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Draft CIL Charging Schedule Consultation
London Borough of Ealing
Strategic planning team,
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Via email: localplan@ealing.gov.uk

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Dear Sir/Madam

London Borough of Ealing: Draft CIL Charging Schedule Consultation Representations on Behalf of Prologis UK Limited

On behalf of our client Prologis UK Limited ('Prologis'), this letter provides comments on the Draft Community Infrastructure Levy ('CIL') Charging Schedule ("DCS") which was prepared by the London Borough of Ealing ("LBE") in December 2023 and published for consultation on 28 February 2024.

Introduction

Prologis is a key stakeholder within the Borough with existing assets and is considering other opportunities to bring forward industrial space as well as industrial intensification in Ealing. As such, Prologis is keen to ensure that the CIL Charging Schedule does not adversely impact or prohibit the delivery of new industrial developments and industrial development in accordance with local and strategic planning objectives.

It is within this context that we have set out below comments and a suggested amendment to ensure that the DCS does not specifically prejudice the delivery of industrial intensification and multi-storey industrial buildings. The proposed amendment accords with the approach being taken by other local authorities in the adoption of their charging schedules.

In addition, Prologis has fundamental concerns regarding the proposed CIL rates within the DCS and the accompanying Viability Study which has informed it. In particular, **Prologis has significant reservations around how the proposed levy rates have been derived, what typologies have been used to inform the assumptions and how it relates to the comparable rates recently adopted in West London. Prologis is of the view that the DCS will have a significantly adverse impact on the viability and deliverability of schemes which will have potential implications for bringing forward any new or redevelopment industrial and logistics developments within the area.**

In developing the proposed levy rates within the DCS, it is considered that LBE has relied upon evidence which does not accurately reflect the current industrial market, including multi-storey developments, within the borough and the associated viability considerations. It is questioned why the Viability Study fails to properly recognise the delivery of multi-level developments. Prologis considers that the DCS has some fundamental issues which need to be addressed before the draft CIL is progressed. As it currently stands, Prologis does not support the DCS and in their view more evidence is required to demonstrate that the rates are justified. These concerns are set out below but in addition, we would be happy to arrange a meeting with Officers to discuss the issues and help inform the development of the DCS.

Background

Prologis is one of the largest developers of industrial logistics buildings within London and across the UK. The company has built, delivered and managed over 50 million sqft of industrial floorspace across 22 'Prologis Parks' and continues to invest in strategic employment locations, creating high quality business environments for a range of occupiers.

Prologis is focused on the intensification of industrial land, including the delivery of multi-storey schemes, as explicitly encouraged by the GLA and the London Plan (Policy E7). Prologis has unrivalled knowledge of multi storey logistics schemes globally and have used this knowledge, alongside a significant amount of research and analysis of the UK commercial market, to inform the highly specialist and technical designs currently underway. Prologis is considering opportunities to help address the acute need for new distribution warehouse floorspace to serve London and is exploring how innovative development can make best use of the limited space available.

These representations are therefore prepared in the context of the industrial and logistics sector, in line with London Plan policy, potentially looking to optimise density on employment sites and facilitating employment intensification, through the delivery of innovative building, including multi-storey developments. In this regard, Prologis is committed to expanding its portfolio of distribution properties across London, contributing positively towards the GLA and LBE's ambitions for sustained employment growth and industrial capacity and would not wish to be deterred by unjustified high CIL rates.

It is within this context that Prologis has reviewed the DCS and the associated Viability Study (December 2023) and make the following comments. For ease, we have separated out comments which relate the DCS and those which relate to the Viability Study.

Comments

LBE Draft Charging Schedule

Multi-level Industrial Development – Non-chargeable Floorspace

The DCS (p.1) states that CIL is charged per sqm at the given rates *"on the net additional floor space created, this being the Gross Internal Area proposed less any existing buildings within the proposal in lawful use which are to be retained as part of the development or demolished before completion of the chargeable development"*.

Under the CIL regulations (2019), the amount of levy that is payable is typically calculated by multiplying the additional gross internal area ('GIA') by the rate for a particular development type. The rate is set out in the relevant charging schedule. However, the term GIA is not defined in the regulations. It is a matter for charging authorities to determine what aspects of a development should be included in the calculation, however I commonly understood that the RICS definition of GIA is used as the basis for this calculation.

The priority issue for Prologis is that under the current LBE DCS, on a traditional single storey industrial development, the access roads the service yards are all external, which do not form part of the floorspace (GIA) of the building and, therefore, would not be CIL liable. However, by comparison, the service yards and access roads (ramp areas) in certain multi storey schemes would be CIL liable on the basis that they are enclosed and form part of the GIA floorspace. However, as acknowledged by the fact that open service yards and access roads are not CIL liable, service yards and access roads give rise to no additional impact that needs to be mitigated through CIL, whether open or enclosed. This would not, therefore, be an equitable or reasonable approach.

For the purpose of this representation, a typical example of the sort of scheme which Prologis could bring forward is a multi storey (six floors) logistics facilities providing c.36,000sqm of commercial/warehousing lettable floor space with ancillary uses, car parking, enclosed access roads, service yards and ramps. Please note that this is an example for the purpose of demonstrating the below calculation and does not relate to any specific site.

The table below provides an indicative breakdown of floorspace using an example multi storey scheme (not taking into account any existing floorspace for the purpose of calculating the chargeable amount), and the draft DCS which proposes a CIL rate of £100 per sqm for industrial floorspace (which falls within the 'industry' category):

Single storey (one floor)		**Multi-storey (six floors including ground level)**	
Operational/lettable floorspace	6,000 sqm	Operational/lettable floorspace	36,000 sqm
Service Yard	3,000 sqm	Enclosed service yard	18,000 sqm
Ramp/Access road area	2,000 sqm	Enclosed ramp	11,000 sqm
Total floorspace	11,000 sqm	Total floorspace	66,000 sqm
Total GIA that is CIL liable	6,000 sqm	Total GIA that is CIL liable	66,000 sqm
Draft DCS (£100/sqm)			
Chargeable amount	**£600,000**	Chargeable amount	**£6,600,000**
Chargeable amount *excluding service yards and ramps*	**£600,000**	Chargeable amount *excluding service yards and ramps*	**£3,600,000**
Indicative CIL liability			
Total CIL liable floorspace of **six individual** single storey schemes	36,000 sqm	Total CIL liable floorspace of multi storey **(six-storey)** schemes	66,000 sqm
Total Chargeable Amount	**£3,600,000**	**Total chargeable amount**	**£6,600,000**

It should be noted that the example reflects a typology of a large service yard at every level of the building which is accessed via an enclosed vehicle ramp. This is different to other examples of multi storey schemes which may not include service yards above ground level and do not rely on vehicle ramps. This is typical of the sort of buildings which Prologis and other industrial developers are likely to bring forward during the Local Plan period. In the case of the above example, the enclosed access roads, ramp and service yards equates to over 40% of the gross floorspace of the building.

Under the current DCS, multi storey schemes would pay a disproportionate and unjustified amount of CIL in comparison to single storey schemes with a requirement of c.45% more CIL, despite delivering the same amount of lettable floorspace as single storey schemes, if delivered across six individual sites.

The NPPG states that "*Charging schedules with differential rates should not have a disproportionate impact on particular sectors or specialist forms of development*". It is therefore not considered appropriate for multi storey schemes to pay such a significantly greater proportion of CIL compared to single storey industrial developments.

Further, as stated above, there would be no greater impact on the facilities or services generated by the access road, ramps and service yard areas of multi storey schemes than would be funded by the DCS. In other words, the ancillary access road, ramps and service yard areas within multi storey industrial schemes would give rise to no additional infrastructure impacts that need to be mitigated, and it is therefore not appropriate for these developments to pay more CIL.

This issue was raised during the preparation of the Old Oak and Park Royal Development Corporation (OPDC) Community Infrastructure Levy (CIL) Charging Schedule. Prologis submitted representations on this basis and agreed a Statement of Common Ground to amend the Charing Schedule was agreed with OPDC. Of note, following the public examination in 2023, the Inspector's Report (January 2024) supported the position presented by Prologis and agreed by OPDC and noted that "*this element of development should not be charged CIL simply because servicing provision that is normally exterior to the building becomes enclosed floorspace" (paragraph 62).*

This issue is a critical strategic point for the development of multi storey industrial developments within Ealing, and potentially across the whole of London as individual boroughs revise their CIL (and also when the Mayoral CIL is revisited). It would also prejudice London Plan strategic objectives to promote industrial densification and multi storey developments.

Taking the above into account, we consider that it would be appropriate and justified to exclude the ancillary enclosed access roads, ramps and service yard areas in multi storey schemes from CIL. Planning Practice Guidance (PPG) sets out that the CIL regulations allow charging authorities to apply different rates in a flexible way to help ensure the viability of development is not put at risk – and that this may be appropriate in relation to the types and/or scales of development. Specifically, it states:

"Charging schedules with differential rates should not have a disproportionate impact on particular sectors or <u>specialist forms of development</u>… Charging authorities may also set differential rates by reference <u>to different intended uses of development</u>. The definition of "use" for this purpose is not tied to the classes of development in the Town and Country Planning Act (Use Classes) Order 1987 (as amended)." (our emphasis)

There is therefore the opportunity for LBE, and other LPAs, to adopt an approach that does not charge CIL on certain areas and/or types of development, justified by reference to the viability of development.

As stated above, Prologis sought this amendment as part of the OPDC Charing Schedule. Subsequently, the OPDC CIL explicitly excludes enclosed access roads, ramps and service yards within multi-storey industrial developments (figure 1).

Table 1: CIL rates

Use	CIL rate per square metre in zone A	CIL rate per square metre in zone B
Residential	£80	£80
Hotel	£80	£80
Co-living	£135	£135
Student accommodation	£170	£170
Office developments (20,000 sq.m+)	£35	£80
Data centres	£120	£120
All other chargeable uses	£35	£35
Development by a publicly funded or 'not for profit organisation'* (definition below) comprising: • medical, health and emergency services; • development used wholy or mainly for the provision pf education as a school or college or as an institute of higher education; and • community, sport and lesiure facilities.	£ Nil	£ Nil
Affordable workspace	£ Nil	£ Nil
Specialist housing in accordance with Local Plan policy H9	£ Nil	£ Nil
Enclosed access roads, ramps and service yards within multi-storey industrial developments.	£ Nil	£ Nil
*Definition: Not for profit organisation is one that does not earn profits for its owners but condicts business for the benefit of the general public; all money earned by or donated to the organisation is used in pursuing the organisation's objectives.		

Figure 1 – Table 1 of the OPDC CIL Charing Schedule 2024

A further, comparable example, of this is the Barnet CIL Charging Schedule whereby the liability for residential and retail floorspace explicitly excludes ancillary car parking, as shown by the extract below.

1.7 The Council has agreed to set its CIL as £135 per square metre on residential and retail development; with all other use classes, including car parking space deemed ancillary to retail or residential development, zero-rated.

Mayoral CIL	Barnet CIL
£0 Education uses (D1)	**£135 Residential (C1 - C4, Sui Generis HMOs) ***
£0 Health uses (D1)	**£135 Retail (A1 - A5) ***
£35 All other use classes	**£0 All other use classes**
	**** excluding ancillary car parking***

We consider that a similar approach should be applied here. Currently single and multi storey industrial schemes, would fall within the 'Industry' use category which would include all types of industrial development but would not include office developments which are covered under other uses.

On this basis, an amendment clarification to the DCS could be introduced under "Industry" use by stating *'*excluding enclosed service yards and access roads on multi storey industrial developments'*. This would mirror the approach taken by OPDC and restrict the exclusions specifically to multi storey industrial developments.

In summary, it is considered that the above amendment would ensure that the delivery of industrial intensification in accordance with local and strategic objectives would not be adversely prejudiced through the application of CIL rates in the borough. There is precedent for this approach and Prologis requests that this amendments is made to the charging schedule. Please note that these requested changes are separate to Prologis' fundamental concerns regarding the propose CIL rate for industrial development and data centres which are set out below.

Viability Assessment

Notwithstanding the above comments, Prologis strongly objects to the to the proposed CIL rate for industrial development and data centres set out within the DCS and it is considered that the proposed rates will have a fundamental impact on the delivery of new industrial development in the borough. Prologis considers that the approach taken within the viability assessment is not appropriate to the form of industrial development which could be delivered and the assumptions do not reflect current market conditions.

This sections sets out general comments in relation to the approach taken by the viability assessment and provides a comparison with other uses and boroughs. It also provides commentary on the detailed assumptions made within the assessment.

General Comments

Prologis also has concerns with regard to the assumptions around viability, and specifically the viability study, which has been used to inform and assess the impact of the DCS on the delivery of new development within the LBE area. These concerns relate to the overall approach to viability as it relates to industrial developments, as well as the detail which has been used to inform the accompanying appraisal.

Prologis objects to the DCS with regards to the proposed rates for industrial. Prologis considers that the proposed rates for the industrial within the DCS would currently prohibit the delivery of any new large-scale industrial developments of the type encouraged by London Plan and Local Plan policy.

Paragraph 015 (Reference ID: 25-015-20190901) of the NPPG states "*Plan makers and site promoters should assess viability to ensure that policy requirements for developer contributions are deliverable (see the viability guidance; https://www.gov.uk/guidance/viability). This will be an important part of the evidence underpinning the introduction of a charging schedule. It is the responsibility of authorities when preparing their charging schedules to collaborate with the local community, developers and other stakeholders, to create realistic and viable charging schedules*."

It is considered that this important part of the evidence which underpins the DCS has not been undertaken in accordance with paragraph 015 of the NPPG as currently the DCS as proposed could impact on the deliverability of industrial schemes within the area. In particular, the current CIL rate for industrial development, particularly in relation to other areas could well prevent the sector from bringing forward schemes in the Borough.

Furthermore, it is not clear from the viability assessment what discussions have been held with industrial and logistics developers as required by paragraph 015. If discussions have been held with

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agents and leaders within the industry it is not transparent as required by the RICS ethical obligation to transparency.

In general, the viability assessment is focused on the impact of the proposed CIL rates on residential forms of development. It provides a narrative and review of the residential sector taking into account a range of residential typologies and is inform by appropriate evidence. The same approach has not been taken for the industrial sector. There is not a detailed analysis of the market conditions or an understanding of the form of development and how this would be impacted by the proposed CIL rate. Prologis request that the viability assessment is revised to include a more comprehensive review of the industrial market including discussions with key developers and investors in the market.

Comparison with Other Uses and Boroughs

The DCS proposes a charge of £100 per sqm of industrial development and £150 per sqm for data-centres across the Borough. Prologis strongly object to this charge due to the impact it will have on industrial development in the borough. With the exception of residential uses, these are the highest rates per sqm for any use within the Borough. We note that offices are nil rated across the Borough (with the exception of the metropolitan town centre which is £75 per sqm), hotels are £50 per sqm, retail, food and beverage uses are nil rated and other forms of development are £25 per sqm. It is not clear or justified why this is the case.

How this rate compares to other recently adopted Charging Schedules is also relevant. For example, the nearby Old Oak and Park Royal Development Corporation ('OPDC') adopted its Charging Schedule on 1st April 2024. In that charging schedule, industrial does not have a specifically defined rate, but falls within the *'all other chargeable uses'* which has a rate of £35 per sqm. The supported Revised Viability Study noted *"our appraisals of speculative industrial and warehousing developments (including distribution and logistics facilities) indicate that **viability is challenging** and we therefore suggest the OPDC considers setting a **nominal rate** of £35 per square metre for these schemes* [our emphasis added]". Of specific note is that the OPDC area covers Park Royal which is widely acknowledged to have some of the highest industrial values in London. Therefore, as an overarching principle, it is not clear how the viability assessment which supports the DCS has come to conclusion which proposes a CIL rate three-times higher than those within Park Royal. Similarly, OPDC's charging schedule sets out a rate of £120 per sqm for data-centres which is lower than the £150 per sqm proposed in the DCS.

Taking into account the viability assessment which was prepared to support DCS and the comparable assessment which was prepared in support of the OPDC Charging Schedule we would make the following observations:

1 The viability assessment considers industrial typologies to assess the potential impact of CIL on the viability of the use. In particular, three typologies are assessed: a light industrial scheme and two single storey schemes of up to 6,00sqm. It is noted that the assessment does not consider any large-scale industrial schemes and in particular multi-level typologies which are supported and encourages by policy. The OPDC viability assessment considered five typologies including single storey schemes of 9,300sqm (100,105sqft) and multi-level schemes of 12,495sqm (134,500sqft) and 40,473sqm (435,651sqft). These are the sort of developments which could come forward in the borough and the lack of assessment of these typologies and the associated, very different, viability

considerations is a concern. It is requested that the viability assessment is updated to include additional, multi-level, industrial typologies.

2 Associated with the above points regarding typologies is the assumptions which have been made around rents and build costs within the viability assessment. The assessment assumes a borough rent of £220 per sqm (£20.44 per sqft) for industrial and warehousing. This compares to rental assumptions of between £217 per sqm (£20.25 per sqft) and £409 per sqm (£38 per sqft) within the OPDC assessment. With regard build costs, the assessment assumes base costs of £1,315 per sqm against costs of between £1,130 per sqm (£105 per sqft) and £2,152 per sqm (£200 per sqft).

The viability assessment is assuming rental values at the lowest level of the OPDC assessment and build costs which are higher than the lowest OPDC assumptions. **Notwithstanding the timing of the two assessments and the different market conditions, it does not follow that on the assumption of lower rental values and higher build costs, a CIL rate three times higher is appropriate.** The OPDC viability assessment concluded that "*viability is challenging and we therefore suggest that OPDC considers setting a nominal rate of £35 per square metre for these schemes,"* whereas the viability assessment which supports the DCS states *"our appraisals indicate that industrial and light industrial developments can absorb maximum CIL rates in the region of £200 per square metre. We suggest that a CIL rate of £100 per square metre would leave a significant buffer to address the impact of economic cycles over the life of the charging schedule."* **On the basis of the above, notwithstanding a detailed analysis of the individual assumptions within the viability assessment, Prologis fundamentally disagree that a CIL rate of £100 per sqm is justifiable and would prevent the delivery of industrial intensification in the borough.**

3 The viability assessment (table 2.46.1) identifies the adopted and indexed CIL rates in neighbourhood boroughs for different uses. The table does not however, include the rates for industrial development which is not explained within the assessment. The table below shows the industrial rates within those identified boroughs. Where a specific rates for industrial is not included within the charging schedule, the 'all other uses' figure is shown which represents the effective charge for industrial development.

Borough	Effective From	Industrial / All Other uses
Hillingdon	August 2014	£5 per sqm (industrial specific)
Hounslow	July 2015	£20 per sqm (all other uses)
Brent	July 2013	£0 per sqm (industrial specific)
Hammersmith and Fulham	April 2015	£0 per sqm (all other uses)
Harrow	October 2013	£0 per sqm (all other uses)

As is clearly shown from this comparison, the CIL rates for industrial developments in surrounding boroughs (including OPDC) is considerably below that which is being proposed within the DCS. The rates are also proportionately lower that the other uses shown within table 2.46.1. Whilst there is some differences in the viability considerations within each borough, these differences to not equate to a difference in rates between £0 and £100 per sqm. Therefore the proposed CIL rate for industrial development in Ealing will prevent new developments from coming forward in comparison to surrounding boroughs.

Detailed Viability Comments

In addition to the general comments set out above, Prologis has the following specific comments which relate to the viability assessment and the assumptions therein.

1. Paragraph 2.24 sets out the assessments approach to incorporating policy requirements within the viability assessments. It states that the Regulation 18 policies have been identified and are included within the report. The Regulation 19 consultation draft of the Local Plan is currently out for consultation and the assessment should consider the updated policies within the latest draft of the Local Plan. Table 2.49.1 makes reference to the *'implementation of BREEAM for commercial development'* however does not clarify what level of BREEAM is targeted and assumed within the assessment. The targeted level will have an impact on industrial development and it is requested that this is clarified.
2. Paragraph 3.4 of the assessment sets out the key appraisal variables which have been taken into account. It includes a commentary on developer profit for different housing types and how these have been applied to the assessment. It is notable that there is no equivalent commentary on profit margins for industrial development which is a deficiency within the assessment which should be addressed.
3. Section 4 of the assessment includes Section 106 costs and confirms that an assumption of £25 per sqm for commercial developments has been applied. However, the assessment does not include an explanation or justification for how this figure has been derived and which schemes have been used to inform this position. Within the broad category 'commercial development' there is considerable variation and industrial developments do not typically generate requirements for Section 106 payments in the same way as office developments, for example. Therefore, further justification and explanation on how this figure has been arrived at, whether it is robust figure and how the cumulative impacts of CIL and S106 will impact viability, should be discussed in more detail within the assessment.
4. The assessment seeks to incorporate the costs of achieving net zero carbon reduction on developments within the appraisals. Paragraphs 4.15 and 4.16 confirms that the costs of operation and embodied carbon are currently unclear and will fall over time but assumes a cost uplift of 15% for operational and embodied carbon. It is not clear how this figure has been arrived at as it is considered to be too high for net-zero thorough offsetting and not enough to achieve it through material selection along. Embodied carbon policies should be on a much longer (10year + trajectory). For example, there is already a UKGBC pathway for this which shows the embodied carbon costs for non-domestic buildings decreasing as follows over the next 30 years:

Category	2018	2025	2030	2035	2040	2045	2050
Buildings (Non-domestic) - Embodied Carbon	Baseline 16.9	-17% 14.0	-44% 9.5	-57% 7.2	-67% 5.5	-75% 4.2	-82% 3.0

It is requested that the viability assessment provides justification as to how the figures on net zero have been derived and takes an approach to costs and timescales which aligns with aligns with the wider industry.

Viability Assessment Conclusion

As set out above, Prologis strongly objects to the approach to the viability assessment and conclusions from which a CIL rate of £100 per sqm for industrial development and £150 per sqm for data centres has been arrived at.

The typologies within the assessment are not reflective of the type of industrial intensification which are likely to come forward in the coming years and therefore, the appraisals do not provide an accurate reflection of the industrial market within the borough. In particular, multi-level typologies have a considerably different viability profile and these are not included within the assessment.

In comparison to other CIL rates within this part of London, and particularly the recently adopted OPDC CIL, the DCS proposes a rate which is considerably higher than all of the surrounding boroughs. In the majority of cases, the CIL rate for industrial development is £0 per sqm increasing to £35 per sqm within OPDC which includes the industrial heartland of Park Royal. The viability assessment which supports the DCS does not align with the assessment which was undertaken in support of the OPDC and the significant increase in CIL rates cannot be justified on this basis. Prologis considers that a rate of £100 per sqm is unjustified and will impede the delivery of new industrial development within the borough.

In summary, we request that a revised viability assessment is undertaken with a specific consideration of a broader range of industrial typologies and that the CIL rate is revised to reflect similar rates within this part of London. At the present time, it is not considered that the evidence is robust enough to support the rates proposed.

Summary

As currently drafted, Prologis do not consider that the DCS and the Viability Study which has informed it is justified and should be progressed based on the current assumptions.

Without the inclusion of the amended charging schedule, the DCS has the potential to prejudice the viability and deliverability of multi storey industrial and distribution schemes and bringing forward industrial intensification and investment within the area. Prologis request that:

1. the ancillary enclosed access road, ramp and service yard areas in multi storey schemes should be excluded from CIL, and that there is a simple means to do this within the DCS, that has been similarly applied elsewhere in London; and

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2. the £100 per sqm charge rate for industrial development is revisited because as currently drafted it will make the delivery of industrial development in the borough challenging and is not supported by robust evidence to demonstrate otherwise. It is therefore critical that any charge rate is fully justified by robust evidence that is agreed by all parties. We also question the propose CIL rate for data centres on the basis of other charging schedules within London.

If you have any questions regarding the above, please do not hesitate to contact me or my colleague Simon Slatford.

Yours faithfully

[redacted]

[redacted]