

# Appendix 1

## Westminster City Council

# DRAFT SUPPLEMENTARY PLANNING DOCUMENT: USE OF PLANNING OBLIGATIONS AND OTHER PLANNING MECHANISMS

## Contents

Foreword.....	2
How to comment.....	3
1. Context and Purpose.....	4
2. Legal Background.....	9
3. Policy Background.....	15
4. The Council’s Approach to Planning Obligations and CIL.....	19
5. Affordable Housing and Mixed Use Development.....	24
6. Local Economy and Employment.....	35
7. Health, Safety and Wellbeing: Mitigating the Impact of Development.....	39
8. Social and Community Infrastructure.....	42
9. Open Space, including Children’s Playspace.....	44
10. Energy and Climate Change.....	50
11. Transport and Related Public Realm.....	57
12. Public Art.....	66
13. Waste.....	67
14. Blue Ribbon Network.....	68
15. Management and Implementation.....	69
16. Arrangements for the Period April 2015-Adoption of Westminster’s CIL.....	70
17. Negotiating Planning Obligations: Viability, Procedures and Management.....	76
Appendices.....	81

The City Council is reviewing its standard clauses for use in planning obligations alongside this draft SPD. These will be consulted on separately.

The revised clauses will be incorporated as appendices to the finally adopted version of this document.

## Foreword

Westminster has an intensity and diversity of use found in few places in the world. It covers the heart of the country's capital, places central to its economy and residential neighbourhoods lived in by some of the wealthiest and the poorest in London. It has heritage buildings of global importance, and many of the country's most visited attractions. All of this is accommodated in the 1,323 hectares of the City not taken up with greenspace - which itself includes parks and gardens of Londonwide importance. Over the next decades, we face population and economic growth and factors like a changing climate which will make the job of planning the City more complex – and even more necessary.

We are currently reviewing our planning policies against this background. These set out our objectives – how to ensure growth helps deliver the principles of fairness, opportunity and responsibility that underpin the City Council's vision for Westminster's future. It is also important to be clear about how these objectives will be delivered, and this document explains how the council's planning powers and resources can be used to this end – to deliver prosperity and a high and improving quality of life for all the City's people.

This document sets out how we will use the new Westminster Community Infrastructure Levy (CIL), and longer- established tools like section 106 agreements in the period between adoption of the CIL in 2015 and formal adoption of our new City Plan. It takes account of new legislation and policy requirements. The intention is to be clear about the requirements we will be making of development and the powers that will be used for each. Our intention is to be transparent to developers, residents and everyone involved in the development process what will be expected and how we will deal with these issues day-to-day.

Our approach is underpinned by a recognition that Westminster's prosperity and ensuring a high quality public realm depends on investment, most from the private sector. To ensure development is sustainable, there are things it is right for us to expect development to support, particularly at a time of constrained public resources; many of these are things that make development itself possible and profitable. But we are clear that a balance has to be struck so investment is encouraged.

Striking this balance is not easy; the issues and legislation are complex. This is why a document of this kind is particularly important, and it is essential to get it right. We intend to consult widely and fully on it, and I very much hope it will attract comments and suggestions. These are issues at the heart of planning for our City at a time of unprecedented change, and I look forward to the discussions as we move forward.

**Councillor Robert Davis MBE DL**  
**Deputy Leader, Westminster City Council**  
**Cabinet Member for Built Environment**

Westminster City Council is publishing this draft SPD for preliminary consultation pursuant to Regulation 12 of the Town and Country Planning (Local Development) (England) Regulations 2012 in order to seek the views of interested parties in its preparation.

It is being issued to complement the draft charging schedule published by the Council as part of the process for setting a Community Infrastructure Levy. The consultation period will run for six weeks and any comments received will be considered and taken in to account when developing a revised version of the SPD for further consultation and adoption.

We would welcome any comments that you may have by using the contact details below. All comments should be received by ????????

**Email:**

**Write to:** Rachael Ferry-Jones, Policy, Performance and Communications, Westminster City Council,  
19<sup>th</sup> Floor, City Hall, 64 Victoria Street, SW1E 6QP

**Telephone:** 020 7641 2418

**Fax:** 020 7641 3050

# 1 Context and Purpose of Guidance

## The context

1.1 The City of Westminster covers an area of 2,149 hectares at the heart of central London. Of this, area nearly 40% is green space; the remaining 1,323 hectares accommodate:

- the nation's government and administration;
- homes for 108,550 households comprising a resident population of 226,000
- the largest concentration of employment of any London borough and the biggest centre of comparison retailing in the country;
- nine of London's top thirty visitor attractions and more hotel rooms than Camden and Kensington and Chelsea combined
- the largest night-time economy cluster in the UK.

It is home to over 50,000 businesses with a workforce filling over 700,000 jobs, of which over 540,000 are filled by people travelling in and out of the City every day, many using the four National Rail termini, the 32 Underground stations on ten lines and four river piers in the borough. Many of the 12,819 light goods vehicles and 4,861 heavy goods vehicles entering the central congestion charging zone have essential business in Westminster and use its 350 kilometres of carriageway every weekday. The West End alone attracts 200 million visitors each year, and every Saturday night Leicester Square by itself attracts over 225,000 visitors. It is home to the Palace of Westminster/Westminster Abbey World Heritage Site and over 11,000 other listed buildings (more than any other local authority in the country), 21 registered historic parks and gardens, two scheduled monuments and five areas of archaeological priority.

1.2 Westminster is, therefore, already one of the most intensively used places in the country. This intensity of use means that the existing physical and social infrastructure here is already in need of constant renewal. In the period to 2030 these pressures are likely to increase:

- GLA projections suggest there are likely to be up to 28,000 more residents; their age profile will change over time - there will be a small fall on 0-5s, a larger one (-2,000) in 5-18s, an increase in 19-34s (up 1,700), a big increase in 35-50s (3,900), an even bigger one in 50-64s (up 9,000), a substantial one in 65-90s (up 6,700) and a small (but in percentage terms quite high) increase in 90+s (up 1,400). This is likely to increase the demands on health and other forms of social infrastructure and for changes to transport and other physical infrastructure to meet the needs of an aging population.
- There are likely to be around 15,550 more households. This will increase the need for new homes of all kinds – and given the ageing of the population, more housing suitable for older people in particular. This additional demand is already being seen in the increase in the strategic housing target being set for Westminster by the Mayor, from the 770 homes per year for 2011-21 in the London Plan in 2011 to the 1,068 for 2015-25 per year in the further alteration to the London Plan adopted in March 2015. Within this, there will continue to be high demand for affordable housing.
- There will be something like 70,000 more jobs. The economy will be even more dominated by the private sector than now, with decreasing public administration employment. The

growth areas will be professional/real estate/scientific and technical, information/communication - and accommodation/food service activities. There may be a modest increase in two quite small sectors: finance; and arts, entertainment and recreation. These trends are likely to lead to the need for more offices and other workspaces, and probably more hotels and restaurants. Workers and customers will make additional demands on transport and the public realm; the new workspaces will draw on an already inadequate energy infrastructure.

- It will be warmer – we will be almost halfway to a time when what we think of now as a heatwave could be the summer norm. Government projections suggest that by the 2020s, compared with conditions between 1961-90 there will be an increase in mean summer temperature of 1.5 degrees and an increase of 6 per cent in mean winter rainfall, with a 6 per cent decrease in mean summer rainfall, increasing to 2.7 degrees, 25 per cent and -18 per cent respectively by the 2050s. These trends are likely to reinforce the importance of green space, the effective management of existing space and the extension of greening to help address the urban heat island effect that will otherwise make living and working in central London increasingly uncomfortable as well as increasing energy demands for cooling. It may also mean that some of our existing infrastructure (relating to health and welfare of older people, for example) is no longer fit for purpose.
- There will be more demand on the transport network, with 2.4 million more trips Londonwide compared with 2013. Westminster will handle a large proportion of these – demand for rail travel into central London is likely to increase by 36 per cent over the same period. Congestion is likely to grow – with, for example, 5.3 people per square metre on the central section of the Victoria Line. By 2020, levels of crowding on rail-based public transport will return to the levels seen before the investment that has been made in Crossrail, the Underground Upgrade Programme and Thameslink, which together expanded capacity by around 30 per cent. This will knock onto additional demands on stations and the areas around them.
- A growing population and increasing intensity of use is likely to raise new challenges to ensuring a good and improving quality of life for people living, working and visiting here increasing the need to address issues like air quality, noise, water and waste.
- Crossrail 1 will open in 2018. This will have a direct effect on transport and other infrastructure, particularly around stations on the new line. These impacts are likely to be intensified by the additional development in places served by Crossrail. Looking further into the future, the period is likely to see development of the case for, and then implementation of, Crossrail 2, stopping at Victoria and Tottenham Court Road. This will involve further demands on existing infrastructure and needs for further provision.

1.3 These pressures will increase both the demand for new development, and the need to ensure delivery of the infrastructure needed to enable that development. The 30 per cent increase in rail capacity being implemented between 2011-2019 has enabled central London to grow and the limits of this are already in sight. Development in parts of Westminster is already constrained by inadequate electricity distribution. In its Infrastructure Plan<sup>1</sup>, the City Council has identified 189 infrastructure projects together worth £2.6 billion required to support growth between 2012-

---

<sup>1</sup> Westminster City Council, Addendum to Westminster Infrastructure Plan: Technical Assessment 2006-2026 (August 2014)

2031 (79 public realm projects, 31 transport, 15 for community services, 14 apiece in education and utilities, 9 parks and open spaces, 8 sport and leisure, 3 community safety).

1.4 The planning system has an important role to play in responding to these pressures. Being clear about the policy requirements that will be made of new development is essential if the system is to work as it should. That is the purpose of this document, and the more strategic approach to overseeing the use of planning mechanisms in delivering infrastructure and other needs that it supports.

1.5 The City Council is committed to ensuring the continued prosperity and quality of life for Westminster and its people, it sees maintaining its economic strength in relation to London's overall economy as being an important element of this. As the spatial vision for the city set out in the Westminster City Plan: Strategic Policies puts it, the Council's objective is to make Westminster:

*“the foremost world class sustainable city. A city which values its unique heritage and accommodates growth and change to ensure its continued economic success while providing opportunities and a high quality of life for all of its communities and a high quality environment for residents, workers and visitors alike. In practice this is likely to mean:*

- *Ensuring there is the physical and social infrastructure needed to enable and encourage growth in ways that sustains a high and improving quality of life for existing and future residents, workers and visitors.*
- *Helping to meet the demand for workspaces of the kind and in the locations needed by the economic sectors that are likely to grow and ensuring these are integrated with the City and its infrastructure.*
- *Nurturing the things that make Westminster distinctive as a place to live, work, study and visit, including its world class heritage and urban environments, its parks and other green spaces, through a partnership-based approach to place-making.*
- *Ensuring Westminster residents receive the benefits of growth, living in a well-maintained, high quality environment supported by physical and social infrastructure to match. There is a particular need to address the needs of those at greatest risk of being left behind by growth, to make sure they have the skills and awareness to take full advantage of the opportunities a growing City will provide – and that firms have a skilled local workforce to draw on.”*

Meeting these objectives will mean making the most efficient, cost-effective use of the resources available. The planning system is one of the mechanisms available to address these issues, particularly through the use of the Community Infrastructure Levy and use of planning obligations (more commonly known as section 106 agreements after the legislation under which they are made). This document sets out the basis on which this will be done.

1.6 The City Council recognises that by the nature of Westminster's local economy, delivery of these objectives depends on being able to continue to attract private sector investment in the built environment and urban realm. This means taking a balanced approach which takes account both of the need to ensure that new development makes an appropriate contribution to delivery of the infrastructure and other planning policy requirements essential if it is to be sustainable (as well as profitable) and of the need to ensure landowners and developers can make a competitive return so that development is viable and can go ahead.

## The purpose of this document

1.7 This document provides advice and guidance on the policies in Westminster’s development plan about the circumstances on which proposed developments will give rise to the need for the City Council to use planning powers to support delivery of infrastructure and other provision needed if development is to be acceptable in planning terms against the background already described. As we have seen, managing the impact of development on the socio-economic, natural and built environment within Westminster is essential to ensure that development and growth is sustainable.

1.8 The document deals specifically with use of:

- Planning obligations under section 106 of the Town and Country Planning Act 1990 (as amended) – commonly known as “section 106 agreements”.
- The Community Infrastructure Levy (CIL). The City Council has been a collecting authority on behalf of the Mayor of London since 2012, and is currently in the process of setting its own CIL, as a charging authority in its own right.
- Agreements between the City Council as highway authority and “any person” to carry out highways works under section 278 of the Highways Act 1980 (as amended) – commonly known as “section 278” or “highway” agreements.
- Use of “planning conditions” which the City Council can impose on planning permissions under section 70(1) of the Town and Country Planning Act 1990 (as amended).

Each of these mechanisms is described in more detail in the next section.

1.9 This document is particularly intended to provide clarity about the extent of the requirements that will be made of developers to ensure sustainable development and transparency about what will be sought and how. In doing this it will set out a clear framework for all involved about how the viability of development will be assessed.

1.10 In Westminster, the statutory development plan currently comprises:

- Westminster’s City Plan: Strategic Policies (adopted November 2013) (<https://www.westminster.gov.uk/westminsters-city-plan-strategic-policies>)
- The London Plan (formally the Mayor’s spatial development strategy, adopted in 2011 and altered in October 2013 and March 2015) (<http://www.london.gov.uk/priorities/planning/london-plan>)
- The saved policies of the Westminster Unitary Development Plan (UDP) (adopted January 2007) (<https://www.westminster.gov.uk/unitary-development-plan-udp>)

The City Council is in the course of preparing detailed City Management policies to supplement and implement the strategic ones adopted in 2013. This work will result in a single Westminster City Plan providing a single comprehensive statement of planning policy. This document will be revised and consulted on with a view to adoption as a development plan document after that, as suggested by the National Planning Practice Guidance.

1.11 There is an existing “Supplementary Planning Guidance on Planning Obligations” which was adopted by the City Council on January 2008 and gives guidance on application of policies in the UDP and the version of the London Plan published in 2004. In the normal course of events, the City

Council would have produced new guidance once the City Plan was finally adopted, but changes to legislation and the process to set a Westminster Community Infrastructure Levy has meant that this interim document has had to be produced. **Once formally adopted, it will replace the 2008 document**, and will in turn be superseded to take account of new policies as they are developed in preparing the new Westminster City Plan and through the further alterations to the London Plan currently being promoted by the Mayor. This revision will probably take place in 2016.

1.12 This document will be a supplementary planning document for the purposes of Part 5 of the Town and Country Planning (Local Planning) (England) Regulations 2012 and will be prepared in accordance with the procedure set out there:

- Those with an interest in the issues it covers will be involved in its preparation. This will be done informally initially, in conjunction with the council's consultation on its CIL draft charging schedule (see below).
- It will be one of the documents that will be placed in front of the public examination of the council's CIL proposals, and there will be an opportunity to make further comments at that stage.
- There will then be a further period of more formal consultation.
- The City Council will then formally adopt the document as a supplementary planning document.

1.13 In accordance with the National Planning Policy Framework, this document is being prepared with the intention of helping applicants to make successful planning applications and to aid infrastructure development. It does not add unnecessarily to the requirements made of development.



## 2. Legal background

### What are Planning Obligations?

- 2.1 Planning obligations are contractual agreements made under section 106 of the Town and Country Planning Act 1990 (as amended by later legislation), between any person with an interest in land and the local planning authority, which:
- restrict, the development or use of land in a particular way;
  - require particular things (“operations or activities”) to be carried out in, on, over or under land;
  - require it to be used in a particular way; or
  - require a sum or sums of money to be paid to the authority on a specified date or dates or periodically.
- They are usually entered into in connection with a planning application.
- 2.2 Section 106 has been used by local planning authorities as an effective mechanism to allow, in appropriate circumstances, planning permission to be granted for development proposals that might have otherwise been considered unacceptable in planning terms. This may be because of their impact on neighbouring uses or a wider area, for example. Planning obligations are intended to be a mechanism that can be used to make a development acceptable in planning terms by according with the local development plan.
- 2.3 Most planning obligations are entered into by agreement between the parties. It is also possible for a person with an interest in land to give a “unilateral undertaking” to carry out works or whatever the undertaking may require. These are still binding and can be enforced by the local planning authority. They are sometimes used in cases where developers and authorities are not able to reach agreement (about the amount of affordable housing to be provided, for example) or in connection with the discharge of planning conditions – unilateral undertakings will be taken into account by planning inspectors and the Secretary of State in deciding planning appeals.
- 2.4 In either case, planning obligations are binding on those entering into them and on their successors in title. Obligations “run with the land” and are registered as local land charges. Anyone who acquires the land is then bound by the obligations affecting it. They are enforceable under the 1990 Act and also under the law of contract.
- 2.5 The 1990 Act allows a person bound by a planning obligation to apply to the local authority to modify or discharge it after a period of five years from the date it was entered into. Where an application of this kind is made the authority can decide that:
- the obligation should continue in force without modification; or
  - if it decides the obligation no longer serves a useful purpose, it should be discharged completely; or
  - if it decides the obligation does continue to serve a useful purpose but it would serve it equally well if it had effect subject to the modifications in the application, it can agree them.

There are rights of appeal to the Secretary of State if applications are refused, or are not determined within a prescribed period.

- 2.6 In 2013 the Government made a further change to the law to enable applicants to apply for modification or discharge of planning obligations requiring provision of affordable housing to apply to the local planning authority for that part of an obligation to be discharged or modified where they can show that this is necessary to make a scheme economically viable. Again, there are rights of appeal to the Secretary of State should an application be refused by the council or not determined within the prescribed period. An application under this provision can be made at any time after the obligation has been signed.
- 2.7 When used in connection with a planning application, planning obligations are used to ensure that developments are acceptable in planning terms – for example to mitigate the impacts of a development; prescribe the form it may take; or compensate for any loss caused by it. The Community Infrastructure Levy Regulations 2010 (as amended) provide that as from 6 April 2015 planning obligations can only be taken into account in taking decisions on planning applications where they are:
- necessary to make the development acceptable in planning terms;
  - directly related to the development; and
  - fairly and reasonably related in scale and kind to the development.
- 2.8 One of the strengths of planning obligations has been their flexibility in addressing the cumulative impacts of growth by allowing the “pooling” of contributions from a number of different developments for things like increasing the capacity of schools, with the sums paid fixed through a formula based on the impact of each development (the extent to which this is possible in respect of infrastructure has been restricted by the CIL Regulations – see paragraphs 2.19 and 2.20 and Section 16 below). Used effectively in individual cases or across developments of particular types, planning obligations can contribute to the achievement of the council’s vision for the spatial development of the City by ensuring that development accords with relevant planning policy requirements. They have played a key role in helping to manage the impacts of development on the public services and infrastructure that the City of Westminster’s residents and workers rely upon.

## **What is the Community Infrastructure Levy?**

- 2.9 The Community Infrastructure Levy (CIL) was introduced in 2010. It is a charge on new development at rates set by “charging authorities” (in London the boroughs and the Mayor) to help pay for new or improved infrastructure that addresses a local authority’s more area-wide needs arising from development. The Mayor has had a CIL in place since April 2012 to collect contributions to help pay for Crossrail. Westminster is in the course of setting its own local CIL.
- 2.10 The CIL can apply to all new development in an area which consists of buildings to which people normally go (and so not to structures that are not buildings, or to buildings that people only go to inspect or maintain machinery) and which involve an increase in floorspace of 100 sq m or more or which comprise one or more dwellings. There are exemptions for development by charities for charitable purposes, for self-build housing and for residential annexes or extensions. There is also a relief that can be claimed for social housing. Charging authorities can also make available a number of other reliefs if they choose to do so – for development by charities for investment purposes and for exceptional circumstances. CIL rates are set by charging authorities through a legal document called a “charging schedule”; charge(s) are set at a rate per square metre of development and can include differential rates as determined by land use, size of development and/or geographical area.

- 2.11 The liability to pay CIL arises when planning permission is granted for a development; it is paid when work starts and the development “commences”. In the case of outline planning permission, liability arises when the last reserved matter associated with the planning permission is approved. With larger developments which are carried out in phases, each phase is treated separately.
- 2.12 CIL is intended to be used to fund the provision, improvement, replacement or maintenance of infrastructure required to support development in an area as set out in its local plan. This could include new roads and transport, local amenities such as parks, community centres, schools and health facilities. Affordable housing is explicitly excluded from the list of things on which CIL can be spent by charging authorities.
- 2.13 Charging authorities are required to put by a “neighbourhood portion” of the CIL collected in each neighbourhood – 15% of the amounts paid in respect of local development (25% in places where there is a neighbourhood plan). This portion is to be spent on infrastructure or “anything else that is concerned with addressing the demands that development places on an area”. Where there is a community council (as there is at Queen’s Park in Westminster), that portion has to be paid to it; elsewhere the City Council would retain the neighbourhood portion and decide how it is spent in consultation with neighbourhoods.

## What is section 278?

- 2.14 Under section 278 of the Highways Act 1980 (as amended), where a highway authority is satisfied that it will benefit the public to do so, it can enter into an agreement with any person to carry out any works the authority has the powers to carry out “on terms that that person pays the whole or such part of the cost of the works as may be specified in or determined in accordance with the agreement.” These costs can include those incurred by the authority in making the agreement; making or confirming any scheme or order needed for the purpose of the works concerned; the granting of any authorisation, permission or consent required for the works; the acquisition of any land required for the purposes of the works; and all relevant administrative expenses of the authority. Agreements can also provide for the making of to the authority of payments in respect of maintenance of the works to which the agreement refers.

## What are planning conditions?

- 2.15 Planning law enables local planning authorities to grant planning permission subject to conditions<sup>2</sup>. These can be used to improve the quality of development, and to allow proposals that would otherwise have had to be refused to go ahead by managing and limiting their adverse impacts. They can deal with things like detailed design, ensuring building work is carried out in ways that minimise the effects on neighbours and mitigating the effects the development might have on the local environment (to limit noise, light and other pollution, or require a travel plan to help manage the additional demand a development causes for the local transport network), for example.
- 2.16 The 1990 Act allows councils to use planning conditions to regulate the development or use of any land under the control of an applicant (whether or not it is land that is subject to the application) or to require the carrying out of works on such land, where it considers this is expedient for the purposes of, or in connection with, the development for which planning permission is granted.

---

<sup>2</sup> Town and Country Planning Act 1990, section 70(1)

Conditions can also be used that prevent development from starting before certain steps are taken, even on land that is not owned by the developer concerned.

2.17 Government guidance sets out six tests that must be met if a planning conditions is to be used in a particular case:

- Is it *necessary*? Will it be appropriate to refuse planning permission without the requirements imposed by the condition?
- Is it *relevant to planning*? Does the condition relate to planning objectives, and is it within the scope of the permission to which it is to be attached?
- Is it *relevant to the development concerned*? Does the condition fairly and reasonably relate to the development to be permitted?
- Is it sufficiently *precise*? Is it written in such a way to make it clear to the applicant and to others what must be done to comply with it?
- Is it *reasonable in all other respects*?

Conditions must not be so burdensome or disproportionate that they make a development economically unviable. They cannot require that land is formally given up to other parties, and they cannot require the payment of money. On the other hand, so long as the six tests are met they can prohibit development allowed by the planning permission to go ahead until a specified action has been taken (for example entering into a planning obligation requiring payment of a financial contribution towards the cost of supporting infrastructure).

2.18 Government guidance also states that planning conditions should be used to address unacceptable impacts of a development in preference to planning obligations, with the latter only being used where in it “not possible” to deal with an issue through a condition<sup>3</sup>. This document applies this general principle wherever appropriate.

## How do these powers inter-relate?

2.19 The Government’s intention is that the CIL should replace the use of pooled planning obligations as the principal mechanism in the planning system for facilitating the delivery of infrastructure associated with the demands of new development. In designing the CIL they have also sought to avoid authorities from using both the CIL and section 106 (and most recently section 278) to fund the same infrastructure – what has become known as “double dipping”. The CIL Regulations include limitations on the use of section 106 intended to apply these principles.

2.20 The first limitation is intended to scale back the use of section 106 agreements to fund infrastructure, in particular by preventing “pooling” arrangements. Prior to the introduction of the CIL regulations it had become common for local authorities to adopt a tariff based approach requiring general financial contributions towards the delivery of infrastructure, for example non-specific education or transport contributions. Under regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended), from 6 April 2015 (or the date on which an authority starts charging CIL, whichever is the earlier) a planning obligation cannot be taken into account in deciding a planning application if:

- It provides for the funding or provision of an infrastructure project or type of infrastructure; and

---

<sup>3</sup> National Planning Policy Framework, paragraph 203

- Five or more separate obligations relating to planning permissions granted for development within an authority's area which provide for the funding or provision of that project or type of infrastructure have been entered into since 6 April 2010 (it should be noted that these provisions do not apply to contributions towards the cost of Crossrail 1 sought by the Mayor – see section 11.6).

The effect of this is that as far as planning obligations relate to things that are regarded as “infrastructure”, their use will have to be scaled back to matters that are directly related to a specific site and meet the three tests set out in section 2.7. Planning obligations to secure non infrastructure planning policy requirements will not be restricted in the same manner and will continue to be secured through the use of Section 106 agreements and unilateral undertakings.

- 2.21 The second limitation is aimed at preventing “double dipping”. Regulation 123(2) states that planning obligations cannot be taken into account in determining planning applications if they provide for the funding or provision of “relevant infrastructure”. Where a CIL has been adopted, “relevant infrastructure” means any infrastructure at all, unless a charging authority has published on its website a list of infrastructure types or projects that it intends will be, or may be, wholly or partly funded by CIL (other than by CIL passed to a community council) – in which case it will be the items listed that will be treated as “relevant infrastructure” for this purpose. Lists of this kind have become known as “Regulation 123 Lists”.
- 2.22 Planning obligations for infrastructure that is not on the Regulation 123 list may however still be used as a reason to grant planning permission providing that the obligation also meets the Regulation 122 legal tests, as set out above. However, where a CIL has been adopted and no list has been published planning obligations for the provision of any type of infrastructure cannot be used at all as a reason for granting planning permission.
- 2.19 The same principle has been applied to section 278 agreements (the CIL Regulations call these “highway agreements”). The CIL Regulations now prevent the imposition of a condition on a planning permission or a planning obligation either requiring a section 278 agreement for the funding or provision of “relevant infrastructure” or preventing or restricting the carrying out of development until a section 278 agreement has been entered into for the funding or provision of relevant infrastructure has been entered into.
- 2.20 The City Council will publish a regulation 123 list which will set out the types of infrastructure that may be funded by CIL - there is no requirement to spend CIL on things that appear on the list, and nothing to prevent CIL being spent on things not on the list, subject to the overall principle that the cost of funding or providing infrastructure should be met through one mechanism or the other, but not both. The draft regulation 123 list is attached as Appendix A; as noted this is a “living” document and is subject to change in the light of further consultation and discussion.
- 2.21 The effect of these provisions is that as far as the provision or funding by new development of things that fall within the definition of “infrastructure” is concerned, section 106 is restricted to addressing site-specific impacts of individual schemes in ways meeting the legal tests. Things that are not “infrastructure” (including affordable housing) will continue to be sought through section 106 as before.
- 2.22 Given the background explained in section 1 of this document, it will be appreciated that considerable care has to be taken in deciding what will be “relevant infrastructure”, and what

infrastructure items should continue to be dealt with through planning obligations and highway agreements. There is a need to ensure delivery of infrastructure required to support growth and development across the City; it is also important to retain sufficient flexibility to deal with issues raised by particular development proposals. There is a need to ensure a balance between infrastructure and other items, notably affordable housing. Given the differences in the individual circumstances of each development, it is only possible to provide clarity about the basis on which the likely financial requirements to be made of development will be assessed rather than deal comprehensively with the outcome – and the relevant Government guidance reflects this.<sup>4</sup>

---

<sup>4</sup> Department for Communities and Local Government, Planning Practice Guidance: Community Infrastructure Levy, para. 25-029

## 3. Policy background

- 3.1 This section sets out the national, London-wide and local Westminster policy framework within which the City Council uses its planning and related powers (CIL, planning obligations and highway agreements) to secure its policy requirements to enable sustainable planning for individual developments and for the City of Westminster as a whole, within the legal requirements explained in the previous section. The subject-specific sections that follow set out the policy frameworks underpinning each specific field in which these various powers are applied.

### National policy

- 3.2 The National Planning Policy Framework (NPPF) sets out the Government planning policies for England and how these are expected to be applied in order to deliver sustainable development. The NPPF must be taken into account in the preparation of local and neighbourhood plans (and documents like this one). It is also a material consideration in taking planning decisions.
- 3.3 The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development, which it defines by reference to three “dimensions” – economic, social and environmental. It recognises that these are inter-related and mutually dependent, and therefore that “to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system”<sup>5</sup>.
- 3.4 The NPPF sets a presumption in favour of sustainable development, encouraging a positive approach to decision-making on development proposals where possible. It recognises the value of planning obligations and other mechanisms in achieving this, stating that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations<sup>6</sup>. It states, however, that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition and that they must meet all of the legal tests set out in Regulation 122 of the CIL Regulations (see paragraph 2.7 above)<sup>7</sup>.
- 3.5 The Framework advises that pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-making. Accordingly, sites and the scale of development identified in local plans should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, infrastructure contributions and other standards or requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing developer to enable the development to be deliverable<sup>8</sup>.
- 3.6 It states that the CIL should support and incentivise new development, particularly by placing control over a meaningful proportion of the funds raised with the neighbourhoods where development takes place<sup>9</sup>.

---

<sup>5</sup> NPPF, paragraph 8

<sup>6</sup> NPPF, paragraph 203

<sup>7</sup> NPPF, paragraph 204

<sup>8</sup> NPPF, paragraph 173

<sup>9</sup> NPPF, paragraph 175; see paragraph 2.13 above

- 3.7 The NPPF is clear that where safeguards are necessary to make a particular development acceptable in planning terms (such as environmental mitigation or compensation), it should not be approved if the measures required cannot be secured through appropriate conditions or agreements. The need for safeguards of this kind should be clearly justified through discussions with the applicant and the options for keeping such costs to a minimum fully explored to ensure development is not inhibited unnecessarily<sup>10</sup>
- 3.8 The Framework states that supplementary planning documents (SPD) should be used where they can help applicants make successful applications or aid infrastructure delivery, but that they should not be used to add unnecessarily to the financial burdens on development.
- 3.9 The City Council agrees with, and seeks to apply, the approach set out in the NPPF in its plan-making and decision-taking. This position informs the approach taken in this document and in the council's Community Infrastructure Levy proposals. Westminster's City Plan and the London Plan have both been adopted in full compliance with the NPPF, and as will be seen the "saved" UDP policies referred to later are consistent with it. It is not the purpose of this SPD to require planning obligations beyond the scope of the policy requirements already set out in these plans; as such it should not add to the costs of complying with current policies. The purpose of this SPD is to provide further detail to the policies in this plan and whilst it is not part of the development plan it will be a material consideration in making planning decisions.
- 3.10 The Government has also published more detailed National Planning Practice Guidance. On planning obligations, this echoes the NPPF regarding their purpose and use. It states that where the CIL is in place for an area, the charging authority should work with developers to ensure they are clear about their infrastructure needs and what developers will be expected to pay for through which route – there should not be actual or perceived "double dipping"<sup>11</sup>. It emphasises the importance of ensuring that policy for seeking obligations should be grounded in an understanding of development viability and that on individual schemes applicants should submit evidence on scheme viability where obligations are under consideration<sup>12</sup>.
- 3.11 The NPPG also provides guidance on the CIL, how it is set, collected and used. It also explains the relationship between CIL, planning obligations and highway agreements. It has recently been amended to seek to restrict local planning authorities' use of planning obligations to secure affordable housing and tariff-style infrastructure contributions for smaller-scale developments (defined in the NPPG as those of 10 units or less and which have a combined gross floorspace of no more than 1,000 sq m.). The City Council is currently considering its longer-term response to this change, which may include changes to development plan policy; in the meantime it has had regard to this policy guidance in preparing this document.

## Regional Planning Policy Framework

- 3.12 The Mayor of London's spatial development strategy (commonly known as "the London Plan") was published in its current form in 2011, with early minor alterations in 2013 and further alterations

---

<sup>10</sup> NPPF paragraph 176

<sup>11</sup> National Planning Practice Guidance, paragraph 23b-002

<sup>12</sup> NPPG, paragraph 23b-007



published in March 2015. The London Plan is the overall strategic plan for London which aims to set out an integrated economic, environmental, transport and social framework for the development of the capital to 2036. It forms part of the development plan for Greater London with London boroughs' local plans being required to be in general conformity with it. It also explains the considerations the Mayor will take into account in dealing with the planning applications which are referred to him.

- 3.13 Chapter 8 of the London Plan sets out the Mayor's policies and considerations on planning obligations. Policy 8.2 states that development proposals should address strategic as well as local priorities in planning obligations and states that affordable housing, supporting the funding of Crossrail and other public transport improvements should be given the highest importance. Importance should also be given to tackling climate change, learning and skills, health facilities and services, childcare provisions and the provision of small shops.
- 3.14 Unlike anywhere else in the country the Mayor of London is also empowered to establish a CIL for strategic transport in London. The Mayor of London adopted a CIL Charging Schedule on 1 April 2012 which imposes a mandatory charge of £50 per square metre in Westminster against all but health, and education floorspace. The council, as a London local authority, is required to collect the Mayoral CIL. The proceeds of the Mayor's CIL are currently being used to fund Crossrail. This position is recognised in London Plan Policy 8.3.

## Westminster's local planning policy framework

- 3.15 Westminster's City Plan: Strategic Policies (2013) sets out the vision for the City of Westminster up to and beyond 2026/27 (see section 1.5 above) and puts in place a policy framework to deliver that vision. Taken as a whole, it is the local expression of sustainable development against the growth and other trends likely to affect the city and its development over the plan period. Its purpose is to balance competing requirements and demands to deliver against economic, social and environmental objectives. Looking to the future, it will deliver sustainable economic development including homes, business premises and infrastructure in a way that enhances those key attributes that make Westminster a great place to live, work and invest and helps create thriving sustainable communities.
- 3.16 Policy S47 sets out the overall policy approach to development proposals embodying these principles, stating that when considering development proposals:

*"the council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area"*

The practical guidance in this document reflects the spirit and intention of this policy.

- 3.17 Policy S33 in the City Plan: Strategic Policies deals with delivering infrastructure and planning obligations. It states that development:

*“will be supported by upgrades to existing infrastructure and the provision of new infrastructure to enable it to be sustainable. Working with its partners, the council will identify this infrastructure, its costs and any shortfalls in funding and will ensure this infrastructure is:*

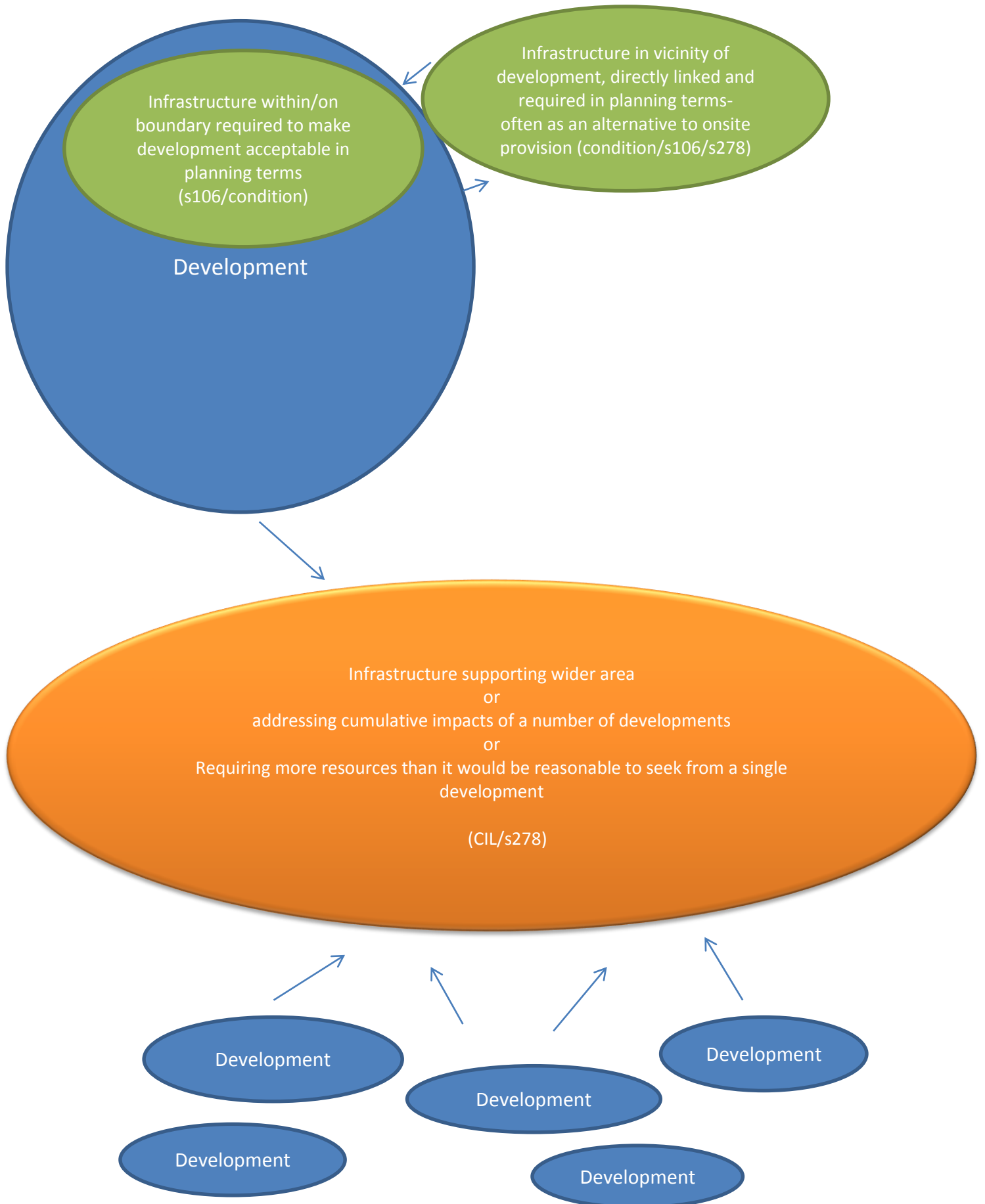
- phased and delivered in a timely manner to support growth; and*
- funded through the Community Infrastructure Levy or planning obligations, where this complies with relevant legislation.*

*When negotiating planning obligations, the council will secure the mitigation of the directly related impacts of development; ensure the development complies with policy requirements within the development plan; and, if appropriate, seek the provision or contributions for supporting infrastructure.*

*Planning obligations and Community Infrastructure Levy contributions will be sought at a level that ensures the overall delivery of appropriate development is not compromised”.*

## **4. The Council's approach to planning obligations and CIL**

- 4.1 As explained in section 2 of this document, the CIL does not spell the end of section 106 agreements. But where a local planning authority publishes in its regulation 123 list that it may fund a piece of infrastructure (e.g. a new road) through CIL, it cannot take a planning obligation to either provide or contribute towards the same infrastructure into account in granting planning permission as well.
- 4.2 Section 106 agreements will still be required for infrastructure required to address site specific mitigation – typically things within or on the boundary of a development which deals with an issue that, if it went unaddressed, would mean the development was unacceptable in planning terms and that permission would have to be refused. In considering this point it is worth bearing in mind the nature of development in Westminster is such that there are relatively few schemes on such a scale that they will in themselves generate such a demand for many types of infrastructure that it will be appropriate to require on-site provision.
- 4.3 On the other hand, CIL will be used to fund delivery of infrastructure requiring an area-based approach and/or more resources than it is reasonable to expect to be able to secure from a single developer. At this scale, it is likely that infrastructure will be supporting the development of an area rather than to make individual planning applications acceptable in planning terms, helping to unlock development and support growth at strategic and local levels. This is the kind of thing that CIL is intended to fund. This principle, the application of which is dealt with in more detail in the subject-specific sections of this document, is illustrated overleaf:



4.4 In accordance with the restrictions on the pooling of planning obligations requiring financial contributions from more than five developments in the CIL Regulations, a number of the City Council's tariff-based policies will come to an end on 6<sup>th</sup> April 2015:

- CCTV contributions
- Public realm contributions, including contributions for the delivery of the North West Westminster Special Policy Area
- Social/community/culture
- Education contributions
- Open space and playspace, including pooled contributions towards improvements to public space in priority areas
- Contributions towards the cost of parking improvements
- Healthcare
- Waste Management Fund

4.5 The restrictions on use of planning obligations do not apply to their use for supporting things that do not fall within the scope of the definition of "infrastructure" in section 216 of the Planning Act 2008 (as amended). There will continue to be a degree of pooling of contributions to cover:

- Affordable housing and mixed use development
- Local employment, training and skills initiatives
- Non-infrastructure steps to reduce carbon emissions to offset savings that cannot be made by new development on-site.

The arrangements that will be put in place during any interval between 6<sup>th</sup> April 2015 and adoption of Westminster's CIL are dealt with in section 14.

4.6 Other policy requirements will be sought either by seeking to ensure they are included in the design of schemes and secured, where necessary by the appropriate use of planning conditions (or, exceptionally, planning obligations) – for example the provision of playspace in a residential development.

4.7 CIL is likely to be used to fund most types of infrastructure, for example:

- Social and community facilities of a kind or on a scale which goes beyond what is essential to make a particular scheme acceptable in planning terms and/or which it would be unreasonable to seek from an individual development.
- Open space and play space on a scale that goes beyond what is essential to make a particular scheme acceptable in planning terms
- District heating schemes
- Strategic public transport infrastructure (such as stations)
- Area-scale improvement to public transport, public realm, cycle safety, wayfinding and legibility and the pedestrian environment
- Highway improvements beyond the requirements of a specific development site
- Shared freight/servicing facilities
- Closed circuit television and other community safety infrastructure outside of the development site
- Waste facilities outside or not otherwise directly linked to the development for s
- The physical provision of supported enterprise space (such as shared offices/workshops)

The process for developing the final list of projects or infrastructure types to be funded through CIL is still being developed. It is likely to include a process of consultation with neighbourhoods, businesses and their representative organisations (including business improvement districts), infrastructure providers (such as Transport for London) and others. It will result in a list to be published under regulation 123 of the CIL Regulations which is likely to be kept under regular review.

- 4.8 The next sections of this document deal with the detailed application of these principles to the cases in which use of planning obligations will continue.

## Viability

- 4.9 The City Council shares the Government’s concern that the requirements made of development should not be so onerous that landowners and/or developers cannot secure a competitive return which reflects the risks taken by those concerned. If a development is made unviable and does not proceed, the city will miss the opportunity to secure a modernised urban realm embodying the latest environmental and design standards and providing opportunities for its people. It is not possible to secure new infrastructure from a development that does not happen. On the other hand, development does increase the need for new infrastructure and if that is not delivered, there will come a point at which further development will become impossible.
- 4.10 The City Council will take a balanced approach to issues of viability. It will be clear about its expectations and realistic in their application in particular cases. It will carefully consider any representations from developers that particular circumstances mean these expectations have to be adjusted, but will expect these to be fully evidenced and in a format that enables them to be used to inform decision-making by the City Council’s members and officers. Further detail about the approach that will be taken to viability is given in section 17 of this document.
- 4.11 This document has been prepared in parallel with the City Council’s CIL preliminary draft charging schedule, and has drawn on the Viability Assessment commissioned from BNP Paribas Real Estate as part of the CIL evidence base and other evidence of viability commissioned by the council and others. Having regard to past practice in Westminster, this report assumed that after introduction of CIL, the residual planning obligations and highways agreement requirements linked with new development (excluding affordable housing and the Mayor’s planning obligation policy to contribute to the funding of Crossrail) would amount to £20 per square metre. The City Council is adopting this figure as a strategic benchmark figure for the purposes of this document and future negotiation with applicants. Some schemes may pay more, some may pay a lower amount, depending on the circumstances of each case, but this figure will be used to inform discussions around use of these planning mechanisms.

## Major development

- 4.12 The terms “major development” and “large major development” are used widely in the subject-specific sections that follow. Unless it is clear to the contrary in the text (and this is particularly the case in Section 10 dealing with Energy and Climate Change), these terms should be construed in accordance with the definitions in the Glossary to Westminster’s City Plan: Strategic Policies:

- **Major development** means development where:
  - the proposed number of new residential units to be attained from the proposal is between 10 and 199 or a site area of between 0.5 hectares and less than 4 hectares; or
  - The proposed gross floorspace to be built or created is between 1,000 sq m and 9,999 sq m or a site area of between 1 hectare and less than 2 hectares.
- **Large-scale major development** means development where:
  - the proposed number of new residential units to be attained from the proposals is 200 or more or a site area of more than 4 hectares; or
  - the proposed gross floorspace to be built or created is 10,000 sq m or more or a site area of 2 hectares or more.

4.13 Section 10 uses the London Plan definition of “major development” – development where:

- For **dwelling**s: where 10 or more are to be constructed (or if number is not given, area is more than 0.5 hectares). This definition pre-dated changes to the National Planning Policy Guidance that provided that contributions should not be sought through planning obligations from “small scale” developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm (gross internal area).
- For **all other uses**: where the floorspace will be 1,000 sq m or more (or the site area is 1 hectare or more). The site area is that directly involved in some aspect of the development. Floorspace is defined as the sum of floor area within the building measured externally to the external wall faces at each level. Basement car parks, rooftop plant rooms, caretakers’ flats etc. should be included in the floorspace figure.

4.14 These thresholds will have to be applied having regard to the recent changes to the National Planning Policy Guidance stating that contributions for affordable housing and tariff-style infrastructure contributions should not be sought in respect of developments of 10 units or less and which have a combined gross floorspace of no more than 1000 square metres. From 6<sup>th</sup> April 2015, Westminster will no longer seek tariff-style infrastructure contributions.

## 5 Affordable housing and mixed-use development

### 5.1 Affordable housing

NB The approach that will be taken by the City Council in calculating the proportion of floorspace to be sought as affordable housing in different schemes is set out in detail in an Interim Guidance Note published by the Council in November 2013. ([http://transact.westminster.gov.uk/docstores/publications\\_store/Interim%20note%20revised%20Autumn%202013.pdf](http://transact.westminster.gov.uk/docstores/publications_store/Interim%20note%20revised%20Autumn%202013.pdf)). This section provides a summary for ease of reference.

5.1.1 **Objective:** Westminster is among the most expensive places to buy or rent a home in the country, second only to Kensington and Chelsea in terms of average house prices. In 2013, the average house price here was 220% that of London as a whole. There are currently 4,500 households in priority need on the waiting list for social housing, with 3,800 households registered with “Homeownership Westminster” for intermediate housing in the City. There is a backlog of 5,180 households in affordable housing need. There is therefore an acute need to provide more affordable housing here, and the planning system will have a significant part to play in helping to meet that need.

5.1.2 **Policy basis:** There is support for use of planning obligations to secure affordable housing at national and regional levels:

- The *National Planning Policy Framework* emphasises the need for local planning authorities to boost significantly the supply of housing<sup>13</sup> and states that where they have identified that affordable housing is needed they should set policies for meeting this need on-site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified and the agreed approach contributes to the objective of creating mixed and balanced communities<sup>14</sup>.
- Policy 3.11 in *The London Plan* (July 2011 and as altered) states that the Mayor will and boroughs should seek to maximise affordable housing provision and ensure an average of at least 17,000 more affordable homes each year are delivered. Policy 3.12 states that the maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential and mixed use sites. Negotiations on sites should take account of their individual circumstances including development viability, resources available from registered providers (including public subsidies), the implications of phased development and other scheme requirements. It states that affordable housing should normally be provided on-site; in exceptional circumstances where this is not appropriate it may be provided off-site. A cash in lieu contribution should only be accepted where this would have demonstrable benefits in furthering affordable housing and other policies and should be ring-fenced and poled as appropriate to secure additional affordable housing on identified sites elsewhere or as part of an agreed programme for provision of affordable housing. Policy 3.13 states that affordable housing should normally be required on sites with the capacity to provide 10 or more homes.
- In *Westminster’s City Plan: Strategic Policies* (adopted in November 2013), policy S16 states that the council will aim to exceed 30% of new homes to be affordable homes, and will work with its partners to facilitate and optimise the delivery of new affordable homes. It states that proposals for housing developments of either 10 or more additional units or over 1,000 sq m additional

---

<sup>13</sup> NPPF, paragraph 47

<sup>14</sup> NPP, paragraph 50



residential floorspace will be expected to provide a proportion of the floorspace as affordable housing. The affordable housing will be provided on-site. Where the council considers that this is not practical or viable, the affordable housing should be provided off-site in the vicinity of the development. Off-site provision beyond the vicinity of the development will only be acceptable where the council considers that the affordable housing provision is greater and of a higher quality than would be possible on- or off-site in the vicinity, and where it would not add to an existing localised concentration of social housing.

- 5.1.3 **Threshold and definitions:** Having regard both to national guidance and adopted local policies and the circumstances of each case, affordable housing will be sought from all proposed developments including 11 or more units of housing or over 1,000 sq m of residential floorspace. In accordance with regional policy, it will be sought on the basis of 60% social rented housing and affordable rented housing and 40% intermediate housing (the City Council is consulting on proposals to change this policy to seek 60% intermediate housing and 40% social/affordable rented).

In accordance with the National Planning Policy Framework, “affordable housing” means social rented, affordable rented and intermediate housing, that meet general affordable housing criteria - provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. It will be subject to provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

“Social rented housing” is owned by the City Council and private registered providers (like housing associations and for which guideline target rents are determined through the national rent regime). It may also be owned by other persons and provided under equivalent rental arrangements by agreement with the City Council or the Mayor of London.

“Affordable rented housing” is let by the City Council or private registered providers of social housing to households who are eligible for social rented housing. It is subject to rent controls requiring a rent of no more than 80% of local market rent (including service charges, where applicable). Applicants’ attention is drawn to the City Council’s Affordable Rent Statement which sets out its approach to this housing product: [http://transact.westminster.gov.uk/docstores/publications\\_store/Affordable Rent Statement and Stat Appendix FINAL September 11.pdf](http://transact.westminster.gov.uk/docstores/publications_store/Affordable_Rent_Statement_and_Stat_Appendix_FINAL_September_11.pdf).

“Intermediate housing” is homes for sale and rent provided at a cost above social rent but below market levels and subject to the general affordable housing criteria for eligibility and future provision/subsidy recycling. This category includes shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent. It does not include affordable rented housing.

Homes that do not meet this definition may not be considered as affordable housing for planning purposes.

A “housing unit” means 100 sq m. This is equivalent to a reasonably-sized home, having regard to the London Plan and London Housing Design Guide.

An “affordable housing unit” means 80 sq m. This reflects the fact that in Westminster affordable homes tend to be smaller than market ones.

5.1.4 **Application:** Where the affordable housing threshold is met or exceeded, the affordable housing provision will be sought as a proportion of floorspace. The specific proportions that will be sought have been based on past practice under the previous Unitary Development Plan (specifically policy H4 and its supporting tables 3.1-3.3) and evidence from the Affordable Housing Viability Assessment prepared for the Council by DTZ ([http://www3.westminster.gov.uk/docstores/publications\\_store/Westminster\\_affordable\\_housing\\_viability\\_July2010.pdf](http://www3.westminster.gov.uk/docstores/publications_store/Westminster_affordable_housing_viability_July2010.pdf)).

The maximum floorspace proportions of affordable housing that will be sought in negotiation are as follows:

- **25%** of floorspace on sites in Core CAZ, the Paddington Opportunity Area and the “named streets” in Marylebone and Fitzrovia identified in the Glossary to Westminster’s City Plan: Strategic Policies (Edgware Road, Baker Street, Marylebone Road, Portland Place, Park Crescent and Great Portland Street - which are treated for policy purposes as though they are in the CAZ), where the proposal relates to land having a low existing use value – see Table 1
- **35%** of floorspace on sites outside Core CAZ, the Paddington Opportunity Area and the named streets where the proposal relates to land not having a low existing use value – see Table 2
- **35%** on sites outside Core CAZ, Paddington Opportunity Area and named streets in Marylebone and Fitzrovia, where the proposal relates to land not having a low existing use value (as opposed to 50% of units in the UDP). (Table 3).

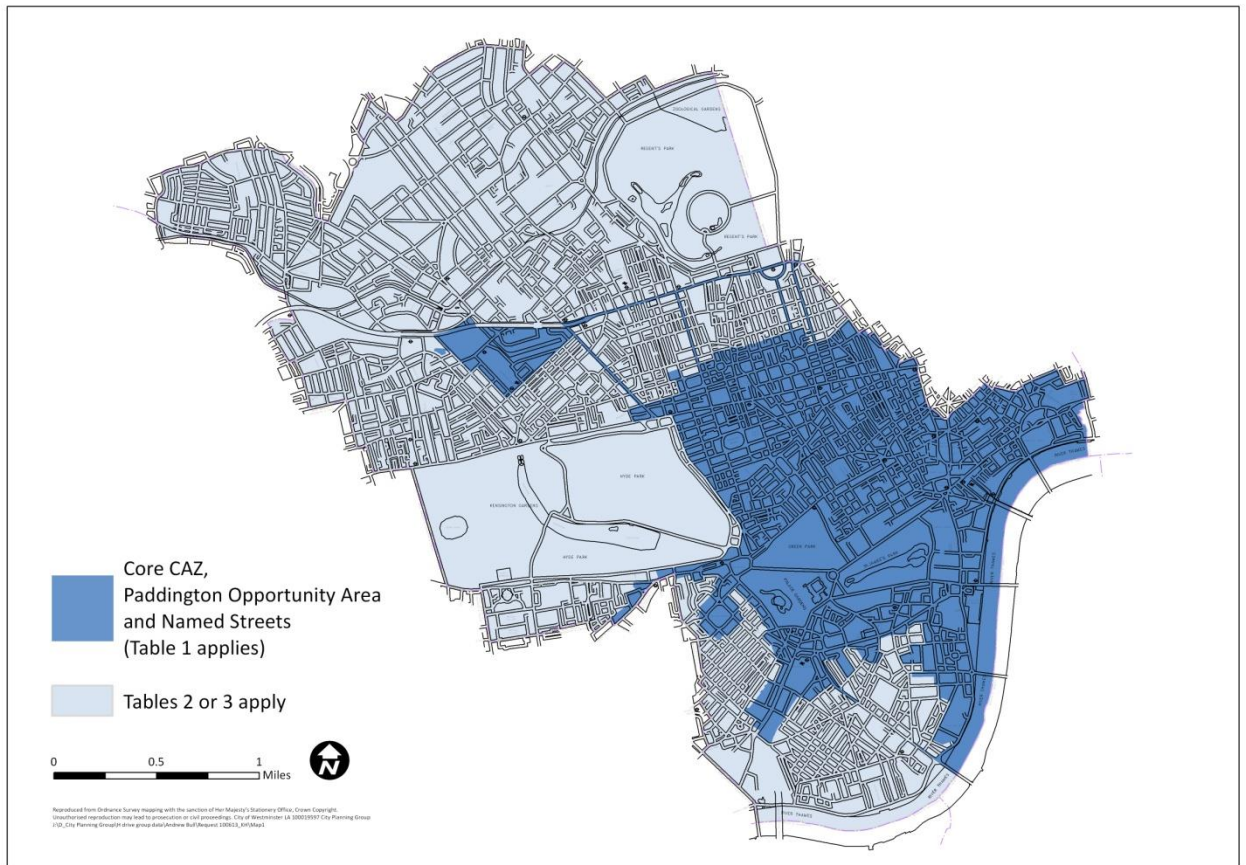
The floorspace requirements set out in the tables below have been adjusted in order to ensure that no floorspace requirements exceeds the maximum floorspace proportions considered viable in the Affordable Housing Viability Assessment. Map 1 illustrates the areas the tables apply to.

<b>Additional floorspace/units (gross external sq m)</b>	<b>Floorspace requirement (in sq m)</b>
10 – 11 units but < 1,000	80
12 – 14 units but < 1,000	160
15 + units but < 1,000	240
1,000-1,199	80
1,200-1,499	160
1,500-1,799	240
1,800-1,999	320
2,000-2,199	400
2,200-2,399	480
2,400-2,499	560
<b>2,500+</b>	<b>25%</b>

<b>Table 2 Sites outside Core CAZ, Paddington Opportunity Area and named streets in Marylebone and Fitzrovia, where the proposal relates to land having a low existing use value</b>	
<b>Additional floorspace/units (gross external)</b>	<b>Floorspace requirement (in)</b>
10 units but < 1000	80
11 units but < 1000	160
12 -13 units but < 1000	240
14 units but < 1000	320
15 + units but < 1000	350
1,000 - 1,099	80
1,100 - 1,199	160
1,200 -1,399	240
1,400 -1,499	320
1,500 -1,599	400
1,600 -1,799	480
1,800 - 1,899	560
1,900 - 2,099	640
2,100 - 2,299	720
2,300 - 2,499	800
<b>2,500+</b>	<b>35%</b>

<b>Table 3 Sites outside Core CAZ, Paddington Opportunity Area and named streets in Marylebone and Fitzrovia, other than land having a low existing use value (Table 2)</b>	
<b>Additional floorspace/units (floorspace is gross external)</b>	<b>Floorspace requirement (in)</b>
10 -11 units but < 1,000	80
12 – 14 units but < 1,000	160
15 - 17 units but < 1,000	240
18 – 19 units but < 1,000	320
20 + units but < 1,000	350
1,000-1,199	80
1,200-1,499	160
1,500-1,799	240
1,800-1,999	320
2,000-2,199	400
2,200-2,399	480
2,400-2,499	560
2,500-2,899	640
2,900-3,199	720

3,200-3,499	800
3,500-3,899	880
3,900-3,999	960
4,000-4,099	960
4,100-4,199	1,040
4,200-4,399	1,120
4,400-4,499	1,200
4,500-4,699	1,280
4,700-4,799	1,360
4,800-4,999	1,440
5,000-5,099	1,520
5,100-5,299	1,600
5,300-5,399	1,680
5,400-5,599	1,760
5,600-5,699	1,840
5,700-5,799	1,920
5,800-5,999	2,000
<b>6,000 +</b>	<b>35%</b>



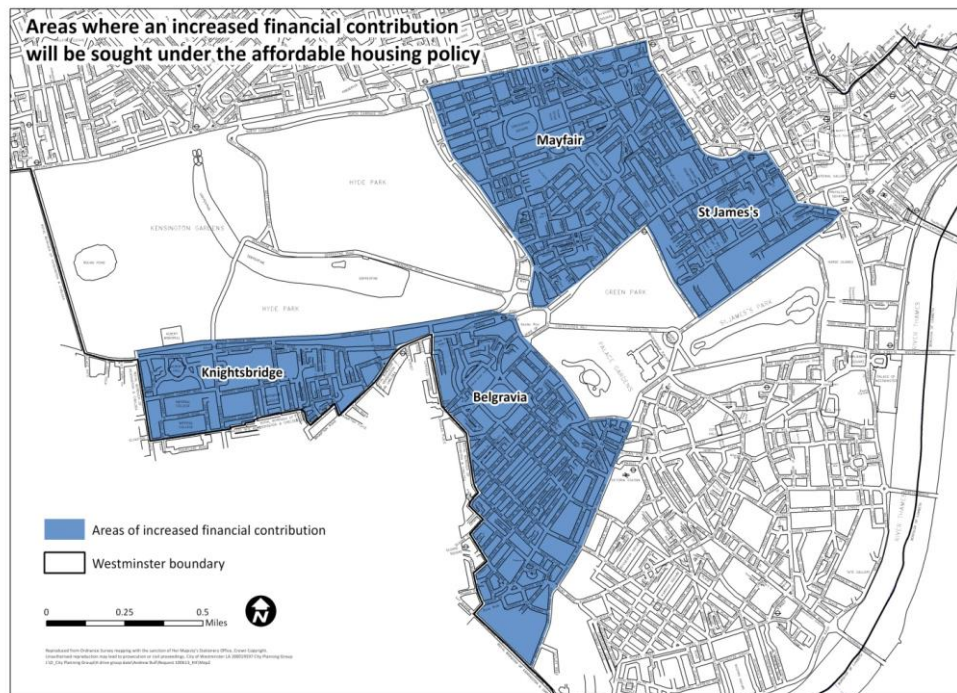
**Map 1. Areas referred to in Tables 1, 2 and 3**

Westminster’s City Plan: Strategic Policies policy S16 recognises that it is sometimes not practical or viable for the affordable housing to be provided on-site. In such circumstances, affordable housing should be provided off-site in the vicinity. When this option has been fully explored and proved not practical or not viable, the council will consider accepting a Payment in Lieu (PiL) of affordable housing. It is recognised that in some schemes at or marginally above the thresholds of 1,000sqm additional floorspace, or 10 additional units (when the floorspace is less than 1,000) and a very small affordable floorspace proportion is required, a PiL may be more appropriate than on site, off site in the vicinity or off site provision. **These payments will be secured by use of planning obligations.**

*Calculation of payments in lieu*

Payments in lieu will be calculated according to the formula set out in Table 4 below, but the unit requirement will be converted to a floorspace requirement as per Tables 1, 2 and 3 above. The methodology below factors in the increased amount of on-site market housing that will arise from having no (or partial) on-site affordable housing i.e. the ‘uplift’ in market housing which occurs when affordable housing is not provided on site. This is the percentage increase in market floorspace (c) in the examples below. The per unit sum is updated annually on 1st April to reflect changes in land values that have occurred in the preceding 12 months. It is currently (2015/16) £287,000 per unit, and £383,000 in schemes in the higher value areas of Knightsbridge, Belgravia, Mayfair and St. James’s.

## Map 2. Higher value areas



**Table 4. Formula for calculating a payment in lieu**

(a)	x	(b)	x	(c)	=	PiL
<p><b>No. of affordable units required</b></p> <p>Based on appropriate Table 1, 2 or 3 to determine amount of <b>affordable housing floorspace required</b>, then <i>divide</i> by <b>80</b> (to represent the average gross external floorspace of an affordable unit).</p>		<p><b>per unit sum</b></p> <p>From April 2013                      £251,000 per unit                      (£335,000 per unit in high value areas see Map 2)</p>		<p><b>% increase in market floorspace</b></p> <p>i) Increase in market floorspace from not providing affordable onsite (same as amount of affordable housing floorspace that would have been provided – see (a));</p> <p>ii) Divided by the amount of market floorspace expected had affordable housing been provided on site (total floorspace minus affordable floorspace that would have been provided (see (a)));</p> <p>iii) Multiplied by 100</p>		

## Addendum: Vacant Building Credit

A.1. This section explains the approach that Westminster City Council intends to take to application of the “vacant building credit” (VBC) which the Government announced on 28<sup>th</sup> November 2014 and incorporated in the National Planning Practice Guidance (as paragraphs 21-23 of the section on “Planning Obligations”) on the same date. It takes account of changes to the policy made by the Government in March 2015.

A.2. **It is not part of the City Council’s formal planning policies.** The vacant building credit is not compatible with adopted policies in Westminster’s statutory development plan:

- London Plan Policy 3.11, which states that the Mayor will, and boroughs and other relevant agencies and partners should, seek to maximise affordable housing provision and ensure an average of at least 13,300 more affordable homes per year in London (a figure proposed to increase to 17,000 as part of the further alterations currently pending formal publication). These provisional figures are based on strategic housing market and strategic housing land assessments which took no account of the Government’s announced approach to vacant buildings.
- Westminster’s City Plan: Strategic Policies policy S16, which states that the council will aim to exceed 30% of new homes to be affordable homes and that proposals for housing developments of either 10 or more additional units or over 1,000 sq. m additional residential floorspace will be expected to provide a proportion of the floorspace as affordable housing. Again, the policy is based on assessments of need and capacity that do not take account of the new approach, and the policy makes no reference to any allowance for vacant buildings.

Regulation 8(3) of the Town and Planning (Local Planning) (England) Regulations 2012 states that any policies contained in a supplementary planning document must not conflict with the adopted development plan. As such, the City Council cannot lawfully give guidance on the application of the VBC in a supplementary planning document. This section merely sets out the approach that will be taken in applying the Government’s policy.

A.3 The City Council is preparing new draft development plan policies that will set out its approach to affordable housing contributions in the kind of circumstances covered by the VBC. This will be informed by objectively assessed housing need in the City and the extent to which there is evidence of need for the kind of incentives for brownfield development on sites containing vacant buildings that ministers have indicated the VBC is intended to provide. Westminster has few brownfield development sites containing buildings that are vacant for any length of time and that there is no evidence of:

- widespread building vacancy indicating problems with brownfield development (in fact the available evidence, including office and shop rents, hotel transactions and house prices suggests that the opposite is the case); or
- City-wide viability issues that mean that application of affordable housing policy is a disincentive to bringing existing vacant buildings back into use.

There is, on the other hand, evidence that general application of the VBC would prevent delivery of the affordable housing required by adopted development plan policies. These requirements have been shown to be necessary to meet objectively assessed housing need (as required by paragraphs 47 and 159 of the National Planning Policy Framework) demonstrated by the evidence on housing need prepared to inform the further alterations to the London Plan and the City Council’s own planning policies on housing.

- A.4 Ministers have stated in national planning practice guidance that in considering how the VBC should be applied, local planning authorities should have regard to the intention of national policy – to incentivise brownfield development, including in particular the reuse or redevelopment of empty and redundant buildings. The guidance states that in doing so, it may be appropriate for authorities to consider:
- Whether the building has been made vacant for the sole purpose of redevelopment; and
  - Whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development.

Given this, the City Council does not intend to apply the VBC on a blanket basis, but rather to examine each case on its merits to consider whether a building is genuinely vacant or has merely been temporarily emptied for the sole purpose of seeing the credit.

- A.5 The NPPG does not relate “building” to the definition of the word in the planning acts (which explicitly includes parts of buildings). For these purposes the term must be given its usual English meaning. Accordingly, the City Council will take the word to mean **an entire building**. This interpretation is considered correct given that although the definition of “building” in section 336 of the Town and Country Planning Act 1990 (as amended) includes “any part of a building”, this special meaning is not applied in this case by the wording of the NPPF. This approach is consistent with that taken by the Planning Act 2008 with regard to the Community Infrastructure Levy, which uses the 1990 Act definition except with regard to Part 11 (which establishes the CIL). **The effect of this is that to take advantage of the VBC it will have to be demonstrated that the whole building has been vacant in the terms explained above.**

- A.6 Process: The credit will be calculated in accordance with the NPPG:  
The City Council will calculate the full total amount of affordable housing that would be required from the development in accordance with the methodology set out in section 5.1 of this document, identifying separately:

- a) The requirement that arises in respect of the proposed development as a whole.
- b) The requirement that arises in respect of the area of any building that the City Council has been notified by the developer as being brought back into use/demolished to be replaced by a new building. This will be the amount that will be offered as VBC.
- c) The residual affordable housing requirement, calculated by subtracting a) from b).

In accordance with adopted policy (Westminster’s City Plan: Strategic Policies policy S16), all measurements and calculations will be made on a gross external area basis. For the avoidance of doubt this calculation will precede any discussions with developers about viability issues that may affect the final sum sought.

- A.7 The VBC applies prospectively. The City Council will not apply it retrospectively to extant planning permissions where the affordable housing contribution has been agreed with the City Council at the time of determination of the planning application. In most cases, the VBC will not be applied in respect of applications made under section 73 of the Town and Country Planning Act 1990 (as amended) to allow the development of land without complying with conditions imposed on a previous planning permission. Although these applications formally result in a new planning permission, the City Council can only consider the question of the conditions subject to which the earlier planning permission was granted. The VBC will only apply if the condition that is the subject of the section 73 application has a direct and demonstrable relevance to the amount of affordable housing that will be required **and** the other requirements in this note can be shown to exist. In most cases, matters affecting the extent of affordable housing will be likely to amount to alterations to the previous planning permission substantial enough to make use of section 73 inappropriate in any event.

- A.8 The City Council will continue to keep the issue under review, and may issue further guidance in due course.



## 5.2 Mixed use policy: housing as part of commercial development

5.2.1 **Objective:** The City Council wants to accommodate the various economic functions in the Central Activities Zone (CAZ) while also building sustainable residential communities. To this end, planning policy seeks to match increases in commercial floorspace with commensurate growth in residential uses, making the CAZ a diverse, vibrant and human city centre while also making a contribution to meeting the Council's housing targets.

5.2.2 **Policy basis:**

- The *National Planning Policy Framework* identifies the promotion of mixed use development and encouraging multiple benefits from the use of land as one of the Government's core planning principles<sup>15</sup>. It encourages residential development on appropriate sites and suggests that local planning authorities should recognise that residential development can play an important role in ensuring the vitality of central areas and set out policies to encourage residential development on appropriate sites<sup>16</sup>.
- The *London Plan* sets out policy on mixed use development and offices in Policy 4.3. This states that within the CAZ, increases in office floorspace should provide for a mix of uses including housing, unless such a mix would demonstrably conflict with other policies in the Plan – where mixed uses may compromise broader objectives such as sustaining important clusters of economic activity. The policy states that boroughs should develop local approaches to mixed use development and office provision taking into account the contribution that 'land use swaps', 'housing credits' and off-site contributions can make.
- *Westminster's City Plan: Strategic Policies* policy S1 deals with mixed use in the CAZ. It states that:

*The council will encourage development which promotes Westminster's World City functions, manages its heritage and environment and supports its living, working and visiting populations. Within the CAZ, a mix of uses consistent with supporting its vitality, function and character will be promoted.*

The *Unitary Development Plan's* policy CENT3 states that:

*Where appropriate and practical, when increases in commercial floorspace are proposed, the provision of self-contained residential accommodation with separate access, where physically possible, will be required. The residential accommodation should comprise an amount of floorspace equivalent to the increase in commercial floorspace in the CAZ and in the recognised CAZ frontages.*

- The City Council will be consulting separately on changes to policy on mixed use which would have the effect of not requiring residential floorspace in cases where office redevelopment proposals involving an increase in floorspace of less than 30% of the original building or less than 400 square metres, whichever is the greater.

---

<sup>15</sup> NPPF, paragraph 17.

<sup>16</sup> NPPF, paragraph 23

5.2.3 Application and definitions: The policy applies where proposals would increase the commercial floorspace by 200 sq m or more or, in the case of A1 retail or private educational, health and leisure facilities (D1 or D2) by 400 sq m or more. It does not apply to changes of use between commercial uses, except where the change of use is to a B1 office one.

In these circumstances provision of an equivalent amount of residential floorspace will be required on site as part of the development, secured by planning condition where necessary.

Where it is clearly not practical to provide the required residential accommodation on site, the City Council will seek its provision on another site in the vicinity of the development. Such arrangements will only be acceptable if:

- the mixed use character of the locality of the development is maintained;
- at least the equivalent amount of residential floorspace is provided;
- the new residential accommodation is of a higher standard in terms of quality and amenity; and
- the provision is secured by **planning conditions and, where necessary, planning obligations<sup>17</sup>**.

Where it is clearly not appropriate or practical to provide residential accommodation either on-site or in the vicinity, other uses which contribute to the character and function of that part of the CAZ or the CAZ frontage should be provided as part of the same development (these might include retail accommodation benefitting the area, studios or light industrial accommodation in the Creative Industries Special Policy Area (designated by UDP policy COM9), social and community facilities or sports, leisure, arts, cultural and entertainment uses). **These uses will be secured as part of the scheme by planning condition.**

Where neither housing (on-site or in the vicinity), nor appropriate alternative uses can be achieved, the City Council will seek a financial contribution for affordable housing. This contribution will be calculated based on the increase in commercial floorspace divided by 75 sq m (to convert the figure into a unit basis) and then multiplied by 43% to approximate the number of units normally required in an off-site arrangement. This is converted into a cash sum using the same per unit figure as for affordable housing policy (currently (2014/15) £251,000 per unit, and £335,000 in schemes in the higher value areas of Knightsbridge, Belgravia, Mayfair and St. James's). Expressed as a formula, the requirement is:

$$\frac{\text{Increase in floorspace}}{75} \times \frac{43}{100} \times \text{unit sum}$$

**Such contributions will be secured by planning obligation.**

---

<sup>17</sup> UDP policies CENT3 and COM3

## 6 Local Economy and Employment

### 6.1 Employment, training and skills

6.1.1 Objective: Westminster has areas of great wealth and great poverty, with significant areas of high deprivation, worklessness and social exclusion. A flourishing local economy and economically active residents are both crucial to delivering economic and social objectives key to genuinely sustainable development. Key to this is ensuring a more skilled resident workforce able to take advantage of the growth and diversity of opportunities in their City. This will also help reduce long-distance commuting and consequent pressure on the City's transport infrastructure. Removing barriers to employment for local residents will also have a range of wider social, health and economic benefits. Planning policies provide a basis for the City Council to work with developers and enterprises to support employment, training and skills development to help residents take advantage of the opportunities brought by growth.

6.1.2 Policy basis:

- The *National Planning Policy Framework* identifies proactively driving and supporting sustainable economic development to deliver, among other things, the thriving local places the country needs, as one of the core principles for the planning system<sup>18</sup>. It expresses the Government's commitment to securing economic growth in order to create jobs and prosperity<sup>19</sup> and to ensuring that the planning system does everything it can to support sustainable economic growth<sup>20</sup>.
- The *London Plan* Policy 4.12 deals with improving opportunities for all. It states that strategic development proposals should support local employment, skills development and training opportunities.
- *Westminster's City Plan: Strategic Policies* policy S19 states that:

*Where appropriate, new development will contribute towards initiatives that provide employment, training and skills development for local residents and ensure that local people and communities benefit from opportunities which are generated from development.*

This policy applies to opportunities arising from development in both the construction and operational phases.

6.1.3 Application: The policy will be applied as follows:

A. For

- All major residential developments providing 10 or more new or additional units, or where the site area is over 0.5ha.
- All major commercial developments comprising over 1000sqm of new or additional floor space or where the site area is over 0.5ha.

---

<sup>18</sup> NPPF, paragraph 17

<sup>19</sup> NPPF, paragraph 18

<sup>20</sup> NPPF, paragraph 19

The City Council will seek employment and training opportunities, where appropriate to be in line with parameters set out in the Client Based Approach model from the Construction Industry Training Board (CITB)<sup>21</sup> and to support delivery of the City Council's own job search, brokerage, training and other and employment programmes for unemployed residents. Its priority target groups for these initiatives are the long-term unemployed; homeless people; young people not in education, employment or training; ex-offenders; skilled unemployed (long or short term) people; and residents from areas or wards within the City with high rates of worklessness.

In particular:

Trainee/Apprenticeship Placements: To offer work based training opportunities/ apprenticeships: provide one placement for every ten on site construction workers throughout the life of the development's construction. Training should follow an accredited framework such as the CITB apprenticeship model. **This will be secured by planning condition and/or planning obligations as appropriate.**

Notification of Vacancies: Aim to achieve as a minimum, ten per cent of construction workforce to come from local labour, with vacancies notified to the City Council and/or its affiliated work placement bodies (details of which will be provided by the City Council). **This will be secured by planning obligation.**

Engagement: The City Council has convened a Westminster Construction Group (WCG) comprising major construction employers, education and training providers, Job Centre Plus and other employment agencies to ensure all stakeholders understand future skills requirements and how they can work together to ensure they are met efficiently and effectively. Developers will be asked to work with the Group (and to use their best endeavours to ensure contractors and sub-contractors do the same) to engage with the WCG and through it, colleges and training providers; to notify vacancies; receive candidate referrals; and help shape, develop and deliver relevant skills training programmes. **This will be secured by planning obligation.**

B. In addition, for

- Large major housing applications for 100 or more new or additional dwellings.
- Large major non-housing uses involving the creation or change of use of more than 10,000sqm of new or additional floor space.

The City Council will seek:

Employment and Skills Plan: Submission of an employment and skills plan as set out in the City Council's Code of Construction Practice. Such plans should set out objectives and targets aligned with the phases of development. The City Council will provide a forecasting and monitoring template for this purpose. **This will be secured by planning condition**

Workplace Coordinator: Contributions to fund or support existing City Council workplace coordinator initiatives through the Cross River Partnership, to provide a single point of contact to manage employment and training opportunities for that development, during construction and

---

<sup>21</sup> See the CITB website: <http://www.citb.co.uk/employer-support/client-based-approach/>

operational phases. This may, in appropriate cases (particularly those involving large-scale, multi-phase development) include a contribution towards the cost of employing workplace coordinators to be agreed with the developer(s) concerned.

**This will be secured by planning obligation.**

## 6.2 Workspace

6.2.1 Objective: A critical factor in Westminster's sustained economic success has been the diversity of local enterprises and sectors. This in turn relies upon an adequate supply of a range of office and other workspace of different sizes, natures, configurations and location across the City. Planning policy will seek to ensure availability of the diverse workspaces required to support established and developing sectors.

6.2.2 Policy basis:

- The *National Planning Policy Framework* identifies proactively driving and supporting sustainable economic development to deliver, among other things, the thriving local places the country needs, as one of the core principles for the planning system. To help achieve economic growth, it encourages local planning authorities to plan proactively to meet the development needs of business and support an economy fit for the 21<sup>st</sup> century<sup>22</sup>. It states<sup>23</sup> that local planning authorities should support existing business sectors, taking account of whether they are expanding or contracting and, where possible, identify and plan for new and emerging sectors. They should also identify priority areas for economic regeneration.
- In the *London Plan* Policy 4.1 refers to promoting and enabling the continued development of a strong, sustainable and increasingly diverse economy across all parts of London, ensuring the availability of sufficient and suitable workspaces in terms of type, size and cost, supporting infrastructure and suitable environments for larger employers and small and medium enterprises. Paragraph 4.8 notes that in some circumstances, such as to meet the requirements of the CAZ, workspace may need to be secured through planning agreements as part of mixed use development. Policy 4.9 deals with small shops, stating that in considering proposals for large retail developments boroughs should consider imposing conditions or seeking contributions through planning obligations where appropriate, feasible and viable to provide or support affordable shop units suitable for small or independent retailers and service outlets and/or to strengthen and promote the retail offer, attractiveness and competitiveness of centres.
- In the *Unitary Development Plan*, policy COM9 sets out planning policies dealing with the provision of new light industrial floorspace in different parts of Westminster. Policy COM11 deals with provision for general industry and commercial warehouse storage and distribution. Policy SS10 deals with new retail accommodation in development schemes outside the Central Activities Zone and states that where there is an identified need new shop-type premises may be required to extend a Centre or to provide the opportunity for local convenience shops.

6.2.3 Application:

A. *Light Industrial Workspace*:

---

<sup>22</sup> NPPF, paragraph 20

<sup>23</sup> NPPF, paragraph 23

Changes to the Use Classes Order since adoption mean that current UDP policy in this area is only applied in limited circumstances. In these exceptional cases, when planning permission is granted for new industrial floorspace anywhere in Westminster, **planning conditions or, in exceptional circumstance justifying their use, planning obligations**, may be used to ensure it is retained in that use.

#### *B. General industry and commercial warehouse storage and distribution*

One of the conditions that has to be satisfied before planning permission will be granted for new general industrial or commercial warehousing floorspace is agreement that the accommodation will be retained for these uses through the use of **planning conditions or, in exceptional circumstance justifying their use, planning obligations**.

#### *C. Affordable workspace*

The City Council may use **planning conditions or, where appropriate, planning obligations** to secure space to be used to provide affordable workspace by negotiation with developers proposing schemes of a nature, size and location making this appropriate in terms of the statutory and policy frameworks governing use of these mechanisms (and, in particular, the three statutory tests for the use of planning obligations in regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) – see paragraph 2.7). This may include affordable workspace as part of a commercial development, or provision of space suitable for occupation and operation of an affordable workspace provider in conjunction with the City Council's Civic Enterprise Fund<sup>24</sup>. In other circumstances (which will be set out in the council's regulation 123 list) this kind of provision **may be secured through use of the Community Infrastructure Levy**.

#### *D. Small shops*

The nature of retail development in the International Centres (Oxford/Regent/Bond streets and Knightsbridge) and other CAZ frontages mean that new retail development is unlikely to be on a scale or of a nature making it appropriate to seek provision of small/affordable retail units in the way envisaged by the London Plan. UDP policy SS10 states that the units in new retail development outside the CAZ must be appropriate to the character and function of the street on which it is located **and where appropriate and necessary planning conditions will be used** to secure this. UDP paragraph 7.113 refers states that the City Council may enter into legal agreements with developers to ensure that units are let to specified retail use; this is likely to be used to protect strategically important uses and clusters - in special policy areas, for example.

---

<sup>24</sup> For further information about the Civic Enterprise Fund see <http://civicenterprisefund.co.uk/>

## 7 Health, safety and well-being: mitigating the environmental impact of development

- 7.1 **Objective:** The scope and scale of growth in Westminster; its density of occupation by residents, businesses and visitors; and the mixed nature of many of its neighbourhoods makes it particularly important to manage the impacts of development both during and after construction. This is necessary both to minimise disruption to residents, businesses and visitors and to protect the wider environment - Westminster's central London location raises particular issues of air quality (the entire City has been declared an air quality management area), noise and light pollution in particular. This is an area where a number of different statutory regimes operate. While it is important to ensure that the planning system does not simply duplicate these, it does have a role in complementing them and supporting their enforcement.

In addressing this overlap between planning and other sets of regulations, the City Council will observe the following principles drawn from relevant case law:

- The requirements dealt with in the City Council's Code of Construction Practice relate to addressing the impacts of construction or implementation of a development, rather than to the use or operation of the development.
- Things like the environmental impacts of emissions into the atmosphere can be a material planning consideration even if they are also dealt with by other legislation.
- It is not helpful to try to draw a hard-and fast demarcation line between different forms of control as this will be something that will need consideration in light of the circumstances of each case. In some cases potential pollution problems can be substantially overcome through other legislation and it will be reasonable to leave details to be resolved without the need for intervention by the planning system. In others, there may be evidence of environmental problems that it is appropriate to use planning powers to deal with.
- National government has given policy guidance on this issue in paragraph 122 of the National Planning Policy Framework, which deals with pollution control. It states that planning should deal with whether the development itself is an acceptable use of the land and the impact of the use and not the control of processes or emissions themselves where these are subject to approval under the pollution control regimes. Planning authorities should assume these controls will operate effectively. This guidance relates to regulation of uses rather than to management of the amenity impacts of construction or implementation (which is the focus of the requirements dealt with in this section). However, the courts have held that an inspector was entitled to refuse planning permission because of dust that would be caused by a use, even though the pollution control system could impose conditions that would reduce it.
- Planning will typically deal with a wider range of considerations than the pollution control process – it can take things like the effects of emissions on the development of an area, or whether the location of a particular use will make the area less attractive for regeneration. It can also address issues of construction and implementation that other regimes cannot.

## 7.2 Policy basis:

- *The National Planning Policy Framework* makes clear that the planning system should contribute to and enhance the natural and local environment by, among other things, preventing both new and existing development from contributing to, or being put at unacceptable risk from, unacceptable levels of soil, air, water or noise pollution or from land instability<sup>25</sup>. It states that planning policies and decisions should aim to avoid noise giving rise to significant impacts on health and quality of life<sup>26</sup>. Planning policies should sustain compliance with and contribute towards EU air pollution limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and the cumulative impacts on air quality from individual sites in local areas<sup>27</sup>.
- The *London Plan* contains a policy (5.3) dealing with sustainable design and construction which provides, among other things, that development proposals should demonstrate that sustainable design standards are integral to each proposal, including its construction and operation. Major development proposals should meet the standards outlined in the Mayor's supplementary planning guidance on "Sustainable Design and Construction" (<http://www.london.gov.uk/sites/default/files/Sustainable%20Design%20%26%20Construction%20SPG.pdf>) covering areas such as minimising pollution (including noise and air) and which outlines key principles and standards that are applicable to the construction phase of new development.
- *Westminster's City Plan: Strategic Policies* policy S29 states that the development of major infrastructure projects will need to mitigate, avoid or remedy environmental impacts, both in construction and operation. Policies S31 and S32 deal specifically with air quality and noise respectively. S30 deals with new development reducing the risk of flooding.
- The *Unitary Development Plan* sets out detailed requirements relating to air pollution (ENV5), noise pollution (ENV6 and ENV7) and light pollution (ENV10). To support implementation of these policies, the City Council has published a Code of Construction Practice ([http://transact.westminster.gov.uk/docstores/publications\\_store/Code\\_of\\_Construction\\_Practice\\_April\\_2008.pdf](http://transact.westminster.gov.uk/docstores/publications_store/Code_of_Construction_Practice_April_2008.pdf))<sup>28</sup> intended in particular to help mitigate construction and development impacts of large sites or combinations of such sites. The supplementary planning guidance on planning obligations published in January 2008 provided for use of planning obligations to secure contributions towards the cost of inspection and enforcement.

## 7.3 Application:

### A. *Code of Construction Practice*

Larger developments and major infrastructure projects (such as those undertaken by Network Rail, Transport for London and the City Council itself) may be subject to a **planning obligation** requiring compliance with the City Council's published Code of Construction Practice, adapted as necessary to address the particular features of the development (particularly large-scale, especially complex schemes, or those in particularly sensitive locations).

---

<sup>25</sup> NPPF, paragraph 109.

<sup>26</sup> NPPF, paragraph 123

<sup>27</sup> NPPF, paragraph 124

<sup>28</sup> The Code of Construction Practice is currently under review and a revised version is expected to be published in 2015



The Code of Construction Practice includes provision to contribute to the costs of the City Council's Environmental Inspectorate and Environmental Sciences services in delivering the requirements of the Code. This may be an agreed sum, or by agreement between the developer and the City Council that the actual costs of these services will be met. In the latter case, staff will maintain time sheets to ensure accuracy of the recovery of costs.

*B. Minimisation of air and noise pollution*

Policy requirements to reduce air and noise pollution (including those set out in more detail in the Code of Construction Practice) will be imposed by **planning condition**.

*C. Flood risk in new development*

Steps to ensure that new development reduces the risk of flooding will be dealt with primarily through the design of the development and if necessary secured by **planning condition**. In cases where the circumstances of a site or development justify it, **a planning obligation** may be used to secure the measures and/or appropriate funding (including for maintenance of flood risk mitigation measures where appropriate). Flood defences on a scale greater than that required for a single scheme **may be met from the Community Infrastructure Levy**.

## 8. Social and Community Infrastructure

8.1 Objective: A growing and changing city needs social and community infrastructure and facilities to meet the shifting needs of a local population that is increasing both in numbers and diversity. New development will give rise to need for new facilities or investment to increase the capacity of existing ones. On top of these needs, Westminster also has to address the demands of workers and visitors from outside its area, coming here at all times of day and night. Some facilities here – such as places of worship, educational establishments and medical facilities – also have London-wide, national or, in some cases, global roles. One of the key objectives of planning for the City is to ensure that new development is matched with provision of social infrastructure needed to ensure a good and improving quality of life for all the city’s people.

8.2 Policy basis:

- The *National Planning Policy Framework* states that among the core planning principles is that planning should take account of and support local strategies to improve health, social and cultural wellbeing for all, and sufficient community and cultural facilities and services to meet local needs<sup>29</sup>. It states that planning policies and decisions should plan positively for delivery of the social, recreational and cultural facilities (including meeting places, sports venues, cultural buildings and places of worship) and other local services to enhance the sustainability of communities and residential environments and ensure an integrated response to considering the location of housing, economic uses and community facilities and services<sup>30</sup>.
- The *London Plan* has a policy (3.16) dealing with protection and enhancement of social infrastructure (such as community, cultural and play facilities, places of worship, fire stations, policing and other criminal justice or community safety facilities “and many other uses and activities which contribute to making an area more than just a place to live”) based around the strategic policy position that London requires additional and enhanced social infrastructure provision to meet the needs of its growing and diverse population. It states that development proposals providing high quality social infrastructure should be supported. There are specific policies dealing with health and social care facilities (3.17), education facilities (3.18) and sports facilities (3.19), all of which support delivery through the planning process. Policy 8.2 identifies learning and skills, health facilities and services and childcare provisions as being strategic priorities that should be given importance in the use of planning obligations.
- In *Westminster’s City Plan: Strategic Policies*, policy S34 states that “New social and community facilities will be encouraged throughout Westminster and will be provided on large scale development sites”. The *Unitary Development Plan* policy SOC1 states that the provision of community facilities will be sought on appropriate sites, including the provision of community facilities in new developments, and paragraph 6.10 explains that provision may be secured through use of planning obligations. Policy H10 supplements this by stating that on sites suitable for large housing developments (explained in paragraph 3.113 to mean those where the amount of housing is likely to be 50 or more units), the City Council will require in appropriate circumstances the provision of a community facility as part of the development. The UDP also includes specific policies dealing with childcare (SOC2), facilities for local community arts or social activities in new indoor leisure facilities and public libraries (SOC7), public toilets (SOC8) and replacement theatre provision in redevelopment proposals (TACE6)

---

<sup>29</sup> NPPF, paragraph 17

<sup>30</sup> NPPF, paragraph 70

which all support use of the planning system to support provision of specific forms of social infrastructure.

### 8.3 Application:

#### *A. General approach*

The principles set out in paragraphs 4.2 and 4.3 and illustrated on page 20 will be applied. In general, and subject to the approaches to particular forms of social infrastructure set out below), social infrastructure the need for which is generated by a single development because of its scale or nature will generally be provided as part of the development concerned and be secured by **planning condition**. This is likely to apply only to larger major developments (those involving 50 or more additional residential units, for example) likely to be exceptional in Westminster. Subject to what is said below the City Council acknowledges that the **CIL is the principal source of funding for social infrastructure**.

In such cases, where it is agreed between the developer and the City Council that provision to meet that need should be made beyond the boundary of the site, that provision will be secured **through a planning condition and/or planning obligation as appropriate**.

Where it is agreed between the developer and the City Council that a payment should be made in lieu of provision to meet that need, it will be secured **through a planning obligation**.

Contributions of this kind will normally only be sought where projects are identified in the local plan, a planning brief or other local development documents or in "City for All" and other statements of City Council policy and strategy.

#### *B. Facilities for local community arts or social activities in new indoor leisure facilities/public libraries*

These facilities (such as facilities for local community arts or social activities, for example space for performances, rehearsals, meetings and exhibitions) will be secured by **planning conditions** in most cases, as they will be sought as part of the design of the development concerned.

#### *C. Public toilets*

Public toilets will generally be sought as part of the design of developments attracting large numbers of people, with appropriate provision being secured by **planning condition**.

## 9. Open space, including children’s playspace

### 9.1 Open space

9.1.1 **Objective:** Open spaces are particularly important in Westminster. They make an important contribution to the quality of life of residents, workers and visitors, providing opportunities for exercise, meeting and quiet enjoyment. They have a vital environmental role, particularly in mitigating the impacts of a changing climate and providing habitat for wildlife. They are an important element in the city’s townscape and heritage and make a unique contribution to the character of its neighbourhoods. They also make a vital contribution to the local and London economy, contributing to the setting for prime development markets and forming a key element of Westminster’s visitor offer. Land in the city is scarce, valuable and under intense competition for other uses. Planning policy seeks both to protect and enhance existing open spaces, and to extend the network where opportunities exist to do so through new development, particularly in places where there is an identified deficiency.

#### 9.1.2 **Policy basis:**

- *The National Planning Policy Framework* identifies recognising that some open land can perform many functions (such as for wildlife, recreation, flood risk mitigation, carbon storage or food production) as part of one of the core planning principles<sup>31</sup>. It notes that access to high quality open spaces can make an important contribution to the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the need for open space, and opportunities for new provision; these assessments should identify specific needs and quantitative or qualitative deficits or surpluses of open space in the local area<sup>32</sup>.
- In the *London Plan*, Policy 2.18 deals with green infrastructure: the network of open and green spaces. It states that enhancements to London’s green infrastructure should be sought from development proposals, particularly to address the needs of areas identified as being deficient in particular types of space. Developments should incorporate appropriate elements of green infrastructure (such as green chains and street trees) which are integrated into the wider network and encourage its linkage with the wider public realm to improve accessibility for all and to develop new links, utilising other components of urban greening. Policy 5.10 promotes and supports urban greening, including multi-functional green infrastructure to help mitigate and adapt to climate change. It states that development proposals should integrate green infrastructure from the beginning of the design process. Policy 7.18 deals with protecting local open space and addressing local deficiency, supporting the creation of new open space to ensure satisfactory levels of local provision to address deficiencies. Policy 7.19, dealing with biodiversity and access to nature, states that wherever possible development proposals should make a positive contribution to the protection, enhancement, creation and management of biodiversity.
- *Westminster’s City Plan: Strategic Policies* policy S35 states that the council will seek to address existing public open space deficiencies, including active play space deficiency, and current and future open space needs by, among other measures, mitigating additional pressure on open spaces by securing new improved public open space in new developments; space for children’s

---

<sup>31</sup> NPPF, paragraph 17.

<sup>32</sup> NPPF, paragraph 73

active play; and seeking public access to private spaces; and securing contributions to improving the quality, ecological value and accessibility of local public open spaces and delivering new open spaces from under-used land. Policy S38 deals with biodiversity and green infrastructure, and states that opportunities to extend and create new wildlife habitat as part of development will be maximised. *Unitary Development Plan* policy ENV15 supports encouragement of provision of new and enhanced open space for public use, and states that in appropriate cases the City Council will require public open space as part of new development in priority areas. Policy H10 states that as part of housing developments the City Council will normally expect provision of amenity space which outside the CAZ will normally include the provision of open space.

- In February 2007 the City Council published the *City of Westminster Open Space Strategy*<sup>33</sup>, prepared in accordance with London Plan policies and related guidance. It was prepared as, and has the status of, a supplementary planning document. Among other things it describes the open space network in Westminster, sets out current and future needs and how these needs will be addressed through the planning system and by other means, particularly to tackle the deficiency of open space in the north west and southern parts of the City. The Strategy is currently under review with a revised version expected during 2015.

### 9.1.3 Application

The principles set out in paragraphs 4.2 and 4.3 and illustrated on page 20 will be applied.

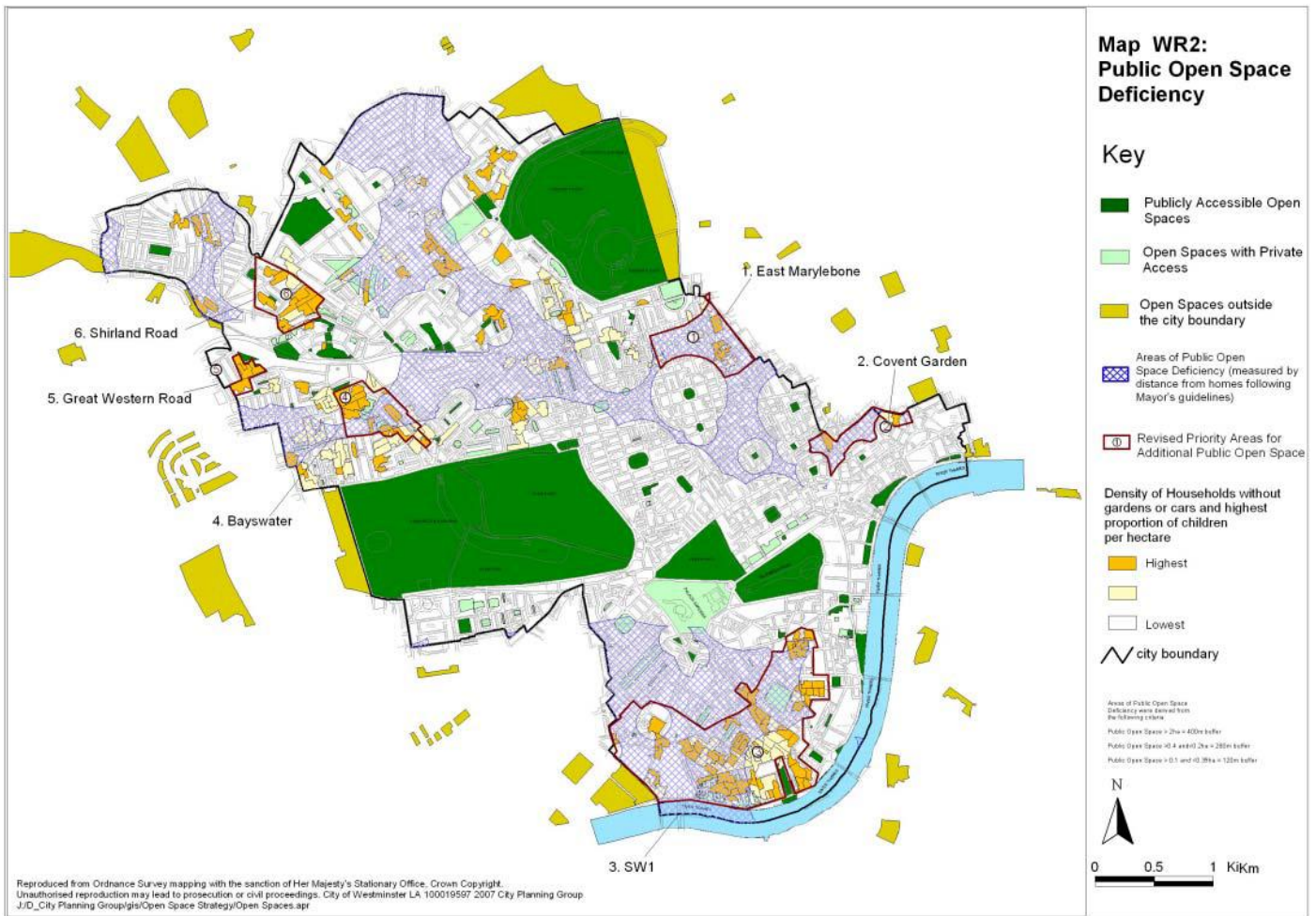
#### *A. Securing new public open space, active playspace or public access to private space*

New public open/play space will be sought as part of large-scale major developments involving the building/creation of 1000 sq m or more of commercial floorspace or of 50 or more residential units in the priority areas identified in Map WR2 published with the City Council's Open Space Strategy and shown below (East Marylebone, Covent Garden, a large part of the SW1 postcode area, Bayswater, Great Western Road and Shirland Road) through **planning conditions**.

**Subject to this, the City Council acknowledges that the CIL is the principal source of funding for new public open space.**

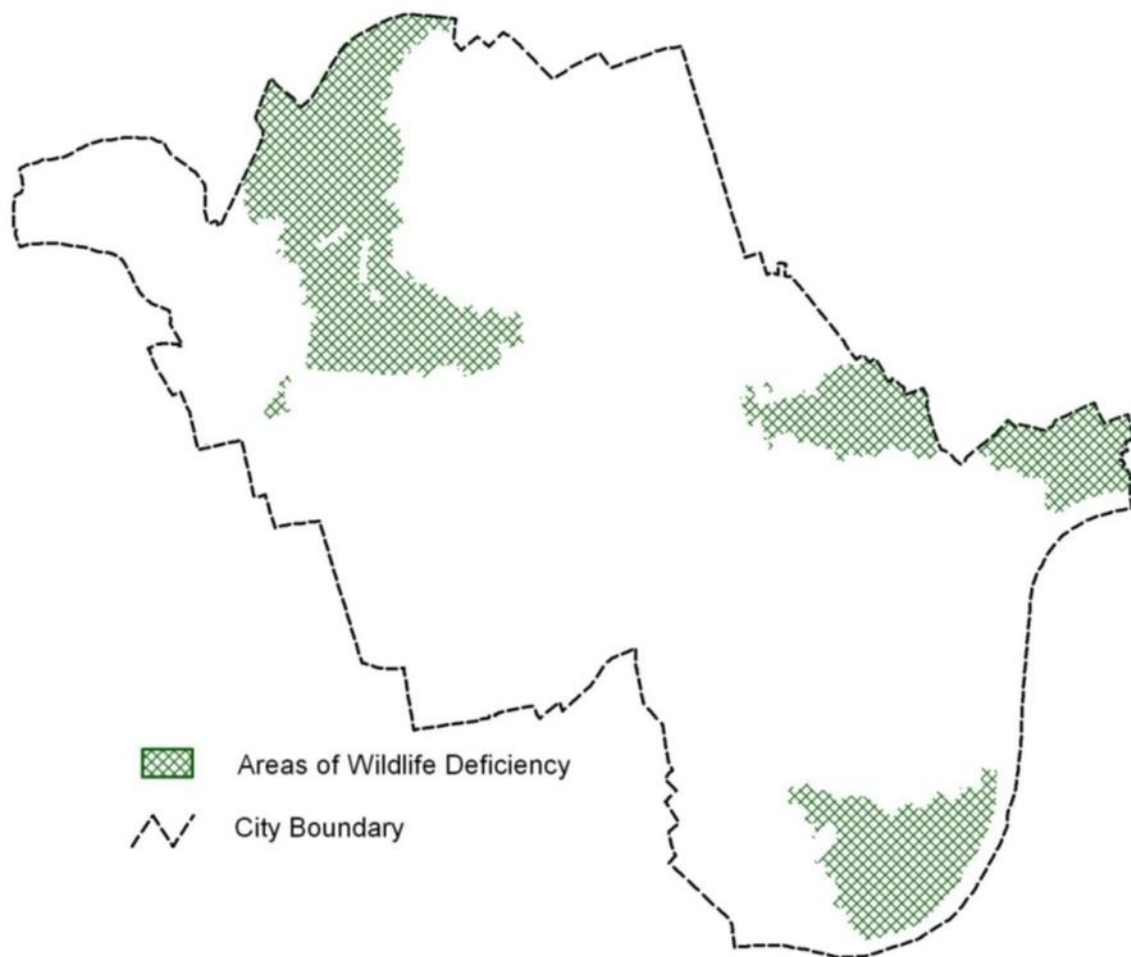
---

<sup>33</sup> [http://transact.westminster.gov.uk/docstores/publications\\_store/Open\\_Space\\_Strategy\\_March\\_2007.pdf](http://transact.westminster.gov.uk/docstores/publications_store/Open_Space_Strategy_March_2007.pdf)



*B. Extension/creation and of wildlife habitat and securing enhancements of biodiversity in areas of wildlife deficiency*

Provision to improve wildlife habitats and secure biodiversity enhancements will be sought particularly in the areas of wildlife deficiency shown in the map below. These will largely be matters of design (such as provision of private spaces, roof terraces, balconies and living roofs and walls), protection and enhancement of existing green infrastructure (such as trees and private gardens), or of features of the exterior of existing buildings, roofs, terraces and walls that provide habitats for wildlife. In most cases they will be secured by **planning condition**.



## 9.2 Children’s playspace

9.2.1 **Objective:** Play is essential to children’s healthy development, and this requires provision of enough space that is safe, of a high quality and sufficiently close to home to enable easy access and allow surveillance. The pressures on Westminster’s scarce land resources means that there is a particular need for planning policy to ensure provision is made in residential development.

9.2.2 **Policy basis:**

- In the *London Plan*, Policy 3.6 deals with play and recreation provision in new development proposals including housing, based on the expected child population generated by the scheme and an assessment of future need. The Mayor has published supplementary planning guidance on *Play and Informal Recreation* (<http://www.london.gov.uk/3C1F64EE-322C-44B3-9852-FAE8F21037E1/FinalDownload/DownloadId-79FFF64CA5FE8FFA385B670B37440E86/3C1F64EE-322C-44B3-9852-FAE8F21037E1/sites/default/files/Shaping%20Neighbourhoods%20Play%20and%20Informal%20Recreation%20SPG%20High%20Res.pdf>) setting out detailed guidance on implementation of London Plan Policy 3.6.

- In the *Unitary Development Plan*, policy SOC6 deals with children’s play provision, and states that children’s play space and facilities will be required to be provided as part of new housing developments which include 25 or more family units. New developments in or near priority areas for additional playspace and green open space for play) will be encouraged to provide new play space and facilities for children, or make improvements to existing facilities.

9.2.3 Application: In new development including:

- twenty or more residential units; or
- 10 or more units of affordable housing

with two or more bedrooms, the approach outlined in the Mayor’s supplementary planning guidance “*Shaping Neighbourhoods: Play and Informal Recreation*” will be applied to calculate the amount of playspace that will be sought (summarised in the table below). This is based on calculating the likely child yield of residential development of different sizes and tenures and seeking a minimum of 10 sq m per child. In most cases (and particularly provision for younger children) provision will be sought on-site, secured by means of **planning conditions**.

Where it can be demonstrated that there are planning constraints that makes delivery on-site impossible, the space may be provided in the vicinity of the development (within 100m or less from the development for provision for children under 5/ 400 m or less for children aged 5-11). Such space will be secured by **planning conditions and/or planning obligations as appropriate**.

Where there are existing facilities in the vicinity that can be extended or improved to enable them to meet the additional demand directly generated by the development concerned, a financial contribution may be acceptable secured by **planning obligation**. The contribution will be based on a notional figure derived from the cost of providing a square metre of playspace, and will be calculated as follows:

Child yield of development, calculated in accordance with number of bedrooms and tenure (see Mayor’s SPG) x 10sq m = play space requirement.

Play space requirement x £94 (average cost per sq m of providing play space)=contribution

Number of Bedrooms		2	3	4	5+
Market and intermediate flats	Age 0-4	0.07	0.17	0.00	0.00
	5-10	0.02	0.11	0.00	0.00
	11-15	0.01	0.03	0.00	0.00
	16-18	0.01	0.02	0.00	0.00
	<b>Total</b>	<b>0.10</b>	<b>0.33</b>	<b>0.00</b>	<b>0.00</b>
Market and intermediate houses	Age 0-4	0.08	0.29	0.63	0.36
	5-10	0.03	0.10	0.31	0.58
	11-15	0.01	0.05	0.13	0.25
	16-18	0.01	0.01	0.04	0.17
	<b>Total</b>	<b>0.12</b>	<b>0.45</b>	<b>1.10</b>	<b>1.36</b>



Social rented / affordable rented flats	Age	0.64	0.62	0.41	0.57
	0-4				
	5-10	0.23	0.74	1.22	1.66
	11-15	0.08	0.47	1.29	1.76
	16-18	0.05	0.17	0.37	0.51
Total		1.00	2.00	3.29	4.50
Social rented / affordable rented houses	Age	0.64	0.62	0.41	0.57
	0-4				
	5-10	0.23	0.74	1.22	1.66
	11-15	0.08	0.47	1.29	1.76
	16-18	0.05	0.17	0.37	0.51
Total		1.00	2.00	3.29	4.50

## 10. Energy and climate change

### 10.1 Climate change mitigation

10.1.1 **Objective:** Some climate change is now inevitable. By the 2030s, we will be experiencing appreciably warmer conditions, with drier summers and wetter winters. The impact will be particularly marked in a densely occupied urban area like Westminster, and is likely to change the way the City is used. At the same time, changing conditions may mean our infrastructure is no longer fit for purpose and there will be a need to address new risks – particularly flooding. All of these factors are likely to impact on the quality of life of the City’s residents, workers and visitors – and, increasingly, on Westminster’s economic success. It is important to try to reduce the extent of future climate change by controlling the level of carbon emissions, and as the built environment is responsible for about 90% of these (commercial buildings are responsible for about 75%, residential development for a further 15%), there is a key role for planning policy in this area.

#### 10.1.2 Policy basis:

- The *National Planning Policy Framework* identifies climate change mitigation as one of the elements of the environmental dimension of sustainable development that the planning system should contribute to<sup>34</sup>. Contributing to the transition to a low carbon economy is one of the NPPF’s core planning principles<sup>35</sup>. The Framework notes the key role planning plays in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. It notes that this is central to the economic, social and environmental dimensions of sustainable development<sup>36</sup>. It states that to support the move to a low carbon future, local planning authorities should plan for new development in ways that reduce emissions, actively support energy efficiency improvements to existing buildings and to ensure any locally-set standards for building sustainability take account of the Government’s zero carbon building policies and nationally described standards<sup>37</sup>.
- The Government has announced that it intends to move towards a “Building Regulations only” approach to emissions standards for residential development. Under this approach local planning authorities will be prevented from setting standards in excess of those set out in Part L of the Building Regulations. Delivery of a zero carbon policy for new housing from 2016 will be achieved through a strengthening of the energy performance requirements (covering carbon compliance, energy efficient fabric and services) of Part L. In a ministerial announcement in March 2015 the Government confirmed that development plan policies requiring compliance with energy performance standards that exceed the energy requirements of Building Regulations until commencement of amendments to the Planning and Energy Act 2008 in the Deregulation Act 2015 – expected to happen alongside introduction of the zero carbon homes policy in late 2016<sup>38</sup>.
- In the *London Plan*:

---

<sup>34</sup> NPPF, paragraph 7

<sup>35</sup> NPPF, paragraph 17

<sup>36</sup> NPPF, paragraph 93

<sup>37</sup> NPPF, paragraph 95

<sup>38</sup> <https://www.gov.uk/government/speeches/planning-update-march-2015>

- Policy 5.2 states that development proposals should make the fullest contribution to minimising carbon dioxide emissions in accordance with an energy hierarchy that gives the highest priority to using less energy, over supplying energy efficiently and then using renewable energy. It sets targets for emission reductions; those for non-domestic buildings are as follows:

<b>Year</b>	<b>Improvement on 2010 Building Regulations</b>
2010 – 2013	25 per cent
2013 – 2016	40 per cent
2016 – 2019	As per building regulations requirements
2019 – 2031	Zero carbon

It states that major development proposals should include a detailed energy assessment to demonstrate how the targets for carbon dioxide emissions reduction outlined above are to be met within the framework of the energy hierarchy. The carbon dioxide reduction targets should be met on-site. Where it is clearly demonstrated that the specific targets cannot be fully achieved on-site, any shortfall may be provided off-site or through a cash in lieu contribution to the relevant borough to be ring fenced to secure delivery of carbon dioxide savings elsewhere.

- Policy 5.3 states that the highest standards of sustainable design and construction should be achieved to improve the environmental performance of new developments and to adapt to the effects of climate change over their lifetime. Major development proposals should meet the minimum standards outlined in the Mayor’s supplementary planning guidance on sustainable design and construction, which include those for minimising carbon dioxide emissions across the site, including the building and services (such as heating and cooling systems).
- Policy 5.4 deals with retrofitting existing buildings, and states that these should be brought up to the Mayor’s standards on sustainable design and construction including, in particular, those to reduce carbon emissions from the existing building stock by identifying potential synergies between new developments and existing buildings through the retrofitting of energy efficiency measures, decentralised energy and renewable energy opportunities.
- Policy 8.2 identifies tackling climate change as a strategic priority for the use of planning obligations to which importance should be given.
- The Mayor has published supplementary planning guidance on *Sustainable Design and Construction* (<http://www.london.gov.uk/sites/default/files/Sustainable%20Design%20%26%20Construction%20SPG.pdf>) which gives detailed guidance on the sustainable design standards that should be applied to new development in London.
- In May 2015 the Mayor published draft further minor alterations to the London Plan dealing with the situation after the implementation of national “zero carbon” requirements and the transition to the “Building Regulation only” approach and use of allowable solutions.
- In *Westminster’s City Plan: Strategic Policies*, policy S28 states that development will reduce energy use and emissions that contribute to climate change during the life-cycle of the development.
- Detailed City Management policies on emission reductions are being prepared as part of the current review process to prepare a single City Plan.

10.1.3 Application: Between the date of publication of this guidance and the earliest of either:

- Formal adoption of the new City Plan; or
- 31 March 2016

Major

Development category	Onsite carbon reduction target (over Building Regulations part L 2010 Target Emissions Rate)	Source of target
New build resi 10 or more units	40%	London Plan 5.2

development as defined in the London Plan:

- residential developments where 10 or more dwellings are to be constructed (or if a number is not given, area is more than 0.5 hectares)
- for all other forms of development, where the floorspace will be 1,000 sq m or more (or the site area is 1 hectare or more).

will apply the carbon reduction targets set out in table 10.1 below, based on the London Plan policies indicated:

Change of use to resi/refurbishment >1000m <sup>2</sup>	40%	London Plan 5.4/5.2
New Build non resi >1000m <sup>2</sup>	40%	London Plan 5.2
Extensions >1000m <sup>2</sup> (excl. listed building)	40%	London Plan 5.4/5.2
Change of use to non resi/refurbishment >1000m <sup>2</sup>	40%	London Plan 5.2/5.4

**Table 10.1**

**NB The residential rate is included to cover the period until residential standards are removed from the planning system (currently anticipated to be late 2016 – see above)**

These reductions will be sought on-site, in most cases through design features inherent to the development. Where necessary, they will be secured by **planning condition**.

Where it is clearly demonstrated that the emission targets cannot be fully achieved on-site, measures to make up the shortfall may be implemented off-site. These will be secured by **planning condition and/or planning obligation, as appropriate**.

Alternatively, developers may make an in-lieu cash payment which will be used by the City Council to fund measures, projects or programmes on a scale to ensure that the full reduction required by the policy is achieved. These payments, which will be **secured by planning obligations**, will not be spent on “infrastructure” and so will not trigger the legal restrictions on pooling of planning obligations for infrastructure that come into force in April 2015 outlined above.

Payments in lieu should be calculated by reference to a “carbon price” – the cost of reducing off-setting carbon emissions calculated for Westminster having regard to the cost and feasibility in the particular circumstances that exist here as suggested by paragraph 2.5.10 of the Mayor’s supplementary guidance on sustainable design and construction. This cost has been calculated for Westminster based on the cost of steps to reduce emissions on the scale require here at £7,560 per tonne.

The method of calculation of offsetting payments in lieu is as follows:

1. Developers should follow the approach described in the GLA’s guidance on preparing energy assessments. This involves providing some key input data as set out in table 10.2 below

**Table 10.2**

	Carbon dioxide emissions (Tonnes CO <sub>2</sub> per annum)
	Regulated
Baseline: Building Regulations 2010 Part L Compliant Development	A
After energy demand reduction	B
After CHP	C
After renewable energy	D

The values in each row should be the regulated CO<sub>2</sub> emissions (expressed in Tonnes CO<sub>2</sub> per annum) after each stage of the Energy Hierarchy (expressed in tonnes of CO<sub>2</sub> per annum, not kgCO<sub>2</sub>/m<sup>2</sup> per annum).

- The inputs are applied into the calculation shown in table 10.3 below to give the savings from each stage of the energy hierarchy, and the shortfall (where the development fails to achieve the minimum 40% target).

**Table 10.3**

	Regulated Carbon dioxide savings	
	(Tonnes CO <sub>2</sub> per annum)	(%)
Savings from energy demand reduction	A - B	$(A - B)/A * 100$
Savings from CHP	B - C	$(B - C)/B * 100$
Savings from renewable energy	C - D	$(C - D)/C * 100$
<b>Total Cumulative Savings</b>	<b>A - D = E</b>	<b><math>(A - D)/A * 100</math></b>
<b>Total Target Savings</b>	<b><math>[A * 0.40] = F</math></b>	<b>40%</b>
<b>Shortfall</b>	<b>F - E = G</b>	

The shortfall in tonnes CO<sub>2</sub> per annum is then multiplied by the Council's cost of carbon

$G \times \text{£}7,560 = \text{Offset payment.}$

NB. There is no need to multiply the shortfall figure by 30 years as in the GLA supplementary guidance, as the carbon cost has been calculated to include an assumption of the cost of offsetting over the lifetime of the plan period.

For further advice please see the detailed GLA guidance:

<http://www.london.gov.uk/priorities/planning/strategic-planning-applications/preplanning-application-meeting-service/energy-planning-gla-guidance-on-preparing-energy-assessments>

In accordance with London Plan Policy 5.4, the principles will be applied to refurbishment projects requiring planning permission that are on the same or similar scale as a “major development”.

## 10.2 Decentralised and renewable energy

10.2.1 **Objective:** Westminster’s future growth, its continued economic success and the quality of life of its people all depend on a reliable and resilient supply of energy that is provided sustainably and cost-effectively. Decentralised heat and power networks have an important part to play in achieving these objectives, particularly when powered using renewable sources of energy which provide opportunities to reduce carbon emissions. Decentralised energy networks can provide electricity and heat for an area, with the potential to provide any surplus to the national grid. Such systems are usually more efficient, as they do not involve transmission losses. The dense pattern of development and occupation in Westminster means there are particular opportunities to secure the benefits of decentralised approaches – indeed, the Pimlico District Heat Undertaking in the south of the City is the oldest network of this kind in the UK. Planning policy has a particular role in catalysing, and securing the benefits of, the development of networks of this kind.

### 10.2.2 Policy basis:

- Much of the policy basis for use of the planning system in this area relating to addressing climate change and encouraging a shift to a low carbon economy has been outlined in paragraph 10.1.2.
- *The National Planning Policy Framework* refers to encouraging renewable energy as one of the elements of supporting the core planning principle of supporting the transition to a low carbon economy<sup>39</sup>. Delivery of renewable and low carbon energy and associated infrastructure is identified as one of the key contributions planning can make to securing radical reductions in greenhouse gas emissions – central to the economic, social and environmental dimensions of sustainable development<sup>40</sup>. The Framework sets out a number of areas in which local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable and low carbon sources, including considering suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure the development of such sources; and identifying opportunities where development can draw its energy supply from decentralised, renewable or low carbon energy supply systems<sup>41</sup>.
- *London Plan* Policy 5.6 states that planning proposals should evaluate the feasibility of combined heat and power systems, where a new CHP system is appropriate, and examine opportunities to extend the system beyond the site boundary to adjacent sites. Policy 5.7 identifies increasing the proportion of energy generated from renewable sources and states that major development proposals should provide a reduction in expected carbon dioxide emissions through the use of on-

---

<sup>39</sup> NPPF paragraph 17

<sup>40</sup> NPPF, paragraph 93

site renewable energy generation where feasible. Policy 8.2 identifies tackling climate change as a strategic priority for the use of planning obligations to which importance should be given.

- *Westminster's City Plan: Strategic Policies* policy S39 states that major developments should be designed to link to and extend existing heat and energy networks in the vicinity, except when the council considers that it is not practical or viable to do so. Where it is not possible to link to an existing network, major development will be expected to provide site-wide decentralised energy generation which minimises emissions and has the potential to be extended to serve other development sites in the vicinity, except where the council considers that it is not practical or viable to do so. Smaller developments will be encouraged to be enabled to connect into heat and energy networks. Policy S40 states that all major developments should maximise on-site renewable generation to achieve at least 20% reduction of carbon dioxide emissions, and where feasible, towards zero carbon emissions, except where the council considers that it is not appropriate or practicable due to the local historic environment, air quality and/or site constraints.
- In the *Unitary Development Plan*, policy ENV1 states that where feasible, new developments will be required to incorporate renewable energy generating plant to meet a proportion of the development's overall energy demand.

### 10.2.3 Application:

#### A. *Renewable Energy*

In all major developments, inclusion of renewable energy generation facilities will be secured as part of scheme design by use of **planning conditions**.

Integration of renewable technologies into the design of smaller-scale developments will be secured by use of **planning conditions**.

#### B. *Decentralised energy*

Re-use or upgrading of infrastructure that is, or has previously been, in use as part of a district heat network and which falls within a development site will be sought by use of **planning conditions and/or planning obligations as appropriate**.

Infrastructure (such as ducting) or design provisions required to enable major developments to connect with existing district heat networks will be sought as part of the design of the scheme and through **appropriate use of planning conditions and/or obligations**.

Where the City Council agrees that it is not practical or viable for a major development to link with an existing heat network, provision of site-wide decentralised energy generation will be sought as part of the design of the scheme and through **appropriate use of planning conditions and/or obligations**.

Decentralised energy networks may be funded through **use of the Community Infrastructure Levy** (as indicated in the council's regulation 123 list).



# 11. Transport infrastructure and related public realm

## 11.1 Transport assessments, travel plans, construction logistics/freight and servicing plans and their implementation

11.1.1 Objective: Westminster is positioned at the centre of London's strategic transport network, with four mainline rail termini, 32 stations on 10 of the capital's 12 Underground lines, 350 kilometres of highway and 623 kilometres of footway (of which 27.5 kilometres and 55 kilometres respectively are on strategic routes managed by Transport for London). This infrastructure supports the needs of residents, nearly 50,000 businesses and their employees (over half a million of whom travel in from outside the City) and visitors. This infrastructure is in use around the clock. Against this background, it is essential to ensure that the effects new development may have in terms of increasing demands on the transport infrastructure are identified and understood to help inform decision-making - and then managed, with steps taken to encourage occupiers of new development to use sustainable transport modes and options.

### 11.1.2 Policy basis:

- The *National Planning Policy Framework* notes the importance of transport policies in facilitating sustainable development and wider sustainability and health objectives and states that Government recognises that different policies and measures will be required in different communities<sup>42</sup>. It states that all developments that generate significant amounts of movements should be supported by a transport statement or assessments<sup>43</sup>. It states that developments should be located and designed to: accommodate the efficient delivery of goods and services; give priority to pedestrian and cycle movements and have good quality access to public transport facilities; create safe and secure layouts minimising conflicts between traffic and cyclists/pedestrians; incorporate facilities for electric and other ultra-low emission vehicles; and consider the needs of people with disabilities by all modes of transport<sup>44</sup>. It notes that travel plans are key tool to facilitate this, and that all developments generating significant amounts of movement should be required to provide such a plan<sup>45</sup>.
- The *London Plan* Policy 6.3 states that development proposals should ensure that impacts on transport capacity and the transport network are fully assessed, with transport assessments required in accordance with Transport for London's *Transport Assessment Best Practice Guidance*<sup>46</sup> for major planning applications. Workplace and/or residential travel plans should be provided for planning applications exceeding the thresholds in, and produced in accordance with, relevant TfL guidance. Construction logistics plans and delivery and servicing plans should be secured in line with the London Freight Plan and should be coordinated with travel plans.
- Policy S42 in *Westminster's City Plan: Strategic Policies* states that developments must demonstrate that the freight, servicing and deliveries required will be managed in such a way that minimises adverse impacts.
- In the *Unitary Development Plan*, policy TRANS14 states that all development proposals will be assessed for their individual and cumulative impact in contributing to traffic generation, and on

---

<sup>42</sup> NPPF, paragraph 29

<sup>43</sup> NPPF, paragraph 32

<sup>44</sup> NPPF, paragraph 35

<sup>45</sup> NPPF, paragraph 36

<sup>46</sup> <http://www.tfl.gov.uk/cdn/static/cms/documents/transport-assessment-best-practice-guidance.pdf>

congestion, parking, safety, public transport, cyclists and pedestrians. The City Council will use transport assessments to seek to promote development that supports more sustainable choices and reduces the need to travel. In cases where the existing road network and/or junctions and/or the public transport networks cannot cope with the increased volume of movement generated by a development, the City Council will refuse planning permission unless it is possible to devise suitable transport improvements to permit the generated movements to gain safe access to the transport networks. Where necessary, the City Council will impose planning conditions or use planning obligations to enable such improvements to be carried out in conjunction with the development. Where the need for transport improvements arises from the movements generated by a new development, the City Council will normally require that the full cost of the improvement or an appropriate proportion of that cost be met by the developer. Appendix 4.1 in the UDP sets out the size thresholds for developments from which transport assessments will be required.

### 11.1.3 Application:

#### *A. Implementation of transport-related requirements identified in assessments, statements and plans*

The principles set out in paragraphs 4.2 and 4.3 and illustrated on page 20 will be applied in deciding the appropriate legal route to secure implementation of the steps identified in assessments, statements and plans where these are required to be submitted with a planning application (see Appendix 4.1 to Chapter 4 of the Unitary Development Plan):

- Measures directly related to the impact and delivery of a particular development and which are required to make it acceptable in planning terms - which may, depending on the circumstances of each case, include:
  - design, layout, implementation and management of the development site (including access arrangements into and within the site, footways and carriageways and vehicle and cycle parking)
  - physical provision on or adjacent to the site for the direct benefit of future occupiers (including vehicle and cycle parking, electric vehicle charging points, servicing and delivery provision)
  - access between the site and the public highway
  - improvements to the capacity or condition of the highway and/or wider public realm in the vicinity of the development linked with construction and/or occupation and/or use of the development
  - integration of the site with the local transport infrastructure
  - improvements to the capacity or condition of public transport provision in the vicinity of the development linked with construction and/or occupation and/or use of the development
  - measures – typically set out in a travel plan - to influence transport decisions of workers and occupiers of the site during construction and future use of the development to encourage a modal shift in favour of sustainable options and public transport use
  - use of the site and adjacent public highways for construction, servicing and delivery traffic.
  - Any highway reinstatement works agreed to be required.

will be dealt with by **planning conditions and through highway agreements** (where they are not separately addressed by the City Council using CIL). These will be supported by use of **planning obligations** where necessary and appropriate – for example to ensure a measure (such as provisions running with the land requiring payment of car club membership for residents of housing schemes) is secured over time or where payments or transfers of land to the council are required.

Details of the public realm standards that the council will seek are given in the *Westminster Way – public realm strategy, design principles and practice* supplementary planning document ([http://transact.westminster.gov.uk/docstores/publications\\_store/Westminster\\_Way\\_Public\\_Realm\\_Strategy\\_Adopted\\_September\\_2011.pdf](http://transact.westminster.gov.uk/docstores/publications_store/Westminster_Way_Public_Realm_Strategy_Adopted_September_2011.pdf)).

- Measures
  - addressing cumulative impacts of development
  - addressing area, neighbourhood or city-wide spatial scales
  - the need for which (assessed in terms of scale, spatial scale and cost) is not substantially the direct outcome of a single development)
  - for which it would not be reasonable for any other reason to seek from an individual developer for which the City Council is barred from using planning obligations because of the restrictions on their use in regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended)

will be secured through use of the **Community Infrastructure Levy**.

The application of these principles is further illustrated in the following parts of this section dealing with particular transport-related policy requirements.

**The City Council will further clarify the position regarding the respective use of CIL and other planning mechanisms through its regulation 123 list, which it intends to update regularly to indicate which transport schemes it will use the Levy to provide, improve, replace, operate or maintain.**

## 11.2 Freight and servicing

11.2.1 **Objective:** Most of the 50,000 enterprises in Westminster need servicing (including waste collection) and deliveries, largely by road. The density of enterprises of different kinds here (the largest in the country); the fact that they often neighbour residential properties; and the city's dense and historic highway network mean that planning policy has to ensure that freight and servicing provision for new development is made which is appropriate to the nature of its location is made. This must balance on and off-street loading and waiting; ensuring effective and safe access; and managing environmental, amenity and highway/traffic management considerations.

11.2.2 **Policy basis:** Part of the policy basis for use of planning mechanisms in dealing with freight and servicing issues has been set out in section 11.1.2 above.

- In the *London Plan*, Policy 6.14 sets a strategic objective of improving freight distribution (including servicing and deliveries). It supports development proposals that locate

developments that generate high numbers of freight movements close to major transport routes and promotes the uptake of the Freight Operators' Recognition Scheme, construction logistics plans and delivery and servicing plans. These should be coordinated with travel plans and the development of approaches to consolidate freight.

- In *Westminster's City Plan: Strategic Policies*, policy S42 states that developments must demonstrate that the freight, servicing and deliveries required will be managed in a way that minimises adverse impacts. This may include the provision of off-site consolidation centres, shared delivery arrangements and/or restrictions on the types of vehicles or timing of deliveries, especially where the quality of the public realm, local pollution, and/or function and reliability of the transport network would be otherwise compromised. It states that servicing and delivery needs will be fully met within each development site, except where the council considers this is not possible, in which case the servicing and delivery needs will be met in such a way that minimises the adverse effects on other highway and public realm users and other residential or commercial activity. Where some or all of the servicing and delivery needs are met through use of the public highway, the development will meet the initial and on-going costs associated with it.

### 11.2.3 Application:

Servicing Management Plans/Operational Management Plans and related arrangements (including those for waste collection) and delivery provision within or in the immediate vicinity of a development and which substantially meets needs directly generated by the development will be secured by **planning condition**. **Planning obligations** will be used where the nature of the provision makes this appropriate.

Arrangements for payment of the costs associated with modification or management of the public highway required to minimise adverse effects from its use for servicing and deliveries will be discussed with the developer in each case. They may be secured by **planning obligation** or **highway agreements** depending on the circumstances of each case.

Shared freight facilities (including those for freight consolidation) will be considered as a potential use of the **Community Infrastructure Levy**, although the council may play a facilitative role in encouraging developers to work together to make collective provision by agreement between them.

## 11.3 Improvements to transport infrastructure

11.3.1 Objective: Previous sections have described the range and extent of the demands on Westminster's transport infrastructure. It does not fully meet these demands now, and can have detrimental effects on local environments and on the amenity and quality of life for residents, workers and visitors. There is a constant need to improve the capacity, efficiency and effectiveness of the transport infrastructure and services serving the city. The City Council will work with the Mayor and Transport for London to ensure this need is addressed, including through appropriate application of planning policy and mechanisms.

11.3.2 Policy basis: Part of the policy basis for use of planning mechanisms in securing improvements to transport infrastructure has been set out in section 11.1.2 above.

- *The National Planning Policy Framework* states that local authorities should work with neighbouring authorities and transport providers to develop strategies for the provision of viable infrastructure necessary to support sustainable development<sup>47</sup>.
- The *London Plan* sets out an indicative list of transport infrastructure and schemes required to ensure closer integration of transport and development<sup>48</sup>. Policy 8.2 identifies supporting Crossrail where this is appropriate and other public transport improvements among the strategic priorities that should be given highest importance in the use of planning obligations.
- *Westminster's City Plan: Strategic Policies* policy S41 states that all developments will prioritise pedestrian movement and the creation of a convenient, attractive and safe pedestrian environment, with particular emphasis in areas with high pedestrian volumes or peaks. Sustainable transport options will be supported and provided for, including provision of cycle facilities (for residents, workers and visitors as appropriate) as part of all new development; reducing reliance on private motor vehicles; encouraging use of alternative sustainable fuels and technologies and developing water-based river transport. Policy S43 states that the council will support and promote transport infrastructure, including servicing improvements necessary to mitigate the impacts of increased passenger numbers, and integrate the infrastructure into the city and broader impacts of those central London networks that impact on Westminster, including major projects like: Crossrail 1 (with new stations at Paddington, Bond Street and Tottenham Court Road); High Speed 2; station improvements to improve accessibility, reducing pedestrian congestion and providing a safe, convenient and attractive environment including Charing Cross, Baker Street, Victoria, Paddington, Marylebone, Tottenham Court Road and Bond Street; public realm improvements - focusing on meeting the needs of people with disabilities and enabling people and businesses to make more sustainable choices; increased cycle parking and improving safety for cyclists; improving wayfinding; improving the convenience, connectivity, attractiveness and safety of Westminster's linear walking routes – including the Blue Ribbon Network and connections within and between Westminster's open spaces; improvements to local bus and taxi infrastructure; and improvements to river services and piers.
- In the *Unitary Development Plan*, policy TRANS8 states that the City Council may require financial assistance or physical provision for specific local improvements to public transport access or levels of service through imposition of planning conditions or be securing agreements with developers where there might be a benefit to the community; where financial assistance might help to achieve other planning aims and policies (such as comprehensive redevelopment, the better layout of development or its proper integration with local transport infrastructure); where they may secure the provision or improvement of a local service necessary to enhance access by public transport or influence the overall modal split in its favour; where it is possible to improve physical conditions or general ease of multi-modal access; and where such improvements would complement wider traffic reduction aims and mitigation of the adverse environmental impact of traffic on the local community.
- TRANS3 states that the City Council will aim to secure an improved pedestrian environment in considering development proposals, with particular regard to their safety, ease, convenience and directness of movement, in the course of negotiations or securing planning agreements, including provision of appropriate facilities such as footway widening, connecting walkways, footbridge location and covered arcading. Policy TRANS4 states that maintenance and improvement of bus services will be sought by a range of means, including such schemes and management measures as may be reliably secured by the development or redevelopment of land and buildings. Where a major development proposal is located where public transport

---

<sup>47</sup> NPPF, paragraph 31

<sup>48</sup> London Plan, Policy 6.1 and Table 6.1

networks are capable of improvements the City Council will require such improvement by concluding agreements with developers. Policy TRANS5 contains similar provisions relating to surface and Underground railways.

- Policy TRANS18 deals with highway improvements. It sets out the circumstances in which the City Council will use its powers to acquire land for improvements arising from, or incidental to, redevelopment proposals offering benefits in terms of wider planning and transport policies. It states that where the City Council identifies the prospect of more minor highway improvement arising from or incidental to development, it may seek to achieve the improvement by negotiation and legal agreement. In cases where the setting-back of buildings is successfully achieved, there may be exceptional circumstances (such as where implementation of a highway improvement will not take place for some time) to secure dedication of the frontage land as highway when it is required through a planning agreement.

### 11.3.3 Application:

As explained in paragraph 11.1.3, the principles explained in paragraphs 4.2 and 4.3 and illustrated on page 20 will be applied so that:

- Measures directly related to the impact and delivery of a particular development and which are required to make it acceptable in planning terms - such as those relating to:
  - Incorporation of transport infrastructure in the design, layout, implementation and management of the development site
  - physical provision on or adjacent to the site for the direct benefit of future occupiers
  - access between the site and the public highway or other transport networks (including rail, Underground and bus services as appropriate)
  - improvements to the capacity or condition of the highway and/or wider public realm in the vicinity of the development directly linked to construction and/or occupation and/or use of the development – such as relatively minor highway improvements that can be secured through the layout or design of a scheme or footway widening
  - integration of the site with the local transport infrastructure and public transport networks
  - improvements to the capacity or condition of public transport provision in the vicinity of the development directly linked to construction and/or occupation and/or use of the development
  - measures to influence transport decisions of workers and occupiers of the site during construction and future use of the development to encourage a modal shift in favour of sustainable options and public transport use

Will be dealt with by **planning conditions** and through **highway agreements (where they are not separately addressed by the City Council using CIL)**. These will be supported by **use of planning obligations where necessary** and appropriate having regard to the statutory tests – for example to ensure a measure is secured or maintained over time.

- Measures
  - addressing cumulative impacts of development
  - the need for which (assessed in terms of scale, spatial scale and cost) is not substantially the direct outcome of a single development – including making improvements to the wider public transport network.
  - for which it would not be reasonable for any other reason to seek from an individual developer

- for which the City Council is barred from using planning obligations because of the restrictions on their use in regulations 122 and 123 of the Community Infrastructure Levy regulations 2010 (as amended)

**will be secured through use of the Community Infrastructure Levy.** The City Council will further clarify the position regarding the respective use of CIL and other planning mechanisms through its regulation 123 list, which it intends to update regularly to indicate which transport schemes it will use the Levy to provide, improve, replace, operate or maintain.

**NB See also section 11.6 dealing with the Mayor’s policy for use of planning obligations to contribute to the costs of Crossrail.**

## 11.4 Improvements to coach facilities

11.4.1 **Objective:** Coaches carry large numbers of passengers, including both commuters and visitors, into and around the City. They have an important role in transporting specific groups (such as educational parties, theatre visitors and people with mobility difficulties) and in supporting the visitor economy. Coaches can have less positive impacts on other highway users, residents and businesses, in many cases intensified by concentration of coach use in particular places and at particular times. Given the large number of attractions and hotels in Westminster, the number of commuter destinations here and the presence of Victoria Coach stations and other coach stops in the City, there is an important role for the planning system in ensuring both high-quality, reliable and accessible coach services and that these do not impact unduly on the safety, amenity and convenience of residents, businesses, visitors and the wider traffic network.

11.4.2 **Policy basis:**

- In the *Unitary Development Plan* policy TRANS6 states that the City Council will seek improvements in coach facilities, such as coach parking (particularly off-street) and layover areas, where appropriate through negotiations or legal agreements with developers of suitable sites.

11.4.3 **Application:** Provision such as parking and layover facilities in any new development generating increases in coach traffic will be secured through **planning conditions or highway agreements** as appropriate.

## 11.5 Parking

11.5.1 **Objective:** Parking raises a number of complex issues affecting the appropriate balance to be struck between different uses of space. Being able to park near a residence or place of work is a valued convenience, and many businesses rely on the ability of suppliers and customers being able to park nearby. On the other hand, parking can take up large areas of the highway and impact adversely on local amenity, residents’ quality of life and the convenience and safety of other road users. Planning policy will seek to ensure that: the most efficient and effective use is made of space; highways remain passable and safe for all users (particularly pedestrians); due weight is given to the interests of residents, businesses, workers, visitors and those with particular needs (such as the emergency services); that places unsuitable for parking are protected; and that parking provision supports the economic success of the city and its centres. Policy will also take account of the influence

availability and ease of parking can have on peoples' transport choices and through these, on levels of traffic and congestion and their social, environmental and economic effects.

### 11.5.2 Policy basis:

- *The National Planning Policy Framework* sets out a number of high-level strategic objectives relevant to parking policy, particularly the important role transport policies can play in facilitating sustainable development and wider sustainability and health objectives<sup>49</sup>. It states that encouragement should be given to solutions supporting reductions in greenhouse gas emissions and reducing congestion<sup>50</sup>. It states that local authorities should seek to improve the quality of parking in town centres so it is convenient, safe and secure<sup>51</sup>.
- In the *London Plan*, Policy 6.11 includes promoting and encouraging car sharing and car clubs among the range of measures that boroughs can include in integrated packages of measures to smooth traffic flow and tackle congestion in their local plans. Policy 6.13 states the strategic objective of striking an appropriate balance between promoting new development and preventing excessive car parking provision that can undermine cycling, walking and public transport use. It states in particular that 1 in 5 parking spaces provided in new development should provide an electric charging point (both active and passive) to encourage the uptake of electric vehicles.
- In the Unitary Development Plan, policies TRANS21-26 deal with off-street parking provision for different forms of development. These set out the levels of provision that will be sought in each case. For residential development, policy TRANS23 states that planning conditions will be used to require that parking spaces will be reserved for the sole permanent use of residents. It states that where appropriate the potential impact of additional cars being parked on-street in the vicinity of a proposed development will be mitigated by either a financial contribution towards the cost of parking improvements that would directly benefit residents, or the long-term provision by the developer of off-street parking in the vicinity.

### 11.5.3 Application:

#### A. *Electric vehicle charging points*

All development proposals with off-street parking provision will be required to ensure that 20% of spaces are provided with charging points for electric vehicles. This will be secured through use of **planning conditions**.

#### B. *Addressing parking impacts of residential development*

Developers proposing residential developments involving five or more units which are likely to contribute directly to the level of on-street vehicle parking may be required to mitigate the address these direct impacts by:

- Long-term provision of off-street parking in the vicinity of the development to address the additional needs directly generated by it and secured for the sole permanent use of residents of the development. This will be secured **by planning conditions and/or planning obligations** as appropriate; and/or

---

<sup>49</sup> NPPF, paragraph 29

<sup>50</sup> NPPF, paragraph 30

<sup>51</sup> NPPF, paragraph 40



- Providing free membership of a Carplus accredited car club for all residents who qualify for 25 years. This will be secured by use of **planning conditions**.

## 11.6 Crossrail 1

11.6.1 As part of the funding agreement between the Mayor of London and Transport for London and the Secretary of State for Transport for the Crossrail 1 project, £600 million of the total £15 billion cost is to be secured from development through the planning system - £300 million apiece from planning obligations and the Mayor's own Community Infrastructure Levy.

11.6.2 Policy basis: London Plan Policy 6.5 provides the policy basis for the use of planning obligations to help meet the cost of Crossrail 1. It provides that in view of the strategic importance of the project to London contributions will be sought from developments likely to add to, or create, congestion on London's rail network. The detailed operation of this policy is explained in supplementary planning guidance (SPG) on *Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy* published in April 2013 (<http://www.london.gov.uk/sites/default/files/Crossrail%20SPG%20April%202013.pdf>).

11.6.3 The Mayor's CIL charging schedule was adopted in February 2012 and charging started from 1 April 2012.

11.6.4 Application:

### *A Crossrail planning obligations*

The City Council will seek Crossrail 1 contributions in accordance with Mayoral policy and guidance.

Westminster falls within the Central London contribution area defined in the Mayor's SPG, where the indicative levels of charge in 2010 prices are as follows:

- Offices: £140 per sq m net increase in gross internal area
- Retail: £90 per sq m net increase in gross internal area
- Hotels: £61 per sq m net increase in gross internal area

The Mayor's SPG provides more detail about the policy and its operation, but it should be noted that payment of Mayoral CIL is treated as a credit towards sums due under this policy.

Under the CIL Regulations, Crossrail 1 planning obligations are explicitly excluded from the restrictions on pooling of planning obligations referred to in paragraph 2.18 above.

### *B Mayoral CIL*

The City Council is the collecting authority for the Mayor's CIL in Westminster. This has been set at the rate of £50 per sq m gross internal area for all uses other than development used wholly or mainly for provision of medical or health services or for the provision of education as a school or college under the Education Acts or as an institution of higher education.

## 12. Public Art

12.1 **Objective:** Public art helps demonstrate a shared commitment by the City Council and developers to ensuring high quality public places which contribute to Westminster’s distinctive feel and spirit of place. It can enliven and animate places and spaces, creating a visually stimulating environment and adding to enjoyment of the city’s unique public realm.

12.2 **Policy basis:**

- The *National Planning Policy Framework* identifies seeking to secure a high quality of design and a good standard of amenity for all existing and future occupants of building and land as one of the core planning principles<sup>52</sup>.
- *London Plan* Policy 7.5 states that planning decisions should include consideration of opportunities for the integration of high quality public art in the public realm.
- In the *Unitary Development Plan*, policy DES7 states that the provision of public artwork, including sculpture, statuary and mural decoration will be encouraged where permission is sought for suitable schemes of development or redevelopment.
- The City Council has published a supplementary planning document on “Public Art in Westminster”: <http://transact.westminster.gov.uk/spgs/publications/Public%20art.pdf>. Further useful advice is given in the “Westminster Way – public realm strategy, design principles and practice” supplementary planning document ([http://transact.westminster.gov.uk/docstores/publications\\_store/Westminster\\_Way\\_Public\\_Realm\\_Strategy\\_Adopted\\_September\\_2011.pdf](http://transact.westminster.gov.uk/docstores/publications_store/Westminster_Way_Public_Realm_Strategy_Adopted_September_2011.pdf)).

12.3 **Application:**

*A. Public art in new development*

The City Council will work with developers to ensure public art is provided as an integral part of the design of their scheme, secured as necessary by **planning conditions**.

*B. New statues, monuments or memorials*

For proposals to create new statues, monuments or memorials on the highway, or in Westminster City Council parks, the City Council will seek financial provision for maintenance through use of **planning conditions (where the statue/monument/memorial is within the boundary of a development) or obligations wherever relevant**. The amount sought will depend on the circumstances of each case. Further advice is given in the City Council’s supplementary planning document on “Statues and Monuments in Westminster” ([http://transact.westminster.gov.uk/docstores/publications\\_store/S-and-M-FINAL-VERSION-1243433604.pdf](http://transact.westminster.gov.uk/docstores/publications_store/S-and-M-FINAL-VERSION-1243433604.pdf)).

---

<sup>52</sup> NPPF, paragraph 17

## 13 Waste

### NB. Waste collection arrangements are dealt with in section 11.2

13.1.1 **Objective:** In keeping with London-wide strategic waste policies, the City Council aims to further the objective of self-sufficiency, including through reduction of waste and encouragement of recycling. Planning policy will be used to ensure new developments play an appropriate part in supporting delivery of this objective.

13.1.2 **Policy basis:**

- The *National Planning Policy for Waste* states that local planning authorities should ensure that new, non-waste development makes sufficient provision for waste management and promotes good design to secure the integration of waste management facilities with the rest of the development<sup>53</sup>.
- *Westminster's City Plan: Strategic Policies* policy S44 states that the council will require major new development to provide on-site recycling and composting facilities, except where the council considers that it is inappropriate or unfeasible to do so. In such cases, new facilities will be provided off-site and may include shared provision with another development or an existing waste facility in the vicinity which has capacity, except where the council considers that it is inappropriate or unfeasible to do so.

13.1.3 **Application:** This requirement will be applied to all major developments. On-site provision will be secured by **planning condition**. Off-site provision directly linked to a development agreed by the City Council will be secured by **planning conditions and/or planning obligations** as appropriate to the circumstances of each case. Larger scale provision serving a number of developments is one of the forms of infrastructure that the City Council **may consider using the CIL to provide**.

---

<sup>53</sup> National Planning Policy for Waste, paragraph 8

## 14 Blue Ribbon Network

14.1.1 **Objective:** The part of London's Blue Ribbon Network of waterways that falls inside Westminster is of huge strategic importance to the capital, to its people and its visitors. The Thames forms the city's southern boundary and includes the setting of the Palace of Westminster and a number of historic buildings and bridges. The Grand Union and Regent's canals run through the north of the city, and the Network also comprises the Serpentine, Long Water and lakes in the other Royal Parks. Protecting these, and ensuring facilities for their enjoyment and use are in place, are important roles for the use of planning policies and delivery mechanisms.

### 14.1.2 **Policy basis:**

- The *London Plan* identifies the Blue Ribbon Network of linked waterspaces in Policy 7.24. Policy 7.27 states that development proposals should enhance the use of the Network; in particular, proposals should protect and improve existing access point to the Network (including steps from land into the water) and that new access infrastructure into or alongside the Network will be sought.
- *Westminster's City Plan: Strategic Policies* policy S37 states that development alongside the network must improve access to and enjoyment of the waterfront.
- In the *Unitary Development Plan*, policy DES13 states that the provision of moorings for both permanent and visitor use and facilities for boaters will be welcomed as a planning advantage on canalside sites.
- Policy RIV9 states that on sites immediately adjacent to the Thames without an existing river path, proposed developments will be required to include such a riverside path. For sites with an existing river path new development will be encouraged to include improvements where these are required. Policy RIV10 states that developments on riverside sites will be encouraged to provide and/or contribute to the improvement of steps or stairs to the River.

### 14.1.3 **Application:**

The principles set out in paragraphs 4.2 and 4.3 and illustrated on page 20 will be applied.

#### *A. Provision of canalside moorings*

Moorings and related facilities for boaters will be secured from canalside developments by **planning condition**.

#### *B. Provision for access to the Thames*

Developments on sites adjacent to the Thames may, where appropriate, be expected to provide or improve river paths and/or steps from land to the river through the use of **planning conditions and/or planning obligations as appropriate**.

## 15 Management and implementation

- 15.1 Successful implementation of the mechanisms provided by the planning system for delivery of policies is integral to achievement of the objectives they underpin.
- 15.2 The December 2008 Supplementary Planning Guidance on Planning Obligations set a contribution level of £500 per principal clause of each planning agreement, to be reviewed annually in line with the Retail Price Index.
- 15.3 These contributions have been applied to:
- Site inspections to assess status of schemes and other monitoring
  - Legal advice and costs, including those relating to enforcement and implementation
  - Ensuring the effective and efficient use of contributions, and providing required reports and accounts
  - Liaison with developers
  - Database maintenance
  - Subscription to Building Cost Information Service (BCIS) and other data sources required to ensure contributions reflect current costs and other trends affecting development viability in Westminster.
- 15.2 In February 2015, the High Court held in Oxfordshire County Council v Secretary of State for Communities and Local Government<sup>54</sup> that on the facts of the case before it a planning inspector was entitled to come to the conclusion that an administration and monitoring contribution did not meet the test in regulation 122(2)(a) of the Community Infrastructure Levy Regulations 2010 – that it would be “necessary to make the development acceptable in planning terms”. The court did recognise that whether administration/monitoring contributions were “necessary” in particular cases was a matter for planning judgement, and it was common ground that there may be circumstances in which it is appropriate to seek such contributions using section 106.
- 15.3 Of necessity, this decision hinges on the circumstances of the particular case concerned and it is difficult to derive any general principles from it at this stage. In the circumstances the City Council intends to keep the position under review, and to make any changes that may be appropriate in later iterations of this document.
- 15.3 The City Council will be reviewing its arrangements for management, administration and monitoring section 106 agreements including the information and other services it provides developers and their advisors as part of future governance arrangements to support the Westminster CIL. This may include considering charging for some services using the powers in Part 1 of the Localism Act 2011.
- 15.4 In the meantime, the Council will consider each case on its merits. It will consider seeking management and implementation contributions where this is appropriate having regard to the statutory tests for use of planning obligations and in other cases will explore use of other powers, including the Localism Act.

---

<sup>54</sup> [2015] EWHC 186 (Admin)

## 16 Arrangements for the period between April 2015 and introduction of the Westminster CIL

The City Council has published an interim guidance note dealing with the arrangements applying in the period between 6 April 2015 and the coming into force of the Westminster Community Infrastructure Levy:

### **Interim Guidance Note: Arrangements for use of planning obligations and other planning mechanisms in the period between 6<sup>th</sup> April 2015 and introduction of the Westminster CIL**

#### **1. Introduction**

1.1 This note deals with the arrangements that will be put in place during the period that will elapse between the coming into force of the restrictions on pooling planning obligations (commonly known as section 106 agreements or, in some cases, unilateral undertakings made by developers) under regulation 123(3) of the Community Infrastructure Levy Regulations 2010 (as amended) on 6<sup>th</sup> April 2015 and the introduction of Westminster's Community Infrastructure Levy (CIL) later in the year. The City Council is working actively to set its CIL with a view to ensuring that this interim period is kept as short as possible. A draft charging schedule is intended to be published for consultation shortly.

1.2 **As far as possible, the City Council intends to continue to apply existing policy and practice during this interim period so that development is not unduly delayed and policy requirements can continue to be applied.**

1.3 It is intended that in time, this note will be incorporated in a comprehensive supplementary planning document (SPD) dealing with the use of planning obligations and other planning mechanisms. It is our intention to issue this SPD for consultation shortly with a view to formal adoption at the same time as our CIL is adopted or before. This note is being brought forward now to help provide clarity for developers and others involved in the planning process about the approach that the City Council intends to take, particularly in light of concerns that have been raised by the sector about the likely uncertainty during this period.

#### **2. The restrictions**

2.1 Regulation 123(3) of the Community Infrastructure Levy Regulations 2010 (as amended) provides that:

*Other than requiring a highway agreement to be entered into, a planning obligation ("obligation A") may not constitute a reason for granting planning permission to the extent that-*

*(a) obligation A provides for the funding or provision of an infrastructure project or provides for the funding or provision of a type of infrastructure; and*

*(b) five or more separate planning obligations that*

- (i) relate to planning permissions granted for development within the area of the charging authority; and
- (ii) which provide for the funding or provision of that project, or provide for the funding or provision of that type of infrastructure

have been entered into on or after 6<sup>th</sup> April 2010.

“Highway agreement” in this context means an agreement made under section 278 of the Highways Act 1980 (see paragraph 2.4).

2.2 The practical effect of this provision will be to prevent use of planning obligations in conjunction with planning applications to “pool” from more than five obligations, with those entered into since 6<sup>th</sup> April 2010 counting against the limit. **This means that from 6<sup>th</sup> April 2015 no further section 106 agreements will be entered into which seek contributions to funding pools for:**

- i. **CCTV contributions**
- ii. **Generic public realm contributions (including contributions for the delivery of the North West Westminster Special Policy Area)**
- iii. **Education contributions**
- iv. **Pooled contributions towards improvements to public space in priority areas**
- v. **Contributions towards the cost of parking improvements**
- vi. **Pooled contributions to a Waste Management Fund.**

It is important to note, however, that there may, in some circumstances be situations in which it is appropriate to seek up to five pooled contributions from developments for infrastructure projects or types of infrastructure where this meets the statutory tests for the use of planning obligations (necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development).

2.3 The restrictions apply only to agreements relating to the funding or provision of either specific infrastructure projects or types of infrastructure. They do **not** apply to contributions towards the cost of things that are not “infrastructure”. The Planning Act 2008 gives examples of things that *may* constitute “infrastructure” – e.g. roads and other transport facilities; flood defences; schools and other educational facilities; and open spaces. There is, however, no *comprehensive* definition, and each case will, therefore, have to be considered on its merits. As a rule of thumb, the definition will tend to cover larger, fixed items likely to be accounted for as capital assets. Smaller-scale, and more moveable items accounted for by revenue spending may fall outside the definition (i.e. works relating to hard infrastructure such as paving, surface treatments and street furniture will generally be infrastructure for this purpose; tree planting and soft landscaping may not be). **Affordable housing is explicitly excluded.**

2.4 The restrictions also explicitly do not apply to use of planning obligations requiring developers to enter into agreements under section 278 of the Highways Act 1980 dealing with works on and to the highway. Where section 278 agreements are used, there is no restriction on the number of

contributions that can be pooled<sup>55</sup>. The further restrictions in the 2010 Regulations to prevent use of both CIL and section 106/278 agreements to fund the same infrastructure projects - what is sometimes known as “double dipping” - **do** apply to highway agreements, however.

2.5 **For the avoidance of doubt, these restrictions cannot be applied retrospectively. They do not affect planning obligations entered into before 6<sup>th</sup> April 2015 or contributions the City Council has already received.** These will continue to be dealt with in accordance with existing policy and practice. Existing funds using past section 106 contributions – such as those supporting delivery of the Paddington Area Transport Strategy (“PATS” - public transport improvements) and the Paddington Area Traffic and Environmental Management Study (“PATEMS” - highway improvements, including long-term vehicular access) and the Paddington Social and Community Fund Account (“PSCFA”) will continue to be managed in accordance with the terms of the original agreements. Longer-term, these arrangements will be reviewed to ensure consistent governance of resources secured through the planning system.

2.6 The restrictions apply at the point at which the decision is made to grant planning permission, and affect the factors that may lawfully be taken into account at that point. **They do not, therefore, apply retrospectively to cases in which that decision was made before 6<sup>th</sup> April 2015**, even if this took the form of a resolution to grant permissions and the administrative act of issuing the planning permission is delegated to officers on satisfactory conclusion of a planning obligation. They also do not apply to cases in which planning obligations are entered into that do not relate to the granting of a planning permission.

### 3. The Council’s intended approach

3.1 From 6<sup>th</sup> April 2015, the City Council will seek to apply the approach to planning obligations set out in this document to secure delivery of its planning policies by:

- Taking careful account of the extent to which the restrictions in regulation 123(3) of the CIL Regulations affect this and other planning considerations in each case.
- Working with applicants to explore the extent to which it is appropriate to seek things that may be regarded as infrastructure as part of the design of their scheme, secured where necessary by use of planning conditions or obligations.
- Coordinating joint approaches by developers to secure collective provision of infrastructure addressing the needs of a number of schemes where this is appropriate and practicable.
- Exploring the scope for use of section 278 highway agreements – and planning obligations requiring developers to enter into them - to deal with highways-based public realm works.
- Taking particular care in the drafting of planning obligations to reduce the extent to which the restriction will be triggered by continuing to clear and specific about the infrastructure projects or types of infrastructure that may be involved in each case and linking them to the demands and impact of the relevant development.

---

<sup>55</sup> National Planning Policy Guidance, paragraph 25-107



- In each case that a planning obligation is proposed to be used, ensuring the three statutory tests for use of planning obligations are met
- Taking particular care about how applications are reported to the Planning Applications Committee, and of the need for clarity about the factors that can and cannot be taken into account in deciding applications to ensure the restrictions do not unnecessarily inhibit decision-making.

#### **4. Public Realm Credits**

- 4.1 In May 2011 the Council adopted a Supplementary Planning Document (SPD) on operating a public realm credit system in Westminster  
[http://transact.westminster.gov.uk/docstores/publications\\_store/Public\\_Realm\\_Credits\\_SPD\\_Adopted\\_May\\_2011.pdf](http://transact.westminster.gov.uk/docstores/publications_store/Public_Realm_Credits_SPD_Adopted_May_2011.pdf) .
- 4.2 This SPD set a framework to incentivise early private capital investment to assist the council in enhancing the city's public realm as an important economic asset. The system was designed to encourage developers and landowners to invest in the council's priority public realm schemes on the proviso that they would be eligible to apply for their investment to be registered as a public realm credit. By December 2014 this framework enabled the council to agree to grant £8.8 million worth of public realm credits. Credits have been awarded to a number of developers in recognition of the investment that they have made towards the delivery of priority public realm improvements in areas including Covent Garden, Kingly Street, King Street, Portman Square, Leicester Square, Oxford Street, Piccadilly, New Quebec Street and Chapel Place.
- 4.3 To a developer the advantage of obtaining a public realm credit is that they may then, subject to a number of conditions, use it to offset a future planning obligation requirement to pay a financial contribution towards public realm improvement works. The policy basis for this is that the necessary public realm improvement works to which the contribution would be allocated have already been delivered through the upfront investment. This was especially important in the lead up to the 2012 Olympics and Paralympics when London and Westminster, in particular, was in the global spotlight. To ensure that the improvement works relate to the impact of the future development, and thereby meet the regulatory tests for using planning obligations, the credit must:
- Be derived from improvement works within the same public realm contribution area as the future development to ensure that the improvement works are within the vicinity of the development;
  - Be used against a planning obligation within 7 years of the grant of the credit to ensure that the future development benefits in time from the improvement works.

#### ***The effect of the CIL Regulation restrictions***

- 4.4 Because of the limitations that the CIL Regulations impose on the council's ability to pool planning obligations for infrastructure from 6<sup>th</sup> April 2015 explained in section 2 of this note, the council will no longer be able to pool contributions for public realm improvement works from this date. The

consequence of this is that there will not be a general public realm planning obligation tariff against which a public realm credit can be directly offset. Developers have been advised of this fact throughout the process and urged to ensure that the use of their existing credits be included in planning obligations signed before the 6<sup>th</sup> April 2015.

- 4.5 At the time of writing there are a number of public realm credits which remain unused. In view of this, during the interim period between 6<sup>th</sup> April 2015 and the date on which a Westminster CIL is adopted, the council will seek to continue to consider the use of public realm credits where a scheme gives rise to the requirement to fund public realm improvements in the wider vicinity of the site.
- 4.6 During this period the council will consider contributions from developments (that would have otherwise contributed to the former public realm tariff obligation), secured through a maximum of five obligations, to specifically identified public realm improvement projects within the vicinity of individual sites. In these circumstances, and using the same criteria and framework set out in the Public Realm Credits SPD, the council will still consider whether the developer should be able to use a public realm credit to offset any obligation to make a contribution. As has always been clear<sup>56</sup>, this judgement cannot fetter the Planning Applications Committee's discretion on whether a public realm credit should be accepted. It will, however, be a material consideration.

#### ***The future of the Public Realm Credit System on adoption of a CIL***

- 4.7 The Council recognises that there is a continual need to revitalise places and streets, connect areas of the city together and enhance their distinctiveness and character in ways that ensure there is a safe, well managed, attractive and clutter free environment that puts the pedestrian first. Major investment in enhancing the public spaces, streets and routes throughout the city is necessary to attract further investment and underpin investor confidence in the city. This investment cannot be secured without the support of key stakeholders in the city. This is particularly true of the West End/Core CAZ which is subject to the most development pressure, the most demands on its public infrastructure and as such is likely to generate the most CIL and is likely to be the largest recipient of its spend.
- 4.8 Given this background and in acknowledgement of the major public realm improvement works that have been brought forward through the Public Realm Credit system, the council is giving detailed consideration to ways in which it can continue to work with key stakeholders to ensure the effective delivery of priority public realm improvement works following adoption of a Westminster CIL. Having taken account of the very prescriptive nature of the CIL Regulations, and the mandatory requirement to pay CIL in cash on commencement of a development, the council considers that this would be better dealt with through the application of CIL funding and appropriate use of the regulation 123 list.

---

<sup>56</sup>Westminster City Council Supplementary Planning Document, Public Realm Credits – Operating a System in Westminster, paragraph 3.8

4.9 The CIL Regulations specifically allow for reimbursement from CIL of expenditure already incurred on infrastructure (regulation 60(1)) and for passing CIL receipts to another person for that person to apply to funding infrastructure (regulation 59(4)). Subject to other legal considerations, including state aid and the provisions governing the public procurement of works, the council will give further consideration on whether these regulations can facilitate an alternative arrangement which would allow developers to fund or deliver the council's agreed priority public realm projects in advance of a development coming forward. In each scenario CIL could be used to either reimburse the developer for expenditure already incurred by them or to fund directly the delivery of the works. Such arrangements will be considered alongside the future governance arrangements for the application of CIL funding.

## 17. Negotiating planning obligations: assessing viability, procedures and management

### 17.1 Procedure

- 17.1.1 This section summarises the process that will be followed for agreeing, completing and implementing planning obligations. At every stage, the City Council will continue to take a positive approach to support delivery of high quality, sustainable development, looking for solutions rather than problems and working proactively with applicants.
- 17.1.2 In particular, it will work with developers to expedite the process and ensure that planning agreements do not unnecessarily delay the decision-making process. Where it appears to the Council that progress on agreements is unnecessarily slow, it will take active steps to remedy the situation.
- 17.1.3 Pre-application stage: Applicants will find that their applications can be dealt with more rapidly if they are proactive in identifying areas where their proposals are likely to give rise to the need for planning obligations. They should consider the London Plan, Westminster City Plan and saved Unitary Development Plan policies, and any relevant supplementary planning documents, that may be relevant to their scheme.
- 17.1.4 The City Council provides a pre-application advice service for anyone considering proposals that may require planning permission or a related consent. The advice will help speed up the development process and avoid unacceptable proposals, and further advice about possible obligations can be given then (further details of the pre-application advice service can be found at <https://www.westminster.gov.uk/get-pre-application-advice>). The value of this advice will be increased if applicants use this document to identify areas where planning conditions or obligations or highway agreements may be appropriate and to start work on preparing draft heads of terms. Any viability issues that the applicant wishes the Council to consider should also be raised at this stage.
- 17.1.5 Applicants are also encouraged to consider their potential liability to pay the Community Infrastructure Levy at this stage. Developers must provide sufficient information to allow the council to determine whether the development is liable to pay CIL and if so to calculate it accurately from the floor areas provided. This procedure applies for both the Mayoral CIL and any potential Westminster CIL. A CIL Additional Information Form (available at [http://www.planningportal.gov.uk/uploads/1app/forms/cil\\_questions.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf)), which gives details about existing and proposed floorspace values and the lawful use test, should be submitted at the earliest opportunity. Further forms may be needed if a development arises from a general consent (for example permitted development under the General Permitted Development Order) or if someone other than the owner of the land intends to assumed liability to pay CIL. All the necessary forms can be found on the Planning Portal website.
- 17.1.6 Application stage: **It will significantly help prompt consideration of an application if draft heads of agreement are submitted with applications.**

- 17.1.7 Any necessary negotiations will continue post-submission, including consideration of any viability issues that may have been raised. Where there have been no pre-application discussions, applicants will be referred to this document and the relevant planning policies.
- 17.1.8 The council will ensure that so far as possible, agreements/undertakings are resolved before the application goes to committee. Applicants and/or their solicitors will be put in touch with one of Westminster's legal team. It will speed matters if things like an undertaking for costs incurred in negotiating and completing agreements, evidence of ownership of the land (to show the applicant has sufficient title to sign an agreement) and contact details are provided as early as possible. The agreement/undertaking will usually be drafted before the committee resolution to grant permission. If this is not possible, it will be done afterwards. The draft agreement will be sent to the applicants and/or their solicitors for comment and any necessary negotiations will be carried out between legal teams. Each agreement/undertaking will have a unique file reference number that will be used in all correspondence and management arrangements for the obligations.
- 17.1.9 Committee and post-committee: Any recommendation to grant planning permission will be made subject to completion of a satisfactory legal agreement or undertaking within a specified timetable. The Director of Law will be authorised to complete the legal agreement, or accept the undertaking.
- 17.1.10 In most cases it will only be necessary to refer an application back to committee if circumstances change to the extent that the obligations need to be altered from those agreed in some way, or where the legal agreement has not been completed within the timescale agreed. In these cases the application will be reviewed and may be considered again by the relevant committee (or, if the committee has agreed, under officers' delegated powers).
- 17.1.11 Post-completion: The City Council will register the planning permission and any other consents and the agreement or undertaking as local land charges.

## 17.2 Management and implementation

- 17.2.1 The City Council is putting new arrangements in place to oversee use of planning obligations, highway agreements and the Community Infrastructure Levy to ensure the most effective use is made of these mechanisms to support Westminster's sustainable growth, that relevant legislation is complied with and to provide a single point of contact for developers and others. These arrangements will include provision of a one stop shop for developers when making payments or serving notices as required by an agreement and will issue receipts and acknowledgements of compliance where necessary.
- 17.2.2 These arrangements will be underpinned by the monitoring database, which holds details of planning agreements. This is likely to be extended to include relevant highway agreements, and will be integrated with the systems and procedures for decision-making and reporting on CIL collection and expenditure to ensure both that the various restrictions on use of planning obligations are complied with and that the most effective use is made of the resources available through the planning process. This information will also be used to inform future decisions about

the Westminster CIL and the regular reviews that will be made of the infrastructure list prepared under regulation 123 of the CIL Regulations (see section 2.19).

## 17.3 Obligations involving highway works

15.3.1 Highway issues will be discussed with applicants at an early stage so that agreement can be reached about:

- the extent, scope and timing of any necessary works related to a development,
- who will carry out such work – the applicant’s contractors or the council’s; and
- whether a planning condition or obligation or use of a highway agreement is appropriate (and the relationship with any works being funded by the council through the CIL), applying the principles set out in paragraph 11.1.3.

This will enable the council to help advise on the works to be carried out, making sure they are proportional to the scale and type of development, and to carry out its duties as highways and planning authority.

17.3.2 Some background information about the development will be needed to inform these discussions. In particular, applicants should provide officers with plans showing existing and proposed layouts and elevations.

17.3.3 Transport for London are the highway authority for the Transport for London Road Network (TLRN). Developers making proposals for sites fronting on these roads should consult TfL.

17.3.4 Where highway works obligations are required, the draft legal agreement will contain the City Council’s standard highways clauses (including those relating to dedication of highway land).

## 17.4 Viability issues

17.4.1 The importance of viability issues has already been highlighted (see paragraphs 4.9-4.11). This section gives some general advice about the way in which the City Council intends to approach questions of development viability in discussions about planning policy requirements and making other requirements of development through the planning system. It is based on a number of key principals:

- The overriding objective is to ensure that those taking planning decisions – elected members and those advising them – receive information that is comprehensive, accurate and presented in such a way as to help them take fully-informed decisions. They must be able to readily understand the options available to them and the consequences of each.
- Planning and planning decisions are matters of wide public interest and concern in Westminster. It is important that all stakeholders in the planning process understand the decisions taken and the reasons for them, and that they are able to have as much access to the evidence used to take those decisions as is consistent with legislation and the appropriate protection of genuine private interests.
- There is a need for openness and frankness on both sides, with a willingness to provide further information if it is requested. All concerned need to be able to rely on the integrity and professionalism of others involved in discussions.

## Process

- 17.4.2 Potential viability issues should be identified as early in the planning process as possible. Applicants should identify the nature and scope of any such issues relating to their proposals during pre-application discussions (see paragraph 17.1.4). Reaching agreement about these, and about the methodologies to be used and inputs to be applied in dealing with them will help ensure prompt decision-making. It may be that providing a draft appraisal at this stage will help make the most productive use of discussions at this stage. This kind of informed early engagement will allow the council to give advice, and allow time for the applicant to receive and consider that advice, before an application is submitted and will help ensure that viability issues are dealt with appropriately and promptly in the planning process after that.
- 17.4.3 In any event, where an applicant intends to raise viability issues as a consideration in decision-making, they should submit a complete viability assessment with their planning application. If at any later stage it is proposed to make changes to a proposal that might change the assumptions underlying the submitted viability assessment the applicant should inform the City Council of the fact, and should submit a revised assessment.
- 17.4.4 Any viability assessment submitted should identify the name and professional qualifications of the individuals responsible for its preparation. Where any of these, or the firms for which they work, have an arrangement with their client whereby their fees increase if they are successful in securing reductions in planning obligations, this fact should be declared. The City Council expects that the standards of professional conduct set by the Royal Town Planning Institute, the Royal Institution of Chartered Surveyors and other relevant professional bodies will be upheld at all times, and reserves the right to refer any failure to meet these to the organisation concerned.

## Openness

- 17.4.5 The City Council is committed to ensuring that everyone interested in the planning process in Westminster can see and understand not only the decisions that it takes, but the evidence on which it draws in making those decisions. On the other hand, it understands that assessments of development viability can include details of genuine commercial confidentiality which merit protection – not least if developers and others involved are going to feel confident in being open and frank to the extent required for decisions to be based on a robust and comprehensive evidence base. In balancing these pressures, the Council also has to have regard to its legal responsibilities under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000.
- 17.4.6 Although both the 2000 Act and the 2014 Regulations contain exemptions from disclosure where this can be shown both to adversely affect the confidentiality of commercial information and to be in the public interest, the City Council cannot commit to keep information confidential – application of the exemption has to be considered in the circumstances of each case. A number of authorities have been compelled to disclose details of viability assessments submitted by developers in respect of major development schemes.
- 17.4.7 The City Council takes a pragmatic and informed approach to cases in which applicants consider that a full viability assessment will contain detail which:
- Is genuinely and demonstrably commercially sensitive
  - is not trivial or already in the public domain

- is such that disclosure would have demonstrable adverse impacts on the interests of the applicants.

Applicants in such cases should submit both a full report, and a version with those aspects considered to fall within the above criteria redacted. The redacted version should be accompanied by a justification for each of the redactions made. The City Council will then agree the form in which the redacted version will be published.

- 17.4.8 This approach is explicitly without prejudice to the City Council's obligations under environmental information/freedom of information legislation. Should a request for disclosure under this be made officers will consider each case on its merits, in particular looking at the case there may be to exercise an exemption from disclosure in the light of the information submitted in accordance with the previous paragraph. The City Council will inform the applicant of any request made, and invite their further comment, in each case.
- 17.4.9 The City Council will be reviewing its approach to consideration of development viability issues to ensure consistency of approach across development planning, strategic spatial policy-making and in connection with the CIL. This review will be informed by a dialogue with the development sector.



# Appendices

## APPENDIX 1

### **Westminster City Council's Community Infrastructure Levy Draft Regulation 123 List – September 2014**

#### **Published to support the Preliminary Draft CIL Charging Schedule**

This draft Regulation 123 list is a living document which provides a summary of the infrastructure that Westminster City Council considers it may fund in whole, or in part, on adoption of a Community Infrastructure Levy (CIL). In determining what infrastructure should be included in the list the council has had regard to the infrastructure demands outlined in the addendum to Westminster's Strategic Infrastructure Plan (2014), the infrastructure that is required to support the delivery of Westminster's City Plan (2013) and the available viability evidence (2014). It is the council's intention that this list will evolve and be reviewed on a regular basis to ensure that it includes the council's priority infrastructure to support development growth in Westminster.

On adoption of a Westminster Community Infrastructure Levy (CIL) the CIL receipts may be applied in whole, or in part, to the provision, improvement, replacement, operation or maintenance of the following infrastructure to support the development of Westminster:

- Crime and anti social behaviour infrastructure;
- Educational facilities;
- Health facilities;
- Parks and Open Space;
- Provision of enterprise space
- Public Realm improvements;
- Social and community facilities;
- Sports and Leisure facilities;
- Transport and highways but excluding works that are required as part of a development proposal to be secured through a Section 278 agreement such as reinstatement of highways disturbed by development works;
- Utilities;
- Waste;

It is important to note that the above list excludes infrastructure projects that are required to make a development acceptable in planning terms in accordance with the planning policies set out in the council's relevant development plan. Whilst CIL will be the council's main mechanism for securing funding towards the infrastructure that is required to support cumulative development in Westminster, there will be some instances where individual developments give rise to their own requirements for infrastructure in order to make the development acceptable in planning terms. Such infrastructure will be secured as part of the development through the use of planning conditions or Section 106 planning obligations. Further details of the approach that will be taken are set out in the draft supplementary planning document on "Use of Planning Obligations and Other Planning Mechanisms".

The above list of infrastructure is not in order of priority. As the council moves towards accruing sufficient receipts for the funding of infrastructure it is its intention that this Regulation 123 list will be amended to provide details of specific infrastructure projects that will be the priority for CIL funding at that time. It is also intended to keep the list under continuous review and to publish regular updates.

This Regulation 123 list therefore explicitly excludes the provision of infrastructure that is required to make a development acceptable in planning terms and which meets the legal tests of Regulation 122 of the CIL Regulations. Through the publication of this list the council therefore retains its discretion to negotiate necessary planning conditions and s106 planning obligations to secure such infrastructure.

## APPENDIX 2

### Overview of the mechanisms proposed for the delivery of a planning obligation on adoption of a Westminster CIL

Type of Obligation. Provision of:	Defined as Infrastructure	Proposed Mechanism for delivering the obligation	
		Community Infrastructure Levy (CIL)	Planning Obligation / Planning Condition
<b>Affordable Housing and Mixed Use Development – see Section 5</b>			
Housing as part of commercial development (CP:SP S1; UDP CENT3)	<b>NO</b>	<b>NO</b>	<b>YES - Planning obligation</b>
Affordable Housing (CP:SP S2; UDP H4)	<b>NO</b>	<b>NO</b>	<b>YES - Planning obligation</b>
<b>Local Economy and Employment – see Section 6</b>			
Employment, training and skills (including construction and operational phases of development (CP:SP S19)	<b>IN PART</b>	<b>IN PART - could fund premises for job brokerage services</b>	<b>YES - Planning obligation/condition as appropriate</b>
Light industrial floorspace in Creative Industries SPA (UDP COM9)	<b>YES</b>	<b>NO</b>	<b>YES - Condition, in exceptional cases where appropriate</b>
Securing general industrial or warehouse (UDP COM11)	<b>YES</b>	<b>NO</b>	<b>YES - Condition, in exceptional circumstances where appropriate</b>
Affordable workspace (London Plan Policy 4.1)	<b>YES</b>	<b>IN PART – may be used for provision of incubators, accelerators and co-working spaces in specific circumstances</b>	<b>YES - Condition, in exceptional circumstances where appropriate</b>
Small shops (London Plan Policy 4.9)	<b>YES</b>	<b>NO</b>	<b>YES - Condition, in exceptional cases where it is appropriate</b>
<b>Health, safety and well-being – see Section 7</b>			
Code of Construction Practice – CP:SP S19	<b>NO</b>	<b>NO</b>	<b>YES - Planning obligation for contributions towards inspection costs for major, complex development in sensitive locations. Compliance with Code dealt with by condition.</b>
Air pollution minimisation – CP:SP S31	<b>NO</b>	<b>NO</b>	<b>YES - Condition, as appropriate with planning obligation for</b>

			contributions towards inspection costs for major developments
Noise pollution minimisation – CP:SP S29	<b>NO</b>	<b>NO</b>	<b>YES - Condition, as appropriate</b>
Flood risk minimisation in new development – CP:SP S30	<b>YES</b>	<b>NO</b>	<b>YES - Condition and/or planning obligation where justified on a site specific basis</b>
Flood defence improvement – UDP RIV 12	<b>YES</b>	<b>IN PART – for strategically important improvements to enable development</b>	<b>YES - Condition and/or planning obligation where justified on a site specific basis</b>
<b>Social and community infrastructure – see Section 8</b>			
New social and community facilities and provisions to address impact of large-scale new development, including utilities and emergency services – CP:SP policy S34 (large-scale development), UDP H10)	<b>MOST</b>	<b>IN PART – facilities requiring an area-based approach and/or more resources than it is possible to secure from a single developer; CCTV</b>	<b>IN PART - Condition and/or planning obligation for site-specific requirements, where justified</b>
Childcare facilities – UDP SOC2	<b>IN PART</b>	<b>IN PART – premises for facilities requiring an area-based approach and/or more resources than it is possible to secure from a single developer</b>	<b>IN PART - Condition and/or planning obligation for site-specific requirements, where justified</b>
Local community arts or social activities in new indoor leisure facilities/public libraries – UDP SOC7	<b>NO</b>	<b>NO</b>	<b>YES - Condition for site-specific requirements, where justified</b>
Public toilets – UDP SOC8	<b>YES</b>	<b>NO</b>	<b>YES - Condition for site-specific requirements, where justified</b>
Replacement theatre provision in redevelopment proposals	<b>YES</b>	<b>NO</b>	<b>YES - Condition for site-specific requirements, where justified</b>
<b>Open space – see Section 9</b>			
Securing new open space, active playspace or public access to private space	<b>YES</b>	<b>IN PART - facilities requiring an area-based approach and/or more resources than it is possible to secure from a single developer</b>	<b>IN PART - Condition and/or planning obligation for site-specific requirements, where justified</b>
Securing contributions to improve quality, ecological value or accessibility of existing spaces – CP:SP S35; London Plan 2.18D; UDP ENV15 and S38/Extension and creation of wildlife habitat – CP:SP S38	<b>IN PART</b>	<b>IN PART- facilities requiring an area-based approach and/or more resources than it is possible to secure from a single developer</b>	<b>IN PART - Condition and/or planning obligation for site-specific requirements, where justified</b>
Children’s playspace in new housing development	<b>IN PART</b>	<b>NO</b>	<b>YES - Condition and/or planning obligation for site-specific</b>

			requirements, where justified
<b>Energy and climate change – See Section 10</b>			
Linkage of major developments to heating and energy networks in the vicinity – CP:SP Policy S39	<b>YES</b>	<b>NO</b>	<b>YES - Condition, as required and appropriate</b>
Site-wide decentralised energy where connection with network not possible – S39	<b>IN PART</b>	<b>NO</b>	<b>YES - Condition, as required and appropriate</b>
Renewable energy – UDP ENV1	<b>IN PART</b>	<b>NO</b>	<b>YES - Condition and/or planning obligation for site-specific requirements, where justified</b>
Climate Change Mitigation: minimisation of carbon emissions, sustainable design and construction, retrofitting of commercial buildings – London Plan policies 5.1, 5.2, 5.3 and 5.4	<b>NO</b>	<b>NO</b>	<b>YES - The preferred option of on-site mitigation measures will be site-specific and dealt with by condition. Where off-setting payments required, a planning obligation will be used.</b>
<b>Transport infrastructure and related public realm – See section 11</b>			
Travel Plan, protection of environment from effects of transport activities – UDP TRANS1, CP:SP S33 and S41	<b>IN PART</b>	<b>IN PART– where implementation requires an area-based approach and/or more resources than it is possible to secure from a single developer. For the delivery of infrastructure</b>	<b>IN PART - Travel Plan will be secured by condition and/or planning obligation as appropriate to each case. Implementation involving non-infrastructure items, and infrastructure items to address site-specific issues will be dealt with through planning obligations or highway agreements (approach described in more detail below)</b>
Transport assessments and their implementation – UDP TRANS14, CP:SP S33 and S41	<b>IN PART</b>	<b>IN PART– where implementation requires an area-based approach and/or more resources than it is possible to secure from a single developer.</b>	<b>IN PART - Implementation involving non-infrastructure items, and infrastructure items to address site-specific issues will be dealt with through planning obligations or highway agreements (approach described in more detail below)</b>
Support or promotion of strategic public transport infrastructure, such as stations – CP:SP S43, UDP TRANS4, TRANS5, London Plan policies 6.5 and 8.2	<b>YES</b>	<b>YES</b>	<b>IN PART - Only in exceptional circumstances and where not permitted by s106 scaleback provisions (including Mayor’s Crossrail planning obligation policy). The City Council will clarify the position in its regulation 123 list</b>

			as updated from time to time.
Area scale improvements to public transport, public realm, cycle safety, wayfinding and legibility, and pedestrian environment - CP:SP S43 and S41, UDP TRANS3, TRANS4, TRANS5, TRANS8	<b>YES</b>	<b>YES</b>	<b>IN PART - Only in exceptional circumstances and where permitted by s106 scaleback provisions (including Mayor's Crossrail planning obligation policy). The City Council will clarify the position in its regulation 123 list as updated from time to time.</b>
Large-scale highway improvement schemes – CP:SP S43, TRANS18	<b>YES</b>	<b>YES</b>	<b>IN PART - Only in exceptional circumstances and where permitted by s106 scaleback provisions (including Mayor's Crossrail planning obligation policy). The City Council will clarify the position in its regulation 123 list as updated from time to time.</b>
Public realm, access and servicing requirements required to mitigate the direct construction and operational impacts of development - CP:SP S41,	<b>YES</b>	<b>NO</b>	<b>YES - Condition, planning obligation and/or highway agreement as appropriate</b>
Cycle parking within schemes – CP:SP S41	<b>YES</b>	<b>NO</b>	<b>YES - Condition, as appropriate</b>
Provision of new freight/servicing facilities within developments – CP:SP S42	<b>YES</b>	<b>NO</b>	<b>YES - Condition, as appropriate</b>
Provision of shared freight/servicing facilities – S42	<b>YES</b>	<b>YES</b>	<b>NO</b>
Cost of use of highway for servicing/delivery – S42	<b>NO</b>	<b>NO</b>	<b>YES - Planning obligation or highway agreement</b>
Improvements to coach facilities	<b>IN PART</b>	<b>IN PART – a) where infrastructure, and b) where implementation requires an area-based approach and/or more resources than it is possible to secure from a single developer.</b>	<b>IN PART - Condition, planning obligation and/or highway agreement where appropriate</b>
<b>Other public realm and heritage– see Section 12</b>			
Public Art – UDP DES7	<b>NO</b>	<b>NO</b>	<b>YES – but only by agreement with developer</b>
Contribution to delivery of North Westminster SPA enhancement strategy	<b>YES</b>	<b>NO</b>	<b>NO - Policy obsolete – see treatment of public realm set out above</b>
<b>Waste – see section 13</b>			
Provision of on-site waste/recycling facilities in	<b>YES</b>	<b>NO</b>	<b>YES – by condition or planning obligation</b>

major developments – CP:SP S44			
Shared or area-scale waste/recycling facilities – CP:SP S44	<b>YES</b>	<b>YES</b>	<b>NO</b>
<b>Blue Ribbon Network – see section 14</b>			
Provision of moorings on canals – UDP DES13	<b>NO</b>	<b>NO</b>	<b>YES – by condition or planning obligation in appropriate cases</b>
Improvements to riverside path where needed from sites next to the Thames – CP:SP S37, UDP RIV6	<b>YES</b>	<b>NO</b>	<b>YES – by condition or planning obligation</b>
Securing steps and stairs to the river from developments next to the Thames – CP:SP S37, UDP RIV10			<b>YES - by condition or planning obligation</b>



