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The Planning Policy Team
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Dartford Borough Council
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Dear Sirs,

CONSULTATION ON DARTFORD'S COMMUNITY INFRASTRUCTURE LEVY, DRAFT CHARGING SCHEDULE -JANUARY 2013

Following review of Dartford's Draft Charging Schedule, our concerns are summarised below:

Unrealistic / Unviable CIL Levels

Whilst RPS welcome the proposed reduction to the charging rates for retail development, we still consider that the CIL levels proposed for large scale retail development is too high and will prevent investment by retail developers and occupiers in the Dartford area.

The Community Infrastructure Levy, An Overview, dated May 2011 (CLG Overview Note) makes it clear that contributions should not be set at levels which will discourage development. It states at paragraph 23:

"Charging authorities wishing to introduce the levy should propose a rate which does not put at serious risk the overall development of their area. They will need to draw on the infrastructure planning that underpins the development strategy for their area. Charging authorities will use that evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy upon economic viability of development across their area."

Paragraph 25 goes on to indicate:

"Charging authorities will need to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the imposition of the levy upon economic viability of developments across their area."

In the current economic climate, it is becoming increasingly difficult to secure tenants and to fund developments. Setting levels at the proposed rates could have a significant impact upon the viability of schemes and the potential to secure major investment in Dartford.

It is essential that the rate set is realistic and allows for potential changes in rental incomes, yields and land value.

Retail Classifications

No distinction is made between different forms of retail uses within the charging schedule. Different styles of retail use generate significantly different income and are able to support very different land and rental values. Trading characteristics vary dramatically and turnover per square metre and indeed traffic generation per square metre vary substantially. As a minimum, retail warehousing should be distinguished from food supermarkets within Zone D as both sectors have very different characteristics.

Quantum

The turnover, and indeed, the traffic generation associated with retail stores is not directly proportionate to the size of a retail unit. Different operators can have significantly different trading characteristics. Applying contribution rates to some large individual operators as explained above could be prohibitive and significantly effect potential viability.

There should be allowances for quantum of development for individual units. A lower rate should be applied over an appropriate threshold, for example, for individual units over 1,000m². This approach is applied in other systems such as rating and indeed planning application fees which make allowances for quantum, recognising that costs to one individual operator can be prohibitive. Consideration should be given to either identifying a cap, i.e. a maximum contribution that can be associated with an individual unit or differing rates should be applied above an agreed threshold.

Discretionary Relief For Exceptional Circumstances

Dartford should ensure that it makes discretionary relief available for major developments involving substantial on and off site highways works and transport infrastructure improvements.

As you know, Regulation 55(1) of the CIL Regulations allows a charging authority to grant relief (relief for exceptional circumstances) from liability to pay CIL in respect of a chargeable development 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.

However, a charging authority may only grant such relief if:

- (a) it has made relief for exceptional circumstances available in its area;
- (b) there is a planning obligation under section 106 of TCPA 1990; 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 the chargeable development; and (ii) considers that CIL would have an unacceptable impact on the economic viability of the development

Moreover, paragraph 53 of the CLG's overview document recognises that the levy should not prevent otherwise desirable development from coming forward and discusses that relief can be given in exceptional circumstances. This should be recognised in your authorities' guidance notes. This is particularly so since Regulation 56 of the CIL Regulations requires a charging authority who wishes to make relief for exceptional circumstances available to publish a statement to this effect.

By safeguarding the option of a discretionary relief, Dartford will be able to assess major development on a case by case basis. In particular, we would strongly suggest that Dartford must maintain the flexibility to assess whether a Section 106 agreement would be the more appropriate mechanism than

the levy. Obviously, CIL is payable “up front” on the grant of planning permission but, there is no guarantee how or when that levy would be utilised or, indeed, if at all for the chargeable development.

Furthermore, for any major scheme involving major highway and transport infrastructure works, there will obviously be a related Grampian condition attached to the planning permission meaning that those works would need to be completed by the required trigger date. The issue for any developer of a major retail or other development will always be deliverability and the risk that any development would be stifled until the CIL monies have been utilised for the specified development. This would be too large a risk for any developer and would prevent major development from coming forward in Dartford.

Accordingly, we respectfully suggest that for major proposals requiring substantive highway or infrastructure works, discretionary relief should be applied and planning obligations should be used to secure the works by the requisite trigger dates.

By reserving a discretionary relief for such exceptional circumstances in its area, Dartford will ensure that there is flexibility to safeguard potentially beneficial development and ensure that it is not prohibited by the application of CIL either (i) from coming forward in the first place because of the economic viability impact; or (ii) if it does come forward, the development is not stopped in its tracks due to deliverability constraints.

Which Infrastructure Should Be Funded By CIL And Which Should Be Left To Section 106?

As explained above, planning application proposals for ‘major’ developments can involve substantial on and off site highways works and improvements controlled by Section 106 and 278 Agreements. The proposals often promote the relevant infrastructure which can involve very substantial sums. The Dartford guidance note should therefore recognise and acknowledge that in such circumstances, there will be a relief from the levy and Section 106 agreements will be used instead.

Of course this will also ensure that the local use of the levy and planning obligations do not overlap which, the CLG overview guidance note reiterates is essential (at paragraphs 64 – 66).

Conclusion

Paragraphs 23 and 25 of the CLG overview document emphasise that authorities have to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the imposition of the levy upon economic viability.

It is believed that the levels proposed are too high and unrealistic. In addition, it is believed that if a very high flat rate is applied to development for very large individual operators, it will have a significant impact upon the potential viability of proposals putting the development at risk and will prevent much needed economic development coming forward.

Finally, RPS wish to request the right to be heard by the Draft Charging Schedule examiner at the CIL examination and also request notification of; the draft schedule being submitted to the examiner, the publication of the recommendations of the examiner and the approval of the charging schedule.



If you would like to discuss any matters, please do not hesitate to contact me.

Yours faithfully

KAREN CALKIN
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