



# **USE OF PLANNING OBLIGATIONS IN THE FUNDING OF CROSSRAIL, AND THE MAYORAL COMMUNITY INFRASTRUCTURE LEVY**

**SUPPLEMENTARY PLANNING GUIDANCE  
APRIL 2013**

**LONDON PLAN 2011  
IMPLEMENTATION FRAMEWORK**

**MAYOR OF LONDON**

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## EXPLANATORY NOTE

- 0.1 This Supplementary Planning Guidance (SPG) has been prepared to support the policies in the London Plan dealing with the funding of Crossrail and other strategically important transport infrastructure (6.5), planning obligations (8.2) and the Community Infrastructure Levy (8.3).
- 0.2 It replaces the SPG on “Use of planning obligations in the funding of Crossrail” published in July 2010.
- 0.3 It reflects developments since 2010, and in particular:
- publication of the London Plan in July 2011
  - adoption of the Mayor’s Community Infrastructure Levy charging schedule in April 2012
  - changes to the law, particularly the Community Infrastructure Levy Regulations 2010 (as amended) and subsequent amending regulations (including those coming into force in November 2012)
  - changes to national policy guidance, particularly the publication of the National Planning Policy Framework and revocation of Office of the Deputy Prime Minister Circular 5/2005, and the publication of statutory guidance on the Community Infrastructure Levy (published in December 2012)
  - the latest position in implementing Crossrail
  - the adoption of the Mayor’s CIL instalments policy in April 2013

## CHAPTER ONE INTRODUCTION

1.1 The London Plan (published in July 2011) is the Mayor of London's statutory spatial development strategy for London, providing the strategic framework for the capital's sustainable development in order to meet London's economic and population growth to 2031. The policy directions underpinning the strategy are set out in Policy 1.1 of the Plan, and are to:

- Manage growth and change in London in order to realise the Mayor's vision for London's sustainable development to 2031 and beyond – that London should excel among world cities, expanding opportunities for all its people and enterprises, achieving the highest environmental standards and quality of life and leading the world in its approach to tackling the urban challenges of the 21<sup>st</sup> century, particularly that of climate change – and his commitment to ensuring all Londoners enjoy a good and improving quality of life sustainable over the life of the Plan and into the future
- Support and manage growth across all parts of London to ensure it takes place within the current boundaries of Greater London without encroaching on the Green Belt or London's protected open spaces, or having unacceptable impacts on the environment
- Give particular priority to the development of east London to address existing need for development, regeneration and promotion of social and economic convergence with other parts of London and as the location of the

largest opportunities for new homes and jobs.

It states that other mayoral plans and strategies, decisions on development proposals and investment priorities should realise the objectives that London should be:

- A city that meets the challenges of economic and population growth
- An internationally competitive and successful city
- A city of diverse, strong, secure and accessible neighbourhoods
- A city that delights the senses
- A city that becomes a world leader in improving the environment
- A city where it is easy, safe and convenient for everyone to access jobs, opportunities and facilities.

1.2 The London Plan makes clear the importance of infrastructure, including public transport, to ensuring realisation of these objectives. It particularly highlights the vital strategic role to be played by Crossrail, which will link Heathrow airport, the West End, the City, Canary Wharf and the Thames Gateway. Crossrail is identified as the mayor's top strategic transport priority for London (Policy 6.4).

1.3 Against this background it sets out in policy a framework for seeking contributions through the planning system towards funding of the project:

### **POLICY 6.5 FUNDING CROSSRAIL AND OTHER STRATEGICALLY IMPORTANT TRANSPORT INFRASTRUCTURE**

#### **Strategic, Planning decisions and LDF preparation**

- A In view of the strategic regional importance of Crossrail to

London's economic regeneration and development, and in order to bring the project to fruition In a suitably timely and economic manner, contributions will be sought from developments likely to add to, or create, congestion on London's rail network that Crossrail is intended to mitigate. This will be through planning obligations, arrangements for the use of which will be established at strategic level, in accordance with relevant legislation and policy guidance.

- B The Mayor will provide guidance for boroughs and other partners for the negotiation of planning obligations requiring, where appropriate, developers to contribute towards the costs of funding Crossrail having regard to:
- a the requirement for contributions from development of up to £600 million under the arrangements for funding Crossrail agreed with Government
  - b central Government policy and guidance
  - c strategic and local considerations
  - d the impacts of different types of development in particular locations in contributing to transport needs, and
  - e economic viability of each development concerned.
- C In addition, the Mayor has produced guidance on the *Use of Planning Obligations in the Funding of Crossrail* which should be taken into account in the handling of planning applications. The guidance includes:
- a criteria for identifying developments in respect of which Crossrail contributions should be required in accordance with national policy guidance
  - b standard charges and formulae for calculating fair and reasonable contributions to be sought and guidance on how these should be applied in specific localities and different kinds of development
  - c the period over which contributions will be sought and arrangements for periodic review.
- D The Mayor will, when considering relevant planning applications of potential strategic importance, take account of the existence and content of planning obligations supporting the funding of Crossrail among other material planning considerations.
- E The approach outlined in this Policy could where appropriate also be applied to other transport infrastructure of regional strategic importance to London's economic regeneration and development and other objectives of this Plan (such as extension of the Northern Line to Battersea). Any proposal of this kind will have regard to the issues outlined above.

#### **LDF preparation**

- F In consultation with the Mayor boroughs should seek to identify in their DPDs particular sites and sub-areas where contributions are likely to be appropriate and should be sought.

#### **POLICY 8.2 PLANNING OBLIGATIONS**

##### **Strategic**

- A The Mayor will provide guidance for boroughs and other partners on the preparation of frameworks for negotiations on planning obligations in DPDs, reflecting the strategic priorities set out below. In particular, the Mayor wishes to develop with boroughs a voluntary system of pooling contributions for

the provision of facilities related to proposed developments.

### Planning decisions

- B When considering planning applications of strategic importance, the Mayor will take into account, among other issues including economic viability of each development concerned, the existence and content of planning obligations.
- C Development proposals should address strategic as well as local priorities in planning obligations.
- D Affordable housing; supporting the funding of Crossrail where this is appropriate (see Policy 6.5); and other public transport improvements should be given the highest importance. Where it is appropriate to seek a Crossrail contribution in accordance with Policy 6.5, this should generally be given higher priority than other public transport improvements.
- E Importance should also be given to tackling climate change, learning and skills, health facilities and services, childcare provisions and the provision of small shops.

### LDF preparation

- F Boroughs should set out a clear framework for negotiations on planning obligations in DPDs having regard to relevant legislation, central Government policy and guidance and local and strategic considerations to the effect that:
  - a It will be a material consideration whether a development makes an appropriate contribution or other provision (or some combination thereof) towards meeting the requirements made necessary by, and related to, the proposed development
  - b Negotiations should seek a

contribution towards the full cost of all such provision that is fairly and reasonably related in scale and kind to the proposed development and its impact on a wider area

- c Boroughs must refer to planning obligations that would be sought in the relevant parts of the DPDs (such as transport and housing policies).

### POLICY 8.3 COMMUNITY INFRASTRUCTURE LEVY

#### Strategic

- A The Mayor will work with Government and other stakeholders to ensure the effective development and implementation of the Community Infrastructure Levy (CIL).
  - B The Mayor will bring forward a draft charging schedule in accordance with the Community Infrastructure Levy Regulations 2010 to enable him to use the CIL to fund strategically important infrastructure, initially focussing on Crossrail.
  - C The Mayor will prepare guidance for boroughs and other partners setting out a clear framework for application of the Community Infrastructure Levy to ensure the costs incurred in providing the infrastructure which supports the policies in this Plan (particularly public transport – including Crossrail – see Policy 6.5) can be funded wholly or partly by those with an interest in land benefiting from the granting of planning permission.
- 1.4 This SPG is the guidance referred to in Policy 6.5C. It provides detailed guidance on how policies 6.5 and 8.2 will be applied to ensure the implementation of Crossrail.

1.5 It also provides information about the Mayoral Community Infrastructure Levy (CIL) in accordance with Policy 8.3C. The Mayor has brought forward a CIL charging schedule, which was formally approved on 22 February 2012 with charging starting on 1 April of that year.

1.6 The Mayor has brought forward proposed early minor alterations to the London Plan which, among other things, seeks to update chapters 6 and 8 to reflect changes to legislation governing the use of planning obligations and the introduction of the Mayoral Community Infrastructure Levy. In particular these seek to:

- Alter Policy 6.5 to replace the existing paragraph E with a requirement that boroughs should, in consultation with the Mayor, seek to identify strategically important transport infrastructure suitable for funding through the Community Infrastructure Levy. It is also proposed to amend the text supporting this policy to remove references to former Office of the Deputy Prime Minister Circular 5/2005 (which has been revoked by Government through the National Planning Policy Framework);
- Alter the supporting text to Policy 8.2 to remove a reference to Circular 5/2005; and
- Alter Policy 8.3 and its supporting text to reflect the fact that the Mayor has now adopted a CIL charging schedule.

1.7 These alterations were examined in public in November 2012, with a view to formal publication in early 2013.

1.8 This document contains guidance supplementary to the London plan policies mentioned above. While it does not have the same formal status as these policies, it will be formally adopted by the Mayor as

supplementary guidance under his powers under the Greater London Authority Act 1999 (as amended). Publication will follow a period of consultation, and a summary of the comments received, and of the Mayor's response to those comments, will be placed on the Greater London Authority website. It will therefore be a material consideration in drawing up development plan documents and in taking planning decisions. It is also intended to be of assistance to London boroughs in taking forward their own CILs.

## CROSSRAIL

1.9 Government has recognised that the delivery of Crossrail is fundamental to the future of London's, and in turn the United Kingdom's, economy. In order to ensure that Crossrail is fully funded, a funding package has been agreed that involves securing resources from three main sources:

- The taxpayer, via national government;
- London businesses, including through a business rate supplement and through contributions by developers; and
- Borrowing against the fares to be paid by users of Crossrail, via Transport for London.

1.10 The focus of this document is on the developer contributions referred to in the second element.

1.11 The impact, both individually and cumulatively, of development proposals will give rise to additional pressures and crowding on London's transport infrastructure. Crossrail is vital to alleviate these pressures, and is national and regional government's chosen method of improving capacity. Use of planning obligations to contribute towards its cost in



respect of developments that will add to these pressures is appropriate, as it meets each of the three statutory tests for appropriate use of planning obligations set out in regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (referred to as “the CIL Regulations” in the rest of this document) – that they should be:

- Necessary to make the development concerned acceptable in planning terms
- Directly relevant to the development, and
- Fairly and reasonably related in scale and kind to the development.

1.12 The 2010 Regulations introduce restrictions on the use of planning obligations arising from introduction of the CIL, effectively preventing use of planning obligations to contribute towards the cost of infrastructure to be funded from CIL and for the pooling of contributions through use of obligations from “five or more separate developments” in a local authority’s area by preventing these being taken into account in deciding whether to grant planning permission. **Planning obligations that relate to or are connected with the funding or provision of scheduled works within the meaning of Schedule 1 to the Crossrail Act 2008 are specifically excluded from these restrictions**<sup>1</sup>

1.13 Under the Planning Act 2008 and the CIL Regulations, the Mayor is empowered to levy a Community Infrastructure levy to help ensure the delivery of local and sub-regional large-scale infrastructure such as Crossrail. The 2010 Regulations explicitly recognise Crossrail as a proper purpose for use of the CIL<sup>2</sup>

1.14 This SPG sets out:

- The background and policy context for Crossrail, including its funding arrangements and, in particular, the use of planning obligations and the CIL to deliver the scheme in terms of relevant legislation and Government guidance (section 2).
- Details of the standard charges and formula that will be applied to work out the contribution to be made in each case (section 3). This includes where the charge will apply, what type of development will be covered, the level at which the charge will be set, and how it will be collected and monitored.
- Information about, and guidance on, the Mayor’s Community Infrastructure Levy (section 4).
- Guidance on implementation issues common to both use of planning obligations and the CIL (section 5).
- Guidance on the approach the Mayor will take to assessing whether a borough has met the requirement to have regard to his CIL referred to above, and provides some general advice based on experience of CIL-setting to date (section 6).

<sup>1</sup> See Community Infrastructure Regulations 2010 (as amended), regulation 123 (4).

<sup>2</sup> Ibid, regulation 59(2)

## CHAPTER TWO CROSSRAIL BACKGROUND AND POLICY CONTEXT

2.1 Crossrail is a major cross-London rail link project developed to serve London and the south-east of England, providing fast, efficient and convenient rail access to the West End, the City and Canary Wharf and linking existing routes from Shenfield and Abbey Wood to the east to Maidenhead and Heathrow Airport to the west. It will ensure improved services for rail users by relieving crowding, ensuring faster journeys and providing a range of new direct journey options while also facilitating interchange between different public transport modes. It will also have wider social and economic benefits for London, enabling the continued growth of key economic sectors and locations. It has three key objectives:

- To support the development of London as a world city, and its role as the financial centre of Europe and the United Kingdom;
- To support the economic growth of London and its regeneration areas by tackling congestion and the lack of capacity on the existing rail network; and
- To improve rail access into and within London.<sup>3</sup>

2.2 It will achieve these objectives by:

- Addressing problems of inadequate capacity on the National Rail and London Underground networks;
- Improving accessibility to regeneration areas; and

- Providing transport capacity for the growth expected for London.

2.3 The project involves construction of seven central area stations (Paddington, Bond Street, Tottenham Court Road, Farringdon, Liverpool Street, Whitechapel and Canary Wharf) providing interchange with London Underground, National Rail, London Overground, the Docklands Light Railway and London Bus services. It also involves upgrading or renewal of existing stations outside central London. The route is shown in figure 1. From west to east, the route as approved will consist of:

- Use of the existing Great Western Main Line between Maidenhead and Westbourne Park, with a new flyover structure at Stockley to allow trains to access the existing tunnel to Heathrow, and a rail underpass west of Acton Yard. A new line, within the existing rail corridor, will be provided between Langley and West Drayton. Enhancements will be made to stations, with the most significant works at Ealing Broadway, Southall, Hayes and Harlington and West Drayton;
- A central section, largely through a twin-bore tunnel beneath central London with portals at Royal Oak to the west, Pudding Mill Lane to the north-east and a point just to the east of Poplar Dock and the A1206 Prestons Road in the Isle of Dogs in the south east. New stations and associated structures, like ventilation shafts, will be provided along this part of the route;
- A northeast route section, using the existing Great Eastern Main Line between Pudding Mill Lane and Shenfield. This will include station enhancements, with the most significant at Ilford and Romford, and reinstatement of track between Goodmayes and Chadwell Heath; and

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<sup>3</sup> Crossrail Environmental Statement, Volume 1

- A southeast route section, running from a point east of the Isle of Dogs station and the eastern terminus at Abbey Wood, where Crossrail will serve a reconstructed station. It will run through a twin-bore tunnel to a reconstructed station at Custom House, then follow the former North London Line alignment through the Connaught Tunnel to Silvertown. At North Woolwich a new twin-bore tunnel will pass beneath the Thames. There will be a station at Woolwich, and two

new tracks will run between Plumstead to a point east of Abbey Wood station to accommodate Crossrail services on the North Kent corridor.

- 2.4 Powers to construct and maintain Crossrail, and the necessary planning and other consents and powers have been secured by the Crossrail Act 2008. During its passage through Parliament, the Act was supported by a comprehensive Environmental Statement.



Figure 1: Crossrail Route

- 2.5 Crossrail is essential to delivering the strategic vision and objectives of the London Plan, particularly

- supporting and managing growth across all parts of London to ensure it takes place within the current boundaries of Greater London without encroaching on the Green Belt or on London's protected open spaces or having unacceptable environmental impacts; and
- supporting the development of east London to address existing

need for development , regeneration and promotion of social and economic convergence with other parts of London, and as the location of the largest opportunities for new homes and jobs.

- 2.6 It also has a particular role in addressing the Plan objectives of ensuring that London meets the challenges of economic and population growth; is an internationally competitive and successful city; has diverse, strong,

secure and accessible neighbourhoods; and is a place where it is easy, safe and convenient for everyone to access jobs, opportunities and facilities<sup>4</sup>.

2.7 The current transport network in and around London is already highly congested, with high levels of crowding on key National Rail, London Underground and Dockland Light Railway (DLR) services, particularly during the peak period. Even with the on-going investment on the Underground, National Rail network and other transport systems, London's transport system is struggling to meet existing demands. Increasing congestion on London's rail network poses a threat to achieving the projected growth in jobs and economic activity envisaged in the London Plan.

2.8 Crossrail will help provide the extra public transport capacity needed to cope with the growth in employment expected in the West End, the City of London and Canary Wharf. Crossrail will reduce current levels of overcrowding on the Underground, particularly in the central area (all Underground lines other than the Northern Line should see a reduction in passengers following the opening of Crossrail) and the Isle of Dogs. It will also reduce crowding on some National Rail services (particularly those using Liverpool Street, Paddington, Fenchurch Street, Charing Cross and Cannon Street).

2.9 Crossrail is also essential to delivering the spatial priorities set out in the London Plan, particularly moving London's centre of gravity eastwards:

- By addressing public transport capacity issues, it will be essential to enabling the

continued growth in central and eastern London outlined in the London Plan. In particular, Crossrail is critical to supporting the growth of the financial and business services sectors in central London and the Isle of Dogs, where there is market demand for additional development capacity – providing increases in rail capacity into each area of 20 per cent and 50 per cent respectively. It will also provide much needed additional transport capacity to the West End, supporting the future development of that area as London's premier retail and leisure location envisaged in the London Plan. The scheme will also improve links to and from Heathrow, thereby supporting connections for London's global businesses. By linking these areas, Crossrail will help create a virtual unified economic and business core in London. It is also crucial to the realisation of regeneration and intensification opportunities around key interchanges within the Central Activities Zone and to its east and west.

- Crossrail will also support delivery of London Plan policies for the development and regeneration of east London, and the London Thames Gateway in particular. Crossrail will make a vital contribution to improving the accessibility and attractiveness of the Thames Gateway to the east of the Isle of Dogs, through its cross-river link to south-east London and its links to the east including interchange with the DLR at Custom House.
- Crossrail will also help support growth in west London identified in the Plan. It will support development opportunities around Heathrow and at Hayes/West Drayton/ Southall, and will assist in supporting West

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<sup>4</sup> Mayor of London, The London Plan, July 2011, Policy 1.1

- London's network of town centres.
- Crossrail stations will lie within eight opportunity areas and areas for intensification identified in the London Plan. Together, these areas have spatial capacity for 216,000 new jobs – over half of which are planned for the Isle of Dogs – and 85,000 new homes (over one third in Stratford).
- 2.10 Crossrail will help enable management of the pattern of urban growth in London to make the fullest use of public transport, and focus major generators of travel demand in city, town and district centres and near to public transport interchanges. By supporting a denser pattern of development, and enabling the accommodation of London's growth within its existing boundaries, it will help reduce the need to travel. In providing substantial additional public transport capacity it will help provide more sustainable transport choices and reduce reliance on the car.
- 2.11 Crossrail will bring significant benefits across London. It is a strategic project which will improve the transport system and create new jobs while helping London remain competitive against other global cities. Significant indirect benefits will flow to areas of the capital not on the route. Combined with Crossrail's operational jobs, the employment figure as a direct result of the project could reach 40,000 in central London. Around 1.5 million more people will lie within 45 minutes' commute of Central London following the completion of the rail link. Londoners securing new and better paid jobs will spend their increased earnings in the areas in which they live, including main suburban town centres such as Bromley, Croydon, Enfield, Harrow, Kingston, Sutton and Uxbridge, which do not lie directly on the Crossrail route.
- 2.12 In February 2009 Crossrail Ltd (CRL) published a major economic study by consultants Colin Buchanan, which sought to quantify how these transport and economic benefits enabled by the new railway would be distributed across London. This work was updated in 2010 (some of the benefits could only be ascribed to particular boroughs on an approximate basis). The study identified the substantial economic benefits that Crossrail will deliver for the whole of London and the South East after the new railway opens. When the results are modelled for just one year – 2026 – the annual economic benefit across all of London's boroughs is estimated at £1.83 billion (at 2010 prices). Residents of every London borough are projected to benefit by at least £15 million per annum by 2026 in terms of wider economic, employment and transport benefits for local residents, with 20 of 33 boroughs benefiting by over £50 million per annum (including £99 million for Newham and £98 million for Greenwich). Even boroughs located furthest geographically from the route are projected to benefit significantly, such as Barnet (£55 million per annum), Bromley (£46 million), Croydon (£36 million) and Enfield (£41 million). The benefits of Crossrail are therefore spread across all boroughs, not just those on the Crossrail route.
- 2.13 There is, therefore, a strong economic case for Crossrail. It will have a strategic effect on London's transport system, allowing further employment growth in London and economic development. The benefits of this will be felt across the capital. This strong case has been used to justify use for the project of the Business Rate Supplement, which is paid by occupiers of property, but it is also a justification for contributions by those who will benefit from new

development – whether residential or commercial.

## PLANNING POLICY BACKGROUND

- 2.14 It is for these reasons that London Plan Policy 6.4, which deals with enhancing London's transport connectivity, states that:

*"The Mayor will work with strategic partners to improve the public transport system in London, including cross-London and orbital rail links to support future development and regeneration priority areas and increase public transport capacity..."<sup>5</sup>*

through a number of projects and initiatives including:

*"implementing Crossrail, the Mayor's top strategic transport priority for London"<sup>6</sup>.*

- 2.15 Policy 6.1 of the Plan sets out an integrated approach to development and transport planning. It is accompanied by table 6.1, which sets out an indicative list of schemes to support this more integrated approach to transport and development. This includes Crossrail.

- 2.16 Policy 6.5 of the London Plan emphasises the strategic regional importance of Crossrail to London's economic regeneration and development and makes clear the Mayor's intention to seek contributions to its funding through the use of planning obligations (see below). Paragraph 6.21 states that Crossrail is essential to delivery of the strategic objectives of the Plan, noting that:

*"Demand for public transport into and within central London is nearing*

*capacity, with crowding on Network Rail services and on London Underground routes towards the West End, the City and Isle of Dogs. The employment growth expected over the period covered by this Plan will further increase demand. Unless this is addressed, continued development and employment growth in central and eastern London will be threatened. In particular, Crossrail is critical to supporting the growth of the financial and business services sectors in central London and in the Isle of Dogs, where there is market demand for additional development capacity. It will also provide much-needed additional transport capacity to the West End, where it will support the future development of that area as London's premier retail and leisure location. The scheme will also improve links to Heathrow, thereby supporting connections for London's global businesses. By linking these areas, Crossrail will help reinforce the development of London's economic and business core. It is also crucial to the realisation of regeneration and intensification opportunities around key interchanges within the Central Activities Zone and to its east and west. Crossrail will make a vital contribution to improving the accessibility and attractiveness of the Thames Gateway to the east of the Isle of Dogs, through its cross-river link to south-east London and connection with the DLR network (including to a potential DLR extension to Dagenham Dock)."*

- 2.17 There is, therefore, strong support for Crossrail in the infrastructure planning underpinning the London Plan.

- 2.18 Crossrail is also strongly supported by planning policy at national level. It is identified as part of the national transport infrastructure programme in

<sup>5</sup> Mayor of London, London Plan, Policy 6.4B

<sup>6</sup> *ibid*, Policy 6.4Ba

the National Infrastructure Plan<sup>7</sup>, particularly for its contribution towards sustainable economic growth and tackling climate change. The Plan points out that the Department for Transport spending settlement includes funding to allow Crossrail to go ahead<sup>8</sup>

- 2.19 Crossrail will support the achievement of sustainable development in Greater London and beyond, and so supports the central principle of the National Planning Policy Framework (NPPF). As already explained, Crossrail is key to meeting the development needs of Greater London. It will help achieving the core planning principles set out in paragraph 17 of the NPPF, particularly the importance of proactively driving and supporting sustainable economic development, supporting the transition to a low carbon future in a changing climate, encouraging the effective use of land and actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling and enabling significant development to be focussed in locations which are, or can be made, sustainable.
- 2.20 Crossrail will also support delivery of the NPPF's policies on "promoting sustainable transport"<sup>9</sup>, promoting sustainable transport modes, providing viable infrastructure to support sustainable development and helping to ensure that developments that will generate significant movements are located in places where the use of sustainable modes can be maximised.

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<sup>7</sup> HM Treasury and Infrastructure UK, National Infrastructure Plan 2010 (October 2010)

<sup>8</sup> Ibid, para. 4.32

<sup>9</sup> Department for Communities and Local Government, National Planning Policy Framework, paragraphs 29-41

## FUNDING CROSSRAIL

- 2.21 Crossrail is jointly sponsored by the Government, through the Department for Transport (DfT), and the Mayor, through Transport for London (TfL). In November 2007, the joint sponsors signed the Crossrail Heads of Terms (HOT), which set out the proposed financing and funding arrangements for the Crossrail project (including the respective contributions to be made by TfL and DfT), and an outline of the governance arrangements under which the Project would be taken forward by Cross London Rail Links ('CLRL') – which was renamed Crossrail Ltd at the end of 2008. The Crossrail Heads of Terms can be found at the following link: <http://www.dft.gov.uk/adobepdf/165234/302038/headsofterms.pdf>. The Sponsors' Agreement formalising the project management and funding arrangements was signed in December 2008.
- 2.22 The headline construction cost of the Crossrail project as agreed by its sponsors and CRL is now £14.5 billion (the rolling stock and depot will be privately financed through a design, build, finance and maintain contract and the costs are not included in this sum). This covers the period up to opening of Crossrail in 2018 and is a cash figure based on a 95 per cent confidence level. This figure differs from the £15.9 billion one that has been used before, and reflects two changes after rounding: the removal of the £0.5 billion estimate for a depot and cost reductions of £1 billion.
- 2.23 In 20 October 2010, the Mayor announced that he had achieved agreement for the whole of the Crossrail project to proceed with the £1 billion of savings referred to above and a revised opening date following a management review. These changes formed part of the Government's Comprehensive

Spending Review. The sponsors reviewed the funding flows for the project in the context of these savings and the extended construction period. The figures in this document reflect the allocation of the savings, with TfL's total reduced by £600 million. The Mayor agreed as part of the expenditure review to maintain the business rate supplement (see below) unchanged. There were also no changes proposed to the sums to be raised from either planning obligations (although the profile of the income forecast from this source has been adjusted) or the CIL.

- 2.24 Under the HOT, funding for the project will come from direct Government grant via the DfT (£ 4.7 billion), from the Mayor (£7.1 billion) and from contributions made by some of the project's key beneficiaries along its route. Canary Wharf Group has agreed to make a significant contribution to the project and will in addition be responsible for delivering the Canary Wharf station on the Isle of Dogs. The City of London Corporation will make an additional contribution from their own funds, and will assist in delivering additional voluntary contributions from the largest London businesses. BAA has also agreed to make a contribution. Network Rail will finance the works on the national railway.
- 2.25 The Mayor (through the Greater London Authority and TfL) has agreed to contribute around £7.1 billion towards the construction costs of the Crossrail project. In addition to the CIL, which is discussed at the end of this section, there are a number of distinct funding sources for this contribution:

- *Crossrail BRS (£4.1 billion)*: The largest element of the GLA contribution will be financed by the Crossrail Business Rate Supplement (BRS). The Crossrail BRS will finance around £4.1 billion of the project costs. This comprises £3.5 billion of borrowing and a further capped sum of £0.6 billion representing the estimated Crossrail BRS income not needed to service the GLA's debt financing costs on this loan during the seven-year planned construction period.
- *Direct TfL contribution*: TfL will provide the remainder of the core funding and contingency it is committed to from prudential borrowing, net of over station development proceeds.
- *Section 106 Contributions (£0.3 billion)*: The Mayor is committed to provide £300 million to be raised from developer contributions through use of planning obligations under section 106 of the Town and Country Planning Act 1991. In 2010 the Mayor altered the London Plan to establish a policy for seeking such contributions, with the details of the policy explained in supplementary guidance.
- *The Community Infrastructure Levy (£0.3 billion)*: The heads of terms also refer to a second sum of £300 million to be raised from a "Statutory Planning Charge" (which has been enacted as "the Community Infrastructure Levy").

- 2.26 This guidance relates to the last two of these funding sources.



## CHAPTER THREE USE OF PLANNING OBLIGATIONS TO HELP FUND CROSSRAIL

3.1 Under the CIL Regulations, a planning obligation may only be taken into account as a reason for granting planning permission if it is:

- Necessary to make the development concerned acceptable in planning terms
- Directly related to the development, and
- Fairly and reasonably related in scale and kind to the development<sup>10</sup>.

These tests are also set out in paragraph 204 of the NPPF.

3.2 This section explains the process that has been used to identify the types and locations of development which will give rise to additional demands on the London rail network, and therefore contribute towards further congestion. Section 2 has shown why, without Crossrail, such development will be unacceptable in planning terms (see section 2). The approach is based on research which quantified the level of demand from each kind of development, so that the direct relationship and the fair and reasonable relationship in kind and scale required by the Regulations can be demonstrated.

3.3 Against the background set out in this document, the Mayor is satisfied that it is appropriate to seek

contributions towards the cost of the construction of Crossrail through use of planning obligations. The principle has been tested at two examinations in public; the first (in December 2009) into alterations to the London Plan to enable the use of planning obligations in this way (which also considered an earlier version of this document), and the second into the draft replacement London Plan in 2010.

### CROSSRAIL CONTRIBUTIONS: FORMULAE AND STANDARD CHARGES

3.4 This section sets out the detailed guidance for boroughs and other partners for the negotiation of planning obligations requiring, where appropriate, developers to contribute towards the costs of funding Crossrail as set out in London Plan Policy 6.5.

3.5 In order to meet the tests set out in the CIL Regulations, the methodology used to assess when it is appropriate to seek a contribution towards the construction cost of Crossrail, and the amount to be sought, must be capable of:

- Demonstrating a direct relationship between a development and the need for Crossrail that makes seeking a contribution acceptable in terms of the Regulations;
- Providing a basis to demonstrate that the scale of contribution sought fairly and reasonably relates to the proposed development concerned; and
- Demonstrating that the amount of the contribution sought is directly related to the scale of the impact that the development concerned will have.

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<sup>10</sup> Community Infrastructure Levy Regulations 2010 (as amended), regulation 122(2)

- For the arrangements to work effectively, the broad levels of contribution set out in Table 2 are necessary and appropriate in these terms.

## WHAT TYPE OF DEVELOPMENT, AND IN WHAT LOCATIONS?

3.6 The first step has been to identify the impact of development (and not the extent to which a development or area “benefits” from Crossrail, which is not a relevant consideration in meeting the statutory tests referred to earlier). This looks at patterns of crowding on rail services (National Rail and London Underground) in London. Crowding costs, and changes in the level of passenger crowding, are key elements used in assessing the costs and benefits of rail schemes, and are an established and well-understood way of assessing the effects on transport networks of changing patterns of development and assessing the impact these have. These have been used to assess the extent to which developments of particular types, sizes and locations either contribute to, or exacerbate crowding. Three things have been considered:

- How many trips are generated by different land uses in different areas of London, and when. This has been established using data from English Partnerships (now the Homes and Communities Agency) on employment densities, standard databases of trip rates by development types, surveys of trip rates by tourists and different types of housing and occupancies by area;
- The share of these trips likely to be made by rail. This is based on analysis of the 2001 Census, which includes information about rail mode share by area of

residence and workplace by local output area; and

- How rail crowding costs vary according to different trip patterns, looking particularly at different trip destinations and time periods (“cost” here being worked out by applying a “crowding factor” - which takes account of passenger demand and a combination of seating and standing capacity - to actual journey times on each part of the network). These are based on Select Link Analysis undertaken by consultants Colin Buchanan and Partners for Crossrail in 2004, which assesses the proportion of time trips to Central London spend under particular levels of crowding.

3.7 The methodology is set out in more detail in background reports from TfL’s consultants Jones Lang LaSalle and Colin Buchanan. These are available on the GLA’s website.<sup>11</sup>

3.8 This methodology has been used to work out which types of development contributions should be sought for, and where, looking at:

- Central London (an area informed by the Central Activities Zone (CAZ) designated by Policy 2.10 of the London Plan) - shown in Annex 1);
- The main business area of the Isle of Dogs (IoD) centred on the northern parts of Millwall and Blackwall wards of the London Borough of Tower Hamlets – the area designated by the London Borough of Tower Hamlets as the “Northern Sub-Area” in their former Isle of Dogs Area Action Plan – see Annex 2);
- Areas in the rest of outer London within approximately 1 km of proposed Crossrail stations

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<sup>11</sup>[www.london.gov.uk/mayor/planning/crossrail/index.jsp](http://www.london.gov.uk/mayor/planning/crossrail/index.jsp)

- (zones chosen because they represent a 12 minute walk from stations, the area within which rail use is likely to be highest); and
- Different types of land use - office, retail, hotels and residential development.
- 3.9 Using this methodology, it has been found that:
- Congestion on rail is predominantly a peak period issue, and the approach taken here is to focus on the time of day when developments of different kinds make the most significant contribution to crowding.
  - The impact of development in terms of increased congestion and costs of crowding differs according to the use and location involved. The relative impact (where office uses in central London – which have the highest impact – are shown as 100) is shown in Table 1:

Table 1: Impact on the rail network in the AM peak (07:00-10:00) by location and land use		
type of development	central London (CAZ/loD)	outer London 800m zones
offices	100	22
retail	64	12
hotels	44	-
residential	6	10

- 3.10 In summary, office development has the most impact, with residential having the least. For office and retail uses, impacts are higher in central London than outer areas, while for residential uses the pattern is reversed, reflecting different choices of transport modes for the comparatively shorter trips from more centrally-located homes. In central London office development has an impact just over 50% higher than the next highest form of development, retail. Development in central London has a significantly higher impact than that in outer London. For office development, impact in outer London is about a fifth of that in the centre.
- 3.11 The statutory tests for the use of planning obligations require that a direct relationship should be shown between an obligation and a particular development and that it should be fairly and reasonably related in scale and kind. In this case this has been done by focussing on those places and uses where a particularly clear link between the impact of additional development and rail network crowding can be shown and quantified.
- 3.12 Taking this approach and the information provided by consultants, the Mayor has decided that:
- Contributions should be sought in respect of retail and hotel and office development, in Central London and the northern part of the Isle of Dogs, which involves a net increase in office floorspace of more than 500 square metres with contributions proportionate to the calculated impact shown in Table 1. This is the form of development that gives rise to the

- most substantial “impact” that Crossrail will mitigate.
- Contributions should be sought in the rest of London in respect of office and retail development within an approximate radius of 1 km around Crossrail stations other than Woolwich Arsenal (which has its own contributions regime operated by the London Borough of Greenwich) based on the reduced relative impact shown in Table 1;
  - The de minimis threshold excluding development that would result in additional office, retail or hotel floorspace of 500 square metres or less has been set to reflect that developments below this size are unlikely to have crowding impacts sufficient to meet the statutory tests; the benefits of seeking contributions from smaller developments of this scale are likely to be outweighed by the costs of entering into obligations and collecting contributions and the large number of smaller developments would make application of a policy of this kind uneconomic to administer.
- 3.13 Congestion pressure on the network is at its worst during the morning peak period (7 - 10am), and most of this pressure is due to people travelling to their place of work. It is these movements which require the maximum enhancement of capacity which will be provided by Crossrail, and without it future development for employment uses will be increasingly unsustainable. The three hour morning peak period can be broken down into two shoulder hours (7 - 8am, 9 -10am) and one peak hour (8 - 9 am), which has the highest daily level of congestion. The additional capacity from Crossrail, which is necessary for office development will also support sectors like retail and hotels.
- 3.14 As the impact of development is at its most acute at the busiest part of the am peak, this is the point at which it can be shown most clearly that development is creating the need for a particular item of infrastructure – Crossrail – that it is reasonable to use planning obligations to help fund the infrastructure concerned. At this point, there is clear evidence that office development is the most substantial contributor to congestion, and it is therefore reasonable to seek contributions from them. However, the relative impact of retail and hotel developments is still significant and proportionate contributions will be sought from them.
- 3.15 This approach focuses on destinations. Congestion is caused by concentrations of development to which people need to travel at peak hours, and it is because of this impact that it is reasonable to seek planning obligations from them under the tests set out in the CIL Regulations. It would be likely to be unreasonable as well as uneconomic to try to seek contributions from residential developments in outer London, and many centres of employment in outer London have jobs substantially filled by people living nearby who cause very little congestion on rail links (in those that have a wider impact it may well be legitimate to seek contributions – see paragraph 3.26).
- 3.16 In short, the approach taken has been to focus on the type of developments having the most direct impact on rail capacity – office, retail and hotel development in the area of the Central London contributions area shown in Annex 1 and the Isle of Dogs contributions area (Annex 2); and office and retail developments within an approximate 1 km radius around Crossrail stations in the rest of London, apart from around Woolwich Arsenal (Annex 3). This also restricts the number of

applications in respect of which a contribution will have to be sought, minimising the administrative and cost burden on planning authorities and also the impact on other planning obligations. Although not part of the contributions scheme, certain leisure and entertainment proposals may warrant contributions towards Crossrail to mitigate their impact; these will be assessed on a case by case basis against the three statutory tests. Leisure and entertainment means any leisure use falling within Class D2 of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that order, and related “sui generis” uses such as theatres, nightclubs and amusement arcades.

## CHARGING LEVELS

3.17 The second step is to use this information as the basis for apportioning contributions across the different uses and locations.

Assumptions have been made about the likely patterns and amount of development between 2008 and 2026 (a period chosen to reflect the likely period over which the £300 million required is likely to be collected) based on information about historical and future office, retail and hotel completions held by consultants Jones Lang LaSalle (JLL), tested against data held by the Greater London Authority. A de minimis threshold of 500 sq m has been applied to exclude all development below this threshold; this reflects the size of development at which an appreciable effect on the rail network is likely to arise.

3.18 A prudent approach has been taken to this, based on:

- Taking an upper case based on a projection of historic development data 2000-2008;

- Taking a lower case, assuming a lower level of development, removing exceptional years from the data; and
- Setting a central case – the median of the upper and lower cases.

3.19 This approach is prudent because it looks over a complete development cycle (2000-2008), over which there have been varying levels of development activity.

3.20 Further adjustments have been made to:

- Apply a 50% net increase to gross development area ratio (based on historic precedent, to reflect the fact that it will usually only be appropriate to seek contributions in respect of net increases in relevant floorspace
- Account for “leakage” due to schemes involving changes of use or owners deciding to retain existing building rather than redevelop;
- Allow for development taking place in the first two years following implementation of this policy, under planning permissions granted in advance without provision for a Crossrail contribution; and
- Enable a cautious view to be taken of the likely yield of a standard charge of the kind proposed here in 2010 and 2011, during a period of likely recovery from particularly difficult market conditions.

## CENTRAL LONDON CONTRIBUTIONS AREA

3.21 The £300 million to be raised towards the cost of Crossrail under the funding heads of terms (see paragraph 2.23 above) has been applied to this figure resulting from this calculation to arrive at a standard

charge per square metre on increases in office, retail and hotel floorspace (net internal area). In order to simplify calculation of the charge by developers and planning authorities this charge rate based on net internal area has been converted to one based upon gross internal area (GIA) measurements – the same basis as for the Community Infrastructure Levy. For the purposes of this conversion it is assumed that, on average, the net internal area of a development will equal roughly 75 per cent of the GIA. This results in charges for all office, retail and hotel developments (see table 2) involving a net increase of more than 500 square metres GIA in the different areas of London.

3.22 **Previous guidance on this policy dealt with gross external area, as this is the basis of measurement most commonly used in the planning and development process. Since calculation of the CIL is based on GIA, the Mayor has considered that it would be easier to use this as a common approach.** The figures shown below have been recalibrated from GEA to GIA, but no substantive change to the sums involved has been made.

3.23 The Vauxhall Nine Elms Battersea (VNEB), Waterloo and Elephant and Castle opportunity areas (OAs) have been excluded from the central London charging areas. This is in recognition of the strategic potential they present for the development of central London identified in the London Plan and the importance of strategic transport schemes other than Crossrail for their development, with other transport needs being met through borough CILs and the use of planning obligations where appropriate. In these areas, the “credit” arrangements to avoid double charging under this policy and the Mayoral CIL will not therefore apply (see paragraphs 4.15-4.16), and no

“top up” payments to address the difference between the amount to be sought under this policy and the CIL will be pursued. The result is that the only area attracting the charge south of the river in the Central London Contributions Area will be the London Bridge/ Bankside Opportunity Area.

3.24 Two stations, Paddington and Liverpool Street, fall within the Central London Contributions Area but lie close to its boundary and areas within easy walking distance of them (about 1 km) extend outwards from the Contributions Area. Development within such radii, shown as pecked line radii on the Annex 1 plan, would have the same likelihood to require the congestion mitigation that Crossrail would provide as areas within the Central London Contributions Area, so will be subject to the same contributions regime.

## ISLE OF DOGS CONTRIBUTIONS AREA

3.25 The circumstances that exist in the designated part of the Isle of Dogs justify a different approach. Growth in this area is particularly dependent upon the provision of additional transport capacity and ensuring transport resilience. Employment is also expected to grow much faster (proportionately) on the Isle of Dogs than in the area covered by the London Plan Central Activities Zone<sup>12</sup>. The acceptability in planning terms of further substantial development on the Isle of Dogs will be particularly dependent upon the additional public transport capacity provided by Crossrail, in terms of transporting additional employees into the area, and providing both further choice and ensuring greater resilience through provision of some

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<sup>12</sup> See Colin Buchanan and Partners for Transport for London, Crossrail Section 106 Contributions (December 2008)

redundancy should one of the existing rail services in the area (the Jubilee Line and the Docklands Light Railway) fail or have to run at reduced capacity. Canary Wharf is the busiest station on the London Underground network served by only one Underground Line, and this level of dependency on an already high volume line is a key constraint on further development in the area, presently and into the future. These impacts are likely to become particularly acute in the period after 2016 as total employment in the area increases above 145,000. By 2026 if Crossrail is not built, the problems of congestion on rail links into the IoD would be substantially higher than those in the CAZ to the extent that there would be limitations on the ability to grant planning consent in ways consistent with national and regional planning policy (and in particular, London Plan policies 6.1 Ac and 6.3, on matching development to transport capacity).

- 3.26 In view of this, in accordance with the statutory tests in the CIL Regulations (and in particular considering what is needed to ensure development is acceptable in planning terms) and the guidance in paragraph 34 of the NPPF, a contribution at a higher level than that sought in central London will be sought in respect of all office, retail and hotel development involving a net increase of more than 500 square metres in the part of the Isle of Dogs shown in Annex 2 (see table 2).
- 3.27 As in the Central London Contributions Area, there are further areas within easy walking distance (about 1 km) of the proposed new Canary Wharf station at West India Quay that would have the same likelihood to require the congestion mitigation that Crossrail would provide as areas within the defined Isle of Dogs Contributions Area. Development north of the Poplar

DLR lands is, however, likely to be of a very different character and mainly related to supporting the local residential community. It will therefore be subject to the Rest of London Contributions Area regime, referred to below.

## REST OF LONDON CONTRIBUTIONS AREA

- 3.28 Paragraphs 2.1 and 2.2 of this guidance describe the Crossrail route through London, and the planning needs it will fulfil across the capital. Outside Central London and the Isle of Dogs there will be developments where the nature of what is proposed, its location and circumstances, make it appropriate under the CIL Regulations and development plan policies in the London Plan (particularly policies 6.4, 6.5 and 8.2) and borough development plan documents to seek a Crossrail contribution. As in Central London and the Isle of Dogs, this is likely to be particularly the case where the impact of a development in terms of additional congestion will be mitigated by the additional public transport capacity and congestion relief Crossrail will bring. There may, however, also be development locations in the “Rest of London” which are at present poorly served by public transport and where Crossrail may be necessary in order to enable development to proceed in line with the objectives of sustainable development. In either of these circumstances, the mitigation provided by Crossrail is most likely to be experienced in the vicinity of Crossrail stations. Account should be taken of the fact that rail use is generally likely to be highest within about 1 km of a station (representing about a 12 minute walk).
- 3.29 In these circumstances, the size of contribution sought should reflect local circumstances, the size and

impact of development and viability issues (see paragraph 4.2).

The matrix of indicative contributions in the different Contributions Areas is as follows:

**Table 2: Indicative Level of Charge per sq.m, by land use and location as at July 2010**

type of dev	central London (See Annex 1)	Isle of Dogs (see Annex 2)	rest of London (See Annex 3)
	Including approximate 1 km indicative radii outwards around Paddington and Liverpool Street Stations	Including approximate 1 km indicative radius outwards around the proposed Canary Wharf station at West India Quay inclusive of and south of the Poplar DLR lands	Including approximate 1 km indicative radius outwards around the proposed Canary Wharf station at West India Quay north of the Poplar DLR lands as well as such radii around all other stations outside the Central Contributions Areas apart from Woolwich Arsenal.
<b>office</b>	£140	£190	£31
<b>retail</b>	£90	£121	£16
<b>hotels</b>	£61	£84	-

**Indicative contribution levels**

Where indicative contribution areas overlap the starting point for negotiations would be the higher of any rates that could be applicable

**Notes to Table 2**

Office is defined as any office use including offices that fall within Class B1 Business of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order. Uses that are analogous to offices which are sui generis, such as embassies, will be treated as offices.

Retail is defined as all uses that fall within Classes A1, A2, A3, A4 and A5 of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order, and related sui generis uses including retail warehouse clubs, car showrooms, launderettes

Hotel means any hotel use including apart-hotels uses that fall within Class C1 Hotel of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order.

In all cases, contributions should be calculated in respect of developments exceeding 500 sq.m. with a net increase in floor area of the relevant use.

For mixed use developments, contributions will be sought on any increase in floorspace for any of the three uses (subject to 500 sq.m. threshold)

**The rates have been recalibrated to take account of the use of Gross Internal Areas**



## DEVELOPMENT BY CHARITIES

- 3.30 To ensure consistency with the CIL, the Mayor will not seek Crossrail contributions in respect of development where:
- A registered charity has a material interest (a freehold or lease for more than seven years after the date planning permission is granted) in the relevant land; and
  - The development will be used wholly or mainly for charitable purposes (whether those of the charity concerned, or of another charitable institution)
- 3.31 This exemption will not apply where the material interest concerned is owned by the charity jointly with a person or organisation who is not a charity, or where the part of the development to be used for charitable purposes will not be occupied by, or under the control of, a charity. It also does not apply where exemption of the charity from the liability to pay CIL would constitute a State aid.
- 3.32 The Mayor will not extend this exemption to development by charities for investment purposes, and the guidance given in paragraph 4.14 with regard to the CIL should be applied to distinguish between the two cases.

## INITIAL REDUCTIONS

- 3.33 There has been an initial reduction of 20 per cent in the sums set out in Table 2 for the three year period expiring on 31 March 2013. The Mayor has decided that there should be a similar reduction for a further twelve month period to 31 March 2014, at a rate of 10 per cent. As before, this reduction will apply to

developments which receive permission and are commenced during this period. Where consent is given to development in phases, only those phases that commence within the set period will qualify for the reduction, and remaining phases will attract the full charge. Developments which are granted consent during this period, but which are not commenced within it, will be liable to the full amount. This reduction only applies to developments which would otherwise have paid the full amounts set out in Table 2 above. After 31 March 2014, the full rates set out in Table 2 will apply.

## VIABILITY

- 3.34 The Mayor is clear about the importance of ensuring that questions of development viability are taken into account in planning decisions, in order to encourage sustainable development; this principle is underscored in the NPPF. Accordingly, while it is essential that a consistent approach to their application is taken, it is also important to ensure that relevant viability considerations raised by particular developments are also taken into account. As indicated in policies 6.5Be and 8.2B of the London Plan, the Mayor will consider carefully any case in which it can be demonstrated that making a contribution under this guidance would have an effect on the economic viability of a development, or would otherwise be unreasonable or disproportionate. In cases where applicants consider the viability of a development could be undermined by application of the standard charge, financial appraisals should be submitted to justify this position.

## INDEXATION

- 3.35 The figures quoted in Table 2 above are at March 2010 prices. The indexation will be calculated from April 2011 until the point that the Section 106 payment becomes due, using the Consumer Price Index (and **not** the All-in Tender Price Index used for indexation under the CIL Regulations). The rate which will apply will be calculated at the point that the Section 106 payment becomes due (see paragraph 3.40 below), not when the planning permission is granted.

## ARRANGEMENTS FOR MIXED-USE SCHEMES

- 3.36 Where a mixed-use scheme containing uses attracting Crossrail charges is proposed, the Crossrail charge should relate to the net additional transport impact from the new development. This should be calculated by deducting the theoretical charge that would be paid by the existing uses covered by this policy from the charge applicable to the new development (see example set out in Annex 4).

## ARRANGEMENTS FOR TEMPORARY DEVELOPMENTS

- 3.37 Where planning permission is granted for a limited period, the Mayor will and boroughs should consider whether it is reasonable, having regard to the statutory tests in regulation 122 of the CIL Regulations, to seek a contribution. It is likely that of particular relevance in making this judgement will be:
- The duration of the planning permission (where the period is

two years or more it is likely that a contribution should be sought)

- The nature and extent of the impact the development will have on London's rail network, given the principles outlined earlier in this section.

## REPORTING, MONITORING AND REVIEW

- 3.38 Transport for London will publish regular monitoring reports on the construction of Crossrail, and on the collection and application of the sums raised under Policy 6.5 of the London Plan and this supplementary guidance. The sum collected will also be reported in the London Plan Annual Monitoring Report. The Mayor intends to keep the position regarding the funding of Crossrail, the appropriate contribution to be made by development, the impact of this policy on wider regional and local policies on planning obligations and progress with implementation of the Community Infrastructure Levy (see section 4) under review, and may publish further guidance in due course covering this and further periods. This approach will enable account to be taken of periods when there is more or less development taking place over the period during which this policy will apply. Arrangements will be made, in consultation with boroughs, developers and other stakeholders, to bring the collection of contributions to an end once the required sum of £300 million has been collected.

## COLLECTION

- 3.39 The Mayor will seek to agree payment of this standard charge through planning obligations in respect of applications he determines himself, and will take account of the inclusion of such a provision when

considering applications referred to him and deciding whether to direct refusal. For other applications, boroughs should include the Crossrail standard charge in planning obligations they negotiate with developers. In cases where no such provision is made, the Mayor may make representations to ministers asking them to call such cases in for their determination.

- 3.40 Contributions will be payable at the point at which development commences, unless other arrangements for payment are agreed. In particular, where it can be demonstrated that the development would otherwise be unviable or that the size or nature of the development makes it appropriate, payments may be related to occupation of a phase or of the completed development (paragraph 3.33 explains how the initial reduced charge will operate with regard to phased developments).
- 3.41 The Mayor is keen to ensure that inclusion of provision for contributions towards the costs of Crossrail in planning obligations does not cause unnecessary delays to the planning process. He has agreed a protocol with boroughs and developers regarding issues like exchange of information about applications, joint approaches to negotiation and collection (covering both applications referable to the Mayor and those that would not) and the arrangements for review set out in the previous paragraph. Contributions will be used only for the purpose for which they have been collected unless agreed otherwise.

## CHAPTER FOUR THE COMMUNITY INFRASTRUCTURE LEVY

4.1 London Plan Policy 8.3A states that:

*"The Mayor will work with Government and other stakeholders to ensure effective development and implementation of the proposed Community Infrastructure Levy."*

4.2 Policy 8.2C states that:

*"The Mayor will prepare guidance for boroughs and other partners setting out a clear framework for application of the Community Infrastructure Levy to ensure the costs incurred in providing the infrastructure which supports the policies in this plan (particularly public transport – including Crossrail – see Policy 6.5) can be funded wholly or partly by those with an interest in land benefiting from grant of planning permission."*

4.3 This section explains what the Community Infrastructure Levy is, and the process that is being followed to develop and implement it. It also explains the Mayor's CIL, which has been fully in place since 1 April 2012. It provides some guidance on issues specific to the CIL, including the application of reliefs and exemptions; detailed guidance on other collection and implementation issues is given in the next section.

4.4 The Community Infrastructure Levy came into force on 6<sup>th</sup> April 2010. It is a new charge which local authorities

in England and Wales are empowered to charge on most types of new development in their area to be spent on local and sub-regional infrastructure to support development in their area. The Planning Act 2008 contains powers for ministers to implement the CIL by regulation. The Act also sets out which authorities will be empowered to raise the CIL ('charging authorities'). These include the Mayor and the London boroughs.

4.5 Under the regulations, the CIL will operate as follows.

- Each charging authority will identify and cost the infrastructure needed to support the development of their area. "Infrastructure" is defined non-exclusively in section 216 of the 2008 Act; "roads and other transport facilities" are explicitly identified as falling within the definition;
- Charging authorities will then prepare a 'preliminary charging schedule' setting out the rate and/or the formula determining how the CIL will be calculated in their area;
- Charging authorities will consult on the preliminary charging schedule. Following this consultation, the authority will prepare a draft schedule, on which there will be a further period of public consultation
- The draft charging schedule will be tested through an examination in public (EiP), at which anyone who has made representations on the draft schedule will be able to appear. The examiner will consider whether the charging authority has had regard to the issues required in the CIL legislation, including the need to have regard to the costs of infrastructure, other expected funding sources and potential

- impact of the proposed levy on the economic viability of development in the area. The examiner will also consider whether the authority has acted on the basis of appropriate evidence;
- The examiner who has conducted the EiP will produce a report which will recommend that the schedule be approved, rejected or amended;
  - The amount of CIL to be paid by a development will be calculated at the time planning consent is granted, and will be payable at the time when development starts. Failure to pay could result in a legal requirement to stop development.
  - In London, both the Mayor and the boroughs are “charging authorities”, able to set a CIL. The boroughs are required to collect the Mayor’s CIL as “collecting authorities”.
- 4.6 The Regulations restrict the Mayor to use of the CIL to fund “roads or other transport facilities, including, in particular, for the purposes of, or in connection with, scheduled works within the meaning of Schedule 1 to the Crossrail Act 2008” (regulation 59(2)).
- 4.7 The Regulations also make provision for restricting the use of section 106 after introduction of the CIL. The Government has made clear its view that the CIL will be a better vehicle to address the cumulative impact of developments and fund the infrastructure needed to deal with this. Accordingly, the Regulations restrict the use of “tariff” arrangements for the pooling of contributions to arrangements involving fewer than five developments. As far as existing section 106-based tariff arrangements are concerned, the Regulations allow these to run until
- April 2014, or the date on which a local authority begins to charge a CIL, whichever is the earlier. In any case, authorities will not be able to “double charge” – seek contributions towards the cost of particular infrastructure through both section 106 and the CIL. Further guidance on this issue is given in the statutory “Community Infrastructure Levy” guidance published by the Department of Communities and Local Government (see in particular paragraphs 84-91).
- 4.8 As already noted, however, the position is different with respect to planning obligations that relate to, or are connected with the funding or provision of scheduled works within the meaning of Schedule 1 to the Crossrail Act 2008 (regulation 123 (4)). The practical effect of this will be that the contributions policy set out in this document will run until the sums referred to in paragraph 2.25 have been raised. The Mayor made clear that should he bring forward a CIL, he would take decisions on both the CIL charging schedule and the level of section 106 contributions for Crossrail in tandem, and this led to the “credit” arrangements explained in the next section.
- ## THE MAYOR’S CIL
- 4.9 As indicated in London Plan Policy 8.2B, the Mayor has brought forward a CIL charging schedule to enable him to use the Levy to fund strategically important infrastructure, initially focussing on Crossrail. He published a preliminary draft charging schedule for public consultation on 17 January 2011. Having considered the comments made on the preliminary draft, he consulted again on a draft charging schedule for a period of just over four weeks between 8<sup>th</sup> June and 8<sup>th</sup> July 2011. A public examination was held between 28 November and 2

December 2011, and following receipt of the Examiner's report the Mayor formally approved his charging schedule on 2 February

2012. Charging began on 1 April 2012.

4.10 The Mayor's CIL is charged at the rates shown in Table 3:

Table 3: Mayoral CIL charging rates		
Zone	London boroughs	Rates (£ per sq. m.)
1	Camden, City of London, City of Westminster, Hammersmith and Fulham, Islington, Kensington and Chelsea, Richmond-upon-Thames, Wandsworth	£50
2	Barnet, Brent, Bromley, Ealing, Greenwich, Hackney, Haringey, Harrow, Hillingdon, Hounslow, Kingston upon Thames, Lambeth, Lewisham, Merton, Redbridge, Southwark, Tower Hamlets	£35
3	Barking and Dagenham, Bexley, Croydon, Enfield, Havering, Newham, Sutton, Waltham Forest	£20
Use		Rate (£ per sq.m.)
	Development used wholly or mainly for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner	Nil
	Development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education	Nil

4.11 The sum payable is calculated in accordance with regulation 40 of the Community Infrastructure Levy Regulations 2010 (as amended). A "CIL Calculator" which can be used to establish an estimate of the sum payable in particular cases can be found on the Transport for London website at <http://www.tfl.gov.uk/assets/downloads/businessandpartners/mayoral-cil-calculator.xls>.

allow relief for development by charities where the whole or greater part of the development is held by the charity as an investment for charitable purposes. The Mayor has decided not to make this relief available. He considers that the better approach is to apply the CIL on the basis of uses rather than ownership, and to keep the overall figure set low. Allowing this relief would also make administration of the CIL across London as a whole unduly complex and burdensome. He will keep the position under review.

## RELIEFS AND EXEMPTIONS

4.12 Regulation 44 of the CIL Regulations 2012 permit charging authorities may

4.13 Under regulations 57 and 58, the Mayor may also allow relief for exceptional circumstances (relating specifically to developments in

respect of which there is also a section 106 agreement, where sums payable under that agreement are higher than the amount of CIL payable and where the Mayor considers that to charge the CIL would have an unacceptable impact on the economic viability of the development). The Mayor has also decided not to make this relief available at this point. He considers that it would be better to address problems of viability caused by the combined demands of CIL and section 106 agreements by making any necessary adjustments to the latter, in accordance with well-understood and applied planning principles. Disputes could be dealt with through the appeals procedures under the Town and Country Planning legislation. This approach would also avoid making administration of the CIL across Greater London as a whole unduly complex and burdensome. Again, he will keep the position under review.

4.14 Development by charities for charitable purposes is exempt from CIL under regulation 43. This is different from the discretionary charitable relief under regulation 44 referred to in paragraph 4.12 above. Developments by charities which do not fall within either of these categories is CIL liable in the usual way. In considering whether development by charities benefits from the exemption, **all** the following conditions would need to be met:

- (a) the development concerned will be occupied by, or under the control of, an institution or by a body established for charitable purposes only; and
- (b) that institution has a material interest in the relevant land as defined in regulation 4 of the CIL Regulations (so long as that interest is not held jointly with a person who is not a charitable institution) - a freehold or a

- leasehold the term of which expires more than seven years after the day on which planning permission first permits the chargeable development; and
- (c) the development concerned comprises accommodation (and other uses where relevant) that will be used wholly or mainly to further that body's charitable purposes (or those of another charitable institution); and
- (d) allowing the exemption would not constitute State Aid.

4.15 The exemption is also only available where the development will be used wholly or mainly to further charitable purposes. If, for example, it is intended to be let out on terms that mean it is actually intended to provide an income for investment on anything more than an incidental basis, it would not be eligible for the exemption (but it might for the discretionary charitable relief under regulation 44, should that be available). This will obviously be a question of fact in each case, but factors like whether the development is to be let at sub-market rents would be an important pointer. It is suggested that collecting authorities ask for the following information from developers seeking to take advantage of the exemption:

- Their charter or similar statute setting out their charitable purpose
- Evidence that the institution has a material interest in the land, and that it does not hold that interest jointly with a non-charity
- Evidence that the accommodation will be used wholly or mainly for a charitable purpose. Collecting authorities could ask charities seeking the exemption to draw on the information they will already be collecting for tax purposes to substantiate this point.

- Confirmation that allowing exemption would not constitute a State Aid. Collecting authorities will need to consider the nature and degree of risk of challenge in each case, and in cases of particular doubt might wish to consider whether it is appropriate to seek an indemnity from the developer to cover cases in which allowing an exemption is subsequently found to constitute a State Aid.
- 4.16 The CIL regulations also provide a relief for social housing, which effectively exempts the types of housing covered from CIL liability. To qualify, social housing has to meet one of the conditions set out in regulation 49. These cover most forms of “affordable housing” as that term is defined in the Glossary to the National Planning Policy Framework, including some shared equity housing products. The Government has amended this regulation to make it clear that the new affordable rent product will come within the scope of the relief.
- 4.17 In short, regulation 49 sets out the criteria to be met for dwellings<sup>13</sup> to qualify for social housing relief.
- The first condition, for social rented homes, is that the dwellings are leased for a period of 7 or more years by a registered provider, registered social landlord or local authority. These are defined in the 1996 Housing Act.
  - The second condition relates to low cost home ownership dwellings. This requires that:
    1. if the home is shared ownership it is occupied in accordance with shared ownership arrangements as defined in section 70(4) of the 2008 Housing and Regeneration Act. This does not mean that the home must be occupied as shared ownership.
    2. the equity sold should not exceed 75% of the market value. If the unsold equity is purchased within 7 years the CIL relief must be repaid, i.e. CIL becomes liable on the dwelling, unless the receipts from the sale are reinvested in affordable housing.
    3. Where a rent is charged on the unsold equity, this should be no more than 3% of the unsold equity and should not increase annually by more than inflation (RPI) plus 0.5%.
- 4.18 For the avoidance of doubt, discount market sale and similar products which meet these criteria qualify for social housing relief.
- 4.19 This relief applies to that part of a development that comprises “qualifying dwellings”; the method for calculating the relief is set out in regulation 50. In short, it is the gross internal area of qualifying dwellings that should be considered and the measuring conventions set out in paragraph 5.2 that should be applied. While it is clear that the area of dwellings themselves should be taken into account for the purposes of this relief, the situation regarding common parts is less so. As a rule of thumb, it is suggested that the starting point in considering what constitutes a “qualifying dwelling” is to consider what will actually be let or leased to prospective occupiers. It is likely on this basis that most common parts will not benefit from the relief.

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<sup>13</sup> For the purposes of the CIL Regulations, “dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling (see Regulation 2(1)).



## THE RELATIONSHIP BETWEEN THE MAYOR'S CIL AND CROSSRAIL PLANNING OBLIGATIONS

- 4.20 In proposing his CIL, the Mayor has met the commitment made in paragraph 8.16 of the London Plan to ensure that decisions on both the CIL charging schedule and the level of section 106 contributions for Crossrail have informed each other. He has taken the view that the best way of ensuring that developers do not have unreasonable demands made of them by having to make both CIL and section 106 payments towards Crossrail is to treat CIL payments (which are effectively mandatory) as a credit towards any payment sought under the Crossrail obligations policy should the former be less than the latter, and not to seek a contribution at all should the obverse be the case. For the avoidance of doubt, any CIL surcharge under Part 9 of the CIL Regulations should be disregarded for this purpose.
- 4.21 In practical terms, this means that for developments of a kind and in a location which triggers the potential need to make a Crossrail contribution as outlined in the previous section, it will be necessary to calculate the amount involved **and** the amount payable in CIL, applying the rates set out in Table 3. For mixed use developments, it is the total payable for the development concerned that should be taken into account, not the amounts for the separate uses involved). The following principles should then be applied:
- Where the amount payable under the planning obligations policy is equal to, or less than, that payable in CIL, only the CIL will be payable.
  - Where the amount payable under the planning obligations policy is
- more than that payable in CIL, the CIL will be payable **plus** a “top up” so that in combination the two payments make up the amount payable under the obligations policy.
- 4.22 In cases where it is likely that CIL liability may not be fixed at the point that a planning obligation is signed (for example where there is a pre-commencement planning condition yet to be discharged), the planning obligation should include a review mechanism to ensure these principles are applied when the necessary information is available. These arrangements are intended to ensure that the same sum is not collected under both the planning obligations policy and the CIL.
- 4.23 As required by the CIL Regulations, the Mayor will publish annual reports showing, for each financial year:
- how much has been collected in CIL by the boroughs on his behalf;
  - how much of that money has been spent;
  - the items of infrastructure on which it has been spent (in the current case, Crossrail);
  - any amount used to repay money borrowed;
  - the amount of CIL used to cover administrative expenses; and
  - the amount of CIL retained at the end of the reported year.
- 4.24 The Mayor will keep the operation of the CIL and the position regarding the funding and implementation of Crossrail under continual review. He intends to conduct biennial formal reviews of the working of his CIL. These reviews will consider in particular whether the CIL rates set continue to be appropriate, and whether there is evidence that would justify the Mayor in allowing either or both of the forms of discretionary relief referred to in paragraphs 4.12

and 4.13. He will publish the results of these reviews in the London Plan Annual Monitoring Report covering the relevant year, and any changes will be subject to public consultation in accordance with the CIL Regulations or the Mayor's usual practice, as appropriate. The first of these reviews is likely to take place in 2014. At the appropriate time, the Mayor will make announcements about future uses of his CIL powers.

- 4.25 Among the issues the Mayor will consider in these biennial reviews will be the effect (if any) of his CIL rates on delivery of affordable housing, and he would encourage the boroughs to take a similar approach in monitoring their own CILs.

## COLLECTION

- 4.26 Under the CIL Regulations, the London boroughs act as "collecting authorities" and collect the Mayor's CIL on his behalf. Transport for London is responsible for receiving and accounting for the CIL, and has agreed a procedure and reporting arrangements to facilitate this process with the boroughs. TfL also coordinates a CIL Collection and Implementation Advisory Group, which provides a forum for discussion with, and between, boroughs regarding the CIL, its implementation and administration.

## BOROUGH CILS

- 4.27 Under the regulation 14(3) of the CIL Regulations, in setting their CILs boroughs are required to take account of the rates set by the

Mayor. The Mayor will consider borough preliminary draft and draft charging schedules with this in mind. Where relevant he will also consider potential impacts of borough CIL proposals on the Crossrail obligations policy. Further guidance on this is given in section 6 of this document.

- 4.28 The CIL is likely to play an important role in ensuring delivery of the infrastructure required to support London's sustainable growth. The Mayor will work closely with boroughs to ensure the CIL is applied appropriately and effectively to achieve the objectives set out in the London Plan and borough local plans – particularly to support optimisation of the opportunity and intensification areas and other strategic development opportunities identified in Chapter Two of the London Plan.
- 4.29 The Mayor is considering ways of improving infrastructure planning in London through the work being done on the London Plan Implementation Plan. He is keen to work with boroughs and other stakeholders (including authorities in areas adjoining London) to ensure that strategically important infrastructure is identified, funded and implemented effectively. The CIL is likely to play an important part in this and further guidance may be issued in due course.
- 4.30 In the meantime, the Mayor's officers and Transport for London will provide information and assistance to boroughs in their infrastructure planning and in preparation of their CIL proposals.

## CHAPTER FIVE IMPLEMENTATION ISSUES

5.1 This section deals with implementation issues for both the Crossrail planning obligations policy and the Community Infrastructure Levy. In general, the Mayor has sought to ensure a common approach to implementation across the two, in order to make it as easy as possible for developers to calculate their liability and for boroughs to administer the two policies. In some areas, however, having different rules for each system is inescapable, particularly given the different legal basis for each. Guidance in this section applies to both Crossrail planning obligations and the CIL unless stated otherwise.

### MEASUREMENT

5.2 **For the purposes of both Crossrail and the CIL**, floorspace should be measured on the basis of Gross Internal Areas (GIA). This is not defined in the CIL Regulations; the generally accepted method of calculation is set out in the Royal Institution of Chartered Surveyors' Code of Measuring Practice<sup>14</sup>. In broad terms, this means the enclosed area of a building within the external walls taking each floor into account and excluding the thickness of external walls.

5.3 It is beyond the scope of this document to give detailed advice on measurement, but as a broad guide, the Valuation Office Agency's guidance on measuring GIA for rating

suggests that it should include the following:

- areas occupied by all internal walls and partitions
- service accommodation, such as WCs, showers and changing rooms
- columns, piers (whether freestanding or projecting inwards from an external wall), chimney breasts, lift wells, stair wells etc.
- lift rooms, plant rooms, tank rooms AND fuel stores (whether or not above roof level)
- open-sided covered areas.

5.4 It should exclude:

- open balconies
- open fire escapes
- open-sided covered ways
- open vehicle parking areas (including roof-top parking), terraces and the like
- minor canopies
- any area with a ceiling height of less than 1.5 metres (except under stairways)

5.5 Reference should be made to the RICS Code to resolve matters of doubt.

5.6 For **both systems**, it should be the development for which planning permission is granted that should be measured – account should be taken of each building within the application "red line", whether they are physically contiguous or not.

5.7 Under the CIL Regulations, buildings to which people do not normally go, or go only for the purposes of inspection or maintenance, do not

<sup>14</sup> RICS, Code of Measurement Practice: A Guide for Professionals

give rise to a CIL liability<sup>15</sup>. The Mayor's legal advice<sup>16</sup> is that this exclusion does **not** apply to parts of buildings. Accordingly, parts of buildings to which people do not normally go, or go only for inspection or maintenance purposes should **not** be netted off in calculating floorspace for **either system**.

- 5.8 For the most part, the carrying out of any building works for the maintenance, improvement or other alteration of a building which either affect only the interior of the building or do not materially affect the

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<sup>15</sup> Neither the Planning Act 2008, nor the CIL Regulations define the term "building", so it is the normal everyday English meaning of the word that should be used.

There are some possible pointers in planning inspectors' decisions, however. The degree of permanence (although CIL does not apply to temporary permissions) may be a consideration. Chalets have been held to be "buildings" given their degree of permanence.. On the other hand, things with wheels like mobile sheds or caravans have been held not to be buildings. Physical attachment to land may also be a factor. The Secretary of State has held the following to be buildings in dealing with appeals:

- Plastic tunnels assembled on agricultural land to protect growing wind and rain
- Three large umbrellas in a pub garden, each with a concrete footing and attached together with canvas side shades.

<sup>16</sup> In short, section 335 of the Planning Act 2008 applies the same meaning for "building" as the Town and Country Planning Act 1990 other than in that part of the Act (Part 11) dealing with the CIL. Regulation 2(4) of the CIL Regulations states that "references to a building or development situated on land include references to a building or development situated in, under or over that land..". it does not refer to part of a building; had there been an intention on the part of Parliament to include "part of a building", such a reference could have been made. There is no reference to parts of buildings in key parts of the regulations, such as regulation 40 (which sets out how CIL is to be calculated) or Part 6 (which deals with reliefs and exemptions).

external appearance of a building (other than providing additional space underground) is not "development" for which planning permission is required. The Planning and Compulsory Purchase Act 2004 added a new section 52A to the 1990 Act allowing development orders to be made specifying types of development to which section 55(2) applies. A development order has been made (Article 2A of the Town and Country Planning (General Development Procedure) Order 1995 (as amended)) in respect of increases in internal floorspace like mezzanine floors exceeding 200 sq m in buildings used for retail sales and including buildings used as retail warehouse clubs (other than for the sale of hot food) within planning control. Regulation 6 (1) of the Community Infrastructure Levy Regulations 2010 states that the carrying out of any work to, or in respect of, an existing building for which planning permission is required only because of provision made under section 55(2A) of the 1990 Act should not be liable to CIL.

- 5.9 **For CIL**, therefore, account need not be taken of applications that involve mezzanines alone, either because they do not constitute development or because they do, but only require planning permission as a result of a development order (although mezzanine floorspace should be taken into account in calculating the floorspace of larger developments which are CIL liable).

- 5.10 **For Crossrail obligations**, no such exclusion applies, and mezzanines for which planning permission involving an increase in floorspace of more than 500 sq m should be taken into account. A mezzanine floor proposed as part of a wholly new development would be covered by **both systems**.

## EXISTING FLOORSPACE

5.11 Both systems make provision for existing buildings, as they focus on net increases in floorspace. In the case of **Crossrail obligations** this only applies to previous floorspace of the classes of use covered by the policy, while for **CIL** the nature of the previous use is not relevant. For **both systems**, account should be taken of buildings which on the date planning permission is granted (or in the case of **CIL only**, “*the day planning permission first permits development*” – see regulation 8 of the Community Infrastructure Levy Regulations 2010 (as amended)):

- Are situated on the site concerned, and
- Have been in lawful use for a continuous period of six months within the twelve months ending on the day planning permission is granted (**for Crossrail obligations**) or “the day on which planning permission first permits development” (**CIL**). In this context “use” means actual, physical use of a building or part of a building. There is no specific meaning of “lawful use” given in the Regulations, but it seems clear that a use in breach of planning control will not be “lawful”. Similarly, there is nothing in the regulations to suggest how substantial the use, or the part of the building concerned that has been used, needs to be. These are questions of fact and degree, and collecting authorities are encouraged to take a pragmatic approach to these issues.

5.12 It should be noted that these provisions are currently under review by Government, and may change as a result of further amending regulations.

5.13 For **both systems**, where the local planning authority does not have

enough information, or information of an adequate quality, to establish the gross internal area of a building, or whether it was in lawful use, it may decide that the existing floorspace should be treated as zero, and so take no account of it in calculating payments.

5.14 It should be noted that this position replaces that set out for the **Crossrail obligations** policy set out in paragraph 4.28 of the July 2010 edition of this guidance.

## AMENDMENTS TO PERMISSIONS

5.15 The Town and Country Planning Act 1990 includes two powers for local planning authorities to amend planning permissions:

- Under section 96A, a local planning authority can make change to a planning permission if it is satisfied that it is not material.
- Under section 73, a local planning authority can amend a condition imposed on a planning permission. The effect of doing so is to issue a wholly new planning permission.

5.16 Changes made under section 96A are unlikely to include appreciable changes to floorspace and should not be treated as new planning permissions **for either system**.

5.17 As originally drafted, the CIL Regulations had the effect of giving rise to a new **CIL** liability every time a section 73 application was granted, as this gave rise to a new planning permission. However, the Government has amended the regulations so that the position is as follows:

- Where planning permission is granted before a CIL charging schedule comes into force (in the case of the Mayor's CIL, 1 April 2012) and a subsequent section 73 application is made resulting in grant of a new planning permission, CIL is only payable in respect of any additional floorspace over and above that originally consented permitted as a result of the section 73 application.
  - Where planning permission is granted after a CIL charging schedule comes into force and a subsequent section 73 application is made, account should be taken of any change in floorspace, with an additional amount sought in the case of an increase and an abatement if the new scheme results in a reduction in CIL payable (the regulations allow repayment without liability for interest in cases where CIL has already been paid because the original application has been implemented).
- 5.18 The regulations now make clear that when a change to an application made under section 73 does not change the CIL liability, only the original consent will be liable. Where CIL liability changes, the most recently commenced scheme is liable. In procedural terms, the borough concerned will issue a liability notice in respect of section 73 applications in the usual way, and the person with responsibility for paying CIL may then apply for their previous payment (if any) to be credited against the new liability.
- 5.19 Developers can also apply to extend planning permissions granted before October 2009 under Article 18 of the Town and County Planning (Development Management Procedure) Order 2010. These applications do not give rise to liability under CIL as a result of the 2012 CIL Amendment regulations. **Crossrail obligations** will remain payable as appropriate.
- 5.20 For **Crossrail obligations**, section 73 applications will only be taken into account in cases where the result would be an increase in floorspace or a change in the mix of uses resulting in a higher Crossrail charge. In cases where payment has already been made in respect of a development, and a subsequent section 73 application results in a reduced floorspace or a change in the mix of uses resulting in a lower Crossrail contribution, Transport for London will make refunds where:
- the difference in Crossrail charge liability is £10,000 or more, and
  - the developer provides sufficient evidence to substantiate the changes made justifying a reduction.
- 5.21 **In either case**, it should be assumed for the purpose of calculating any liability arising from a section 73 application that the position regarding existing floorspace is the same as it was at the time that planning permission was first granted.
- 5.22 In cases where **both a Crossrail obligation and a CIL liability** arise, the "credit" arrangement outlined in paragraph 4.21 will apply along the same lines. If a section 73 application involves either an increase in floorspace, or a change in the mix of uses which result in an increased Crossrail contribution, this should be taken into account alongside the increased CIL liability.
- 5.23 In all other cases, planning applications which purport to alter or amend previous permissions should be treated as fresh applications, and the provisions set out in this guidance and the CIL Regulations governing liability to pay CIL or a

Crossrail contribution should be applied.

## PHASING AND INSTALMENTS

5.24 The CIL Regulations set out the requirements for payment of the **CIL**. In most cases payment is to be made at the end of a 60 day period beginning with the commencement date of the development, although for phased development each phase is effectively treated as a separate planning permission.

5.25 The Regulations also allow CIL charging authorities to put in place policies allowing payment of CIL in instalments. In London, the position will be that in boroughs where the Mayor's CIL applies but there is no borough CIL, any instalment policy put in place by the Mayor will apply. In boroughs where there is a borough CIL and they have their own instalment policy, it is the borough policy that will apply.

5.26 Up to now, the regulations have prevented the Mayor from having an instalments policy for **CIL** in the first of the situations explained in the previous paragraph. Following changes to the CIL Regulations, the Mayor has set an instalments policy in agreement with London boroughs who have not already set their own (Croydon, Wandsworth and Redbridge have their own policies, which will apply to the Mayors CIL as well as their own). It will apply to all developments in respect of which commencement notices are received by the collecting authority on or after 1 April 2013.

5.27 Under the Mayor's policy:

- Where the payable amount of **CIL** is £500,000 or less, the whole amount shall be paid in a single

instalment not more than 60 days after commencement of the development

- Where the payable amount is more than £500,000, developers should have the option to pay two instalment payments:
  - The greater of £500,000 or half the value of the total payable amount 60 days after commencement, and
  - The remainder 240 days after commencement.

5.28 For **Crossrail obligations**, the presumption is that contributions will be paid on commencement (see paragraph 3.40 above).

## DE MINIMIS THRESHOLDS

5.29 A de minimis threshold means that **Crossrail obligations** will not be sought from developments with an additional floorspace of 500 square metres or less. This reflects the Mayor's judgement that developments below this size are less likely to have sufficiently significant effect on the London rail network to justify a contribution being sought.

5.30 The **CIL** Regulations have two de minimis thresholds. There is no liability for CIL if, on completion of the development concerned, the GIA of new build on the "relevant land" is less than 100 square metres (a recent appeal decision by the Valuation Office has confirmed that no CIL is payable in cases where there a scheme includes no "new build" (new buildings or extensions to existing buildings)). This does not apply to developments comprising one or more dwellings (see footnote 14). If the result of the calculation set out in regulation 40 is an amount of CIL is less than £50, the chargeable amount is deemed to be zero.

5.31 For both, developments below the relevant thresholds will not make a payment, while those above will pay in respect of the whole of the development's floorspace.

## INDEXATION

5.32 Both systems provide for indexing payments to take account of changes in prices. For **planning obligations** the provisions are explained in paragraph 3.35 above. For **CIL**, cost change are taken into account when the chargeable amount is calculated as set out in regulation 40 by reference to the national All-in Tender Price Index figure published by the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors for 1 November of the preceding year. In practice, the BICS initially

publishes a forecast figure, which may then be revised before a final figure is published. It is suggested that until a final figure for the period including 1 November of the preceding year is published, the relevant figure is the most recent "final" one.

## REFERABLE/ NON-REFERABLE APPLICATIONS

5.33 For the avoidance of doubt, the guidance in this SPG applies equally to applications that are referable to the Mayor under the Town and Country Planning (Mayor of London) Order 2008 and to those which are not.



## CHAPTER SIX

# CIL: THE MAYOR'S ROLE AND GENERAL GUIDANCE

- 6.1 This section gives some guidance on the Mayor's role in borough CIL-setting, and some general advice based on the experience of rate-setting to date.
- 6.2 Through Transport for London, the Mayor will continue to support the CIL Collection and Implementation Advisory Group. This provides a forum for London charging and collecting authorities to discuss matters relating to setting, collecting and administering the CIL, disseminate advice and good practice and identify matters on which further guidance might be helpful. This also allows boroughs to keep the GLA and each other informed of their progress in setting CIL.

### THE MAYOR'S ROLE IN CIL SETTING

- 6.3 The Mayor's officers will scrutinise borough preliminary draft and draft charging schedules to ensure that they comply with the requirement in the CIL Regulations that supporting viability evidence has taken account of the rates set by the Mayor. In each case, a written opinion will be provided as to whether this requirement has been met. In responding to draft charging schedules, the Mayor will ask to be heard at CIL examinations so that he can provide examiner with any information they might require about compliance with the regulation 14(3)

requirement and any other matter where he can be of assistance.

- 6.4 It will assist the Mayor in providing a conclusion about compliance with regulation 14(3) if the viability evidence shows clearly how the Mayor's CIL rates have been taken into account in drawing conclusions about the potential effects of proposed CIL rates on the economic viability of development across its area. How this is done is a matter for the borough concerned, but perhaps the simplest way is for the Mayor's CIL to be treated as a base cost of development like construction costs or tax, which then makes it clear that the borough proposals are in addition to the Mayor's.
- 6.5 The Mayor agrees with the Government that the central question at the heart of judgements about viability is whether a scheme will provide competitive returns sufficient to encourage landowners to sell land and developers to deliver it. There are a number of models and methodologies for assessing viability effects. The Mayor considers that boroughs should use the approach best suited to the circumstances of their area, and which provides the clearest and most robust evidence regarding the likely effects of the rates proposed on development viability in their area. Whatever approach is taken, the evidence needs to show the likely effect of the introduction of CIL, so an approach that focuses on historic policy contexts is unlikely to be helpful in demonstrating compliance with the tests mandated by the CIL Regulations. The statutory guidance on CIL is clear about the importance of ensuring evidence shows proposed rates will contribute towards delivery of development plan objectives (the London Plan as well as borough local plans at the time of

charge setting and throughout the economic cycle<sup>17</sup>.

- 6.6 There are two basic approaches that can be taken. They are not necessarily mutually exclusive. The first is widely known as “established use value”, which uses the value of the existing use of a site plus an appropriate landowner premium to set a benchmark against which the viability of development can be assessed. It is sometimes criticised on the ground that it requires arbitrary assumptions about the premium that should be used. However, this approach is well-used in the planning system, and so long as the assumptions used are transparent and based on robust evidence it can provide clear and useful evidence for CIL purposes. It also makes it easier to test different CIL options.
- 6.7 The second is known as “market value” and is based around the market value of each site, using recent transactions as evidence of what this should be (in essence, this approach treats the value of the site as a given rather than as the residual). This approach is promoted by the Royal Institution of Chartered Surveyors, who argue that it depends less on arbitrary assumptions. This approach does, however, focus heavily on historic values (ie those before introduction of a proposed CIL) and is less useful in taking account of dynamic changes that may be made as a result of the introduction of the CIL. This methodology may be useful in cases where large sites either have no established use or one that has effectively been abandoned.
- 6.8 In considering compliance with the regulation 14(3) requirement, the

Mayor will consider the adequacy and robustness of the evidence brought forward to show that rates proposed (including differential rates) will not, when introduced in addition to the Mayor’s CIL, put the overall development of the area concerned, and delivery of the development plan for their area, including the London Plan, at risk. In considering questions about development of the area, the Mayor will have regard to the policies and requirements in the London Plan (particularly policies regarding delivery of housing, including affordable and specialist forms of housing) as well as more local matters. This approach is supported by paragraph 30 of the statutory CIL guidance.

- 6.9 In particular, he will consider whether a CIL proposal might prejudice the application of the Crossrail planning obligations policy dealt with in this document in parts of London where this policy applies.

## **FACTORS THAT SHOULD BE TAKEN INTO ACCOUNT IN CIL SETTING**

- 6.10 The Mayor welcomes the Community Infrastructure Levy as a way of funding the range of infrastructure a rapidly growing city like London needs. He is equally concerned that the CIL by itself and in combination with other demands made through the planning system should not make development unviable to the extent that it threatens delivery of the sustainable development of London as described in the London Plan. The Government has conformed that under the statutory CIL guidance, the Mayor can challenge boroughs if he considers their proposed rates put implementation of the London Plan at

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<sup>17</sup> Department for Communities and Local Government, Community Infrastructure Levy Guidance (December 2012), paragraph 30

- risk<sup>18</sup>. While he is clear that it is not a simple matter of £1 from a development in CIL being £1 less that can be sought for other purposes, it is important to be clear that proposed CIL rates have taken account of the overall demands being made from developers (from Mayoral and borough CILs, section 106 agreements, agreements under section 278 of the Highways Act 1980 or requirements under planning conditions).
- 6.11 There are two particular areas referred to in the statutory CIL guidance in this regard. First, it will be important to be clear about how a borough's proposed CIL rates relate to their policies for delivery of affordable housing using section 106 and to identify, and justify, the extent to which trade-offs are made between raising resources to fund infrastructure and the provision of the level of affordable housing set out in their local plans. The statutory CIL guidance also refers to any policies that might be set in local plans for use of planning obligations in major strategic sites (and the Mayor will have particular regard to the opportunity and intensification areas identified in the London Plan).
- 6.12 The development industry has raised concerns that lack of clarity about how CIL proceeds will be spent makes it difficult for them to assess scheme viability and the potential effect of CIL proposals on the viability of development across an area. Boroughs are encouraged to be as clear as possible about their plans for application of CIL; this approach is now supported by the statutory CIL guidance (see in particular paragraphs 15 and 86), and they will find it easier to support proposals through public examination as well as addressing concerns of this kind if they can put forward a coherent case showing what they envisage will be funded through CIL, and what they intend to continue to use section 106 to support (having regard to the scale-back provisions of the CIL Regulations).
- 6.13 In particular, boroughs are encouraged to consider – and demonstrate that they have considered – the need to allow sufficient flexibility to address development-specific requirements that would otherwise make a development unacceptable in planning terms and the cumulative effects on viability they have, taken together with wider planning policy requirements (such as those for affordable housing). Boroughs might want to consider whether to prepare a development contributions development plan document to demonstrate that these matters have been considered.
- 6.14 They should also show they have a reasonably clear view of the infrastructure to which they intend to apply their CIL. Again, this approach is encouraged strongly in the statutory CIL guidance. In approaching these issues, boroughs are likely to find it easier to justify their proposals if they are able to show how their intended use of CIL proceeds will support achievement of the policies in their local plans and in the London Plan (the statutory guidance states that charging authorities should be able to show how the rates they are proposing will contribute towards delivery of the development plan for their area). The Mayor would be glad to work with boroughs to help them make such a case.
- 6.15 Whatever approach is taken, the Mayor will take the extent to which this has been done into account in assessing whether or not the

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<sup>18</sup> See the speech of Lord Ahmad of Wimbledon on the Growth and Infrastructure Bill, Lords Hansard 4 Feb 2013, Column 107

regulation 14(3) requirement has been met.

## CIL REVIEWS

- 6.16 The Mayor has set out the approach he intends to take to the regular review of his CIL rates in paragraph 4.20. Boroughs are encouraged to set out their proposed arrangements for review as they consult on their draft charging schedules. When these reviews are carried out, boroughs should consider their CIL alongside their other demands on development to ensure an appropriate balance between them is maintained. It is worth bearing in mind that the statutory guidance indicates that an authority's record in securing affordable housing and amounts secured through planning obligations are matters that should be taken into account in CIL-setting, and this information is likely to be helpful when revised or new CIL proposals are brought forward.

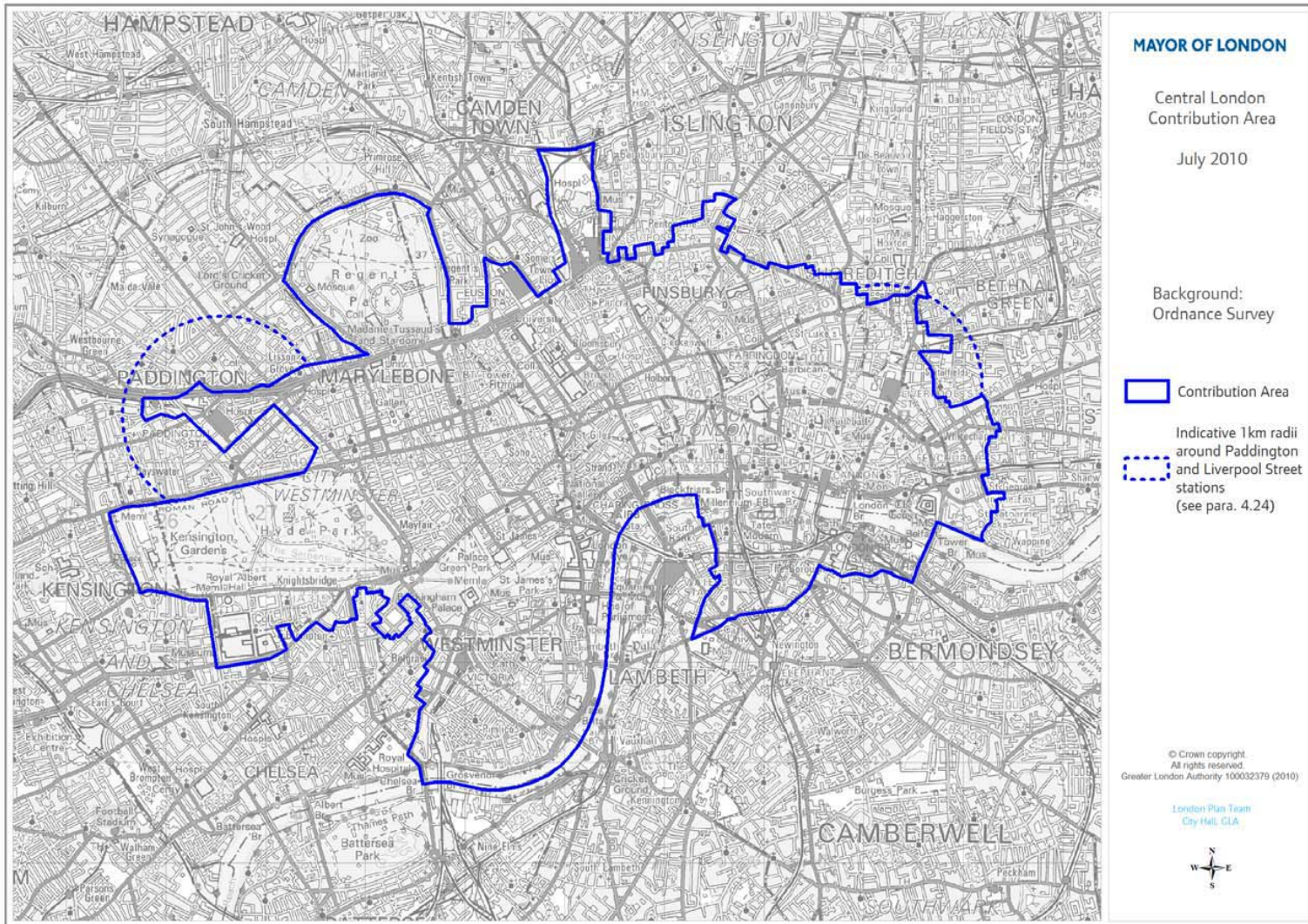
## CIL APPEALS

- 6.17 The CIL Regulations (regulations 113-119) allow for appeals to be made against collection authorities':

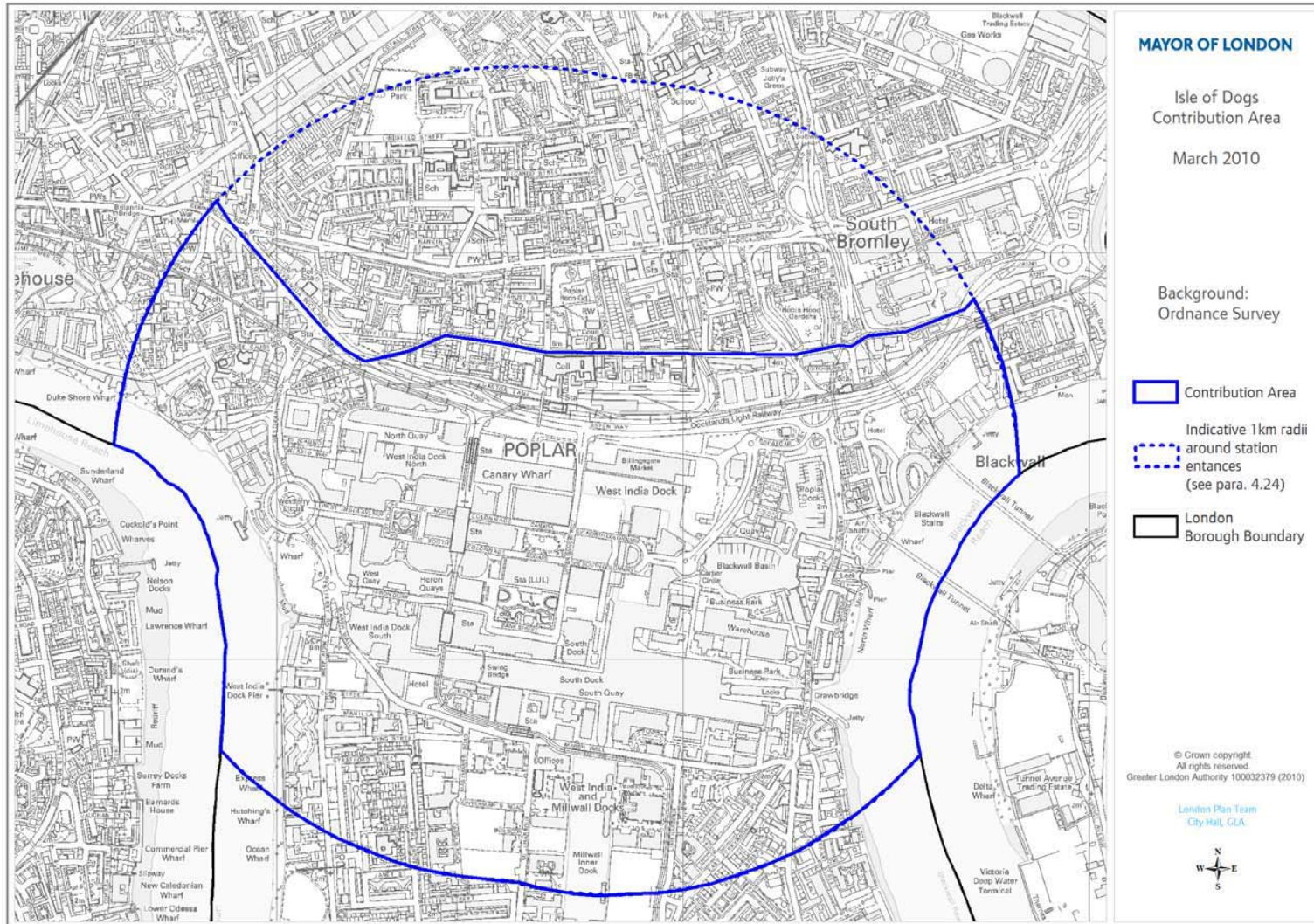
- Calculation of "the chargeable amount"
- Apportionment of liability
- Determination of the value of the interest in land in respect of a claim for charitable relief
- Imposition of a surcharge
- Determination of a deemed commencement date
- Imposition of a CIL stop notice.

Under the regulations, the Mayor as charging authority is an "interested party" and will be asked whether he wishes to make any representations. In general, he will comment on the grounds put forward by appellants, particularly where these give rise to issues that might affect the collection of his CIL more widely. In doing so, he will not recalculate CIL liabilities.

## ANNEX 1: MAP OF CENTRAL LONDON CONTRIBUTION AREA



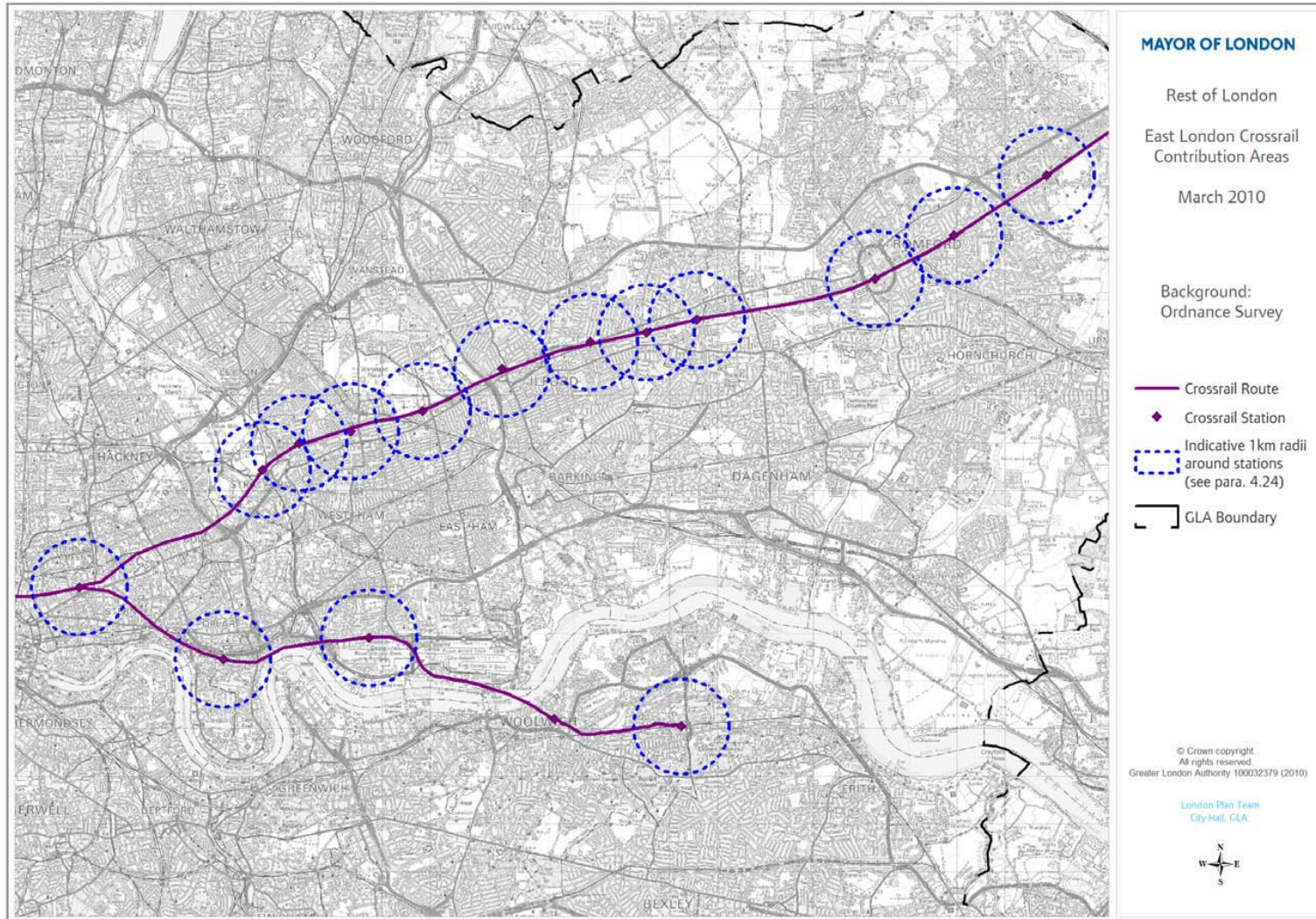
## ANNEX 2: MAP OF ISLE OF DOGS CONTRIBUTION AREA



### ANNEX 3: MAP OF REST OF LONDON CONTRIBUTION AREAS – WEST LONDON



### ANNEX 3: MAP OF REST OF LONDON CONTRIBUTION AREAS – EAST LONDON





## OTHER FORMATS AND LANGUAGES

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### Chinese

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### Hindi

यदि आप इस दस्तावेज की प्रति अपनी  
भाषा में चाहते हैं, तो कृपया निम्नलिखित  
नंबर पर फोन करें अथवा नीचे दिये गये  
पते पर संपर्क करें

### Vietnamese

Nếu bạn muốn có bản tài liệu  
này bằng ngôn ngữ của mình, hãy  
liên hệ theo số điện thoại hoặc địa  
chỉ dưới đây.

### Bengali

আপনি যদি আপনার ভাষায় এই দলিলের প্রতিলিপি  
(কপি) চান, তা হলে নীচের ফোন নম্বরে  
বা ঠিকানায় অনুগ্রহ করে যোগাযোগ করুন।

### Greek

Αν θέλετε να αποκτήσετε αντίγραφο του παρόντος  
εγγράφου στη δική σας γλώσσα, παρακαλείστε να  
επικοινωνήσετε τηλεφωνικά στον αριθμό αυτό ή ταχυ-  
δρομικά στην παρακάτω διεύθυνση.

### Urdu

اگر آپ اس دستاویز کی نقل اپنی زبان میں  
چاہتے ہیں، تو براہ کرم نیچے دئے گئے نمبر  
پر فون کریں یا دیئے گئے پتے پر رابطہ کریں

### Turkish

Bu belgenin kendi dilinizde  
hazırlanmış bir nüshasını  
edinmek için, lütfen aşağıdaki  
telefon numarasını arayınız  
veya adrese başvurunuz.

### Arabic

إذا أردت نسخة من هذه الوثيقة بلغتك، يرجى  
الاتصال برقم الهاتف أو مراسلة العنوان  
أدناه

### Punjabi

ਜੇ ਤੁਹਾਨੂੰ ਇਸ ਦਸਤਾਵੇਜ਼ ਦੀ ਕਾਪੀ ਤੁਹਾਡੀ ਆਪਣੀ ਭਾਸ਼ਾ  
ਵਿਚ ਚਾਹੀਦੀ ਹੈ, ਤਾਂ ਹੇਠ ਲਿਖੇ ਨੰਬਰ 'ਤੇ ਫੋਨ ਕਰੋ ਜਾਂ ਹੇਠ  
ਲਿਖੇ ਪਤੇ 'ਤੇ ਰਾਬਤਾ ਕਰੋ:

### Gujarati

જો તમને આ દસ્તાવેજની નકલ તમારી ભાષામાં  
જોઈતી હોય તો, કૃપા કરી આપેલ નંબર ઉપર  
ફોન કરો અથવા નીચેના સરનામે સંપર્ક સાધો.

