

Our ref: Q230574 Rev 2
Your ref: London Borough of Ealing - Draft Charging Schedule Consultation
Email: [REDACTED]
Date: 10 April 2024



Strategic Planning Team
London Borough of Ealing
Perceval House
14-16 Uxbridge Road
London
W5 2HL

By Email: localplan@ealing.gov.uk

Dear Ealing Strategic Planning Team,

LONDON BOROUGH OF EALING – EALING’S DRAFT CIL CHARGING SCHEDULE CONSULTATION
REPRESENTATIONS SUBMITTED ON BEHALF OF BERKELEY HOMES (SOUTHALL) LIMITED

Quod is submitting representations on behalf of Berkeley Homes (Southall) Limited (“Berkeley”) to the London Borough of Ealing’s (‘LBE’) Community Infrastructure Levy Draft Charging Schedule (DCS). Consultation on the DCS commenced on 28 February 2024 and is due to conclude on 10 April 2024.

These representations are submitted alongside Berkeley’s representations on the LBE new Local Plan and should be read in conjunction.

Berkeley Homes (Southall) Limited is a division of the Berkeley Group (‘Berkeley’) responsible for bringing forward the strategic redevelopment of the former Southall Gasworks site, now referred to as The Green Quarter.

The full context for The Green Quarter is set out in Berkeley’s representations on the LBE new Local Plan and not duplicated here but, in summary, this site is of strategic importance; a “*major regeneration scheme*” and an “*opportunity to bring back into use a large parcel of previously contaminated land and support the long term regeneration of Southall*”¹.

Berkeley first became involved in The Green Quarter in 2014, and since then has invested substantially in Land assembly and CPO, site infrastructure, including remediation of the former gasworks, highway infrastructure including new junctions, bridge, and access roads and has built or in the process of building over 3,000 homes, including affordable homes.

¹ New Local Plan Regulation 19 Version page 431



Berkeley values its relationship with Ealing Council and welcomes the opportunity to meet with Ealing Council to discuss these challenges and provide further evidence based on its experience delivering homes in Ealing.

Both Quod and Berkeley would like to reserve the right to appear at the Examination.

1 Summary

- 1.1 Our analysis suggests that the adoption of the proposed CIL rates set out in the DCS would increase the CIL Liability of the new Green Quarter planning application (ref: 234110OUT) from c. £22m to an estimated £84m², an increase of £62m.
- 1.2 In the following sections we will outline Berkeley's concerns over the evidence used to justify the DCS, and that its adoption would not be compatible with Ealing's Local Plan objectives.
- 1.3 The proposed rates for Residential in Central Ealing (£300/sqm) and the rest of the borough (£200/sqm) represent a significant cost for a large development. The Green Quarter site is within the "rest of the borough" but Berkeley Homes has in the past, and may have in the future, land interests beyond this site. As the largest housebuilder in London, Berkeley is always looking for new sites and, if development can be shown to be deliverable and viable, other sites are likely to be come forward. However, the proposed CIL rates are a key factor that could affect the deliverability of the Green Quarter, and the likelihood of further investment elsewhere in the borough.
- 1.4 Whilst there are neighbouring boroughs with similar (and lower) Residential CIL rates, Ealing is unique among them in having failed the most recent housing delivery test by a large margin.

Neighbouring boroughs	2022 Housing delivery Test Result	Result
Hounslow	141%	Passed
Harrow	128%	Passed
H&F	149%	Passed
Brent	144%	Passed
Hillingdon	132%	Passed
Ealing	86%	Action Plan

- 1.5 This suggests that Ealing faces unique challenges for development viability and delivery, which have not been captured in the viability assessment which in large part uses a standardised methodology and set of assumptions, which are not suitable in the case of Ealing.

² On the basis of phases 4-9 in isolation which are currently pending under a revised Outline Planning Application



- 1.6 Developments on the scale of The Green Quarter provide much of their essential enabling infrastructure directly, on-site or through Section 106. The extant Section 106 covers all of the mitigation for items (as listed later in this representation.)
- 1.7 To provide for this infrastructure through both Section 106 and CIL would be effectively double charging for the same infrastructure and putting a disproportionate burden on the development.
- 1.8 Berkely Homes values its relationship with Ealing Council and welcomes the opportunity to meet with Ealing Council to discuss these challenges and provide further evidence based on its experience delivering homes in Ealing.
- 1.9 These representations will set out in further detail:
 - Guidance on setting CIL rates
 - Berkeley's representations which are that:
 - **Representation 1:** The viability evidence which has been prepared to support the Regulation 19 Draft Local Plan and Draft CIL charging schedule is insufficient to determine the potential effects on the viability of development.
 - **Representation 2:** Viability evidence has not been informed by market indicators
 - **Representation 3:** The results of the viability study do not demonstrate how the proposed policies of the Regulation 19 Plan are consistent with the proposed rates.
 - **Representation 4:** CIL and S106 will be double counted on strategic developments that support their own infrastructure such as the Green Quarter.

2 Guidance on Setting CIL Rates

- 2.1 The National Planning Policy Framework (the 'Framework') and National Planning Practice Guidance ('PPG') sets out how Local Authorities should use proportionate financial viability evidence to support local plan policy requirements and CIL charging schedule rates. It expands on the statutory requirements set out in the Town and Country Planning Act (1990), Planning Act (2008), Localism Act (2011) and CIL Regulations (2010) as amended.
- 2.2 In respect of local plans, the Framework and PPG confirms in setting local policy requirements and site allocations, an authority must:
 - Ensure the plan is 'justified' (based on proportionate evidence) and 'effective' (deliverable over the plan period) (NPPF Paragraph 35);
 - Use a viability assessment to ensure that policies and allocations are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan (Ref ID: 10-002-20190509); and
 - Be informed by a proportionate assessment of viability (ID: 10-001-20190509).
- 2.3 In respect of CIL levy rates, the Framework and PPG confirms that when setting levy rates, an authority must:



- Ensure they are fairly and reasonably related in scale and kind to the development (the Framework, Paragraph 57)
- Do not undermine the deliverability of the plan (the Framework, Paragraph 34)
- When deciding the levy rates, an authority must strike an appropriate balance between additional investment to support development and the potential effect on the viability of developments [...] 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 (Paragraph: 010 Reference ID: 25-010-20190901)
- The regulations allow Charging Authorities to apply differential rates in a flexible way, to help ensure the viability of development is not put at risk. (Paragraph: 022 Reference ID: 25-022-20230104)
- If the evidence shows that the area includes a zone, which could be a strategic site, which has low, very low or zero viability, the charging authority should consider setting a low or zero levy rate in that area. The same principle should apply where the evidence shows similarly low viability for particular types and/or scales of development. (Paragraph: 022 Reference ID: 25-022-20230104)
- A charging authority must use 'appropriate available evidence' (as defined in the section 211(7A) of the Planning Act 2008) to inform the preparation of their draft charging schedule. (Paragraph: 020 Reference ID: 25-020-20190901)

2.4 The charging authority should adhere to this practice, characterised principally by transparent evidence-based assessments in consideration of Local Plan objectives, when setting out its proposed rates. Fundamentally it should: -

- Strike an appropriate balance between additional investment to support development and the potential effect on the viability of developments.
- Show how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan and support development across their area.
- Be consistent with, and support the implementation of, up-to-date relevant plans.
- Ensure they are informed by a proportionate assessment of available viability evidence; and
- Avoid setting a charge at the margins of viability.

2.5 The charging authority should adhere to this practice, characterised principally by transparent evidence-based assessments in consideration of Local Plan objectives, when setting out its proposed rates.

2.6 We do not consider that the evidence base used to support the charging schedule meets these requirements, or that the proposed rates will have a positive effect on delivering existing and emerging policies.



3 Representations

Representation 1: The viability evidence which has been prepared to support the Regulation 19 Draft Local Plan and Draft CIL charging schedule is insufficient to determine the potential effects on the viability of development.

- 3.1 The Council has published a 'Local Plan Viability Assessment' (December 2023) in support of the DCS. This provides the evidence base for the impact of CIL and other obligations on development. This document is intended to meet the requirement for striking the right 'balance' to ensure that the delivery of the sites and scale of development in the Plan are not put at risk.
- 3.2 The inputs and assumptions used in the evidence base are not considered to be realistic in the current market and are not supported by proportionate evidence, thus not meeting the required threshold.

Typologies

- 3.3 The viability evidence assesses a range of residential and commercial typologies. The residential typologies vary from 1 to 500 home schemes at low and high density. The remaining phases of the Green Quarter are in excess of 5,000 homes – with c 8,000 across the site as a whole. This is demonstrably a different context than a development of 500 homes, which would rarely provide any of its own on-site infrastructure except access.
- 3.4 These and other related variables – relevant to The Green Quarter and other large-scale development - that are not covered in the viability testing, including:
- Enabling Site Works;
 - Infrastructure Requirements; and
 - Building Height & Construction Methodology.
- 3.5 We would like to see (and we believe an examiner should require) a much wider variety of large-scale development included in the viability review, or bespoke evidence for a development of this nature and scale, to better reflect the circumstances of the Green Quarter in its scale and strategic importance.

Abnormal costs

- 3.6 The viability assessment does not include abnormal costs in its testing. With respect to The Green Quarter, the Southall Plan itself recognises that it is:

An opportunity to bring back into use a large parcel of previously contaminated land and support the long term regeneration of Southall

- 3.7 The Southall Plan recognises that bringing back into use this kind of contaminated land is a major public benefit of the site because of the great costs associated with that process (that will all be borne by the developer). In line with Planning Practice Guidance, we would therefore welcome consideration for a reduced or nil CIL rate being proposed for strategic sites with high abnormal costs, including The Green Quarter.



- 3.8 BNPPRE argue that it is not possible to provide a reliable estimate of what exceptional/abnormal costs might be, and therefore the analysis excludes exceptional costs stating that, to apply a blanket allowance would generate misleading results.
- 3.9 We believe that it is unrealistic to assume no abnormal costs would be incurred in a typical large scale residential development. As Berkeley's site is a former gasworks site and one of the very largest housing sites, the development is demonstrably atypical and ignoring exceptional costs is a significant omission.

Viability inputs

- 3.10 Berkeley is concerned that substantial rises to the CIL chargeable rates are being proposed at a time when viability of all housing-led development is deeply challenging due to the current interest rate, regulatory and inflation environment. Transaction volumes and values have decreased while financing costs and construction costs have risen. While things have stabilised somewhat there remains deep uncertainty around medium to long term inflation (and therefore base rates on which mortgages are based) and its impact on construction tender prices and home sales.

Profit Margin

- 3.11 The BNPPRE study notes at para 3.4.36 that returns of 17.5% are required for private sale. This is an extremely conservative estimate.
- 3.12 An acceptable profit margin in London will vary depending on the scale and complexity of the project and the risk involved. However, 20% is a minimum net return.

Build costs

- 3.13 The included build costs - £2,745 per sqm for flatted development with 6+ storeys - are lower than what is generally achievable for a development of the nature, quality and complexity of the Green Quarter. This assumption is derived from the RICS BCIS database which can have small sample sizes that represent a specific part of the market and lag behind actual costs, particularly with respect to recent changes in building standards and challenges including building fire regulations and sustainability.
- 3.14 It also excludes contractors design risk contingency which would form part of any present day tender price. It is for these exact reasons BNPPRE themselves do not rely on the BCIS database for the assessments of planning applications.
- 3.15 BCIS should only ever be used as a starting point, especially in the context of a London development with site specific challenges and opportunities. It does not reflect the complexity which is introduced into projects in London associated with design standards (lower building efficiency which arises from the standards); materials; Building Safety; quality of external areas; Future Homes Standards; complex and dense developments with high rise elements; podiums; basement etc, sustainability issues such as embodied carbon and all the other obligations which are incorporated into a design.
- 3.16 It also does not reflect the cost of preliminaries which are significant in an urban context.



Finance costs

- 3.17 Finance has become more costly as a result of the recent increases to interest rates. The study uses an assumption of 6%, however this market is unstable and rates over 8.5-10% have been common in the last year.

Private Residential Sales Values

- 3.18 No evidence is provided in the study to support the range of sales values adopted. Achievable residential revenues have reduced considerably as a result of increased interest rates which have reduced mortgage affordability. The revenues set out at Figure 2.22.1 are not substantiated.

4 Representation 2: Viability evidence has not been informed by market indicators

- 4.1 The results of the viability assessment do not appear to have been sense checked against any market indicators. For example, it has been widely reported that as a result of weakened market conditions housing delivery is at unprecedented lows in London. The GLA's most recent market report (February 2024) notes that residential starts are 36% down in 2023 and there are current 6,000 homes stalled in the capital. This includes some of the London Borough of Ealing's own development schemes as publicised on the Council's website.
- 4.2 The BNPPRE study indicates many forms of development should be viable with 40% affordable housing and could support an increased cost burden with the introduction of CIL payment. This is clearly out of kilter with actual market conditions. This further suggests the methodology used in the BNPPRE study needs to be carefully reviewed.
- 4.3 The outputs of the viability study have not been verified against case study data informed by more detailed up to date assessments of design efficiencies, construction costs and achievable value which would be available to the Council.
- 4.4 Our analysis of recent planning applications in LBE evidence that schemes are unable to afford to deliver in excess of 35% affordable housing prior to the introduction of any additional cost burden relating to CIL.
- 4.5 The Council's approach to propose CIL, and an affordable housing Fastrack route of 40% affordable housing, of which 70% is social rent, is not in general conformity with the London Plan, or supported by a robust evidence base. It is unclear at this stage, how such an approach can be justified. For Southall, Table 6.11.2 shows that even with the Council's optimistic assumptions and without abnormal costs, Type 19 typologies cannot support 35% affordable housing.

5 Representation 3: The results of the viability study do not demonstrate how the proposed policies of the Regulation 19 Plan are consistent with the proposed rates.



- 5.1 The emerging Local Plan identifies a pressing need to support the delivery of housing and affordable housing in the borough and sets a target for 2,157 homes per year (in line with the London Plan) of which 1,079 are targeted to be affordable housing (50%).
- 5.2 The GLA's Datahub evidences that in 2022/23 only 783 homes were completed in LBE (36% of the annual target) of which just 169 were affordable homes (21% of those delivered and just 15.6% of those targeted). This highlights the financial challenges already facing the delivery of housing and affordable housing in Ealing.
- 5.3 The results of the BNPPRE viability study itself appear to show that large scale residential schemes in the region of 300-500 homes would not be viable with more than c.10-25% affordable housing on brownfield sites in all areas with average values less than £8,136 per sqm. The study also shows at Table 7.17.1 that the introduction of the proposed Draft CIL rates alone could reduce the viable levels of affordable housing by up to c.6-7%.
- 5.4 On this basis, many schemes which have recently been consented in these areas (but not yet delivered) either with the maximum viable level of affordable housing or via the 35% Fast Track route will almost certainly become undeliverable as a result of the new Regulation 19 policy requirements and CIL charges.
- 5.5 Moving forward, while there is flexibility in policy for a lesser amounts of affordable housing to be provided (where supported by an application stage viability assessment) the BNPPRE study itself evidences the viable level of affordable housing is unlikely to exceed c.10-20% in many cases. This is less than the c. 21% average achieved in 2022/23 which was already substantially less than the 50% strategic target due to financial constraints.
- 5.6 The practice guidance on setting rates requires that due consideration is given to the impact of rates on Local Plan objectives.
- 5.7 Policies SP1 and SP4.1 of the New Regulation 19 Local Plan seeks to promote Good Growth through excellent place-making and sustainable development.
 - A. Uniting high quality design, placemaking, sustainability, a healthy environment, with the positive elements of character, heritage, and nature in delivering against planned development needs.*
 - B. Directing development to sustainable locations that are well connected to sustainable transport modes or within close proximity to town centres, and thus deliver patterns of land use that reduce the reliance on the car and facilitate making shorter and regular trips by walking and cycling.*
- 5.8 Berkeley takes pride in developing high quality homes with a particular focus on placemaking to deliver new communities. The high quality of design and location of the Green Quarter on brownfield land close to public transport, including Southall Station, makes it exemplar of the kind of site that needs to come forward viably if Ealing is to deliver on these policies.



5.9 The Green Quarter also sits within the Southall Town where policy S4 for West Southall seeks the following:

(iii) Providing a connected network of high quality green and open spaces to address deficiencies in the area.

(iv) Providing social and community infrastructure, including a new primary school, indoor sports hall, community buildings, and a health centre.

(v) Providing a significant proportion of genuinely affordable housing and other tenures/types to meet local needs.

5.10 The Southall Town plan is transparent on the centrality of The Green Quarter to the delivery of this policy objective.

5.11 Based on these Local Plan objectives it is therefore clear that any CIL charge that threatened the viability of The Green Quarter would threaten the delivery of the Local Plan.

5.12 In summary, the council has not achieved its housing targets in recent years due to a factors including financial viability constraints. The proposed policies and site allocations set out in the regulation 19 Draft Local Plan and the proposed Draft CIL charging schedule will further reduce the ability of sites to meet these targets and of the council to implement the relevant emerging local plan to achieve these objectives.

6 Representation 4: CIL and S106 will be double counted on strategic developments that support their own infrastructure such as the Green Quarter.

6.1 The consultation does not explain at all what infrastructure CIL will deliver, and what current Section 106 planning obligations will be replaced in the future. As the Council does not have s.106 legal obligation guidance, there remains a significant evidence omission.

6.2 As indicated above, because the typologies only go up to 500 homes, the sample or test data will not reflect the burden of on-site and Section 106 infrastructure required. At c 8,000 homes, The Green Quarter will provide much of its own infrastructure, including the following, all paid for by Berkeley:

- Education
- Swimming Pool
- Shop Mobility
- Employment and Training
- Air Quality Strategy Development
- Air Quality Implementation and Monitoring
- Transport Management Fund



- Signage
- Parking
- CPZ
- Spencer Street Open Space
- Street Trees
- Public Realm
- Allotments
- Burial Ground

6.3 To levy a significant CIL liability in addition to this is effectively double charging – or mitigating an impact that Berkeley has already committed to mitigating. It is also important to have transparency for the community on what is being spent. We welcome a further discussion on how the local CIL allocation will be spent and how this will benefit the current and future population of Southall.

7 Recognise the bespoke nature of brownfield sites and make them CIL exempt

7.1 Urban regeneration sites are highly variable with their own challenges and opportunities. Many of these sites have huge potential but struggle for economic viability given their constraints. Negotiated S106 agreements remain the best route to maximising delivery on brownfield land, maximising the opportunities these sites provide, and directly delivering services and infrastructure that reflect the needs and aspirations of the local community.

7.2 These sites should be excluded from CIL and Infrastructure Levy payments in order to maximise the scope for the delivery of the direct tangible benefits to the local community which are a key element in securing local support for strategic sites.

8 Conclusions and recommendations

8.1 If the DCS is adopted the impact of the increase in CIL liability (c. £62m) would threaten The Green Quarter's deliverability.

8.2 If more realistic inputs (inc. land values, build costs and finance) were tested on a typology equivalent to The Green Quarter (inc. more than 500 homes and associated costs, as well as site specific abnormal costs) we are of the view substantial viability challenges would be revealed. This would also more accurately reflect Berkeley's experience of the challenge of delivering homes in this location, as evidenced by the difficulty Ealing has faced in meeting its housing targets.

8.3 As such we have three recommendations:

- Recommendation 1: The viability study underpinning the Regulation 19 Local Plan and Draft charging schedule should be revised and updated as necessary to ensure that: i) the



inputs are robust and up-to-date; ii) the results are verified against recent application assessments and current applications; ii) the results are sense checked against.

- Recommendation 2: The introduction of CIL should be delayed until Regulation 19 has been adopted and the impact of policies on viability have been determined through application stage assessments. Introduction of CIL ahead of this would be premature.
- Recommendation 3: Significant further work is required to justify the application of CIL, and its relationship with how the Council seek s.106 obligations.
- Recommendation 4: Urban regeneration sites should be excluded from CIL and Infrastructure Levy payments in order to maximise the scope for the delivery of the direct tangible benefits to the local community which are a key element in securing local support for strategic sites.

8.4 Berkeley is very supportive of Ealing's ambitious Local Plan targets for the borough and sees The Green Quarter as an important part of that ambition. Were a CIL charge to be introduced it would be imperative that differential rates were applied to Strategic sites such as the Green Quarter because of their abnormal costs. This is inline with the requirements of the Planning Practice guidance.

8.5 Quod and Berkeley would like to reserve the right to appear at the Examination and would be happy to meet with you in the meantime to share relevant evidence or discuss the matters in this letter further.

Kind regards.

Yours faithfully,

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