.

However, your approach, as set out in your letter of 27 June, is fundamentally inconsistent with that of other Inspectors who have reported in London regarding the treatment of affordable housing policy. We drew this to your attention in our letter of 2 July and sought the opportunity to raise this through and extension of the examination process. However, your letter of 7 July does not discuss this issue or address our concerns. It does not provide us with assurance that this fundamental issue will be considered.

The Council also wishes to provide additional clarity and transparency on the matters raised within your letter of 7 July. We attach a short report (Appendix A) to this letter with clarifying information. Subject to your views, this further information can be published as part of the examination allowing for the appropriate consultation with relevant parties. In summary, the following key points must be considered, which are covered in more detail in the report:

- It is not the proposed CIL charges that cause the schemes which model 50% affordable housing to become unviable: 18 of the 19 unviable schemes referred to in your letter of 7 July are unviable when tested with 50% affordable housing provision regardless of the proposed CIL charges. The proposed CIL charges have a negligible effect on the Borough's affordable housing delivery. This clarification,

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coupled with information relating to the development plan policies, demonstrate that the proposed rates are fully in accordance with legislation and guidance.

- The regulations state simply that the Council must strike an appropriate balance between infrastructure funding and economic viability of development and this is exactly what the Council has done.
- The 'relevant plan' must be considered as the London Plan and the borough's Core Strategy with regard to the specific wording of the affordable housing policies (including CH2) and other policies relating to infrastructure delivery – this is the approach that other CIL Inspectors have adopted in London.
- The examination approach, as outlined in our previous letter, is inconsistent with the established approach in London and there are significant implications for this Council if a different approach is followed. Furthermore, it has wider implications for other London councils and will introduce uncertainty at a time when other boroughs are preparing for examination. No explanation has been forthcoming as to why a different approach is being adopted.
- For Kensal Gasworks, the impact of CIL on the delivery of affordable housing is minimal. The Council is able to undertake a further appraisal of Kensal using the 2012 methodology if you require this to demonstrate that the proposed charge for this area is viable.
- The Council is now able to provide information on the tipping points of viability for the real sites. The revised evidence base now incorporates indicative benchmark land values for each of the twelve sites, based on BNP Paribas Real Estate's understanding of the individual circumstances before redevelopment. The assumptions for each site are set out within the accompanying table as attached (Appendix B) and continue to demonstrate that CIL has a very modest impact on land value in most circumstances.

The Council must insist that it is given the opportunity to provide the required clarity on these outstanding matters. As the Council was not aware of your fundamental concerns prior to the hearing, this would seem perfectly reasonable. There is no justification to withdraw the Draft Charging Schedule, or to suspend the examination process and if that approach is insisted upon the Council would consider that it had not been treated fairly or reasonably. Clarification only is required at this stage. This would not be time consuming or onerous and would not result in changes to the Draft Charging Schedule.

We kindly request you to:

- Consider the above points raised and the attached report in full;
- Advise as to whether you wish the Council to publish the attached report for consideration as part of the continuing examination; and
- Advise as to whether you will reconsider using the 'Mid Devon' approach and instead adopt a 'London' approach in light of the clarifications provided in the attached report – which is fully consistent with the relevant legislation and guidance.

I look forward to hearing from you with a positive way forward.

Yours sincerely

A handwritten signature in cursive script that reads "Jonathan Bore".

Jonathan Bore
Executive Director for Planning and Borough Development

cc. Mary Travers, Director (Plans), Planning Inspectorate
LeVerne Parker, Chief Solicitor, Royal Borough of Kensington and Chelsea

Appendix A - Response to Inspector's Concerns

The following short report contains additional clarification which the Council wish the Inspector to take into account in considering the recommendation for this Borough's Draft Charging Schedule.

This does not constitute additional information, but transparency relating to existing work and existing regulations, policy and guidance. This information could be subject to further consultation should the Inspector consider it appropriate.

1.0 Affordable Housing

- 1.1 The vast majority of appraisals which assume 50% affordable housing are modelled as unviable regardless of the proposed CIL charges. The determining factor in viability is not CIL.
- 1.2 The Inspector is correct in that of the 33 appraisals which model the 50% affordable housing, 19 are not viable. However, to date perhaps it has not been clear that 18 of the 19 schemes would have been unviable at the 50% affordable housing level regardless of whether CIL is factored in or not. This is summarised in the below table:

Zone	Number of schemes complying with Core Strategy 50% affordable housing 'base' position	Number of these schemes showing 'not viable'	Number of these schemes which show 'not viable' at 50% affordable housing, regardless of whether CIL is factored in
Zone A (Knightsbridge)	3 schemes	0	n/a
Zone B	12 schemes	6 schemes (including 1 not sufficiently viable)	5 schemes
Zone C	3 schemes	3 schemes	3 schemes
Zone D	6 schemes	3 schemes	3 schemes
Zone E	6 schemes	4 schemes	4 schemes
Zone F	3 schemes	3 schemes	3 schemes
Overall	33 schemes	19 schemes	18 schemes

(Adapted from Inspector's letter. 07/07/14, page 2)

- 1.3 It is therefore not the proposed CIL charges which cause problems with viability, but wider market factors. The proposed CIL charges have a negligible effect on affordable housing delivery
- 1.4 The fact that it is not the proposed CIL charges which cause problems with viability was further explained in the consultant's viability report (October 2012):

In assessing the results, it is important to clearly distinguish between two scenarios; namely, schemes that are unviable

regardless of the level of CIL (including a nil rate) and schemes that are viable prior to the imposition of CIL at certain levels. If a scheme is unviable before CIL is levied, it is unlikely to come forward and CIL would not be a factor that comes into play in the developer's/landowner's decision making. We have therefore disregarded the 'unviable' schemes in recommending an appropriate level of CIL. The unviable schemes will only become viable following a degree of real house price inflation, or in the event that the Council agrees to a lower level of affordable housing in the short term [Footnote: However, as shown by the sensitivity analyses (which reduce affordable housing to 40%, 30% and 20%) even a reduction in affordable housing does not always remedy viability issues. In these situations, it is not the presence or absence of planning obligations that is the primary viability driver – it is simply that the value generated by residential development is lower than some existing use values. In these situations, sites would remain in their existing use.]

(para.6.5)

The primary purpose of this exercise was to determine whether changes to affordable housing requirements on individual schemes would enable unviable sites to contribute towards infrastructure.

(para.6.12)

In the main, the imposition of CIL is not the critical factor in determining whether a scheme is viable or not (with the relationship between scheme value, costs and land value benchmarks being far more important).

(para.7.2)

- 1.5 The Council is able to clarify the 'relevant plan' affordable housing policy context to reassure the Inspector that the proposed charges are fully in accordance with legislation and guidance.
- 1.6 To assist the Inspector in deliberations we can provide further clarification to the policy context and intentions of affordable housing policy operating in the borough which complements the evidence base. In clarifying this, it is important to go back to the legislation and statutory guidance.
- 1.7 The regulations simply state that the Council "must strike an appropriate balance" between infrastructure funding and "the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area" (R14(1)). There is no mention of local plan policies and/or affordable housing in the regulations – it is for the Council to "strike an appropriate balance". It is also necessary to turn to the CIL guidance (issued by the Secretary of State) because S221 of the Planning Act 2008 (as amended) states that the Council "must have regard to the guidance". We therefore consider that we have struck an appropriate balance and have had regard to the statutory guidance.
- 1.8 The April 2013 CIL Guidance states that the Council should "take into account other development costs... including taking account of any policies on planning obligations in the relevant Plan (in particular those for affordable housing)..."

(para.29). The February 2014 CIL Guidance and subsequent revision in the June 2014 National Planning Practice Guidance (NPPG) on CIL states much the same, i.e. the Council should “take development costs into account...” (paras.2:2:2:5 and 020 respectively). Again, we consider that we have taken development costs, including affordable housing costs, into account in setting the proposed rates.

1.9 The “relevant plan” is not defined in legislation, but defined in the guidance as the Local Plan and the London Plan in London (NPPG para.011). The guidance states that the Council should “be able to show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan...” (NPPG 009; 018); set rates which do “not threaten the ability to develop viably the sites and scale of development identified in the relevant Plan” (NPPG 008; see also 009; 038; 093); and the charging schedule should “be consistent with, and support the implementation of, up-to-date relevant Plans” (NPPG 010). We consider that all these requirements have been met. The policy context and intentions of the London Plan and the Council’s Core Strategy are clarified in the following paragraphs.

1.10 *London Plan (July 2011, as amended October 2013) policy*

Extracts from the relevant London Plan policies are provided below (with the Council’s emphasis underlined). The London Plan seeks the maximum reasonable amount of affordable housing within a framework of targets and consideration of development viability:

Policy 3.11 Affordable housing targets

Strategic

A The Mayor will, and boroughs and other relevant agencies and partners should, seek to maximise affordable housing provision and ensure an average of at least 13,200 more affordable homes per year in London over the term of this Plan...

LDF preparation

B Boroughs should set an overall target in LDFs for the amount of affordable housing provision needed over the plan period in their areas...

C LDF affordable housing targets should take account of... (f) the viability of future development, taking into account future resources as far as possible.

Policy 3.12 Negotiating affordable housing on individual private residential and mixed use schemes

Planning decisions and LDF preparation

A The maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential and mixed use schemes, having regard to:

(a) current and future requirements for affordable housing at local and regional levels identified in line with Policies 3.8, 3.10 and 3.11 and having particular regard to guidance provided by the Mayor through the London Housing Strategy, supplementary guidance and the London Plan Annual Monitoring Report...

(b) affordable housing targets adopted in line with Policy

3.11,
(c) the need to encourage rather than restrain residential development (Policy 3.3),

...

B Negotiations on sites should take account of their individual circumstances including development viability, resources available from registered providers (including public subsidy), the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation ('contingent obligations'), and other scheme requirements.

- 1.11 It should also be noted that the London Plan, as part of the 'relevant plan' also requires contributions other than affordable housing which are necessary to contribute to, support and implement the London Plan (and make development acceptable in planning terms). These need to be taken into account when considering appropriate affordable housing percentages for CIL viability modelling:

*Policy 8.2 Planning obligations
Planning decisions*

...

D Affordable housing; supporting the funding of Crossrail where this is appropriate...; and other public transport improvements should be given the highest importance...

E Importance should also be given to tackling climate change, learning and skills, health facilities and services, childcare provisions and the provision of small shops.

- 1.12 The Mayor of London's Housing Supplementary Planning Guidance (SPG, November 2012) provides further guidance on the intentions and practical implementation of the London Plan policies:

The expression of local targets

While the Mayor has set a strategic numeric target in the LP to clearly quantify the scale of future provision, at local level either or both percentage and numeric targets can be useful – a numeric one to show the quantum of a borough's realistic ambitions (and to illustrate how it relates to London's overall affordable housing need), while a percentage can provide a convenient, and locally related starting point for negotiations on individual development proposals...

(para.4.3.24)

4.4.1 Within the national presumption in favour of sustainable development, and to realise this in London, the overarching requirement to maximise affordable housing output and give priority to family provision, a careful balance has to be struck between a range of sometimes competing issues which can arise with individual development proposals. There is no 'one size fits all' solution, and each case must be addressed on its merits always bearing in mind the overall intent of policy.

(para.4.4.1)

Use of targets

In keeping with the general approach to affordable housing targets to maximise output and, within this, to address the priority for affordable family housing (see above), it is for boroughs to determine how they use their local targets in coming to a view on individual development proposals, within the framework of national and London strategic policy. However, the Mayor will, and boroughs are advised, to go beyond mechanistic application of the target alone in assessing the amount and character of affordable housing appropriate in a proposal. As the Plan makes clear, there are a range of other factors to be taken into account within the context of the overarching objectives outlined above.

(para.4.4.2)

1.13 Core Strategy (December 2010) Policy

Extracts from the relevant Core Strategy policies are provided below (with the Council's emphasis underlined and as summarised in paras.2.2-2.3 of the submitted DCS Commentary document). The Core Strategy seeks the maximum reasonable amount of affordable housing within a framework of targets and consideration of development viability, other public benefits and other scheme requirements:

Policy CH1 Housing Targets

...

b. make provision for the maximum amount of affordable housing with a target of a minimum of 200 units per annum from 2011/2012 until 2027/28 from all sources, the exact target will be set through the London Plan process;

Policy CH2 Housing Diversity

i. Require developments to provide affordable housing at 50% by floor area on residential floorspace in excess of 800m² gross external area

...

p. where a scheme over 800m² does not provide 50% of gross external residential floorspace for affordable housing, the applicant must demonstrate:

i. the maximum reasonable amount of affordable housing is provided through the provision of a viability assessment...

ii. the exceptional site circumstances or other public benefits to justify the reduced affordable housing provision

1.14 The supporting text in the Core Strategy provides further guidance on the intentions and practical implementation of the Core Strategy policies:

In order to ensure we are delivering the maximum amount of affordable housing, developments proposing less than 50% will need to demonstrate a viability case, using the GLA toolkit or an agreed alternative. The target is based on the high level of need, and takes account of the Council's Affordable Housing Viability Study. The intention is to provide certainty to those developing housing in the Royal Borough as to the level of affordable housing

that is expected.

(para.35.3.20)

Targets should be applied flexibility [sic], taking account of individual site constraints, the availability of public subsidy and other scheme requirements.

(para.35.3.21)

- 1.15 It should also be noted that the Core Strategy also requires contributions other than affordable housing which are necessary to contribute to, support and implement the plan (and make development acceptable in planning terms). These need to be taken into account when considering appropriate affordable housing percentages:

Policy C1 Infrastructure Delivery and Planning Obligations

...The Council will require that there is adequate infrastructure to serve developments...

- 1.16 The Council considers it has met the requirement of CIL guidance in taking into account affordable housing development costs in light of the intentions and implementation of policies for affordable housing and infrastructure in the borough (and across London).

- 1.17 *Approaches in CIL Examinations for other London Boroughs.*

The Inspector's approach in previous letters is inconsistent with the established approach in London and there are significant implications if a different approach is followed

- 1.18 *Mid Devon District Council*

The Inspector has made helpful reference to the examination of Mid Devon District Council's Draft Charging Schedule for which a proposed £90/m² charge was reduced to £40/m² by the Inspector based on Mid Devon's adopted affordable housing policies, which are summarised below for comparison:

Core Strategy 2026 (July 2007)

COR3 Meeting Housing Needs

The diverse housing needs of the community will be met through the provision of approximately 6800 dwellings between 1st April 2006 and 31st March 2026, including a target of 30% (2000) affordable dwellings...

Allocations and Infrastructure DPD (October 2010)

AL/DE/2 Overall Affordable Housing Provision

2000 or more affordable dwellings should be provided between 2006 – 2026...

- 1.19 The Inspector concluded that in light of these policies "the use of the 22.5% figure by the Council will be seen as a reason not to seek the achievement of the full target and consequently it will put the provision of affordable housing at serious risk" (para.14). This Council does not consider that the same argument can be followed for this borough because there is a considerably different policy context in London (see previous section) which means that the requirements to support the 'relevant plan' should be seen through the relevant plan policies in

London and in the borough, rather than through those in Mid Devon.

It is also worth noting that Mid Devon District Council has subsequently made a Cabinet Decision on the 28th May 2014 not to implement CIL for a number of reasons, including “the amount raised through CIL would not fund the significant infrastructure costs of such sites”. This reiterates the point made earlier that in ‘striking an appropriate balance’ in setting CIL rates, this Council must not only consider viability (and implementing affordable housing policies in the ‘relevant plan’) but also the need for funding of infrastructure to support development proposed in the ‘relevant plan’. Notwithstanding the appropriate public consultation and examination process, Mid Devon have published a Preliminary Draft Charging Schedule (PDCS, June 2014) for consultation proposing rates ranging from £40-100/m².

1.20 *London policy context and approach*

Whilst we made reference to a number of Inspectors’ reports from other London authorities (for which the ‘relevant plan’ always includes the London Plan) in our previous letter of 2nd July, the points we raised about an inconsistency of approach between these boroughs and our borough which remain unaddressed. The ‘relevant plan’ policies of these boroughs at the local level and at the London Plan level are more akin to those in our borough rather than those in Mid Devon. For convenience, the affordable housing policies are provided in the sections below, alongside the previously-provided extracts from the Inspectors’ reports.

1.21 As stated previously, this Council considers it has taken into account affordable housing development costs in accordance the policy in the borough (and across London) and has struck an appropriate balance in setting the proposed CIL charges. If, however, the Inspector considers a different approach should be applied in considering affordable housing, this will have significant implications for all other charging schedules in London to be examined by the Planning Inspectorate. It would also seem to suggest that councils cannot ‘strike an appropriate balance’ between viability (of affordable housing) and infrastructure, and instead, only viability (of affordable housing) (at a rigid % level, which is not necessarily the same as what is actually in ‘relevant plan’ policy) can be considered to the almost total exclusion of raising funding for essential infrastructure. If this approach were followed, councils in London would not be in a position to implement their plan, as they would not be able to provide the infrastructure that the cumulative impact of growth will require. Crucially, those councils would also fail to achieve their 50% affordable housing targets – as previously noted, in RBKC and elsewhere, setting a nil CIL would not enhance scheme viability sufficiently so that schemes could provide 50% affordable housing.

1.22 Given the heterogeneous nature of sites in complex boroughs like RBKC, it would be impossible to adopt a policy approach which delivers 50% affordable housing on every site. Like all other London boroughs, the approach is therefore one of maximising delivery through individual site-by-site negotiations, having regard to individual circumstances. In light of this, we consider that have struck an appropriate balance in setting the proposed CIL charges by recognising the way in which its affordable housing policies are intended to operate. Whilst every pound paid in CIL is a pound less that could have funded affordable housing, the Council has a duty not only to provide affordable housing, but also ensure sufficient funding is raised to fund essential supporting infrastructure.

There are other calls on development value that can also be used to fund affordable housing, including Mayoral CIL.

To progress, it is imperative that the approach adopted for the continued examination of the DCS is clarified. As stated previously we feel that the approach being taken is seriously out of step with other Inspectors in the London context and this raises fundamental inconsistency arguments that we believe must be addressed. Once clarification has been given the Council will then bring forward evidence accordingly and publish this, as a matter of course, as part of the examination. We believe that the following approaches must be taken into account as part of the examination process; otherwise we cannot have faith in the examination approach adopted by the Planning Inspectorate as being consistent.

1.23 London Borough of Redbridge

Core Strategy (March 2008)

Strategic Policy 8: Affordable Housing

1. The Council has a strategic borough-wide target that between 2007 and 2017 50% of new housing from all sources should be affordable.

2. ...

3. On these sites the Council will negotiate to achieve an affordable housing provision of 50% across the range of housing on the site having regard to:

(a) the size of the site;

(b) the economics of providing affordable housing;

(c) the extent to which the provision of affordable housing would prejudice other planning objectives to be met from the development of the site

...

Inspector's Report (September 2011)

In summary, the output tables demonstrate that in normal market conditions, taken to mean some recovery in values approaching the peak in 2008, the mid-range CIL rate is likely to be deliverable in many development circumstances in the Borough, assuming mid-range sales values. This takes into account provision of affordable housing at 30%, with grant; a higher percentage may be deliverable if sales values improve over the next few years. The Viability Assessment is likely to outline 'worst case' scenarios, because it does not take into account the reduction in CIL charges on those sites where some existing floorspace would be redeveloped... However, in broad terms the study evidence shows that housing development is deliverable across the Borough with the middle band CIL charge selected. The charging rates for residential development are therefore informed by and consistent with the economic viability evidence.

(para.11)

1.24 London Borough of Newham

Core Strategy (January 2012)

Policy H2 Affordable Housing

1. Aim to ensure 50% of the number all new homes built over the plan period are affordable;

...

A negotiation target of between 35% and 50% will be applied having regard to the considerations in Box H1 above. Some schemes will be unable to provide affordable housing within this range. However, varying scenarios have been modelled to consider different circumstances over the entire plan period and this target range is considered to be robust provided it is applied flexibly on a case by case basis.

(para.6.126)

Inspector's Report (July 2013)

15. The Core Strategy was adopted in January 2012. Policy H2 was supported by an Affordable Housing Economic Viability Study and seeks the provision of 35 to 50% affordable housing on sites with a capacity of 10 units or more. However, the Council concede that, at present, the majority of new schemes are unable to deliver affordable housing at the level required by Policy H2. According to the Viability Study, at 35% affordable housing, most sites are not viable regardless of CIL.

16. As stated in the Viability Study, if a scheme is not viable before CIL is levied it is unlikely to come forward and CIL is, therefore, unlikely to be a material consideration in any development decision. Consequently, the Viability Study, sensibly in my view, did not factor in unviable schemes in recommending appropriate rates. The Viability Study is based on 35% provision of affordable housing (for schemes of 10 or more units). EXAM 3 contains further detail and analysis regarding the impact of CIL on the provision of affordable housing and concludes that 'a variation in CIL has only a marginal effect on the viability of a scheme and the level of affordable housing that is secured'.

1.25 London Borough of Waltham Forest

Core Strategy (March 2012)

Policy CS2 Improving Housing Quality and Choice

B) maximising the number of quality affordable homes in the Borough by:

i) maximising the number of quality affordable homes in the Borough by aiming to provide at least 50% (5,700 homes) of homes as affordable over the plan period...

ii) assessing the level of affordable housing on a site by site basis. In order to deliver the maximum amount of affordable housing, developments proposing less than 50% will need to demonstrate a viability case, in the form of a viability assessment...

Inspector's Report (January 2014)

Notwithstanding the development plan requirement, the AHVS suggests that a maximum level of only 20% affordable housing can be delivered in current market conditions. The Council confirms that, in practice, a reduced level of affordable housing

provision has been accepted in many cases where a proven viability case has been made. It is not for this report to comment upon the relationship between the 20% figure and the 50% target that is contained in the above-noted LP policies. However, bearing this evidence in mind, and notwithstanding the need to ensure that the Local Plan delivery target is not undermined by proposed CIL charging rates (a matter considered below), it is appropriate in principle for the VSU to test residential development viability against the lower figure as well as against the 50% target set out in the CS.

The VSU indicates that a residential CIL rate of £70 is generally viable in cases where affordable housing is provided at 20%. When tested against 50% affordable housing provision, two of the relevant development typologies (sites types 4 and 69) are shown to also be viable when CIL is charged at this rate. However, substantial viability problems are demonstrated in site type 5, which relates to a flatted scheme of 100 units, where affordable housing is provided at 50%. Given that the CS makes particular reference to intensifying residential uses and building at higher densities in the Borough's four key growth areas, site type 5 appears to represent an important part of the Borough's future housing supply. This suggests that, in present market conditions, achieving the 50% affordable housing target from general housing development within the Borough represents a significant challenge. It is contended by the Council that, within the Borough as a whole, the resulting shortfall has been compensated for by the delivery of 100% affordable housing developments that are subject to separate funding arrangements.

In any event, the VSU also demonstrates that, in respect of site type 5, the cost of providing affordable housing is considerably greater than the CIL rates that are now proposed. For example the residual land value (RLV) model suggests that increasing the amount of affordable housing from 20% to 50% in such a scheme would result in a cost of some £7m: in contrast, a CIL rate of £70 psm would result in a cost of some £½m. The potential CIL liability applying to such a development therefore represents a small percentage of the overall deficit arising from a scheme providing 50% affordable housing. As such, reducing the CIL requirement (or removing it altogether) would make little difference to overall scheme viability. A substantial deficit would remain even if a nil CIL charge was applied. Indeed, the sensitivity testing carried out for the VSU suggests that such a deficit would remain in some cases even if the amount of affordable housing is reduced well below the 50% figure. The underlying problem in such circumstances is that the value generated by residential development is lower than some existing use values.
(paras.15-17)

1.26 London Borough of Islington

*Core Strategy (February 2011)
Policy CS12 Meeting the housing challenge*

G. Provide affordable housing by:

- requiring that 50% of additional housing to be built in the borough over the plan period should be affordable.
- ...
- seeking the maximum reasonable amount of affordable housing, especially social rented housing, from private residential and mixed-use schemes over the threshold set above, taking account of the overall borough wide strategic target. It is expected that many sites will deliver at least 50% of units as affordable, subject to a financial viability assessment, the availability of public subsidy and individual circumstances on the site.

Inspector's Report (March 2014)

This assessment shows that while a number of developments could provide 50% affordable housing under the charging rates now proposed, achieving this figure on all relevant sites remains a challenge. However, the wording of policy CS12(G) accepts that the 50% figure represents a Borough-wide target that may not be achieved within all individual schemes. As such, neither the conclusions of the CILVS nor the fact that lower levels of affordable housing have been tested are sufficient to undermine the CS policy requirement. Furthermore, as already noted, the CIL liability applying to such developments represents a small percentage of the overall development costs. The CILVS shows that substantial reductions in the proposed CIL rate would have very limited effects on the delivery of affordable housing. For example a change of £100 in the CIL rate would result in an average change of only 2% in affordable housing provision. I return to this matter when discussing the delivery of development below.

(para.17)

The CILVS states that the transition to CIL from payments under Section 106 would have a very limited impact on the delivery of affordable housing (an average change of less than 2%). As already noted, the costs arising from the CIL charges in respect of residential developments would represent a small percentage of the overall development costs. These factors suggest that, notwithstanding the challenges to date in achieving a Borough-wide target of 50% affordable housing provision, the introduction of CIL would not materially worsen the current position. Indeed, given that affordable housing (that is eligible for social housing relief) is presently subject to contributions under section 106 but would not be charged CIL, the introduction of CIL may potentially encourage the inclusion of more affordable housing.

(para.41)

2.0 2012 vs. 2014 Methodology

2.1 The Inspector's letter of 27th June stated:

“What is missing in this analysis is the key question of whether the application of the CIL charge would have tipped any of the developments from ‘viable’ to ‘not viable’ based on the Council’s employed methodology, which is founded on residual values exceeding pre-set BMLVs”.

- 2.2 We are now able to present this “missing” evidence, as attached below. Subject to the Inspector’s views, this further evidence could be published as part of the examination allowing for the appropriate consultation with relevant parties, as a matter of course.
- 2.3 The revised evidence base now incorporates indicative benchmark land values for each of the twelve sites, based on BNP Paribas Real Estate’s understanding of the individual circumstances before redevelopment. The assumptions for each site are set out within the Appendix.
- 2.4 We would also reiterate a point made at the Examination, namely the very modest impact CIL has on the land value in most circumstances. In light of this, it is unlikely in the Council’s view that the CIL will ‘tip the balance’ of the vast majority of schemes from viable to unviable.

3.0 Strategic Sites: Kensal Gasworks

- 3.1 The Inspector’s letter of 27th June acknowledges the importance of Kensal Gasworks as the most significant site in the Borough yet to be developed. The letter recognises that “the appraisal concludes that whilst the assumed scheme would generate a positive residual land value, it would be substantially below even the lowest BMLV employed in the Council’s CIL testing methodology.” Given the nature of the site, as a gas works with abnormal costs, any scheme on the site would generate a lower land value than others within the Borough. However, it is not considered that this would prevent the scheme from coming forward for development.
- 3.2 The submitted documentation already demonstrates that the impact of CIL on delivery of affordable housing in Kensal is minimal. Paragraph 3.1 of the 2014 viability report reveals that the difference in affordable housing delivery between a nil CIL rate and the proposed £110 rate is just 1.91%. Given the circumstances of this site and the buffers and mechanisms integral within the CIL legislation, incorporating the site within Zone F is considered a pragmatic and reasonable approach.
- 3.3 Should it be required, the Council can undertake a further appraisal of Kensal using the 2012 methodology of determining a residual amount for CIL after benchmark land value costs, rather than assessing the impact of CIL on the benchmark land value. The Council is confident that this work would not demonstrate the need for a revised charge for Kensal Gasworks and this work could supplement the existing viability work submitted if it is required.
- 3.4 In addition to the above it should be noted that ownership of the site remains with the current occupiers, predominantly Ballymore and Sainsbury’s, and the site has not been sold for development. It is therefore pragmatic to assume that any CIL charge could be reflected within the sale value of the site.
- 3.5 The Council also highlights the proposed rate for the north of the Borough, within

postcode W10, is comparable to the CIL rates proposed and existing in the adjoining London Boroughs. Hammersmith and Fulham, which adjoins the Borough to the west, is proposing a £100 charge on residential development adjoining the proposed Zone F and Brent to the north has an adopted CIL charge of £200 per square metre on residential development. The proposed CIL rate therefore has regard for, and sits comfortably within the context of the adjoining authorities.

4.0 Draft Regulation 123 List

4.1 We appreciate advice on the Draft Regulation 123 List and confirm a commitment to consulting on a revised list before our CIL comes into effect – notwithstanding that “it is not the purpose of the examination to challenge the list” (NPPG para.017).

5.0 Perceived complexity of the charging schedule / number of zones

5.1 We appreciate that this does not constitute a fundamental problem. Paragraph 7.1 of the Viability Report (October 2012) states, “the Council could set a single CIL rate across the Borough, having regard to the least viable types of development and least viable locations. This option would suggest the adoption of the ‘lowest common denominator’, with sites that could have provided a greater contribution towards infrastructure requirements not doing so. In other words, the Council could be securing the benefit of simplicity at the expense of potential income foregone that could otherwise have funded infrastructure”.

6.0 Conclusions

6.1 We would be grateful if the Inspector can consider the above issues which we hope will go some way in helping to recommend approval of the DCS and conclude that an appropriate balance has been struck in consideration of these matters.

Appendix B – Real sites analysis with indicative benchmark land values (BNP Paribas Real Estate)