

DP3221/JS

26 September 2018

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Examiner MCIL2 Draft Charging Schedule  
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Dear Mr Holland,

## **REPRESENTATIONS ON ADDITIONAL EVIDENCE PROVIDED BY GLA/TfL**

### **On behalf of Battersea Project Land Company Limited**

Please find below and enclosed further representations on behalf of the owners of Battersea Power Station, Battersea Project Land Company Limited ('BPLCL') to the following two statements provided by TfL/GLA to the MCIL2 Examination in Public:

- I. Use of Guidance Speaking Note prepared by GLA/TfL (12 September 2018)
- II. Analysis of proposed office rates in the Central London Charging Area prepared by JLL on behalf of GLA/TfL (September 2018)

These further representations should be read in conjunction with the written representations submitted to the PDCS and DCS stages of MCIL2 on behalf of BPLCL.

BPLCL continues to object to the proposed extension of the Central London Charging Area boundary to include the Vauxhall Nine Elms Battersea ('VNEB') Opportunity Area, within which the Battersea Power Station site is located. We do not consider that the further statements provided by the GLA/TfL address the objections raised by us (and LB Lambeth and LB Wandsworth who also objected to this element of MCIL2) at the Examination or in our earlier written representations. The proposed sharp increase in MCIL rates for office use represents a significant viability challenge for an area that has been identified by the London Plan to deliver a substantial number of new jobs – including in particular the Battersea Power Station site which has an allocation within the Local Plan and is designated to deliver the new town centre for the Opportunity Area. The development is also contributing approx. £250m towards the funding of the Northern Line extension. Work on the scheme is well underway but significant challenges to its delivery remain, even without the proposed increase in MCIL rates. The only office floorspace delivered within the site to date has been for the occupation of the development management company BPSDC, and there has been limited delivery of office floorspace generally within the Opportunity Area. As an office market the area remains very much in its infancy. All of these conditions are unchanged from 2010, when the Panel for the Examination into the London Plan Crossrail Alterations decided to exclude the VNEB Opportunity Area from the Central London Charging Area for these same reasons.



Within this context, the evidence that has been presented by the GLA/TfL to inform the proposed significant change to charging rates in the VNEB Opportunity Area (and other proposed extensions to the Central London Charging Area) is wholly inadequate. National guidance has not been followed, and there is a general feeling that the issue has been given little consideration, with objections from stakeholders largely ignored. The evidence that has been presented is not robust and is not proportionate to the significant impact that the proposed change in rates will have on the delivery of strategic sites upon which the London Plan relies.

We therefore request that the Examiner recommends that the VNEB Opportunity Area (OA) remains excluded from the Central London Charging Area. We enclose a plan of the OA boundary for ease of reference.

### **I. Use of Guidance Speaking Note prepared by GLA/TfL (12 September 2018)**

Firstly, we wish to remind the Examiner that our previous representations did specifically point to the Planning Practice Guidance (PPG) at both rounds, and we further echoed our concerns at the Examination. The opening paragraph of the speaking note is therefore deficient in citing only the London Boroughs of Richmond and Wandsworth as arguing that the Mayor's approach to MCIL2 does not properly take into account the PPG produced in 2014. We also made this argument, albeit with a focus on the Central London Charging Area boundary, and we have set out below our further response to the GLA/TfL note on the application of PPG and to the core matter of the appropriateness of the evidence base that has been used. We address the different parts of the note in turn below: We address the different parts of the note in turn below:

**The Mayor's response is that the PPG is guidance. Such guidance has been considered by the Mayor and followed where appropriate. However, individual points in the guidance are, of course, not requirements. There can be good reasons for not following individual points – based on particular circumstances, on whether there is an alternative path to the same aim, on practicality and proportionality, and on whether an activity would be purposeful.**

The guidance on CIL reflects the wording of the Planning Act 2008 and the CIL Regulations 2010, and the guidance expands on this to assist with interpretation. The legislation itself requires using "appropriate available evidence" in the preparation of charging schedules and requires due consideration of the effects of the levy on economic viability across the relevant area (there is a statutory requirement for this under the Planning Act 2008 which is repeated in the CIL regulations). In our view, appropriate available evidence has not been properly considered and nor has the impact of the levy on economic viability across the area (strategic site sampling should have been considered), in contravention of the legislation as well as the PPG guidance.

The Planning Act 2008 (as amended) and the CIL Regulations 2010 (as amended) set out that the charging authority, when setting rates, must have regard to matters including the cost of infrastructure and "the economic viability of development which may include in particular, actual or potential economic effects of ...the imposition of CIL" (Planning Act 2008 section 211 (2)).

The charging authority must use "appropriate available evidence" to inform the preparation of the



charging schedule (s. 211 (7A)), and the Act clarifies that these provisions apply to revisions of charging schedules in the same way as preparation of new charging schedules (s. 211 (10)).

CIL Regulation 14(1) relates to setting rates:

*“In setting rates (including differential rates) in a charging schedule, a charging authority must strike an appropriate balance between—*

*(a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and*

*(b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.”*

What is meant by “an appropriate balance” (in Reg. 14(1) and PPG para 008) is explained in the PPG guidance (para 008, 009).

We consider that “appropriate available evidence” to be considered when setting a charging schedule (as required by s. 211 (7A) of Planning Act 2008) would include strategic sampling of sites, as set out in the guidance:

*“The focus should be in particular on strategic sites on which the relevant Plan relies and those sites (such as brownfield sites) where the impact of the levy is likely to be most significant.” (para 019)*

We do not consider that this is an optional part of the guidance, rather the PPG fleshes out the legislation which requires the “appropriate available evidence”. If this appropriate strategic sampling had been used, it would be clear that no appropriate balance has been struck in drawing up the MCIL 2 charging schedule (contrary to the CIL regulations) and that there would be a negative effect on the economic viability of development across the area, especially the Central London Charging Area boundary (contrary to the CIL regulations).

Furthermore, the GLA/TfL note states that “there can be good reasons for not following individual points” in the guidance. These reasons have not been clearly set out. The PPG guidance requires that when setting levy rates:

*“In all cases, the charging authority should be able to explain its approach clearly.” (para 019)*

It is difficult in the context of the core theme of the PPG re. reasonableness and appropriateness to accept that no sampling resembles a robust and justified basis upon which the proposed MCIL2 rates can be based. The PPG needs to be given appropriate weight by the Mayor, and any deviation from it should be properly justified. There is no robust evidence to demonstrate that proper regard was given to the guidance during the preparation of the draft charging schedules, nor that proper justification has yet been given as to why the guidance does not apply to MCIL2. We consider that the note misses the points raised in objection and is too broad in its understanding of the issues at play and the essence of the PPG. The PPG needs to be considered in the round – including alongside paras 173-177 of the



2012 NPPF (“Ensuring viability and deliverability”).

We respond below to the note’s various points of justification for not undertaking any direct sampling for MCIL2:

- **The Mayor is in a different position from other CIL setting authorities. He is setting a strategic CIL across a wide area. Boroughs and MDCs will set their CILs and are better positioned to reflect particular local circumstances. The approach taken to the evidence requirements for MCIL will be different from those of most other authorities. The Mayor’s Plan is also strategic in nature, not site specific, and this affects how it should be taken into consideration.**

Whilst the London Plan does not allocate individual sites, it does allocate strategic areas of change and regeneration where the majority of London’s new housing and jobs are to be located, and it sets the strategic targets on which Borough Local Plans are based. The delivery of the Opportunity Areas is central to achieving the London Plan’s objectives. Whilst the London Plan may not set exact boundaries, it is clear that any potential impact on the viability and deliverability of the Opportunity Areas is important to the London Plan and needs to be considered (broadly, we accept). Enough is known about each of the Opportunity Areas to enable this to be checked / sense-checked. The implications for the Opportunity Areas need to be looked at in the round and should take into account the cumulative scale of obligations and policy burdens.

Furthermore, it is directly stated in PPG that:

*“In addition, a charging authority should directly sample an appropriate range of types of sites across its area, in order to supplement existing data. This will require support from local developers. The exercise should focus on strategic sites on which the relevant Plan (the Local Plan in England, Local Development Plan in Wales, **and the London Plan in London**) relies, and those sites where the impact of the levy on economic viability is likely to be most significant (such as brownfield sites).”* (our emphasis) (PPG para 019).

Given this very clear reference to the London Plan in particular in relation to sampling, we do not consider that there is scope for the Mayor to decide that this part of the guidance is not applicable.

- **The Mayor is using a methodology for MCIL which has been tested during the last six years and which has proved to have been effective in balancing viability against infrastructure needs, and with the approaches boroughs and MDCs have adopted locally. While the methodology is broad brush, it is based on data and experience. The 2017 Liz Peace-led CIL Review also supported the MCIL approach (simple levy, set at a relatively low level).**

The methodology for MCIL2 cannot be the same as for MCIL1 because when MCIL1 was adopted, there were very few CIL charging schedules and there was no preceding Mayoral CIL to take into account. The effects of MCIL1 and borough CIL must be taken into account in a suitably detailed analysis for MCIL2, which necessarily changes the nature of the methodology for MCIL2 as compared to MCIL1.



We do not agree with the note's assertion that the 2017 Liz Peace-led CIL Review endorsed the approach taken to the evidence base for MCIL2, or that endorsement of the methodology for MCIL1 equates to endorsement to use the same methodology for MCIL2. The Review did indeed support strategic levies being 'a simple levy, set at a relatively low level', but these comments related to MCIL 1, rather than being an endorsement for MCIL 2 which has different baseline conditions to start from, and which is proposing differential rates and high level rates.

We are concerned that the GLA/TfL are confusing the reference to a simple levy with reference to a simple evidence base. The evidence should not be simple, but here it is. The levy should be simple, but here it is not. Each levy should be supported by evidence that is appropriate, reasonable and proportionate. The methodology that was appropriate for a simple, low level charge such as MCIL1 is not necessarily appropriate for a charge with differential rates, including high level rates and expanded boundaries, such as MCIL2. This is particularly relevant where the rate has the potential to materially affect the delivery of several strategic sites in Central London's Opportunity Areas, on which the Plan relies for achieving the targets for new homes and jobs.

- **Where there are changes in MCIL2 rates, the viability evidence for those is shown and supports the rates suggested.**

The CIL evidence needs to be able to describe the potential effects of the proposed levy rates on the economic viability of the Opportunity Areas since these are the 'strategic sites' on which the London Plan relies. In order to test and sense-check viability, the PPG envisages that sampling of sites should be undertaken and this is emphasised as even more important where differential rates are proposed (as is the case for MCIL2). The exercise is intended to focus on those sites that are strategically most important for the particular Plan i.e. the Opportunity Areas in the case of the London Plan.

By way of example from the PPG: "A charging authority should take development costs into account when setting its levy rate or rates, particularly those likely to be incurred on strategic sites or brownfield land. A realistic understanding of costs is essential to the proper assessment of viability in an area..." (Para 020).

In relation to differential rates, there is a clear emphasis within the PPG that rates need to be justified by reference to the economic viability of development. The argument that site sampling should include strategic sites e.g. Opportunity Areas is intended to help ensure that the proposed rates are reasonable and appropriate.

The GLA/TfL's assertion that the changes to the Central London Charging Boundary have been justified using viability evidence is unsupported. PPG para 019 states that: "In all cases, the charging authority should be able to **explain its approach clearly**." But we do not consider that either the approach to the boundary change or to the rate setting has been explained clearly.

Our representations identify various flaws in the evidence used to support the extension to the boundary, which we will not reproduce here. However, we will note that the GLA/TfL has not yet addressed these flaws either in their responses to consultation on the PDCS or DCS, or in their further statements issued to the Examination. Therefore the boundary should not be changed. If the change is



to be taken forward, full and robust evidence must be presented to support the change, and this evidence should be made available for further scrutiny.

- **Any approach which involved sampling across Greater London down to ward or local zone level would involve very significant activity and would require consistent cooperation from boroughs and developers. There would inevitably be significant costs which would not be proportionate.**

The GLA/TfL has not undertaken any sampling and has not provided a good reason for not doing so. This is especially concerning given the sharp increase in rates and the extension of the boundary of the Central London Charging Area and the very significant concerns expressed by both private and public sector stakeholders in this respect from a very early stage in the preparation of MCIL2.

It would be wholly reasonable and clearly most appropriate for the GLA/TfL to have undertaken some sampling (more refined analysis) of strategic sites within Opportunity Areas to assist it in understanding whether a sharp increase in rates would give rise to an acceptable or an unacceptable impact on development viability within the proposed areas of change – or indeed the areas within which concern was raised by objectors during the process. This analysis would be part of a proper assessment of the effects on economic viability in the relevant area – as required by the legislation.

Should sampling have been undertaken this need not have been complicated or time consuming / costly – certainly no more so than the work that has now been undertaken by the affected developers and local authorities in making representations supported by appropriate evidence. There is data readily available. Instead the matter has been brushed over by the Mayor. Had more detailed work been undertaken, the Mayor's team would have found that MCIL2 would cause the following effects:

- a very significant increase in rates (i.e. a significant % uplift compared to other areas);
- a possibility then of unintended/abnormal impacts prohibiting development – a 'shock' event so to speak;
- large scale regeneration schemes already at varying stages of implementation meaning land has already transacted and so it is difficult for developers to then take this increased cost into account in continuing the delivery of their development;
- challenging viability circumstances documented through a combination of scheme specific viability processes at planning application stage as well as viability basis for Borough CILs;
- a material impact on viability i.e. whether expressed as a % of value, development cost, IRR or the delivery of other planning benefits such as affordable housing, which could then lead to development schemes being abandoned, halted or revised;
- and therefore the conclusion would be the need to approach MCIL2 with caution and a clear understanding of the impact on viability of these large schemes.

This sampling evidence would also have identified (as shown in representations) that the markets in the areas of concern are still evolving. We accept that a lot has happened since MCIL1 and the Crossrail SPG, but there is still a long way to go before the markets can be considered to have reached a level of maturity comparable to established Central London office markets such as the City or West End. This is where the representations have pointed to MCIL3 as a potential point for reconsideration, but the key point is that timing is an essential consideration when considering significant rate changes in each of the areas of concern.





- **The Mayor is proposing a simple approach which follows borough and MDC boundaries for residential development and only has separate zones for commercial development in Central London and Docklands. It takes account of borough CIL rates to establish that the MCIL2 rates should be viable on a strategic basis; but it does not seek to vary the rates because individual boroughs have chosen higher or lower rates themselves. There are strong arguments against any more fine grained Mayoral policy and the evidence gathered should be appropriate for the realistic policy choices.**

This response clearly ignores the sharp increase in rates for specific Opportunity Areas, which has largely been ignored in the GLA/TfL's material generally. The sharp increase is not recognised and has not been explored in any way. References to a simple approach masks the very sharp increase in these specific areas, proposed without sufficient justification or analysis of the effects on economic viability on those areas affected (as required by the legislation).

The scale of rates increase could not have been reasonably predicted by the development industry – especially as there is no evidence to suggest an equivalent step change in development viability or circumstances. We do not consider that any arguments have been advanced by the GLA/TfL as to why this impact has not been assessed or justified.

- **There are potential arguments in the published viability material to show that development values across London have not been adversely affected.**

This response again ignores the matter of the sharp increase in rates in several of the Opportunity Areas. Each of these areas was carefully considered when the Crossrail SPG rates were set, and each area was excluded from the Central London Charging Area – either by the independent Panel, or the Mayor himself. The relevant circumstances that informed those decisions has not changed, and the GLA/TfL have not provided sufficient viability evidence to demonstrate that the sharp increase in proposed rates would not affect development within these Opportunity Areas (see our further comments on the viability evidence below), as required by the legislation. In fact, as set out above, local boroughs and developers have demonstrated in their representations that there would be an adverse impact on development as a result of those proposed new charging areas and rates

As we explained at the examination, we do accept that a broad approach is necessary on a strategic CIL across London, however:

- Obtaining a simple conclusion and simple charging schedule does not automatically mean or endorse a simple and basic evidence base. Far from it. London is complex. The viability of strategic developments is complex. Getting into the detail is necessary to then take a step back, see the wood for the trees and make an informed judgement about a simple set of rates.
- It would be wrong to assume that the approach for MCIL1 is appropriate for MCIL2. Guidance and precedent decisions have moved on. They signal a more cautionary approach and the need to look at strategic sites in more detail. Also, this is a review exercise, meaning that any changes – especially if sharp – need to be informed and evidenced. It is difficult to contemplate how new rates and particularly changes to boundaries can be justified without any sampling.



- The GLA/TfL set out on a journey that did not intend any sharp increase in rates (or at least this is how their documentation reads). But the consequence of the change to the Central London Charging Area boundary is exactly the opposite – a sharp increase in particular areas, making up a significant amount of land, has been the result. Whilst still at a broad level, more sampling should have been undertaken to assess the impacts of the changes and to understand the consequences and full reasons given to justify it. The material put forward for examination is completely absent in this respect. Broad brush should not mean inadequate. The degree of testing across the piece should only a relatively small and incremental change in rates be proposed would lend itself to a particular approach and a particular reading/interpretation of the PPG. But the guidance sets out how to apply the legislation and where sharp increases in rates across large geographies are proposed (as is the case here) then any reasonable authority should apply the regulations and guidance in a strict way, especially in relation to sampling and rate setting.

In addition to all of our points above, we would note that the further statements provided by GLA/TfL still relate only to offices. The sharp increase in rates within the areas of concern also affects retail and hotel land uses, and yet there has been absolutely no consideration of these two major land uses whatsoever. This remains a substantial flaw in the approach to changing the Central London Charging Area boundary. We repeat our arguments above on this point, the legislation requires a proper analysis of the impacts on economic viability of a new or amended charging schedule. Where this analysis has not been undertaken, full reasons should be given to justify this.

## **II. Analysis of proposed office rates in the Central London Charging Area prepared by JLL on behalf of GLA/TfL (September 2018)**

Please find enclosed a response to this note prepared by CBRE.

In addition to the enclosed note, we would comment generally that the JLL evidence misses the point on the changes that are proposed to the VNEB Opportunity Area. It does not provide an accurate representation of the development viability considerations for a strategic scheme such as Battersea Power Station, and masks the scale of proposed increase by presenting the rates as inconsequential. The analysis takes no account of development costs and makes very broad brush assumptions for a market that has limited information to enable such assumptions to be made.

Such an approach to justifying rates as an inconsequential part of the wider development viability package has been questioned by Examiner's in previous CIL examinations. Malcolm Rivett BA (Hons) MSc MRTPI commented in his report on the London Borough of Tower Hamlets' Draft CIL Charging Schedule that:

*"Like with many developments, the CIL charges proposed by the Council would represent a relatively small part of both overall development costs and development value on these large allocated sites<sup>3</sup>. Nonetheless, the charge would, in a material way, reduce the schemes' IRRs: whilst the Supplementary Evidence refers to CIL resulting in a reduction of IRR of in the order of 1%, this is 1 percentage point, which represents 5% of a 20% IRR and, obviously, an even greater percentage of a smaller IRR. As such I conclude that the proposed CIL charges could*





*be determinative of whether or not one or more of the large allocated site schemes would be likely to come forward.”*

Given the potential impact of MCIL2 on strategic sites such as Battersea Power Station, we do not consider that this approach is appropriate or sufficient here. We would also note that the evidence has not been robustly compiled and contains numerous inconsistencies, including:

- The blended average of the percentage of capital value for the four Waterloo deals on p4 is 1.43%, whereas on p9 Waterloo is represented at 1.38% (with a different yield and different capital values)
- The Elephant & Castle analysis on p5 is based on CBRE data provided in representations to evidence the gradual drop in values from Southbank to Elephant & Castle, but JLL present this data as evidence for Elephant & Castle, when only one of these lettings is actually in Elephant & Castle and the others are outside (the deal with the highest percentage of capital value at 2.05%, vs. an average of 1.084% for the five Southbank deals)
- The City submarket analysis on p7 includes Canary Wharf, which is arguably a different office market with a noticeably higher percentage (1.8% vs. an average of 1.18% for the other City submarkets)
- The West End submarket analysis on p9 includes Battersea, Vauxhall and Waterloo when these are all clearly separate markets as evidenced by representations submitted to the Examiner

Notwithstanding our concerns with the general validity of the approach, we consider that JLL’s evidence actually supports our representations when the inconsistencies identified above are stripped away. We note that the evidence does not include any commentary to aid its interpretation and so we have distilled its contents into the table below:

Office market	Proposed MCIL2 as a percentage of capital value per sq m (average)	Proposed MCIL2 as a percentage of capital value per sq m (range)	Emerging office market?
Elephant & Castle	2.05%	2.05%	Yes
Canary Wharf	1.8%	1.8%	No
Vauxhall, Nine Elms, Battersea	1.68%	1.53 to 1.84%	Yes
Waterloo	1.42%	1.34 to 1.59%	Yes
Southbank	1.35%	1.18 to 1.66%	No
City	1.18%	1.11 to 1.52%	No
West End	1.08%	0.63% to 1.59%	No

Even the limited assessment undertaken by JLL appears to demonstrate that, broadly, the proposed MCIL2 rates represent a markedly higher proportion of capital value for VNEB and the other Opportunity Areas of concern (1.42%, 1.68%, 1.8% and 2.05%) than the established office markets of the City, West End and Southbank (1.08%, 1.18% to 1.35%) using this method of assessment. We do not fully understand what conclusions the GLA/TfL intended be drawn from the document as there is no analysis to support the contents, but if it has been submitted as a means to evidence that MCIL2 rates have broadly the same impact on these emerging office markets as they do on established office



markets, we do not consider it to be successful. In fact, the evidence appears to support our view that the proposed Central London charge for offices would represent a bigger proportion of capital values in these emerging office markets. This cannot be right. At the very least it indicates that further, finer grain analysis is required before a conclusion can be reached that the higher rate is justified and would not negatively impact upon the delivery of offices (and consequently jobs) in these areas.

There remains no evidence provided by GLA/TfL in relation to either retail or hotel uses in the VNEB Opportunity Area or other areas of concern.

Our original representations noted that the Mayor has referenced the prospect of an MCIL3. Should the Examiner agree with our assertion that the VNEB office market is emerging and does not warrant a higher rate charge at the present time, there would remain a further opportunity to reconsider its inclusion within the Central London Charging Area at some future point, once more evidence is available to make a proper assessment.

We respectfully request that our further representations are taken into account. Should you require any further information in relation to these representations, please contact Jonathan Smith or Craig Tabb of this office.

Yours sincerely,

**DP9 Limited**

**Encs.**

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Our Ref CV/ar/

26  
September 2018

Dear Jonathan

## BATTERSEA POWER STATION – MCIL2

Further to the JLL note commissioned by TFL in respect of the above, we have considered their research and comment as follows:

- The headline rents described ignore the incentive / inducement packages on offer in transactions, and we consider that only net effective rents should be used to provide a true view of the market due to the extreme variance across the London sub-markets.
- Notwithstanding this, a reliable and comparable set of headline rents is extremely difficult to ascertain due to a lack of buildings that are new or substantially refurbished, in all of the sub-districts described.
- We would query the relevance of the GVA figures, as they do not have a discernible office leasing team in London.
- The net initial development yields are extremely questionable and differ considerably from those that developers in the area would use.

We consider that the JLL report lacks substantial and robust evidence of leasing market transactions, and ignores the reality of all elements of the financial packages being agreed in the market. As such we do not consider that it succeeds in countering the evidence that we provided in our initial representations, in support of the position that Nine Elms Battersea remains an emerging office market.

Kind regards

Yours sincerely



**C P VYDRA**  
**Executive Director**

cc Kevin McCauley – CBRE



Opportunity Area 33: Vauxhall, Nine Elms, Battersea (VNEB).

