Westminster Property Association

Cllr G Barraclough
c/o Planning Policy Team
Westminster City Council
64 Victoria Street
London
SW1E 6QP

By email only:
planningpolicy@westminster.gov.uk

29 September 2023

Dear Cllr Barraclough

Re: Representations on behalf of the Westminster Property Association to the Planning Obligations and Affordable Housing (POAH) SPD

Please find below our formal representations to the second consultation on the draft Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD). A list of the c250 member companies the Association represents is available here.

As we recently discussed with you and officers, we are particularly concerned at the near tenfold proposed increase in the carbon offset fee from £95/t to £880/t. As stated in our initial response to this proposal (WPA statement here) we believe your methodology for reaching that figure is deeply flawed, and inconsistent with both the London Plan and national regulations on the use of financial contributions from planning permissions.

The property industry, particularly the commercial real estate sector, is at the vanguard of driving forward sustainable development. This is in line with market demand, corporate net zero commitments and public policy, including the tightening of MEES (Minimum Energy Efficiency Standards) and EPC (Energy Performance Certificates) ratings for commercial buildings.

In principle, we are supportive of an increase in the current carbon offset cost, which has not kept pace with the costs of delivery in recent years. Evidence from across the London boroughs indicates the true average cost to lie between £150/t and £200/t (enclosed in Appendix 1).

However, it is important this is set at an appropriate level to encourage, rather than discourage, the retrofit-first approach that we all support. Far from being a radical policy which will drive sustainability, Westminster's proposed increase risks being a reckless one which will have the opposite effect, eroding investment and social and economic prosperity across the city.

The council's study underpinning this fee presupposes extensive use of PVs, and is based on off-site carbon savings being achieved solely by PVs. This is clearly impossible in a dense, and historic, urban environment such as Westminster, and is both unreasonable and legally unsound.

The policy wording also implies that the property sector requires this elevated fee, which is effectively a punitive tax, to force it to deliver sustainable development. This is categorically untrue, and not borne out by your own evidence base, the GLA's evidence, and evidence to the contrary in our Retrofit First, Not Retrofit Only report.

We believe this fee would actually deter investment in Westminster, which has already experienced a 50% drop in major planning applications over the past two years, and which are now 25% of their 2016 peak.

As set out in further detail in item 74 in our technical submission below, the proposal would impact the deliverability of retrofit due to the fact refurbished buildings are generally less efficient, operationally, than new ones and would therefore attract a substantial carbon offset fee. The risk of obsolescence would be increased, and any assumption that a corresponding market adjustment would be risk-free to Westminster's economic success is unwise, and would likely lead to unintended consequences.

The property sector has an important role in helping to deliver on the wide range of sustainability outcomes, social and economic, as well as environmental, which are all essential for genuinely sustainable cities. By virtue of its intensity of uses the commercial heart of Westminster is already one of the most sustainable areas in the world per capita. The agglomeration benefits of its mixed economy underpin its success, borne out by the strength in demand for high quality West End office space. However, this cannot be taken for granted and there are other areas within the Central Activities Zone, as well as globally, which are vying for investment.

Capital investment has also become increasingly risk averse and expensive to secure given macro-economic conditions. To compound this further locally through self-inflicted and ill-judged planning policy would be a severe setback for your own ambitions for a 'Fairer Westminster'.

We strongly urge the council to engage with us on the details within our submission as a matter of urgency so that the concerns raised, including issues of legal compliance, can be addressed in advance of the adoption of the SPD.

The WPA wishes to work with the council to help deliver on its net zero ambitions in a constructive and professional manner, and offers at your disposal our in-depth data, industry knowledge, and sustainability expertise to that end.

Yours sincerely

Charles Begley
Chief Executive
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Westminster Property Association

Formal representations

1. Our areas of concern arising from the document relate to:

    1. Carbon offsetting and the proposed carbon price, over which we have particular concerns;
    2. Affordable workspace;
    3. Technical matters relating to the guidance on affordable housing; and
    4. Employment and skills.

Carbon offset

2. The Association supports the City Council's objective to achieve a net zero Westminster by 2040 and has, jointly, led the creation of the Sustainable City Charter with the City Council to improve the environmental performance of Westminster's existing building stock. It supports the objectives of Policy SI2 of the London Plan and the desire to ensure that carbon emissions from development are reduced.

3. The Association supports the principle of a carbon offset charge, recognising that buildings in central London have more constrained opportunities to generate renewable energy onsite and will continue to need energy, even after substantial efficiency improvements albeit this energy may be secured from renewable sources through Power Purchase Agreements and other auditable and verifiable methods, ensuring that there would be no net operational emissions. There is, therefore, an important role for offsetting any carbon emissions associated with that energy, to achieve net zero.

4. The Association recognises that the cost of offsetting carbon emissions in central London may well exceed the current £95/t offset cost set in the London Plan. It would support the City Council in setting an appropriate charge that reflects the costs of delivering local carbon savings. Our review of the average cost of delivering carbon savings across the London Boroughs, enclosed at **Appendix 1**, suggests an average cost between £150 and £200/t.

5. WPA Members are delivering net zero carbon buildings in accordance with the UKGBC framework. This means reducing construction emissions by minimising upfront embodied carbon and delivering all electric, highly efficient buildings. WPA Members invest heavily in low carbon materials to achieve embodied carbon targets, including those set corporately by individual members. Many WPA Members were early adopters of the Design for Performance/NABERS UK scheme which is a step change in designing highly efficient buildings and tracking their energy efficiency in operations and therefore spend a significant amount of capital going beyond regulatory compliance which is currently not recognised by the planning system.

6. The POAH SPD proposes to introduce a carbon offset tariff of £880/t of carbon dioxide equivalent (C02e) emitted.

7. The Association has very serious concerns regarding the level of this proposed carbon charge and objects, strongly, to this element of the SPD. The Association considers that the carbon charge as proposed is unjustified, would not comply with CIL Regulation 122, would not comply with relevant London Plan policy, and would have a material, adverse, effect on development viability in Westminster.

8. Increasing the offset price by almost tenfold would not only jeopardise our Members' ability to deliver first class new buildings in Westminster but it would detract capital away from delivering truly net zero schemes in accordance with industry standards.

9. The SPD should not be adopted until this issue is addressed.

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National and global carbon pricing

10. The Government has set out a review on the valuation of (non-traded) greenhouse gas emissions in policy appraisal.[1] This suggests a value in 2023 of between £126/t and £378/t, with a central value of £252/t. This increases to £189 – £568/t by 2050. It does not come close to £880/t.

11. The World Bank aggregates data on local, and national, traded carbon pricing regimes. It reports carbon prices ranging between c. $1 (Kazakhstan) and $155.87 (Uruguay), noting the EU's Emissions Trading Scheme price is currently $96.30.[2]

Planning Policy Background

12. Paragraph 152 of the NPPF contains states that the:

> **"planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions…"**

13. Paragraph 154 states that new development should be planned in ways that, inter alia, "can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards."

14. Paragraph 6-009-20150327 of the Planning Practice Guidance states:

> **"Local requirements should form part of a Local Plan following engagement with appropriate partners, and will need to be based on robust and credible evidence and pay careful attention to viability. In this respect, planning authorities will need to take account of government decisions on the Housing Standards Review when considering a local requirement relating to new homes.**
>
> **If considering policies on local requirements for the sustainability of other buildings, local planning authorities will wish to consider if there are nationally described standards and the impact on viability of development. Further guidance can be found under Viability."**

15. National policy and guidance does not specifically address carbon offset pricing in a planning context.

16. The development plan basis for carbon pricing within planning decisions is Policy SI2 of the London Plan.

17. Policy SI2(C) states:

> **"A minimum on-site reduction of at least 35 per cent beyond Building Regulations is required for major development. Residential development should achieve 10 per cent, and non-residential development should achieve 15 per cent through energy efficiency measures. Where it is clearly demonstrated that the zero-carbon target cannot be fully achieved on-site, any shortfall should be provided, in agreement with the borough, either:**
>
> **1) through a cash in lieu contribution to the borough's carbon offset fund, or**
>
> **2) off-site provided that an alternative proposal is identified and delivery is certain"**

18. Paragraph 158 of the London Plan addresses the role of offsetting. It states:

> **"The price for offsetting carbon is regularly reviewed. Changes to the GLA's suggested carbon offset price will be updated in future guidance. New development is expected to get as close as possible to zero-carbon**

[1] Valuation of greenhouse gas emissions: for policy appraisal and evaluation, UK Government, September 2021, available online at https://www.gov.uk/government/publications/valuing-greenhouse-gas-emissions-in-policy-appraisal/valuation-of-greenhouse-gas-emissions-for-policy-appraisal-and-evaluation

[2] Carbon Pricing Dashboard, World Bank, https://carbonpricingdashboard.worldbank.org/map_data , included at Appendix 2

onsite, rather than relying on offset fund payments to make up any shortfall in emissions. However, offset funds have the potential to unlock carbon savings from the existing building stock through energy efficiency programmes and by installing renewable technologies – typically more expensive to deliver in London due to the building age, type and tenure."

19. Footnote 155 states that:

> **"Boroughs should develop a price for offsetting carbon using either a nationally recognised carbon pricing mechanism or a price based on the cost of offsetting carbon across the borough. A nationally recognised non-traded price of £95/tonne has been tested as part of the viability."**

20. To date, the City Council has used the non-traded price of £95/t provided for in the London Plan.

Current proposals

21. The City Council has previously consulted on a potential increase in the carbon offset price to £300/t, in the March 2022 version of the POAH SPD. The Association objected to that proposal at the time, which it did not consider to be justified. Our previous representations, and our comments on an early version of the evidence base document from 2020, are enclosed as **Appendices 3 and 4**, respectively.

22. The City Council now proposes to set a local carbon price of £880/t.

23. The POAH does not set out the basis for the £880/t price, and refers to the Delivering Net Zero 2023 (The "2023 Study") document as the evidence base.[3]

24. The 2023 Study explains the rationale for the recommended offset approach in Section 10.

25. At p242 it states:

> **"a 35% on-site improvement over Part L 2021 may be relatively easy to comply with for some buildings. In those cases, if it is cheaper to offset than to seek further carbon reductions on site, applicants will generally find it tempting to limit their commitments in terms of on-site performance to the 35% minimum, and offset the residual regulation emissions."**

26. It goes on to state that:

> **"carbon offsetting should not be the cheapest option: its price should be at least as high as the cost of installing PVs on the building. That would encourage applicants to do this instead of doing less and pay into the offset fund."**[4]

27. The subsequent paragraph then states:

> **"The carbon offset price should be set at a level which enables each London borough to save carbon elsewhere on a 1:1 basis, administer the carbon offset fund, and ensure that all other good practice principles on carbon offsetting are complied with (e.g. additionality)."**

28. The 2023 Study then recommends a carbon offset price of £880/t.[5]

29. It provides only a very limited explanation as to how this is derived. It notes this is based on a cost of £1,016/kWp for a high output PV system with microinverters, with a 10% premium for administration of the offset fund, based on a carbon factor for electricity of 50gCO2/kWh. This is described as "**representative of the average electricity**

[3] Delivering Net Zero, An evidence study to support planning policies which deliver Net Zero Carbon developments, Levitt Bernstein et al., May 2023, available online at https://www.westminster.gov.uk/media/document/delivering-net-zero-july-2023 ("The 2023 Study")

[4] 2023 Study, page 243

[5] Ibid., p244

carbon content over the lifetime of the PV system". This is described as "**set[ting]the carbon offset price at a level sufficient to incentivise greater carbon savings on site rather than offsetting.**"

30. By way of illustration, the carbon offset contribution on an office led, comprehensive redevelopment of c. 30,000sqm GIA, of a very high standard environmental design, would increase – when considered against 2021 Part L – from c. £250,000 to c. £2.2m. This is a substantial increase.

31. No further explanation of this calculation is provided.

Areas of concern

32. The Association is seriously concerned about the scale of the proposed increase in carbon price. It does not support setting the tariff at the level proposed.

33. The Association considers that the proposed charge would be unlawful for the following main reasons:

    (i) The proposed charged is not evidentially justified. Therefore, it would not comply with Regulation 122 of the CIL Regulations.

    (ii) The proposed charge would not comply with strategic London Plan planning policy;

    (iii) The proposed charge is derived from an incorrect understanding of the carbon savings deliverable, especially in Westminster's heritage and conservation context;

    (iv) The proposed charge would have a material, adverse, effect on the deliverability of new development, contrary to paragraph 34 of the NPPF, and the PPG.

34. We address each below.

(i) Regulation 122 of the Community Infrastructure Levy Regulations 2012

35. The proposed offset cost would not comply with Regulation 122 of the Community Infrastructure Levy Regulations 2012. Regulation 122 states:

> **(2) [Subject to paragraph (2A),] A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—**
>
> **(a) necessary to make the development acceptable in planning terms;**
>
> **(b) directly related to the development; and**
>
> **(c) fairly and reasonably related in scale and kind to the development.**

36. The 2023 Study explains that the offset price is based solely on the cost of installing PV panels, to incentivise developers to install more. The feasibility of this is discussed in more detail below, but as the Study concludes that, in respect of office buildings, substantial offsetting will still be required even with 70% roof coverage[6], it is inevitable that this offset will be delivered by mechanisms other than on-site PVs, and at a different price, because more on-site PVs will not be feasible.

37. The 2023 Study itself recognises that a carbon offset cost based on retrofitting other buildings (ie, a method other than the deployment of PVs) should be around £370/t.[7]

38. The 2020 Study likewise concluded the cost was likely to be c. **"at least £300/t"**.[8]

[6] Ibid., Section 6.2.1

[7] Ibid., Section 10, page 244

[8] Towards Net Zero, Final Report, May 202 Revision M, p42. Available online at https://www.westminster.gov.uk/media/document/towards-net-zero-carbon---achieving-greater-carbon-reductions-on-site-may-2020

39. As noted above, the London Plan is clear that the offset cost should be based on the local cost of retrofit (not the cost of deploying one particular form of renewable technology).

40. The Association considers that the evidence demonstrates that it is wholly implausible that all carbon offset in Westminster would be achieved by the installation of PV panels rather than by other methods such as reducing energy demand through energy efficiency. The evidence demonstrates that are insufficient potential installation locations in Westminster to install the PV capacity necessary to provide sufficient offset. Therefore, setting the carbon offset cost based solely on PVs is not justified or necessary as it is not realistically related to the actual cost of offsetting carbon across the Borough.

41. Prioritising renewable energy generation, rather than reducing energy demand by improving efficiency in existing and proposed buildings would also be inconsistent with the Mayor's Energy Hierarchy.

42. The City Council has set out guidance on the use of the Carbon Offset Fund.[9] This provides "**criteria for allocating funds to local carbon saving projects**". It states (paragraph 4.1), that the objectives of the fund are to enable Westminster residents, businesses and communities to:

> **"Reduce their energy use and associated carbon emissions**
>
> **Promote greener and cleaner communities**
>
> **Support the delivery of wider co-benefits, in line with the City Council's Fairer Westminster strategy.**
>
> **Support delivery of Westminster's net zero carbon targets set out in the City Council's Climate Emergency Action Plan. "**

43. The guidance indicates projects should aim to deliver carbon savings at a rate of £500/t.

44. Appendix 1 to the Guidance describes the priority projects on which the funding will be focused. These are grouped into themes, including "Efficient Buildings", which seeks to reduce energy demand in existing buildings, "Clean and Affordable Energy" which seeks to expand renewable energy provision, as well as other themes promoting sustainable travel and transport, and promoting knowledge and learning.

45. The Mayor's December 2022 review of carbon offset funding[10] identified a wide range of carbon offset costs arising from the examples cited, ranging from £58/t upwards.[11]

46. The Mayoral Energy Efficiency Fund invests on the basis of a threshold of £167/t over 30 years, for energy efficiency measures in public sector buildings.[12]

47. The Association's review of evidence from across the London boroughs, enclosed at **Appendix 1**, also suggests that the average cost of reducing carbon emissions from retrofit / energy efficiency measures is c. £178/t.

48. It is, therefore, clear that offsets will be created through a range of different techniques, not solely (or even predominantly) the provision of PVs, at a range of different costs.

49. Therefore, it is plain that an offset cost of £880/t is not necessary or related in scale and kind to the development because carbon offsets will be realised through a mix of measures, not just provision of PVs.

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[9] Westminster Carbon Offset Fund Guidance, 2023. Available online at https://www.westminster.gov.uk/media/document/carbon-offset-fund-guidance

[10] Carbon Offset Funds: Monitoring Report 2021, Mayor of London, December 2022, available online at https://www.london.gov.uk/sites/default/files/2023-01/GLA%20Carbon%20Offset%20Funds%20Monitoring%20Report%202021.pdf

[11] Ibid., Case Studies on p18 / 19 – Kingston Warm Homes Better Health 685t CO2 saved per year at cost of £40,000

[12] Carbon Offset Funds, Greater London Authority guidance for London's Local Planning Authorities on establishing carbon offset funds, GLA, July 2022, paragraph 4.13, available online at https://www.london.gov.uk/sites/default/files/gla_carbon_offsetting_guidance_2022.pdf

50. The evidence base itself conflicts with the basis of the offset cost and confirms that it will not be possible to realise all the necessary carbon reductions from commercial buildings on-site. It does not test relying on PVs only to produce the necessary offsets, and conversely the Council's own guidance indicates that offset funds will fund a range of projects. The Council's guidance indicates a target rate of £500/t. The evidence base document suggests in the region of £300/t, and a review of actual projects suggests £150-£200/t

51. The offset cost must be derived through the actual costs of the mix of measures to be provided across the Borough and not a blanket cost for PVs which is acknowledged cannot and will not be the sole technique employed. The cost of £880/t which is based solely on PVs is therefore unlawful. This cost cannot be demonstrated as being necessary to make a development acceptable, be fairly and reasonably related in scale or directly related to the development.

52. The sum must be adjusted to fairly and realistically reflect the actual cost of carbon offsetting in the city in order for any charge to be lawful.

53. We suggest that the City Council also set out a draft Memorandum, to be attached to s106 agreements securing carbon offset payments, that will state in what circumstances the carbon offset funding secured will be used, to ensure money collected under s106 is targeted at carbon reduction projects and not used for wider purposes.

(ii) The proposed charge is in conflict with London Plan policy

54. As noted above, the policy basis for carbon offsets is London Plan Policy SI2, and the associated explanatory memoranda. These clearly refer to the offset cost being based upon the local cost of offset projects. This is also consistent with the requirements of Regulation 122 of the CIL Regulations.

55. As described above, the proposed cost is based upon the costs of deploying one particular form of technology, photovoltaic panels. There will, of necessity as envisaged by Westminster Carbon Offset Fund Guidance, be other methods for generating offsets but the offset cost is not based upon these.

56. Thus, the proposed cost does not comply with Policy SI2 and associated text.

57. The proposed approach would be focused on generation of renewable energy, rather than reducing energy demand, which would not comply with the Mayor's Energy Hierarchy as set out in Policy SI2.

58. The approach, and the guidance, should also recognise the role of 'in kind' provision through retrofitting or other measures delivered by the applicant / developer on other buildings within the city. Policy SI2(C)(ii) provides for off-site provision where an alternative proposal is identified and delivery is certain. This is not currently addressed within the guidance, notwithstanding the clear provision for it within strategic policy.

(iii) Incorrect understanding of the carbon savings achievable

59. The supporting documentation is focused on the introduction of additional photovoltaic panels.

60. The prioritisation of solar power appears to be based upon the example of Policy SEC1 of the Cornwall Council Development Plan Document[13], which prioritises roof-mounted PV, with the objective of achieving on-site renewable energy generation to match the residual energy consumption of buildings. This policy was introduced through a development plan document that was subject to independent examination.

61. The Cornwall example is not applicable to the Westminster context:

    a. First, because the assessment of the carbon performance of buildings in Westminster remains based upon Part L 2021, as the adopted London Plan approach, rather than focused on reducing energy intensity and then matching energy intensity with on-site generation.

[13] 2023 Study, page 41

b. Second, because the evidence base does not, then, explore whether or not generation of the required energy from on-site PVs would be practical and achievable in the central London context.

62. This is a serious omission within the supporting documentation.

63. The Association does not consider that the Cornish example is directly relevant to central London. A policy that may be effective at lower latitudes (ie, with improved PV efficiency) with higher average sunshine in a more rural administrative area will not be effective in central London, given far more constrained sites and a densely urbanised area with extensive constraints on PV generation, both from overshadowing and from conservation designations.

64. The modelling conducted on London office buildings within the 2023 Study concludes that, even with 50% site coverage from PVs, it is not possible to achieve the London Plan Policy SI2 requirement of a 35% on-site reduction in carbon emissions on Part L 2021. An increase to 70% **is** shown to achieve compliance in most cases, with reductions on Part L of between 37% and 57%.

65. Crucially, whether the 35% target is achieved, or not, **the residual emissions would still need to be offset using the carbon offset tariff**.

66. (Incidentally, it is not clear what plot ratio has been assumed in testing this scenario. Increasing PV will have less overall effect on denser / taller office buildings because their energy use will increase but their available roof space will not.)

67. The Association is already concerned that 70% roof coverage by PV will not be achievable because of other pressures on roof space, such as biodiversity, urban greening, and the space needed to accommodate air source heat pumps, which must have free air. Increasing further, beyond 70%, is most unlikely to be feasible. The embodied carbon cost of the additional PVs is also not considered in this approach.

68. The GLA's own data confirms this point. **Appendix 5** is a presentation from the Mayor of London's office, considering the shift to Part L 2021 for compliance with London Plan Policy SI2. The graph at Page 7 confirms that office accommodation, in particular, would not achieve on-site zero carbon and would still require off-sets, even incorporating PVs and heat-pump led district heating networks.

69. The analysis within the evidence base, the GLA's analysis, and the Association's experience therefore confirms that, for commercial office buildings, offsets will continue to play a significant role, as achieving reductions of, or close to, 100%, is not possible at this point.

70. Furthermore, there are frequently significant heritage and conservation constraints that will limit the extent to which renewable energy and other interventions to reduce energy use are appropriate in Westminster, given the extent of conservation designations and frequency of listed buildings. Incorporating extensive PV coverage, or deploying other technologies, will often not be feasible or permissible.

71. The charge proposed for offsets is stated to be set at a penal level to try to influence developer behaviour or encourage additional provision for PVs. This is unlawful, in particular because there is no evidential basis for asserting that all carbon saving will be achieved by PVs across the City. The evidence shows the contrary.

72. We additionally note that most leading developers have their own commitments to delivering zero carbon buildings, and their own offset arrangements to support delivery of these buildings, which this carbon charge may duplicate. Commitments to offsetting operational emissions through other methods should be addressed within the guidance and taken into account.

73. An ongoing problem that would remain unaddressed is the treatment of Power Purchase Agreements and other arrangements that allow for buildings to be supplied by auditable, verified (and in the case of PPAs additional) sources of 100% renewable electricity, meaning that (if fossil fuels are not used within the building), there will be no net operational emissions. Many developers and occupiers have corporate commitments to using such sources of electricity irrespective of planning commitments. However, such commitments – even if secured

through s106 legal agreement – are not taken into account when calculating residual emissions, meaning that carbon offset payments may be sought even when the operational phase of the building will not lead to carbon emissions because it is supplied with electricity from 100% renewable sources. Imposing an increased carbon offset payment would exacerbate this problem, and potentially actually disincentivise the use of green energy because of its additional cost, if funds had already been spent on the offset payment and were no longer available to source renewable energy.

74. The proposal would also disincentivise retrofit. This is a serious concern. As retrofit / refurbishments of existing buildings become more extensive, they are more likely to require planning permission and, as a result, the full suite of energy modelling and analysis. Refurbished buildings are generally less efficient, operationally, than new buildings because their design, basic structure and orientation cannot be maximised for energy savings. If the scale of the application is such that the energy modelling is required, and an offset payment is then sought at the level proposed, there will be a very substantial disincentive to undertake the retrofit because of the carbon offset that would then be sought. Economically, it may be more desirable to continue with an unrefurbished building, even if that is likely to mean substantially greater carbon emissions.

(iv) The proposed charge would have a material, adverse, effect on the deliverability of new development

75. Paragraph 34 of the NPPF requires that development contributions should "not undermine the deliverability of the plan." Paragraph 6-009-20150327 of the PPG, quoted above, refers to the need to pay "**careful attention**" to viability.

76. The effect of the proposed charge is considered in the POAH SPD Viability Study by BNP Paribas Real Estate ("the 2023 Viability Study").

77. The 2023 Viability Study tests 155 development proposals on sites across the city to represent the types of sites that the Council expects to come forward over the Plan period; These developments are based on submitted applications and considered by the VA to be representative of schemes likely to come forward during the Plan period.

78. A residual based methodology has been applied to test the viability of development typologies, including the impact on viability of the Council's emerging planning policies alongside adopted levels of Westminster CIL.

79. Sensitivity analysis in the 2023 Viability Study is confined solely to a single scenario, testing the impact of growth in sales values/capital values of 10% and cost inflation of 5%. No downside viability testing has been undertaken. This is particularly important given the current uncertainty on market inputs including finance rates.

80. The 2023 Viability Study concludes that:

> **"Increasing the offset figure to the higher levels we have tested (£880 per tonne) would have a more significant impact on viability (an average reduction in residual land values of 33%) and is likely to put pressure on the extent to which developments can absorb the cumulative impact of all plan policy requirements."**[14]

81. This would be a material, and significant, reduction in residual land values and would significantly restrict the supply of land in the city. A total offset payment equating to 14% of construction costs is excessive and will stifle development across Westminster.

82. Given the complexity of the City of Westminster area, the 2023 Viability Study does not adequately provide a methodologically sound and comprehensive evidence base for the proposed tariff, according to the requirements of the NPPF and NPG for the following reasons:

    a. It concludes that the proposed figures would have "a more significant impact on viability", notwithstanding our other methodological concerns.

[14] City Plan and POAH SPD Viability Study, BNP Paribas, 2023, page 4

b. The typologies selected do not reflect the diversity of development coming forward across the City;

c. Supporting evidence is limited, superficial and in some cases non-existent, thereby not representative of the geographical spread of costs and values across the complex urban area of Westminster;

d. It relies upon a land value benchmark of existing use value plus an arbitrary margin (premium). This is not in accordance with the Paragraphs 13 to 16 of the NPG nor RICS mandatory requirements. This approach disregards the national planning policy and planning guidance considerations. National policy and guidance prescribe that premiums should be determined by the market place.

83. It is impossible to critically analyse the modelling as the results are only summarised in table form without necessary detail on cost and value components. WPA is concerned by the lack of transparency, and apparent inaccuracies, in the application and testing of the cumulative impact of policies, and therefore request further detail to enable transparent analysis of BNPPRE's modelling.

84. The Association notes that the 2023 Viability Study suggests that "**many developers would opt for the more cost effective route of on-site carbon reduction solutions**"[15] rather than paying the offset charge. However, this is entirely inconsistent with the findings of the 2023 Study, as described above, which conclude, in respect of commercial development, that substantial offset payments will continue to be required because office developments will struggle to exceed a 50-60% on site carbon reduction, even with 70% PV coverage. The option of on-site carbon reductions will not be available and development will be exposed to these deliverability challenges.

85. Furthermore, the capital cost modelling provided at Section 9 of the 2023 Study contains areas of concern. Current price increases in key components, including photovoltaics, are excluded on the basis the authors consider they are short term.[16] Inflation is assumed to be less than 5% per annum, not withstanding rates double that over the last 12 months.

86. This additional cost would also come on top of further, significant, increases in the cost and complexity of delivering new developments, especially, but not limited to, residential development. These include overall cost inflation, the additional costs associated with the Future Homes Standard, the requirements for second staircases and other fire engineering features in taller buildings (be they residential or commercial), the financial implications of the Building Safety Levy, and the overall requirements for affordable housing provision. These additional costs do not appear to have been addressed within the 2023 Viability Study.

87. Overall, the proposed charge would not, therefore, be consistent with national policy.

Part L

88. The Association notes that, within the box on page 63 of the POAH SPD, it is stated that **"at least a 35% improvement on Part L of the Building Regulations 2013"** should be achieved on site.

89. Part L 2013 has been replaced by Part L 2021. The GLA's guidance on the application of Policy SI2 requires the energy performance of buildings to be assessed against 2021 Part L.[17] The GLA recognises that achieving a 35% reduction against 2021 Part L is likely to be more challenging, especially for non-residential buildings.[18]

90. The POAH must be updated to refer to the 2021 Part L to align with the GLA's approach and application and London Plan policy, and carbon offsets only sought based on residual emissions under 2021 Part L.

[15] Ibid., p4 and again at 5.43 and 6.2
[16] 2023 Study, p 222
[17] Energy Assessment Guidance, Greater London Authority guidance on preparing energy assessments as part of planning applications (June 2022), available online at https://www.london.gov.uk/media/12774/download?attachment
[18] Energy Assessment Guidance updates - Part L 2021 of building regulations, GLA Cover Note, undated, page 2, available online at https://www.london.gov.uk/media/99153/download?attachment

91. It is also unclear whether the viability assessment of the £880/t tariff is based on assumed contributions under 2021, or Part L. This requires clarification.

Other matters

92. The Association recognises that the 2023 Study questions whether the current definition of net zero should be reconsidered as part of the review of the London Plan, to explore whether other ways of assessing the carbon emissions of buildings could be considered. This could include considering energy intensity / energy in use, and the actual performance of buildings, rather than against current Part L. This is described as "Option 2".

93. The Association agrees that the continued role of Part L, as opposed to other forms of measurement, should be investigated and considered in more detail. It agrees that energy intensity may be a more appropriate assessment. It looks forward to discussing this issue in more detail, potentially as part of the review of the London Plan.

Affordable Workspace

94. We refer to our previous detailed representations on this matter, in our letter of 29 April 2022.

95. In summary, as set out in that letter:

    a. we do not consider that the need for affordable workspace has been demonstrated in Westminster, as the market provides a wide range of accommodation, including some that is heavily discounted from prevailing market rates;

    b. it is unclear how providing some discounted workspace will necessarily assist in addressing wider economic issues, and could simply lead to eligible businesses relocating from less, to more, expensive areas. There may not necessarily be a need for all forms of discounted space;

    c. The guidance that is proposed is highly prescriptive and will not always represent the best outcome in all scenarios. Managing, and finding occupiers for, space that is subject to extensive and complex eligibility requirements can prove complex;

    d. The procedural requirements to secure the space remain unnecessarily complex and will discourage, rather than encourage, provision;

    e. We suggest that some provision is also made in the document for financial contributions to the City Council, instead of on-site provision. This could allow the City Council to provide the type of space that it considers is necessary, for example by pooling contributions to purchase buildings where there is a need, providing subsidised access to existing flexible office space, or exploring other operation models.

96. We welcome the changes made in response to our previous comments. In particular, we welcome the recognition on the penultimate paragraph of page 36 that the absence of any provision of affordable workspace will not in itself constitute a reason for refusing planning permission.

97. We suggest that the title for this heading is amended to "Where this guidance applies" to reflect the fact that the SPD can only provide guidance and cannot create a new policy requirement.

98. We also welcome the clarification that the guidance relates to net additional floorspace, not to total commercial floorspace.

99. Insofar as our other previous comments from our letter of April 2022 remain unaddressed, these continue to reflect the Association's position.

Affordable Housing

100. The Association's comments remain as set out in our letter of April 2022, subject to our comments below.

101. We reiterate our previous observation that the charging rates for payments in lieu are significantly higher than those associated with the previous City Plan and we anticipate that this will result in a greater proportion of applications following viability-tested route, as oppose to the fast track route, or to fewer applications for residential development as a whole.

102. We suggest, in the final paragraph on Page 14, that the text is amended to refer to "no or limited alterations to existing homes." There may well be cases where existing homes are subject to limited works as part of the creation of additional residential floorspace, for example an upward extension, but without being physically reconfigured as described on the following page or being "new homes". We believe that this is the intention of the guidance, but suggest that this should be clarified.

103. For similar we suggest that the reference to "refurbishment or reconfiguration" in the first paragraph of Page 15 should be to "reconfiguration" only. Works of refurbishment within an existing home should not create a requirement for affordable housing, even if they are undertaken alongside other works that do create new homes. We suggest that the test of "reconfiguration" is more appropriate.

Employment and skills

104. The Association's comments remain as set out in our letter of April 2022, subject to our comments below.

105. We note that the potential financial penalty of £6,000 per job / apprenticeship appears high compared to other boroughs. For example, Southwark's is currently £4,000 / job.

106. The Association would encourage the City Council to explore allowing for a more nuanced approach to promote greater collaboration between the council and developers to maximise benefits for residents. Whilst the contribution method based on the methodology in the proposal is likely to support those developers that are not able to deliver programmes themselves, we suggest that the guidance should also allow engagement with developers with established programmes/partnerships already addressing employment and skills where they are able to demonstrate equivalent, or greater, local benefits through existing programmes.

107. This could include:

a. Using existing partnerships to create social value in the area of the development i.e. No. of local people engaged in employability programmes; no. of people supported to enter the world of work - apprenticeships, on-site jobs;

b. Reporting the total number of beneficiaries and social value delivered in the area annually;

c. Potentially allowing financial contributions from developers who have established programmes and partnerships to be directed to those programmes, to provide further enhancement to their outcomes and opportunities, including with auditing arrangements and targets within the s106 agreement;

d. Where a developer has multiple developments within Westminster, working with the council to develop a group Employment and Skills Plan (ESP), rather than on a site-by-site basis. The ESP would be prepared across the portfolio of developments therefore providing an aggregation of the impact that will be achieved across the portfolio.

e. Allow greater flexibility within s106 agreements for cross borough collaboration where appropriate, in line with the recommendations from the Skills for a Sustainable Skyline Taskforce report[19] published by the City of London Corporation earlier this year.

Appendix 1 – Review of costs of borough carbon reduction / energy efficiency projects, WPA
Appendix 2 - Carbon Pricing Dashboard, World Bank
Appendix 3 – WPA Representations on March 2022 Planning Obligations and Affordable House SPD
Appendix 4 – WPA Letter of Comment on Toward Zero Carbon – The Role of Carbon Pricing, 17 December 2020
Appendix 5 – London Plan – Part L 2021 impact, Mayor of London, 6 May 2022

[19] 2023 Skills for a Sustainable Skyline - recommendations