

Developer Contributions and the Infrastructure Levy in London

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1. Introduction

- 1.1 The Infrastructure Levy (IL) proposed in the Levelling Up and Regeneration Bill (“the Bill”) was first set out in the Planning White Paper 2020. Since then, the approach has been amended from a national levy to one that would be set locally. However, key aspects are unchanged and if implemented, IL would fundamentally change the system of securing developer contributions through the planning process. Rather than determining the level of contributions to be provided when planning applications are assessed, this would be based on a fixed proportion of the value of each development phase. Final IL liabilities would not be assessed until after the development is completed, which in many cases would be years after planning consent has been granted.
- 1.2 The GLA and other organisations have consistently highlighted the range of problems that this would create: the infrastructure needed to support development would be delayed or may not come forward at all; basing IL on development value would result in a much more complex, uncertain and contested process; and crucially, fewer affordable homes and less community infrastructure would be delivered.
- 1.3 The analysis of the proposals in this report draws on the GLA Group’s experience of negotiating Section 106 agreements, including for affordable housing, strategic transport and a range of other planning obligations, assessing development viability, co-ordination of the London Authorities Viability Group, introducing and administering the Mayoral Community Infrastructure Levy (CIL) and co-ordination of the CIL Collection Group. Following careful consideration of IL since its inception, it sets out the reasons why IL should not be implemented and the current developer contributions system should be retained and improved, building on existing best practice.
- 1.4 Prior to considering this further, the report sets out the significant role that the current system plays in securing affordable housing, community infrastructure and a range of other measures to support the delivery of sustainable development in London.

2. The importance of developer contributions in London

- 2.1 London has the highest residential prices and rents in the UK making housing costs unaffordable to many low and middle income earners, including key workers. There is substantial need for affordable housing, particularly social rent, with approximately 166,000 homeless Londoners, including 81,000 children, living in temporary accommodation¹. Further details on housing need and the importance of affordable housing delivery through the planning system in London are provided below and in Appendix 1.
- 2.2 In many cases, development in London takes place on complex brownfield sites requiring new and improved infrastructure through direct provision and financial contributions. The extent of affordable housing and infrastructure needs in London mean that it is vital that affordable housing and infrastructure delivery through developer contributions are maximised and that other development impacts are addressed effectively.
- 2.3 The current developer contributions system in London is well established with S106 agreements used for broadly 30 years and CIL for eleven. Significant expertise and practice in these areas has developed across the public and private sectors over these periods. S106 and CIL are effective as land value capture mechanisms, however they also serve a much broader and important purpose. They are delivery focused measures that help to ensure that proposals are acceptable in planning terms by addressing issues that arise during the development process. Importantly, they enable planning consent to be granted where that otherwise would not be the case.
- 2.4 A range of financial and non-financial planning obligations are secured in S106 agreements, in line with the tests in CIL Regulation 122, which ensure that local impacts are mitigated and that development is sustainable. This is particularly important in London given its characteristics and density, and the impacts that new development can place on existing residents, infrastructure and the environment.

Affordable housing

- 2.5 The 'Threshold Approach' to applications was introduced through the Affordable Housing and Viability Supplementary Planning Guidance (SPG) in 2017 and now forms part of the London Plan. This has helped to increase affordable housing delivery in London by incentivising developers to provide

¹ London Councils, 2023

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the relevant threshold level of affordable housing which enables schemes to follow the 'Fast Track Route'. This avoids the need for viability testing and has sped up the planning system, provided greater certainty to the market, and has helped to ensure that planning requirements are reflected in land values.

- 2.6 The approach also enables schemes to achieve planning consent where they are not able to meet affordable housing thresholds due to genuine viability constraints. These cases are assessed through the 'Viability Tested Route' to ensure that the maximum viable level of affordable housing is provided. They are also subject to additional viability review mechanisms which test whether a higher level of affordable housing can be provided if viability improves as the scheme is delivered
- 2.7 Authorities have generally been able to secure better outcomes through the viability testing process following the Parkhurst Road appeal decision and High Court Judgment and updated Mayoral and national guidance on viability testing². The guidance promotes an 'Existing Use Value' approach to determining benchmark land value, rather than basing this on the price paid for land which resulted in land value inflation and reduced affordable housing, which became known as the 'circularity issue'.
- 2.8 The threshold approach has helped to significantly increase the level of affordable housing secured through the planning process:
- In 2022, the highest proportion and number of affordable housing units in approved schemes referable to the Mayor were secured since the data was first recorded in 2011³.
 - The average percentage of affordable housing in these schemes increased from 22 per cent in 2016 to 41 per cent in 2022, and 45 per cent by habitable room.
 - 84 per cent of schemes provided 35 per cent or more affordable housing.
 - 66 per cent of eligible schemes followed the Fast Track Route, up from 27 per cent in 2018, avoiding the need for viability testing and speeding up the planning process.
 - The proportion of social and low cost rented housing also increased to its highest level over the data period.
- 2.9 However, there remains a significant shortfall in the number of new affordable homes required to meet housing need. It is therefore vital that any

² Parkhurst Road Ltd v Secretary of State for Communities and Local Government and London Borough of Islington, England and Wales High Court (Administrative Court) 2018

³ [Affordable Housing Planning Analysis Referable Applications 2011-2022](#)

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new developer contributions system would secure more affordable homes and not put existing sources of supply at risk which would exacerbate the housing crisis and existing funding shortfalls.

- 2.10 The planning system in London has been made quicker, more certain and consistent through the provision of guidance and standard S106 clauses to boroughs and applicants on issues such as affordable housing and viability. The GLA also co-ordinates the London Authorities Viability Group which draws together planning, housing and surveying officers from across London to promote best practice in developer contributions and viability. This has enabled the sharing of expertise to help enable authorities to more accurately assess development viability where a development is not capable of fully complying with development plan requirements.

Infrastructure Contributions

- 2.11 A significant level of infrastructure contributions and other planning obligations are also secured to support the delivery of development in London. All but two London authorities have adopted CIL Charging Schedules. This is a highly important source of funding, securing a cumulative total of £1.14bn at 2020/ 21 for investment in education, health, transport, open space, playspace facilities and other community infrastructure⁴.
- 2.12 CIL has removed the negotiation of most infrastructure contributions from S106 agreements. This has sped up the planning process and provided certainty to developers and authorities because CIL is based on the level of proposed net additional floorspace which is known at application stage.
- 2.13 In addition to Borough CILs, the Mayoral CIL secures funding for the Elizabeth line and services Crossrail-related debt. The Bill retains the Mayoral CIL, however, S106 agreements would in part be replaced by IL and Borough CILs would entirely be replaced. The potential impacts of this are considered further below.

Other S106 obligations and mitigation measures

- 2.14 While the standardisation of S106 obligations has provided greater certainty and speed to the process, S106 agreements are still flexible enough to address issues that are specific to individual sites to enable them to come forward for development. For example, community and cultural facilities, or employment uses may need to be re-provided that would otherwise be lost

⁴ Transport for London analysis (2022)

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as a result of a development. This is often the case in London, however, the cost and terms of re-provision, which are additional to the costs of mitigating the impacts of new development, could not be captured in a standard IL rate because re-provision is not required in every instance.

- 2.15 Planning obligations are also important to address the direct impacts of specific developments such as those on the transport network. In 2021/22, Transport for London (TfL) secured £66m in S106 agreements (and £50m the previous year) and £26m in S278 agreements, without which the developments would have caused unacceptable pressure to the transport system. In addition, TfL often secures important works that are carried out by developers on-site which materially contribute to the improvement of London's transport network, such as a new entrance to King's Cross station from an adjacent development.
- 2.16 A range of other obligations such as carbon offsetting, local employment and training, affordable workspace, construction monitoring and mitigation measures are also regularly secured through S106 agreements. These are important for ensuring that development is environmentally, economically and socially sustainable, and that local communities and businesses benefit from new development.
- 2.17 The scale of these financial and in-kind contributions is also significant. For example, since 2016, £145m has been secured by Boroughs for carbon-offsetting projects that will help to tackle the climate emergency, in addition to onsite carbon reductions⁵. The GLA is also aware of at least 40 cultural and workspace facilities secured in S106 agreements in recent years which support London's cultural and creative economy, SMEs and community organisations⁶.
- 2.18 Despite the level of in-kind and financial contributions secured in London through CIL and S106, there is still a significant shortfall in the infrastructure delivery and funding needed to support the level of development envisaged in the London Plan. The London Infrastructure Plan 2050 identifies a funding gap of £1.3 trillion between 2016 and 2050, with the actual figure likely to be higher due to inflation⁷. Again, it is therefore vital that any new developer contributions system results in more, not less infrastructure provision and does not prevent other important obligations from being secured.

⁵ Carbon Offset Funds: Monitoring Report 2021 (Dec 2022)

⁶ [Securing Cultural Infrastructure and Workspace planning practice note | London City Hall](#)

⁷ [London Infrastructure Plan 2050 | London City Hall](#)

3. The Infrastructure Levy

Background

- 3.1 The GLA has carefully considered IL since initial proposals were set out in the Planning White Paper (2020). This has included discussions with the Department for Levelling Up, Housing and Communities (DLUHC) and a range of public and private sector organisations, as well as detailed review of policy documents and the provisions in the Bill. The GLA has also reviewed commentary on IL by academics, practitioners and publications including those by Shelter⁸ and the Centre for Social Justice⁹.
- 3.2 Taking this into account, the GLA, together with other organisations, including the Royal Town Planning Institute, the Town and Country Planning Association, Shelter and the British Property Federation, amongst others, have concluded that IL would be more complex and less effective in securing developer contributions than the current system.
- 3.3 Provisions for IL were included in the Levelling Up and Regeneration Bill which was published in May 2022. By this stage the approach to IL had evolved from one in which rates would be set locally rather than nationally. However key aspects of the proposal remained unchanged, including that it would be a fixed charge, incorporating affordable housing, and that final liabilities would be based on development value determined at the end of the development process.
- 3.4 A Regulatory Impact Assessment for the Bill was published in December 2022¹⁰. In our view this significantly underestimates the risks and costs of IL and overstates the influence of mitigating measures and benefits. Notwithstanding this, the assessment estimates a total social net present value of -£707.7m for IL. This excludes any changes in the level of contributions which we consider would reduce under IL for the reasons set out below. The assessment also acknowledges that this poses particular challenges for brownfield land.
- 3.5 The Levy provisions in the Bill have been subject to detailed scrutiny in the House of Commons and subsequently in the House of Lords. A number of concerns, including those referred to here have been raised and a range of amendments have been proposed in both Houses. These include changes

⁸ <https://blog.shelter.org.uk/2021/06/planning-reforms-and-the-threat-to-affordable-housing/>

⁹ https://www.centreforsocialjustice.org.uk/wp-content/uploads/2022/12/CSJ-Housing_Paper.pdf

¹⁰ [LevellingUpandRegenerationBillImpactAssessment.pdf \(parliament.uk\)](#);
[LevellingUpandRegenerationBillImpactAssessmentAnnexes.pdf \(parliament.uk\)](#)

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that would: remove the Levy provisions from the Bill; give local authorities discretion over whether to introduce IL or retain the current system; remove affordable housing from the scope of IL and ensure that IL is spent on infrastructure that is related to the development of an area.

- 3.6 In light of the reluctance of government to accept changes to IL, a letter signed by 18 leading organisations from across the housing sector, including Tom Copley, the Deputy Mayor for Housing and Residential Development, was sent to the Secretary of State for Levelling Up in February 2023. This highlighted the potential for IL to negatively impact on affordable housing delivery¹¹.
- 3.7 In March 2023, a consultation document was published by DLUHC which provided more information on the technical aspects of the proposals. This was accompanied by research commissioned by DLUHC in 2021 and led by the University of Liverpool. The research raises a range of potential challenges for authorities relating to the setting of rates for brownfield sites whilst maintaining viability, delays to the local plan process and the need for additional training and support given the degree of departure from the existing system.
- 3.8 The Mayor's response to the consultation highlighted that a range of additional issues arise when the practical aspects of the proposals are considered¹². The consultation document prompted another joint letter, this time signed by an even broader coalition of 30 organisations in June 2023, led by the Royal Town Planning Institute and signed by Jules Pipe CBE, the Deputy Mayor for Planning Regeneration and Skills, which urged the Secretary of State not to progress with the proposals¹³. These concerns were also reflected in different organisation's responses to the consultation¹⁴.
- 3.9 Prior to report stage in the Lords, the government issued amendments to the Bill on 4th July 2023 including changes to IL provisions. These amendments, which are considered further below, do not however address the fundamental issues identified with the proposals.

¹¹ The letter is available [here](#).

¹² The Mayor's response to the Technical consultation is available [here](#).

¹³ [RTPI | Joint letter on the Infrastructure Levy](#)

¹⁴ For example, see [RTPI | RTPI response to the DLUHC consultation 'Technical consultation on the Infrastructure Levy'](#); [BPF - BPF urges Government to abandon proposals for new infrastructure levy and improve CIL and Section 106](#)

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Key concerns

- 3.10 The issues that we and others have identified are summarised further below and in the Mayor's response to the technical consultation.

Affordable Housing

- 3.11 A fixed Levy system for both affordable housing and infrastructure has never been attempted in the UK before, despite this being considered - and rejected - in initial proposals for CIL and previous contributions systems. There are a range of reasons why this approach has not been introduced previously, including that it would make the process highly complex.

Rate setting

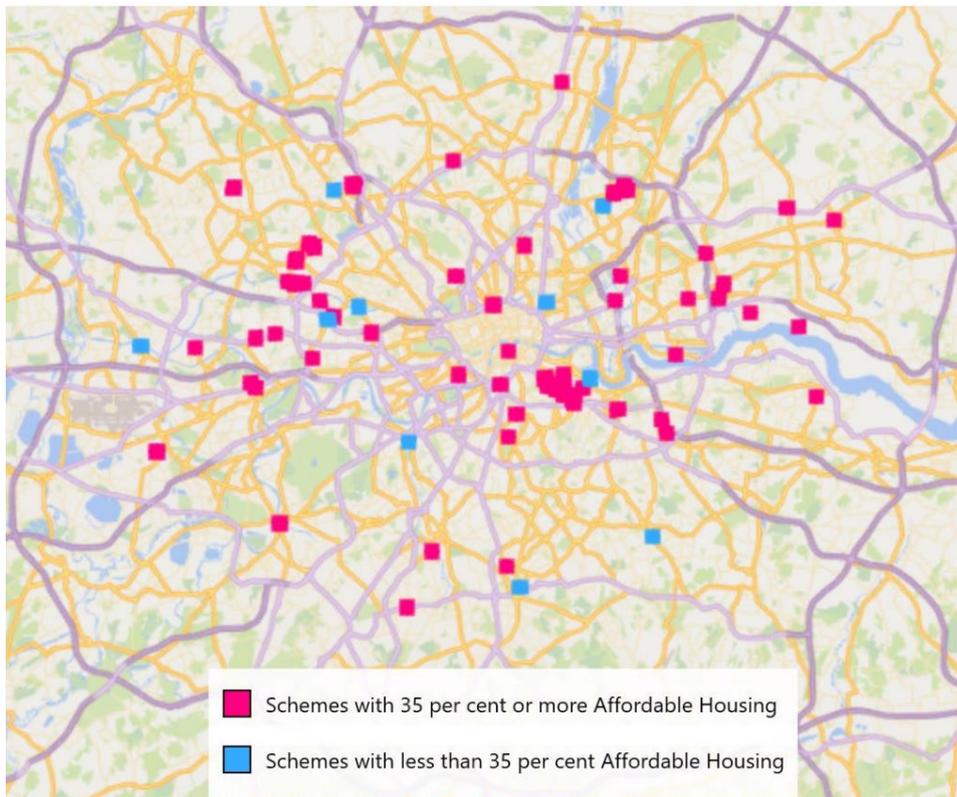
- 3.12 Including affordable housing within the scope of the IL would require rates to be many times higher than CIL. This is particularly the case in London where the value differential between market and affordable housing is much larger than in most other areas. The 'margin of error' for setting rates that are capable of both maximising contributions and ensuring that development remains viable under an IL system is likely to be extremely small, if not non-existent.
- 3.13 Setting rates at the level needed to maintain current levels of affordable housing could make less viable developments undeliverable. Conversely, setting lower rates will reduce contributions. In practice, both is likely to occur. Through the Examination process, in which development viability would be a key consideration, it is likely that local authorities would be required to set 'lowest common denominator' rates. Charging schedules are also likely to be very complex system with numerous different rates. This would have a significant negative impact on affordable housing and other contributions secured through the planning process in London.
- 3.14 If an IL rate was set with the intention of achieving, for example, 35 per cent affordable housing (plus infrastructure and other requirements), affordable housing would not have been maximised on schemes that would otherwise have been capable of providing more than 35 per cent affordable housing. Conversely, schemes that could not support this level would be made unviable. We estimate that IL could have resulted in a loss of c.4500 affordable homes between 2019 and 2021 and 10,000 affordable units between 2017 and 2021 secured in referable applications, while making 10,000-30,000+ units of all tenures (including market housing) unviable.

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When non-referable applications are taken into account these figures would be much higher.

- 3.15 Allowing rates to be set locally would not address this issue because schemes which provide both higher and lower levels of affordable housing come forward in areas with similar values within boroughs. This is because development viability is determined by a range of factors which vary between sites and proposals, including development values, build costs, scheme typology, specification, abnormal / infrastructure costs and existing use values. While the majority of referable applications now provide 35 per cent or more affordable housing, the map below shows that schemes that were found not be capable of achieving this due to genuine viability constraints are located in a range of areas across London and in some instances are in close proximity to sites that provide 35 per cent affordable housing or more¹⁵.

Location of Referable Schemes Providing 35 per cent or more Affordable Housing and less than 35 per cent Affordable Housing in 2021



- 3.16 Incorporating affordable housing, and onsite and offsite infrastructure within the scope of IL, is likely to result in a series of highly detailed, complex and

¹⁵ GLA analysis, 2022

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contentious charging rates and zones which attempt to respond to the variation in land uses, development values, costs and land values across a local authority area, albeit there will often be no discernible pattern across these variables. This will make it hard for developers, investors, and communities to understand the extent and nature of planning requirements and scheme benefits.

- 3.17 IL would also make it difficult for strategic authorities to implement policies that provide a clear and consistent regional or sub-regional approach to affordable housing and infrastructure delivery which can be taken into account by the land market. Further commentary on affordable housing and IL based on GLA analysis of the proposals is set out in Appendix 3.

Delivering the same or greater level of affordable housing

- 3.18 The intention of IL is to provide the same or more affordable housing as at present, however evidence has not been made available to demonstrate that this would be achievable. The measures in the Bill to ensure that the same or greater level of affordable housing is provided through IL are very limited. Schedule 11 Part 1 204G (2) of the Bill states that when setting IL rates, charging authorities must (only) 'have regard' to the 'desirability' of achieving this over a timeframe that is yet to be specified.
- 3.19 This extremely low bar was amended by government on 4th July 2023 to require that local authorities 'seek to ensure' that the level of affordable housing which is funded and provided by developers is maintained or exceeded when setting Levy rates. However, an additional amendment also removes this duty if this would result in development of the area becoming economically unviable. While welcome in principle, these changes fail to address the fundamental issue set out above, that requiring affordable housing through a fixed levy system means that there would be a far smaller, or even non-existent margin of error when determining IL rates. This is likely to result in lower rates being set and fewer affordable homes being delivered than at present.
- 3.20 The government has also been clear that this relates to rate setting only and that this amendment would not require authorities to actually allocate IL receipts in a way that would deliver the same or more affordable housing as at present. The allocation of IL funding is also considered below.
- 3.21 A further amendment has been tabled that the Secretary of State should publish a report on the impact of IL on the delivery of affordable housing and other infrastructure for authorities that charge IL within five years of the first charging schedule taking effect. However, given the time required to

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undertake a further consultation, bring forward regulations and consult on, examine and adopt a charging schedule, this analysis may not be available for another eight to ten years.

- 3.22 Another amendment would enable regulations to give the power to disapply IL in an area or charging authority. It is understood that this would enable the Secretary of State to allow a specific authority to revert to using S106 agreements if IL is not achieving its policy aims. This would however be retrospective and would not enable authorities to elect to retain the current system, even if there was evidence to indicate that the adoption of IL would be detrimental to the delivery of affordable housing and infrastructure. This approach would also give no option to retain or revert to CIL for securing funding for infrastructure. Instead they would be wholly dependent on negotiating contributions through S106 agreements. For authorities that have introduced CIL, this is likely to require additional resources, reduce the level of contributions secured and delay the determination of planning applications.
- 3.23 In addition, government has consulted on proposals for a Building Safety Levy (BSL) which would take the form of a separate charge on development based on the number of proposed residential units or floorspace. As with IL, the full details of the BSL are not yet known, nor how the two charges would affect each other. If government proceeds with the BSL rather than securing funding through other measures such as the Residential Developer Tax and Developer's pledge, it will be important that BSL cannot be used to justify providing fewer affordable homes being provided, either through the current system or IL. It is presumably not the intention of the proposals and would be highly inequitable if historic safety costs were effectively passed onto households in housing need.

Mixed communities, the Right to Require and the Grant Pot approach

- 3.24 Including affordable housing within the scope of IL and crediting this against Levy liabilities will require additional valuation exercises and increase complexity. The proposals unnecessarily 'monetise' the provision of affordable housing which could undermine the long-standing principle of on-site affordable housing delivery as the primary approach for delivery and enabling mixed communities. This results in the need for a 'right to require' and the 'grant pot' approach in which authorities could require on-site affordable housing and use receipts from other schemes to purchase affordable housing in subsequent developments.

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- 3.25 An amendment tabled by government on 4th July 2023 now includes a requirement that regulations 'permit charging authorities, in the circumstances and to the extent specified in the regulations, to require IL to be paid by providing affordable housing on the development site. This was previously absent from the Bill with the intention that this would be addressed through regulations. While welcome in principle, it remains unclear what circumstances will be specified in regulations and how this would work in practice.
- 3.26 These approaches are likely to be significantly more complex than the current system, particularly if additional funding agreements are required and the value of affordable housing needs to be reconciled with the final IL liability which is determined at the end of the development process. Without further clarity as to whether these approaches are workable, this risks undoing years of progress in creating more sustainable, high-quality neighbourhoods.
- 3.27 Any time saving associated with determining the liability through IL is likely to be limited because, as noted above, a significant proportion of strategic schemes in London (but not all) already meet the policy level of affordable housing, with no requirement for viability testing.
- 3.28 In addition, under IL, a legal agreement would still be required to secure obligations that address a range of issues that are currently dealt with through S106 agreements. These include: housing tenure type, affordability (rents/ housing costs/ proportion of income), eligibility (incomes, key workers etc), disposal to a Registered Provider and occupation restrictions on market units to ensure delivery and enforcement of obligations. The benefits of standardising the IL payment do not outweigh the additional complexity and uncertainty that arises by determining the liability based on a proportion of development value which not be known until the end of the development process.

Timing of payments and infrastructure delivery

- 3.29 Instead of receiving infrastructure payments when development starts, payment would be delayed until a later stage of the development process and based on development value. This means that infrastructure would not be in place when needed, resulting in less sustainable development and greater opposition to development.
- 3.30 The delivery of infrastructure at the start or early in the development programme is often required to enable developments to come forward, and

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to help facilitate placemaking. Without this in place, developments will be less attractive to potential purchasers and tenants. This would reduce development values and may result in developments not coming forward. If, however, payments were made at an earlier stage this would require additional valuations for each development phase which would make the process more complex and resource intensive. This process is considered further below.

Basing IL on Development Value

- 3.31 Basing IL on development value will result in greater uncertainty for councils, developers and communities about the final value of payments and more risk for councils who may have to repay IL receipts if a scheme's value is lower than expected. This would be exacerbated if councils have borrowed against expected future payments to deliver the infrastructure alongside the development. In practice however, few councils are likely to have the resources or be in a financial position to borrow against uncertain IL receipts to deliver infrastructure to support development.
- 3.32 Importantly, with the level of contribution unknown at application stage, councils and communities will not be able to assess whether a development's impacts will be sufficiently mitigated or whether the benefits of a development will outweigh any harms. This is likely to result in fewer consents being granted.
- 3.33 In addition, developers will not know what to pay for sites when acquiring land which normally takes place many years prior to completing a development. As a result, in a competitive land market such as London, developers may be more likely to over-pay for land, resulting in schemes becoming unviable, or a reduction in other standards if the IL liability is higher than was expected.
- 3.34 Under the current system, developers benefit from the certainty given by the Threshold Approach. From an early stage they can factor in the costs of meeting policy requirements and physically design a scheme on a policy compliant basis. Following the Fast Track Route means that any additional value achieved by the scheme following practical completion will be retained by the developer, which could offset higher costs incurred during the development. Conversely, basing IL on a proportion of final development value would mean that the developer's liability will increase in a rising market, without potentially being able to address any exceptional or higher costs that arise during the construction process.

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Valuation process

- 3.35 Basing IL on an assessment of development value will also involve a multiple valuation process for every phase of development that IL applies to, rather than just schemes that do not meet policy requirements, as is currently the case. This much more prominent role for valuation in the planning process would be complex, contested and protracted in many cases, particularly for schemes involving valuer judgment such as those with residential or commercial property that will be rented. Affordable housing and onsite infrastructure would also need to be valued if this is to be credited against the final IL liability. Most authorities do not have the resources or expertise to implement this robustly which could be subject to avoidance and dispute.
- 3.36 Basing the IL liability on final development value is likely to result in a range of valuation and enforcement issues. A large proportion of residential units in London are sold to investors / off plan or as bulk sales which may be at a discount to market value. This would reduce the IL liability but would benefit the developer in other ways through improved cashflow and reduced risk. Developers/ investors are also likely to act in other ways that limit IL liabilities, for example by retaining units on a rental basis, which may result in a lower valuation, and delaying sale until after the final payment has been determined. It is not clear how these issues would be addressed or how final payments would be enforceable after a development has been sold or occupied.
- 3.37 Determining the final liability at this very late stage creates inherent uncertainty and will result in outcomes that may be difficult to reconcile with aspects of the development that need to be determined at an early stage, including onsite affordable housing and infrastructure.

Site-specific mitigation and obligations

- 3.38 The IL proposals do not appear to provide an alternative mechanism with sufficient flexibility for securing measures, such as on-site and offsite transport works, that support the delivery of development. This may cause particular issues for strategic and upper tier authorities because IL would be set and collected locally and there is no guarantee that rates would or could be set at a level that would ensure that impacts on strategic infrastructure are addressed. This would impede delivery, particularly on complex brownfield sites, which will impact on London's ability to meet housing targets.

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- 3.39 Restrictions to S106 agreements may also prevent other important obligations as referred to above, such as carbon offsetting, local employment and training, affordable workspace, construction monitoring from being secured.

Spending IL receipts

- 3.40 The Bill would allow IL to be spent on items that are wholly unconnected to development. This would exacerbate significant existing funding shortfalls for affordable housing and infrastructure. It would also increase the risk of proposals being unsustainable and reduce community support for development which could result in fewer applications receiving planning consent.

Retention of S106 for large sites

- 3.41 The GLA supports the retention of S106 for large sites, instead of IL, however the technical consultation document indicated that the preferred threshold for this would be ‘the very largest and most complex sites including new settlements of 10,000 homes and above, or complex urban regeneration sites with large scale redevelopment of existing buildings’¹⁶. There are very few, if any sites of this scale in London and a much lower threshold should be considered.
- 3.42 Furthermore, provision should be made to enable authorities to retain CIL where appropriate to avoid all infrastructure contributions being negotiated through S106 agreements. This would be a backward step as it would prolong the planning process and could reduce the level of contributions secured.

Implementation of IL and transitional period

- 3.43 Given the issues raised above, the principle of a ‘test and learn’ approach is supported, however during the Commons Committee stage of the Bill it was confirmed that implementation of IL would take place over the rest of the decade, with the technical consultation document indicating national roll out from 2029 onwards¹⁷. This would cause significant disruption and uncertainty for the market, local authorities and communities, as well as complex and resource intensive transitional periods as authorities would need to operate, monitor and enforce several different systems.

¹⁶ The next threshold down (medium) would include urban extensions of 2-4000 units.

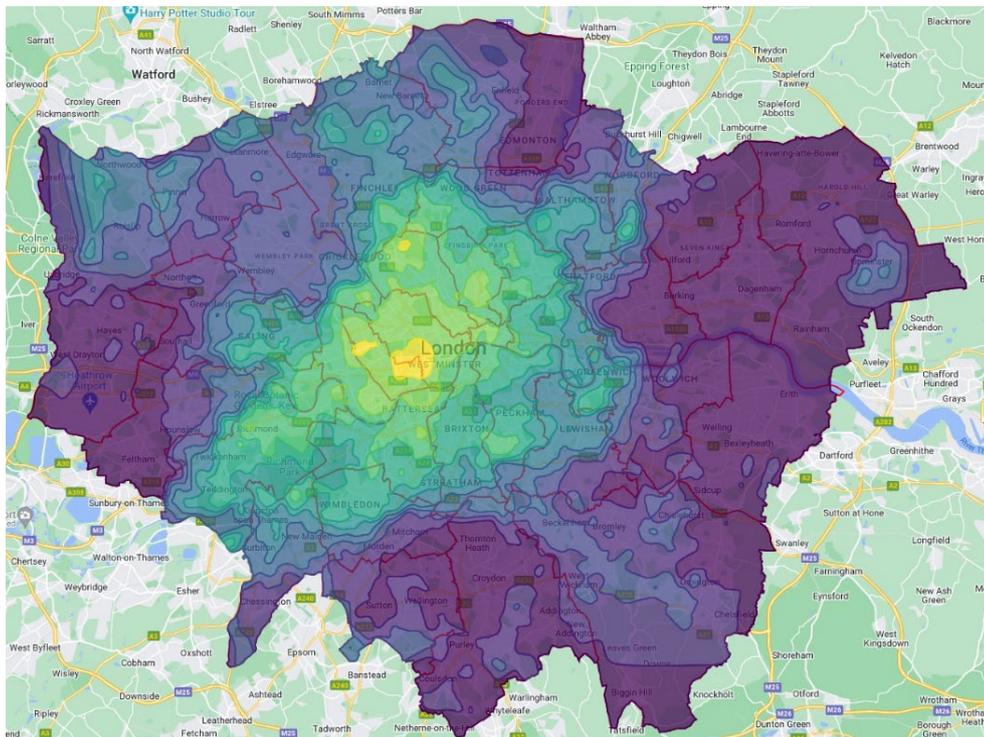
¹⁷ Marcus Jones MP, Minister of State DLUHC, Levelling Up and Regeneration Bill Public Bill Committee, Eighteenth Sitting.

Impact in London

3.44 The impact of these issues is particularly acute in London given its specific characteristics, which include:

- significant variation in development values, costs and land values, both within London boroughs and between sites. The variation in new build residential values both across and within borough areas is evident from the following map¹⁸:

Variation in New Build residential values in London



- substantially higher residential values than most parts of the country and consequentially a higher differential between the value of market and affordable housing. This affects the level of development subsidy required to deliver each affordable home.
- the infrastructure, enabling works and other measures that are often required to enable the delivery of London's brownfield sites.
- variation in context, design and development typologies (from low rise to tall buildings), with subsequent variation in values, costs and viability.
- the greater likelihood of requirements which vary for different sites e.g. viewing corridors and impacts on building heights, the re-provision of

¹⁸ Molior 2023. Brighter colours indicate higher values and vice versa. New build residential values in London range from c£450 to over £1,500 per square foot. Affordable housing values also vary between c£150 and 500 per square foot depending on tenure and unit size.

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existing affordable housing on estate regeneration schemes, costs and design implications associated with heritage assets and Listed Buildings, and the re-provision of commercial and industrial floorspace and social infrastructure.

3.45 The heterogeneity of development sites and proposals in London would make it highly difficult to set IL rates that would not either result in lower developer contributions or that would make development unviable. These issues are considered further in Appendix 2.

4. Conclusion

- 4.1 In light of these many issues, the current system of developer contributions should be retained and improved, building on best practice, rather than introducing IL.
- 4.2 The evidence indicates that retaining the current system would be more effective for delivering affordable housing and infrastructure so that communities benefit from new development, while ensuring that development remains sustainable and deliverable. This would also avoid the situation in which authorities would be required to implement and simultaneously operate a range of different contribution systems which would be highly complex and potentially unmanageable given resourcing pressures within the planning system.
- 4.3 If the proposals are progressed through the Bill, discretion should be given to authorities to implement IL or retain the current system of developer contributions if this would be more effective. For areas with a Regional Spatial Strategy, Mayoral authorities are best placed to determine the most appropriate approach given the specific circumstances and need for consistency across large Metropolitan areas.
- 4.4 The GLA recognises the importance of an efficient and effective planning process and has taken a range of measures to implement this through the Mayor's policies and planning powers in London. Further recommended approaches to improve the current developer contributions system and support the delivery of affordable homes and sustainable development are set out in Appendix 3.

Appendix 1: Affordable Housing Need in London and the Importance of Delivering Affordable Housing through the Planning System

- 1.1 The context for considering any major changes to the system for securing and delivering affordable housing in new developments, is that there is substantial need for affordable housing in London.
- 1.2 In 2021/22, over 8,300 people in London were seen sleeping rough¹⁹. In November / December there were 166,000 homeless Londoners, including 81,000 children, living in temporary accommodation²⁰. 9.2 per cent of households in London were estimated to live in overcrowded accommodation in 2019/20, which is significantly higher than overcrowding rates across England. Housing needs have been further exacerbated through the pandemic, which has had a disproportionate impact on low income and Black, Asian and ethnic minority households.
- 1.3 The delivery of new affordable homes is vital to meet the housing needs of London's residents and workforce. The London Plan (2021) identifies that 43,500 affordable homes are needed per year. This accounts for the majority of new homes needed in London, with market homes in new developments often being unaffordable to the majority of London households²¹.
- 1.4 Previous national policy required that developers should bring forward proposals for market housing which reflect demand and the profile of households requiring market housing, in order to sustain mixed communities²², however the need to reflect the profile of households who are able to purchase market housing is no longer a national policy requirement. Build out rates and the phasing of development are driven by the speed at which properties can be sold to ensure that additional supply does not have a downward impact on market prices²³. Market housing is often pre-sold to investors before completion, to aid cashflow and reduce risk, however owner occupiers are less likely to be able to forward purchase a property. While market housing can help to cross-subsidise the delivery of affordable housing, all of these factors highlight the importance of onsite affordable housing delivery in new developments.

¹⁹ Housing in London 2022. November 2021.

²⁰ London Councils, 2023

²¹ Land Registry figures indicate that new build residential values were at their highest ever level at £635,843 in February 2023. This is nearly 20 times the median London average household income and is only affordable to high earning households.

²² Planning Policy Statement 3: Housing

²³ Independent Review of Build out, 2018.

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- 1.5 Homes that are available for low income households are particularly scarce compared to the extent of need, due to the low delivery of social housing in previous years in part arising from reductions in affordable housing grant and the loss of social housing. As a result, low cost rent housing (social rent and London Affordable Rent) is normally only available for the most vulnerable and at-risk households. New lets within the existing stock are comparatively rare; approximately 1-in-30 homes in the general needs category are re-let in a given year. This means that very many households in significant housing need, including those with children, remain in temporary and other unsuitable accommodation.
- 1.6 New supply of social and London Affordable Rent housing has a disproportionate positive impact on lessening housing waiting lists. The delivery of affordable homes for low and middle-income households, including the provision of low cost rent and intermediate housing for essential workers, is also vital to maintain the function and resilience of the city, which is a key contributor to the UK's economy.
- 1.7 Affordable homes secured through the planning system are an important source of new affordable housing in London, albeit many more affordable homes are needed. Research published by MHCLG²⁴ also confirms the significance of the planning system in securing affordable housing, albeit we consider that the methodology applied underestimates the value of affordable housing secured in London.

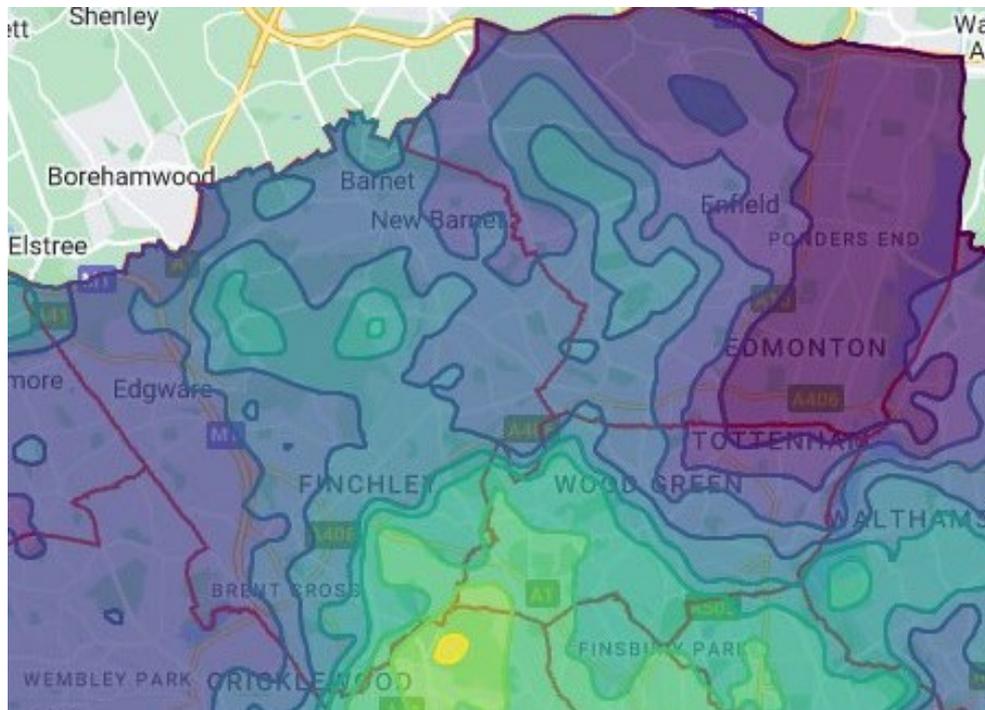
²⁴ Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19, MHCLG, August 2020

Appendix 2 - Variation in values, costs and site circumstances in London

Variation in development values

- 2.1 There is far greater variation in property values in London than in any other area of the country. Proximity to transport infrastructure, the Central Activity Zone, high streets and key employment centres, parks and waterfront settings, areas undergoing significant regeneration, Conservation Areas and social and cultural amenities are all factors which result in significant and highly localised variations in development values.
- 2.2 The following images of specific boroughs and areas show that the distribution of residential values within boroughs is far from straightforward. This, together with variation in costs, land values and other site-specific circumstances would make the process setting IL rates that do not either result in fewer contributions or making development unviable extremely difficult, if not impossible²⁵:

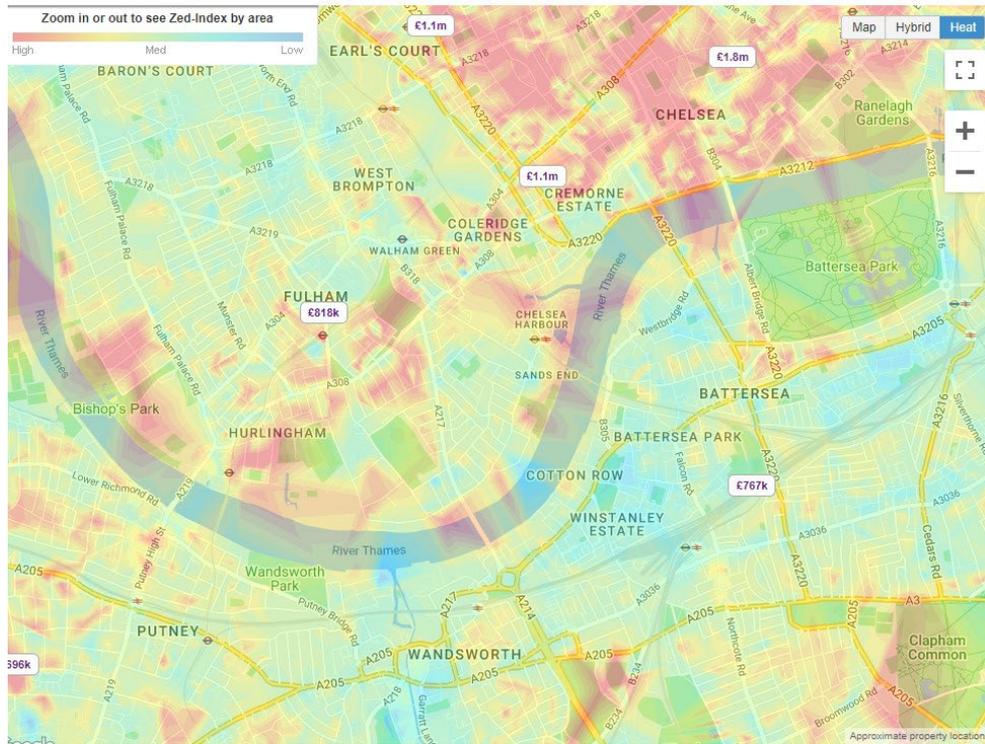
Variation of new build residential values in and around LB of Barnet, Enfield and Haringey



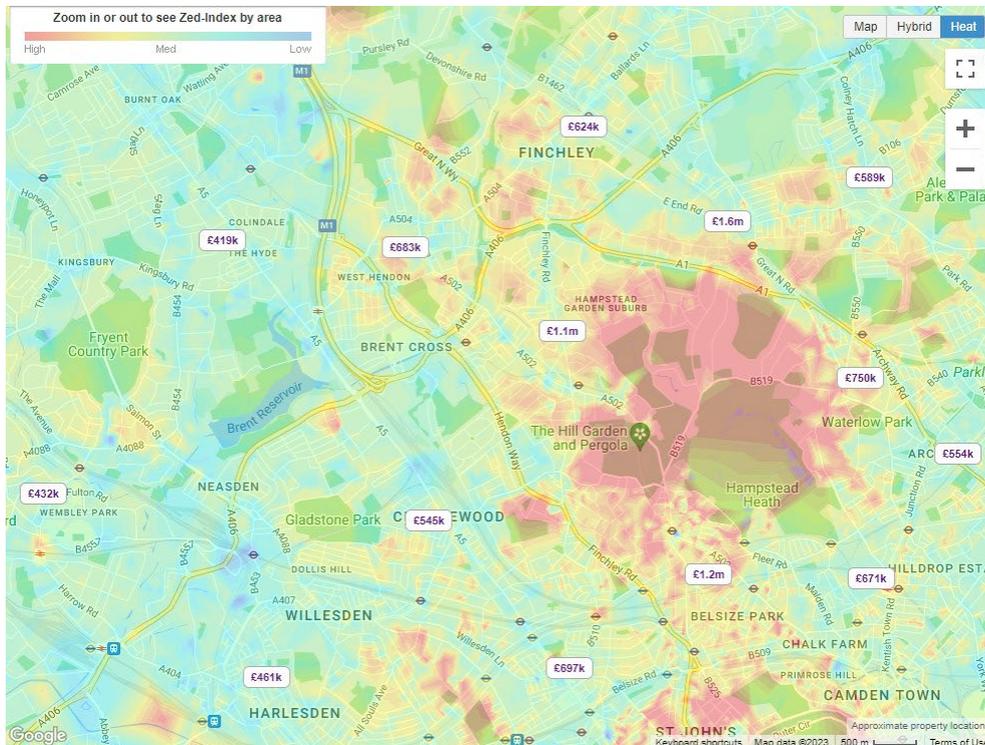
²⁵ Molior 2023. Brighter colours indicate higher values.

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Localised variation in residential values in Inner South West London

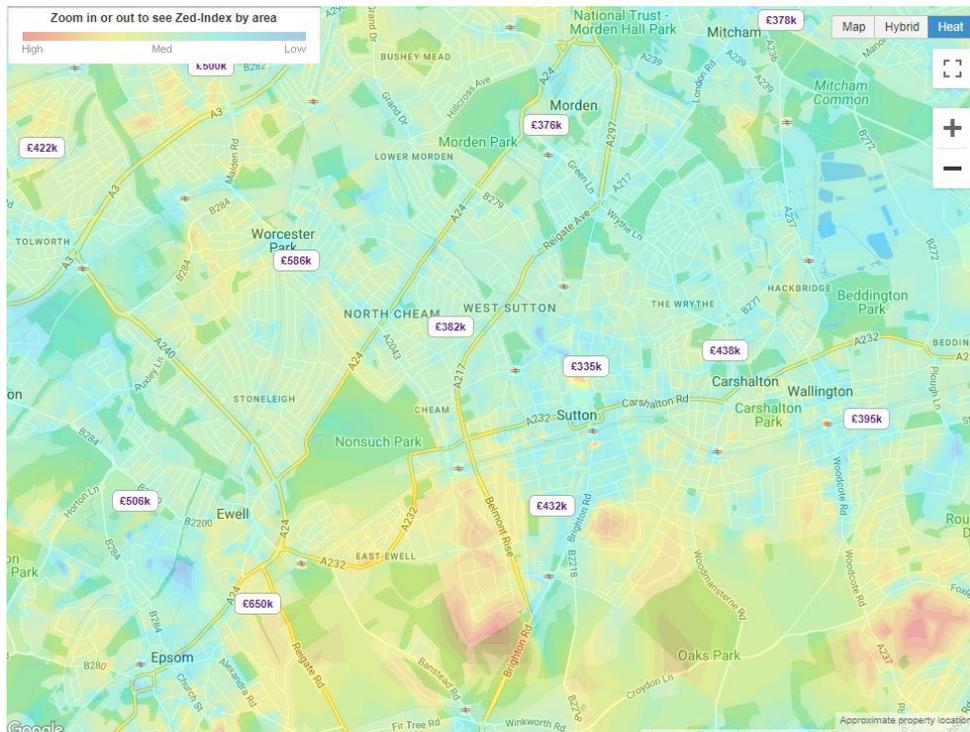


Localised variation in residential values in Inner North West London



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Localised variation in residential values in Sutton and surrounding areas



Variation in site costs and circumstances

- 2.4 Whilst most sites across London now provide 35 per cent affordable housing alongside other developer contributions, there are instances where developments are consented with lower levels of affordable housing and planning obligations due to site specific circumstances that affect scheme viability.
- 2.5 For example, a site may have high enabling costs, high site remediation costs, or a high Existing Use Value. In addition, a site may be subject to higher build costs due to site specific factors or be significantly shaped as a result of being located in a Conservation Area. Furthermore, a site also may be subject to specific planning policy requirements to re-provide employment floorspace, contain affordable workspace, or provide social and cultural infrastructure. Such site-specific circumstances have an impact upon the costs and values of the development.
- 2.6 Where site specific issues have a genuine impact on viability, the London Plan allows development proposals to follow the 'Viability Tested Route' at the planning application stage. Viability is assessed to determine the impacts of the constraints and identify the maximum viable amount of affordable housing and obligations which the scheme can deliver.

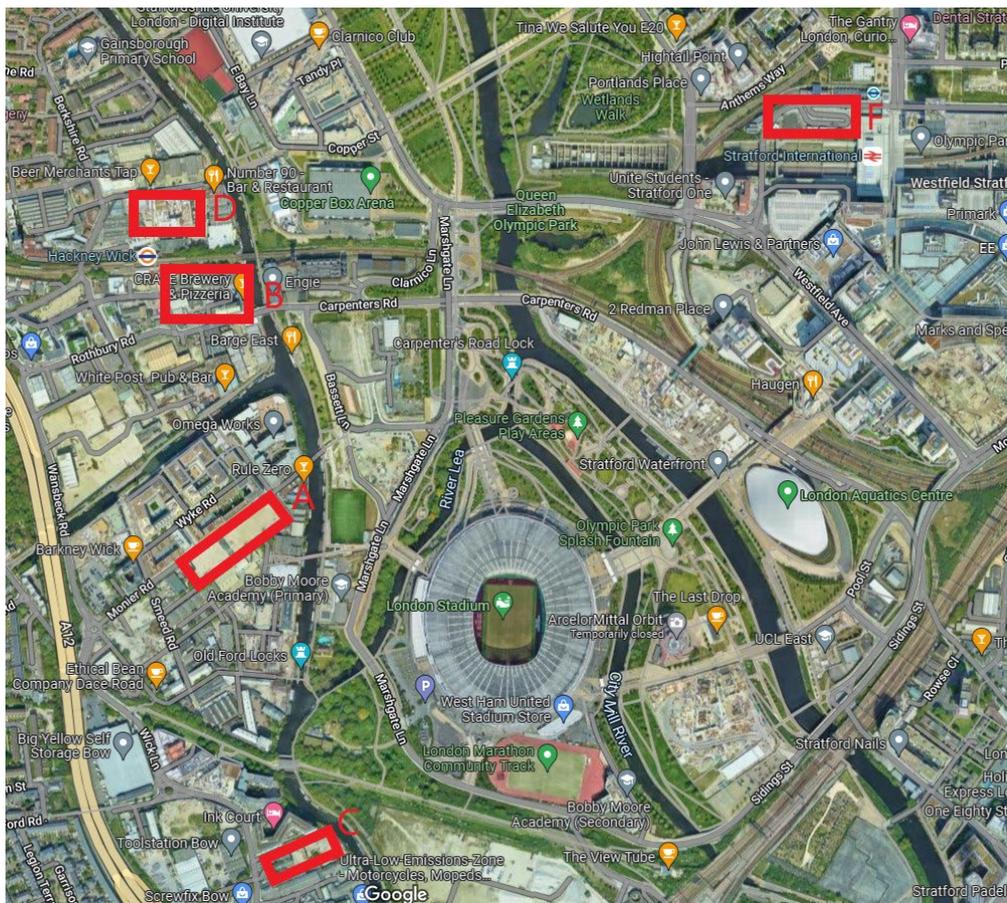
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2.7 Within London, it is not uncommon for sites that are closely located to one another with similar development proposals to result in different levels of developer contributions due to site specific characteristics. Given the significant variation between sites and proposals it would be highly difficult to accurately take this into account for all potential future development sites when setting rates in an IL Charging Schedule.

2.8 This is demonstrated by the following sites in the London Legacy Development Corporation area:

90 Monier Road (Scheme A), Queen's Yard (Scheme B), Iceland Wharf (Scheme C), Stone Studios (Scheme D), Legacy Wharf Phase 2 (Scheme E) and International Way (Scheme F).

Location of various development sites in LLDC area





2.9 These sites are in close proximity to each other. The developments are broadly similar in size and land use, although Scheme F is larger with increased massing and is formed of two 27 storey towers.

- Scheme A: 148 residential units and 3,761 sqm commercial floorspace
- Scheme B: 143 residential units (Build to Rent) and 2,562 sqm commercial floorspace
- Scheme C: 120 residential units and 3,919 sqm commercial floorspace
- Scheme D: 121 residential units and 5,365 sqm commercial floorspace
- Scheme E: 196 residential units and 2,258 sqm of commercial floorspace
- Scheme F: 380 residential units (Build to Rent) and 2,605 sqm commercial floorspace

2.10 Schemes A and C qualified for the Fast Track Route providing 35 per cent affordable housing. Scheme E was subject to a viability assessment due to being on industrial land and provided 35 per cent affordable housing. Scheme F was also subject to a viability assessment due to being on public land and will provide a higher 40 per cent affordable housing²⁷.

2.11 However, Scheme B followed the Viability Tested Route providing 21 per cent affordable housing (all intermediate rent). The design of Scheme B was shaped by the need to appropriately respond to the nearby existing historic building

²⁷ The threshold level for public and industrial land is 50 per cent (and 35 per cent where industrial floorspace capacity is re-provided).

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typologies through appropriate massing and building heights. It was also required to re-provide a theatre to ensure that this was not lost as a part of the redevelopment. In addition, Scheme B faced higher build costs associated with access restrictions during construction, as well as site specific costs associated with works to the canal wall and removal of contamination.

- 2.12 Scheme D followed the Viability Tested Route providing 8 per cent affordable housing. The design of Scheme D was required to respond sensitively to the Hackney Wick Conservation Area which shaped the building heights and massing of the development. In addition, Scheme D was required to provide affordable workspace and an access route to Hackney Wick Station.
- 2.13 These examples, which are just some of the development sites within the area, illustrate the inherent difficulty in formulating an IL charging schedule which would be capable of accounting for all the varied characteristics found across development sites within London authority areas.
- 2.14 If an IL rate based on 35 per cent affordable housing were to be applied to Scheme B and Scheme D, they would likely be rendered unviable. If, however, it was decided that a lower IL rate should be applied to residential and commercial uses in this area, this would have resulted in a lower level of affordable housing being achieved at Schemes A, C, E and F.
- 2.15 Even if a charging authority were to set variable rates by area and land use, this would still present enormous difficulty in developing a charging schedule which would both be capable of maximising affordable housing and developer contributions whilst also ensuring that sites remain deliverable.
- 2.16 In summary, a fixed levy which is calculated as a proportion of development value for the purpose of securing both affordable housing and infrastructure contributions does not correspond well with the heterogeneity of development sites in London.

Appendix 3 - Infrastructure Levy and affordable housing

- 3.1 The Bill proposes significant changes to the way that affordable housing is secured through the planning process. IL would be calculated as a proportion of development value which may need to be assessed at a number of stages in the development process. The value difference between market and affordable housing is treated as part of IL, the final calculation for which is undertaken at the end of the development process and after the sale of any properties.
- 3.2 IL would replace S106 agreements and CIL, although there are some circumstances where legal agreements would still be required. The intention is to continue to secure affordable housing onsite at least at current levels and to treat this as 'in kind' payment of the level.
- 3.3 Aiming to achieve affordable housing at least at current levels will however not address the significant housing need identified above and may prevent increases in affordable housing delivery that could be achieved through improvements to the current system. It would also divert substantial public and private sector resources away from the process of securing and delivering affordable housing and would be highly disruptive as the new proposals are developed and understood, and new systems and procedures are established to implement it.
- 3.4 The risks and disruption associated with an entirely new system would only be warranted if it was demonstrated that this would increase affordable housing delivery in the tenures needed, and also result in a simpler and less resource intensive process. However, no calculations or evidence have been published to demonstrate that this would be achieved under IL. There are significant risks that this will not achieve the same or more affordable housing, and will result in a process that is notably more complex, and less certain and transparent.
- 3.5 IL bears a much stronger resemblance to a development land tax, when compared with the current system which is delivery focused, addresses development impacts and secures positive planning outcomes to ensure that development is acceptable and able to come forward. Although the current system is not perfect, on a range of key measures, including meeting strategic and local planning objectives, facilitating delivery, land value capture and longevity, it has been substantially more effective than the five main attempts at land / development value taxation since the introduction of the modern planning system. These were complex, largely ineffective and short-lived, or were not implemented at all.

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- 3.6 In addition, by proposing to deal with affordable housing and onsite infrastructure as well as financial contributions through a single system, IL is far more ambitious than previous land value tax mechanisms. While the proposition of a single system for securing in-kind and financial contributions was attractive to previous policy makers, this was subsequently rejected as not being practically feasible²⁸. The challenges associated with this are self-evident from the new issues that necessarily arise from this approach. These have required the development of various 'work arounds' and design options, such as the right to require which create additional complexity and have the potential to undermine well established approaches that are vital to the principles of good planning.
- 3.7 It is also of note that a fixed, non-negotiable affordable housing requirement could be applied under the current system and secured through S106 agreements without the need to change to a valuation-based approach with payments made at the end of the development process. This would be a more effective approach, however, entirely fixed affordable housing requirements have not been introduced at a national, regional or local level because it is recognised that there are will be cases with genuine viability issues, that could not support the normal level of contributions required. Progress has been made in recent years on ensuring that only schemes with genuine constraints provide a lower level of contributions. The current system provides a more effective framework in which to implement this.
- 3.8 To understand the impact of IL, in particular the proposal that this would be set as a fixed tariff that includes affordable housing and all other infrastructure costs, the GLA undertook modelling which identified the following issues:
- a) There is a complex relationship between the IL rate based on a proportion of development value and the level of affordable housing and contributions that this equates to. This would vary according to a range of factors such as residential and affordable housing values and the level of the 'value based minimum threshold'. A single IL rate will result in a range of levels of affordable housing and contributions for different developments. Conversely, if the aim was to achieve a specific level of affordable housing and infrastructure contributions, the equivalent IL rate would have to vary significantly depending on market and affordable housing values and the minimum threshold. This will make it difficult to both set the rate based on known levels of affordable housing need and required levels of

²⁸ When proposals for CIL (2008) were being designed it was initially thought that a single mechanism could be developed that would deal with both affordable housing and infrastructure provision. However, affordable housing was subsequently removed from the scope when primary legislation for CIL was brought forward in the 2008 Planning Act.

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infrastructure funding, and to assess the level of affordable housing and contributions that would be delivered through a specific IL rate.

At a fixed affordable housing level, the equivalent rate as a proportion of development value appears to increase from lower to higher value developments. Conversely if IL is fixed as a proportion of development value for developments across an area, the level of affordable housing that this equates to would be lower for higher value developments than would be the case when the requirement is expressed as a percentage of affordable housing. Similarly, lower value developments would be required to provide a higher relative proportion of affordable housing under the new approach. This could result in the under-delivery of contributions from higher value schemes and cause viability issues for lower value schemes.

- b) Notwithstanding the difficulty of equating a specific level of affordable housing to a single IL rate as referred to above, if a rate was set with the intention of achieving, for example, 35 per cent affordable housing, plus infrastructure and other requirements, this would result in a potential loss of affordable housing from every scheme that would otherwise have been capable of providing more than 35 per cent affordable housing. Conversely, schemes that could not support this level would be made unviable. We estimate that IL could have resulted in a loss of c.4500 affordable homes secured in approved referable applications between 2019 and 2021, and 10,000 between 2017 and 2021, while making 10,000-30,000+ units of all tenures (including market housing) unviable.
- c) While the outcomes would differ through setting a different IL rate, this would not overcome these issues. A lower rate may reduce the number of schemes that become unviable due to a fixed rate, but this would increase the number of 'foregone' affordable homes that could have been delivered through more viable developments. Conversely, setting a higher rate will achieve a greater level of affordable housing in more viable schemes but would potentially threaten the delivery of a greater number of developments.
- d) Allowing rates to be set locally would also not address this issue because, as noted above, schemes which provide both higher and lower levels of affordable housing come forward in the areas with similar values within boroughs. This is because development viability is determined by a range of factors which vary between sites and proposals, including development values, build costs, scheme typology, specification, abnormal / infrastructure costs and existing use values.

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e) Charging authorities typically set variable CIL rates by area and/or use, and a complex set of charging structures has emerged within London. CIL accounts for a relatively small proportion of development value (typically 1-4 per cent) which means that, despite being fixed, there is sufficient 'headroom' to ensure that development remains viable. However, by incorporating affordable housing within the scope of IL, rates would need to be set substantially higher. We estimate that a rate of 30 – 40 per cent would need to be applied (assuming a 100 per cent market development and without taking into account a minimum threshold) to provide the 35 – 50 per cent affordable housing levels now achieved in most referable London developments and typical CIL/ S106 contributions. This would however result in less viable developments being undeliverable.

3.9 For these reasons we do consider that IL would be capable of achieving the same or more affordable housing and infrastructure contributions as are currently secured through the planning process.

3.10 A further issue which has not been addressed, is how the IL would apply to estate regeneration schemes where the requirement is to re-provide existing affordable housing and maximise delivery of additional affordable housing. A fixed IL would not be capable of determining affordable housing requirements for estate regeneration schemes which vary from site to site depending on the existing level of affordable housing and the viability of the proposed redevelopment.

Recommended approaches

3.11 In light of these many issues, the current system of developer contributions should be retained and improved, building on best practice, rather than introducing IL. If the proposals are progressed through the Bill, discretion should be given to authorities to implement IL or retain the current system of developer contributions if this would be more effective.

3.12 There is a strong case for retaining the use of planning obligations to secure affordable housing and other site-specific requirements that make developments acceptable in planning terms. Affordable housing requirements should continue to be established as part of a planning permission to ensure that this is designed into new developments and reflected in land values. Linking this to a financial liability through IL, to be determined at the end of the development process, in many cases years later, is unnecessary and gives rise to significant complexity and other issues that do not currently exist.

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- 3.13 IL should focus on infrastructure contributions and build on the extensive work undertaken to establish CIL as a system that successfully secures funding for infrastructure within a timeframe that allows it to be delivered to support new development.
- 3.14 The GLA recognises the importance of an efficient and effective planning process and has taken measures to improve this in London. There is scope for greater efficiencies within the current policy framework which could be implemented without the significant disruption, risks and the transitional issues that would arise through IL. For example, the London Plan Threshold Approach if applied more widely, would provide greater certainty to the market and increase affordable housing delivery, while ensuring that development with genuine viability issues still comes forward. Promotion and implementation of the approach in national and Mayoral policy that focuses viability testing at plan making rather than application stage would speed up the planning process. Wider application of Mayoral guidance on viability would also improve the assessment process.
- 3.15 There is a broad consensus that the sector's resources would be better focused by retaining and improving the current system. The GLA is committed to work with partners to achieve this in order to support the delivery of sustainable development, achieve better outcomes for communities and improve the planning process.