

Planning Committee Report

London Thames Gateway Development Corporation

Planning Obligations and Community Infrastructure Levy (CIL) Update

Report of the Director of Planning

1. Purpose of this Report

- 1.1. This report provides an update on matters relating to Planning Obligations.

2. Decision Required

- 2.1. That Planning Committee note the contents of this report.

3. Structure of this report

- 3.1. This report is structured as follows:
- Outcome of the Planning Obligations Community Benefit Strategy review
 - Overview of CIL and its impact on the LTGDC tariff
 - CLG consultation on revised Planning Obligations Circular 05/05
 - Next Steps

4. Outcome of the Planning Obligations Community Benefit Strategy Review (POCBS)

- 4.1. At the point of adoption, the Board noted a commitment to review the Standard Charge and Discounted Standard Charge in 2009, and that this process should be done collaboratively with the Management Groups and Developer Liaison Groups. In 2009 LTGDC re-commissioned Environmental Resources Management (ERM), who had assisted in the development of the original Strategy, to review the process and level of charge, in light of its initial period of operation and any impacts in relation to the economic climate.
- 4.2. LTGDC conducted a 12-week public consultation on proposed changes to the POCBS between November 2009 and February 2010. The results of that consultation and amendments to the strategy were reported to the July 2010 meeting of the LTGDC Board. A summary of the consultation responses and LTGDC response is attached at Appendix 1. A 'track

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changed' version of the strategy is attached Appendix 2. The track changes in red outline the changes proposed in October 2009 in response to the technical review and the track changes in red italics outline the changes as a result of the public consultation. The model S106 agreement has also been updated and is set out at Appendix 3.

- 4.3. At their meeting the Board NOTED the consultation comments on the POCBS and AGREED the revisions to the POCBS and model agreement.
- 4.4. The Board also considered and agreed a proposal for a 12 month holiday on payment of the discounted Standard Charge element due on commencement (i.e. 25% of £6,000 in LR / 25% of £10,000 in LLV) for schemes implemented in the next 12 months (1 August 2010 - 31 July 2011), in order to incentivise early commencement. This applies to both schemes already permitted but not yet started and schemes in the pipeline that are consented and commenced this year. Please see the attached procedure note at Appendix 4 for the details of this 'holiday' period. The holiday was proposed because of concerns expressed by stakeholders during consultation and the lack of recent starts on site. The holiday has been publicised on the LTGDC website and discussed at the Development and Landowner Liaison Group meeting.
- 4.5. To date, LTGDC has negotiated more than £50m via the tariff for strategic infrastructure in addition to £33m for other specific benefits and has received more than £4m in contributions. The tariff is included within ten signed S106 agreements, and a further five agreements are under negotiation.
- 4.6. The planning committee considered the 'Planning Obligations Monitoring 2009/10' annual update report on all the Section 106 agreements (S106) that the Development Corporation has agreed and signed, at their meeting on 13 May 2010. Quarterly reports on contributions will continue to be provided to the planning committee as previously agreed.

5. Overview of Community Infrastructure Levy (CIL) and its impact on the LTGDC tariff

- 5.1 CIL is a new local levy which local authorities can choose to introduce to fund infrastructure such as roads, public transport, open space, or health centres in their areas. CIL would be charged on most types of development and local authorities can choose the CIL rate that they wish to set, but must set this out in their charging schedule which is subject to independent examination to ensure that it is evidence-based and appropriate for the local area.
- 5.2 The Community Infrastructure Levy Regulations 2010 came into effect on 6 April 2010, although it is not anticipated that any LPAs will be in a position to charge CIL for at least a year, due to the need to develop and then examine the charging schedule. LTGDC will not have powers to charge CIL as it is not a plan-making authority. However, if one of the boroughs was to

set a CIL, if LTGDC determined an application within the borough, LTGDC would be only able to collect and spend the CIL contributions, if this was agreed by the borough.

- 5.3 In relation to tariffs (paragraph 123), the transitional period in which tariffs are to be phased out has been extended nationally to 4 years (until April 2014), which covers the anticipated lifespan of LTGDC. However, this transitional period would end on the day a borough begins to charge CIL, if this is earlier, in which case if one of the LTGDC boroughs develops and adopts a CIL charging schedule, this could supersede the LTGDC tariff in their area.
- 5.4 The CIL Regulations also put Circular 05/05 tests related to planning obligations into law (paragraph 122) – planning obligations must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
- 5.5 LTGDC has previously had legal advice that the tariff contributions under the POCBS were Circular 05/05 compliant. Denton Wilde Sapte has confirmed that the POCBS and tariff can still lawfully be applied and can, in most cases, still be used as a reason for approval. The POCBS policy and evidence base makes it quite clear that there are infrastructure costs that need to be met, and the POCBS approach and the tie in to the Public Sector Investment Plan ensures that in most cases there is a sufficiently direct and fair relationship between the infrastructure impacts and any contributions. Future committee reports will consider whether any planning obligations, particularly where they relate to the tariff, satisfy the tests and are compliant with the new CIL regulations and can therefore properly be treated as reasons for approval. The planning committee have already considered all existing s106 agreements on this basis at their meeting on 30 March 2010.
- 5.6 The Conservative Party's Planning Green Paper (Open Source Planning, February 2010) noted that they propose to abolish CIL in favour of a reformed S106 system and 'Local Tariff'. It is not yet clear however what direction the government will take in relation to CIL and Planning Obligations.

6. CLG consultation on revised Planning Obligations Circular 05/05

- 6.1 CLG launched a 12 week public consultation in March 2010 on a new policy document for planning obligations, intended to replace Circular 05/05 on Planning Obligations. The new policy document is required in light of the introduction of CIL and reforms to planning obligations set out in the section above to clarify the purpose of planning obligations and to ensure that they can work effectively with CIL. The consultation closed on 21 June. Full details of the consultation can be found at:
<http://www.communities.gov.uk/publications/planningandbuilding/planningobligationsconsultation>

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- 6.2 LTGDC responded to the consultation following consideration of a report at it's June meeting. The response it attached at Appendix 5 to this report. It is not yet clear how the government intends to take forward this matter and the results of consultation. Therefore, Circular 05/05 on planning obligations is still in force.
- 6.3 In summary, planning obligations were proposed to be reformed as part of the package of CIL regulations in three respects:
- (i) putting the Circular 5/05 tests on a statutory basis for developments which are capable of being charged CIL
 - (ii) ensuring the local use of CIL and planning obligations does not overlap
 - (iii) limiting pooled contributions towards infrastructure which may be funded by CIL
- 6.4 The consultation document set out that whereas S106 contributions were originally envisaged for direct impact mitigation, their scope has been extended by various court judgements to cover more general contributions, which are not dependent on demonstrating a close relationship with the development site. These types of contributions are now intended to be covered by CIL and therefore the previous government was seeking to restrict planning obligations to direct impact mitigation to avoid double counting, where CIL has been introduced.
- 6.5 The previous government believed that CIL is a better vehicle to achieve the objectives of pooled contributions and tariffs in addressing the cumulative impacts of development, that therefore existing tariff schemes should, over time, be migrated to CIL, and the ability to establish a new tariff should be prevented upon the adoption of a local CIL or nationally after a suitable transitional period (four years to April 2014).
- 6.6 The CIL Regulations also contain transitional arrangements to reflect existing commitments by the Government and the Mayor of London to use planning obligations to raise revenue for Crossrail i.e. the tariff for Crossrail will continue until Crossrail is funded. Affordable housing will also continue to be sought via planning obligations to enable it to be delivered on site.

7. Next steps

- 7.1 In relation to CIL, future planning committee reports will clarify that any obligations, particularly where they relate to the tariff, satisfy the new tests in CIL Regulation 122 and can properly be treated as reasons for approval. The LTGDC tariff will continue to be able to operate until April 2014, subject to the boroughs not introducing CIL in their areas before that date.
- 7.2 The consultation responses and revisions to the POCBS have been published on the LTGDC website, and a meeting with the Developer and Landowner Liaison Group has taken place to update them on the revisions and provisions for the holiday.

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Appendix 1 – Consultation responses to POCBS November 2009-February 2010.

Appendix 2 – Revised POCBS ‘track changed’

Appendix 3 – Updated model section 106 agreement

Appendix 4 – ‘Holiday’ procedure note

Appendix 5 – LTGDC response to CLG consultation on ‘New Policy Document for Planning Obligations’