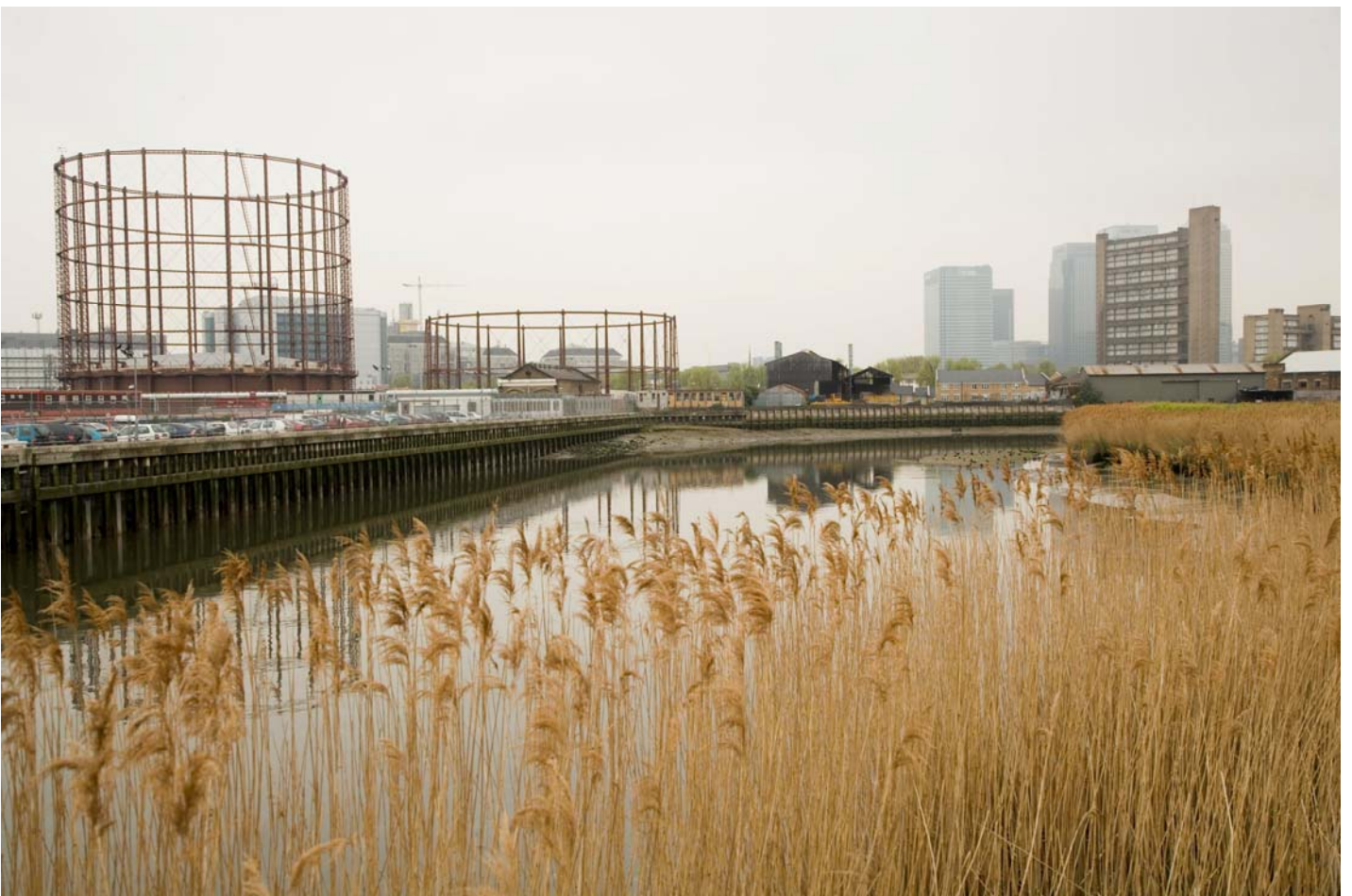


Planning Obligations Community Benefit Strategy

Response to issues raised in consultation: March 2008



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INTRODUCTION

This note responds to the main issues raised by a number of organisations when the Revised Strategy was published for public consultation in July 2007. The note explains the approach underlying the Adopted Strategy and some of the assumptions that were made while it was being developed. It amplifies the way in which the Adopted Strategy is intended to work in practice, with further information that it was not considered necessary to form part of the Adopted Strategy document itself.

CALCULATING THE PROPOSED STANDARD CHARGE

General concerns were expressed about the calculation of the Standard Charge and, in particular, about the way in which likely public/third party funding has been taken into account in setting the level of the Standard Charge.

Does the Standard Charge take account of public/third party funding?

The Adopted Strategy takes account of public/third party funding in a number of ways. Firstly, it sets a capped total amount for which a developer is liable (the Standard Charge). If public funding is secured for specific elements of infrastructure and other infrastructure is fully funded, the Standard Legal Agreement allows for a reduction in the amount of the Standard Charge for which a developer may be liable. Secondly, the Discounted Standard Charge includes an assumption that any costs shortfalls will be met by the public purse.

The Adopted Strategy makes developers liable for the full amount of the Standard Charge, set at £22,600 in the Lower Lee Valley (LLV) area and £28,800 in the London Riverside (LR). These figures represent the minimum necessary amount per unit¹ to meet the raw costs of providing the facilities required to support the levels of housing set out in the Lower Lea Valley Regeneration Strategy and Opportunity Area Planning Framework and the London Riverside Regeneration and Physical Development Framework. The level of charge also assumes that external funding for the infrastructure is not to be treated as an entitlement.

However, mindful of the level of residual values of land in its area, the Adopted Strategy recognises that recovering the cost of infrastructure needs to be balanced against encouraging development to come forward. Accordingly, the Standard Charge has been discounted to a level of £10,000 per residential unit in the LLV area and £6,000 in LR (the Discounted Standard Charge) until April 2009. These figures represent a charge which is significantly below the identified infrastructure cost (even allowing for some level of public/third party funding). This is to ensure that there is little doubt that any payment is well within the range of costs that could properly be attributed to development.

For the moment, LTGDC anticipates that any shortfall, including cost over-runs, will be met from the public purse. If the viability assessments which underlie the Discounted Standard Charge prove overly pessimistic, the Standard Legal

¹ All prices Q2 2006

Agreement includes a mechanism to recapture an appropriate part of the discount (subject to any reduction in the level of Standard Charge to reflect public or third party funding as described above).

Why are there differences between the amounts being raised and the costs in the Delivery and Investment Strategy?

One of the consultation responses notes that the Corporation's LLV Delivery and Investment Strategy only identifies a cashflow of £120 million of the expenditure from the Standard Charge.

The LLV Delivery and Investment Strategy (DIS) is not meant, at present, to be a complete list of all of the infrastructure expenditure that is likely to take place, rather it was a prudent short term cash flow projection. Recent section 106 Agreements concluded in the LTGDC area already suggest that the income projections in the DIS are under estimates.

The DIS will be reviewed regularly and the latest expenditure and income estimates will be reflected in the updates of LTGDC's Public Sector Investment Plan.

Why is the Standard Charge only operated at two levels given the wide variations in land values around the area?

The Revised Strategy accepts that existing residual land values in its area mean that it is unrealistic to seek developer contributions to meet the full cost of providing the community facilities and infrastructure. The Revised Strategy already recognises that affordability varies both within and between the LLV and LR areas. However, it is the difference between the two areas that is the most significant and it was this difference that was used as the basis for setting the two levels.

While recognising that land values also vary, to some extent, within each of the areas, LTGDC believes that there are practical difficulties in setting a hierarchy of charges within each area. In any event, the Discounted Standard Charge is set at a level to accommodate the majority of such variations. LTGDC expects that the levels of the Discounted Standard Charge will only prevent a development going ahead in exceptional circumstances. In such cases a suitable contribution level could be negotiated if the specific circumstances of the site justify it.

If a developer claims that exceptional circumstances exist to justify a renegotiation of the contribution level, LTGDC will expect the developer to bear the cost of LTGDC's development appraisal. In such cases the Prevailing Discounted Standard Charge option described in the Adopted Strategy and Standard Legal Agreement will not normally be available.

What account has been taken of climate change costs?

Development within the LTGDC area must be built to high environmental and design standards. That includes taking account of all proper "green" requirements.

The infrastructure costs used as the basis for calculating the Standard Charges, include all of those 'climate change' costs known at the time. As further studies are completed, e.g. Strategic Flood Risk Assessments, these costs are likely to change.

The extent to which such costs fall to be included in the Standard Charge will be discussed with the relevant agencies and developers when those studies are completed.

LTGDC takes the view that the costs of meeting, for example, the emissions requirements in the Building Regulations or the Code for Sustainable Homes are 'normal' developer costs and no further deductions will be made from the Discounted Standard Charge.

What account has been or will be taken of costs arising from environmental requirements?

The cost of dealing with works required for environmental purposes, including those identified in environmental assessments, are also normal development costs. LTGDC do not anticipate making any further allowances in relation to such costs.

However, when a developer carries out an Environmental Impact Assessment of a proposed development, it should assume that those infrastructure works which are already identified as fully funded and set out in the revised Public Sector Investment Plan and which relate to environmental requirements will be completed in accordance with the identified programme. In relation to such works, LTGDC do not envisage that further site specific requirements beyond the Standard Charge will be required.

As explained below, developers may, if necessary, ask for the ability to carry out specified works themselves and offset the cost against the payment of the Standard Charge.

There are errors in the way in which the Standard Charge has been calculated

There is an arithmetical error in Table 6.5 of the Final Report from ERM dated December 2006 (the Final Report) in that the figure for Likely Public and External Funding should read £448.0 (not £548.0m). However, as explained above, the key figure for the purpose of setting the Standard Charge (and consequently the Discounted Standard Charge and the Deferred Part of the Standard Charge) is the actual cost of providing the community benefits and basic infrastructure. This arithmetical error does not affect that calculation.

LTGDC also wish to clarify that the overall cost of infrastructure per dwelling of £28,000 in the LR area is based on a total of 23,300 dwellings (i.e., excluding the dwellings provided at Barking Riverside). The overall cost of infrastructure per dwelling of £22,600 in the LLV area is based on a total of 22,500 dwellings (which figure excludes any dwelling permitted before the date of the analysis). Contributions attributable to the Standard Charge will not be expended on infrastructure directly or substantially attributable to already permitted development at Barking Riverside or any development permitted prior to September 2006. The Standard Legal Agreement has been amended so that before any final payment of any Deferred Charge, or long stop payment, LTGDC will confirm (subject to dispute resolution) that the charge has been appropriately assessed.

APPLICATION OF THE STANDARD CHARGE

Concern was expressed about whether the charge should apply to all development, the date on which the charge becomes fixed and other issues relating to the application of the charge.

Why does the Standard Charge only relate to residential development?

The Final Report indicated that the likely values to be achieved from most commercial uses within the LTGDC area were modest and, with the exception of certain retail developments, commercial development would be unable to afford significant contributions to infrastructure costs under present market conditions. If any significant unanticipated contributions are made before April 2009, LTGDC will review the need to take such contributions into account in any deferred charge arrangement.

Having balanced the amounts likely to be recovered and the other benefits arising from non-residential development LTGDC has decided not to apply a Standard Charge policy to non-residential uses before 2009. Planning obligations will be negotiated instead of a site-by-site basis. LTGDC also concluded that the amounts likely to be recovered (even taking account of exceptional retail and commercial developments) in this initial period would not, given the level of unfunded infrastructure cost, be likely to affect the level of the Standard Charge.

LTGDC will review their approach to non-residential development in 2009 (and subsequent reviews). If LTGDC decide that, from that date, it is possible to extend the charge to commercial development it may be appropriate to reduce the amount of Standard Charge payable by residential development. An appropriate revision has been made to the Deferred Part option in the Standard Legal Agreement to reflect this. No amendment is necessary in relation to the Prevailing Discounted Standard Charge option since any likely receipts will be taken into account in setting the level of the Discounted Standard Charge.

Why does the Standard Charge apply on a per unit basis?

The Standard Charge will be levied on a per-unit basis for residential development. This approach limits any disincentive to provide larger units. It should also help to ensure a balance between meeting the cost of infrastructure needed for a development, and the key planning objective of achieving mixed and balanced communities, which include of adequate proportions of family housing.

Consideration was given to the Charge being applied on a floorspace, habitable room or other basis but it was felt that the approach of charging per-unit better met the overall planning and delivery objectives of LTGDC, as well as offering administrative advantages in terms of simplicity of operation and transparency.

Why does the Standard Charge relate to affordable housing?

Affordable housing creates a need for new community facilities and infrastructure similar to other housing. LTGDC believe that it is therefore equitable for the Standard and Discounted Standard Charge to apply to all residential uses.

The overall approach to assessing viability in the Revised Strategy assumed that developers will obtain full Social Housing Grant. If full grant is not available, then in appropriate circumstances, the developer may be allowed to alter the amount or type of affordable housing. In any event, a minimum level of affordable housing will be required.

What is the date when the Discounted Standard Charge and Standard Charge for any development will be set?

The current level of Standard Charge and Discounted Standard Charge (indexed from April 2007) will apply to all applications determined before April 2009.

After April 2009, the level of the Discounted Standard Charge and the Standard Charge applicable to a development will be the charges adopted by LTGDC at the date the application is determined. As noted above the Standard Charge may vary as infrastructure costs change and additional or unnecessary requirements are identified. The level of the discount may also be reviewed to reflect market conditions at the time. This approach should ensure that the amount levied relates closely to the most recent assessment of infrastructure needs which are relevant to the proposed development.

What is the process of reviewing the Standard Charge and any discount?

The requirements and costs underlying the Standard Charge were approved in April 2007 on the basis of Q2 2006 prices. There will be a need to review the infrastructure requirements and costs in 2008 (to be adopted in April 2009) to ensure that the costs assessments remains relevant.

LTGDC wishes to work with the private sector and others on each review to identify any changes to the level of infrastructure required, the associated costs and the levels of Charge and the appropriate level of discount. LTGDC will not adopt any new Discounted Standard Charge or Standard Charge without appropriate consultation. Viability will be an issue considered as part of that process.

LTGDC has convened appropriate developer liaison groups to start the process of review for 2009 to ensure that there is full and transparent private sector involvement. The management groups for the Lower Lea Valley and London Riverside have already been set up and will also be involved in the review process.

Why are there no minimum thresholds for the application of the Charge?

All development for which LTGDC is the appropriate planning authority is expected to make full contributions (by way of the Discounted Standard Charge) to the provision of essential facilities. Since LTGDC only deals with relatively large developments of 50 dwellings and over, there is no justification for any other minimum thresholds in relation to the Discounted Standard Charge.

The adopted strategy allows a minimum threshold of 100 (one hundred) units for the application of the Deferred Standard Charge.

When and how will the offset arrangements work?

LTGDC will prepare a programme, including anticipated costs, of the community facilities and infrastructure which is required in the LLV and LR areas (the Public Sector Investment Plan). A developer may request the ability to provide community facilities or infrastructure included in the Public Sector Investment Plan. If LTGDC agree, the developer will be entitled to offset all or part of the costs of the agreed works against the Standard Contributions payable. The amount of any offset will be negotiated on a case-by-case basis.

If the proper planning of an area requires community facilities or infrastructure to be provided within a development site then it is expected that that land will be made available for public use. In most cases the land requirement will be related to the scale of the development and the land should be made available free of charge.

The Standard Charge makes no allowance for the acquisition of land. It follows that no off-set in relation to the value of the land will be justified if the proposed community facilities are built, or infrastructure works carried out by, the developer. In cases where the land requirement is disproportionate an agreed amount may be offset subject to LTGDC funding issues.

When will the Standard Charge be indexed from?

The infrastructure costs on which the Standard Charge and the Discounted Standard Charge are based were assessed in 2006 and approved in April 2007. They will be reassessed in April 2009.

It is reasonable to expect costs to rise in line with inflation between the date the costs were approved in April 2007 and the date at which community facilities are constructed or infrastructure works carried out. LTGDC has decided that the Standard Charge (and the Discounted Standard Charge) should be index linked from April 2007 and not from the date that any Section 106 agreement is completed.

Indexing the Standard Charge and Discounted Standard Charge from April 2007 will reduce the risk that necessary community facilities and basic infrastructure cannot be provided because of a short-fall in funding. This should give developers and investors greater certainty that the funding is available to ensure that appropriate infrastructure required to support their development will be provided.

Why are the proposed payment dates set now rather than on a case by case basis?

The Adopted Strategy suggests an initial payment of 25% of the total amount of the Discounted Standard Charge for the development on implementation. It suggests that the balance of payments will be tied to completion, with any variation negotiated on a case-by-case basis. In normal circumstances, as the draft planning agreement makes clear, payment will be made on the balance on a quarterly basis depending on the number of implementations and completions. LTGDC considered whether this should be altered following the last consultation. LTGDC decided that an early upfront payment is required in order to help fund the infrastructure necessary to support development and reduce public funding costs.

Why are there no repayment provisions?

Given the extent of required infrastructure in the LTGDC area, charges from developers in the LLV area will be pooled, as will those in the LR area. This will allow the basic facilities which are necessary to support the regeneration of those areas to be funded in a fair and equitable way. Many of the basic facilities to be part funded through the Standard Charge, for example transport infrastructure, will benefit all development in the area. LTGDC expect to expend the Standard Charge in providing the necessary facilities irrespective of income received through contributions and does not envisage any need to repay tariff contributions.

However, in response to concerns raised by consultees if, after provision of all infrastructure, a surplus remains, the Standard Legal Agreement requires LTGDC to use reasonable endeavours to return that surplus on an equitable basis.

How will the infrastructure be delivered?

It is expected that LTGDC will hold Developer Liaison meetings on a regular basis to update on the progress of infrastructure provision and the expenditure of monies collected through the strategy. LTGDC officers will also provide regular updates to the LLV and LR Management Groups and to the LTGDC Board and would welcome input from developers in their recommendations. With the potential establishment of regular developer/landowner liaison group meetings for LLV and LR, the opportunity for such inputs should be increased. LTGDC will also post an annual report on infrastructure delivery on its website.

LTGDC will use its reasonable endeavours to facilitate the provision of relevant infrastructure through third parties in accordance with a programme settled after consultation with the LR and LLV Management Groups. However, LTGDC will only consider covenanting to bring forward a particular facility which is required in connection with a specific development, if either it is fully funded from existing receipts or the developer undertakes to fully fund it.

What site specific requirements will there be in addition to the Standard Charge?

LTGDC does not anticipate further contributions from Developers beyond the Standard Charge (where relevant as offset by any on-site agreed physical infrastructure provision which is fully funded by developers within their developments) to meet the cost of the infrastructure specified in the Public Sector Investment Plan.

There will, obviously, be other on and off site infrastructure requirements which are not specified in the Public Sector Infrastructure Plan, the need for which directly arises as a consequence of the development proposals. These will be subject to conditions and/or obligations.

As the Adopted Strategy makes clear there may also be requirements for on site public realm, public art and environmental works such as river walls, public squares and footpaths which are clearly part of the proper planning of high quality new developments.

RELATIONSHIP WITH OTHER POLICIES

Why is the policy being applied immediately?

The pace of development within the LTGDC area is swift. LTGDC decided to apply the strategy with effect from July 2007 in order to make sure that the cost burden of the necessary community benefits and infrastructure was borne as widely and equitably as possible. If the implementation of the policy had been delayed then the burden would have been disproportionately borne by those developing later.

How will you reconcile the policy in the Revised Strategy with the development plan?

It is not believed that the Revised Strategy conflicts with the development plan. Clearly, different approaches to community benefits are adopted in the London Plan and each of the existing UDPs. However, there is no direct conflict in terms of approach or outcome. To the extent that a conflict arises in connection with the determination of an application then the relevant policies will have to be judged and weighted appropriately.

Where the LTGDC overlaps other local planning authority areas, LTGDC will encourage those authorities to use a similar Standard Charge approach to ensure consistency. LTGDC will also encourage neighbouring authorities to adopt a similar approach.

DEFERRED CHARGE

The Deferred Charge generated much comment from consultees. LTGDC met private sector organisations that had commented on the strategy in an open meeting on 11 January 2008 to explore concerns regarding the operation of the Deferred Charge.

The Deferred Standard Charge needs to be understood in the context of the Standard Charge and the Discounted Standard Charge. In principle, LTGDC believes that developers should be responsible for the full cost of the identified community facilities and infrastructure which are required to make the development of the LTGDC area acceptable in planning terms. It follows that developers would normally be required to pay the Standard Charge.

As explained above, LTGDC recognises that, given the level of existing and likely residual land values, the Standard Charge might make development unviable. LTGDC are advised that a charge set at the level of the Discounted Standard Charge would not negatively impact on the viability of development. However, this leaves a significant level of infrastructure unfunded. This level of the Discounted Standard Charge guarantees a minimum cash flow to contribute to the provision of the necessary community facilities and infrastructure needed to support development, when supplemented by other funds.

In effect, part of the full Standard Charge is being deferred in order to secure development, solely on the basis that it is unaffordable. Any shortfall in funding

represents a risk which is taken on by LTGDC. If LTGDC were unwilling to carry this risk, planning permissions would normally have to be refused.

If the viability assumptions on which the Discounted Standard Charge is based prove to be wrong, the justification for the non-payment of part of the Standard Charge no longer applies and it would be equitable for a further contribution to be made.

The Adopted Strategy therefore sets out 3 options for how the deferred part of the standard charge will operate, which have been added as a result of comments made in the consultation exercise on the revised strategy.



Regeneration for East London

London Thames Gateway
Development Corporation
9th Floor, South Quay Plaza 3,
189 Marsh Wall, London E14 9SH

Tel: 020 7517 4730
Fax: 020 7517 4778
www.ltgd.org.uk