

Mr T Kemmann-Lane
c/o the Programme Officer

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Ref: [Click here to enter reference.](#)

Dear Mr Kemmann-Lane

Definition of nomination student housing

At the examination hearing we discussed the definition of nomination student housing schemes and in particular the status of the informative which reads:

“*** Nomination student housing schemes – rental levels set below an average of £168 per week and secured through a section 106 planning obligation”

You asked us to seek a legal opinion on whether this informative lies within the scope of your examination. We have sought a legal opinion which we are attaching in appendix A of this letter.

In summary, our view is that the informative lies outside the scope of your examination.

The informative is distinct from the “chargeable amount” referred to in the Regulations and therefore Regulation 40 which relates to indexation does not apply. In relation to the status of the figure of £168, this needs to be read in the context of our policy as a whole and it is unlikely anyone would take this figure as static; especially given the paragraph refers to the student housing being secured through a section 106 agreement. In this respect, the informative is likely to be read in conjunction with the adopted Section 106 Obligations and CIL supplementary planning document (CDL9).

The Section 106 Obligations and CIL SPD (CDL9) provides guidance on the way in which the informative is inflated. We will continue to apply this guidance until such point as the SPD is revised. Any such revision would be subject to the usual procedure for amending an SPD and would need to take account of any changes in our own Development Plan or the London Plan.

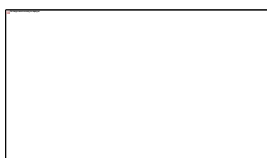
I will add this letter to the core document list (CDEIP6).

Yours sincerely,

A handwritten signature in black ink that reads "Tim Cutts". The signature is written in a cursive style with a period at the end.

Tim Cutts

Senior Regeneration Manager



Appendix A

Opinion from the council's Legal Services team

The remit of the examiner is set out in Section 212 (7) of the Planning Act 2008, which provides that:-

*'The examiner must consider whether the **drafting requirements** have been complied with and (a) make recommendations in accordance with Section 212A, and (b) give reasons for the recommendations.'*

The **drafting requirements** are defined in Section 212 (4) as:-

*'In this section and sections 212A and 213 "drafting requirements" means the requirements of this **Part [11]** and **CIL regulations** (including the requirements to have regard to the matters listed in section 211(2) and (4)), so far as relevant to the drafting of the schedule.'*

Part 11 sets out the framework for the implementation of CIL and leaves much of the drafting requirements to the CIL regulations. Section 211 of the Act, for example, provides that:-

*'(2) A charging authority, in setting rates or other criteria, must have regard, **to the extent and in the manner specified by CIL regulations**, to (a) actual and expected costs of infrastructure...; (b) matters specified by CIL regulations relating to the economic viability of development... ; and (c) other actual and expected sources of funding for infrastructure.'*

*(4) The regulations **may**, in particular, permit or require charging authorities in setting rates or other criteria-*

- (a) to have regard, to the extent and in the manner specified by the regulations, to actual or expected administrative expenses in connection with CIL;*
- (aa) to have regard, to the extent and in the manner specified by the regulations, to actual and expected costs of anything other than infrastructure that is concerned with addressing demands that development places on an area...;*
- (ab) to have regard, to the extent and in the manner specified by the regulations, to other actual and expected sources of funding for anything other than infrastructure that is concerned with addressing demands that development places on an area;*

- (b) *to have regard, to the extent and in the manner specified by the regulations, to values used or documents produced for other statutory purposes;*
- (c) *to integrate the process, to the extent and in the manner specified by the regulations, with processes undertaken for other statutory purposes; and*
- (d) *to produce charging schedules having effect in relation to specified periods...*

The CIL regulations provide, amongst other requirements, that:-

- (14) *In setting rates (including differential rates) in a charging schedule, a charging authority must... strike... an appropriate balance between:-*
 - (a) *the desirability of funding from CIL (in whole or in part) the actual and expected estimate 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.*

In our draft schedule we state that directly let student housing shall be charged at £109 per sq.m and that nomination student housing shall be charged at £0.00 per sq.m. In the notes, we make it clear that nomination student housing schemes are those that have been secured as such pursuant to a section 106 agreement and whereby the average rental level falls below £168.

There is no apparent drafting requirement that prevents a local authority from including an informative such as this. Indeed, Regulation 12 (1) provides that *'subject to the provisions of this Part a charging authority may determine the format and content of a charging schedule.'*

In relation to indexation, regulation 40 requires collecting authorities to apply an index of inflation when calculating individual charges to keep the levy responsive to market conditions. The index is the national All-In Tender Price Index of construction costs published by the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors

Regulation 40 specifically relates to the *'calculation of the chargeable amount'* and therefore it cannot be said to extend to apply to any other figure contained within the draft schedule and which does not form part of the chargeable amount.

As you know, our Section 106 and Community Infrastructure Levy SPD states that:-

'A planning obligation will be secured on schemes that propose student accommodation let at restricted rent levels below an average of £168 per week (single or double unit including service charge and CPI indexed yearly from October 2013) to be set for a period of at least seven years (seven years being equivalent to the relevant period for securing CIL charitable relief as set out in the CIL Regulations 2010).'

Section 211 of the Act confirms that a charging authority may revise a charging schedule and that section 211 (amount), 213 (charging schedule approval) and 214(1) and 214(2) (charging schedule: effect (publication)) apply to the revision of a charging schedule as they apply to the preparation of a charging schedule.

In relation to the status of the figure of £168, this needs to be read in the context of our policy as a whole and it is unlikely anyone would take this figure as static; especially given the paragraph refers to the student housing being secured through a section 106 agreement which is likely to be read in conjunction with this Schedule. If the examiner did however want to clarify this, we could simply amend the informative to read: 'Nomination student housing schemes – rental levels **currently** set below an average of £168 per week and secured through a section 106 planning obligation.'

Summary

- the examiner is required to consider whether or not the drafting requirements as defined within the Planning Act 2008 have been met.
- the drafting requirements do not appear to limit the use of informatives.
- reference to the £168 rental level just clarifies the distinction between a direct let and a nomination scheme and does not itself amount to a CIL charge.
- Regulation 12 (1) specifically provides that subject to the provisions of Part 11 of the Planning Act 2008, a local authority may determine the format and content of a charging schedule.
- The indexation methodology contained in Regulation 40 specifically relates to the calculation of the chargeable amount and all figures/values contained within a schedule.
- Our Section 106 and Community Infrastructure Levy SPD sets out its own methodology for the indexation of the £168 rental level which we would be free to change, subject to the usual procedure for amending an SPD, from time to time. Also, it would be open to us to apply it in a practical way based on any changes to the London Plan and/or our own Development Plan.

- If the examiner was concerned about a potential for conflict, we could just add the word 'currently' to the informative which would then make clear the figure may be adjusted by the council from time to time.

