



Full Council
25 February 2013

**Report from the Director of
Regeneration & Major Projects**

For Action

Wards affected:
ALL

**Community Infrastructure Levy and S106 Planning
Obligations**

1.0 Summary

- 1.1 Government legislative changes mean the Community Infrastructure Levy will replace S106 Planning Obligations as the vehicle for funding the infrastructure that supports growth and development. Authorities will collect Community Infrastructure Levy contributions from developers to pay for the infrastructure requirements created by new development, with S106 Planning Obligations restricted in the main to site specific matters.
- 1.2 After two rounds of public consultation and an examination in public, the Council is now in a position to adopt the Brent CIL Charging Schedule. Concurrently, S106 arrangements will be revised through the adoption of the S106 Planning Obligations Supplementary Planning Document (Appendix 1), as agreed at Executive on 13th February 2012.
- 1.3 The Executive, at its meeting on 11 February 2013 agreed to submit the recommendations below to Full Council for approval.

2.0 Recommendations

That Council:

- 2.1 Approve the Brent CIL Charging Schedule, with a CIL commencement date of 1st July 2013, subject to the procedures surrounding the settlement of such a date.
- 2.2 Authorise adoption of the S106 Planning Obligations Supplementary Planning Document, as agreed by the Executive on 13th February 2012, to come into effect concurrently with the CIL commencement date of 1st July 2013.

- 2.3 Authorise that CIL can be paid in instalments in line with the policy detailed below (3.2.3 and 3.2.4)

3.0 Background

- 3.0.1 The Planning Act 2008 (“PA 2008”) and Community Infrastructure Levy Regulations 2010 (“the 2010 Regulations”) (subsequently amended in 2011 and 2012) have introduced legislative changes to the planning framework which make the Community Infrastructure Levy (“CIL”) the government’s preferred vehicle for the collection of pooled development contributions to fund the infrastructure needed to support growth and development. The new regulations restrict S106 agreements to necessary site related matters, and will limit the local use of S106 planning obligations for pooling developer contributions. CIL will replace the Council’s S106 standard charge on planning agreements. CIL is predicted to provide increased funding for infrastructure compared with S106, as CIL will apply to more development schemes, including smaller developments, which often contribute little under the current S106 system.
- 3.0.2 CIL is chargeable on most development resulting in a net increase of more than 100m² of floorspace or where one or more dwelling are created by the development. Material change of use, or conversion, of any land or building is not development for the purposes of CIL. Charities and minor development also have exemptions from CIL and Affordable Housing has relief from CIL.
- 3.0.3 Executive agreed to move towards the adoption of CIL in October 2011. After consulting on the Preliminary Draft Charging Schedule in the winter of 2011 and the Draft Charging Schedule in the summer of 2012, officers submitted the Draft Charging Schedule to the Planning Inspectorate in September 2012 and an Examination in Public was held in November 2012.

3.1 Brent CIL Charging Schedule

Brent’s Draft Charging Schedule was examined at an Examination In Public (EIP) in November 2012 before an independent inspector. The Inspector considered representations made by objectors who wanted the CIL charge amended or removed and also considered the Council’s evidence in support of the CIL. The Planning Inspector’s Report (Appendix 2) sets out his conclusions on the main issues raised at the EIP. He finally concludes that, as amended, the Brent Community Infrastructure Levy satisfies the requirements of Section 212 of the PA 2008 and therefore meets the criteria for viability in the 2010 Regulations (as amended) and therefore recommends that the Charging Schedule be approved.

Prior to closing the EIP, the Inspector gave an opportunity for the public to be re-consulted on a change that the Council sought during the examination. This was to lower the CIL charge on retail warehouse clubs (from £40 per sqm to £14 per sqm) as a consequence of evidence submitted by Costco. The Council accepted Costco’s evidence and put forward the change. During the public consultation that took place after the hearing, there was one objection to the proposed change. The objector argued that warehouse clubs should be

treated as other retail uses and this would be in line with statutory guidance on the matter. The Inspector has rejected this argument in his report (paragraphs 45 and 46). The objector has made further representations to the Council arguing that the Council accepted that warehouse clubs were the same use as retail uses and that only now has the Council changed it's mind and that they are different uses. In response, the Council argues that in our position statement we specifically refer to warehouse club uses as sui generis uses (i.e. a different use from retail use) and that is how they are presented in the Charging Schedule. In the Council and Costco position statements, and our statement of common ground with Costco, there is not only acceptance of warehouse club uses being sui generis uses, but also reference to the recognition of the nature of Costco Warehouse Clubs being a combined warehouse/retail use (being 65% warehouse and 35% retail), a matter accepted by the Secretary of State.

To be clear, your officers accept the evidence for a £14 per sqm CIL rate for warehouse clubs and that warehouse clubs are sui generis in use. The Inspector concludes in paragraph 19 of his report that there is no reason why the Council should not choose to base its Charging Schedule on the Use Classes Order. New guidance issued in December of last year (para 35 of the CIL Guidance December 2012) notes that the definition of "use" for generating a Charging Schedule is not tied to the classes of development in the Town and Country Planning Act (Use Classes) Order 1987, although that Order does provide a useful reference point. Officers therefore conclude that there is a sound basis for adopting the Charging Schedule (attached as Appendix 3) and the proposed CIL rates set out below:

Charging Schedule - Rates of CIL

Use	Charge per sqm
Residential (Use Classes C3 & C4), Residential Institutions, except Hospitals, (Use Class C2), Student Accommodation, Hostels and HMOs (Sui Generis)	£200
Hotel (Use Class C1)	£100
Retail (Use Class A1), Financial & Professional Services (Use Class A2), Restaurants & Cafes (Use Class A3), Drinking Establishments (Use Class A4), Hot Food Take-aways (Use Class A5), Office (Use Class B1a), All Sui Generis uses except Student Accommodation, Hostels, HMOs, Public Transport Stations, Theatres, Water and wastewater infrastructure, Fire stations and fire service facilities, Police stations and police facilities, and Warehouse Clubs	£40
Warehouse Clubs (Sui Generis)	£14
Assembly and Leisure, excluding Public Swimming Pools (Use Class D2)	£5

<p>Light Industry and Research & Development (Use Class B1b&c), General Industrial (Use Class B2), Storage & Distribution (Use Class B8), Health, Education, Public Libraries, Museums, Public Halls and Places of Worship (Use Class D1a-h), Hospitals (Use Class C2), Public Swimming Pools (Use Class D2), Public Transport Stations, Theatres, Water and wastewater infrastructure, Fire stations and fire service facilities, and Police stations and police facilities (Sui Generis)</p>	<p>£0 (Zero Charge)</p>
--	------------------------------------

***The above charge will apply across all of Brent, in addition to the Mayoral CIL of £35 per sqm.**

3.2 Implementation

3.2.3 The main purpose of this report is to formally adopt the Council's CIL Charging Schedule. Officers will produce a further report in around the summer of 2013 setting out options for CIL expenditure. CIL will apply to all planning permissions issued on or after the Charging Schedule comes into effect. Officers recommend Council approve a commencement date of 1st July 2013 to allow, where practicable, pending planning applications to be decided, business systems to be updated across services, final notice to be given to the development community as to the proposed change, and other transitional administration to be completed.

3.2.2 Officers will publish the Charging Schedule on the Council's website and also, as agreed at Executive on the 13th June 2012, issue a statement to the effect that the Council will make discretionary relief from the Community Infrastructure Levy in exceptional circumstances available in the borough and will consider in kind land payments in satisfaction of the Community Infrastructure Levy.

3.2.3 The CIL Regulations require that CIL be paid in full within 60 days of the commencement of any chargeable development, however also allow charging authorities to issue an instalments policy. Instalments policies aid the viability and deliverability of development proposals. Payment of CIL by instalments improves development cashflow, for which the difficulty of financing tends to be proportionate to the size of development, the level of costs and the length of the build programme. The Mayor introduced a Londonwide CIL on the 1st April 2012 which is intended to raise £300 million for Crossrail. Mayoral CIL in Brent is charged at £35/m². The Mayor is expected to introduce an instalments policy which will apply to not only Mayoral CIL but, in the absence of local instalment policies, any CIL charges adopted by London boroughs. The Mayor's instalment policy requires

- Developments with a CIL liability value* < £500,000 should make a single payment not more than 60 days after commencement.

- Developments with a CIL liability value* \geq £500,000 should have the option to make two payments
 - The greater of £500,000 or half the value of the total payment 60 days after commencement; and
 - The remainder 240 days after commencement (i.e. 180 days + 60 days allowance).

3.2.4 Brent's Local Development Framework identifies a number of strategic development sites across the borough which have the capacity for sufficient development to potentially yield multimillion pound CIL payments. Officers recommend that a local instalment policy be introduced on the adoption of the Brent CIL which follows the Mayor's instalment policy, but introduces an additional payment structure for such larger strategic developments.

- Developments with a CIL liability value* \geq £3,000,000 should have the option to make three payments
 - The greater of £1,000,000 or one third of the value of the total payment 60 days after commencement; and
 - The greater of £1,000,000 or one third of the value of the total payment 240 days after commencement; and
 - The remainder 450 days after commencement

*CIL liability value = Mayoral CIL liability value (where no Borough CIL exists); or cumulative Mayoral + Borough CIL liability value (where Borough CIL exists)

3.3 Spending CIL: Strategic Infrastructure Plan & Regulation 123 List

3.3.1 Brent's Infrastructure & Investment Framework (I&IF) was agreed as part of the Council's Local Development Framework Core Strategy in May 2009 and sets out the major infrastructure needs of the growth areas and other areas in the borough. In preparing for CIL officers updated the I&IF. Global infrastructure costs now stand at £406m, with significant pressure on school places requiring greater capital spend on education and driving the bulk of the uplift verses the 2009 figures.

3.3.2 Whilst the I&IF demonstrates demand for infrastructure to support growth it is not comprehensive and in particular is currently silent on the prioritisation of spend. Officers propose to draw up a Strategic Infrastructure Plan (SIP) to present to members in the spring. The SIP will build on the I&IF and provide a comprehensive picture of the borough's strategic infrastructure needs, then map out and assess the regenerative benefits associated with each infrastructure project. The I&IF already demonstrates that CIL, when combined with other sources of capital investment and funding, will not deliver all the borough's strategic infrastructure needs. Prioritisation is inevitable, and careful consideration of the regeneration benefits associated with identified

infrastructure projects is therefore essential.

- 3.3.3 The SIP will also need to address the procurement challenges thrown up by the introduction of CIL. Where previously developers often built out infrastructure works under S106 agreements, now the Council will increasingly have opportunities to directly procure infrastructure works to be funded through developer cash contributions secured through CIL. The Council will want to ensure the best possible value for money in such cases but will also need to coordinate closely with the developer community to ensure timely delivery and that development does not stall due to lengthy procurement process. The Council also recognises that in some cases, for example larger strategic development projects where infrastructure is heavily integrated into a broader capital construction programme, developers may be better placed to deliver infrastructure projects and joint procurement exercises may need to be undertaken. Specialist legal advice will be required in order to determine what options will be available to the Council within State Aid legislation and will inform the SIP procurement strategy.
- 3.3.4 The Council's Regulation 123 list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL will be derived from the SIP. In addition, the government had indicated through the Localism Act, that a proportion of CIL would be spent in accordance with the wishes of the local community. Further clarification of what this will mean has now been announced by the Planning Minister and it is anticipated that the necessary Order will be in place in the spring of this year. The proportion of CIL to be allocated for 'community spend' will be 15%, increasing to 25% within areas covered by an adopted Neighbourhood Plan. It is understood that in areas where there are no Parish Councils, the Council will control the spend and in areas covered by a Neighbourhood Plan, the Council will remain the accountable body. The government has also confirmed that there will be no relaxation or change at the present time to allow CIL receipts to be spent on affordable housing.

4.0 Legal Implications

- 4.1 The legal implications detailing the statutory framework for CIL are already covered in the body of this report. As mentioned above, the Community Infrastructure Levy (CIL) is a new planning charge that came into force on 6th April 2010. It allows local authorities to raise funds through a tariff based approach from developers undertaking new building projects in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of development. It applies to most new buildings and charges are based on the size and type of new development. If Members are minded to elect to levy CIL then the Council as a charging authority will have to prepare and publish a charging schedule. Details of this are contained in this report to which the Director of Legal and Procurement has had an input.
- 4.2 The charging schedule will sit within the Local Development Framework but will not form part of the statutory development plan nor will it require inclusion within the Local Development Scheme.

4.3 In permitted circumstances the Council will still insist on a developer entering into S106 obligations. However, this requirement will only be used where the identified pressure from a proposed development cannot effectively be dealt with by conditions and the infrastructure requirement is not covered by CIL. Consequently, standard charging will therefore be removed from S106, which will now focus on these mitigations:

- New streets, Travel Plans, Permit Free schemes
 - Sustainability, Code for Sustainability Homes, BREEAM
 - Affordable Housing – including definitions, off site provisions and in-lieu contributions
 - Street tree planting and landscaping
 - Local employment and training provision
 - Community and cultural facilities
-
- Other obligations, such as: public access / community agreements, public rights of way; community or affordable workshop space; servicing agreements; CCTV; highways improvements, adoption of new highways (S38 /S278 agreements); listed building improvements; allowance of future connection of the site to any Decentralised Heat / Energy network (in areas with a proposed DHE Network); contributions for loss of D1 space (Policy CP23); contributions for significant under provision of amenity space; join and adhere to the Considerate Contractors scheme.

4.4 As soon as practicable after the charging authority approves a charging schedule in accordance with section 213 of the PA 2008 it must comply with the following procedural steps—

- (a) publish the charging schedule on its website;
- (b) make the charging schedule available for inspection at the places at which documentation was made available for the Draft Charging Schedule consultation
- (c) give notice by local advertisement of the approval of the charging schedule, that a copy of the charging schedule is available for inspection, and of the places at which it can be inspected;
- (d) give notice to those persons who requested to be notified of the approval of the charging schedule that it has been so approved; and
- (e) send a copy of the charging schedule to each of the relevant consenting authorities.

5.0 Financial Implications

Estimated CIL receipts vs. Current S106 receipts

5.1 CIL has the potential to form a major future source of revenue for the Council, supporting its infrastructure work and associated administrative costs. CIL is part of a new mix of funding including retained business rates and New Homes Bonus and provides an opportunity to link the Council's revenue generating activities and the LDF strategy to deliver regeneration and growth.

- 5.2 CIL is a new and different system of securing infrastructure to support development and is not intended to replicate S106 collection. The Council must set rates that meet infrastructure requirements and continue to bring forward viable development. Officers have set the proposed CIL rates with this in mind. However, as a subsidiary exercise we have estimated projected receipt of both so that members could get some idea of potential outcomes. It is indeed the case that S106 and CIL are likely to be broadly similar on larger scale mixed sites. This is not a surprise because it means that both S106 and CIL are set at rates that have not or will not hamper development. Officers have also estimated the potential annual CIL take against S106. It is predicted that this may be slightly higher than overall S106 annual sums, mainly because CIL will be applied to a wider range of development sites and CIL will be applied to developments at a smaller scale than S106. The key principle that Members must have in mind is that CIL provides a reasonable sum for infrastructure without hindering development proposals. The intention is not to set CIL at a maximum – indeed any CIL sum that is too high will prevent development and add nothing to the overall fund. The real benefit of CIL is that CIL is not so restricted by area or type of infrastructure expenditure as S106 and can be planned and spent on a borough wide basis, linking with the Council's capital programme.

Reimbursement of expenditure incurred and repayment of loans

- 5.3 Charging authorities may not borrow on the strength of getting future CIL revenue to pay for a piece of infrastructure early, however CIL Regulations cover circumstances where a charging authority can apply CIL to reimburse expenditure already incurred on infrastructure. Where a charging authority, other than the Mayor, has borrowed money for the purposes of funding infrastructure, it may apply CIL to repay that money if certain conditions are met, most notably that the amount of CIL that can be applied to repay borrowed monies is conditional on Secretary of State direction.

Payment and Non-Payment of CIL

- 5.4 The Council will be able under certain conditions to accept one or more land payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development.
- 5.5 Late interest is chargeable at 2.5% above the Bank of England base rate from the due date of payment of CIL and in the case of non payment of CIL authorities can order relevant development activity to cease.

6.0 Diversity Implications

- 6.1 Most S106 agreements are directly linked to planning policy requirements that have been the subject of public consultation and examination, and an equalities impact assessment. The planning strategy for Brent (London Plan and the LDF) reflects the needs of the borough's diverse community.

The Community Infrastructure Levy will assist the Council in funding a wide range of infrastructure projects across the Borough which will be not only

support growth, but at the same time help to meet the needs of local people. The Localism Bill will require the Council to consult with communities regarding the CIL collected within their area and which infrastructure projects that CIL will be spent on, including local projects. This will require the allocation of CIL to be both transparent and accountable, thereby helping to ensure an equitable distribution of CIL across the borough and that communities are given a level of infrastructure funding that is appropriate to the impact of new development within their area.

An Impact Needs / Requirement Assessment has been undertaken and is available as a background paper to this report.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 A specialist vacant post within Planning was filled in November 2012, with the remit having been broadened to cover CIL. The Council has the ability to use a small proportion (up to 5%) of local CIL receipts to cover administrative costs; the Council are also entitled to a small proportion (up to 4%) of Mayoral CIL to cover the costs of collecting Mayoral CIL.

Background Papers

CIL Executive Report dated 17th October 2011
CIL Executive Report dated 13th February 2012
CIL Executive Report dated 13th June 2012
Impact Needs / Requirement Assessment 6th January 2012

Contact Officers

Andrew.Donald@brent.gov.uk
Director Regeneration & Major Projects
Dave.Carroll@brent.gov.uk
Head of New Initiatives
Jonathan.Kay@brent.gov.uk
Development Manager