



GERALDEVE

Chris Banks
Programme Officer
C/O Banks Solutions
21 Glendale Close
Horsham,
West Sussex
RH12 4GR.

72 Welbeck Street London W1G 0AY
Tel. 020 7493 3338
www.geraldeve.com

7 October 2014

Our ref: RWF/AWO/J5255

Dear Mr Banks,

**Royal Borough of Kensington and Chelsea (RBKC)
Draft Community Infrastructure Levy (CIL) Schedule
RBKC's Response to Main Issues and Questions**

We write in order to make representations, on behalf of our client, The Cadogan Estate, to RBKC's response to the main issues and questions raised by the Examiner's assessment re the Council's CIL proposals. We note the Examiner raised nine questions which the Council have sought to address in their response. We comment on each of the responses under the Examiner's numbered questions. We do not seek to re-state matters that are either already part of the Examination nor quoted within the Council's response. Where we do not comment upon a matter this should not be construed as either agreeing or disagreeing with the content of the Council's response.

Question 1: What is the background to Core Strategy Policy CH2 and 50% Affordable Housing requirement?

We fully agree that policy compliant provisions of affordable housing is subject to the "maximum reasonable test." Clearly, however, policy states that developments proposing less than 50% (affordable housing) will need to demonstrate a viability case. It follows that in setting CIL rates that would result in a scheme needing to propose less than 50%, that this in turn requires a viability justification in order to satisfy policy. Whereas if CIL rates are set at levels which do not result in schemes producing affordable housing at less than 50%, this will not in turn require a viability justification to meet policy.

The intentions of the CIL regulations are to set appropriate rates that do not compromise other policy objectives of the relevant plan. This is not being met in such a circumstance where the level of the CIL rate proposed would automatically lead to viability testing to meet policy.

Question 2: To what extent does Policy CH2 allow for flexibility over Affordable Housing content?

We acknowledge that “flexibility” in respect of the maximum reasonable test through a viability assessment is inherent in determining whether a scheme with an affordable housing content less than 50% is or is not policy compliant. This we would, however, suggest is wholly different to the setting of CIL rates which automatically require such a viability assessment, where the scheme proposed is providing less than 50% affordable housing. In that instance, flexibility is in effect “compromising” the target policy from the outset which cannot be the intended meaning of flexibility in the context of policy application or the intentions of the CIL regulations.

Question 3: How has Policy CH2 been applied in practice and what levels of Affordable Housing have been achieved?

The Council in its justification of the levels of affordable housing that have been achieved identify numerous constraints that either make onsite affordable housing unfeasible, impractical or limited in terms of tenure. Indeed, at paragraphs 3.8 and 3.9, the Council highlights the constraints of being acute with sites in conservation areas or listed buildings, whilst also noting site development restrictions.

In our opinion, this only seeks to emphasise that lack of testing in the underlying viability evidence base of sites which have these characteristics, in order to underpin the proposed CIL rates. In short, the proxies chosen are not representative in order to allow for policy CH2 to be appropriately appraised and a resultant CIL rates to be established. Notwithstanding the appropriateness of the proxies chosen, it is quite clear from the Council’s own evidence of approved schemes in Appendix 1, that schemes are frequently below the policy target. This has clearly not been taken into consideration when establishing the proposed CIL works.

Question 4: What is the evidence to support the Council’s use of lower levels of Affordable Housing (20% and 30%) to inform its CIL proposals?

We note the Council acknowledges that the policy compliant level of affordable housing is frequently not 50%. It must follow that in testing at lower levels of affordable housing (i.e. 20% or 30%) that the Council acknowledges that the 50% policy CH2 level is failing. It must also follow that setting CIL rates at levels which are significantly higher than other central London Boroughs with similar policy levels, notwithstanding the specific development economics of RBKC, is clearly inconsistent and flawed.

We are of the opinion that testing a lower level of affordable housing to justify the levels of CIL rates proposed is simply not in accordance with the CIL regulations and is seeking to use the term “policy compliant” in a way that was not intended either in policy setting or the CIL regulations themselves. This may be a matter that the Examiner may wish to seek legal advice upon in coming to a view on the appropriateness of the methodology used by the Council and its consultant.

Question 5: What would be the effort on scheme viability of applying Affordable Housing at, and closer to, the Policy CH2 requirement?

Notwithstanding our responses to Questions 1 to 4 above, the same issues apply to this instance. The proxies selected are not representative of the type of proposals that commonly come forward in RBKC. If Appendix 1 is illustrative of affordable levels of housing, then the suggestion by the Council that the proposed CIL rates are viable alongside 40% and 50% affordable housing must be incorrect. This is before marginal sites and the like are tested which clearly would as consequence not meet those levels of affordable housing whilst seeking to pay the CIL rates proposed.

Question 6: What is the relevance of other CIL examination and is there as the Council appears to contend a “special case” for London Boroughs?

In undertaking area-wide viability assessment whether for policy making or in setting CIL rates, by definition this will take into account all considerations of the area being tested. There will be and indeed are, differences between Borough’s policies notwithstanding being in accordance with the London plan. It follows that any comparison between Boroughs needs to factor in those differences in order to be comparing “apples with apples.”

It is also a factor that CIL viability evidence and rate setting has taken place at different times, some of which was before the latest CIL regulation amendments. Again, comparisons between CIL rates adopted (and that have been through examination) need to factor in these and other market issues when comparing between Boroughs.

The conclusions drawn by the Council in their response are to some degree hypothecating on outcomes with no supporting evidence to justify the assertions set out. In certain cases that the Council has identified it is far too early to make judgements as the impact of the CIL rates that have been set or indeed the impact upon other policies.

We would suggest that comparisons with other Boroughs whilst contextual, is limited in its use and should in any event not necessarily be used as advancing precedent in the way in which the Council has sought to do in its response.

Question 7: Does the Council’s evidence support the imposition of the Zone F CIL charge (£110 psm) on the strategic site at Kensal?

We do not comment on this question as our client has no interest in the site.

Question 8: Is there a case for treating Kensal strategic site differently?

We do not comment on this question as our client has no interest in the site.

Question 9: Are there any implications for other strategic site coming from the Council’s CIL proposals?

We do not comment on this question as our client has no interest in the sites identified.

We conclude that given the response to the question above made to the Examiner by the Council and our representatives on these that the Council has not demonstrably shown why the CIL rates for residential should be at the levels proposed. We are of the opinion that the Council's CIL methodology is inconsistent with the intentions of their own policy as well as the intentions of the CIL regulations. We would therefore ask the Examiner to reject the rates proposed by the Council and seek the evidence base be redone in accordance with the Council's own policy and CIL regulations.

Yours faithfully



Gerald Eve

rfourt@geraldeve.com

Direct tel. +44 (0)20 7333 6202

Mobile +44 (0)7771 941877