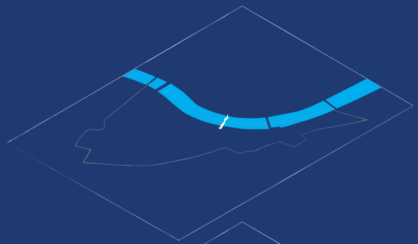
Chapter 10

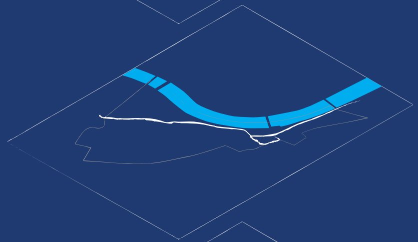
Section 106 & CIL



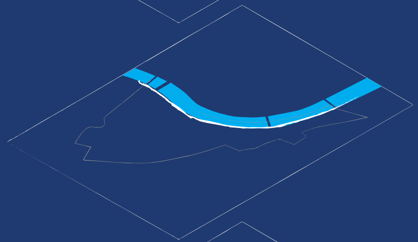
new pedestrian bridge across the river

new social infrastructure

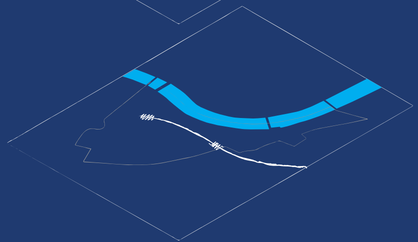
new linear park



improved road environment



improved river walk



northern line extension

10.1 Development infrastructure funding study

In Summer 2010, Roger Tym & Partners, Peter Brett Associates, and GVA Grimley undertook a Development Infrastructure Funding Study (DIFS) on behalf of the GLA in partnership with TfL, Wandsworth and Lambeth Councils and landowners. The aims of the study were to understand what infrastructure is required to support the proposed level of new development within the OA based on preferred development capacity revised scenario five (high density housing with retail and office); to identify the level of contribution that can be collected from developers without jeopardising viability; to identify how this is split between the proposed Northern Line Extension (NLE) and other infrastructure projects; to identify the size of the potential funding gap; and how that funding gap might be addressed.

The infrastructure requirements identified in the DIFS report were based on an assessment of the need for transport, health, education, open space and other infrastructure arising from future growth in housing and jobs in the opportunity area. These requirements were identified in consultation with key stakeholders and service providers. The costs associated with delivery of the new infrastructure were based on service providers' own estimates or with reference to case studies and data from cost guides. The proportion of infrastructure costs that were directly attributable to development in the OA, and which may be reasonably sought from developers via a tariff on development, was determined. Residual land value appraisals were then undertaken in order to determine what level of contribution per residential unit and per square metre of non-residential floorspace could be supported without unduly impacting development viability.

The full DIFS report is provided as Technical Appendix 9 to the framework.

10.2 Legislative context

Part 11 of the Planning Act 2008 provides for the imposition of a Community Infrastructure Levy ("CIL"). The Community Infrastructure Levy Regulations 2010 (as amended) implement the detail of the CIL.

The CIL allows local authorities and the Mayor to choose to charge a levy on new development in their area in order to raise funds to meet the associated demands placed on the area and to enable growth. It will largely replace agreements made under Section 106 of the Town and Country Planning Act 1990, the use of which, following implementation of CIL, will be scaled back to site-specific planning obligations and affordable housing, although the legislation may be further amended to bring affordable housing under CIL.

Under Regulation 122 of the CIL Regulations, the policy tests for planning obligations have been reduced from five to three and have been given statutory force, as follows:

"A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development."

Circular 05/2005 'Planning obligations' provides for planning obligations to be pooled where the combined impact of a number of developments creates the need for infrastructure. It states that local authorities should set out in advance the need for this joint supporting infrastructure and the likelihood of a contribution being required, demonstrating both the direct relationship between the development and the infrastructure and the fair and reasonable scale of the contribution being sought. It is considered that the OAPF together with the DIFS report provide the evidence base for the proposed tariff-based approach.

Transitional arrangements for phasing out section 106 and implementing CIL, permit Section 106 agreements to continue to be used to pool planning obligations until April 2014 or until the CIL is introduced, whichever is the earlier. Thereafter, the CIL Regulations state that a local planning authority cannot use a planning obligation as a reason for granting permission to the extent that five or more separate planning obligations have been entered into within the area of the charging authority for the same infrastructure (other than Crossrail). Any mechanism that attempts to fund significant strategic infrastructure across five or more sites in either borough will therefore have to be implemented as a CIL. Once a local authority has adopted a CIL charge, it will be unlawful to charge a planning obligation for any item that could be covered by a CIL charge. Section 106 agreements will remain but contributions sought by this mechanism will be site-specific.

10.3 Policy context

London Plan

London Plan Policy 8.2 'Planning obligations' indicates the Mayor's preference for pooling planning obligations:

"In particular the Mayor wishes to develop with boroughs a voluntary system of pooling for the provision of facilities related to proposed developments...

... Affordable housing; supporting the funding for Crossrail where this is appropriate and other public transport improvements should generally be given the highest importance.

Importance should also be given to tackling climate change, learning and skills, health facilities and services, childcare provision and the provision of small shops"

To ensure the process is transparent and equitable to developers, a consistent approach for determining planning obligations will be encouraged across the OA.

London Plan Policy 8.3 'Community Infrastructure Levy' sets out the Mayor's commitment to the effective development and implementation of the CIL. It states that the Mayor will provide a clear framework for application of the CIL to ensure the costs incurred in providing the infrastructure which supports the policies in the Plan (particularly public transport – including Crossrail) can be funded wholly or partly by those with an interest in land benefiting from the granting of planning permission.

Wandsworth Core Strategy

Policy IS7 – Planning Obligations of the Core Strategy states that "Planning obligations will be sought on a site-by-site basis to secure the provision of affordable housing in development schemes (see Policy IS5) and to ensure that development proposals provide or fund local improvements to mitigate the impact of development and/or additional facilities made necessary by the proposal, subject to the five tests set out in Circular 05/2005." It goes on to state that in the areas of major change, including Nine Elms, contributions towards the cost of specific off-site improvements will be sought, in particular for transport and other infrastructure provision where necessary.

Wandsworth Site Specific Allocations Document

In the Area Spatial Strategy for Nine Elms, which forms part of its Site Specific Allocations Document (adopted February 2012), Wandsworth indicated that "Until the CIL is adopted, it is proposed that the tariff levels recommended in the DIFS report should be used as a guide to negotiations with developers".

Lambeth Core Strategy

Policy S10 – Planning Obligations of the Core Strategy states that "Planning obligations will be sought to secure the provision of affordable housing" and will also be sought to mitigate the direct impact of development, secure its implementation, control phasing where necessary, and to secure and contribute to the delivery of infrastructure made necessary by the development.

10.4 Crossrail funding

Use of planning obligations in the funding of Crossrail SPG

The Crossrail SPG, adopted in July 2010, states that when considering a planning obligation, Crossrail should 'generally' be given highest priority, but that the VNEB OA presents a special case and has been omitted from the Central London charging area. This is on the basis that development in this area will be required to make a similar level of contributions towards other strategically important transport infrastructure, such as the NLE.

Mayoral Community Infrastructure Levy

The Mayoral Community Infrastructure Levy to support the funding of Crossrail will come in to force on 1 April 2012. The levy is intended to raise £300m towards the delivery of Crossrail, which is essential to London's growing economy and to ensuring it remains a competitive global business centre.

The Mayor considers that all new development in London (except development for health or education facilities) should contribute towards the funding of Crossrail. Because of differences between the CIL and section 106 systems, and the importance of avoiding potential State Aid challenges, areas which were previously excluded from Section 106 requirements under the Crossrail SPG are included in the Mayoral CIL charging schedule. This sets out a rate of £50 per sq.m. (gross internal area) in Wandsworth and £35 per sq.m. (gross internal area) in Lambeth.

10.5 Wandsworth and Lambeth CILs

The DIFS report includes recommendations for converting the tariff to a CIL charge, taking account of the differences in the way Section 106 and CIL operate, including the fact that CIL is not chargeable on affordable housing. Under the CIL Regulations, the boroughs are required to produce separate CILs for their areas. It will be important for the two borough charging schedules that apply to the OA to be consistent with one another.

Wandsworth CIL

Wandsworth Council is at an advanced stage of developing a local Community Infrastructure Levy which it expects to adopt in late 2012. Within the area designated as the Nine Elms charging area, which covers the Wandsworth part of the OA, the Council proposes to adopt an approach that identifies the Mayoral CIL as a deduction from the overall level of charge that was deemed affordable in the DIFS. The Mayoral CIL has therefore been made inclusive in the overall charge deemed affordable for the area, and is not proposed to be applied as an additional charge.

The Wandsworth CIL charging schedule is consistent in its outcome with the OAPF tariff (set out later in this chapter) and when adopted it will replace the tariff in the Wandsworth part of the OA.

Development in the Wandsworth part of the OA is expected to contribute in the region of £15-20m towards the Mayoral CIL.

Lambeth CIL

Lambeth Council has not yet commenced work on its boroughwide Community Infrastructure Levy but intends to have a charging schedule in place by April 2014 in line with legislative requirements.

Lambeth in its Cabinet report of 16 January 2012 has decided to implement the OAPF tariff (40% affordable housing scenario) in the interim period prior to adoption of a boroughwide CIL.

10.6 Charging mechanism

It is important that the most appropriate form of charging mechanism is put in place to ensure that the necessary contributions are charged fairly and collected properly.

The DIFS assessed various options for collecting contributions and recommended that, given the uncertainty in relation to the introduction of CIL which existed at the time, a S106 tariff-based approach be taken. The main advantage of a S106 tariff approach is the certainty it provides to developers regarding what they will be expected to pay, and to the authorities regarding the income that can be expected from contributions. Prior to the introduction of CIL, it is the most transparent and fairest way of collecting contributions and should largely avoid time consuming site-by-site negotiations.

The charging mechanism has been developed to ensure that contributions are charged fairly and collected properly, and to be sufficiently flexible so that it can be relatively easily adapted to a CIL in due course.

Individual S106 agreements will still be required for small revenue items such as maintenance, site specific infrastructure such as play areas and to secure affordable housing. The majority of the site-specific infrastructure items are transport-related and include contributions towards the delivery of the Mayor's cycle hire docking stations, which will be negotiated on a site-by-site basis and secured via S106/S278 agreements. A full list of infrastructure items to be funded is included in the table in chapter 17 of the DIFS report.

10.7 Affordable housing

The DIFS assessed the level of viable tariff contributions based on alternative 15% and 40% affordable housing scenarios. The cost of providing affordable housing is not included in the tariff itself, but is accounted for separately. The DIFS recognised that the level of affordable housing sought will affect the level of tariff contributions developers can afford. Because of ongoing uncertainty regarding affordable housing subsidy, the affordable housing scenarios both assume no grant is available, If grant becomes available in the future, it could be used to finance additional affordable housing.

Affordable housing units are subject to the residential tariff in the same way as private housing. This differs from the approach set out in the CIL legislation, although CIL may be amended in due course.

The strategic priorities set out in the London Plan are affordable housing and transport. Given the importance of the NLE and other transport projects to the success and viability of the whole opportunity area, in this instance, transport is prioritised above affordable housing. Therefore, the 15% affordable housing option is considered the most appropriate for the majority of the opportunity area. However, the affordable housing level required by Lambeth will normally be 40%, although for sites within close proximity to the proposed station at Nine Elms and those which may not be suitable for family housing, 15% affordable housing may be considered.

10.8 Tariff zones

The DIFS identified four different value areas within the OA and concluded that Value Area 1 could, in theory, afford a materially higher tariff than Value Areas 2, 3 and 4.

Two residential tariffs are therefore proposed, one for the higher value development in Zone A and a separate lower tariff for all other areas of the OA (Zone B). The tariff zone areas are shown in figure 12.1.

In terms of commercial development, a single tariff for the whole OA is proposed, regardless of the value area within which it is located.

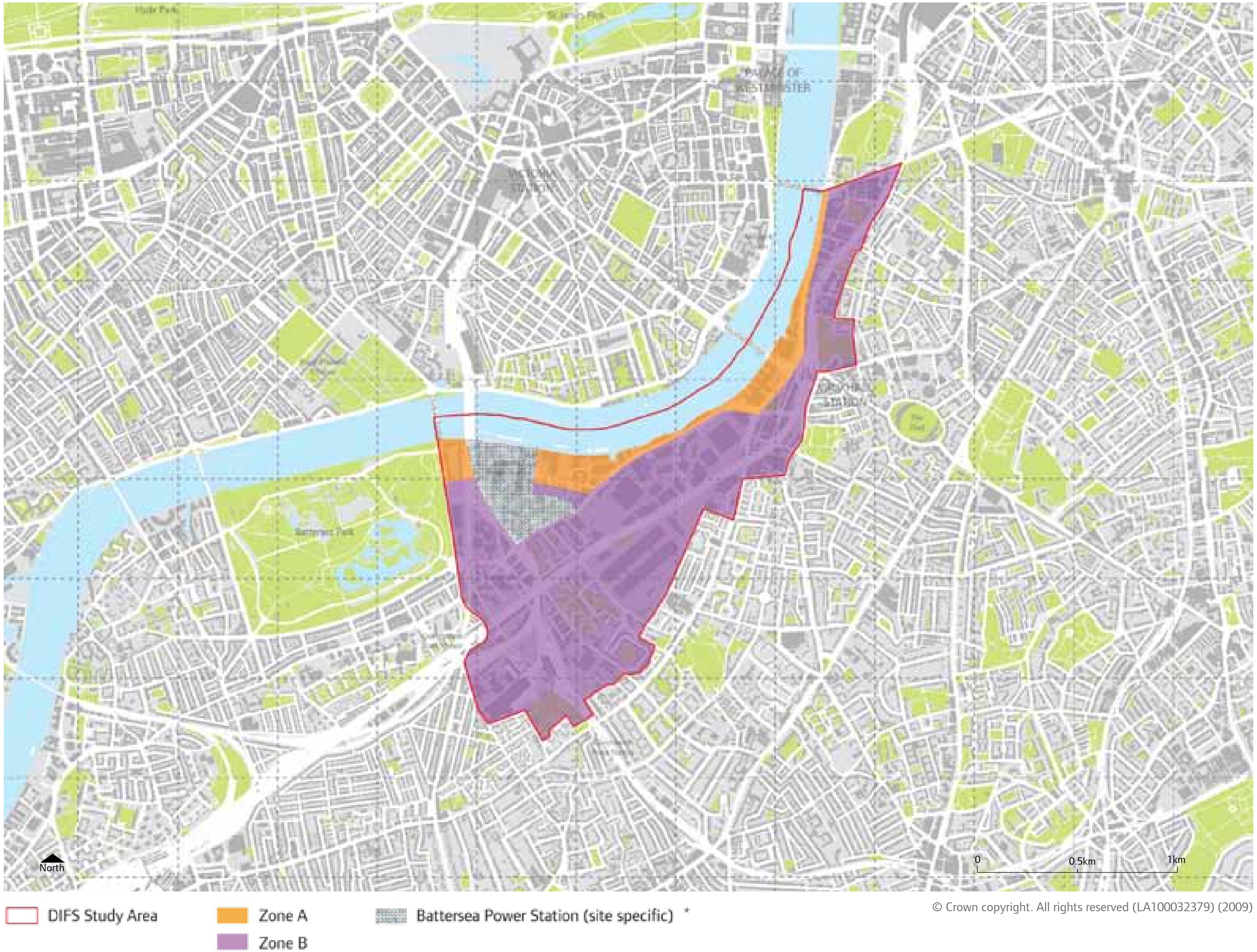


Figure 10.1: Proposed tariff zones

* *"Section 106 contributions secured in connection with any new scheme for the Power Station site will be expected to be at least proportionate to those already agreed, and having regard to borough CIL"*

10.9 Charging tariff

The tariff will be levied on the levels of net additional residential and commercial floorspace calculated by gross internal area on a like-for-like land use basis. In practice, most of the development in the OA will involve demolition of activities such as warehousing and its replacement with residential, retail and office uses. There is likely to be very little replacement of space of the same use at a higher density. For the purpose of calculating the tariff, only the loss of the same type of space as that being proposed will be accounted for. The amount of tariff sought should relate to the level of affordable housing provided.

In order to front-load infrastructure funding and ensure its delivery in a timely manner, the tariff should, where possible, be paid on commencement of development. It is, however, recognised that there will be instances in which this could compromise scheme viability. The phasing of tariff payments should therefore be negotiated on a case-by-case basis having regard to scheme viability. The timing and size of payments will depend on the size of the overall contribution and the timescale for the construction of the development. Once CIL is in place the timing of payments will be determined by the CIL Regulations, and the relevant authority's instalment policy.

	15% affordable housing				**40% affordable housing**			
Land Use	**2010 -2015 Tariff charge (per unit)**	**2010 -2015 Tariff charge (per sq.m.)**	**2016 -2031 Tariff charge (per unit)**	**2016 -2031 Tariff charge (per sq.m.)**	**2010 -2015 Tariff charge (per unit)**	**2010 -2015 Tariff charge (per sq.m.)**	**2016 -2031 Tariff charge (per unit)**	**2016 -2031 Tariff charge (per sq.m.)**
Residential zone A	£40,000	£425	£50,000	£530	£25,000	£265	£35,000	£370
Residential zone B	£20,000	£210	£30,000	£315	£15,000	£160	£25,000	£265
Office (B1)	-	£160	-	£160	-	£160	-	£160
Retail (A1-A5)	-	£150	-	£150	-	£150	-	£150
Hotel (C1) and student housing	-	£40	-	£40	-	£40	-	£40

Table 10.1: Proposed S106 tariff charges for the OA, based on 15% and 40% affordable housing and property market recovery by 2015

The tariff will be paid to the local planning authority as the charging authority, who are also responsible for the allocation of funds to projects. However, the Strategy Board will be responsible for advising the Charging Authorities on prioritising and allocating funds to the infrastructure projects necessary to support the development of the OA.

10.10 Contribution split

The DIFS provides an in depth analysis of what infrastructure will be required in the OA to support the level of development proposed. Figure 10.2 shows the estimated infrastructure cost by category. A comprehensive list is provided in Chapter 17 of the study, including estimated costs and a breakdown of potential funding sources. The study does not seek to prioritise specific infrastructure projects but indicates that some are vital to the delivery of the OA whilst others are not essential but highly desirable.

Costs and potential sources of funding identified by the DIFS are set out in table 10.2. Work undertaken since the DIFS was completed has indicated that some of the figures need revising to take account of the latest information. As the implementation of the OAPF is taken forward, the detailed costs and sources of funding set out in the DIFS will need to be monitored and regularly updated. This work will be overseen and directed by the Strategy Board.

The DIFS highlights that there is likely to be a funding gap (of around £88 million, assuming market recovery) and that funding will come forward at different phases of the development period. Due to this uncertainty, it is important to clearly structure how funding will be allocated to projects as they come forward; which projects will be bought forward first and; which infrastructure projects have priority if the funding gap cannot be closed at a later date.

The development of the opportunity area is expected to take up to 25 years. The infrastructure requirements identified in the DIFS were based on the information available at a point in time, before any significant development in the area had commenced. As the development of the area takes place, the infrastructure requirements needed to support the area will need to be regularly reviewed, to take account of the latest information available.

The Strategy Board will be responsible for overseeing implementation of the OAPF and ensuring the success of the OA, including recommending the prioritisation and allocation of Section 106 contributions collected through the tariff and through the borough CILs as they come forward and replace the tariff. It is proposed that developer tariff/CIL contributions should effectively be pooled and that the Strategy Board should influence the prioritisation of projects and the allocation of funds as the development and specific infrastructure requirements are taken forward. Priorities for funding are likely to change over time and for the purposes of the OAPF it is not considered appropriate to be prescriptive about the allocation of monies towards specific infrastructure projects. The NLE is, however, recognised as being fundamental to the success of the OA and the ability to support the quantum of development planned under the preferred development scenario and should therefore be given the highest priority.

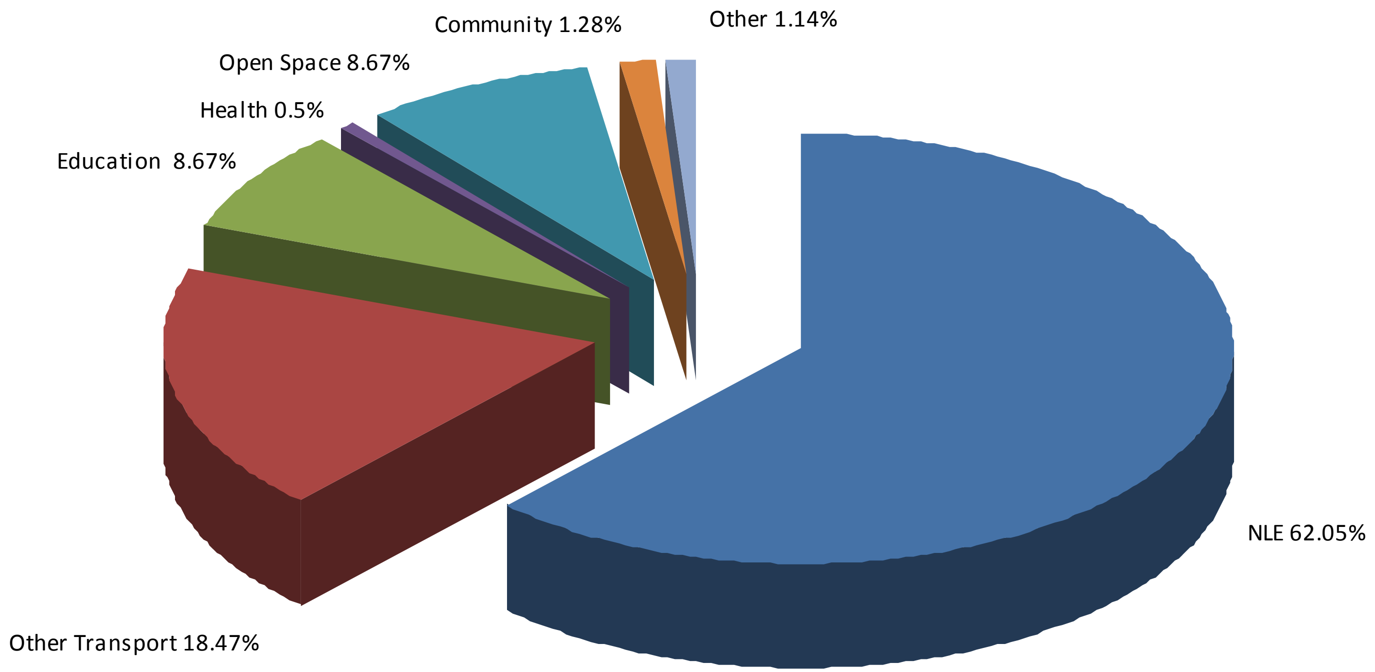


Figure 10.2: S106 / contribution split of total infrastructure costs identified in the DIFS

(Source: RTP)

10.11 Costs and funding summary

	Category	Definition	15% affordable housing	40% affordable housing
A	Gross infrastructure costs identified in the DIFS	The total costs of all infrastructure sought at the OA. It is the gross cost because it creates benefits beyond the OA.	- £1,059m*	- £1,059m*
B	Mainstream funding	Including grant funding from public agencies and authorities, and other recognised forms of public-private financing such as rent-back deals.	+ £23m	+ £23m
C	Funding anticipated through utilities cos, ESCOs, MUSCOs,	Explained in section 16 of the DIF study	+ £65m	+ £65m
D	Gross infrastructure costs after funding	= A – B- C	- £970m	- £970m
E	Infrastructure costs attributable to VNEB development	The portion of the gross costs which are mitigating the impact of development in the OA (i.e. costs that can be sought through S106, S278 or tariff)	-£908m	-£908m
F	Developer contributions	Anticipated funding which is available through the tariff, as well as contributions from extant permissions and Battersea Power Station.	+ £659m	+ £581m
G	Infrastructure assumed to be provided through development masterplan	Value of infrastructure provision which is expected through development masterplans. It will be agreed on a site-by-site basis through S106/ S278.	+ £94m	+ £94m
H	Infrastructure provided by site-by-site S106/S278	Value of infrastructure provision that is expected.	+ £34m	+ £34m
I	Innovative funding: additional bank borrowing for affordable housing which releases funding for infrastructure	See chapter 7 of DIF study	+ £33m	+ £90m
J	**Funding Gap**		**- £88m**	**- £109m**

Table 10.2: Estimated headline cost and funding

** This includes the estimated private sector delivery cost of the NLE at £563.8m. The public sector delivery cost is estimated at around £900m, which includes 35% optimism bias and an allowance for inflation.*

(Source: RTP, PBA and GVA Grimley)

A number of other transport and non-transport infrastructure items are also necessary to make the development successful and should be prioritised accordingly. In order to maintain flexibility over the allocation of monies towards infrastructure provision, it is proposed that Section 106 contributions should be linked to “the provision of infrastructure to support the development of the OA” and not to specific projects or areas except where this is justified by specific circumstances.

10.12 Developer contributions already agreed

Of the 16,000 units planned in the OA under revised scenario 5, 5,288 residential units have already been permitted, along with a significant amount of business and retail space at Battersea Power Station and the US Embassy.

Table 10.3 sets out the section 106 contributions that have already been agreed. Payment of these contributions is reliant on developments coming forward and is linked to the phasing of those developments.

Scheme	Contribution
US Embassy	£6,335,000
Lambeth (Various sites)	£5,300,000
Battersea Power Station	£213,249,711
Tideway	£35,013,050
Marco Polo House	£12,081,250
Embassy Gardens	up to £55,756,002
Nine Elms Parkside	up to £50,900,000
Total	up to £378,635,013

Table 10.3: S106 contributions already agreed

10.13 Other sources of funding

A number of other potential sources of funding for new infrastructure were identified in the DIFS and have emerged since its publication. Tax increment financing (TIF) could provide an opportunity to raise finance against predicted additional future taxation revenue streams e.g. business rates resulting from development in the OA. This mechanism could be implemented through creation of a new Enterprise Zone in the OA, which is currently being considered by the Government. Borrowing against future CIL and section 106 income could also provide upfront infrastructure financing.

These opportunities are the subject of ongoing discussion between all parties, which will continue to seek practical viable solutions to reduce the funding gap and ensure infrastructure is delivered in a timely manner.

Further work undertaken in relation to affordable housing has however indicated that the assumptions made in the DIFS in relation to the innovative funding of affordable housing are unlikely to be realised.

NLE funding and financing update

Since completion of the DIFS, a considerable amount of further work has been undertaken which has focused on the funding gap specifically as it relates to the NLE. It is important to note that the funding gap identified in the DIFS report is based on the estimated private sector cost of delivering the NLE (£563.8m). The ongoing funding and financing discussions are based on a NLE public sector delivery cost of £900m, which includes 35% optimism bias and an allowance for inflation.

This approach increases the overall funding gap for infrastructure; however, the Mayor remains committed to the NLE as key to unlocking and enabling growth and economic benefits for London.

The Government's support for the NLE was confirmed in the Chancellor's Autumn Statement (2011). Subject to a commitment by April 2013 from a developer to develop the Battersea Power Station site in accordance with the Mayor's vision and make agreed contributions, the Government has indicated that it will consider allowing the Mayor of London and TfL to borrow against the Community Infrastructure Levy (CIL) to support this scheme; and also consider creating an Enterprise Zone, meaning that funding could be raised by borrowing against growth in local business rates. TfL and the GLA will continue to work closely with Government and the boroughs of Lambeth and Wandsworth to explore these mechanisms.

TfL is now progressing the preparation of a Transport Works Act Order application for the NLE on the understanding that the associated costs will be recovered from future section 106 and CIL payments. Subject to a funding and financing solution being agreed and final Mayoral sign-off, it is anticipated that this will be submitted this in early 2013.

Figure 10.3 Developer contributions already agreed


STEWARTS
PLAYGROUND