



**London Plan Alteration: Development Contributions to Crossrail  
Public Consultation Draft  
London First Response  
05/08/09**

**1. INTRODUCTION**

1. London First is a business membership group whose aim is to make London the best city in the world in which to do business. We do this by mobilising the experience, expertise and enthusiasm of the private sector to develop practical solutions to the challenges London faces and to lobby government for the investment that London needs in its infrastructure. London First delivers its activities with the support of around 250 of the capital's major businesses in key sectors such as finance, professional services, property, creative industries, hospitality and retail. Our members represent around a quarter of London's GDP.
2. London First is a longstanding and strong proponent of Crossrail and supports the principle that development contributes to its funding. Contributions must be equitable, reasonable and viable. Contributions must be considered in the context of other planning obligations and requirements, particularly in light of the economic circumstances which are likely to prevail for the short to medium term. This will be critical to ensure development is undertaken and London is well placed for economic recovery.
3. It is vital that the Crossrail charge is seen firmly in the context of the continuing need to attract capital and to create the incentive to invest in London as fully and as quickly as possible. The severity of current economic circumstances means that the practical consequences of the introduction and application of the proposed charge warrant careful and sensitive handling.
4. The concerns raised in this response are founded from a strong desire to ensure that the policy is successful and that development contributes to Crossrail.

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## Overall approach

5. We welcome the changes the Mayor has made to his proposals since consultation with the Assembly but remain concerned that these do not go far enough. The narrow approach to use classes proposed to be charged, coupled with the geographic focus, leads to an untenably high charge.
6. The continued approach of focusing on one use class in a small area threatens to undermine the viability and deliverability of the most economically important development nationally. This will not only threaten economic recovery, but also the ability to achieve the funding for Crossrail.
7. The narrow approach does not reflect the heads of terms for funding Crossrail which included:  
  
“securing contributions from property developers who develop in the vicinity of Crossrail stations.”
8. In light of the approach taken, where meeting the target is reliant on office development within the CAZ, we urge the Mayor to assess the impact on deliverability of the changes to the London View Management Framework which will reduce office development capacity within much of the CAZ.
9. The draft Alteration, SPG and supporting documentation do not recognise that in much of the CAZ there are no pure office developments. Mixed use policies require the inclusion of housing and consequently affordable housing. In an already highly constrained area this adds considerable cost and complexity and reduces development viability and deliverability. The impact of the charge on office development is therefore not a simple one and needs to be considered in this context.
10. We do not consider that the proposed approach of charging only offices in the CAZ and north of the Isle of Dogs meets the tests of being ‘fairly and reasonably related in scale’ and ‘reasonable in all other respects’ (two of the tests under Circular 05/05).
11. We are concerned that the justification for the higher rate proposed for the north of the Isle of Dogs is on the grounds of ‘resilience’: based on making up for past under-investment, and is therefore contrary to the Circular; and that the rate is based on what was agreed on one development at Wood Wharf which is exceptional and should not form the basis of the charge across the area.
12. We recognise that the Mayor does not wish to extend the uses to which the charge will apply, although extension with differential rates other use classes would reduce the headline rate.
13. Specific consideration will be needed for the application of the charge to over-site development of Crossrail stations where the priority should be to improve the public realm and integration in these important areas.

## Viability

14. Ensuring development viability will be critical to delivering much needed development as well as the funding for Crossrail. Where development is marginal or where there are site specific circumstances which lead to other section 106 priorities, it will be necessary to pay a lower or no charge and this will need to be agreed through financial appraisal. There is precedent for this approach in relation to affordable housing and other planning related matters that require quantification such as credits and enabling development considerations.
15. The assessment and application of the charge must be subject to rigorous analysis on the impact on economic viability. As with affordable housing and other planning obligations, the charge must be set and applied at a level which encourages, **rather than restrains development**. This is never more critical than during this recession: the charge must not prolong recession and delay development and recovery.
16. In practice this means that:
  - Viability must be considered when setting and applying policy.
  - The proposed level of the charge and its impact on development must be rigorously tested, with developers involved in testing. We do not believe this to be the case with the current draft policy.
  - The yield from developments proximate to outer London stations should be calculated and reflected in the headline rate.
  - The charge must be applied sensitively and reduced where viability assessments demonstrate that this is necessary.
  - Planning obligations and requirements (including affordable housing, other transport improvements and sustainability measures) from the GLA family and boroughs must be clearly prioritised and reduced accordingly.
17. Rigorous viability testing of the proposed charge and other planning obligations is therefore critical. We welcome the inclusion of viability testing in the revised policy and look forward to working with the Mayor's advisers and officers to construct an appropriate test. Viability should be tested through financial appraisals which must take full account of:
  - property (land) costs or a market value of the property / land (whichever is more appropriate); and
  - All s106 obligations (from the GLA/TfL and borough); and
  - Planning requirements which impose significant additional costs such as those to mitigate and adapt to climate change; and
  - All development costs including interest on construction, professional fees, acquisition costs, purchase costs and allied professional fees; and
  - Contingencies; and
  - Developer profit commensurate with the risk.
18. Financial appraisals should be undertaken as part of pre-application discussions to reduce uncertainty for applicants. Applicants, their advisers and boroughs will need to be aware of the charge to ensure that this happens for non-referrable schemes.

## **DRAFT ALTERATION**

### **New Policy 3C.12A Funding of Crossrail**

19. To be consistent with the circumstances that the Mayor will have regard to, it should be stated that the guidance will include:  
  
“circumstances for identifying developments in respect of which Crossrail contributions should be SOUGHT (not required) in accordance with national policy.”
20. Crossrail contributions will be sought but may not be required. This is also consistent with the second bullet point (“reasonable contributions to be sought...”), and third “the period over which contributions will be sought.”
21. It is welcome that any changes to the standard charge will be thoroughly consulted upon and will take account of the impact on the viability of development. We agree that the office benchmarks in the London Plan will be a useful way to assist this.

### **Amended Policy 6A.4 Planning Obligations**

22. We welcome clarification on planning obligation priorities which is critical if development is to be viable: the Crossrail charge can't simply be added to requirements. The supporting text could go further to recognise that:  
  
“PRIORITISATION OF ALL PLANNING OBLIGATIONS WILL BE ESSENTIAL TO ENSURE THAT DEVELOPMENT IS VIABLE AND IS ENCOURAGED, NOT RESTRAINED. THIS WILL MEAN PRIORITISATION WITHIN THE GLA FAMILY, AND BETWEEN THE REGIONAL AND LOCAL LEVEL.”
23. Applications will need to undergo rigorous viability testing where the s106 demands threaten viability, with a consequent reduction in requirements where necessary. Amended policy 6A.4 should refer to the viability of development for consistency and clarity. The following should be added at the end:  
  
“The Mayor will and boroughs must, take account of the viability of individual developments through financial appraisals when considering planning obligations, to ensure that development is deliverable.”

### **Amended Policy 6A.5 Planning Obligations**

24. Policy 6A.5 should also make reference to viability for consistency. The following should be added after the second bullet point:  
  
“Negotiations should take account of the viability of individual developments.”

## DRAFT SUPPLEMENTARY PLANNING GUIDANCE

### Use of planning obligations: meeting the tests in Circular 05/05

25. Planning obligations must meet the five tests in Circular 05/05 to be:
- (i) relevant to planning;
  - (ii) necessary to make the proposed development acceptable in planning terms;
  - (iii) directly related to the proposed development;
  - (iv) fairly and reasonably related in scale and kind to the proposed development;
- and
- (v) reasonable in all other respects.
26. We do not consider that the proposed approach of charging only offices in the CAZ and north of the Isle of Dogs meets the tests of being 'fairly and reasonably related in scale' and 'reasonable in all other respects.'

### Types of Development and Location

27. The table depicting impact on the rail network (p26) refers to 800m zones around outer London stations whilst the text (para 4.25) refers to 960 m. The table should be amended.
28. The first bullet point of paragraph 4.11 should be consistent with paragraph 4.25:
- "The impact on outer London is comparatively low other than within 960m of Crossrail stations where the charge will be sought. The standard rate will be the starting point for negotiations"
29. Policy must balance the desire for simplicity with equity and the need to ensure viability. We are concerned that the focused route proposed has been overly influenced by the desire to have a 'clear and easy to understand boundary'.
30. The simplicity and clarity that applicants seek is in the calculation of obligations, not the policy itself. We do not consider it is a reasonable justification to focus on office development in the CAZ as it (para 4.17):
- "...restricts the number of applications in respect of which a contribution will have to be sought, minimising the administrative cost burden on planning authorities and also the impact on other planning obligations."
31. The proposed approach is based on the analysis undertaken by Colin Buchanan and Jones Lang LaSalle. The full body of research and modelling should be made available for thorough testing as part of the examination process.
32. We are concerned that the proposed approach, focussing on offices in the central area, leads to a high level of charge which will make development unviable, undermine economic recovery and growth and puts at risk the ability to collect £200 million. We agree that the charge should be allocated according to impact and we do not consider that full consideration has been made of the impacts of different uses.

33. The CAZ and north of the Isle of Dogs is the most important part of the country economically: policy which has a negative effect on development in the CAZ will be detrimental economically. The implications of such an approach must be carefully analysed and considered. This is even more critical in the current economic climate with the need to ensure policy encourages and doesn't delay recovery.

### **Setting the Level of Charge**

34. The Jones Lang LaSalle research refers to 'leakage' as a consequence of the proposed policy: i.e. development which becomes unviable and does not happen. The extent of this requires greater consideration. This leakage has very real implications for the London and UK economy; its competitiveness and attractiveness. The risk of leakage would be reduced by spreading the burden more broadly thereby reducing the charge and creating a level playing field between uses.
35. The need to spread the risk is heightened by the uncertainty of the timing of market recovery.
36. The standard rate has been achieved (paragraph 4.22) by estimating the likely level of development and applying it to the target to raise £200 million. The viability of the consequent charge has not been tested. Making deductions for leakage is not the same as ensuring that the resultant charge is viable. Likewise, the higher rate on the north of the Isle of Dogs is justified in terms of transport need and not assessed for viability.
37. The revised draft has provided further guidance on circumstances where developments proximate to stations outside London might incur the Crossrail Levy, which is welcome. However, it is critical that the yield is calculated and reflected in reductions to the headline charge rate.
38. We do not consider that there is sufficient justification for the proposed higher level of charge in the north of the Isle of Dogs. The basis, on the grounds of 'resilience': is essentially making up for past under-investment which is contrary to the Circular. The rate is based on what was agreed on Wood Wharf which is an exceptional development and should not form the basis of the charge across the area.
39. The revised text in the SPG (para 4.25) is ambiguous regarding the use classes to which the charge would apply in developments proximate to stations. It is critical that there is clarity so that the impact can be factored into the design and cost of the development at the outset. If the charge is applied to residential development it is likely to lead to lower levels of affordable housing which will impact on the make-up and design of the development. This needs to be taken into account at the outset, not when negotiations start on planning obligations.
40. We do not agree that, paragraph 4.26, "the charge has been set at a level that should not affect viability."
41. It should be made clear that consideration will be made of the viability of development with respect to the Crossrail charge in conjunction with other planning obligations and requirements. The charge itself may not make a development unviable, rather the cumulative impact with other planning obligations. Paragraph 4.26 should therefore be amended:

“The Mayor will consider carefully any case in which it can be demonstrated that making a contribution under this guidance, IN CONJUNCTION WITH OTHER PLANNING OBLIGATIONS, would have an effect on the viability of development, or would otherwise be unreasonable or disproportionate.”

42. Further detail should be provided on the nature of financial assessments. In particular assessment should take full account of:
- property (land) costs or a market value of the property / land (whichever is more appropriate); and
  - All s106 obligations (from the GLA/TfL and borough); and
  - Planning requirements which impose significant additional costs such as those to mitigate and adapt to climate change; and
  - All development costs including interest on construction, professional fees, acquisition costs, purchase costs and allied professional fees; and
  - Contingencies; and
  - Developer profit commensurate with the risk.

### **Reporting, monitoring and review**

43. It is essential that there is transparency on how much is collected and when the target is reached. The amount collected should be recorded in the London Plan annual monitoring report.

### **Collection**

44. We welcome the production of a protocol to minimise delays. London First would like to be involved in the preparation of the protocol to ensure that the applicants' perspective is understood and represented.
45. Complex schemes with a long lead in time may have already made commitments to certain planning obligation for infrastructure provision; re-prioritisation to account for the Crossrail charge may be impractical or impossible. Exceptions should be made for such circumstances and the draft guidance should make some reference to this.

### **Consistency with Government policy tests and viability**

46. We do not agree with the JLL conclusion that the [paragraph 4.33] charge is 'low.' We are also concerned that the emphasis on a simple and easy to calculate charge has led to approach which is too focused and results in a standard charge which is too high and will make development unviable.
47. We do not agree that leakage will be 'at the margin'. The risk of leakage is exacerbated by the high level of charge and focus on one use class in the CAZ. Planning policy and the 'pull' of central London may not be sufficient to overcome the effect of the charge when added to other planning obligations and requirements. Planning policy in much of the CAZ seeks the inclusion of housing in commercial development which already greatly adds to the cost and complexity of development and can undermine viability and the rationale for development. This charge will exacerbate this effect and will lead to a reduction in housing and affordable housing provision.

48. We also do not agree that developer acceptability will be increased by payment on implementation. Payment before implementation would be highly unusual and inequitable. The impact of the charge and the sensitivity of payment timing has been recognised by the changes made to the draft SPG which recognise that payment may be appropriate in phases or on completion or occupation.
49. We agree that the impact of the charge will be largest where there is little existing development as the net increase will be larger. It should also be recognised that in areas with high existing use values, the impact of the charge may be to remove the rationale for development by increasing the cost above existing values.
50. We do not agree that the level of the charge will be easily absorbed into development costs.

### **The Community Infrastructure Levy (CIL)**

51. As far as possible the s106 policy should be established to allow simple transition to CIL in light of the expected implementation of CIL within the Plan period; the requirement to raise £300 million for Crossrail from CIL; and therefore the transition of the requirement from one regulatory regime to another.
52. Arrangements for transition between the Crossrail levy under the current s106 regime, and the CIL, are critical, especially as the Government has announced that it intends the CIL to be introduced on 6 April 2010, the same time that the Crossrail Alteration will be adopted. It is therefore vital that urgent consideration is given to the interaction of the two regimes as they will be introduced simultaneously.
53. However, the draft regulations and consultation document published on 29 July do not address the matter, but pose the question as to how it should be addressed. This is highly unsatisfactory, especially as the close of consultation (23 October) is after the pre examination meeting.
54. Local authorities will be empowered, not required, to set a CIL. Consideration will be needed for the circumstances where a borough chooses not to set a CIL.
55. Development should only make one contribution to Crossrail. We do not consider it to be reasonable or equitable for development to pay both Crossrail s106 and CIL. Once CIL is introduced the Crossrail s106 should no longer apply.

### **Lower introductory rate**

56. We support the Mayor's suggestion that a reduced headline rate should be introduced in the early years of the policy. This will be important to facilitate development as the economy recovers. There is a clear case for revenue being raised over a longer timeframe – this would be a more realistic proposition.

### **Developments outside London**

57. We welcome the Mayor's letter to the Secretary of State for Transport seeking authorities outside London to apply the charge to developments proximate to Crossrail stations and would be pleased to support the Mayor in achieving this.
58. Contributions from developments outside London should be recorded and deducted from the £200 million s106 target.