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By email only: planningpolicy@westminster.gov.uk

29 April 2022

Dear Deirdra

Re: Westminster City Council Planning Obligations and Affordable Housing SPD and Affordable Workspace Draft Informal Planning Guidance Note Consultation

1. I am writing on behalf of the Westminster Property Association (the “Association”), the membership body and advocacy group for the leading owners, investors, professional advisors, and developers of real estate in the City of Westminster. A list of the 240+ member companies we represent is available [here](#).
2. The Association welcomes the opportunity to comment on Westminster City Council’s Planning Obligations and Affordable Workspace Supplementary Planning Document (“SPD”) Consultation Draft and the draft Affordable Workspace Guidance note (the “Guidance Note”).
3. Our response is concerned primarily with the draft content on affordable workspace, energy and carbon, viability, employment and skills and affordable housing.
4. The Association is committed to working with the City Council and other investors, occupiers and employers in Westminster to support the revival of Westminster’s economy after Covid and to ensure that it continues to be a world-leading location for investment, innovation and growth.
5. We have provided detailed commentary on the approach to affordable workspace. In summary, the Association objects to the guidance on affordable workspace. This section should be removed from the document. The need for affordable workspace, in the context of Westminster’s well-functioning and exceptionally diverse office market, has not been established. There is no development plan policy basis to require such provision.

6. The method used to provide the significantly increased carbon off-setting cost (which would change in practice from £95 per tonne to £300 per tonne) should be revisited, given that it appears to be inconsistent with the CIL Regulations. It would be helpful in addition to acknowledge the role to be played by off-site carbon off-setting (as well as payments-in-lieu), given the explicit policy support for this. The City Council should recognise and take into account renewable Power Purchase Agreements, when calculating operational carbon offsets, to ensure that developers are not required to off-set certified, net additional renewable energy.
7. The proposed introduction of 'end user' requirements in Employment and Skills obligations is likely to prove both onerous and difficult to monitor, given the separation between the developer of the building and the various end users and their business needs. An approach focussed on using "reasonable endeavours" to promote local recruitment and job opportunities is suggested instead.
8. Various aspects of clarification are provided in relation to the application of affordable housing policy, as well as to aspects of other topics covered by the draft guidance. These clarifications are welcomed, and others are suggested.

Further comments and viability

9. The Association notes that the consultation on the potentially wide-ranging and complex matters in the SPD has been held over a short period, including the Easter holiday. Whilst it has sought to respond as fully as possible, it is still collecting evidence and it may be appropriate to comment further after the formal close of the consultation. We would be grateful if the City Council would take subsequent information into account.
10. Section 2.1 of the SPD refers to the Viability Assessment published during the examination of the City Plan. It is subsequently stated that this viability evidence may need to be reviewed and updated before the draft SPD is finalised and adopted.
11. The National Planning Policy Framework ('NPPF') paragraph 34 and the Planning Practice Guidance ('PPG') paragraphs 1 and 2 together confirm that plans should "**set out the contributions expected from development**" and "**a proportionate assessment of viability that takes into account all relevant policies, and local and national standards, including the cost implications of the Community Infrastructure Levy (CIL) and section 106**".
12. The Association would welcome the publication of the viability evidence which has been prepared to support the proposed approach in the draft documents, as well as the opportunity to comment further on the draft documents in the light of that evidence.
13. The Association reserves its position to provide further comments on the content of the SPD and the viability evidence base when that is released.

Affordable Workspace

14. The draft SPD and Guidance Note together set out significant, and prescriptive, detail regarding affordable workspace provision.
15. Strategically, the Association objects to the content of the SPD regarding affordable workspace, and the content of the Informal Guidance Note. Affordable workspace should be removed from the SPD. This is because:
 - i. The lack of need for the type of affordable workspace and specific measures identified in the guidance, given the flexibility and diversity of space available in the office market already; and
 - ii. There is no Development Plan policy basis for seeking affordable workspace provision.

Need and evidence base

16. No evidence has been supplied by the City Council explaining the need for affordable workspace. The approach set out in the draft SPD, and in the Guidance, is highly detailed and prescriptive, in terms of the space that would be expected. This is not, however, based upon evidence that there is a specific, unmet, requirement for space of this type.
17. The approach is not justified, as it is not based upon a proportionate evidence base.
18. Westminster is economically and demographically diverse. The nature of occupiers and the associated requirements for workspace will vary considerably between, for example, the West End at the heart of the Central Activities Zone to North Westminster.
19. There already exists a very wide range of office accommodation, even within each neighbourhood. This ranges from refurbished or modern 'grade A' space in newly developed buildings to historic and un-refurbished office stock. In addition to attracting significantly lower rents and other occupier costs, the latter type of accommodation often provides smaller floorplate spaces which are better suited and already more attractive to start-up- and small businesses than to established and larger businesses.
20. Gerald Eve research is attached at Appendix 1, indicating the diversity of office rental levels across Westminster.¹ This illustrates that:
 - i. Grade A space is available within Victoria (ie, within the CAZ) at a discount of 36% over prevailing Mayfair Grade A headline rents;
 - ii. Grade B space is available at over a 50% discount to Mayfair headline rents;
 - iii. Within each submarket, Grade B space is generally available at a 20-25% discount to Grade A space.

¹ In practice, the Grade B definition is difficult to land on a set value. A range is more appropriate, dependent on the varying quality within Grade B.

21. This aggregate research disregards individual buildings which will be more heavily discounted from locally prevailing headline rents. For example:
 - i. In Belgravia, recently achieved rents range from just over £40 per sqft to just under £80 per sqft, within a distance of approximately 300 metres;
 - ii. Within Chinatown and parts of Fitzrovia, space can be secured from £35psf and £46psf;
 - iii. Consequently, a typical average rent in a West End multi-property portfolio could be c. £62.5psf, with rents starting at £35 - £40psf.
22. There is, therefore, already very diverse workspace available in Westminster, in relation to costs (of which rent forms a relatively small and declining proportion of total costs), size, configuration, type of fit-out and lease term. These existing spaces already suit different types of occupiers including those targeted in the draft guidance (such as 'small' or 'start-up' businesses).
23. There is no evidence of a lack of workspace within the West End at a wide range of prices.
24. Making some space available to some businesses at a 50% discount – without clearly identifying those businesses eligible – risks distorting the operation of the market. For example, it could simply lead to businesses relocating to Mayfair that might, otherwise, have located in Fitzrovia or Victoria.
25. Availability in the West End market is estimated to be above average, at a vacancy rate of 6.3%, above the long term average rate of 4%, with a strong pipeline of supply from permitted and committed developments in the over the next three years.² In the short term, the West End office market is functioning well, with stable rents spanning the market including heavily discounted space, reasonable availability and good short / medium term pipeline.
26. The type of space provided would typically be a small element of Grade A space in key employment locations, which may not actually address any need that exists, which may be for niche or specialised space, in existing communities rather than large hubs.
27. Successful flexible and affordable workspaces are not defined solely by pricing or subsidy, but by a range of other factors. These can include scale, vision, sectoral focus and clustering, the community and ecosystem supported, availability of other business support, established and emerging networks, and other factors. The combination of factors will vary from place to place and from industry to industry. Small occupiers are also increasingly moving to flexible workspace which provide shorter leases, occupier services and access to other start-up and SMEs.

² West End Office Market Watch, Savills, 25 February 2022,
https://www.savills.co.uk/research_articles/229130/325536-0

28. Paris' Station F³, Bristol's Engine Shed⁴ and Brixton's 3Space are all good examples of the range of ways in which flexible, lower-cost and affordable space is provided in different forms for a range of occupiers. None would precisely match the model proposed in the Guidance and the needs to be met are not identified.
29. Our members' experience of the provision of affordable workspace, both in Westminster and elsewhere in central London, especially when made complex and inflexible by detailed eligibility criteria or provided at insufficient scale to attract other start-ups and SMEs, is that it frequently remains empty or unused, as it does not address actual market need. Alternatively, space is occupied by tenants benefitting from discounted rents who were not the type of intended beneficiaries of the policy. In this way, the provision of new employment space is made more complex and challenging without providing meaningful benefit.
30. For example, in one case involving the redevelopment an existing community centre, the planning permission required the provision of an element of community workspace, to be delivered to a Cat B fitout (that is, fully fitted out and ready for occupation as useable space including partitions, kitchens, workstations etc). As no end user was identified, the council could not provide a specification for the Cat B fit out (which is highly specific to the needs of the incoming tenant and is generally, therefore, delivered by a tenant rather than landlord). A speculative Cat B fit out was delivered to meet the planning commitment, but as this speculative fit out did not meet demand, the space is proving difficult to let.
31. There is no evidence that the lack of workspace is a serious concern for Westminster's businesses. We note that access to affordable space is **not** raised as an issue in the latest ONS business insights survey, which raises input price inflation and energy prices as key issues.⁵
32. The British Chamber of Commerce's March 2022 "Recommendations for Building Back Better" identifies the "cost of doing business" as a key concern, but rental costs are not raised as a contributor to this, which instead is focused, again, on materials and energy costs, employment costs and skills shortages, and increased taxation.⁶
33. The CBI's December 2020 London Business Survey contains no suggestion that accommodation costs are a key issue for London's businesses. Conversely, however, it recognises that the design of offices may need to change to meet new working patterns; reducing the flexibility of offices to change and evolve should therefore be avoided.⁷

³ <https://stationf.co/>

⁴ <https://engine-shed.co.uk/>

⁵ [Business insights and impact on the UK economy - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/business-insights-and-impact-on-the-uk-economy)

⁶ Renew: Recommendations for building back stronger. British Chambers of Commerce, March 2022. <https://www.britishchambers.org.uk/page/restart-rebuild-renew>

⁷ London Business Survey 2020 (December 2020), CBI, page 10. <https://www.cbi.org.uk/articles/london-business-survey-2020-key-priorities-for-a-more-inclusive-society/>

34. Disincentivising the creation of new workspace by imposing additional planning requirements is, conversely, likely to reduce the supply of new office space and introduce additional constraints to a market that is functioning efficiently.

Status of the guidance

35. The London Plan provides the regional-level, strategic policy framework for the City of Westminster and is an element of the Development Plan for the determination of applications in Westminster.
36. Policy E2 of the London Plan seeks to ensure that there is the provision of **“a range of B Use Class business space, in terms of type, use and size, at an appropriate range of rents, to meet the needs of micro, small and medium-sized enterprises and to support firms wishing to start-up or expand”**.
37. Policy E3 states that **“in defined circumstances”, “planning obligations may be used to secure affordable workspace”**. The circumstances referred to are that a Borough provides **“in their Development Plan ... detailed affordable workspace policies in light of local evidence of need and viability. These may include policies on site-specific locations or defining areas of need for certain kinds of affordable workspace”**.
38. It was noted in the Examiners’ Report on the London Plan, in respect of Policy E3, that the policy was amended in order to be effective and justified, before being found sound. The changes included **“mak[ing] it clear that the policy will only apply to areas and locations identified in local plans...”** (Examiners’ Report, paragraph 442, our underlining).
39. Westminster’s City Plan Policy 13 instead states only that proposals which involve the provision of affordable workspace **“will generally be supported throughout the commercial areas of the city”**.
40. The City of Westminster’s Development Plan **does not include any policy which requires that affordable workspace should be provided as part of developments, to make them acceptable in planning terms or otherwise identify locations within which affordable workspace will be required**.
41. The introduction of a “requirement” would therefore not be based on development plan policy and would be inconsistent with London Plan policy E3, which requires locations for affordable workspace to be identified within local plans. The SPD and Guidance Note refer to “requirements” of developers throughout, including a statement on Page 29 that **“planning statements should include a section detailing how proposed space will meet the requirements set out [...] above.”**
42. Paragraph 008 of the Plan-making section of the PPG is clear that SPDs **“cannot introduce new planning policies into the development plan.”** It also goes on to add that they **“should not add unnecessarily to the financial burdens on development.”**
43. There is a separate concern, as noted earlier, that the viability implications of an affordable workspace requirement do not appear to have been tested as required by paragraphs 1 and 2 of the PPG and paragraph 34 of the NPPF.

44. The content of the guidance is onerous and prescriptive, as set out below, and should not be taken forwards. The guidance as drafted seeks strict controls on the **level of discount (50%), the proportion of floorspace provided as affordable workspace (10 %), the nature of fit-out, type of occupation and lease length and other arrangements.**
45. Consequently, **the references to affordable workspace within the SPD should be removed**, in the absence evidence of need, a basis in development plan policy, and compliance with the PPG. **The interim guidance note should not be taken forwards in its current form.**

Other matters

46. Entirely without prejudice to the Association’s position that the SPD’s content on affordable workspace should be removed, we have set out further commentary on detail of the guidance.
47. These matters would be applicable to any revised form of the Informal Guidance Note, should the City Council consider that it wishes to set out suggestions on the form of flexible, lower cost and affordable workspace it may consider to be helpful.
48. **Public benefit.** The draft SPD states that affordable workspace is encouraged in recognition of “the role it can play in the **growth of small start-up businesses, enhancing local job opportunities and contributing to a diverse economy**”. Any replacement Informal Guidance Note should recognise explicitly that these various objectives or aims for affordable workspace provision may be achieved, in practice, in a variety of forms, given different needs, sectors and operating models. Whilst the City Council may wish to set out what it considers to be a preferred form of provision, there should be flexibility to recognise that other forms of provision may also provide public benefits.
49. Any replacement guidance note should **remove the prescriptive criteria** which may not be appropriate in different contexts and proposals. It will generally not be possible to achieve this flexibility and diversity of supply with fixed or standardised s106 terms.
50. If the need can be identified, there may be other ways in which it can be more effectively addressed than in seeking set amounts of discounted space, and a more flexible approach could recognise this. For example, the development subsidy that would otherwise be required to discount office space could be used to directly fund subsidised serviced office membership schemes.
51. **Planning Status.** Any retained informal guidance should **state explicitly that the absence of affordable workspace provision from a development would not be a reason for the refusal of planning permission.**
52. **Lifespan.** The current draft SPD and Guidance Note suggest that affordable workspace should be provided for the lifetime of the proposed development (often considered to be at least 60 years).
53. Commercial expectations for the quality, format and layout of office space and workspace change regularly. They will change several times over the lifetime of a commercial building – especially as those buildings are now being built to have longer life spans and to be more flexible, to minimise

whole life carbon. Buildings will be refurbished frequently, often every ten to fifteen years, in line with commercial leases.

54. We therefore suggest any proposed timescale for the retention of affordable workspace should be aligned with the market occupational lease lengths, to avoid discouraging investment and to enable buildings to be refurbished in their entirety at the end of aligned leases. The imposition of a requirement for the 'Lifetime' of the development or 'in perpetuity' is likely to prevent the effect refurbishment, retrofit and upgrading of buildings as a whole to ensure they continue to meet contemporary occupier expectations.
55. Short-term "pop-up" uses of otherwise vacant buildings can often provide a very flexible form of low cost accommodation, whilst adding to activity and vitality.
56. **S106 notification requirements.** The complex notification requirements suggested at 3.13.3 of the Guidance Note, which appear intended for transcription into s106 agreements, should be removed as they are likely to cause significant delays and discourage, rather than encourage, the voluntary provision of this type of space.
57. **Thresholds.** The draft guidance seeks to secure the provision of 10% of space in relevant uses as affordable workspace where at least 1,000 sqm of those relevant uses is proposed. The extent of the benefits to be achieved by securing affordable workspace in as limited an amount as 100 sqm, when weighed against the various design and operational issues this introduces to small commercial developments, are therefore highly questionable. Small spaces will not support the networks and ecosystems attractive to start-ups and SMES.
58. By analogy to affordable housing, it is generally accepted that RPs are unwilling to take on a small number of isolated units, which are generally impractical to manage.
59. It will in many cases be impractical to provide such a small quantum of floorspace purely for affordable workspace. We suggest further research is undertaken on the appropriate minimum size to achieve a viable critical mass and any replacement informal guidance recognise that provision is likely to be more practical on larger sites.
60. Provision of affordable workspace in connection with other forms of Class E space, such as retail, light industrial and research and development will generally not be practical or appropriate and should not be expected.
61. **Basis of 10%.** The Guidance and SPD are not clear as to whether the expectation for 10% affordable workspace would arise on the total floorspace of a new development, or the additional space created. As most development in Westminster involves the replacement of an existing building, either through extension and retrofit or redevelopment, the gains in space are generally on the margin.
62. This would have caused a significant disincentive effect.

63. For example, a developer is unlikely to seek to replace a 10,000sqm office building with a 12,000sqm office building, if 1,200sqm of the new building would be required as affordable workspace, meaning the net increase in area would be only 800sqm, with the added complication of no longer being able to single let the building to a single occupier.
64. Any replacement informal guidance should set out the City Council's preferred form and model of affordable provision. Specifying percentage requirements on market commercial development is not necessary and, for the reasons set out above, not based upon Development Plan policy.
65. **Offsite provision.** Informal guidance could recognise that there may be opportunities for affordable workspace to be provided across sites, especially where a landowner controls substantial amounts of floorspace within the City.
66. Many landowners already provide affordable workspace for charities and selected community partnerships and initiatives, which could be taken into account, whilst also encouraging the upgrading and sustainable retrofitting of tertiary office space.
67. **GIA / NIA.** Reference is made in the draft SPD and draft guidance note to the use of both Net Internal Area ('NIA') and Gross Internal Area ('GIA') in measuring the proportion of floorspace to be provided. The measurement of NIA is dependent on the detailed nature of internal space division and fit-out, introducing significant additional subjectivity compared to GIA. NIA may change over the lifetime of a building and should not be subject to planning control. Therefore, any guidance should use GIA rather than NIA.
68. **Occupancy criteria.** The draft Guidance Note states that the end user of a designated affordable workspace would be expected to allow for 50% of desk space to be occupied by residents of Westminster or businesses already trading in Westminster who are risk of moving elsewhere due to being unable to afford workspace at market rents. For the reasons set out earlier in this response, there is not a demonstrable need for additional, designated affordable workspace targeted toward such businesses, given there already exists a range of accommodation across many parts of Westminster which is well-suited to different types of businesses.
69. The suggestion of a requirement to ensure the ongoing employment of a given proportion of Westminster residents by an occupier is onerous. In practical terms the would be very difficult to implement and monitor. It could seriously limit the ability of start-up businesses to access the full talent pool. Any replacement informal guidance should revise this.
70. **Fit-out.** The draft guidance suggests that that a certain level of fit-out should be made a requirement of affordable workspace. Given the widely varying needs of different occupiers, this could limit the attractiveness and potential occupation of a designated space – the inclusion of this element should therefore be reconsidered. As noted above, designing fitout speculatively is difficult; it can often discourage, rather than encourage, occupiers. In the absence of clear evidence of need it is difficult to anticipate to what market a Cat B fitout should relate.

71. These criteria are, highly prescriptive in their current form and too complex if applied rigidly to all developments including any element of affordable workspace. Instead of encouraging affordable workspace provision, therefore, the likely effect of including such prescriptive guidance will be to **discourage the inclusion of affordable workspace in development proposals** and also result in **greater vacancy of any designated affordable workspace in the long term.**

Summary

72. No need has been shown for designated affordable workspace. Requiring this is not in accordance with policy, as explained earlier in this response. The Affordable Workspace content of the SPD should be removed. The Informal Guidance should not be taken forwards in its current form.
73. Should a revised Informal Guidance note be prepared, it should take a flexible approach to enable a range of spaces, discounts, and operational models to be accommodated and recognised as public benefits.

Affordable Housing

74. At section 3.1, the draft SPD provides helpful additional detail clarifying how and in what circumstances the affordable housing policy requirement is to be applied. The improved flexibility in approach, counting only floorspace considered to constitute 'new homes' rather than existing ones in the calculation of the affordable housing requirement, is welcomed.
75. The draft SPD acknowledges at section 3.2 that there will be instances where affordable housing may need to be delivered as a payment in lieu. It would be useful to clarify that there will be some circumstances where provision entirely by payment in lieu will be appropriate, as opposed to in combination with on-site or off-site provision.
76. The charging rates attached to payments in lieu, set out in section 3.2, are significantly higher than those associated with the previous City Plan. We anticipate that this will result in a greater proportion of applications following the viability-tested route compared to the 'fast-track' route.
77. Section 3.3 Phasing includes text suggesting there will be limited circumstances where the phasing of developments including affordable housing will be accommodated, namely where "it can be demonstrated that this will maximise the provision of affordable housing, or where the need of phasing is linked to a key piece of infrastructure delivery", or where Estate Regeneration is proposed. There may, however, be a range of other circumstances in which the phased development of affordable housing, which is inevitably complex, as well as other forms of development would be beneficial. We suggest the wording is broadened to reflect the fact that various site-specific circumstances, beyond those specifically quoted, may mean that phasing is appropriate in other circumstances.
78. The draft SPD refers to the publication of the Annual Affordable Housing Statement. It would be useful to establish a regular annual date for the publication of the Statement and for the date to be publicised, to aid the appraisal of developments and the preparation of application documents.

79. At Section 3.7 of the draft SPD, the proposed approach relating to the delivery of communal external amenity space provides for a ‘cascade’ of alternative methods – this approach is well-crafted and helpful.

Employment and Skills

80. The Association supports the principle of encouraging greater employment amongst Westminster residents.

81. The suggestion in the draft SPD of a requirement to ensure the ongoing employment of a given proportion of residents by an occupier or end user is potentially complex and in practical terms will be very difficult to implement and monitor.

82. Most commercial office buildings will **not** be occupied by their developer but will be occupied by a third-party tenant (or tenants). The building may be sold to an institutional investor as an investment, meaning that obligations or commitments accepted or made by a developer a planning stage will need to be passed on to a new owner or occupier. Requiring these new owners or end uses, which in the centre of Westminster may be specialist and internationally mobile companies, to employ a percentage of their staff from within Westminster will be perceived as a significant constraint on their ability to recruit and employ people in a way that best suits their business. Landlord will generally only directly employ a few people in building / estate management roles.

83. We suggest, instead, that this seek to encourage local employment, through publicity, to which occupiers could commit to using “reasonable endeavours” but not suggest that there would be sanctions where those targets are not met. The use of “best endeavours” is likely to be too onerous an obligation as it can, ultimately, be interpreted to mean that the occupier should take steps contrary to its own interests. This can cause very substantial challenges when leasing buildings, as incoming tenants need to be assured that they are, ultimately, able to exercise their discretion in choosing staff to employ. Flexibility to choose the best and most appropriate talent is absolutely integral to Westminster’s offer as a world-leading employment centre.

84. Any obligations within legal agreements should be limited to requiring developers or occupiers to demonstrate “reasonable endeavours”, rather than “best endeavours”, with regard to compliance with these obligations.

85. In conclusion, we suggest

- i. Any obligations should require developers or occupiers to demonstrate “reasonable endeavours”, rather than “best endeavours”, with regard to compliance with these obligations;
- ii. there should be no “sanction” for failing to achieve targets at operational phase because it is third party occupiers who will implement the scheme; and

- iii. in terms of what constitutes “reasonable endeavours” the SPD should be clear that WCC does considers compliance with anti-discrimination legislation as a pre-requisite limitation on the endeavours to be undertaken in compliance together with an explicit acknowledgement that no developer and/or landlord is required to impose any requirements on its leaseholder or tenant that would deter occupancy take-up or otherwise limit the market-scope of occupiers or rental values that can be achieved. This avoids any unintended market distortion in favour of those few developers who may look to disregard its obligations under the s106 agreement.

Car Parking in Residential Development

86. Section 5.2.1 of the draft SPD suggests that where on-site car parking is deemed acceptable in residential development, legal agreements will secure their letting on a ‘short-term basis’, with the sale of spaces prohibited. It is suggested that the definition of ‘short-term’ is modified to ensure leases of at least twelve months would be suitable, given the benefits to all parties of arrangements of this period.

Energy and Carbon

87. The text at section 6.2.1 of the draft SPD refers to the proposed use of a local carbon off-setting payment-in-lieu figure of £300 per tonne of carbon (for 30 years). It is stated that the proposed figure is based on the findings of the publication “Toward Net Zero Carbon – Achieving greater carbon reductions on site: the role of carbon pricing (2020)”. We have attached our December 2020 letter responding to a previous version of this document.
88. This would amount to more than a tripling of the carbon price from the current £95/t.
89. This would very substantially exceed the UK’s current market carbon price of c. £70/sqm.
90. The study also notes that the average price of securing carbon reductions from retrofit projects within London is about £185/tonne.
91. The study appears to justify the proposed carbon price of £300/tonne as being an appropriate price necessary to incentivise behavioural change in the design of buildings, on the basis that achieving a c. 50% reduction in emissions against 2013 Part L should be achievable in most cases.
92. We note that this is based on a single, small, office development of c. 4,000sqm, with 50 % PV coverage. In practice, given the pressure on roof space, PV coverage is likely to be lower than this. A site’s form and position relative to neighbouring buildings which may overshadow it, heritage constraints and designations, alongside other policy aspirations for outdoor amenity space and/or urban greening all need to be carefully considered when assessing the viability of PVs in central locations.
93. Larger office buildings, with more floors, are likely to have, proportionately, less PV space and the effect of the PVs is therefore likely to be overstated. The Association would also like to understand

what modelling has been carried out in respect of larger commercial buildings where net-zero carbon has been very difficult to achieve using Part L and SAP10 as a baseline. The analysis of commercial buildings and mixed-use developments is based on only two typologies; a more representative sample of central London development should be considered.

94. The proposed approach is therefore not consistent with Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended, which requires that planning obligations should be imposed only to the extent that they are “**fairly and reasonably related in scale and kind** to the development and **necessary** [our emphasis] to make the development acceptable in planning terms”.
95. Given that the relevant policy (36 part C) in the City Plan clearly requires that “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”, an approach which seeks to go beyond off-setting by encouraging the wholesale change of a development’s design through punitive carbon pricing, is disproportionately onerous and would fail to meet the tests set out in Regulation 122.
96. Carbon offsetting should be a direct, quantifiable cost of mitigating the effect of development by paying the cost of the negative externalities of that development.
97. The priority should be to ensure the carbon price used genuinely reflects local carbon costs and that any carbon offset contributions are spent on verified, measurable carbon savings in a timeframe compatible with net zero policy and guidance. Where complete on-site reductions are not feasible, there should be flexibility to use alternative methods which achieve net-zero carbon, including offsetting in kind, through off-site projects, or financial contributions that fairly reflect the costs of such projects, with appropriate monitoring, transparency and traceability.
98. The current GLA and WCC definition of net zero carbon only considers operational carbon based on Part L which is not representative of the actual operations of a building. Other methods, such as NABERS Design for Performance go considerably further in modelling overall carbon reductions, but this is not recognised by the recognised by the GLA offset calculation methodology, based as it is on the increasingly out-of-date Part L. As a result, other additional investments in carbon reduction that developers are not recognised, and charging an increased carbon cost on a Part L assessment risks diverting funding away from other, on-site, measures that would prevent the carbon emissions in the first place.
99. The draft SPD also contains no reference to the use of either developer-owned or ‘off-site’ off-setting of carbon emissions – through verified, nature-based solutions, which remove carbon from the atmosphere, or retrofitting of standing stock – despite the fact that Policy 36 expressly confirms these may be appropriate in some circumstances. We suggest this is an area on which the SPD could provide additional, helpful guidance.
100. The City Council should recognise and take into account renewable Power Purchase Agreements, when calculating operational carbon offsets, to ensure that developers are not required to off-set renewable

energy. Power Purchase Agreements (PPAs) are used by property owners to purchase certified, net additional renewable energy from renewable energy generators.

101. If this more punitive approach to carbon offsetting is pursued, then a tiered approach should be considered, recognising the challenges of designing out operational carbon completely. For example a lower charge for emissions from 50% to net zero should be set.

Planning Performance Agreements

102. The draft SPD contains reference at section 8.1.3 to the use of Planning Performance Agreements ('PPAs') at pre-application stage, for more complex, large-scale developments – this is supported by the Association, subject to a reciprocal commitment from the City Council to provide appropriate levels of resourcing, communication and a genuine shared commitment to seeking to meet agreed timescales.

Monitoring Fees

103. It is stated at section 8.5 of the draft SPD that, with regard to the Monitoring of Planning Obligations in Section 106 Agreements, the monitoring fee attached to financial contributions is likely to be between 2 and 5 % of the total value of the financial contribution, based on a 'monitoring costs and fees review'.

104. The Planning Practice Guidance ('PPG') states that monitoring fees "**must be proportionate and reasonable and reflect the actual cost of monitoring**". The Guidance has not explained the actual monitoring costs.

105. If charged at a rate of 5 % of the obligation, a development required to make a financial contribution of, for instance, £3,000,000 (for example for carbon offsetting), would be required to pay £150,000 solely in relation to the monitoring of this single obligation. This is unlikely to reflect the actual cost of monitoring. A larger financial contribution may not involve substantially higher costs.

106. Evidence should be provided of the actual time and costs of monitoring s106 obligations, per year, with the fees to be charged based upon this.

107. A flat-rate / per obligation monitoring fee should continue to be charged in most cases, with provision for bespoke arrangements for particularly complex or large-scale s106 agreements.

108. Without prejudice to this, should an approach including a proportion of a financial contribution be pursued, it should be set at 2% (or below for large developments) rather than 5%. Given the substantial potential amount of these fees in relation to large developments, and in the interests of transparency, monitoring fee income, and expenditure on monitoring and implementation, should be published annually.

Conclusion

109. The Association welcomes the opportunity to comment on these, and any replacement draft informal guidance documents concerning affordable workspace and planning obligations. If it would be helpful to discuss the content of this document further, please do not hesitate to contact me.

Yours sincerely,

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