



**Representation in respect of Birmingham
City Council's Community Infrastructure
Levy: Draft Charging Schedule**

Client: Knightsbridge Student Housing Ltd

November 2014

- 1.1. This brief representation relates to Birmingham City Council’s Draft Charging Schedule in respect of the Community Infrastructure Levy (CIL). It is made on behalf of Knightsbridge Student Housing Ltd and focusses entirely on the CIL rate proposed for student housing, although generic comments, such as state aid, for instance, apply more widely.

CIL Guidance

- 1.2. The CIL Regulations (as amended), along with Part 11 of the 2008 Planning Act and the relevant sections of the National Planning Practice Guidance, set the framework within which the City Council will have to operate in setting the charge. The relevant text from Regulation 14 is set out below.

“14.—(1) In setting rates (including differential rates) in a charging schedule, a charging authority must aim to strike what appears to the charging authority to be an appropriate balance between—

(a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and

(b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area”.

- 1.3. Part 6 of the CIL regulations addresses exemptions and relief from the rates. Regulation 55 deals with discretionary relief for exceptional circumstances. This is set out in full below.

“55.—(1) A charging authority may grant relief (“relief for exceptional circumstances”) from liability to pay CIL in respect of a chargeable development (D) if—

(a) it appears to the charging authority that there are exceptional circumstances which justify doing so; and

(b) the charging authority considers it expedient to do so.

(2) Paragraph (1) is subject to the following provisions of this regulation.

(3) A charging authority may only grant relief for exceptional circumstances if—

(a) it has made relief for exceptional circumstances available in its area;

(b) a planning obligation under section 106 of TCPA 1990(1) has been entered into in respect of the planning permission which permits D; and

(c) the charging authority—

(i) considers that the cost of complying with the planning obligation is greater than the chargeable amount payable in respect of D,

(ii) considers that to require payment of the CIL charged by it in respect of D would have an unacceptable impact on the economic viability of D, and

(iii) is satisfied that to grant relief would not constitute a State aid which is required to be notified to and approved by the European Commission.

(4) The Mayor may not grant relief for exceptional circumstances in respect of a chargeable development unless a claim for that relief is referred to the Mayor by a London borough council in accordance with regulation 58(3)".

- 1.4. The NPPG replaces previous guidance on CIL. This is referenced comprehensively below where relevant. It states that *"The evidence base for a charging schedule is examined in public prior to the adoption of the levy. Care must be taken to ensure that it is robust"*. (ID: 25-015-20140612)
- 1.5. NPPG ref. ID: 25-016-20140612 states that *"charging authorities must identify the total cost of infrastructure they wish to fund wholly or partly through the levy. In doing so, they must consider what additional infrastructure is needed in their area to support development, and what other sources of funding are available, based on appropriate evidence"* and that *"the Government recognises that there will be uncertainty in pinpointing other infrastructure funding sources, particularly beyond the short-term. Charging authorities should focus on providing evidence of an aggregate funding gap that demonstrates the need to put in place the levy"*.
- 1.6. In respect of the 2011 IDP *"where infrastructure planning work which was undertaken specifically for the levy setting process has not been tested as part of another examination, it will need to be tested at the levy examination. The examiner will need to test that the evidence is sufficient in order to confirm the aggregate infrastructure funding gap and the total target amount that the charging authority proposes to raise through the levy"*
- 1.7. We note the viability evidence published in support of the preliminary schedule and highlight NPPG text stating that *"a charging authority should be able to explain how their proposed levy rate or rates will contribute towards the implementation of the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London), and support development across their area. Charging authorities will need to summarise their economic viability evidence"*. In addition the NPPG states that *"as set out in the National Planning Policy Framework in England (paragraphs 173 – 177), the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened"*.
- 1.8. The NPPG states that *"it is good practice for charging authorities to also publish their draft infrastructure lists and proposed policy for the associated scaling back of section 106 agreements at this stage, in order to provide clarity about the extent of the financial burden that developments will be expected to bear so that viability can be robustly assessed. The list now forms part of the 'appropriate available evidence' for consideration at the examination"*.

- 1.9. Reference ID 25-009-20140612 states that *“the levy is expected to have a positive economic effect on development across a local plan area. When deciding the levy rates, an appropriate balance must be struck between additional investment to support development and the potential effect on the viability of developments”* and that, in ID: 25-020-20140612, *“a charging authority should take development costs into account when setting its levy rate or rates, particularly those likely to be incurred on strategic sites or brownfield land. A realistic understanding of costs is essential to the proper assessment of viability in an area”*.
- 1.10. Reference ID: 25-021-20140612 relates to the setting of differential rates, clearly stating that *“differences in rates need to be justified by reference to the economic viability of development. Differential rates should not be used as a means to deliver policy objectives”*. It goes on to state that *“in all cases, differential rates must not be set in such a way that they constitute a notifiable state aid under European Commission regulations (see ‘State aid’ section for further information). One element of state aid is the conferring of a selective advantage to any ‘undertaking’. A charging authority which chooses to differentiate between classes of development, or by reference to different areas, should do so only where there is consistent economic viability evidence to justify this approach. It is the responsibility of each charging authority to ensure that their charging schedules are state aid compliant”*.

Local policy

- 1.11. The Birmingham Development Plan document was submitted to the Secretary of State and is currently being examined. Paragraph 2.5 notes the importance of the tertiary education sector to the city acknowledging that *“the local economy is supported by five universities and six major colleges. They provide world class learning environments, reflecting recent and ongoing investment programmes, supporting over 73,000 undergraduate and postgraduate students”*. Supporting text goes on to state, in paragraph 8.31 that *“the City Council wishes to ensure that there is sufficient supply of good quality accommodation which meets the needs of all members of the student community which is provided in a suitable and sustainable location, is well designed and provides a high quality living experience in attractive buildings which enhance the local area”*. Policy TP32 states that;
- “Proposals for purpose built student accommodation provided on campus will be supported in principle subject to satisfying design and amenity considerations. Proposals for off campus provision will be considered favourably where:*
- *There is a demonstrated need for the development.*
 - *The proposed development is very well located in relation to the educational establishment that it is to serve and to the local facilities which will serve it, by means of walking, cycling and public transport.*
 - *The proposed development will not have an unacceptable impact on the local neighbourhood and residential amenity.*

- *The scale, massing and architecture of the development is appropriate for the location.*
- *The design and layout of the accommodation together with the associated facilities provided will create a positive living experience”.*

1.12. Further to the policy support for purpose built student accommodation, there is a supply of purpose built accommodation of 18,448 bed spaces, roughly split in half between University owned and private schemes. At present there is a significant (at least 17,000) number of students without access to purpose built student accommodation, who live independently from their parents and do not own their own residence. There is a future pipeline of just over 4,000 additional bedspaces, which, if delivered, would still leave over 12,400 students unable to access purpose built accommodation

Draft Charging Schedule and evidence base

1.13. The draft charging schedule is supported by viability evidence as required by the NPPG. This has been prepared by GVA. For student housing (outside the sustainable urban extension) the charging schedule proposes a charge of £69/sq m.

1.14. The first (October 2012) viability assessment was supplemented by a study specifically relating to testing further employment scenarios at the end of 2013. It assesses a total of 28 ‘development typologies’. The starting point for assessing the viability of delivery of each development typology is an assessment of the benchmark land value. The evidence proposes two approaches, one assuming existing use value plus 20% as being necessary to incentivise the release of that land for an alternative use and the other being residential use value. These two approaches are broken down further by reference to market value areas, which table 3 illustrates by reference to values within defined postcodes. In the lower market area, under approach 1 (relevant to student housing as set out in Table 21), it is stated that the benchmark land value to release land for student housing is £595,000/ha (£240,000/acre). We consider that the benchmark land values are wholly inadequate and will not ensure that land is made available for beneficial forms of development that emerging policy requires.

1.15. The first 14 development typologies relate to residential development and this is gone into in some detail. Appendix G, for instance sets out detailed assessments with sensitivity analysis relating to changes in capital costs and gross development value for the nine purely residential typologies. The NPPG requires, as set out above, a robust evidence base, yet the same level of evidential justification is not set out for nineteen of the typologies, including student housing. If this level of detail is required for one use, it should be imposed uniformly across all uses. There is no justification for a greater level of detail relating to one use over another. The evidence on the CIL rate for student housing is insufficient and does not form a robust basis on which to justify the proposed rate of £69/sq m. Whilst we acknowledge this has been reduced from the ‘maximum’ figure of £115 (which we dispute), we still consider it will put too much student housing

development at risk of not being delivered. This is a significant issue in the context of a clear policy recognition of the benefits of delivery of student housing in the city.

- 1.16. We make limited comment on the CIL rate for residential development other than to say that the evidence does not necessarily, in our view, point towards the proposed rate. Tables 6 to 9 do not seem to justify the charge imposing realistic policy requirements (as required by the NPPG), in that residential development on allocated sites cannot afford to pay any CIL.
- 1.17. The evidence relating to 'other uses' commences at section 7 of the first GVA report. We note that the sums referred to in paragraph 7.6 do not tally to table 4 figures. Student housing benchmarks are referred back to Table 4.
- 1.18. In terms of typologies 24 and 25 in Table 22, we make the following comments;
 - 1.18.1. Site coverage – No comment The site coverage areas (ha) per number of rooms for typologies 24 and 25 in Table 22 appears incorrect as typology 24 shows a comparatively high dense provisional scheme over a small site area whilst typology 25 shows the opposite. The number of rooms allocated for typology 24. is far larger at 250 (over 0.18ha) compared to the 50 (over 0.9ha) provided at typology 25.
 - 1.18.2. GIA – The Penworks building completed in Q32013 has a GIA of 8,108 sq m (87,276 sq ft) and provides 282 student bedrooms. The assumptions within Table 22 are unrealistic taking into account necessary in-site management accommodation, communal areas such as a student lounge, laundry facilities and necessary circulation space. The assumed floor area within Table 22 should more closely reflect reality and the recently built Penworks at 309 sq ft (28.7 sq m) per bedroom is a useful benchmark.
 - 1.18.3. Build cost – The build cost of £1,200 /sq m is too low, significantly so, and an unrealistic measure of the actual cost. Our client's budget is currently is over £1,600/sq m on a site that they are purchasing at Legge Street, Birmingham over 510 cluster bedrooms. The Penworks scheme was built in Q3 of 2013 and, taking inflation into account equates to £1,560/sq m. These costs are borne out on other sites currently being taken through the planning/design process elsewhere in the UK, such as Cambridge and Plymouth for instance.
 - 1.18.4. Rental value – Rental values achieved at Selly Oak due to its location for both residential and student use are historically and currently higher than other areas of the city particularly more marginal locations to the north of the city centre such as Aston and Nechells. There should be a range of CIL charges to more accurately reflect the location and price differentials associated with student use across the city and not one single charge focused on the specific area of Selly Oak which benefits from the highest rents achieved in Birmingham.

- 1.18.5. Yield – We consider that 6.25% is too low a yield as an investor would not be able to support a financial offer on a net initial yield at this level in the Nechells area of Birmingham. Looking at recent investment transactions the market would be more likely to sustain a net initial yield return of no less than 7% resultant in a lower exit capital value of a student development.
- 1.18.6. Profit – No comment.
- 1.19. In addition to the above, we question why professional fees have not been included within the viability assessment set out in Table 22. This should be at least 10%.
- 1.20. Paragraphs 8.9 to 8.12 provide further commentary on student housing. Para 8.10 states that there is an over-supply of student housing. As set out above, we cannot tally this assumption with our experience of the market for purpose built student accommodation. If such an important piece of evidence is unable to correctly assume on such a basic matter, it must lead one to question most of the assumptions within the evidence.
- 1.21. Paragraph 9.12 provides a conclusion that does not seem to stem from any evidence setting this out. There is no link between the proposed CIL rate of £115/sq m and any evidence justifying this rate within the evidence accompanying the draft charging schedule. It may well exist somewhere, but is not clearly set out. It is insufficient for the evidence to justify a lower rate of £69/sq m as being acceptable on the basis that it is lower than the £115/sq m figure, especially where the latter figure is not fully justified.
- 1.22. We note guidance on differential rates and ‘state aid’ within the NPPG. The evidence base that accompanies the draft charging schedule proposes differential rates, but there is no clear link, which is required, between different levels of viability and different CIL rates. We question why the CIL rate for residential development and student housing is £69/sq m in the high value area, but there is a zero rate for residential in in the low value zone, but the same CIL rate of £69/sq m for student housing remains relevant in the low value market areas. If there is a recognition of the similar ability of residential development and student housing to pay CIL by reference to viability, then this assumption must be applied uniformly. In addition the rates must be set out by reference to viability and not to further policy ends. At present, residential development in the low market value areas is specifically proposed to be given state aid. NPPG (ref. ID: 25-155-20140612) states that *“State aid is a European Union member state’s support to ‘undertakings’ which meets all the criteria in Article 107(1) of the Treaty on the Functioning of the European Union (Lisbon Treaty 2009). Article 107(1) declares that state aid, in whatever form, which could distort competition and affect trade by favouring certain parties or the production of certain goods, is incompatible with the common market, unless the Treaty allows otherwise”*. This is a significant failing of the rates that is not justified by any part of the evidence base.
- 1.23. We draw attention to regulation 55 and the discretionary relief for exceptional circumstances. Whilst we accept that this will be invoked rarely, we highlight this to demonstrate the importance of not setting the rate at too high a level; if it is non-

negotiable, this means that the variable is the interpretation of development plan policy. CIL has not negated s38(6) of the 2004 Act and it is imperative that it is not set too high and put development at risk of not coming forward.

Conclusions

- 1.24. In summary, our clients consider that the following issues should be debated more fully at the examination in front of the appointed Inspector;
 - 1.24.1. Inadequate evidence (including sensitivity analysis) relating to nineteen of the development typologies set out in evidence.
 - 1.24.2. Assumptions set out in Table 22 in respect of typologies 24 and 25, which we consider are inaccurate.
 - 1.24.3. The lack of justification (relating to viability) of the proposed CIL rate of £69/sq m for student housing.
 - 1.24.4. The extent to which differential rates constitute state aid.
- 1.25. In accordance with Regulation 21, we request the right to appear at the eventual examination in the draft charging schedule. We would look to supplement our general concerns expressed within this document with detailed worked examples setting out key real world assumptions.