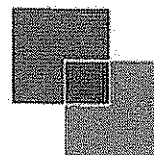


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Dear Sir/Madam

Representations on Proposed Modifications to the Community Infrastructure Levy Draft Charging Schedule

Thank you for consulting Oxford Brookes University on the proposed modifications to the Community Infrastructure Levy (CIL) Draft Charging Schedule as set out in the 'Statement of Modifications'.

The University objects to the proposed modifications as they do not provide clarity as to whether or not the provision of student accommodation by the University would be subject to CIL, nor clarification as to whether charitable relief exemption would constitute 'State Aid,' as sought by the University in its representations dated 26 March 2015.

The reasons why the University considers there is still a lack of clarity are set out below:

1. Lack of clarity about whether CIL would be charged on student accommodation:

Both the Community Infrastructure Levy (CIL) Draft Charging Schedule Public Consultation and the amended CIL Draft Charging Schedule Submission Version refer to CIL being payable on '*residential development*.'

While this would seem to imply C3 use, paragraph 11 of the Community Infrastructure Levy Draft Charging Schedule Public Consultation stated that: '*The definition of 'use' does not follow the formal definition of classes of land use as set out in the Town and Country Planning Act (Use Classes) Order 2005,*' which could indicate a wider definition of residential development and that potentially the Council could treat student accommodation as a form of residential development and make a CIL charge.

In response to the University's representations in relation to this point, the Council has stated in its Consultation Statement that: '*Student accommodation has not been tested specifically as it is not critical to the Core Strategy and the Council does not rely on this type of development*' (representation nos DC23). This does not, however, answer the question raised by the representations as to whether CIL would be charged on student accommodation or not.

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In response to a further inquiry by the University on this point the Council has responded in an E mail from Heike Wetzstein dated 5.6.15 (copy attached) that *'The Draft Charging Schedule sets out that residential (C3) office and retail development is CIL liable. So I would say as long as the proposed development does not fall under these categories, it would not be CIL liable.'* This is a welcome clarification of the Council's intentions. However, the CIL Draft Charging Schedule Submission Version makes no reference to C3 use in relation to residential development.

The University therefore requests that '(C3)' is inserted in brackets after residential development in Table 1. As C3 and C2 are already referred to in Table 1 in relation to residential retirement housing and care homes respectively, this would not create any inconsistency in the table, but would add welcome clarification. Alternatively student accommodation could be added to the list, but the charge be indicated as 'nil', as happens for many of the other categories.

Provided this clarification on student accommodation is provided in Table 1 the University would be willing to withdraw its objection in relation to this matter.

2. Lack of clarity as to whether Charitable Relief would apply to the provision of student accommodation by Oxford Brookes University

In regard to this matter the University sought clarification as to whether the University's charitable status would mean that it was exempt from CIL, or whether this would be deemed to constitute 'State Aid'. In response the Council has stated in its Consultation Statement: *'Universities do qualify for exemption from CIL under charitable relief. This will be clarified in the DCS under Exemptions'* (representation nos DC23). However, the proposed modification under Exemptions adds to the list of exempt development *'Charitable development that meets the relief criteria set out in Regulations 44 to 48'* (DC23).

As, however, Regulation 43 states that the exemption for charitable institutions does not apply where it would constitute 'State Aid,' this does not provide clarification on the University's representations in relation to this point. In response to the University's further query in relation to this matter, the Council has responded in the E mail from Heike Wetzstein dated 5.6.15 that it is seeking *'legal opinion on this matter,'* and that the Council *'will have to come back to this specific query,'* once this legal advice has been received.

If this legal opinion indicates that development by the University would be exempt the University would be willing to also withdraw this representation. If, however, this legal advice indicates that the University is not subject to mandatory relief from CIL as it constitutes *'State Aid,'* the University wishes to apply for discretionary charitable relief. In this respect it is noted that the Council has stated in paragraphs 29 and 30 of the CIL Draft Charging Schedule Public Consultation (and this is repeated in the CIL Draft Charging Schedule Submission Version) that:

The Council do not have to offer this relief, but if they choose to do so, they must adopt a discretionary relief policy. This is not part of the charging schedule and may be published at a different time. The Council has not made a formal decision on whether it will offer discretionary relief in accordance with the CIL Regulation.'

However, as the decision as to whether or not to grant discretionary relief is fundamental to the viability of development by the University, it is considered essential that a decision is made now in order to demonstrate compliance with the Planning Practice Guidance's requirement that:

'the proposed rate or rates are informed by and consistent with the evidence on economic viability across the charging authority's area;'

Accordingly, if granting the University exemption from CIL would constitute State Aid the University wishes to apply for this discretionary charitable relief, with the grounds being 'de minimis block exemption' and the 'Service of a General Economic Interest Block Exemption', which is used to give social housing relief from the levy and can *'also be used in the event that housing provided by charities cannot qualify for social housing relief.'* (Planning Practice Guidance Ref ID 25-164-20140612).

Conclusion:

It would seem from the Council's Consultation Statement and the E mail response from Heike Wetzstein dated 5.6.15 that it is not its intention to charge CIL on student accommodation. However, it is considered that it is important to insert '(C3),' after the words 'residential development' in Table 1 of the CIL Draft Charging Schedule in order to provide this clarification.

On the issue of charitable exemption and 'State Aid,' the University does not consider that the proposed modification adding the words *'Charitable development that meets the relief criteria set out in Regulations 44 to 48,'* provides any clarification on this point, for the reasons set out above and therefore awaits the Council's legal opinion on this matter. If it is decided that granting exemption would constitute *'State Aid,'* and therefore not be permissible, the University wishes to apply for discretionary charitable relief, for the reasons set out above.

I confirm that the University does wish to appear at the CIL Examination in the absence of amendments to address the representations outlined above and in the fuller statement contained in the University's original representations dated 26.3.15. The reason is that the proposed charges could significantly affect the University's ability to provide student accommodation.

Should you require any further information, please do not hesitate to contact me.

Yours faithfully



**Stephen Pickles, BA, MSc, Dip TP, MRTPI
For West Waddy ADP**

Enc.

