ODCIL1 Legacy Corporation note on the Community Infrastructure Levy (CIL) rates of the Four Growth Boroughs

At the CIL examination hearing the Inspector requested a note which set out a comparison of the Legacy Corporation's draft Charging Schedule rates and the CIL rates for the four growth boroughs; the London Boroughs of Tower Hamlets ('LBTH'), Hackney ('LBH'), Waltham Forest ('LBWF') and Newham ('LBN'). Charging authorities are not required to have regard to the CIL rates adopted by their neighbours and neither are they restricted in the judgement they apply to their own rate setting by decisions made by other authorities. The primary driver for rate setting is the viability evidence prepared by individual authorities, which will be influenced by a range of factors, including the planning policy requirements set out in each authorities' local plans, which will of course vary. All four boroughs have adopted CIL Charging Schedules, LBN and LBWF adopted their charging schedules in 2014 and LBH and LBTH adopted their charging schedules in 2015. The LBTH have recently reviewed their charging schedule, which has been examined but the Examiner's report has not yet been published.

The charging schedules adopted by the four growth boroughs and the Legacy Corporation were developed and adopted at different times, considering available evidence and context within each planning authority area at each relevant point in time. The areas covered by the four boroughs are far larger than that covered by the Legacy Corporation as CIL charging authority, and therefore this has affected the context and the approach each borough has taken to setting their CIL charges, in some cases this has led to boroughs zoning their area to reflect local differences in context and character. All four growth boroughs removed the LLDC area from their analysis of potential CIL rates. Circumstances on the ground in the areas around the LLDC area may differ significantly from those inside the LLDC area. The Regulations and NPPG allow for individual Charging Authorities' ('CA') judgement in setting their rates. The NPPG on CIL identifies at para 019 that, "*A charging authority's proposed rate or rates should be <u>reasonable, given the available evidence</u>, but there is <u>no requirement for a proposed rate to exactly mirror the evidence</u>*" and that *"There is <u>room for some pragmatism</u>"*. Para 019 goes on to identify that in arriving at *"an appropriate balance between the need to fund infrastructure and the potential implications for the economic viability of development across their area"*.

Therefore, there is no reason to presume that if four CAs were faced with precisely the same evidence base, they would arrive at the same conclusion, even if all four growth boroughs had analysed market conditions in the LLDC area, which as noted previously they have not. The guidance explicitly allows for individual CAs to exercise their judgement and the four growth boroughs and the Legacy Corporation have done this in relation to their charging schedules. CAs therefore have regard to the specifics of development in their areas and take a strategic view of viability and development delivery across their area when considering the setting of their rates. Consequently, there is a range of factors that play into the rates setting for each individual CA i.e. they are not necessarily solely determined by viability evidence, but should not be logically contrary to the evidence. Each of the four councils and the Legacy Corporation have their own distinct planning policies which have different impacts on viability and consequently on the value remaining to fund CIL contributions. One CA's judgement on the balance between CIL and other policy objectives (and the need to ensure development is viable across the area) will differ from another.

Table 1: A headline comparison of CIL charges neighbouring the Legacy Corporation boundary

Development Type	LBH	LBN	LBTH (Zones2&3)	LBTH Emerging (Zones 2 & 3)(2019)	LBWF
Residential[1]	£25	£80	£65/£35	£150/£50	£70
Student Accommodation	£373	£130	£425	£450	£0
Convenience supermarkets	£150	£0	£120	£130	£150
Hotels	£55	£120	£180	£190	£20
Retail[2]	£65	£30	£70	£100	£80 (A3&A5) £90 (Betting shops)
Office[3]	£0	£0	£0	£0	£0

Some of the four growth boroughs have put in place zonal charging within their boroughs, as through their viability evidence the character of different areas varies so much that it is not sustainable to put charges in place in some areas but it is in others. Therefore, it is important to note that whilst the areas directly surrounding the Legacy Corporation do not have office charges in place and the retail charges in LBH and LBTH are not in place close to the boundary, they do apply in areas such as the City Fringe and Docklands areas for both office and retail in LBTH and LBH. When it comes to office charges these areas highlight specific markets where office is viable to charge, for LBH the City Fringe and within LBTH the new CS now includes an office charge for the North Docklands area. The new charge within the North Docklands area reflects improvements in the office market over the last few years, these improvements are reflected within the Legacy Corporation Viability Study Report (CIL06).

The Legacy Corporation's draft Charging Schedule is a partial review of the currently adopted Charging Schedule, which seeks to account for changes to the development market experienced in their area since the last schedule was adopted. This is in line with the NPPG on CIL which requires charging authorities to *"keep their charging schedules under review and should ensure that levy charges remain appropriate over time*" (Para 045). Given the Legacy Corporation's experience of development deliverability and viability in its area, it considers that the existing indexed CIL charges, except for those it is seeking to amend through this partial review, "remain appropriate" (Para 045) and strike the required balance by the CIL Regulations i.e. they ensure that development is coming forward whilst also remaining *"relevant to the funding gap for the infrastructure needed to support the development of the area"*.

Considering the observations above, the Legacy Corporation has maintained the charges from the original schedule, updating these to reflect indexation in line with regulation 40(5), which is not before the Examination. The additional charges identified in the draft Charging Schedule before the Examination are shared-living/co-living within the residential charge (£73.90), a charge on Office in the 'Stratford Retail Area' (£123.17) and an all other uses charge (£20). These charges reflect the change in context in the Legacy Corporation area since the original Charging Schedule was adopted

[1] These do not include a charge for Shared Living or Co-Living uses, which are Sui Generis.
[2] The retail charges in LBH and LBTH only cover the City Fringe and North Docklands areas as set out in their respective charging schedules.
[3]

in 2015 as well as acknowledging new sub-sets of intended uses of development and the variety of development that has come forward.

The market and built form and character will be different between the different CAs' areas, which will directly impact on the benchmark land values, sales values, rents and yields achievable. There are strong physical boundaries to the west and the south of the Legacy Corporation area formed by the A12 and mainline railway lines, this means that there are areas of different character either side of the boundary, which will influence the different charges that have been set. To the north east, the character of the Legacy Corporation is dominated by the Queen Elizabeth Olympic Park, whereas on the other side of the boundary is the residential area of Leyton, comprised largely of late Victorian and Edwardian properties and infill estates, which is of a very different character. Regeneration and quantum of infrastructure provided and connectivity differences in the surrounding areas will influence values, which is a strong factor within the Legacy Corporation area. In addition, the burden of responsibility for strategic infrastructure such as improvements to Stratford Regional Station has also influenced the decision to introduce new charges on the Legacy Corporation side of the boundary within the London Borough of Newham.

The typologies tested are also likely to vary based on the development form expected to come forward in each of the CAs' areas. The Legacy Corporation area has a greater density of large scale, often cleared former industrial sites and other areas of regeneration that are driving a significant level of development activity. This means that large scale development can take place in a way that is not possible in other areas, and that pressures on development are different in scale, nature and value from those in more built up and existing residential areas. The existing land uses will be different in the four boroughs as will the sales values achievable on them, which will influence the charges that CAs set. In addition, the policy context will be different in each of the different CA areas, which will influence the charges set. An example of this is affordable housing policies, where boroughs have different policies around the percentage of development sought for affordable housing and what the tenure split related to these might be; these policies will in turn impact on viability and therefore on the charges set by a CA.

The Legacy Corporation Draft Charging Schedule builds upon the original Charging Schedule adopted in 2015, adding charges to reflect the changed context and development coming forward within the unique context and conditions of the Legacy Corporation area, based upon strong evidence including an updated viability study (CIL06). The four growth boroughs have adopted CIL Charging Schedules that reflect the context and conditions within their borough areas. Differences between charging schedules reflect these differences and the requirements under which a charging schedule should be set.