

Our ref: SW/TR



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Dear Ms Ryskowska

I write on behalf of Land Securities who control the Ebbsfleet and Eastern Quarry sites. Peter Brett Associates have been commissioned by Land Securities (LS) to advise on the potential impact of Dartford's proposed CIL charges on the sites in the event that LS return to DBC with new applications for planning permission at some point in the future.

Please treat this letter as a representation on the draft charging schedule published on 3 January 2013 in connection with its potential effect on the viability of the Eastern Quarry site. This letter follows earlier representations (objections) to the Dartford Borough Council preliminary draft charging schedule made by Land Securities in the letter sent on their behalf by Barton Willmore dated 21 May 2012. That letter made the case for the need to take particular account of the Eastern Quarry and Ebbsfleet sites and their potential to become liable for CIL.

This letter, while raising an objection, seeks to continue the positive relationship between Dartford and Land Securities. As a result, it sets out positive proposals for ways forward with the balance between the residential CIL rate and other developer contributions on the Eastern Quarry site which would both ensure compliance with statutory guidance and remove Land Securities' objection to the proposed rate as it would apply to that site.

With the exception of the strategic transport payment, which was re-negotiated in August last year, Land Securities are not attempting to renegotiate their developer contributions for the Eastern Quarry site in this process. Instead, Land Securities are seeking to maintain them at the level which they currently stand with the objective of ensuring that the introduction of CIL does not inadvertently reduce site viability and threaten delivery of this important element of Dartford's Core Strategy if planning permission is reworked.

Land Securities are objecting to the draft schedule on the basis that:

- 1) the residential rates for zone B do not take sufficient account of the potential threat to Core Strategy delivery imposed by current S106 policy requirements for Eastern Quarry. This objection relates particularly to the need for clarity and policy change regarding the proposed use of CIL and S106 to fund infrastructure requirements in connection with the Eastern quarry site. The current contribution mix resulting from Dartford's policy on developer contributions

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for the site means there is a serious risk to future implementation of development on the Eastern quarry site and so a threat to delivery of Dartford's Core Strategy; and

- 2) the approach to arriving at the proposed residential CIL charge and the information made available to accompany the draft schedule is not in accordance with the statutory guidance published in December 2012.

I address each in objection in turn below.

1) Rates for Zone B threaten delivery

The current outline permission for Eastern Quarry has an associated agreed S106 planning obligation covering a range of on and off-site mitigation/infrastructure requirements including affordable housing at 30% overall (25% on-site, plus cash contribution) which are also set out as policy requirements. Strategic transport elements of this agreement have recently been subject to renegotiation.

If the site were developed following the resolution of reserved matters within the current outline permission, then under CIL Regulation 128(1) the site would not be liable for CIL, even if Dartford BC had adopted a Charging Schedule.

However, if, as is possible, a new planning permission were sought and granted after a CIL charge is introduced in Dartford, then market housing and commercial floorspace on the site would become liable for CIL. As set out in the letter from Barton Willmore, the resulting imposition of CIL at currently proposed rates in addition to the agreed level of s106 contribution would render the site unviable.

Under November 2012 amendments to the CIL regulations, any change to the current outline permission delivered as a 'minor material amendment' by condition variation using S73 of TCPA1990 would only attract CIL if it resulted in increased floorspace. However, in the event that any significant revised plans emerged for the site, it is unlikely that the S73 variation route would be suitable given the scale of the site.

2) Non-compliance with Dec 2012 CIL Statutory Guidance

Since publication of the preliminary draft charging schedule and Barton Willmore's letter of May 2012, the government has published new statutory guidance on the setting of CIL rates. Local authorities are obliged by S221 of the Planning Act 2008 to have regard to that guidance, which applies to any CIL proposals submitted for examination from 14 December 2012 on. The new guidance sets out several requirements around the treatment of strategic sites and planning obligations which are particularly relevant to issues connected with the Eastern Quarry site:

- Paragraph 27 emphasises that the delivery of specific strategic sites should be a focus when considering viability;
- Paragraph 29 requires authorities to take account of planning obligation policies, particularly those relating to strategic sites;
- Paragraph 34 allows that a strategic site can be considered as a geographical zone for differential rate purposes;



- Paragraph 15 requires increased up-front transparency over CIL spending intentions and the balance between CIL and S106. It requires that, at examination, the authority should set out both its draft 'Regulation 123' list of infrastructure to be funded by CIL, and those site specific matters where S106 contributions may still be sought;
- Paragraphs 84 to 91 add more detail to this new requirement. In particular:
 - Pre-examination engagement with developers must ensure they are clear about the specifics of the CIL/106 contributions mix;
 - The eventual Reg 123 list must be based on the draft presented at examination (ie. The examination list will need to be more than just 'indicative' as currently shown in Dartford's CIL Overview Report);
 - Revised S106 policies (such as that published for Eastern Quarry) should be presented at examination and implemented with the charging schedule.

Proposed way forward

Bearing in mind these objections, and the possibility that, some point in the future, the site could return for new planning permission once CIL was in place, this representation proposes that Dartford Borough Council should take the following actions before submitting the CIL charging schedule for examination:

- revise its published policies on required mitigations to remain within the overall site-specific contribution envelope agreed for Eastern Quarry, and commit to implementing those revised policies at the time the schedule is implemented;
- specifically, remove strategic items from the required mitigations list of matters to be included within a S106 agreement. The key strategic items are the contributions to strategic transport (STIP) and the secondary school/sports hall campus; and
- include these strategic items in Dartford's draft 'Regulation 123 list' of infrastructure to be delivered with CIL funds that is now required to be submitted alongside the schedule for examination and carry them forward into the finalised list.

At the proposed CIL charging rates for Zone B the resulting balance of S106 and CIL contributions would maintain the overall level of developer contributions currently agreed. This would preserve the viability and deliverability of the Eastern Quarry site and remove LS' objection to the rates as they would apply to that site. However, failure to implement the proposals above would result in non-compliance with statutory guidance and, importantly for the CIL examination, render the site potentially unviable, so threatening delivery of the Local Plan.

Overall - In conclusion

Land Securities remains committed to working with Dartford Borough Council to secure an agreed way forward, which will enable this site to make its planned contribution to the growth needed in the Borough. Following on from our earlier positive discussions, I hope the proposals in this



representation will be acceptable. I would emphasise that it is not Land Securities intention to submit a new permission for the site and give rise to CIL application to the site however given the site's development could take around 25 years we are mindful that a new permission could be possible and are therefore concerned to maintain the viability of the site. Land Securities would be happy to meet to discuss further if required.

Yours sincerely

For and on behalf of
PETER BRETT ASSOCIATES LLP

cc.	Peter Mail	Land Securities
	Robin Meakins	Barton Willmore
	Peter Nelson	Camland