

Are Crossrail contributions legitimate?

Hannah Baker sets out the current policy position and questions whether contributions can legitimately be required.



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Construction got underway last month with the station at Canary Wharf

With work on Crossrail having begun, developers are increasingly being asked to contribute towards the cost of its construction. As the first few planning applications to be affected by the Mayor's new policy requirement to make a financial contribution to Crossrail are approved or refused, this article sets out the current policy position and questions whether contributions can legitimately be required.

The Policy Position

To secure Crossrail contributions, proposed alterations have been made to the London Plan. This includes new policy 3C.12A: Funding of Crossrail. This sets out that the Mayor will provide guidance to require developers to contribute towards Crossrail. This new policy is

accompanied by new Supplementary Planning Guidance: Use of planning obligations in funding Crossrail, which sets out the criteria for identifying which developments will be required to contribute and how the contribution will be calculated.

Initial consultation on the proposed Crossrail policy took place with the Assembly and Functional Bodies between December 2008 and February 2009. Following this some amendments were made to the proposals. A twelve week public consultation exercise was launched on the 18 May with the deadline for making comments being the 10 August 2009. Following this, there will be an Examination in Public (EiP) with the preliminary meeting currently timetable for September

and the EiP itself planned for December 2009.

It is therefore clear that this draft policy has very little material weight and it is questionable whether applications should be considered against this policy. Given that the policy position is weak there is room to negotiate in terms of the level of contribution paid.

The Contribution

It is proposed that contributions will be sought in respect of office development in the Central Activities Zone and Isle of Dogs, which include a net increase in office floorspace of more than 500 square metres.

The contribution is charged against the net increase of office floorspace over previous office levels. In the CAZ the standard charge is set at £213.30 per square metres of net additional floorspace. In the northern part of the Isle of Dogs a higher contribution will be sought to reflect the fact that this area will be particularly dependant on the additional public transport capacity created by Crossrail. Outside of the CAZ and Isle of Dogs contributions will be sought with the standard charge used as the basis for negotiation.

The GLA calculate the level of contribution by using the GEA of the proposed office floorspace and then rounding it down to 75 per cent to reflect net increase. If an applicant can demonstrate that this does not accurately reflect the actual internal floorspace, and it is in fact less than 75 per cent of the GEA the GLA will recalculate the contribution.

This policy has been applied to a number of schemes and several have agreed to make a contribution as a result of the GLA threatening to direct refusal unless a contribution was made to Crossrail.

One of the first applications to be

considered was 1-7 Howick Place. A contribution of £866,000 was required. Negotiations took place with TfL and GLA and an agreement reached that £120,000 would be an acceptable contribution. This lower sum was not reached through any scientific means, rather it was considered that this would be the cost of appealing against the application being refused on not providing a Crossrail contribution. On another scheme in the City £1,386,450 was originally requested and through negotiations it was reduced to £200,000. Typically approximately 20 per cent of the sum required under the formula set out in the SPG is being agreed between the interested parties.

As well as negotiating the Crossrail contribution down there has also been success in terms of phasing the contribution. The starting point is that payment will be on commencement of development. However, if it is demonstrated that the development would be unviable

or that the size or nature makes it appropriate, phased payments may be agreed. For instance on one scheme it has been agreed that 50 per cent of the payment will be made on 50 per cent occupation with the remaining 50 per cent on 100 per cent occupation.

Whilst the Crossrail policy arguably carries little weight and is being prematurely applied the Mayor seems determined to persist with using it to help procure funds for Crossrail. Applicants are being given a tough choice, make a contribution or face refusal. The silver lining is that those who have agreed to make a contribution have been able to negotiate substantial discounts coupled with favourable phasing agreements. However, as the policy position strengthens, negotiations are likely to become much harder, and it is expected that the sums sought will increase as a reflection of this.

It is therefore recommended that landowners who could potentially be



affected by this policy, submit representations to the GLA by the 10 August 2009, seeking its amendment e.g. changing the contribution threshold, level of contribution etc. The last thing the Property Industry

needs in London is a further obstacle, having already been partly derailed by the current economic downturn.

Mayor's policy on contributions under review

Last month the Mayor of London, Boris Johnson, published revised proposals for alterations to the London Plan to help fund Crossrail. The alterations were first announced last December so that new office developments, in central London and in the northern part of the Isle of Dogs could be required, through the planning system, to make a financial contribution towards the cost of Crossrail.

Since December the London Assembly, the Greater London Authority Group, and developers and local authorities have been consulted on both the alterations and new planning guidance. As a result of developers' concerns over the impact of the charge on the viability of new developments, particularly in the current economic climate, today's revised proposals now include viability as a planning policy test for the purpose of negotiating financial contributions.

The Mayor is also seeking views on whether it would be appropriate to have a lower rate of

contribution during the first years of the charging scheme, and whether the boundaries of the charge area in central London should be adjusted to reduce impacts on places where investment margins on new developments are tighter.

Further guidance is included on where it may be appropriate for the charge to be levied on developments along the Crossrail route outside central London. Respondents had questioned the fairness of the charge only being applied in London. As a consequence the Mayor has written to the Secretary of State for Transport asking him to approach the planning bodies in the South East and the East of England with a view to their seeking contributions, where appropriate, from developments around Crossrail stations beyond the London boundary.

Statutory changes to London Plan for Crossrail funding should be complete by mid 2010. To date the Mayor has been accepting Crossrail contribu-

tions of around 20 per cent of the eventual charge that will be applied to individual developments. In the run up to formally changing the London Plan, the Mayor would like to see contributions agreed at a higher rate.

The Mayor said: "Crossrail is vital for the future of the capital. It will transform our transport network and ensure London emerges strongly from the current economic downturn.

"I have listened carefully to the views and concerns of developers over contributions to this crucial venture and I am committed to taking a wholly pragmatic approach in future negotiations and will consider every case individually.

"It is important that we now move forward and ensure that those new developments which benefit most from Crossrail can contribute their fare share."

