

Mayor's consultation - draft Supplementary Planning Guidance on the use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy

Draft Planning Committee consultation response

1. Introduction

- 1.1 The Committee's consultation response focuses primarily on chapter six of the Draft SPG (the Mayor's role and general guidance) which gives some guidance on the Mayor's role in borough Community Infrastructure Levy (CIL) setting and some general advice based on the experience of rate setting to date. Some comments are also directed at chapter four (the Community Infrastructure Levy) and chapter five (Implementation issues).
- 1.2 A number of issues and gaps have been identified within these SPG chapters that would benefit from a greater level of detail. Based on the Committee's findings from its recent investigation into CIL in London, the Committee is making recommendations to the Mayor on how to close these gaps and also how to address a number of other concerns raised by stakeholders during the investigation.
- 1.3 During its investigation into CIL in London the Committee identified three key issues that the Mayor and London boroughs should address when setting up or reviewing their CIL charges:
 - Complexities of cross boundary sites and proposals;
 - Maintaining scheme viability; and
 - Continued use of Section 106 contributions
- 1.4 These issues are reflected in the detailed comments and recommendations set out in this response.

2. Chapters one to three

- 2.1 Chapters one to three focus on the Mayor's approach to funding Crossrail. The Assembly's then Planning & Housing Committee provided responses in the past to consultations relating to Crossrail and the CIL in 2009.
- 2.2 In December 2008, the Mayor consulted the London Assembly and the GLA group organisations on his proposed alterations to the London Plan and an accompanying draft Supplementary Planning Guidance (SPG) addressing the use of planning obligations in the funding of Crossrail. In January 2009 the Assembly's Planning and Housing Committee discussed the proposed alterations with the Deputy Mayor for Policy and Planning, officers from the London Plan Team and Transport for London and representatives from London boroughs. The Assembly's subsequent response to the Mayor's consultation in February 2009 reaffirmed its support for the overall funding

package but called on the Mayor to rethink his approach on a number of policy details.

- 2.3 Between January and March 2011 the Mayor ran a public consultation on a preliminary draft charging schedule for his Mayoral Community Infrastructure Levy. The draft charging schedule was subsequently consulted on in June 2011. The Assembly did not participate in these consultations.

3. Chapters four and five

- 3.1 During the Committee's investigation, boroughs have expressed the need for further guidance, especially on CIL collection, and suggested that the existing working groups could help with that.¹ Islington pointed out that any technical issues could be solved more easily if the Mayor issued guidance on how to interpret the CIL regulations. Stakeholders felt that the Mayoral SPG could have a useful role in providing such guidance, and would "plug a few of the gaps" that exist through a lack of Government guidance.²
- 3.2 Boroughs should now assess whether the guidance relating to the CIL regulations provided in chapters four and five addresses their need for additional guidance and clarification (as set out in paragraph 3.3 below) that takes into account London's unique situation and diverse communities.
- 3.3 During the Committee's investigation, stakeholders have defined the issues in the CIL Regulations³ that need to be resolved, including clarification and simplification on a number of points⁴ and better definitions⁵. While some, for example London First, consider the CIL regulation to be flawed, "*not fit for purpose*" and in need of an extensive review, others, for example the London borough of Islington, thought that some technical issues primarily needed to be resolved to facilitate greater consistency across London⁶.
- 3.4 Any London wide or borough level guidance or policies are informed by national regulations and policies. Advice from boroughs indicates that the guidance provided by chapters four and five of the Mayoral SPG is of a reasonable level of detail and helpful. However, the need for Government to provide greater detail and corrections to the current CIL regulations remains – this is to ensure that the potential benefits of CIL can be accomplished as originally intended. The Mayor should highlight this issue now to prevent unnecessary negative impacts on delivery and strategic regeneration objectives in London in the long term.
- 3.5 Stakeholders also raised concerns about the lack of flexibility of the system and the need for a degree of exceptions. This could provide the individual

¹ Islington, Barnet, Bromley

² September meeting; Richmond

³ The Community Infrastructure Levy Regulations 2010 came into force on 6 April 2010; amendments to the Regulations 2011 came into force on 6 April 2011; further amendments came into force on 29 November 2012.

⁴ Barnet, Kingston, Westminster, Richmond, Ealing, Kensington & Chelsea

⁵ Tower Hamlets, Hackney

⁶ Faraz Baber, London First & John Wachter, Islington - October meeting

local authority with the scope to have a dialogue about the best possible route to deliver a development and achieve more benefits for the community. The British Property Federation suggests a “*period of pragmatic reflection*”, where adopted CIL charging schedules were left in place and be assessed as ‘pilots’ while other authorities would continue to apply operate with 106 arrangements⁷.

Recommendation 1

- **The Mayor should make representations to Government and suggest that the Government address the need for additional guidance, clarification and corrections to the current CIL regulations as raised by both London boroughs and the property industry. Government should also address the need for more flexibility in the introduction of CIL - this might mean provide for transitional arrangements to allow more time to prepare the CIL schedules and for land prices to reflect the new levy.**

This will help ensure that the potential benefits of CIL can be accomplished as originally intended while taking into account London’s unique situation and diverse communities.

4. Chapter six

- 4.1 While chapter six sets out a number of duties for the boroughs in relation to collecting and providing evidence for the examination process, a greater level of practical advice would be useful. To a degree this should be possible within the policy guidance; however, it may be appropriate for the Mayor to also prepare best practice guidance to better address these concerns.

Evidence collection and engagement

- 4.2 Because of the wide interpretational differences within the Regulations, different authorities may approach engagement and transparency completely differently. While some boroughs so far have engaged very early, well before the development of their viability assessments, others have come up with a preliminary charging schedule based on a viability study only and little engagement⁸.
- 4.3 The British Property Federation considers it essential that CIL is developed through a cooperative approach between the local authority and the development sector⁹. The Royal Institution of Chartered Surveyors (RICS) agrees that using appropriate evidence to justify charging schedules as well as putting in place a comprehensive consultation process with stakeholders before bringing forward a preliminary draft CIL charging schedule should be held up as examples of best practice¹⁰.

⁷ Liz Peace, BPF – October meeting

⁸ Faraz Baber, London First – October meeting

⁹ Liz Peace, BPF – October meeting

¹⁰ RICS

- 4.4 The Mayor should promote this approach to London boroughs while a lack of feedback from developers in consultations should equally be highlighted¹¹. The Mayor should outline proactive and innovative ways of engagement to obtain the necessary evidence to set CIL charges appropriately. Discussions across London and sharing knowledge would also be beneficial in this respect and the monthly pan London CIL working groups continue to be useful.¹²

¹¹ Liz Peace, BPF – October meeting

¹² Lewisham, Barnet, Southwark, Hackney, City of London, Newham, Kensington & Chelsea, Ealing, Richmond, GLA

CIL levels and scheme viability

- 4.5 Most London boroughs, through their Local Development Frameworks, have produced a Community Infrastructure Plan or Infrastructure Delivery Plan (or are preparing an update to those plans) as evidence for assessing the long term infrastructure needs to support the growth across a borough.
- 4.6 The Planning Inspectorate told the Committee that, that on average, the evidence that is produced is not very dense and fairly basic and it would be impossible to actually have site-by-site evidence. Furthermore, the role the Inspectorate can legally undertake has a very limited remit with CIL charging schedule examinations.¹³ Some consider this a weakness of the examination process which leaves little scope to effectively challenge draft charging schedules¹⁴.
- 4.7 Several stakeholders¹⁵ believe there is a risk that in order to ensure viability and overall delivery of schemes, affordable housing targets could be lowered by some local authorities in order to offset the costs of CIL. This point is discussed separately from paragraph 4.10 of this response onwards.
- 4.8 The London borough of Richmond would like to see guidance on what constitutes “appropriate available evidence” that will inform a draft charging schedule, and also requests better access to London wide evidence on infrastructure¹⁶.
- 4.9 Mayoral advice should therefore include a greater focus on the type and extent of evidence required to inform draft CIL charges so that viable schemes can eventually be delivered.

Recommendation 2

- **The Mayor’s SPG or new best practice guidance should set out in detail the type and extent of evidence required for developing CIL as well as approaches and sources to obtain and analyse such evidence consistently across London. This includes evidence to establish infrastructure need and evidence to justify the level of charges proposed while ensuring scheme viability can largely be maintained. The guidance should also give advice to boroughs to help them set their CIL charges at a suitable level that, based on the assessment of evidence, would not make a large number of schemes potentially unviable.**

It may be necessary for the Mayor to also write to the Secretary of State to request further assistance on this matter.

Recommendation 3

- **The Mayor’s SPG should encourage boroughs to engage with each other, the Mayor and a wide range of stakeholders early on when developing or reviewing their CIL, and that they make use of other boroughs’**

¹³ Keith Holland, PINS - September meeting

¹⁴ Various - October meeting

¹⁵ Southwark, Barnet, RICS; Keith Holland, PINS - September meeting

¹⁶ Richmond

experiences with CIL through working groups and similar forums. The Mayor, in his SPG, should request that boroughs share their Regulation 123 lists in the preparatory stage of developing their CIL charges, to enable cross boundary analysis of proposed infrastructure projects to assess where these could complement one another.

The Mayor should indicate in his SPG that he will conduct a formal consultation with London boroughs at an appropriate time to review how they are collaborating in practice and how cross boundary infrastructure needs are being addressed.

Affordable housing

- 4.10 The Committee's findings are consistent with the Mayor's statement at paragraph 6.10 of the Draft SPG and support the approach that "*Boroughs are encouraged to be as clear as possible about their plans for application of CIL; (...) showing what they envisage will be funded through CIL, and what they intend to continue to use section 106 to support*".¹⁷ During the Committee's investigation the London borough of Redbridge highlighted the need for boroughs to identify how far to scale back Section 106, particularly on large strategic sites.¹⁸
- 4.11 Boroughs have to particularly consider how to mitigate the risk that affordable housing delivery could decrease as a result of introducing CIL and how to respond quickly to unwanted effects caused by the CIL. Current CIL regulations exclude affordable housing from the definition of infrastructure that can be funded by CIL. Affordable housing will therefore need to continue to be funded through S106 planning obligations¹⁹ and is likely to be more aggressively negotiated as the main 'unfixed' component of the residual valuation of sites²⁰.
- 4.12 There is already some evidence that affordable housing rates are being 'squeezed' due to the priority that needs to be given to CIL in assessing viability (and hence the quantum of S106 contributions) with local authorities setting affordable housing targets lower than those in their core strategies in order to offset the costs of CIL. Keith Holland (Planning Inspectorate), feared that: "*quite a lot of local authorities will see CIL as a way of raising money and will do it at the expense of affordable housing. (...) that is a very big danger*".²¹
- 4.13 Additionally, the recently introduced Bill for Growth and Infrastructure provides for a modification procedure in relation to affordable housing requirements in existing Section 106 agreements which are no longer economically viable. This procedure will put even more pressure on affordable housing in areas where CIL has been introduced. Figures from Local Government Association research suggest that 80 per cent of local authorities

¹⁷ Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy

¹⁸ Ian Rae, Redbridge - September meeting

¹⁹ City, NHF

²⁰ Southwark, Barnet

²¹ Keith Holland, PINS - September meeting

will negotiate affordable house building in a bid to kickstart stalled sites, and 41 per cent had already started negotiations. Given these figures it is even more important that boroughs think carefully about the impact their CIL charges could have on the delivery of affordable housing.

- 4.14 To support boroughs in ensuring the continued provision of affordable housing in London, a greater level of practical advice should be given by the Mayor to address the wider concerns about CIL's impact on affordable housing, with an emphasis on monitoring contributions and delivery.

Recommendation 4

- **The Mayor's SPG should expand on paragraph 6.10 to highlight the need for boroughs to consider the implications of their proposed amount of CIL levels in relation to the reduced scope of S106, in particular regarding affordable housing. Boroughs must closely monitor affordable housing contributions and delivery following the introduction of CIL, as a noticeable reduction in affordable housing contributions could indicate for a review of their CIL.**

Strategic approach and cross-borough boundary matters

- 4.15 The Mayor has a duty to provide leadership to address London's infrastructure needs. Given his strategic role and previous experience in establishing a CIL, he is best placed to identify the implications of the boroughs' CIL proposals for sub regional infrastructure requirements and the need for a strategic approach that takes into account the unique London circumstances. There may be further opportunities to reflect this approach within the Draft SPG²².
- 4.16 London's political geography and diverse communities appears to lead to wide disparities between the boroughs CIL schedules – draft and adopted charges for residential development, for example, currently range from as little as £10/ m² in parts of Barking and Dagenham to as much as £575/m² in the Nine Elms area of Wandsworth. Several London boroughs have highlighted the issue of addressing CIL in cross-boundary regeneration areas²³.
- 4.17 Many boroughs²⁴ agree that CIL charges should be based on need and development viability only – criteria that are normally assessed on a borough-by-borough basis. The borough of Lewisham notes that producing sub-regional evidence might improve the alignment of CIL values across boundaries, but it might also create a less effective response to local infrastructure needs²⁵.
- 4.18 While there is no legal duty for boroughs to cooperate, the Committee supports the views that it would be "*eminently sensible*" for the boroughs and

²² Such details could, to a degree, reflect the approach the Mayor is already taking in providing strategic support through Opportunity Area Frameworks for large sites that can encompass more than one borough.

²³ Hackney, Richmond

²⁴ Lewisham, Barnet, Southwark, City, Croydon, Barking

²⁵ Lewisham

the Greater London Authority to co-operate voluntarily in relation to CIL.²⁶ Therefore, procedures should be considered that take account of differences in charges and enable collaboration across boundaries. These could focus on joint funding of selected infrastructure development but also assess the benefits of setting the CIL levels jointly where appropriate.

- 4.19 The dense population of London means that the administrative boundaries do not provide discrete areas in terms of development or population distribution. Therefore areas of regeneration that cross over administrative boundaries e.g. Finsbury Park which covers the boroughs of Hackney, Islington and Haringey, may benefit more by being formally managed.²⁷
- 4.20 Clarity over the amount and use of CIL in cross-boundary areas would also help provide accurate information and certainty to developers. The borough of Ealing warns that in a worst case scenario variations in rates between boroughs would potentially affect the form and layout of a proposed development, with built structures all being located on the borough with the lowest rate - which would not necessarily be to the benefit of the scheme²⁸.
- 4.21 Lessons could be drawn from the Mayor's introduction of the CIL for Crossrail which charges differential rates while being of strategic benefit for the whole of London. The Mayor should use this experience to help ensure London's needs are addressed. To achieve this, there should be further details in the SPG to cover this important area of guidance and advice.
- 4.22 These additional details should set out that boroughs and the Mayor ought to engage with each other and a wide range of stakeholders early on and make use of other boroughs' experiences with CIL through working groups and similar forums (also see the recommendation under "Evidence and engagement"). They should in particular consider opportunities and methodologies of spending CIL jointly on infrastructure projects serving more than one borough.
- 4.23 London's boroughs need to recognise that for sustainable regeneration of major schemes that cross borough boundaries it might be necessary, and desirable, for some CIL funds raised in one borough to be spent in another. The Mayor also needs to recognise this opportunity and either address it in his formal guidance or be prepared to facilitate or "broker" such "resource transfer" arrangements across London.
- 4.24 The SPG should therefore also address the role of CIL for cross boundary regeneration matters and could draw from the Mayor's experience of developing policy for the London wide CIL and OPAFs. To reinforce this concept the Mayor should also develop and promote best practice approaches through forthcoming major applications and Opportunity Areas, especially across borough boundaries.

²⁶ Keith Holland, PINS - September meeting

²⁷ Hackney

²⁸ Ealing

Recommendation 5

- Given the Mayor's strategic role and previous experience in establishing a CIL, he can identify the implications of the boroughs' CIL proposals for sub regional infrastructure requirements (for example public transport hubs, colleges, hospitals or major green spaces) and the need for a strategic approach that takes into account the unique London circumstances. This should be reflected in the SPG and we suggest that further details are added to the SPG to cover this important area of guidance and advice.

Recommendation 6

- Boroughs should consider ways of spending CIL jointly on infrastructure projects serving more than one borough or on some strategic regeneration schemes. The Mayor will need to consider what mechanisms might be needed for such "resource transfers" between boroughs if joint funding of cross borough infrastructure is required. He should either address this approach within formal guidance or be prepared to facilitate such transfer arrangements.

Recommendation 7

- The Mayor should to use his experience of the London wide CIL and OPAFs to develop policy that addresses the role of CIL for cross boundary regeneration matters. He could include this in his SPG but he should also develop and promote best practice approaches through forthcoming major applications and opportunity areas, especially across borough boundaries.