

## **Ealing London Borough Council – Draft Charging Schedule**

### **LBE's Response to Examiner's initial questions**

**1. The document SD3 submitted to the examination contains an appendix that appears to be the same as that submitted separately in document SD3A: please can this be confirmed?**

Yes, the content of SD3A is identical to that provided at appendix A of the SD3. The same is also true of SD3B, which repeats appendix E of SD3. Appendix A (SD3A) and E (SD3B) were provided separately for ease of reference, given that a number of representations had addressed specifically these sections of the funding gap report. As SD3A and SD3B duplicate in part SD3 they could be withdrawn, if you consider this to be necessary.

**2. Pocket Living Ltd and Ealing Ltd raise issues about discretionary social housing relief for discounted open market housing under Regulation 49A. In response the Council has stated, in document SD5 – Consultation Statement, that “the Council proposes to allow consideration of ‘discretionary relief for exceptional circumstances’. However, the relevant text of Regulations 49A and 49B is as follows:**

**49A.—(1) A chargeable development is eligible for relief from liability to CIL if—**

**(a) discretionary social housing relief is available in the area in which the chargeable development will be situated; and**

**(b) the development comprises or is to comprise qualifying dwellings or qualifying communal development (in whole or in part).**

**(2) For the purposes of this regulation a dwelling is a qualifying dwelling if all of the following criteria are met—**

**(a) the dwelling is sold for no more than 80% of its market value (where the market value at any time is the price which the dwelling might reasonably be expected to fetch if sold at that time on the open market);**

**(b) the dwelling is sold in accordance with any policy published by the charging authority under regulation 49B(1)(a)(iii); and**

**Discretionary social housing relief: notification requirements**

**49B.—(1) A charging authority which wishes to make discretionary social housing relief available in its area must—**

**(a) issue a document which—**

**(i) gives notice that discretionary social housing relief is available in its area,**

**(ii) states the date on which the collecting authority will begin accepting claims for relief, and**

**(iii) to the extent that the charging authority is responsible for allocating the housing to be granted relief, includes a policy statement setting out how that housing is to be allocated in its area;**

**(b) publish the document on its website;**

**(c) make the document available for inspection—**

**This is a separate provision to that under Regulation 55 to which the Council refers: will the Council please comment on its intentions in respect of relief under Regulation 49A? And, to the extent that may be appropriate depending on the answer to that question, also comment on the final sentence of the first paragraph of the letter dated 26 May from Rolfe Judd Planning?**

Having reviewed again the representations prepared for Pocket Living Ltd and Ealing Ltd, alongside the regulations, officers are of the view that discretionary social housing relief should be provided in the borough in line with Regulation 49A. Whilst officers are committed to offering this relief, and intend to follow the model adopted by Wandsworth and Lambeth, we will need to seek authority to prepare and serve a notice/statement which gives effect to these provisions. Given that the Council will need to seek the authority of its Full Council to implement CIL (on the assumption that there is a positive recommendation to adopt CIL), it is officers intention to also seek authority at the same time for the scope and implementation of discretionary relief.

As noted above the statement/notice will follow closely those prepared by Lambeth and Wandsworth, and will include reference to the criteria in Regulation 49A of the Community Infrastructure Levy Regulations 2010 (as amended), which define qualifying dwellings. In addition it might also define eligibility criteria for households relating to their income levels and links with the borough, having regard to the criteria defined in the London Plan, the Mayor's Housing SPG, the Annual Monitoring Report for the London Plan, and local housing policy. As further consideration needs to be given to the content of locally defined criteria/requirements, more time is needed to finalise this before seeking authority to approve and implement it. It should be noted however that it is our intention to offer this relief from the outset, i.e. from the point of CIL implementation. Once drafted, we'd be happy to share this text with Pocket and Ealing Ltd, and seek any informal views they might have on its content.

We hope that through clarifying our intention here, this provides the necessary comfort to representors, and that this would avoid the need to give evidence on such matters in person.

**3. Whilst referring to the Regulations, Regulation 12(2) states:**

**“(2) A draft charging schedule submitted for examination in accordance with section 212 of PA 2008 must contain—**

- (a) Where a charging authority sets differential rates in accordance with regulation 13(1)(a), a map which—
- (i) identifies the location and boundaries of the zones,
  - (ii) is reproduced from, or based on, an Ordnance Survey map,
  - (iii) shows National Grid lines and reference numbers, and
  - (iv) includes an explanation of any symbol or notation which it uses;”

**It appears to Mr Kemmann-Lane that the two maps in the Draft Charging Schedule are clear as to the zones to which the differential charges are to apply. However, the maps do not show national grid lines and reference numbers. Please will the Council comment on this omission?**

It is accepted that the absence of national grid lines and reference numbers is an omission. The maps will accordingly be amended to include these. Revised maps can be issued to the Inspector next week.

**4. Similarly there is a requirement in Regulation 12(2) that the submitted Schedule must contain an explanation of how the chargeable amount will be calculated:**

- 12. — (1) Subject to the provisions of this Part a charging authority may determine the format and content of a charging schedule.*
- (2) A draft charging schedule submitted for examination in accordance with section 212 of PA 2008 must contain—*
- (a), (b), (c) and, [not of relevance here],*
  - (d) an explanation of how the chargeable amount will be calculated.*
- (3) A charging schedule approved by a charging authority must, in addition to the contents mentioned in paragraph (2), contain—*
- (a) the date on which the charging schedule was approved;*
  - (b) the date on which the charging schedule takes effect; and*
  - (c) a statement that it has been issued, approved and published in accordance with these Regulations and Part 11 of PA 2008.*
- (emphasis added)**

**The Draft Charging Schedule includes the following text:**

**“The ‘Chargeable Amount’, including indexation to take into account inflation, will be calculated in accordance with Part 5 of the Community Infrastructure Levy Regulations 2010 (as amended).”**

**Mr Kemmann-Lane is not at all sure that this meets the requirement of Regulation 12(2)(d) that a draft charging schedule submitted for examination in accordance with section 212 of PA 2008 must contain an explanation of how the chargeable amount will be calculated. Will the Council comment please?**

For reasons of brevity the Council omitted additional text explaining how the chargeable amount will be calculated. The Council now proposes to reinstate and amplify text from the Draft Charging Schedule Consultation Version (EB1). The proposed text will read as follows:

CIL is currently calculated on the basis set out in Part 5 of the Community Levy Regulations 2010 (as amended by the Community

Levy Regulations 2012 and 2014), although regard must also be had to any future regulations.

For ease of interpretation, this means that CIL will be charged on the total net additional floorspace created (measured as Gross Internal Area).

The CIL rates shall be tied to the Royal Institute of Chartered Surveyors *All In Tender Price Index*; the rate of CIL charged will therefore alter depending on the year planning permission for the chargeable development is first granted.

It is recommended that this text replace the existing sentence under the heading 'Calculation of CIL charge & indexation'.

**5. The representation on behalf of Acton Gardens LLP refers to the regeneration of South Acton Estate and seeks to have the estate zero rated. The Council's response in document SD5 states "The submitted viability study confirms scenario testing has been undertaken and Ealing's proposed rates are set low within the acceptable range for all uses." [DCS/21 (9 of 23)]**

**As far as Mr Kemmann-Lane can see, whilst there clearly has been 'scenario testing' in the viability study, there is no scenario that is representative of a large estate regeneration scheme. He appreciates that the Council has also made reference to the consideration of 'discretionary relief', but please comment further on this representation and explain which scenario(s) should be considered if it is contended that the situation of South Acton Estate has been covered.**

The South Acton Estate redevelopment is, in essence, the same as any other development in terms of delivering a particular percentage of private housing and a percentage of affordable housing. The South Acton Estate has planning permission and will provide 55% private housing and 45% affordable housing, in contrast to the assumption in the VS that schemes will provide 50% affordable housing. This 5% additional private housing provides a buffer for costs that are unique to estate redevelopment schemes, such as homeloss and disturbance payments.

It is also important to note that estate regeneration schemes are typically not required to generate a land receipt for the local authority and that they are merely required to achieve a break-even point after homeloss payments are taken into account. Without the burden of a land receipt, other costs can more readily be absorbed.

The Council's view is that the CIL can be absorbed by estate regeneration schemes through a modest adjustment in the tenure mix provided; it is important to stress that the financial 'benefit' from switching a square metre of affordable housing to private will typically be around £4,000 per square metre. Very little floorspace would need to be transferred from

affordable to private to compensate for the £50 per square metre CIL – see worked example below.

### Impact of CIL on tenure balance on estate regeneration schemes

	No of units, assuming 80 sqm gross per unit	CIL liability @ £50 per sqm
<b>100,000 square metres total new floorspace</b>	1,250	
<b>55,000 square metres of new private housing</b>	688 (55%)	£2,750,000
<b>45,000 square metres of existing affordable housing</b>	562 (45%)	Nil

Value generated by converting 1 square metre of affordable housing to private = £4,000.

Therefore, 688 square metres of affordable housing required to change to private (i.e. £2,750,000 divided by £4,000). The revised tenure mix is therefore as follows:

Tenure	Gross areas – no CIL	Gross areas – with CIL
Private	55,000 (55%)	55,688 (55.69%)
Affordable	45,000 (45%)	44,312 (44.31%)

In the Council's judgement, the impact of CIL on estate regeneration schemes is sufficiently modest that there will be little impact on deliverability. Furthermore, the Council could, if necessary reinvest an equivalent amount of CIL into the estates to fund community infrastructure delivered by the scheme.

It is also important to note that the South Acton Estate secured planning permission in 2012 for 2,350 dwellings. Future applications that increase the number of units and triggering a CIL liability would provide an improvement on the base viability position and, in any case, could only have a marginal impact on the tenure mix of any new housing provided.

The agreed Section 106 package for the extant planning permission totals £4.4 million for education, health, transport, parks, trees and community chest. The Council has estimated that if the masterplan scheme is resubmitted for planning after CIL has been adopted, then education and health contributions would be removed, resulting in a saving of £1.5 million. This would offset a significant proportion of CIL liability that would arise.

**6. In the Viability Study's Appendix 3 – Commercial appraisal results, on the spread sheet for Office, in the rows 'Building costs' and 'Area' under the column with 'Floor area' at the top, there is reference to "82% grs to net". Please confirm that this is a reference to building costs being derived from the gross floorspace, whilst value (rental income) is derived from net internal area, or otherwise give an explanation if the Examiner's assumption is incorrect.**

The Examiner's understanding is correct. The appraisals base rental income on the net floorspace, which is calculated as 82% of the gross internal area. Construction costs are based on the gross internal area.

**Steve Barton,  
Strategic Planning Manager,  
July 5th 2016**