



Cabinet
16 November 2015

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

Wards affected:
ALL

Community Infrastructure Levy – procedural matters

1. Summary

- 1.1 The Community Infrastructure Levy (“CIL”) was introduced by the Community Infrastructure Levy Regulations (“CIL Regs”) in 2010 (as amended) made under the Planning Act 2008. CIL in Brent was approved by Full Council in 2013 and came into force on 1 July 2013. The CIL Regs introduced CIL as a levy on development charged in accordance with an approved scheme. A number of discretionary provisions are included with the Regulations and this report seeks the approval of Cabinet for the Council to accept some of the discretionary provisions and to set out the procedural process for the same.

2. Recommendations

- 2.1 That Cabinet decides to make Discretionary Infrastructure Payments available in Brent and delegates the authority to accept or refuse to accept land and infrastructure as payment of CIL in lieu of money to the Operational Director Planning and Regeneration.
- 2.2 That Cabinet delegates the decision to accept or refuse claims for exceptional circumstances relief to the Strategic Director Regeneration and Growth in consultation with the Lead Member Housing and Development.
- 2.3 That Cabinet decides to not make Discretionary Social Housing Relief available in Brent.
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3. Background

- 3.1 Amendments to the Community Infrastructure Regulations 2010 made in 2013 and 2014 have introduced two new discretionary items: (1) discretionary social housing relief (Regulation 49A-49B); and (2) discretionary Infrastructure Payments (Regulation 73A-74) and these are discussed below; the procedure for deciding reviews for Exceptional Circumstances Relief (“ECR”) is also reviewed.

4. Detail

Discretionary Infrastructure Payments

- 4.1 Discretionary Infrastructure Payments is a provision in the Regulations that gives the Council the option to make available a policy to take infrastructure as payment of CIL in lieu of money. Once made available, the Council is not obliged to accept any offer of payment in-kind by infrastructure.
- 4.2 The CIL Regulations already provides for the Council to take land as payment in lieu of money should the relevant criteria be met, however as with Discretionary Infrastructure Payments, the Council is not obliged to accept a land payment instead of money.
- 4.3 The infrastructure or land to be provided must be related to the provision of those projects listed in the Council’s Regulation 123 list and the Council must aim to ensure that the infrastructure will be used to support the development of Brent, although infrastructure can be provided outside of Brent if the Council considers the infrastructure will support the development of Brent.
- 4.4 Brent is not permitted to accept an infrastructure payment unless the Party offering the infrastructure has or is likely to have sufficient control over the land on which the infrastructure is to be constructed and that the necessary statutory authorisations have been, or will be, obtained.
- 4.5 Brent is also not permitted to accept an infrastructure payment if the infrastructure offered is necessary to make the proposed development acceptable in planning terms. This is to ensure developers do not seek to offset the costs of infrastructure set out in a S106 agreement against CIL.
- 4.6 Any agreement relating to such an in-kind payment must be made before the chargeable development commences and payments in-kind must be provided to the same timescales as cash payments, or otherwise on an agreed basis, subject to the provisions in the regulations and any other State Aid considerations
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- 4.7 Land or infrastructure must be valued by a suitably qualified independent valuer who, in the case of land, will ascertain its 'open market value', and in the case of infrastructure the cost (including related design cost) to the provider. This will determine how much liability the 'in-kind' payment will off-set.
- 4.8 It is proposed that Brent require the aforementioned valuation costs to be at the applicant's expense.
- 4.9 For the purposes of the CIL Neighbourhood Fund, the 15% (or 25% in adopted Neighbourhood Plan areas) of the value of the infrastructure must be provided in money so that if 100% of a CIL payment is made in infrastructure, the Council will need to ensure the 15% for the Neighbourhood Fund is met from other CIL reserves.
- 4.10 The benefit to the Council of publishing a policy to offer Discretionary Infrastructure Payments is that development that is able to provide priority infrastructure necessary to support the development of the borough would be able to so.
- 4.11 The policy is made available by publishing a document giving notice of the date from which the Council will begin accepting infrastructure payments and including a policy statement setting out the infrastructure projects, or type of infrastructure, which Brent will consider accepting.
- 4.12 The policy can be withdrawn by publishing a statement to that effect giving at least 14 days notice that it is to be withdrawn.
- 4.13 Your officers recommend that a notice be published on the website that states that the Council is willing to accept infrastructure payments, subject to the criteria set out in the CIL Regulations, from the date the notice is published and setting out the infrastructure projects, or types of infrastructure, which the Council will consider accepting the provision of infrastructure payments by reference to the published Regulation 123 list.
- 4.14 Further, your officers recommend that the decision to take land or infrastructure as payment of CIL in lieu of money be delegated to the Operational Director Planning and Regeneration.

Exceptional Circumstances Relief

- 4.15 The CIL Regulations allow for relief to be granted in exceptional circumstances. The criteria to be applied when considering 'exceptional circumstances' are set out in the CIL Regulations. In order that a local authority may exercise the power to grant exceptional circumstance relief it must have agreed the area be a relief area, which was agreed in 2013 at Full Council.
- 4.16 Minor changes have been made to discretionary ECR in the 2014 amendments. The CIL Reg no longer require the cost of complying with a planning obligation to exceed
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the cost of paying the CIL chargeable amount. This increases the number of cases that are potentially able to claim ECR. To date, only one claim has been received and the decision was to not accept the claim and therefore no relief has been given.

- 4.17 It is not proposed to formally review Brent's stance on ECR until a comprehensive review of Brent's CIL is undertaken in future years; however it is proposed to formally delegate authority to grant or refuse exceptional circumstances relief to the Strategic Director Regeneration and Growth, in consultation with the Lead Member Housing and Development, pursuant to the delegated authority granted to the Strategic Director under Brent's constitution
- 4.18 The Localism Act 2011 amended Sections 70(2) and 70(4) of the Town and Country Planning Act 1990 (as amended) such that the Council must have regard to a local finance consideration, which would include a CIL payment, as far as it is material. Whether or not a 'local finance consideration' is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. The Government advises that it would not be appropriate to make a decision on the potential for the development to raise money for a local authority or other Government body and this strongly suggests CIL payments should not be considered material planning considerations. As such, your officers do not propose to report claims for exceptional circumstances relief back to the Planning Committee: this is consistent with the approach for determining other types of relief and avoids the potential to confuse the planning decision stage of the process, where material planning considerations are weighed, with the relief process governed by the CIL Regs.
- 4.19 The determination of a claim for ECR does, however, involve a number of value judgements based on weighing of other material considerations and this does justify Member involvement. To grant relief for a scheme the Council must decide that: (i) there are exceptional circumstances for justifying relief from CIL; (ii) on the balance of probabilities, the development will not go ahead at the given profit level; and (iii) the public will be harmed more by the development not going ahead than they will be harmed by forgoing the CIL income. The Council would be entitled, and may in some circumstances be required, to consider such factors as: (i) the implications for the financing of infrastructure from allowing relief; and (ii) the implications for the area in which the development site in question is located and the borough as a whole, if the development did not go ahead.
- 4.20 In light of the above, your officers recommend that claims for ECR be delegated to the Strategic Director Regeneration and Growth in consultation with the Lead Member Housing and Development.

Discretionary Social Housing Relief

- 4.21 This would enable anyone to claim relief from CIL provided the dwelling is sold for not more than 80% of its market value, provided measures are in place to ensure that the dwelling, if sold, will continue to be affordable for future purchasers at a maximum of 80% of market price for a period of seven years. At present, only Registered Providers can benefit from the existing mandatory social housing relief.
- 4.22 Brent can set out what is required to qualify for this relief, including the criteria governing who is eligible to occupy the dwellings and how these will be allocated.
- 4.23 Your officers recommend that discretionary social housing relief is not offered in Brent as it would discourage provision of preferred social housing tenures of affordable rent and shared ownership dwellings for a long lease whilst the corresponding reduction in annual CIL income will hinder the Council's ability to provide the infrastructure needed to support the development of the borough.

5. Financial Implications

- 5.1 The decision to take infrastructure in kind will reduce the amount of CIL received in money but the overall value to the Council will not be diminished. The procedure for approving claims for ECR will ensure Member scrutiny of significant claims for relief.

6. Legal Implications

- 6.1 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.
- 6.2 The government introduced the Regulations in 2010 and amended them in 2011, 2012, 2013 and 2014.

Definition of Infrastructure

- 6.3 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.
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Procurement of Infrastructure

- 6.4 S106 planning obligations were often delivered by developers. CIL is made in payments, so there is likely to be more emphasis on councils delivering that infrastructure which the 2014 amendments to the CIL Regulations to allow infrastructure works in kind to be considered as payment in lieu of a CIL liability. If the council delivers more large scale infrastructure projects it will need to consider how it can procure contractors effectively and efficiently. While procurement places an additional administrative burden on the council (albeit the costs of such exercise should be recoverable in the main) it also provides opportunities to support the local supply chain and maximise training and employment opportunities for local residents.

7. Diversity implications

- 7.1 The effect of the decision to accept land or infrastructure as payment of CIL in lieu of money would be neutral to the Council and its residents in terms of the value derived from development in the borough. The decision to accept ECR can only be reached where the Council considers it is expedient to do so.
- 7.2 CIL contributions can have a positive impact on equality and diversity, as they allow the Council to make improvements to the local community which can benefit disadvantaged groups by the provision of additional social infrastructure including community spaces and education opportunities.

8. Staffing/accommodation implications

- 8.1 The council can use up to 5% of its own and 4% of Mayoral CIL collected to administer the levy. Some staff costs are met from this administration charge.

Background Documents

N/A

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