

# the use of planning obligations to secure and enhance green infrastructure

**Stephen Wilkinson** outlines findings revealed by three case studies of how planning obligations have been used to secure or enhance green infrastructure, and considers shortcomings in the planning approaches taken

The need to *actually* plan for 'growth' is intrinsic to sustainable development. While the major planning debates on providing infrastructure focus on the provision and location of hard infrastructure, debate on planning for new green infrastructure (GI) is often muted.

The three case studies presented in this article lie either within or adjacent to London: the Epping Forest Special Area of Conservation, Essex; the Lee Valley Regional Park in North and East London; and the proposed Lea River Park in London's East End. Each study identifies three approaches to the use of planning obligations to secure or enhance green infrastructure.

To assist in understanding, definitions are required for both GI and planning obligations. Firstly, drawing on a definition set out by Natural England,<sup>1</sup> GI can be defined as 'a network of multi-functional green space, both new and existing, both rural and urban, which supports the natural ecological processes and is integral to the health and quality of life of sustainable communities'. In short, GI is about networks of green spaces designed to serve more than a local catchment. Secondly, the recently revised National Planning Policy Framework (NPPF)<sup>2</sup> outlines the limits to the use of planning obligations as follows:

- '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'.

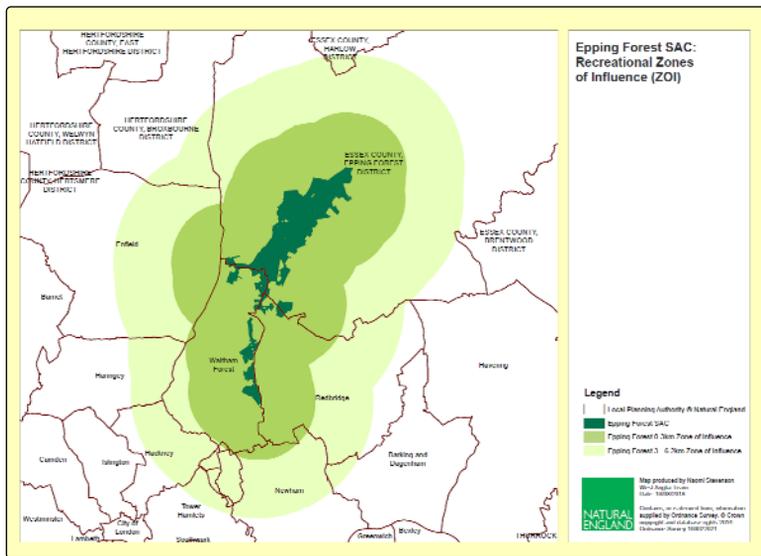
Supporting text within the NPPF states that local planning authorities should consider whether otherwise unacceptable development can be made more acceptable through the use of planning obligations. The principal tools of planning obligations are the powers contained with Section 106 of the Town and Country Planning Act 1990 (as amended) and the Community Infrastructure Levy (CIL) Regulations.<sup>3</sup>

## Epping Forest Special Area of Conservation

The Epping Forest Special Area of Conservation (EFSAC) is an area of ancient woodland, classed within the top tier of nature conservation designations. The NPPF recognises the important role of such sites, and they are afforded the highest levels of protection through the Natura 2000 Habitats Regulations. Epping Forest covers an area of 2,400 hectares, 1,728 hectares of which lie within the SAC. It is wholly owned by the City of London Corporation and is managed through its 'Conservators'. It attracts 4.2 million visits per annum.<sup>4</sup>

As a result of concerns over increasing recreational pressures on the EFSAC and the adverse impacts of air pollution, Natural England has encouraged neighbouring local planning authorities to enter into a memorandum of understanding to ensure that they work together to:

- collect and analyse data and evidence related to the impacts of proposed development and growth identified through the area's emerging Local Plans, on which to base a strategy to protect the EFSAC; and



**Fig. 1 The Epping Forest Special Area of Conservation zones of influence, derived from visitor surveys**

Source: Natural England, 2018

- commit to prepare a joint strategy based on relevant available data and evidence to an agreed timetable.

The joint strategy is intended to address requirements to both avoid adverse impacts and effectively mitigate impacts derived from Local Plan led development. The memorandum of understanding will also include approaches to mitigating impacts on the health of Epping Forest from air pollution caused by increases in traffic on roads that run through it.

Visitor tracking surveys commissioned by the City of London Corporation and Harlow, East Herts, Uttlesford and Waltham Forest Councils have been used to identify a 'zone of influence' from which visitors to the forest currently travel. The zone extends 6.2 kilometres from the SAC boundary, with a median extent of 3 kilometres, as shown in Fig. 1. The zone includes significant areas of North and East London.

To provide a base for mitigation the Conservators have developed an interim strategy which identifies a range of schemes designed to reduce the impacts from visitors, at a cost of £2.7 million for the period 2019-2033. A form of planning obligation or 'roof tax' of between £100 and £420 per dwelling, depending on location within the zone, will be used to fund the strategy. It is understood that Natural England has adopted the same approach in partnership with Wealden District Council regarding the protection of Ashdown Forest.

In recent advice sent to the councils concerned, Natural England has suggested that mitigation for recreational pressures would vary, depending on the scale of development proposals. While a request for funding may be required to support investment in GI projects, for sites exceeding 100 dwellings the advice

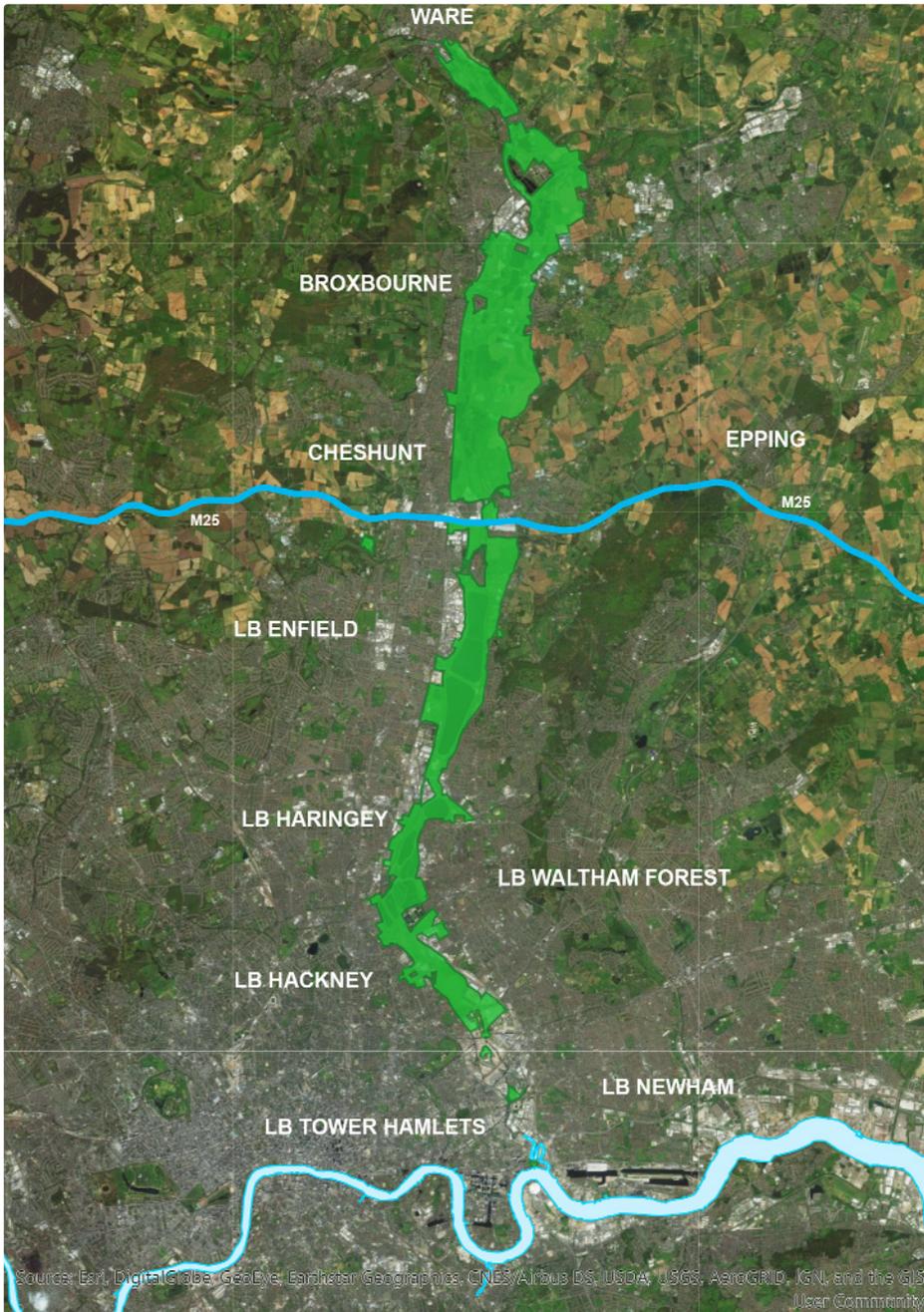
seeks the creation of suitable alternative natural green space (SANGS) within new development, designed to ease pressures on the EFSAC. Guidance from Natural England suggests that this open space should, in the main, comprise varied semi-natural landscape of sufficient scale to afford genuine alternative space for recreation outside the 'protected sites'.

While this approach is designed to adequately mitigate the recreational pressures derived from new housing, issues relating to poor air quality in the EFSAC arising from vehicles travelling through the area will be assessed through the Habitat Regulations Assessment of Epping Forest District Council's Local Plan, which will be 'tested' through its Examination in Public. This will provide action points to be addressed by the bodies that are party to the memorandum of understanding. Although this approach has to be fully 'tested', it demonstrates that, where protected sites are under threat, planning obligations can be used to effectively mitigate against adverse impacts arising from development.

### Lee Valley Regional Park

Abercrombie's Greater London Plan of 1944 identified a strategic vision for the creation of a new park along the course of the River Lea,<sup>5</sup> which led eventually to the creation of the Lee Valley Regional Park through the Lee Valley Regional Park Act 1966. The Lee Valley Regional Park Authority, which oversees and manages the Regional Park, has a dedicated remit that focuses on nature conservation, recreation, leisure, sport and entertainments of any kind.

Extending north from East India Dock Basin for 26 miles, and broadly aligned with the natural course of the River Lea through East London, Essex and Hertfordshire to Ware, the Regional Park presents a rich tapestry of award-winning international sports venues, including the Lee Valley VeloPark and the



**Fig. 2 The Lee Valley Regional Park**

Source: Lee Valley Regional Park Authority

Lee Valley White Water Centre, surrounded by 4,000 hectares of attractive parklands. Although its boundary overlies the administrative boundaries of its riparian boroughs, it is conceived as a special place where recreation, leisure and nature conservation should prevail. Across the parklands are eight Sites of Special Scientific Interest and a Special Protection Area and Ramsar site. It currently attracts around 7 million visits per annum, a growth in visitor numbers of 40% since 2006. Fig. 2 shows the location of the Regional Park.

The Act included a funding formula (the 'levy') which requires contributions from each resident of Greater London and the two counties of Essex and Hertfordshire. This has placed the Regional Park in a unique and advantageous position of having its own dedicated funding stream, free from the funding constraints imposed by central and local government. However, the Authority has reduced the levy for the last decade broadly in line with reductions to local authority budgets. This has posed challenges for the Authority, similar to those experienced by local

authority parks' services, regarding budgets for capital projects and asset management.

The Regional Park Authority is not a planning authority but has limited planning powers, largely confined to its role as a statutory consultee. The application of the three 'tests' included in the NPPF on the use of obligations has provided a legitimate break on the Authority's ability to secure large amounts of additional moneys through planning obligations. Given its location in the centre of a 'growth area' which runs the entire length of the Lea Valley, the Authority has managed to secure around £1.2 million of moneys through planning obligations in the last decade. At the time of writing most of this has been secured for habitat improvements, with the remainder directed towards investment in either new or existing visitor infrastructure. The identification within planning agreements of moneys for existing infrastructure raises the issue of the 'test' of 'necessity' identified in the NPPF. This is a challenge common to many local authority parks' services.

Furthermore, the NPPF's 'tests' do not enable the Authority to secure obligations from developments which sit some way from its boundary but may nevertheless generate large numbers of visitors, placing demands on both the Regional Park's biodiversity and its infrastructure. A further complication arises from developments which may sit within one local authority area but whose effects may be felt within a part of the Regional Park which lies within a different local planning authority area. In this way the operation of the NPPF 'tests' undermine the Regional Park's green infrastructure role.

To date, the Authority has not been able to access funds secured through CIL. This reflects in part few references to the Regional Park's role as strategic green infrastructure in the Regulation 123 lists of the riparian boroughs

### Lea River Park

In contrast to the other two established areas of green infrastructure, the Lea River Park does not yet exist as a cohesive integrated area of open space. Proposed for the Lower Lea Valley in the boroughs of Tower Hamlets and Newham in East London, its genus reflects a failure of decision-makers to fully embrace Abercrombie's vision when the statutory boundary of the Lee Valley Regional Park was agreed in the 1960s. Fig. 3, on the next page, shows the location of the Lea River Park.

In 2004 the delivery of the Abercrombie vision by creating a cohesive park through the Lower Lea Valley to the Thames became the responsibility of the London Thames Gateway Development Corporation (LTGDC), which pursued the provision of GI as part of a strategic regeneration programme. The Greater London Authority's Lower Lea Valley Opportunity Area Framework,<sup>6</sup> published in 2007,

identified the need for the proposed park to offset the anticipated housing growth. Continuing growth has occurred during the last decade, and the draft London Plan (2017) sets targets for a further 73,600 additional housing units in Tower Hamlets and Newham in the period from 2019/20 to 2028/29.<sup>7</sup>

Working with partners, the LTGDC was empowered to deliver a new linear park throughout the Lower Lea Valley, designed to link (via a new pedestrian and cycle route – originally called the 'Fat Walk' and now referred to as the Lea River Path) to existing spaces at Three Mills Green and East India Dock Basin and to new parks proposed for four other sites, including former gasworks at Twelve Trees and Leven Road. The LTGDC prepared numerous design frameworks and feasibility documents, but on its cessation in 2013 work on this project also ceased.

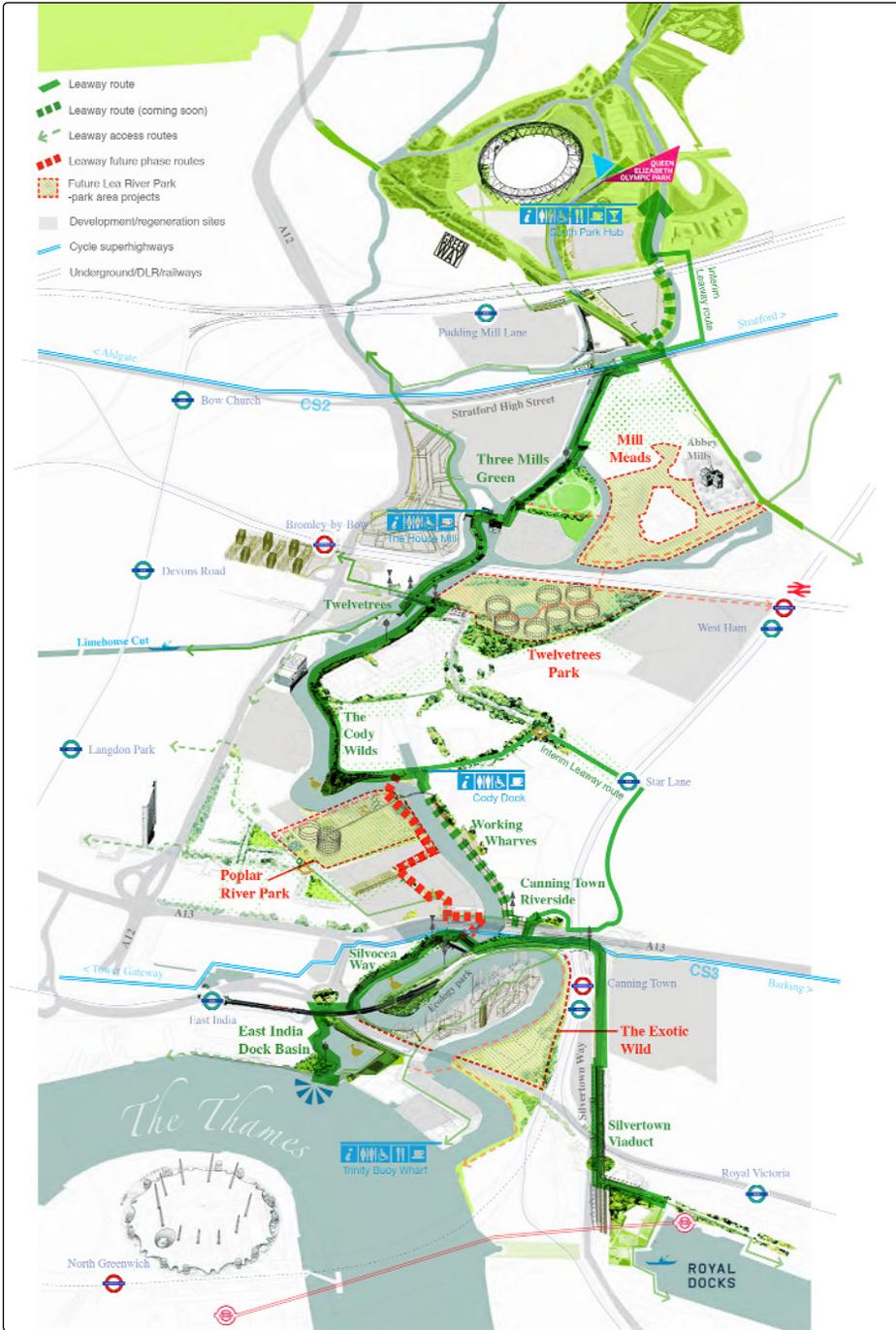
Following the abolition of the Development Corporation, critical work on securing the Compulsory Purchase Orders and planning permissions required to secure the route of the pathway and bridge piers and the completion of a primer and design manual was supported by the London Legacy Development Corporation. However, since 2015 the management of this project has been passed to a joint officer-led steering group with member support managed by the London Boroughs of Newham and Tower Hamlets.

Policy support for the Lea River Park and Lea River Path is now included in the emerging Local Plans of both Newham and Tower Hamlets. Both councils have a shared aspiration to deliver the new park and pathway. However, it is unclear how management arrangements for a future park in this area would work in practice.

As the planning of the new park is being 'retro-fitted' into a dense urban fabric, its creation faces significant challenges. These relate to the limited opportunities for large areas of land to be transformed into large areas of parklands, and instead new GI would have to developed as a series of medium-sized spaces with connections, often bridges across the River Lea, to create a contiguous area which would address the historic challenges of limited legibility and permeability.

Although to date significant progress has been made, the first real 'test' of Lea River Park's delivery has recently emerged on the site of the former Poplar Gas Works at Leven Road, Bow. Originally conceived by the LTGDC as the site of a park of 7.35 hectares, with bridge connections over the Lea to other areas within the proposed park, the brief included in the Regulation 19 draft Local Plan for the site now refers to 'infrastructure requirements' of 1.0 hectares of 'strategic open space' with a requirement to 'safeguard' land for the delivery of a new bridge.

However, a recently submitted application for the site includes a mixed-used scheme comprising 2,800 new dwellings, a primary school and other related infrastructure, with a local park of 1.0 hectares. At



**Fig. 3 The proposed Lea River Park**

Source: *Lea River Park Design Manual*. Revision D. London Legacy Development Corporation, Oct. 2016. [www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Strategic-Planning/Local-Plan/Evidence\\_base\\_2016\\_Local\\_Plan/DRAFT\\_LRP\\_Design\\_Manual\\_Nov\\_2016.pdf](http://www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Strategic-Planning/Local-Plan/Evidence_base_2016_Local_Plan/DRAFT_LRP_Design_Manual_Nov_2016.pdf)

the time of writing, the application does not include any reference to the possibilities of a commuted sum for a river crossing, although it does include wayfinding maps indicating the site's connections to transport nodes and local services. However, the small size of the proposed park, together with the absence of a firm commitment to a bridge crossing, means that it will serve only the needs of the new housing scheme and cannot be considered as a

component of GI. The whole premise of the Lea River Park was to ensure the provision of new GI designed to act both as an ecological and a recreational resource for the whole of the Lower Lea Valley.

While it is acknowledged that the initial ambitions for a large strategic open space on this site have been reduced by the realities of the development process, involving the costs of developing on a

contaminated site and the provision of a new school, it would seem that, in the absence of a firm commitment, the opportunities for this site to form part of an important area of GI have been lost.

While the final outcome of the application has yet to be determined, this case reveals the extreme difficulties in securing adequate new infrastructure through the planning process, despite there being a wealth of policy support and guidance designed to secure delivery.

### Conclusions and implications for mainstreaming GI

Several lessons can be drawn from each of these case studies that demonstrate the marginalisation of GI in the planning and development process.

Firstly, reductions in public funding for GI have meant that local planning authorities are increasingly reliant on making the case to demonstrate its value. While natural capital accounts and ecosystem services are increasingly discussed by practitioners, it has proved very difficult to ascribe values to GI's multiple attributes that enable it to 'compete' for planning obligations against other priorities, such as affordable housing or school places.

Secondly, the Epping Forest SAC and Lee Valley Regional Park case studies demonstrate that, while planning obligations can be used to preserve 'protected sites', it is more difficult to secure funding for visitor infrastructure from developments which fail the NPPF 'test' of being 'directly related' to the proposed development even though they are likely to result in increased recreational pressures.

Thirdly, a thread common to the negotiation of planning obligations for new or improved infrastructure is one of playing 'catch up' as housing growth continues apace. This is despite the increasingly held view that networks of connected public open space define places and contribute significantly to people's lives through enhancing their mental and physical wellbeing, as well as providing a haven for biodiversity and contributing significantly to the resilience of cities. While individual applications for planning permission include areas of open space – in themselves a form of 'obligation' delivered 'in kind', in line with adopted Local Plan standards – these rarely form elements of GI and as a result have only a 'local' value. The case of the Lea River Park is instructive in this regard.

Fourthly, it is a 'moot' point whether moneys secured through planning obligations to support the asset management budgets of local authority parks' services meet all the 'tests' included within the NPPF, as the infrastructure is already in place. It is questionable whether the 'test' of necessity is being met, as no additional infrastructure is being provided to 'accommodate' the new pressures arising from housing development.

Finally, the government has recently consulted on lifting the restrictions on pooling planning obligations,<sup>8</sup> and on proposals for a Strategic Infrastructure Tariff<sup>9</sup> designed to enable groups of charging authorities or 'combined authorities' to use existing powers to deliver strategic infrastructure. If adopted, these measures would be welcome in potentially harnessing large pots of funding to deliver GI, and could address some of the issues faced by the Regional Park Authority in securing moneys for significant investment commensurate with its role. However, it remains the case that the funding of GI, like all areas of infrastructure, requires government to be proactive and lead, to address deficits that currently hinder the delivery of sustainable development.

● **Stephen Wilkinson** is a Past-President of the Royal Town Planning Institute. The views expressed are personal.

### Notes

- 1 *Green Infrastructure Guidance*. NE176. Natural England, Jan. 2009. <http://publications.naturalengland.org.uk/publication/35033>
- 2 *National Planning Policy Framework*. CP 48. Ministry of Housing, Communities and Local Government, Feb. 2019 (updated version of the revised NPPF of Jul. 2018). [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779764/NPPF\\_Feb\\_2019\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779764/NPPF_Feb_2019_web.pdf)
- 3 *The Community Infrastructure Levy Regulations 2010*. SI 2010 No. 948. [www.legislation.gov.uk/uk/si/2010/948/contents/made](http://www.legislation.gov.uk/uk/si/2010/948/contents/made)
- 4 *Epping Forest Visitor Survey 2014. Results Report*. City of London Corporation, 2014. Available at [www.redbridge.gov.uk/media/3659/ced116-epping-forest-visitor-survey-2014.pdf](http://www.redbridge.gov.uk/media/3659/ced116-epping-forest-visitor-survey-2014.pdf)
- 5 The spelling of Lea or Lee is a moot point. The 1966 Act refers to 'Lee', but the actual river name is spelt as 'Lea'
- 6 *Lower Lea Valley Opportunity Area Planning Framework*. Strategic Planning Guidance. Mayor of London. Greater London Authority, Jan 2007. [www.london.gov.uk/what-we-do/planning/implementing-london-plan/opportunity-areas/opportunity-areas/lower-lea-valley](http://www.london.gov.uk/what-we-do/planning/implementing-london-plan/opportunity-areas/opportunity-areas/lower-lea-valley)
- 7 *The London Plan. The Spatial Development Strategy for Greater London*. Draft for Public Consultation. Mayor of London. Greater London Authority, Dec. 2017. [www.london.gov.uk/sites/default/files/new\\_london\\_plan\\_december\\_2017.pdf](http://www.london.gov.uk/sites/default/files/new_london_plan_december_2017.pdf)  
The latest version of the plan including the Mayor's minor suggested changes (Aug. 2018) is available at [www.london.gov.uk/what-wedo/planning/london-plan/new-london-plan/downloaddraft-london-plan-0](http://www.london.gov.uk/what-wedo/planning/london-plan/new-london-plan/downloaddraft-london-plan-0)
- 8 *Reforming Developer Contributions. Technical Consultation on Draft Regulations*. Ministry of Housing, Communities and Local Government, Dec. 2018. [www.gov.uk/government/consultations/developer-contributions-reform-technical-consultation](http://www.gov.uk/government/consultations/developer-contributions-reform-technical-consultation)
- 9 *Government Response to Supporting Housing Delivery through Developer Contributions: A Summary of Consultation Responses and the Government's View on the Way Forward*. Ministry of Housing, Communities and Local Government, Oct. 2018. [www.gov.uk/government/consultations/supporting-housing-delivery-through-developer-contributions](http://www.gov.uk/government/consultations/supporting-housing-delivery-through-developer-contributions)