



Document title: Post-Hearing Note on Financial contributions

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Post-Hearing Note on Financial contributions
(October 2020)

1. Introduction

Throughout the City Plan there are several references to where financial contributions will be sought from individual developments. This paper explains the justification for those contributions and the relationship to the Community Infrastructure Levy.

It does not cover payments in lieu of affordable housing.

2. Planning obligations

Paragraph 002 (Reference ID: 23b-002-20190901) of the Planning Practice Guidance sets out:

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:

- 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.

These tests apply whether or not there is a levy charging schedule for the area.

3. Community Infrastructure Levy

The Community Infrastructure Levy (CIL) is a charge on development to help fund infrastructure such as transport schemes and schools which the council, local community and neighbourhoods require to help accommodate new growth from development. The Council has published a list of the types of infrastructure which it will spend its CIL receipts on in line with Regulation 123 of the Community Infrastructure Levy 2010 Regulations (as amended):

http://transact.westminster.gov.uk/docstores/publications_store/planning/cil/WCC_CIL%20Infrastructure_List_for_the_Purpose_of_Regulation_123.pdf

As set out in Paragraph 006 (Reference ID: 23b-006-20190901) of the Planning Practice Guidance the 2019 amendments to the CIL regulations removed the previous restriction on pooling more than five planning obligations towards a single piece of infrastructure by removing Regulation 123. Instead of the previous Regulation 123 List, the council must publish an annual infrastructure funding statement by 31st December 2020, which identifies the infrastructure the council will spend planning obligations on and whether these will be from CIL or S106, or both.

This means that, subject to meeting the three tests set out in CIL regulation 122, charging authorities can use funds from both the levy and section 106 planning obligations to pay for the same piece of infrastructure regardless of how many planning obligations have already contributed towards an item of infrastructure.

4. Policy requirements in draft plan

Policy 19 Education and Skills (including proposed modification M/EE/15)

D. Major developments will contribute to improved employment prospects for local residents. In accordance with the council’s Affordable Housing and Planning Obligations SPD, this will include:

- 1. financial contributions towards employment, education and skills initiatives from residential and commercial schemes; and**
- 2. for larger schemes, the submission and implementation of an Employment and Skills Plan.**

Purpose of this requirement

As explained in the supporting text to the policy (paragraph 19.7), the financial contributions will go “towards employment, education and skills initiatives, and on larger schemes, requiring apprenticeships and job placements in accordance with targets set out in an agreed Employment and Skills Plan.”

The contribution is justified on the fact that although Westminster has a very high number of jobs, it relies heavily on in-commuting of skilled workers and the need to ensure the city’s residents benefit from growth in the city in terms of employment opportunities, particularly those from disadvantaged backgrounds (paragraph 19.6 of the draft City Plan).

Relationship to CIL

These contributions primarily fund the Westminster Employment Service and are unrelated to infrastructure provision. There is therefore no overlap with CIL.

Planning obligation tests

All tests are met:

- Necessary to make the development acceptable in planning terms – yes as it ensures individual developments make a collective contribution to securing job placements within the end use of the development rather than solely in the construction phase, which will be important to ensure local residents fully benefit in the long term from the diverse opportunities economic growth brings.
- Directly related to the development – yes as the financial contributions are used to fund the Westminster Employment Service which provide a key point of contact to assist developments in delivering benefits to local residents.
- Fairly and reasonably related in scale and kind to the development – yes as the contribution relates specifically to the size of the development, as set out in the [published guidance note](#) (which will be updated upon adoption of the new City Plan and form part of the Affordable Housing and Planning Obligations SPD).

Policy 25 Sustainable Transport (including proposed modification M/C/01)

Clause C 5. Major development should provide or financially contribute towards creating well-connected, high-quality, convenient, safe cycle infrastructure and routes.

Purpose of this requirement

This part of Policy 25 seeks to ensure that major development plays its part in encouraging the use of sustainable transport options by making it easy and accessible to choose this transport mode over private motor vehicles. As submitted, this was limited to cycling infrastructure, however following

comments from Transport for London in their Regulation 19 consultation response this was widened out to cover all sustainable transport modes through a proposed modification.

Relationship to CIL

The policy seeks site specific improvements to sustainable transport infrastructure and there is therefore no overlap with CIL. The policy clearly allows for physical provision of measures OR a financial contribution to comply with the policy. The specific circumstances of the site can therefore be taken into account as to what the appropriate measure is and the intention is for the developer to provide these site specific improvements (whether physical provision or financially) to make the development acceptable in planning terms.

Planning obligation tests (relating to submitted policy)

All tests are met:

- Necessary to make the development acceptable in planning terms – yes as the policy seeks to ensure major developments are able to comply with the strategic objective of policy 25 which is to increase the use of sustainable transport modes.
- Directly related to the development – yes as there will be instances where section 106 is required to secure on-site improvements e.g. provision of part of a new cycleway running through a site – CIL wouldn't cover the costs of this. This sort of contribution is therefore directly related to the development
- Fairly and reasonably related in scale and kind to the development – yes as the financial contribution level would be negotiated on a scheme by scheme basis taking into account the scale and type of development, its impact and appropriate level of contribution.

Policy 27 Public Transport and infrastructure (including proposed modification M/C/06)

C. Major development must:

- 1. ~~make a financial contribution towards improvements to the public realm which facilitates access and~~ improvements to the operation of all sustainable transport modes through improvements to the public realm ~~the bus network and associated infrastructure;~~**

Purpose of this requirement

The policy in the submitted plan sought financial contributions towards improvements to the public realm specifically to facilitate improvements to the bus network. This is justified in paragraph 27.2 which sets out that improvements to accessibility of public transport is necessary as space is limited i.e. opportunities must be taken to make improvements wherever possible.

A modification was proposed at submission to remove specific reference financial contributions and to open up the policy to require improvements to the public realm to facilitate access to all public transport modes instead of just the bus network. The proposed modification to remove specific reference to bus infrastructure was made in direct response to comments from Transport for London in their response to the Regulation 19 consultation where they commented:

*“The text of Policy 27 suggests that development should support investment in strategic transport infrastructure (including rail), however support for financial contributions appears to be limited to public realm and bus infrastructure. **Financial contributions should not be limited to these** and should also include contributions to mitigate the impact of development on all modes, including rail where appropriate. The policy should be clarified to reflect this.”*

The removal of the reference to financial contributions in the modification was due to concerns that there would be an overlap with contributions collected for CIL.

Relationship to CIL

The council note the point raised by TfL at the hearing for Matter 6 that increased footfall created by a development can directly impact the quality of public realm so developers should be encouraged to improve it. The provision of access and improvements to the operation of sustainable transport modes required by the policy may be delivered by the developer themselves, or it may be provided via a financial contribution (i.e. paying for a third party to carry out the work via a section 106 agreement) if, for example, the access route isn't owned by the developer. There is therefore justification for reference to financial contributions in the policy to address this kind of impact. The contributions sought are therefore for measures to make the specific development acceptable in planning terms (i.e. to comply with the principle of Policy 27 which is to ensure better connectivity to public transport).

Planning obligation tests (relating to submitted policy)

All tests are met:

- Necessary to make the development acceptable in planning terms – yes to address impacts of the development on the public realm and access to public transport infrastructure to comply with Policy 27.
- Directly related to the development – yes as contributions will seek to offset the impacts of the development on access to public transport.
- Fairly and reasonably related in scale and kind to the development – yes as the contributions will be calculated on a site by site basis considering the specific likely impacts and reasonable level of contribution.

Policy 33 Air Quality (including proposed modification PS/E/04)
C. All other major developments and developments incorporating solid biomass boilers or Combined Heat and Power (CHP) should be at least Air Quality Neutral.
Paragraph 33.5 If air quality neutral status cannot be achieved, the Mayor’s Sustainable Design and Construction SPG sets out the actions that should be considered. When all measures to achieve Air Quality Neutral status have been exploited, financial contributions to offset the impact of the development on air quality may be considered as a final intervention. The process and calculation for this process are set out in Section 5 of the GLA’s Air Quality Neutral Planning Support Document (AQNPSD). We will be set out updated guidance in a forthcoming supplementary planning document following an expected review of the AQNPSD after the adoption of the new London Plan.

Purpose of this requirement

The requirement for a financial contribution to offset the impact of the development on air quality may be considered only as a last resort means to comply with the objectives of the policy. That is to achieve air quality neutral in major development not subject to an Environmental Impact Assessment or outside the Opportunity and Housing Renewal Areas.

Relationship to CIL

As per how contributions are collected under adopted policy, the contributions will be secured via a legal agreement and are used to meet the costs of interventions such as a green screen/wall in line with the Air Quality Action Plan 2019 – 2024. This will help with ensuring the site complies with air

quality neutral requirements and supports Westminster’s air quality improvement ambitions. The site at which the financial contribution is to be spent will normally be specified in the section 106 agreement. As the fund is spent on site-specific interventions to make the development acceptable in planning terms, it is therefore appropriate to collect such a contribution through section 106 separate from CIL.

N.B. The GLA are planning to publish updated guidance before the end of 2020 that will supersede the 2014 Sustainable Design and Construction SPG, which will include new guidance on Air Quality Neutral and related off-set payments.

Planning obligation tests

All tests are met:

- Necessary to make the development acceptable in planning terms – yes as it allows new developments to comply with policy 33 where it is not feasible or practicable to achieve air quality neutral status at the development site.
- Directly related to the development - yes as the contributions relate specifically to the air quality at the development site.
- Fairly and reasonably related in scale and kind to the development – yes as the financial contribution relates specifically to the expected cost of making a development air quality neutral and the rates have been viability tested.

Policy 37 Energy
C. Where it is clearly demonstrated that it is not financially or technically viable to achieve zero-carbon on-site, any shortfall in carbon reduction targets should be addressed via off-site measures or through the provision of a carbon offset payment secured by legal agreement.

Purpose of this requirement

The requirement for a financial contribution is a last resort means to complying with the objectives of the policy to achieve zero carbon.

Relationship to CIL

The contributions are paid into the council’s Carbon Offset Fund which is used to support Westminster’s carbon neutral ambitions by funding carbon saving projects elsewhere in the local authority area. The carbon offset funds can be used to support all costs relating to a carbon saving project e.g. capital costs (such as the cost of the physical carbon-saving intervention e.g. local heat networks or improved energy use in Westminster’s housing stock), core costs (such as staffing) or project costs (e.g. venue hire). If infrastructure is required on or near a site to mitigate carbon emissions, then it is reasonable to spend these funds, possibly even in combination with CIL (given that there is now no restriction on this) to mitigate site-specific issues, namely the carbon emissions from that site.

More information on the Carbon Offset Fund can be found in the council’s Carbon Offset Guidance (January 2020):

www.westminster.gov.uk/sites/default/files/westminster_carbon_offset_fund_guidance-jan2020.pdf

Planning obligation tests

All tests are met:

- Necessary to make the development acceptable in planning terms – yes as it allows new developments to comply with policy 37 where it is not feasible or practicable to achieve all necessary carbon emissions savings at the development site.
- Directly related to the development – yes as the contributions relate specifically to the carbon emission expected from the development.
- Fairly and reasonably related in scale and kind to the development – yes as the financial contribution relates specifically to the expected carbon emissions of the specific development and the rates have been viability tested.

Policy 44 (including proposed modifications PS/DH/27) Public realm

F. New statues, monuments or memorials in the public realm will be directed outside of the Monument Saturation Zone.

Paragraph 44.15 Westminster has an outstanding heritage of more than 300 statues and memorials. Many of these were by the leading artists of their day and are major works of art in their own right. Almost half of all memorials, 47%, are situated in the royal and governmental heart of Westminster – a relatively small area centred on Whitehall and in the Royal Parks. It is not possible to continue to accommodate new statues and monuments in Westminster on the same scale as in the past, and the most central areas are already saturated. However, new statues and monuments ~~are strongly encouraged~~ may be supported in appropriate locations in other areas of Westminster, where public art is underrepresented and where these relate to the site or context, particularly where they help tell the stories of our diverse communities or under-represented histories. Where these are sited on the public highway, or in Westminster’s parks, gardens or open spaces, financial provision will be secured by appropriate planning conditions or legal agreements for future maintenance.

Purpose of this requirement

As explained in paragraph 44.15 shown above the financial contributions for this policy relate solely to the maintenance of new statues or monuments. This is to ensure they remain safe and in a state of good repair for the duration of their siting.

Relationship to CIL

These contributions go towards the upkeep of public statues or monuments to make the specific development acceptable in planning terms. Using section 106 is the appropriate mechanism to do this rather than through the Community Infrastructure Levy. There is no overlap with the function of CIL.

Planning obligation tests

All tests are met:

- Necessary to make the development acceptable in planning terms – yes as it will ensure the new statue/monument can be maintained for its lifetime and remains safe.
- Directly related to the development – yes as it related solely to any new statues or monuments.
- Fairly and reasonably related in scale and kind to the development – yes as the contributions secured through a section 106 agreement will be spent on the maintenance and upkeep of the relevant statue/monument and the costs will be commensurate to the likely costs that will ensue.

5. Conclusion

This paper has explained that of the six policies in the draft City Plan which refer to the requirement for financial contributions (excluding those that require payments in lieu of affordable housing), all are deemed to meet all of the tests for setting planning obligations.

It has also explained why they do not create an overlap with the financial contributions collected through the council's Community Infrastructure Levy Charging Schedule, particularly following the 2019 amendments to the CIL Regulations which removed the restriction on pooling of planning obligations.

The requirements for financial contributions are therefore considered to be appropriate for all policies addressed by this paper.