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Examiner MCIL2 Draft Charging Schedule
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Dear Mr Holland

Representations on Mayor's Additional Evidence

Wandsworth Council welcomes the opportunity to comment on the Mayor of London's further submissions of evidence in relation to his Draft Charging Schedule (DCS) for Mayoral Community Infrastructure Levy 2 (MCIL2).

As per previous representations, the Council continues to strongly object to the Mayor's proposals for MCIL2 as the evidence base presented by the Mayor is considered to be deficient and inconsistent with requirements for setting differential rates and does not adequately assess impact of the levy on viability of the strategic sites on which delivery of the London Plan relies. The additional evidence presented by the Mayor is not considered to address the concerns raised, particularly in relation to the inclusion of the Vauxhall Nine Elms Battersea Opportunity Area in the Central London Charging Area, for the reasons set out in detail below.

1. EIP Library Document 'MCIL2 Examination – Use of Guidance Speaking Note, September 2018

In the note it refers to the NPPG being guidance – whilst this is correct it is clearly the Government's recommended approach - the NPPG states *"There are a number of valuation models and methodologies available to charging authorities to help them in preparing this evidence. There is no requirement to use one of these models, but charging authorities may find it helpful in defending their levy rates if they do"*. So if the Mayor is choosing not to follow the NPPG then he needs to set out his reasoning and justification clearly – reference to a "broad brush" approach is not sufficient.

Paragraph 34 of the NPPF which **is policy** (not guidance) states clearly contributions from development *"should not undermine delivery of the plan"*. This is supported by the NPPG which again clearly states charging authorities should ensure that policies *"are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan"*.

One cannot seek to detach the terms of the NPPF from the methodological process of the NPPG. The Mayor should not depart from the NPPF as this is Government policy - and if the

Mayor chooses not to follow the methodologies in the NPPG then robust evidence needs to be presented to support that position, especially having received representations from local authorities and other stakeholders, providing evidence that the proposed rates will undermine delivery and viability . The Council's request is not disproportionate – it simply requests the Mayor follows the NPPF and the NPPG.

The NPPG states “*It is the responsibility of plan makers in collaboration with the local community, developers and other stakeholders, to create **realistic, deliverable** policies*” Paragraph: 002 Reference ID: 10-002-20180724

It also states that “*The authority will need to be able to show why they consider that the proposed levy rate or rates set an appropriate balance between the need to fund infrastructure and the potential implications for the economic viability of development across their area*”.

Turning to the Mayor's assertion that because he is setting a “strategic rate” he is in a different position from other charging authorities and therefore his rate setting requirements/ evidence base is different – this is legally incorrect.

The Mayor is a Charging Authority pursuant to the Community Infrastructure Levy Regulations 2010 (as amended) (**The Regs**) and Regulation 14 governs the setting of rates:

“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.***”

(our emphasis added)

There is no reference in the Planning 2008 Act (which introduced CIL), the Regs , policy or indeed guidance that suggests the Mayor is outwith of the Regs in particular Regulation 14 because it is a strategic levy, therefore he has to engage with Reg 14(1)(b).

The note refers to the Mayors “broad brush” approach and states that it has been effective in balancing viability against infrastructure needs and is based on experience. This is a moot point, but even if true one cannot rely on “experience” to support levy charging rates – the evidence in support of charging rates needs to be robust. As previously stated there is a regulatory framework in the Regs, supported by policy and guidance which sets out how evidence should be provided – the point of the Council's submission is that the data/evidence has not been provided.

Furthermore it is fundamentally wrong to seek to support this “broad brush approach” by reference to a report containing recommendations (February 2016) where the approach referred to in that report has not been adopted by Government – the Mayor should provide

the requisite detail to support its rates and engage with Reg 14 as to how those rates effect economic viability. The Mayor does not appear to address the Council's submission that there is not sufficient viability evidence to support rate changes – not just in the Vauxhall Nine Elms Battersea Opportunity Area (OA), but also in Roehampton.

The Council accepts and would not expect the Mayor to sample 80,000 appraisals. However, the NPPG is clear that there is an “appropriate balance” to be struck . The following paragraphs from the NPPG are a clear statement from the Government as to how it expects charging authorities to prepare evidence in support of a rate change. Again our emphasis added:

“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.

This balance is at the centre of the charge-setting process. In meeting the regulatory requirements (see [regulation 14\(1\)](#), as amended by the [2014 Regulations](#)), charging authorities should be able to show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan and support development across their area”.

Paragraph: 009 Reference ID: 25-009-20140612

A charging authority should use an area-based approach, involving a broad test of viability across their area, as the evidence base to underpin their charge. There are a number of valuation models and methodologies available to charging authorities to help them in preparing this evidence. There is no requirement to use one of these models, but charging authorities may find it helpful in defending their levy rates if they do.

A charging authority must use ‘appropriate available evidence’ (as defined in the [section 211\(7A\) of the Planning Act 2008](#)) to inform their draft charging schedule. The government recognises that the available data is unlikely to be fully comprehensive. Charging authorities need to demonstrate that their proposed levy rate or rates are informed by ‘appropriate available’ evidence and consistent with that evidence across their area as a whole.

A charging authority should draw on existing data wherever it is available. They may consider a range of data, including values of land in both existing and planned uses, and property prices – for example, house price indices and ratable values for commercial property. They may also want to build on work undertaken to inform their assessments of land availability.

In addition, a charging authority should directly sample an appropriate range of types of sites across its area, in order to supplement existing data. *This will require support from local developers. The exercise should focus on strategic sites on which the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London) relies, and those sites where the impact of the levy on economic viability is likely to be most significant (such as brownfield sites).*

The sampling should reflect a selection of the different types of sites included in the relevant Plan, and should be consistent with viability assessment undertaken as part of plan-making.

Charging authorities that decide to set [differential rates](#) may need to undertake more fine-grained sampling, on a higher proportion of total sites, to help them to estimate the

boundaries for their differential rates. Fine-grained sampling is also likely to be necessary where they wish to differentiate between categories or scales of intended use.

The focus should be in particular on strategic sites on which the relevant Plan relies and those sites (such as brownfield sites) where the impact of the levy is likely to be most significant.

The outcome of the sampling exercise should be to provide a robust evidence base about the potential effects of the rates proposed, balanced against the need to avoid excessive detail.

A charging authority's proposed rate or rates should be reasonable, given the available evidence, but there is no requirement for a proposed rate to exactly mirror the evidence. For example, this might not be appropriate if the evidence pointed to setting a charge right at the margins of viability. There is room for some pragmatism. It would be appropriate to ensure that a 'buffer' or margin is included, so that the levy rate is able to support development when economic circumstances adjust. In all cases, the charging authority should be able to explain its approach clearly.

Paragraph: 019 Reference ID: 25-019-20140612

2. EIP Library Document 'MCIL2 and Office Value Analysis (JLL)

The Council considers that the Mayor has provided insufficient evidence on viability impacts, particularly in relation to significant rate increases in Opportunity Areas included within the proposed boundary of the Central London Charging Area. Viability is informed by both **costs** and values, and the Mayor's sole focus on office rental values therefore results in presentation of incomplete viability evidence which cannot be justifiably used to set the levy.

Opportunity areas in their scale and ambition are by their nature complex and long-term projects which need to be supported as they emerge. Opportunity Areas present many challenges in terms of delivery and development constraints such as required remedial works on brownfield land and significant infrastructure requirements result in substantial costs which impact on viability. In the Vauxhall Nine Elms Battersea OA, the challenging viability position is recognised from the outset, with only a 15% requirement for affordable housing provision (evidenced in the Development Infrastructure Funding Study 2010 (DIFS 2010)) to ensure that delivery is not hampered by cumulative costs of development, including developer contributions. On sites in the OA where viability is demonstrated at planning permission stage as being most challenging, affordable housing review mechanisms are in place to ensure that wherever possible, this minimum requirement is met (e.g. Battersea Power Station ref: 2017/1680). Whilst to date it has been possible to secure affordable provision in excess of the policy requirement on some sites in the OA, the overall average affordable housing provision for schemes on allocated sites (completed, under construction and with permission) is currently 14% -17%, depending on the outcome of scheme viability review mechanisms. Viability has been considered in detail at planning permission stage for each development, demonstrating that the conclusions of the DIFS 2010 remain valid in the Vauxhall Nine Elms Battersea area and that the lower 15% affordable housing requirement is necessary to ensure the OA remains deliverable. Any additional fixed levy will only serve to worsen viability considerations, potentially impacting on delivery, and in particular delivery of affordable housing.

The Council considers that projected office rental values are of limited relevance to viability in this context. Essentially, if delivery is hampered by developer contributions, the provision of those future offices is at risk and so too the realisation of office rental income, regardless of projected value which is inherently difficult to predict in an emerging office market such as Vauxhall Nine Elms Battersea. If the details of the Apple deal are confidential and the only other commercial let is the American Embassy, then the sampling carried out by JLL cannot support viability of development and it is certainly not the “fine grained” evidence as referred to in the NPPG. It is even more surprising that the Mayor did not choose to sample Battersea Power Station as a major strategic site in this area. At DCS Examination, it was stated that sampling sites such as Battersea Power Station would be the ‘tail wagging the dog’ in relation to setting a strategic levy. However, the Council would maintain that the development at Battersea Power Station is an essential catalyst for ensuring delivery of one of the largest areas of growth identified in the Mayor’s London Plan and it is the Mayor’s responsibility to ensure the viability considerations of Battersea Power Station and other major sites in the OA are properly considered in setting the MCIL2 rates, particularly in relation to the significant increases arising from inclusion of the OA in the Central London Charging Area.

The evidence presented by JLL focuses solely on office uses, with no reference to retail or hotel uses, which considering the very substantial increases proposed is questionable. The rates for retail (£165 per sqm) and (£140 per sqm) for retail and hotel uses are significantly higher than those set in the borough’s own Charging Schedule (£100 per sqm and £0 per sqm respectively) and the impact of the imposition of MCIL2 in addition to the borough’s CIL rates has not been tested.

As evidenced in earlier representations, the imposition of the proposed Central London Charging Area levy for retail, office and hotel uses represents a significant additional cost to be borne by development in the OA which has the potential to upset an already delicate viability balance. The Mayor asserts that most developments have already received planning permission and MCIL2 will therefore have very little impact. However, as detailed in previous submissions the complexity of development in the OA, combined with the construction of the Regs results in this being far from true. From April 2019 the proposed MCIL2 rates could impact on any development where development is in progress or has yet to start construction. Of the 449,682 sqm retail, office and hotel floorspace permitted on allocated sites in the Wandsworth part of the OA, only 14% is expected to be completed by 1 April 2019 (see Table 1). The vast majority of retail, office and hotel floorspace is still to be delivered and could be impacted by MCIL2, should an application under Section 73 of the Town and Country Planning Act 1990 be made, or a new planning application be submitted or indeed if an existing outline permission has not achieved it’s first permits date by the proposed MCIL2 implementation date (e.g. Nine Elms Parkside and New Covent Garden Market).

Completed	Under Construction	Not Started	Total
62,191	224,004	163,487	449,682
14%	50%	36%	100%

Table 1: Retail, Office and Hotel Floorspace (sqm) with Planning Permission
(Allocated Sites in OA (Wandsworth only) - 'Completed' includes completions expected in 2018/19)

On a technical note, the absence of definitions or specific use classes attributable to retail, office and hotel uses in the Mayor’s DCS poses a difficulty with administering the levy for collecting authorities. Office in the borough’s DCS is defined as B1a, as required by the Examiner at the time based on viability evidence presented. A similar interpretation would

presumably mean that Embassies (as Sui generis) would therefore not be caught by MCIL2 Central London Charging Area rates, but this is unclear from the viability evidence provided. Similarly, the absence of viability evidence to support the retail rates proposed and absence of a specified use class or range of use classes in the DCS will pose administrative difficulties and inconsistencies in application.

The delivery of the Vauxhall Nine Elms Battersea OA is central to delivering growth in the borough and meeting ambitious housing targets over the next fifteen years, in support of the strategic vision set out in both the current London Plan and the next London Plan. The Council appreciates the Inspector allowing further comments on the Mayor's additional submissions given the importance of developer contributions for delivering strategic infrastructure which directly supports the OA.

Yours sincerely

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