



Executive
22 April 2014

**Report from the Director of
Regeneration and Growth**

For Action

Wards Affected:
All

**Adoption of Community Infrastructure Levy (CIL)
Regulation 123 list**

1. SUMMARY

- 1.1 The council has adopted a Community Infrastructure Levy (CIL) Charging Schedule that applies a charge to most new development in the borough. The purpose of the CIL charge is to fund new infrastructure such as schools, parks, roads and public transport improvements required to support development and growth. The council is advised to produce a list of priorities (a Regulation 123 list) itemising those types of infrastructure it wishes to spend CIL on. This report sets out a proposed CIL Regulation 123 List for the council to adopt.

2. RECOMMENDATIONS

That Executive agree to:

- 2.1 Publish the CIL Regulation 123 List as set out in Appendix 1, advertise the Regulation 123 List on the council's website and consider any representations arising; and
- 2.2 Delegate authority to make, consult and publish changes to the Regulation 123 List to the Strategic Director of Regeneration & Growth in consultation with the Lead Member for Regeneration.

3. BACKGROUND

- 3.1 The council has already set a Community Infrastructure Levy or CIL charge on most forms of large scale development to fund the provision of new infrastructure (for example the council now charges £200 per m2 of private housing). CIL is intended to replace Planning Obligations (S106 agreements) for large scale infrastructure, so instead of negotiating a

developer contribution on each scheme, CIL is now calculated on a per metre formula set out in the adopted CIL charge. Planning Obligations S106 will now be used for local matters (such as agreeing access arrangements onto a site) and to mitigate the impact of a development. So for example if a development did not provide sufficient amenity space on site, the council could secure a contribution for its provision off site through a planning obligation, although generally open space provision will be funded through a CIL contribution.

CIL Regulation 123 List

- 3.2 There is a strong incentive on local authorities to move to the CIL system to fund major infrastructure because there is a restriction on councils' now combining S106 planning obligations to fund infrastructure. Once a council has adopted a CIL, S106 agreements are intended primarily to mitigate local site related matters such as access. After April 2010, the government's CIL regulations prohibit authorities combining S106 contributions from more than four new different S106's. However authorities could carry on using the S106 provisions until a deadline of April 2014, which has recently been extended to April 2015. Because developers and landowners have expressed concern that they may be charged twice for infrastructure by paying both CIL and S106, the government recommend that local authorities clarify this matter by producing a list detailing likely infrastructure expenditure. This is known as the Regulation 123 list after the regulatory provision.
- 3.3 The proposed CIL Regulation 123 List is set out in Appendix 1. This sets out in very broad terms what infrastructure could be paid for by CIL. The council can still spend CIL on items not on the 123 List and it is intended not to be exhaustive. Regulation 123 lists can be very detailed listing named projects or they can be in very general terms, sometimes they are a mix of both approaches. The Regulation 123 list set out in Appendix 1 is deliberately very general because it will give the council flexibility to best fund the complex set of infrastructure requirements with the complex funding streams it has.
- 3.4 Your officers are also recommending the adoption of the Regulation 123 List because otherwise the council would have difficulties in continuing to legally secure planning obligations and highways works under s106 and s278 agreements. The council will also have more difficulty legally using a combination of more than four S106 planning obligations that were secured after April 2010 to fund a single piece of infrastructure.

Prioritisation Process

- 3.5 The council is likely to secure between £4-£6m p.a. on CIL to fund infrastructure. This will be in addition to S106 funding already secured. In time, S106 funding will reduce and S106 funding will only arise by historic applications being triggered. CIL will then be the dominant source of infrastructure funding.

- 3.6 It is intended that officers will bring forward a further report to Executive on ways in which CIL and S106 funds could be prioritised in order to secure regenerative development and growth.

4. FINANCIAL IMPLICATIONS

- 4.1 The recommendations in this report do not commit any resources either directly or by delegation.
- 4.2 CIL and S106 are predicted to deliver between £4m and £6m per annum amounting to £184m of infrastructure funding in the next 30 years if predicted growth housing and commercial development materialises.

5. LEGAL IMPLICATIONS

- 5.1 Part 11 of the Planning Act 2008 provided for local authorities to impose a charge on development known as the Community Infrastructure Levy or CIL. CIL Regulations have then been introduced to set out the detailed provisions enabling local authorities in England and Wales to introduce a CIL in their areas, and also how the levy would operate if they did so. The levy would apply to new buildings above a certain size and the revenue from the levy must be applied to infrastructure needed to support the development of the area. The Regulations also provide for the reform of the current system of developer contributions towards infrastructure ('planning obligations') so that the two regimes operate effectively alongside each other.
- 5.2 The government introduced the Regulations in 2010 and amended them in 2011, 2012, 2013 and more recently in March of this year referred to as the Community Infrastructure (Amendment) Regulations 2014.

Definition of Infrastructure

- 5.3 Section 59 (1) of The Community Infrastructure Regulations 2010 no 948 specifies that a charging authority must apply CIL to funding infrastructure to support the development of its area. Infrastructure is defined in s.216 of the Planning Act 2008 (as amended) as roads and other transport facilities, flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities and open spaces.

6.0 Diversity Implications

- 6.1 CIL provides a mechanism to collect a charge on development. The implications for diversity arise when decisions on the CIL spend is made. This will be considered in a further report to Executive.

7.0 Staffing/Accommodation Implications

- 7.1 The council can top slice up to 5% of its own and Mayoral CIL to administer the Levy. This charge is used to fund the cost of two officers deployed to administer and manage CIL / s106.

Background Documents

Planning Act 2008
CIL Regulations, 2010, 2011, 2012, 2013, 2014

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APPENDIX 1.

London Borough of Brent INFRASTRUCTURE (REG 123) LIST List of Infrastructure to be funded by the Community Infrastructure Levy

In accordance with Regulation 59 of the Community Infrastructure Levy Regulations 2010 (as amended) ("the CIL Regs"), CIL receipts from Brent CIL must fund the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of Brent. Types of infrastructure to be funded in whole or in part by CIL are listed below. The list will be reviewed and updated regularly. This list is valid from 22 April 2014.

The London Borough of Brent intends to fund either in whole or in part the provision, improvement, replacement, operation or maintenance of new and existing:

- public realm infrastructure, including town centre improvement projects and street trees;
- roads and other transport facilities;
- schools and other educational facilities;
- parks, open space, and sporting and recreational facilities;
- community & cultural infrastructure;
- medical facilities;
- renewable energy and sustainability infrastructure; and
- flood defences,

except unless the need for specific infrastructure contributions is identified in the S106 Planning Obligations Supplementary Planning Document or where section 106 arrangements will continue to apply if the infrastructure is required to make the development acceptable in planning terms.

Inclusion of a project or type of infrastructure is not a commitment by Brent to fund the project either in whole or in part.

In accordance with Regulation 123 of the CIL Regs, Brent will not seek contributions through planning obligations for the infrastructure listed; however planning obligations may still be required for the type of infrastructure listed where these comply with Regulation 122 and 123 of the CIL Regs. This list should be read in conjunction with the S106 Planning Obligations Supplementary Planning Document.