London Borough of Barking and Dagenham

Community Infrastructure Levy

Preliminary Draft Charging Schedule

Summary of Comments and Reponses

January 2013

APPENDIX 2

Response No.	Respondent Name	Summary of Comments	Council Response	Charging Schedule Amendments
1	English Heritage	Suggest document could benefit from reference to acknowledge that growth can have impacts on the historic environment as on other areas of planning and that heritage should be regarded as a recipient of CIL within the Council's responsibilities in relation to historic public realm, open spaces and cemeteries.	Charging schedule already refers to public realm, open space and cemeteries. Further distinction not necessary. However please note that the consultation is on the proposed charges not on what the proceeds of the levy will be spent on. The comments are noted and will be considered when the Council publishes its Regulation 123 list which lists the infrastructure types to be funded by CIL.	None
2	Brett Group	CIL does not apply to minerals extraction development and therefore Bretts do not wish to make any comments on this consultation exercise	Noted	None
3	Dron Wright Property Consultants acting on behalf of the London Fire and Emergency Planning Authority	As fire stations are a vital community facility we believe that they should be excluded from payment of this levy. This is on the basis that fire stations are community safety facilities which are included within the definition of infrastructure under the Planning Act 2008	The levy can only be set on the basis of viability. No evidence has been presented that fire stations cannot afford to pay the modest charge of £10 per square metre that has been set. It is important to note that existing floorspace to be demolished/retained can be discounted where the building has	None None

		Despite the Council's infrastructure plan saying that the borough's fire stations are not in need of investment Barking Station is in need of investment and Dagenham Station is part of a PFI project to provide nine new fire stations across London. With this in mind together with the increase in growth in the area LFEPA will be under increased financial pressure in providing the essential services that are required of them. It is therefore requested that consideration should be given to the provision of funding for LFEPA community facilities, from the CIL payments which are collected.	been in continuous use for six months in the last twelve months. This is relevant to the LFEPA if they plan to invest in existing stations. It is also important to clarify that the consultation is on the proposed charges not on what the proceeds of the levy will be spent on. The LFEPA comments are noted and will be considered when the Council publishes its Regulation 123 list which lists the infrastructure types to be funded by CIL.	
4	Highways Agency	No comment	None	None
5	Joint Nature Conservation Committee	No comment	None	None
6	Natural England	Approach seems reasonable and in line with relevant legislation, therefore Natural England does not wish to offer any substantive comments in respect of the Community Infrastructure Levy rate. Natural England is pleased to see the inclusion of Open Space provision within the document especially section 3.5.2 which refers to the provision of new open	None None	None None

		space and links to the east London Green Grid. This is welcomed and to be encouraged.		
7	Peacock and Smith representing Morrison's Supermarket	Strongly object to proposed CIL rate of £300 sqm for large convenience retail floorspace (>1500 sqm) It is acknowledged that the charge has been informed by viability assessments prepared by GVA Grimley, our client is gravely concerned that the suggested 'abnormal' charge will have a significant adverse impact on the overall viability of future (large) convenience retail development in the borough. A balance has not been found between infrastructure funding requirements and viability. Effectively, supermarket operators are being used as a scapegoat. Morrisons raises concerns that the viability analysis does not take into account all likely costs associated with developing a new foodstore. For example the potential costs associated with developing a brownfield site (e.g. site remediation and preparation) can be extortionate. The draft charge will put undue	The levy can only be set on the basis of viability. Page 226 of the Council's Economic Viability Report demonstrates that large convenience retail developments (>1500 sqm) can afford a levy of up to £1500 per square metre. However the Council has decided to remove the large convenience threshold and instead has tested the viability of supermarkets/superstores in general. This has evidenced that supermarkets and superstores can afford a charge of £175 per square metre.	

		additional risk on the delivery of foodstore proposals and will be an 'unrealistic' financial burden. This, in turn, poses a significant threat to potential new investment and job creation in the borough, especially in regeneration areas, at a time of economic recession and low levels of development activity. Furthermore, it is important to note that the proposed £300/sq m levy for convenience retail development is disproportionately higher than those being proposed by other London boroughs. By way of example, the boroughs of Lewisham, Merton and Croydon are proposing rates of £80/sq m, £100/sq m and £120/sq m respectively which, on average, are a third of the charge being proposed by LB Barking and Dagenham.		
8	Savills acting on behalf of Sanofi	Extremely concerned about the proposed blanket charge across the borough of £300 per square metre for 'large convenience retail' and the consequences that this would have for the viability of the recently approved Sanofi scheme. Acknowledge that approved scheme and subsequent	The Council accepts that the permitted Sanofi development and any subsequent reserved matters are not liable for Mayor of London CIL as it was permitted before 1 April 2012 and therefore neither is it liable for the Council's CIL.	

		reserved matters would not be liable to charge but are concerned about impact on any fresh applications. Sanofi consider that a charge of this level could undermine the entire proposal and would almost certainly prevent it being built. The Charging Schedule should be updated to take into account site location and other factors including: • high remediation costs associated with a development • where retail and other uses subsidises less valuable uses on a scheme which delivers important community benefits, including job creation and facilities such as health care The Charging Schedule should take these matters into account and should allow for a lower, if not 'nil', rate. The draft Residential charge takes into account the different areas within the Borough and recognises that variable rates should apply dependent on viability considerations. Our site falls within the 'Rest of the borough' which has the	Therefore Sanofi's concerns are only relevant to an entirely new planning application. Notwithstanding that the site already has the benefit of permission for a supermarket, no evidence has been provided that an entirely new planning permission for a supermarket could not afford the levy being proposed. All the employment and training uses on the sites would pay between £5 - £10 per square metre in comparison to the Mayor of London's charge of £20 per square metre. This is not considered unreasonable and again no evidence has been provided that this is not viable. The Council's viability work shows that whilst there is a significant difference in the viability of residential uses across the borough this is not true for non-residential uses.	

		lowest rate. We can not understand why the same approach has not been applied for the other uses. Furthermore, we note that the charge for B1a and health uses is Nil and it is our view that the rates for retail and other non-residential uses should also be nil in certain circumstances as set out above. Unless changes are made to the charging schedule developments such as this, which will secure important benefits for the community, will be unviable.		
9	Gerald Eve acting on behalf of Fresh Wharf Developments limited	The level at which the LBBD CIL is set must have careful regard to the area's market context. There is little development activity in the borough at the moment and the market remains in a weak condition. If the CIL is set at too high a level it will put further pressure on an already weakened property market and stifle future development.	Tables 31 and 32 of the Economic Viability Report, model development viability in Barking Town Centre on the basis of 0% affordable housing. This shows that a LBBD CIL (Mayoral CIL is included as a cost) varying from £122-154 per sq m can be supported in Barking Town Centre on schemes of 250 units and below. However for a scheme of 1000 units CIL is more marginal due to the extra cost of building to Code Level 5. However Local Plan policy does not demand Code Level 5 for schemes of this size and therefore development costs	

			should be comparable to smaller schemes and consequently similar CIL levels should be supported.	
		It is not clear from the documentation provided how the Council have set the final rates set out in the PDCS. These are not in line with the recommendations by GVA, in particular with regard to the Barking Town Centre, Leftley and Faircross residential rate of £70 sqm. Note that the GVA recommendation is made with the assumption of 10% affordable housing delivery, but it is not clear if this is either carried over to the PDCS, or increase or indeed decreased simply the document states “without an affordable housing target”.	The Council is proposing a CIL of £70 so this is not at the margins of viability. This is on the basis of 0% affordable housing.	
		GVA have used a non-specified appraisal model. We assume that this is a bespoke appraisal as there is no specific explanation of it or software which has been used. We note that there are a number of standard models for appraising residential development including Argus Developer, the GLA Three Dragons Toolkit and the HCA model in additional to bespoke models some of which are referenced. Whilst these adopt to varying degrees standard development appraisal principles, the detailed methodology does vary in some cases considerably. We have no	The approach and methodology of the viability testing is explained in Chapter 2 of the Economic Viability Report. A market value rather than existing use value approach has been applied.	

		objection to advocating a bespoke model approach, particularly given the limitation of the GLA Toolkit, but this needs to be transparent in order to be able to examine the appropriateness in the circumstances. The methodology assumes that the land value is the Net Residual Land Value once all planning contributions, including affordable housing have been taken into account and this has been cross checked with benchmark land values for this area. However, there is no evidence of comparable information provided and therefore this does not conform with the recommendations of the exposure draft RICS Guidance Note on Viability in Planning. We consider that at the benchmark land value of £625,000 per acre for Barking Town Centre residential land value is low to our experience of the local property market.	Paragraph 2.17 of the Economic Viability Report explains that the benchmark land values reflect prevailing development values. These are sourced from analysis of the current situation in Barking and Dagenham and corroborated through Valuation Office Agency data, GVA's own Agency Team knowledge of transactions in the Borough and local stakeholder discussions.	
10	Iceni Projects acting on behalf of Estates and Agency Properties Limited	CIL charging regime is a one size fits all approach and provides no flexibility in the application of the identified charging regime. It must demonstrate an appropriate level of flexibility to respond to the commercial realities of development. With regard to Relief for Exceptional Circumstances the PDCS states	Unlike the Mayor of London the Council has chosen to offer Discretionary Relief for Exceptional Circumstances. So the Council is being flexible. However it is important to clarify that in exercising this relief the Council will have to comply with the provisions set out in the	

		"…the fact that a development might be unviable at the time a planning application is considered is unlikely to constitute an 'exceptional circumstance' in relation to the CIL Regulations". Such an approach is considered to be overly restrictive and contrary to directions from Central Government in particular the ministerial statement title "Planning for Growth" and the CLG CIL summary document. The PDCS does not offer any flexibility in charging where it can be demonstrated that a development would be unviable as a consequence of the requirements of CIL. Accordingly the adoption of an onerous and overly restrictive approach to CIL has the potential to undermine schemes which could otherwise be delivered in the short term and help to meet wider regeneration aims and objectives within the Borough. The PDCS should be amended to reflect a degree of flexibility where issues of viability would causes undue delay to the achievement of wider regeneration aims through otherwise appropriate development. It should recognise that in	Community Infrastructure Regulations 2010 as amended when determining whether discretionary relief can be provided. The regulations do provide for charging authorities to accept transfers of land as a payment 'in kind' for the whole or a part of a CIL payment, but only if this is done with the intention of using the land to provide, or facilitate the provision of, infrastructure to support the development of the charging authority's area. The levy can only be set on the basis of viability. The CIL regulations do not allow the Council to set the levy to achieve regeneration objectives. No evidence has been presented that large convenience retail developments (>1500 sqm) or residential in Barking Town Centre cannot afford to pay the charge that has been set. However the Council has altered the retail charges, and on the basis of	

		certain instances the provision of on-site facilities and benefits will make the same – if not a greater – contribution to the Borough's infrastructure provision. It is noted that there is a large disparity between the level of charging for certain uses over others and the geographical areas to which these relate. As acknowledged in the LDF the focus of future retail and residential development in the Borough will largely be upon Barking Town Centre with the aim of fulfilling wider regeneration aims and objectives on identified key sites. E&A considers that the PDCS for convenience retail floorspace combined with the lack of flexibility proposed within the charging regime would in combination have a significant effect on development values in Barking Town Centre. This could render schemes unviable and stifle the opportunity to realise wider regeneration aims and objectives as identified in adopted policy. The PDSC should prioritise investment within Barking Town Centre by adopting a charging regime in the Town Centre equating to 25% of the overall charge for comparable developments in locations	further testing proposes to charge £175 per square metre for supermarkets and superstores of any size. Please see response to Gerald Eve for justification of levy for residential in Barking Town Centre.	

		beyond the BTCAAP boundary. This discounted rate should apply to retail and residential floorspace on the basis that the regeneration and revitalisation of the Town Centre should be the priority within the Borough. The application of such a discounted rate would increase the viability of existing stalled schemes making it more no less likely that such schemes will materialise and would incentivise developers to pursue potentially more expensive and difficult sites over easier options beyond the Town Centre boundary. Having reviewed the PDCS there is a very real concern that the proposed level of contributions for both large retail development and residential development within town centres is disproportionate to developers reasonable expectations of a financial return and has the potential to impact upon the viability of such developments impacting upon the achievement of wider regeneration goals. Combined with the lack of flexibility of the proposed charging schedule, it is considered that the rigidity of the document as presented has the potential to stifle development on key sites in the		

		short to medium term. In respect of the above it is considered that the proposed charging schedule would be improved with the following changes: • The removal of paragraph 3.1 to improve flexibility in the application of charges • Lowering the charge on large retail development, and spreading costs more evenly over the use classes; and, • Lowering the charge on residential development within town centre areas to improve flexibility and viability		
11	CGMS on behalf of the Mayor's Office for Policing and Crime (MoPC) and the Metropolitan Police Service (MPS)	The provision of effective policing is of crucial importance across London to ensure safe places to live are created as part of a sustainable community, consistent with planning policy at all levels. The MoPC and MPS provide a vital community service to Barking and Dagenham and it is essential that the required community infrastructure such as policing comes forward in line with development in order to maintain safety and security in the borough. It is noted the Council do not intend to	The levy can only be set on the basis of viability. No evidence has been presented that police stations cannot afford to pay the modest charge of £10 per square metre that has been set. It is also relevant to note that whilst the Mayor of London is responsible for supervising the Metropolitan Police the Mayor of London's CIL does apply to new policing floorspace. The Mayor of London's CIL is £20 per square metre. Therefore the Council's CIL	

		impose a charge for new small retail, offices, leisure, health and education floorspace. This should be extended to include all new community infrastructure floorspace, in particular that proposed by the Metropolitan Police. By being subject to a CIL payment, community uses including policing are prejudiced in being able to provide essential policing facilities which will impact upon the Council's ability to deliver a safe and secure environment contrary to the aims of the NPPF, London Plan and Core Strategy. It is therefore essential that CIL is not payable for new policing floorspace in the Borough. It should be further noted that, in providing a community infrastructure (i.e. new policing facilities) which would attract a CIL liability, the MPS contribution to infrastructure would effectively be double-counted. Therefore the MOPC/MPS strongly recommend that the draft charging schedule provides an exemption from CIL for community uses including policing facilities in additional to small retail, offices, leisure, health and education uses.	would only represent 33% of the overall CIL charge for new policing facilities.	