Memo

Date 22 November 2023
To Terry Kemmann-Lane, JP DipTP FRTPI MCMI
From Lichfields (on behalf of Prologis)

Subject OPDC Draft CIL Charging Schedule Statement of Common Ground Explanatory Note

Introduction & background

1.1 This explanatory note accompanies a Statement of Common Ground ('SoCG') between Old Oak and Park Royal Development Corporation and Prologis in respect of the Draft Community Infrastructure Levy ("CIL") Charging Schedule ("DCS") which was published by the Old Oak and Park Royal Development Corporation ("OPDC") in December 2022, and submitted for Examination in Public in July 2023.

1.2 This note has been prepared following discussions between Prologis and OPDC officers and further to Prologis' representations to the DCS.

1.3 This note is prepared to provide further background and detail to the issues covered by the SoCG in relation to the application of CIL for multi storey industrial developments within the OPDC area.

The application of CIL on multi storey industrial buildings

1.4 Prologis is seeking to bring forward multi storey industrial developments across London, including Park Royal.

1.5 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 currently own four warehouse assets in Park Royal and where appropriate, will redevelop these sites to meet the growing needs of its customers and London as a whole. Prologis has unrivalled knowledge of multi storey logistics schemes globally and has been building multi storey warehouses in Japan since 2002, delivering 112 buildings totalling over 82 million sq ft. Prologis has used this knowledge, alongside a significant amount of research and analysis of the UK commercial market, to inform the highly specialist and technical design of its London multi storey concept.

1.6 As set out in 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 it is commonly understood that the RICS definition of GIA is used as the basis for this calculation.

1.7 The priority issue is that under the current OPDC DCS, on a traditional single storey industrial development, the access roads and service yards are all external, which do not form part of the floorspace 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. This would not, therefore, be an equitable or reasonable approach.

1.8 For the purpose of this explanatory note, a typical example of the sort of scheme which Prologis is seeking to bring forward in London is a multi storey (six floors) logistics facility providing c.36,000sqm of commercial/warehousing lettable floor space with ancillary uses, car parking, enclosed access roads, service yards and ramps.

1.9 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 £35 per sqm for industrial floorspace (which falls within the 'All other uses' category):

Table 1 – Indicative CIL liability on single storey and multi storey industrial schemes in OPDC

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 (£35/sqm)			
Chargeable amount	**£210,000**	Chargeable amount	**£2,310,000**
Chargeable amount *excluding service yards and ramps*	**£210,000**	Chargeable amount *excluding service yards and ramps*	**£1,260,000**
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	**£1,260,000**	**Total chargeable amount**	**£2,310,000**

1.10 It should be noted that the example reflects a typology of a large covered service yard at every level of the building which is accessed via an enclosed vehicle ramp. This is typical of the sort of buildings which Prologis and other industrial developers are likely to bring forward during the Local Plan period. 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.

1.11 In the case of the above example, the enclosed access roads, ramp and service yards equates to over 40% of the gross internal floorspace of the building.

1.12 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.80% more

CIL, despite delivering the same amount of lettable floorspace as single storey schemes, if delivered across six individual sites.

1.13 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.

1.14 This issue is a critical strategic point for the development of multi storey industrial developments within Park Royal, 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.

Proposed approach

1.15 Taking the above into account, we consider that it would be appropriate to exclude the ancillary enclosed access roads, ramps and service yard areas in multi storey schemes from CIL. Planning Practice Guidance[1] (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 specialist forms of development... Charging authorities may also set differential rates by reference to different intended uses of development. 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)

1.16 There is therefore the opportunity for OPDC, 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. A comparable example of this is the Barnet CIL[2] Charging Schedule whereby the liability for residential and retail floorspace explicitly excludes ancillary car parking, as shown by the extract below.

[1] PPG on CIL: Paragraph: 022 and 023 – available here
[2] Barnet London Borough CIL Charging Schedule (2013) available here

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Figure 1 – Barnet CIL

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

1.17 We consider that a similar approach should be applied here. Currently multi storey industrial schemes would fall within the 'All other uses' category which would include all types of industrial development but would not include office or data centre developments which are covered under other uses.

1.18 On this basis, the proposed amendment to the DCS could be introduced under "all other uses" by stating '*excluding enclosed service yards, ramps and access roads on multi storey industrial developments'. This would restrict the exclusions specifically to multi storey industrial developments. Whilst it is not envisaged that other forms of development would have enclosed service yards and access ramps, other uses which fall within the "all other uses" category would not be affected by this exclusion. As stated above, office and data centres do not fall within this category so will not be affected but additional text could also be added to provide additional clarity.

Summary

1.19 Without the inclusion of the amendments agreed with OPDC via the SoCG, the DCS has the potential to prejudice the viability and deliverability of multi storey schemes and the ability to bring forward industrial intensification within the area. We consider that it would be appropriate to exclude the ancillary enclosed access roads, ramps and service yard areas in multi storey schemes from CIL, and that there is a simple means to do this within the DCS, that has been similarly applied elsewhere in London, including the Barnet example referenced above.