

PLANNING COMMITTEE MEETING: THURSDAY JULY 9th 2009

USE OF PLANNING OBLIGATIONS IN THE FUNDING OF CROSSRAIL (PROPOSED LONDON PLAN ALTERATIONS)

REPORT BY THE DIRECTOR OF PLANNING

1. PURPOSE

- 1.1 On 18 May 2009, the Mayor launched the next step in the formal review of the use of planning obligations in the funding of Crossrail, a twelve week public consultation exercise on his proposed alterations to the London Plan and accompanying draft supplementary planning guidance (SPG).
- 1.2 Written comments are sought by 10 August 2009 and this report sets out recommended comments for the Corporation to make. The full document is available at <http://www.london.gov.uk/mayor/planning/crossrail/index.jsp>
- 1.3 All comments will be forwarded to the Examination in Public (EiP) Panel. The EiP Panel will decide which topics are discussed at the EiP and who will be invited to participate in the EiP. The Panel will hold a preliminary meeting in September 2009 and the Examination in Public itself is planned for December 2009.
- 1.4 The LTGDC Board has previously provided comments to the GLA on Crossrail Funding (December 2008). These comments and the extent to which they have been taken on board in the current consultation document are outlined in section 3 below.
- 1.5 This consultation forms part of a suite of consultation documents on alterations to the London Plan and associated strategies including transport, economic development and housing, which are also under review.

2. DECISION REQUIRED

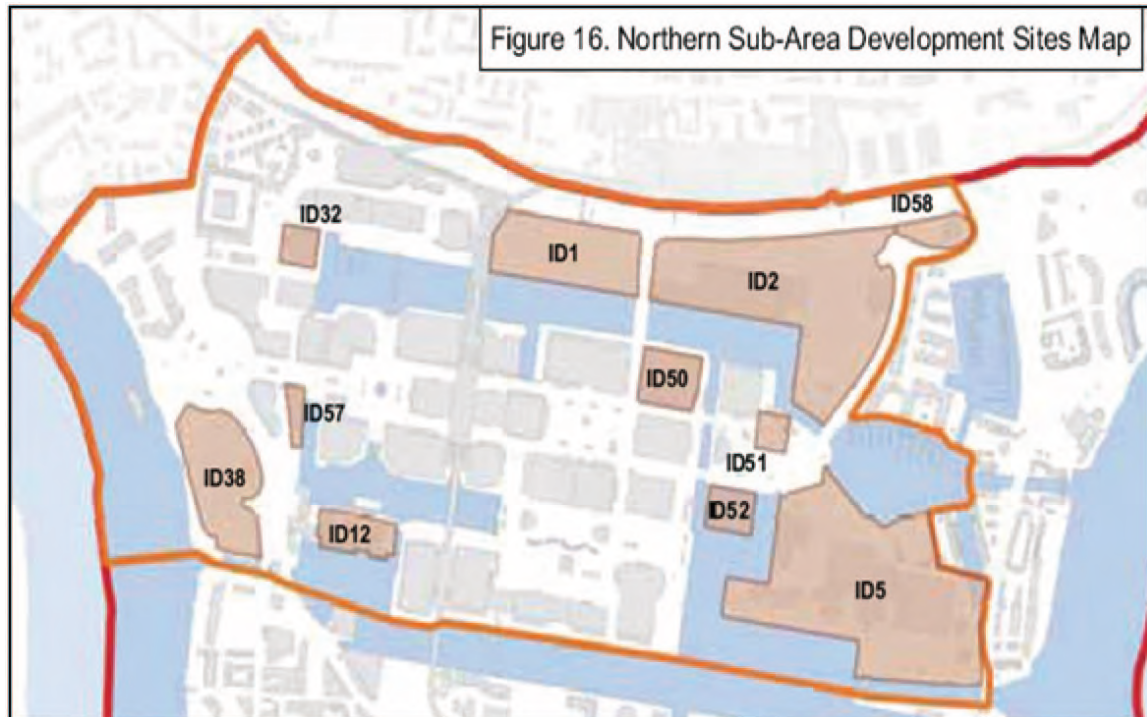
- 2.1 To AGREE the response to the consultation document subject to any amendments

3. PREVIOUS COMMENTS

- 3.1 The Mayor has previously consulted on the proposed funding for Crossrail in both the 'direction of travel' document entitled 'Planning for a Better London' and in December 2008, when the Mayor published, for initial consultation with the London Assembly and the GLA Group, proposed London Plan Alterations covering the use of planning obligations (S106 agreements) in the funding of Crossrail.
- 3.2 The Corporation responded that it is generally supportive of the principle of seeking contributions to transport and other essential infrastructure from

new development in its area and as appropriate in other areas across London and outside London. The Corporation noted its own S106 Strategy and outlined that to date the standard charge has been applied only to residential development with contributions from commercial development being negotiated on a case by case basis. As the proposed Crossrail contributions are only to be sought from office or commercial development, the Corporation stated that it had no in principle objection, provided it can be clearly demonstrated that viability of individual schemes will not be so adversely affected such that development does not take place.

- 3.3 The Corporation requested that further information be provided on the actual charge to be levied in the Isle of Dogs (IoD) area together with confirmation that the boundary of the IoD charging area does not overlap with the Corporation's Lower Lea Valley area.
- 3.4 The Mayor received 36 set of comments on this initial consultation and has provided responses to the issues raised (See Appendix 1). In relation to the Corporation's responses, the Mayor welcomes the in principle support and the current SPG document provides clarity on the IoD charge and boundary and further guidance on viability and the need to ensure that each development is considered in light of its individual circumstances.
- 3.5 It has been clarified that the contribution will be sought in respect of office development, in London's Central Activities Zone (CAZ) and the northern part of the IoD, which involves a net increase in office floorspace of more than 500sqm. The main business area of the IoD is clarified as the 'northern sub-area' of the IoD within the LB of Tower Hamlets (see Fig.16 below). It can therefore be confirmed that this boundary does not overlap with the Corporation's Lower Lea Valley area (LTGDC boundary to the north-east).
- 3.6 The charge proposed to be levied in the CAZ is £160 per sqm GEA. The charge in the IoD area is sought at a higher level, as growth is particularly dependent upon the provision of additional transport capacity and ensuring transport resilience. Recent contributions in the IoD area have been sought on the basis of £218.30 per sqm GEA and it is proposed that this will be used as a benchmark for negotiation in the area.



- 3.7 The Corporation asked for reassurance that the viability of individual schemes will not be adversely affected such that development does not take place. In response to this comment, an additional reference has been incorporated in New Policy 3C.12A on the need to take into account economic viability and local considerations, as per the text below:

Exert from New Policy 3C.12A Funding of Crossrail

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:

- *The requirement for contributions from development of up to £600 million under the arrangements for funding Crossrail agreed with Government;*
- *Central government policy and guidance;*
- *Strategic and local considerations;*
- *The impacts of different types of development in particular locations in contributing to transport needs;*
- *and Economic viability of each development concerned.*

- 3.8 The associated SPG elaborates on this issue and states that:

Paragraph 4.26

Circular 5/05 is clear that where a standard charge and formula approach is taken, it should not be applied in a blanket form regardless of actual impacts, but that there needs to be a consistent approach to their application. Although the charge has been set at a level that should not affect viability, 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.

4. BACKGROUND

- 4.1 The consultation document states that Crossrail is vital to London's continued competitiveness and success, and the Mayor is committed to doing all he can to ensure it is delivered to time and budget. It acknowledges that the contribution towards the cost of the project that could be secured from development through S106 obligations is a relatively small but nevertheless important part of the funding package agreed with Government.
- 4.2 The agreement setting out how the £16 billion cost of Crossrail will be funded, signed by Government and the former Mayor, requires £300 million to be raised from planning obligation contributions from development (and an additional £300 million from the Community Infrastructure Levy (CIL) when this is in place).
- 4.3 In summary, the proposed alterations consist of adding two new policies to the London Plan on funding for Crossrail and CIL, editing two existing policies on planning obligations priorities and providing Supplementary Planning Guidance (SPG) to elaborate on the details of the charging mechanism. The alterations therefore:
- Add a new policy setting a framework consistent with the relevant Government guidance (Circular 5/2005) for the use of planning obligations to raise contributions towards the funding of Crossrail, with supplementary guidance to be provided on detailed matters, including standard charges and formulae to calculate the contribution that might fairly and reasonably be sought for particular kinds of development (New Policy 3C.12A and SPG);
 - Clarify existing policies on priorities in planning obligations, making clear in particular the priority that should be given to the funding of Crossrail (Existing Policies 6A.4 and 6A.5);
 - Look ahead to the Government's introduction of the Community Infrastructure Levy (New Policy 6A.5A).

5. CHANGES SINCE PREVIOUS CONSULTATION

- 5.1 In light of the consultation responses received from the initial consultation period. The Mayor has made a number of minor amendments to the proposed Draft Alterations to the London Plan:

- A clarification of the total sum of £600m to be raised from developments under the Crossrail funding agreement with Government (£300m from planning obligations and £300m under the Community Infrastructure Levy) – changes to new Policy 3C.12A and to paragraph 3.226;
- The addition of references in New Policy 3C.12A to the impacts of different types of development in particular locations, and to economic viability, as additional matters to which the Mayor will have regard in seeking Crossrail contributions;
- A clarifying reference to circumstances under which Crossrail contributions in outer London would be sought (new paragraph 3.226b); It states that contributions should be sought from relevant development in the vicinity of Crossrail stations (960m radius representing a 12 minute walk) – see section 7.3 below.
- Further clarification on the balance of S.106 priorities – changes to Amended Policy 6A.4 to make it clear that whilst affordable housing and transport remain the most important, where it is appropriate (in terms of a proposal's location), Crossrail will be the highest transport priority.

5.2 In addition, further changes have been made to the accompanying Draft SPG, detailed in an explanatory note at the front of the Draft SPG.

- More information has been given about the contribution that different uses make to congestion in the busiest period on the rail network – the morning peak (paragraphs 4.12 – 4.15)
- It has been made clear that the standard charge should be calculated by reference to floorspace based on a gross external area measurement (para 4.22)
- The guidance on the circumstances in which contributions should be sought from development in outer London has been strengthened (para 4.25)
- Further guidance is given on the need to ensure that each development is considered in the light of its individual circumstances (para 4.26)
- Guidance is given on how floorspace should be measured (para 4.27)
- Guidance is given on the point at which contributions should be paid (para 4.31)
- The section on the Community Infrastructure Levy (Section 5) has been updated to take account of developments since the draft guidance was first published.

6. CONSULTATION QUESTIONS

6.1 The consultation document outlines two areas on which the Mayor wishes to indicate that further consideration is being given, and on which views would be particularly welcome:

- First, many of those commenting on the initial proposals drew attention to the need to consider whether some places at the margins of the central London charging area should be exempted in whole or in part from the standard charge. Two arguments have been given for this: first, because the standard charge would have a major impact on viability of development there; and secondly, because there is an overriding need to

fund another piece of strategic transport infrastructure from any contributions from there.

- Second, representations were made about the potential impact of a standard charge on recovery from the current downturn in the development industry. One possible method of mitigating this impact could be to set a reduced level of charge for a limited period from the date of formal introduction of the charge.

7. SUGGESTED LTGDC COMMENTS

- 7.1 The Corporation acknowledges that the current consultation provides further clarity regarding the proposed boundary of the charging area and the level of charging in the Isle of Dogs area, and it is noted and welcomed that this does not overlap with the LTGDC boundary, where the Corporation has already developed a standard charge approach to infrastructure contributions.
- 7.2 It is also welcomed that the impact on viability of schemes, as raised previously by the Corporation, has now be given greater prominence in both the New Policy (3C.12A) Funding of Crossrail and the associated SPG. The proposed system of seeking financial appraisals in cases where applicants consider the viability of a development is undermined by the proposed Crossrail contribution is considered sensible (and is currently in operation in LTGDC) and it is understood that a common approach to financial appraisals is being developed, which is also welcomed.
- 7.3 Beyond the CAZ and the IoD area, it is understood that contributions should be sought from relevant development in the vicinity of Crossrail stations (960m radius representing a 12 minute walk). Stratford is the only Crossrail station that falls within the LTGDC area (Isle of Dogs, Maryland and Custom House are all outside the area). Contributions to Crossrail from large office developments in this area may be acceptable, but will need to be judged in relation to other critical infrastructure improvements in the area, including the DLR extension to Dagenham Dock, Barking to Royal Docks Bus Corridor, A12 corridor improvements, Canning Town roundabout removal and Beam Park station.
- 7.4 In relation to the two questions posed:
- *Whether areas at the margins of CAZ should be exempted from the standard charge due to the viability of development there or because there is an overriding need to fund another piece of strategic transport infrastructure from any contributions from there* – it is welcomed that it is acknowledged that a certain flexibility is needed in the application of this policy. Where there are reasons for specific exemptions, the SPG guidance should clearly set out where these caveats apply and in relation to which alternative transport infrastructure. In relation to exempting areas on viability grounds, if applicants are required to submit financial appraisals where viability is raised, this could potentially be sufficient to ensure that the contributions do not undermine the viability of development.

- *Impact of a standard charge on recovery from the current downturn - possible method of mitigating this impact could be to set a reduced level of charge for a limited period* – it is considered that this is a sensible approach to assist in the introduction and transition to a new system of S106 contributions, in the current economic climate. LTGDC already operates a deferred S106 charge arrangements, already assesses viability on a case by case basis and can accept initial contributions below the discounted standard charge if these are justified by development appraisals.

The LTGDC Planning Obligations Community Benefit Strategy has been in operation for over a year and has been successfully implemented. The Strategy and charges are currently under review in light of the prevailing economic climate and in order to incorporate any refinements from the first year of operation.

Information on how the reduced S106 charge is applied and the discount recaptured is set out in the box below:

Where LTGDC grants planning permission for a development, the development will normally be required to make financial and in kind contributions towards infrastructure and community facilities. These contributions will be secured through a section 106 agreement. The level of financial and in kind contributions sought will be in accordance with the guidance in the Planning Obligations Community Benefit Strategy.

Standard Charge: this is the charge per dwelling that is justified as a contribution towards the significant infrastructure needs of the area. Currently this is £22,600 in the Lower Lea Valley and £28,800 in London Riverside

Discounted standard charge: The strategy recognises that the standard charge, in most cases was not viable and seeking to levy a charge at that level would inhibit regeneration. Therefore a 'discounted standard charge' of £10,000 per unit in the Lower Lea Valley and £6,000 per unit in London Riverside was set.

Deferred Standard Charge / Recapturing the Discount: This is a mechanism to ensure that the discount or part of the discount (i.e. £22,600 minus £10,000 in the Lower Lea Valley and £28,800 minus £6,000 in London Riverside) is recaptured if the viability assumptions justifying the original discount prove unwarranted. This mechanism is necessary in particular on large developments where build out takes some time and circumstances change as time elapses after planning permission is granted. No deferred charge is required from developments of less than 100 units or units completed within 3 years of the grant of planning permission. There are also 3 options for calculating the deferred charge set out in the Strategy (all developers have chosen to include Option 1 in their legal agreements).

Option 1: Matrix of average sales values and deferred charges: If sales values increase from those anticipated when legal agreement signed, a deferred charge would be payable in steps in line with values up to the standard charge.

Option 2: The Discounted Standard Charge applicable at the time the contribution was payable.

Option 3: The Fixed Deferred Charge: level and timing of deferred charge fixed and set out in legal agreement. Envisaged later contributions would be considerably above the discounted standard charge applicable at signing of the agreement and index linked.

8. RECOMMENDATION

- 8.1 That a response is sent to the Mayor, as amended by any comments from Committee, as outlined in section 7 above.

Date: June 2009