MAYOR AND CABINET			
REPORT TITLE	London Business Rates Pilot Pool 2018-19		
KEY DECISION	Yes	ITEM No.	
WARD	All		
CONTRIBUTORS	Executive Director for Resources & Regeneration		
CLASS	Part 1	Date	25 October 2017

1. EXECUTIVE SUMMARY

1.1. This report:

- sets out the Government's latest position on the 100% retention of local business rates,
- provides an update on the proposals to see a business rate pilot pool established in London in April 2018, and
- recommends the Council confirm its commitment to the London Councils proposals for developing a London pool subject to the governance being satisfactorily resolved and the no deficit guarantee confirmed.

1.2. The Secretary of State for Communities and Local Government issued a general invitation to other authorities to apply to become pilot pools next year, with a deadline for applications of 27 October, and also wrote to the Chair and Vice-Chair of London Councils confirming the desire to conclude an agreement on a voluntary pilot pool for London.

1.3. This report sets out how London Councils has envisaged that the London Business Rates pilot pool would work in practice, were the 32 boroughs, the City of London Corporation and the Mayor of London to agree to form a pool in 2018-19, subject to further legal advice.

1.4. The report also sets out the implications for Lewisham if the London Council's proposals were agreed and implemented.

2. PURPOSE OF THE REPORT

2.1. The purpose of this report is to set out how the proposal for London Business Rates pilot pool would work, were the 33 Leaders/Mayors and the Mayor of London to agree to form a pool in 2018-19, and to seek approval to support the proposal to create such a pool along with the principles set out in therein.

3. RECOMMENDATION

3.1. The Mayor is asked to:

3.2. Recommend that Council support the proposal to create a London Business Rates pool based on the principles set out in the London Councils proposals, with a preference for Option D, as set out later within paragraph 6.7 of this report (i.e. greater weighting to “needs” and “population” (each 30%) with equal remaining weightings of 20% for “incentives” and “investment” pots, subject to clarification on the details still outstanding, in particular:

- that any London pool will be protected by a no detriment guarantee;
- on the detail of how the 100% devolved business rates plans from government will operate and the timing for their introduction;
- of the impact of the fair funding review and arrangements for conversion from pilots to permanent arrangements (including when and how revaluations will be conducted); and
- that there is unanimous agreement from all London Boroughs on how the pool will operate at set up and enable individual authorities to leave if they wish to.

4. POLICY CONTEXT

4.1. The National Non Domestic Rates (NNDR), or business rates regime is a nationally set tax collected by local authorities and pooled based on certain distribution arrangements. They are that the Local Authority retains a proportion of the rates they collect and then receive a top-up or tariff from the nationally pooled element based on the fair funding formula. In London there is also a third element which is the proportion passed to the Greater London Authority (GLA).

4.2. Currently of the amount Lewisham collects based on the Valuation Office Agency ratings and after applying the national rebates, the Council retains 30%, 37% goes to the GLA, and 33% into the national pool.

4.3. Lewisham currently has a low business rate base in London and is a top-up authority. Based on current regeneration and economic development plans this position is unlikely to change in the short to medium term.

4.4. Lewisham’s 2017/18 budget for business rates income is £88.9m (against a safety net base of £82.2m); of which £19.7m (22%) is the retained element and £69.2m (78%) received via the top-up. The Council has a low cost of collection and good collection rate (>98% in year). Nonetheless, the Council does have to allow for some bad debts and the risk of valuation appeals, set at £3.0m for 2017/18.

4.5. The London wide 2017/18 forecast business rates income is £7.9bn of which the retained element is forecast at £5.3bn, with a £1bn tariff.

4.6. On 1st April 2017 the Government launched five pilots of 100% business rates retention. These pilots have retained 100% of business rates income and foregone some existing grants. Over the pilot period they will retain all of their growth in business rates income. The five current 100% pilots which launched on 1 April 2017 will be continuing through 2018/19, running alongside the new wave of 2018/19 pilots.

4.7. In London the Government established a pilot when the Greater London Authority (GLA) level of retained business rates increased from 20% to 37%, replacing TfL transport grant and Revenue Support Grant. An expanded London pilot in 2018-19, which would require all 33 London Boroughs and the Mayor of London to agree to pool, is now being considered.

5. INTRODUCTION

5.1. The Government's stated policy objective is to move to 100% devolved business rates. This may require local authorities to assume additional responsibilities to match costs to the available business rates and enable the Treasury to reduce other sources of funding, in particular by phasing out Revenue Support Grant (RSG).

5.2. As part of this move the Government is looking to increase the number of pilots and encouraging pooling as a means for local areas to maximise their opportunities for growth.

5.3. However, it should be noted that the Local Finance Bill was "dropped" following the June 2017 General Election which would have converted the policy objective into legislation, requiring it to be delivered. Originally intended to be by 2020. The Bill (un-amended) would also have moved the business rates appeals risk to central government and given the Secretary of State the final decision on the creation of pools.

5.4. Related to the 100% devolution of business rates, the Government is also due to complete the consultation and propose new / updated fair funding arrangements. This is important to the business rate discussion as the fair funding arrangements will drive the redistribution of rates used to calculate baselines for each authority.

6. London Council Proposal

6.1. The draft London Councils prospectus (see Appendix 1) sets out how it is envisaged that the London Business Rates pilot pool would work, were the 33 Leaders/Mayors and the Mayor of London to agree to form a pool in 2018-19.

6.2. The pilot has two key principles at its heart:

- Nobody worse off with a ‘no detriment’ guarantee in place
- All members to share some benefit

6.3. The level of RSG for each borough has been set by the four year settlement (to 2019-20). For each borough this would be replaced by retaining additional rates (just as the GLA has done this year). In addition Public Health Grant (PHG) and the Improved Better Care Fund (iBCF) would also be replaced by rates, leading to an adjustment of expected baselines and top-ups or tariffs (as appropriate). While the composition of each borough’s “core funding” (retained rates plus RSG, Public Health Grant and iBCF) will therefore change, the overall quantum will not.

6.4. The net financial benefit of pooling consists of retaining 100% of <u>growth</u> (rather than 67% across London under the current scheme), and in not paying a levy on that growth (which tariff authorities and tariff pools currently pay). Assuming the pool generates some level of additional financial benefit, the question of how to share this will be central to any final pooling agreement.

6.5. The latest estimated net benefit to participating in the pool is expected to be in the region of £240 million in 2018-19, based on London Councils’ modelling using boroughs’ own forecasts.

6.6. In addition, it could be possible to transfer of some Central List properties located in London (for example, the London Underground network) to the London pool, thereby increasing the capacity of the pool to benefit from growth on those properties. This would be explored with government as part of the pool negotiation.

6.7. In respect of how all members are to share some benefit, London Councils are proposing the allocation of growth to four themes and four options for how the growth is allocated to these themes. They are:

1. **incentivising growth** (by allowing those boroughs where growth occurs to keep some proportion of the additional resources retained as a result of the pool)
2. **recognising the contribution of all boroughs** (through a per capita allocation)
3. **recognising need** (through the needs assessment formula); and
4. **facilitating collective investment** (through an investment pot designed to promote economic growth and lever additional investment funding from other sources).

And the sharing options are:

A. An **even split** percentage between the four pots (25:25:25:25).
B. **Reducing the strategic investment** pot to 10% of the total, while the “reward”, “needs” and “population” pots are equally weighted (30:30:30:10).

C. **Greater “incentive weighting”** with equal weighting for the other three pots (40:20:20:20).
D. **Greater “needs” and “population” weightings** (each 30%) with equal remaining weightings of 20% for “incentives” and “investment” pots (20:30:30:20).

6.8. Establishing a business rates pool in London will require each authority participating in the pool to agree to do so; and to also agree the terms upon which they will participate jointly with other members, including to appoint a lead authority as accountable body for the pool and to decide how the pool should operate, including a jointly agreed supporting legal framework.

6.9. Participation in a pool in 2018-19 would not bind boroughs or the Mayor (of London) indefinitely. As with existing pool arrangements, the founding agreement would need to include notice provisions for authorities to withdraw in subsequent years.

6.10. If established, another key issue will be the treatment of Collection Fund surpluses and appeals provisions within the pool. The key principle pooling authorities would have to agree is that the benefits (or costs) of actions undertaken by the boroughs prior to entering the pool should remain with the borough so that no borough can be worse off than they would have been under the 50% scheme.

7. Lewisham considerations

7.1. There are some pooling opportunities and risks for Lewisham and some points where further clarification will be required before any final commitment could be made. They are:

7.2. Opportunities of pooling

- Keeps Lewisham aligned with Government’s policy direction for 100% business rates devolution and would strengthen joint working across London.
- No risk of loss (relative to current position) during the pilot with the opportunity for gain through shared benefits.
- Of the four options for sharing gain officers would recommend option D - there are investment opportunities (e.g. Bakerloo Line Extension) but weighting to ‘need’ and ‘population’ to fund services should come first (this is also the option relative to budget by which Lewisham gains most).
- Pooling will reduce the risk of volatility in rateable values (e.g. Virgin Media) and the opportunity to lobby for some Central List valuations to be included could provide additional resources to support further devolution of powers.

7.3. Risks to pooling

- Creating a single Collection Fund for London should be limited to Business Rates only, the risk being that if extended to include Council Tax there could be constraints on local discretion.

- Lewisham's low business rates base, low cost of collection, good collection performance and low level of appeals all mean that joining the pool and moving to the average for London risks increasing costs and sharing burdens that wipe out gains from growth if 'no detriment' guarantee not in place.
- Absence of final detail and timing on government plans for how 100% business rate devolution is to operate means assumptions in projections may not be correct and flexibility to extricate may be lost.

7.4. <u>To be clarified</u>

- What is the Government's offer for the London pilot and will it definitely include a 'no detriment' guarantee and for how long is the pilot to run?
- What is the final business rate scheme to be and how will baselines be calculated and when and how will these be reset?
- Which responsibilities are to be devolved to account for the full value of business rates at 100% devolution?
- How and by whom will the London pool Collection Fund be operated and the financial implications and legal arrangements for joining / leaving set?

8. FINANCIAL IMPLICATIONS

8.1. This report proposes that the Council supports London Councils to form a London Business Rates Pilot Pool in 2018/19 in principle. The understanding is that the Government has provided a no detriment guarantee for the pilot. This means that Lewisham will receive at least the equivalent amount to the 2018/19 Settlement Funding Assessment already determined under the 4 year settlement provided by the Government in 2016/17. The total 2018/19 Settlement is £128.7m along with specific grants for public health and the improved better care fund.

8.2. Under the 100% Business Rates Retention proposals, the Government will transfer additional responsibilities to the local authorities which represents the additional funds retained. This is to ensure a net neutral impact on local authority funding.

8.3. There is, however, the advantage of Authorities keeping 100% of growth in Business Rates which in 2018/19 has been forecast at £240m across London. Agreement has to be reached as to how this extra money will be divided between all the members of the pool, and officers are recommending that the Mayor agrees to option D in paragraph 6.7 above, i.e. Greater "needs" and "population" weightings (each 30%) with equal remaining weightings of 20% for "incentives" and "investment" pots (20:30:30:20).

8.4. It is not yet possible to determine how much the Council could receive from the gain under option D, but it is the option the Council would gain the most from.

8.5. Under the Council’s current and ongoing financial situation, any additional funding would reduce the pressure to produce annual savings in an environment that has already faced unprecedented budget cuts over the last 10 years.

8.6. Still unknown however are the financial implications regarding the governance and operation of the pool, and whether there will be financial levies for joining/leaving the pool. These issues will have to be clarified by London councils before any final commitment to join the pool is made.

9. LEGAL IMPLICATIONS

9.1. The Department for Communities and Local Government published in September 2017 its ‘Invitation to Local Authorities in England to pilot 100% Business Rates Retention in 2018/19 and to pioneer new pooling and tier-split models.’

9.2. “To be accepted as a pilot for 2018/19, agreement must be secured locally from all relevant authorities to be designated as a pool for 2018/19 (in accordance with Part 9 of Schedule 7B to the Local Government Finance Act 1988) and to put in place local arrangements to pool their additional business rates income” (para. 2.3 of the published Invitation).

9.3. “Authorities selected as pilots for 2018/19 will be expected to forego Revenue Support Grant and Rural Services Grant. The value of the grant foregone will be taken into account in setting revised tariffs and top-ups, which will be used to ensure that the changes are cost neutral, except for the value of any growth retained.” (Para. 2.8 of the published Invitation).

9.4. “It is wholly at the discretion of authorities whether or not they choose to apply to the pilot scheme…Any proposals for new pilots must be received by the Department for Communities and Local Government on or before Friday 27 October 2017.” (Paras.2.12 and 2.13 of the published Invitation).

9.5. The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

9.6. In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

9.7. It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.

9.8. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

9.9. The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice
https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance

9.10. The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty: A guide for public authorities
- Objectives and the equality duty. A guide for public authorities
- Equality Information and the Equality Duty: A Guide for Public Authorities

9.11. The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:
https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1

10. CRIME AND DISORDER IMPLICATIONS

10.1. There are no specific crime and disorder implications directly arising from this report.

11. EQUALITIES IMPLICATIONS

11.1. There are no specific equalities implications directly arising from this report.

12. ENVIRONMENTAL IMPLICATIONS

12.1 There are no specific environmental implications directly arising from this report.

13. CONCLUSION

13.1. The direction of travel in the proposals from London Councils is positive but necessarily constrained in the vacuum of clear government direction on how 100% devolved business rates arrangements will work.

13.2. The recommended Lewisham position is to be supportive of the proposal to create a London pool and the principles set out in these proposals, with a preference for Option D and subject to clarification on the details still outstanding.

13.3. In particular subject to clarification on:

- detail on how the 100% devolved business rates plans from government will operate and the timing for their introduction;
- impact of the fair funding review and arrangements for conversion from pilots to permanent arrangements (including when and how revaluations will be conducted); and
- unanimous agreement from all London Boroughs on how the pool will operate at set up and to enable individual authorities to leave if they wish to.

For further information on this report, please contact:
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Appendix 1
London Business Rates Pilot Pool 2018-19
UPDATED Draft Prospectus – September 2017

APPENDIX 1

London Business Rates Pilot Pool 2018-19

UPDATED Draft Prospectus – September 2017

A. Introduction and context

1. An earlier version of this draft prospectus was circulated to Leaders in July, asking all boroughs, the City of London and the Mayor to consider the issues involved in establishing a pilot pool over the summer and, in particular, in the run up to the Leaders Committee and Congress of Leaders and the Mayor on October 10th.

2. At that time, following the General Election, the Government's position on the future of business rate retention, and on the agreement of additional pilots, was unclear. In the first week of September, the Government clarified its position, and the momentum behind business rate retention pilots is growing rapidly.

3. The Government has now formally confirmed its renewed desire to see a business rate pilot pool established in London in April 2018, as indicated in the previous Memorandum of Understanding between the Government and London signed in March 2017. It further issued a general invitation to other authorities to apply to become pilot pools next year, with a deadline for applications of 27th October. The Secretary of State for Communities and Local Government has subsequently written to the Chair and Vice-Chair of London Councils confirming his desire to conclude an agreement on a voluntary pilot pool for London.

4. The London Councils Executive met on 12th September and discussed the current position and feedback from Leaders' discussions over the summer.

5. This updated draft prospectus sets out how it is envisaged that the London Business Rates pilot pool would work in practice, were the 32 boroughs, the City of London Corporation and the Mayor of London to agree to form a pool in 2018-19, subject to further legal advice. It seeks to address issues raised to date by Leaders and provides minor updates to the estimated benefits of pooling, arising from increased growth projections in 2018-19 received from a number of boroughs over the summer.

B. The anticipated "terms of trade"

6. Establishing a pilot pool will require two separate agreements based on aligned and integrated strands of work:

   1) between London and the Government by which the Government designates the pool; and
   2) between the boroughs, City of London and the Mayor of London by which London Government collectively decides how to operate the pool and distribute the financial benefits

In respect of both strands, each authority will need to take the relevant decisions through its own constitutional decision-making arrangements. The Government will require "in principle" agreement by the time of the Provisional Local Government Finance Settlement in December; in practice this will likely still be subject to final approval pending all participating authorities taking the required decisions: see Section G below.

7. Before the Election, the previous Government established pilots in 6 areas of the country in April 2017, including London where the GLA's level of retained business rates increased from 20% to 37%, replacing TfL transport grant and Revenue Support Grant. An expanded London pilot in 2018-19 would seek at least to replicate the common features of the deals in the other 5 pilot areas: Greater Manchester; Liverpool City Region; West Midlands, West of England and Cornwall.

8. The key features offered and expected by the Government would be:

   1) The pilot pool would be voluntary, but, in order to come into being, would need to include all London authorities
   2) London would collectively retain a greater proportion of the business rates collected in the capital, swapping these resources for Revenue Support Grant, Public Health Grant and the Improved Better Care Fund. (London would not in practice keep the full 100% of rates collected, as it would still pay an aggregate tariff to Government to support local services in other parts of the country.)
   3) London would, however, retain 100% of any growth in business rate income above baselines, and would pay no levy on that growth. (We currently estimate the net benefit to London would be in the region of £240 million in 2018/19; Government are aware of this estimates, and have factored it into their considerations.)
   4) In the event that London's business rates income fell, the collective pool would have a higher "safety net" threshold – 97% rather than

92.5% - than individual authorities in the existing system. This broadly reflects the greater reliance local authorities will have on business rates within the pilot. (For context, London's authorities are currently collectively estimating overall growth in rates income of 6%.)

5) Furthermore, a "no detriment" guarantee will ensure that the pool, as a whole, cannot be worse off than the participating authorities would have been collectively if they had not entered the pilot pool. In the unlikely event of this arising, Government would intervene to provide additional resources. As a result, London would be able to guarantee that no authority could lose out as a result of participating: where authorities anticipate growth, they will continue to retain at least as much of that income as they would under the current system, plus a potential share of the aggregate benefits of pooling (see Section C, paragraph 14 below).

9. In addition, the Secretary of State's letter concludes by stating that he "would be keen to see detail of robust governance arrangements and a commitment to invest a significant share of pooled funds in London-wide strategic growth and priority projects."

10. Feedback from Leaders and discussion at Executive has indicated a desire for assurance from the Government on three key aspects of a potential agreement:

1) There should be ***no new burdens*** imposed on London authorities as part of this business rates pilot agreement. The Memorandum of Understanding on Devolution agreed in March included business rates within a broader package of service devolution ambitions. Leaders and the Mayor would not want to see the potential benefits of the pilot being regarded as funding streams for newly devolved responsibilities. London Councils officers have sought and received such assurance from civil servants, but we will want to see this more formally recognised.
2) Interaction with the "***Fair Funding" review***. As set out in the July Leaders' Committee report, the Government remains committed to undertaking a review of the formulae used to assess councils' relative spending needs. The officer-level working group continues to meet; London Councils and GLA officers are taking an active role in its work. Within a future 100% rate retention system, the impact of that review would be to redefine the funding baselines against which authorities' top-ups or tariffs are calculated. Participation on a pilot pool will not affect the outcome, or London's ability to contribute to the review in any

way, and Leaders are keen that Government formally acknowledges this.

11. Leaders have also raised questions about the issues referred to in the Secretary of State's letter:

    1) The basis, purpose and potential scale of a "***Strategic investment pot***" are set out in Section D below.
    2) ***Governance arrangements*** – including decision-making on the use of the investment pot – are addressed in Section E.

12. Both issues will be matters for the agreement between London authorities on the operation of the pool. However, it is clear that the Government will want to see evidence of progress before it will agree to designate a London pool.

C. Founding principles for a London business rates pilot pool

13. It is proposed that there are two founding principles that would require agreement at the outset by all pooling members.

1) Nobody loses

14. The first founding principle of the agreement would be that ***no authority participating in the pool can be worse off than they would otherwise be under the 50% scheme***. This would include a guarantee that, where authorities are anticipating growth, they will continue to receive at least the same increase in income as they would have received under the present system, plus a further share of the net benefits of the pool as a whole.

15. DCLG civil servants have confirmed that a London pilot pool would be underpinned by the same safety net arrangements and "no detriment" guarantee currently offered to existing pilots in 2017-18. This ensures that the pool, as a whole, cannot be worse off than the participating authorities would have been collectively if they had not entered the pool. (It is worth noting that other authorities applying to become pools in response to the current invitation will not receive this guarantee.)

16. Existing Enterprise Zones and "designated areas", along with other special arrangements, such as the statutory provision to reflect the unique circumstances of the City of London Corporation, would be taken into account in calculating the level of resources below which the guarantee would operate.

For boroughs in an existing pool[1], DCLG have also indicated that the basis of comparison would include the income due from that pool.

17. The impact of the guarantee would be to ensure that the minimum level of resources available for London, as a whole, could not be lower than it would otherwise be. In order to then ensure that no *individual authority* loses out as a result of participating, the first call on any additional resources generated by levy savings and additional retained rates income, would be used to ensure each borough and the GLA receives at least the same amount as it would have without entering the pool.

18. The level of Revenue Support Grant (RSG) for each borough has been set by the 4-year settlement (to 2019-20). For each borough this would be replaced by retaining additional rates (just as the GLA has done this year). In addition Public Health Grant (PHG) and the Improved Better Care Fund (iBCF) would also be replaced by rates, leading to an adjustment of expected baselines and top-ups or tariffs (as appropriate). While the composition of each borough's "core funding" (retained rates plus RSG, Public Health Grant and iBCF) will therefore change, the overall quantum will not. This revised position is then the baseline against which the "no detriment" guarantee is calculated. Each borough – whether its business rate income grows or declines during the operation of the pilot pool – will receive, as a minimum, the same amount of cash it would have received under the existing 50% system.

2) All members share some of the benefit

19. Growing London's economy is a collective endeavour in which all boroughs make some contribution to the success of the whole. In recognition of the complex interconnectedness of London's economy, it is proposed that the second proposed founding principle would be that ***all members would receive some share of any net benefits arising from the pilot pool.***

20. The net financial benefit of pooling consists of retaining 100% of growth (rather than 67% across London under the current scheme), and in not paying a levy on that growth (which tariff authorities and tariff pools currently pay). The principle would mean that *any aggregate growth* in the pool overall – because of the increased retention level – would generate additional resources to share, with each pooling member to benefit to some extent.

21. In addition, it may be possible to gain agreement to transfer some Central List properties located in London (for example, the London Underground network) to the London pool, thereby increasing the capacity of the pool to benefit from

[1] Of the 33 London authorities in 2017-18 this includes Barking & Dagenham, Havering and Croydon

growth on those properties. This would be explored with government as part of negotiating the pool designation.

D. Sharing the benefits of pooling

Objectives

22. Assuming the pool generates some level of additional financial benefit, the question of how to share this will be central to any final pooling agreement. The latest estimated net benefit to participating in the pool is expected to be in the region of £240 million in 2018-19, based on London Councils' modelling using boroughs' own forecasts. This is a slight increase since the draft prospectus circulated in July, following the inclusion of updated estimates from a small number of boroughs over the summer.

23. Discussions with the Executive and informally with Group Leaders, identified four objectives that could inform the distribution of such gains:

- **incentivising growth** (by allowing those boroughs where growth occurs to keep some proportion of the additional resources retained as a result of the pool)
- **recognising the contribution of all boroughs** (through a per capita allocation)
- **recognising need** (through the needs assessment formula); and
- **facilitating collective investment** (through an investment pot designed to promote economic growth and lever additional investment funding from other sources).

24. A "pure" way to ***incentivise growth*** would be for the London local authorities where growth occurs to retain the full benefit, including any levy savings, after ensuring all authorities had been brought up to the level of funding they would otherwise have received under the current 50% scheme. This option would see the greatest reward go to those whose business rates grow, but would produce no net benefit for the minority of boroughs where no (or negative) growth is expected.

25. A simple ***per capita distribution*** using the latest population estimates from the ONS[2], would recognise the requirement to work collectively to grow London's economy and ensure a share of the benefit for all authorities.

[2] The 2014-based Sub-National Population Projections for 2018

26. While the role of incentivising growth is important, some recognition of ***increasing need*** and demand for services has also been identified as a priority. Economic and business growth also drives, and is reinforced by, increasing demand for services across the capital. One measure that could be used to distribute any net benefit could therefore be to reflect the Government's current assessment of need: Settlement Funding Assessment (although this will clearly be subject to change in future following any "Fair Funding" review).

27. Recognising the requirement for ***collective investment*** to promote further economic growth could be facilitated by retaining resources in a strategic investment pot. Such an approach would help address the Government's original policy objectives behind business rate retention. It is assumed that, in order to achieve any significant impact, such resources would need to be invested in a small number of targeted projects. Agreeing these projects would require joint decision-making arrangements of the sort outlined in Section E on Governance below. As indicated in paragraph 9, the Secretary of State has recently confirmed that he would expect to see a "significant proportion" of the benefits of pooling dedicated to this purpose.

28. Individually, these principles would drive very different distributions of the direct benefits received by boroughs. The pure "incentives" approach would obviously favour those with the highest growth rates. Distribution according to SFA and population creates a more even spread of resources, but arguably provides less incentive to promote growth, and may therefore not optimise the opportunity for London in the longer term. It is proposed that a distribution mechanism should be a blend of all four of these objectives.

Options for weighting

29. In deciding the balance between the four objectives, and therefore the relevant weighting between the measures listed above, there are countless possible variants. However, following initial discussions with Group Leaders, four potential options are illustrated below:
    A. An even split percentage between the four pots (25:25:25:25).
    B. Reducing the strategic investment pot to 10% of the total, while the "reward", "needs" and "population" pots are equally weighted (30:30:30:10).
    C. Greater "incentive weighting" with equal weighting for the other three pots (40:20:20:20)

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D. Greater "needs" and "population" weightings (each 30%) with equal remaining weightings of 20% for "incentives" and "investment" pots (20:30:30:20)

30. In each case, the ***GLA share*** is calculated by first deducting the proposed investment pot resources from the total available, and then dividing the remainder between the GLA and boroughs in proportion to the level of spending supported by business rates. This is in accordance with the principle previously agreed by London Councils and Mayor in our joint business rate devolution proposals to Government in September 2016, and results in the GLA receiving approximately 36% of the resources distributed to authorities (see Table 1 below).

31. The potential net benefit for each borough from this model – based on the latest information available on estimated income for 2018-19 – is set out in the charts at Appendix A and summarised in the table below. Under the 100% pilot pool it is estimated that there might be £480m of retained growth: £240m more than under the 50% scheme (after ensuring no borough loses out as a result of participating).

Table 1 – Distribution options for estimated £229m net benefit of pooling in 2018-19

Option	A	B	C	D
GLA share (£m)	£65	£78	£70	£70
Aggregate borough share (£m)	£115	£138	£123	£123
Investment pot (£m)	£60	£24	£48	£48
TOTAL (£m)	**£240**	**£240**	**£240**	**£240**
Minimum borough gain (£m)	£1.3	£1.5	£1.1	£1.5
Maximum borough gain (£m)	£13.1	£15.7	£20.7	£10.6

Source: London Councils' modelling using London Boroughs' data supplied by borough finance directors or where not available by applying the latest 2017-18 forecasts to 2018-19.

32. Leaders are invited to consider the options in the context of balancing the objectives of incentives and need, and be in a position to indicate a preference for the weighting by the time of the meetings of the Leaders' Committee and Congress of Leaders and the Mayor on 10th October. Any final decision on such matters will remain with the authorities themselves in agreeing to participate in the pool on these terms or by agreeing the mechanism by which such matters will collectively be agreed after the pool is established.

E. Governance

33. Leaders and the Mayor have previously endorsed the view that commitment to the collective management of devolved business rates would require unanimous support, and have identified Congress of Leaders and the Mayor as the appropriate body formally to express those commitments.

34. However, the Congress of Leaders and Mayor has no legal authority to take decisions or make binding commitments on behalf of authorities. Establishing a business rates pool in London will require each authority participating in the pool to agree to do so individually; and to also agree the terms upon which they will participate jointly with other members, including appointing a lead authority as accountable body for the pool and deciding how the pool should operate. This would include the basis of future decision-making arrangements.

35. Participation in a pool in 2018-19 would not bind boroughs or the Mayor indefinitely. As with existing pool arrangements, the founding agreement would need to include notice provisions for authorities to withdraw in subsequent years.

Investment pot principles and governance

36. Whatever the proportion of resources allocated to an "investment pot", the founding agreement will need to specify the criteria for developing proposals and the basis on which future decisions on its application to projects will be taken.

37. It is therefore proposed that the founding pool agreement includes *guiding principles* for the use of such an investment pot, for approval by all members of the pool. As such, it is proposed that investment proposals approved would:

- promote increased economic growth, and increase London's overall business rate income; and
- leverage additional investment funding from other sources.

38. These principles would be agreed as part of the founding agreement for the pool – and would therefore require unanimous support.

39. Subsequent decisions on the application of a strategic investment pot to proposed projects meeting those principles could be taken in the same way as the initial decision to participate: i.e. by each and every authority individually agreeing as such decisions arose. However, this could lead to a cumbersome and time-consuming process for approving relatively small individual projects.

40. One option could be for the authorities to establish a new joint committee to take these types of decisions within the operational framework unanimously agreed in establishing the pool. That joint committee could be established along the lines of London Councils' existing arrangements, but could also include the Mayor. All authorities would have to agree that the relevant powers and functions should be delegated to a joint committee to discharge jointly on their behalf (such as the ability to decide on the application of the investment pot).

41. Those decisions could be made subject to the voting principles designed to protect sectoral, sub-regional or Mayoral interests, such as those previously endorsed by Leaders and the Mayor in the London Finance Commission (both 2013 and 2017), and set out in London Government's detailed proposition on 100% business rates in September 2016. For example:

    1) Both the Mayor and a clear majority of the boroughs would have to agree
    2) That majority could be defined as two-thirds of boroughs and the City of London, subject to the caveat that:
    3) Where all boroughs in a given sub-region[3] disagreed, the decision would not be approved.
    4) If no decisions on allocation can be reached, the available resources would be rolled forward within the pot for future consideration.

[3] For these purposes only, the sub-regions could be defined as Central, West, South and Local London, as illustrated in the map at Appendix B. If in the future, boroughs wished to change the initial groupings that could be achieved by agreement of the pool member authorities.

42. Were such a joint committee to be created, administrative support – including the consideration and evaluation of projects for presentation to the committee – could be undertaken by London Councils and GLA staff as service providers to the new joint committee. Meetings could be arranged to coincide with the existing cycle of the Congress of Leaders and the Mayor, providing bi-annual opportunities for decision-making. (NB: the discharge of functions by the joint committee on behalf of all participating authorities is distinct to the role of the lead authority set out in section F below.)

43. Legal advice will be sought to develop these proposals, to draft relevant documentation, and to help frame the decisions which would need to be taken by each authority to give effect to the intention of each of them in joining the pool and the pool's ongoing operation.

Designated areas

44. Enterprise Zones and "designated areas" effectively hypothecate future business rate revenues to support investment. Under current arrangements, these are subject to agreement between the Government and the boroughs directly involved, in consultation with the GLA, whose revenues are also affected.

45. The Government is not actively encouraging further such arrangements. However, if, during the lifetime of a pilot pool, new "designated areas" or Enterprise Zones were to be created, this could – depending on the nature of the individual scheme – impact on the potential future revenues of all members of the pool and will need to be considered in establishing the pool and framework. Subject to further legal advice, an option may be to require any such decisions to be taken by the relevant local authority after appropriate consultation with those affected and for this to be embedded in the pool framework by unanimous agreement in establishing the arrangements..

F. Accounting and reporting arrangements

Lead authority

46. As in other existing pools, it is a statutory requirement that a "lead authority" act as the accountable body to government and would be responsible for administration of the pooled fund. The same authority – or another – could also hold any properties transferred to London from the Central List, as there is currently no legislative provision for a "regional list". The role of the lead authority for the purposes of the designation order is separate to any administrative arrangements agreed by all members of the pool to support the operation of a joint committee of Leaders and the Mayor, should such an arrangement be established.

47. The lead authority responsibilities from existing pool agreements typically include:
    - Receiving payments from pool members and making payments to central government on behalf of pool members on time.
    - Maintaining a cash account on behalf of the pool and paying interest on any credit balances.
    - Liaising with and completing all formal pool returns to central government.
    - Administering the schedule of payments between pool members in respect of the financial transactions that form part of the pool's resources.
    - Providing the information required by pool members in preparing their annual statement of accounts in relation to the activities and resources of the pool.
    - Leading on reporting to understand the pool's position during and at the end of the financial year.

48. The lead authority would, therefore, be responsible for the net tariff payment to central government as well as the internal tariff and top up payments to the pool authorities. The partner billing authorities would make payments to the lead authority based on an agreed schedule, which could be made on the same schedule of payment dates agreed for tariff and top up payments.

49. It is likely that the resources required to perform this function would be 1 FTE post, which would likely be a senior accountant with considerable experience and understanding of collection fund accounting and the business rates retention scheme.

Reporting

50. In order that a the lead authority can fulfil its functions and meet its obligations as accountable body, each member authority would need to provide timely information to the lead authority as well as making timely payments to an agreed schedule.

51. Forecast (NNDR1) and outturn (NNDR3) figures will still need to be produced, as per the existing NDR Regulations 2013, in order to enable budget processes to be complete, payments determined that need to be made to the lead authority and to government (by the lead authority) and to the GLA during the course of the year as well as transfers to General Funds.

52. The pool would use NNDR1 returns to establish the schedule of payments to be made to the lead authority and for the calculation of any notional levy savings to be made. However, it would not be until the outturn position is known (the NNDR3 form) that actual reconciliation would be made and the final growth/decline for the pool as a whole, and individual pool members, would be established. This will be in September 2019 after accounts have been audited for the financial year 2018-19.

53. The NDR income figures in the forms determine the growth/decline for that year and it is this figure that would determine the amount to be shared between pool members or between local authorities and central government in the current system.

The treatment of appeals

54. Variances against forecast in the non-domestic rating income are reflected in the forecast surplus or deficit of the collection fund at the start of the following year (information which is collected as part of NNDR1). Appeals provisions impact each year on the calculation of the NNDR income figure: a higher provision in a year, everything else being equal, reduces the NNDR income figure determining growth/decline for that year.

55. A separate pooled collection fund would be required to be established that would sit with the lead authority. A key issue will be the treatment of Collection Fund surpluses and appeals provisions within the pool. The key principle pooling authorities would have to agree is that the benefits (or costs) of actions undertaken by the boroughs prior to entering the pool should remain with the borough so that no borough can be worse off than they would have been under the 50% scheme. So – for example – if a provision established in 2013-14 proves not to be necessary and is released during 2018-19, the borough should receive at least as much as it would have under the existing 50% scheme, plus its share of any additional retained revenues.

56. The pool's collection fund account would have to continue beyond the life of the pool until all appeals relating to the pool period were resolved. Provisions released after the operation of the pilot would be distributed on the basis of the pool's founding agreement – i.e. the borough where the provisions originated would receive at least as much as it would under the 50% retention system, with any additional resources being shared according to the pool's agreed distribution mechanism. There would therefore be no "gaming" benefits to individual boroughs of setting higher (or lower) provisions. The lead authority would be responsible for administering this.

57. Further work will be undertaken to set out how the accounting and reporting requirements would work in practice, which is likely to mean either additional lines on the existing NNDR form or an additional "London pool" form administered by the lead authority. This will be confirmed as part of the final pooling agreement which will underpin the operation of the pool.

G. Timetable

58. Should Leaders and the Mayor indicate a willingness in principle to proceed in October, a 2018-19 pilot would require in principle agreement to be made between the authorities and the Government before the Autumn Budget – now confirmed to be on 22 November 2017 – for inclusion in the Provisional Local Government Finance Settlement in December. For the reasons set out above, each of the 34 authorities must take all relevant decisions at a local level, regarding both:

    1) the designation of the pool by the Government and the appointment of a named lead authority; and
    2) agreeing the framework for the pool's operation.

    These two work streams will in practical terms, due to the proposed commencement of the pilot in April 2018, need to progress concurrently.

59. In order to facilitate this process it is proposed that London Councils will procure legal advice on behalf of all the London local authorities (working in collaboration with the GLA) which will inform detailed guidance and frame the required decisions for member authorities to adopt and/or adapt to reflect their individual constitutional arrangements to give effect to the proposals.

60. All 34 authorities' decisions would need to be taken in time for the resulting business rate and funding baselines to be incorporated within the Final Local Government Finance Report in February.

61. Whilst this is a challenging timetable, and introduces a degree of uncertainty for both authorities and the Government during the budget-setting process, London would not be unique in this regard. Any pilot pools agreed in response to the Government's recent invitation for applications will not be identified before the end of October, and formal decision-making and agreement to those pilots will be subject to similar legal and constitutional constraints.

62. This timetable highlights the need for a clear expression of support for the proposals at the meetings of Leaders and the Mayor in Congress on 10th October 2017. Whilst the views of Leaders in those meetings cannot formally commit or fetter the discretion of their authorities in taking their subsequent decisions, we would expect that the views expressed would reflect the views of the authorities concerned. Neither London nor the Government would be in the position to proceed without the confidence that such an expression of intent would offer.

63. This draft prospectus therefore forms the basis for internal consideration and discussion within each of the 34 prospective pooling authorities, in order for each Leader and the Mayor to be in a position to consider their authority's in principle position about the pool and to indicate this at the Congress of Leaders and the Mayor on 10th October.

APPENDIX 1

Appendix A – Modelled Options

1. This appendix shows the impact of varying weightings on the overall distribution of any net additional benefit from being in the pool. It assumes the latest growth estimates for 2018-19 across London (combining where available figures from a recent survey of Treasurers and, where not available, the latest published estimates of growth in 2017-18 applied as if in 2018-19). The overall net benefit being distributed is £240m.

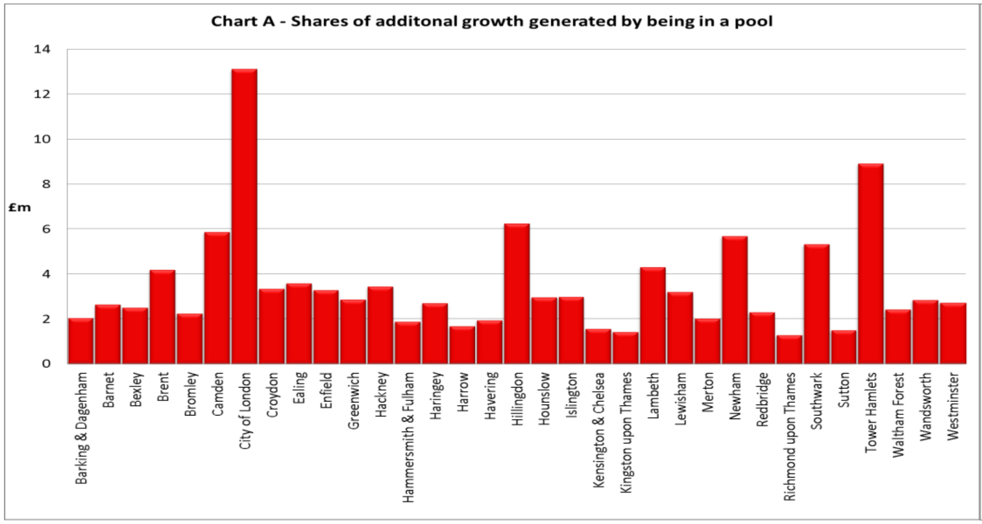
2. The charts below show the distribution of growth under four different scenarios for the relative weightings between the four potential distribution "pots" described above - i.e. incentives; needs (SFA); population (ONS 2018 projection) and investment pots.

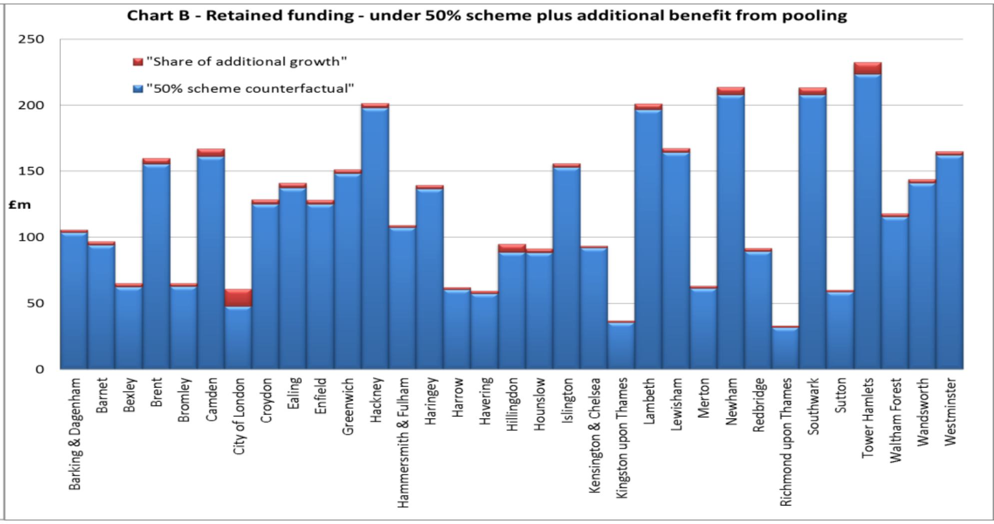
    - Option A: weights each pot at 25%
    - Option B: Incentives (30%), Needs/Population (30% each) and Investment (10%)
    - Option C: Incentives (40%), Needs/Population (20% each) and Investment (20%)
    - Option D: Incentives (20%), Needs/Population (30% each) and Investment (20%)

3. For each option we have illustrated both the cash gain for each borough (red, left-hand bar charts) and the marginal gain over the retained funding under the existing 50% position (red and blue, right-hand bar charts).

APPENDIX 1

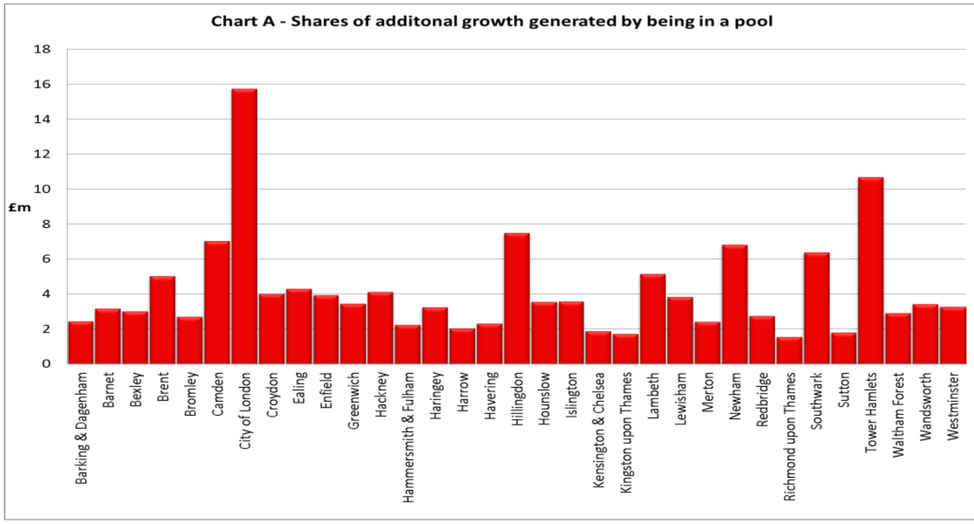
Option A: Equal split between pots – 25%/25%/25%/25%

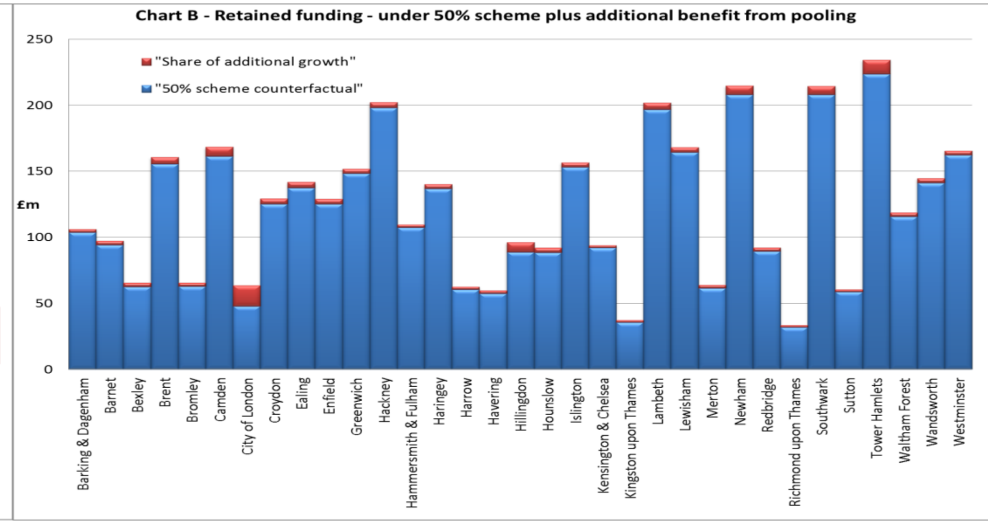




APPENDIX 1

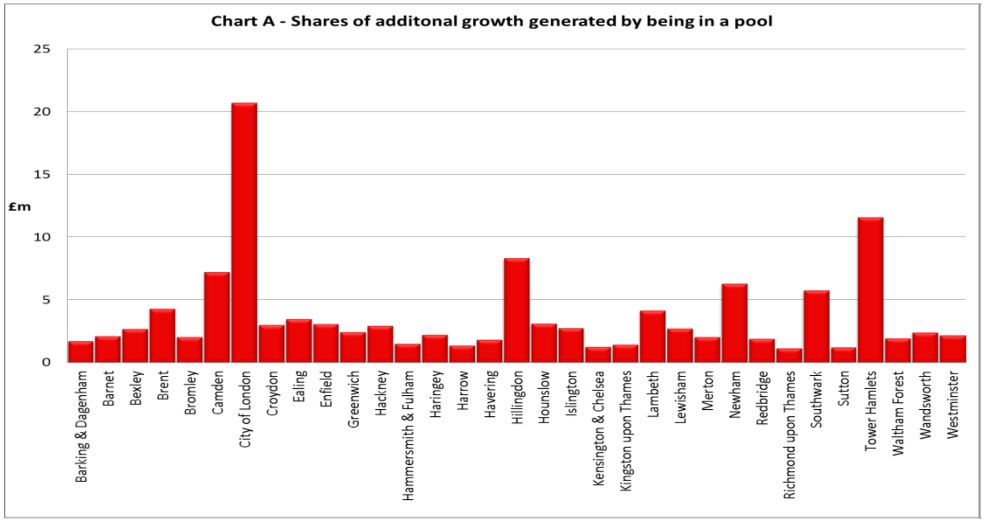
Option B: Reduced “investment pot”: 30%/30%/30%/10%

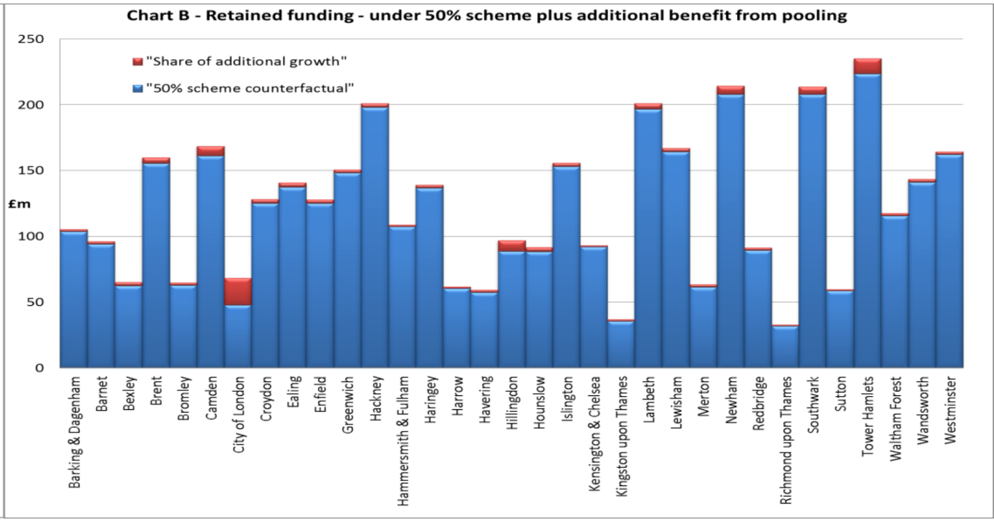




APPENDIX 1

Option C: Greater "incentive" weighting: 40%/20%/20%/20%





APPENDIX 1

Option D: Greater “Needs/population” weighting: 20%/30%/30%/20%