



Scrutiny Committee
9 February 2016

**Report from the Chief Executive's
Department**

For action

All wards

**Proposed Scope for Scrutiny Task Group on Community
Infrastructure Levy (CIL) and Section 106 in Brent**

1.0 Summary

- 1.1 This report sets out the proposed scope for the Scrutiny task group on Community Infrastructure Levy (CIL) and Section 106 in Brent. This task group has been requested by the Scrutiny Members to ensure Brent council is achieving the best financial outcomes for the borough with its current section 106/CIL agreements.
- 1.2 The task group will look at the current section 106/CIL processes with a view to ensuring that communities and councillors are engaged in the making of funding decisions.
- 1.3 The purpose of the task group will be to analyse four key areas:

Policy

- An evaluation of Brent's current and previous s106 and CIL policies and processes; this should include looking at:
 - Brent priorities and links to the borough plan and service plans,
 - charging rates for s106 and CIL,
 - different models of member and public engagement, and
 - Lessons learnt and plans for the future
- An evaluation of Brent's current s106 and CIL policies, processes and performance in comparison with other local authorities.

Engagement

- The involvement of elected members in the decision making processes for s106 and CIL funds.
- Explore how Brent residents can be more actively engaged in the scoping and planning process.

Funding

- Analysis of how funds have been spent and plans for spending future funds.

- Explore how fund can be spent on more discretionary services, such as youth services, libraries and sports facilities.
- Analysis of funds in reducing negative social impacts.

Future Planning

- Prioritising Brent's needs as outlined in the borough plan.
- S106/CIL status for upcoming/ future development plans.

- 1.4 The task group will review the local arrangements of the council and its partners, national research and guidelines and the views and opinions from local residents and businesses. The task group will also consult with experts in this field and other London boroughs which have been identified as achieving excellence in this area.
- 1.5 The task group will review a number of concerns in the s106/CIL process; which it will seek to examine in the context of Brent, these are:
- Further transparency and better understanding of the policies and processes regarding s106/CIL funding;
 - Achieving the best financial outcomes for the borough with its current section 106/CIL agreements;
 - That all outcomes are linked to the borough's priorities and needs via the borough plan;
 - Flexibility is build into the section 106/CIL process to ensure that communities and councillors are engaged in making funding decisions.
- 1.6 As part of the borough plan we promised to deliver transformational change and support and promote neighbourhood planning across the Borough, targeting identified priority and growth areas. The task group hope that its work will support this element within the context of our "Better Place" priority.

2.0 Recommendation

- 2.1 Members of the Scrutiny Committee are recommended to agree the scope, terms of reference and time scale for the task group on s106/CIL in Brent, attached as Appendices A and B.

3.0 Detail

- 3.1 With member consensus on ensuring the best use of CIL and s106 funding, Members of the Scrutiny Committee requested a time-limited task group undertake a focused piece of work on potential actions to improve understanding, transparency and stakeholder involvement in Brent. The proposed scope and terms of reference for this work are attached as Appendices A and B.

Contact officers:

Cathy Tyson,
Head of Corporate Policy and Scrutiny
Cathy.Tyson@brent.gov.uk

Peter Gadsdon,
Director Performance Policy and Partnerships
Peter.Gadsdon@brent.gov.uk

Appendix A

Community Infrastructure Levy (CIL) and Section 106 Proposed scope for Scrutiny Task Group February 2016

Task Group Chair: Cllr Harbi Farah

Task Group Members: Cllr Wilhelmina Mitchell Murray, Cllr Milli Patel, Cllr Mary Daly, Cllr Bhagwanji Chohan and Mr Faraz Baber

Time frame: To be presented to the Scrutiny Committee on Tuesday 5 April 2016

1. What are we looking at?

Community Infrastructure Levy (CIL)

The Community Infrastructure Levy is a planning charge, introduced by the Planning Act 2008 to provide a fair and transparent means for ensuring that development contributes to the cost of the infrastructure it will rely upon, such as schools and roads.

The Community Infrastructure Levy (the levy) is a tool for local authorities in England and Wales to help deliver infrastructure to support the development of the area. The levy may be payable on development which creates net additional floor space, where the gross internal area of new build exceeds 100 square metres. The limit does not apply to new houses or flats, and a charge can be levied on a single house or flat of any size, unless it is built by a 'self builder'.

The levy is charged on new development. Normally, this requires planning permission from the local planning authority, the Planning Inspectorate, or the Secretary of State on appeal. Planning permission can also be granted through local planning orders. Examples are simplified planning zones and local development orders. Development can also be granted consent by Neighbourhood Development Orders including Community Right to Build Orders. Some Acts of Parliament, such as the Cross rail Act 2008, also grant planning permission for new buildings.

The levy applies to all these types of planning consent. CIL is non-negotiable and therefore, brings more certainty and transparency to the development process than the system of planning obligations which could cause delay as a result of lengthy negotiations; however, developments may still require a legal agreement to control other aspects of the development like sustainability or affordable housing. The Government decided that this tariff-based approach provides the best framework to fund new infrastructure to unlock development.

Charities and Social Housing has relief from CIL on application, as do large residential extensions or annexes and self built dwellings. Relief can also be granted in exceptional circumstances where CIL has an unacceptable impact on the economic viability of development. Decisions on whether to grant exceptional circumstances relief will be made by the Strategic Director of Regeneration & Growth in consultation with the Lead Member.

The Council can take land or infrastructure as payment towards CIL instead of money, provided that the payment is equivalent to the amount of CIL liable. It is at the Council's

discretion to accept such an offer and decisions on this will be made by the Operational Director of Planning & Regeneration.

CIL Neighbourhood Fund

Brent must spend a minimum of 15% of CIL receipts in consultation with the local community, subject to an annual cap of £100 per dwelling in the area¹. This neighbourhood component (“the Neighbourhood Fund”), like the Strategic Fund, should be spent on infrastructure to support the development of the area but can also be spent on a broader range of items than the strategic part of CIL: on the provision, improvement, replacement, operation or maintenance of infrastructure; and anything else that addresses the demands that development places on an area. The Neighbourhood Fund can also be used to provide affordable housing.

Areas that have an adopted Neighbourhood Development Plan (“Neighbourhood Areas”) benefit from an increase in the neighbourhood component of CIL to 25%².

Section 106

Section 106 (S106) agreements, also known as planning obligations, are agreements between developers and local planning authorities that are negotiated as part of a condition of planning consent.

The Town and Country Planning Act 1990 (the ‘1990 Act’) enables local authorities to negotiate contributions towards a range of infrastructure and services, such as community facilities, public open space, transport improvements and/or affordable housing.

Where an application is made for planning permission to undertake development on land within the area of a local planning authority, Section 106 of the 1990 Act allows the local planning authority and any person interested in the land to secure by deed certain obligations which mitigate the harmful impact of the proposed development.

These obligations can:

- Restrict the development or use of the land in any specified way;
- Require specified operations or activities to be carried out in, on, under or over the land;
- Require the land to be used in any specified way; or
- Require a sum or sums to be paid to the authority

The Community Infrastructure Levy Regulations 2010 set out the statutory criteria (the ‘necessity test’) for when a planning obligation may constitute a reason for granting planning permission for the development; that is when the obligation is:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and

¹ The annual cap is subject to inflation.

² This is also the case for CIL from developments not in an area with a neighbourhood development plan in place, but granted permission by a Neighbourhood Development Order made under section 61E or 61G (Community right to build orders) of the Town and Country Planning Act 1990.

Why are we looking at this area?

To establish whether Brent council is achieving the best financial outcomes for the borough with its current section 106/CIL agreements and; how to ensure that flexibility is built into the section 106/CIL process to ensure that communities and councillors are engaged in the making of funding decisions.

National Context

CIL

The aim is to allow local authorities to raise funds from developers to fund a wide range of infrastructure that is needed as a result of new development. Almost all development has some impact on the need for infrastructure, services and amenities, so it should contribute to the cost. The Planning Act stipulates that authorities can only spend CIL on providing infrastructure to support the development of their areas:

“Infrastructure” legally includes (so the list in the Act is not exhaustive):

flood defence, open space, recreation and sport, roads and transport facilities, education and health facilities

CIL Regulations 2010 removed affordable housing, which will continue to be funded by S106. The Localism Act clarifies that CIL can be spent on the ongoing costs of providing infrastructure (Maintenance, Operational and Promotional).

The levy is expected to have a positive economic effect on development across a local plan area. When deciding the levy rates, an appropriate balance must be struck between additional investment to support development and the potential effect on the viability of developments.

S106

S106 funding is highly constrained by: the legal agreements by which the contributions are secured; the planning reasons on which the contribution was sought; national legislation and regulations; and the Courts. Some of those restrictions are discussed further below.

Spatial and thematic constraints

S106 funding, in the vast majority of cases, is linked geographically to the development from which they it derives: it must be spent in the vicinity or locality of the development. In every case, it must be spent such that the impact of the development is mitigated in some way. Projects should be focussed where recent or likely future development pressures are highest and whilst these tend to be within the borough’s Growth Areas and Housing Zones, it is not limited to them.

Similarly, the funding is in the vast majoring of cases secured for infrastructure falling into four broad themes of Education, Sustainable Transportation, Open Space and Sports. Funding for infrastructure not falling within these themes will be limited and spatially highly specific. Community Safety and Community Facilities are not core themes for S106 and only very limited funding is held in very specific circumstances.

To mitigate the impact of development

As a principle, providing funding for relevant infrastructure is an important means by which development can help to mitigate the impact an increased population can have on a local area and its amenities and social infrastructure; therefore new or expanded social or physical infrastructure in areas of greater development pressure will be prioritised over minor improvements to existing infrastructure in areas of low development pressure.

There is a distinction between projects which improve existing infrastructure to the extent that capacity is increased and projects with a narrower focus that might be better considered as maintenance works and should be funded from other sources.

To support the development of the area

A further principle is that, wherever possible, projects will be prioritised where they would help to generate further investment in the borough; as such the Regeneration Investment team will be closely involved in identifying or assessing projects and Service Unit liaison officers and project managers will be expected to work closely with that team.

Capital v Revenue

S106 funding is in the vast majority of cases capital, not revenue funding. It is however, recognised that some projects which are designed and managed by council officers or external consultants can incur fees; therefore reasonable professional fees can be included but an estimated percentage should be clearly identified from the beginning of the project's development. It is not acceptable to claim funds for management oversight or other overheads.

Local Context - Brent

CIL

Brent Community Infrastructure Levy (CIL) was formally introduced from 1 July 2013. Brent is also a collecting authority for the Mayor of London's CIL which was introduced from 1 April 2012. In accordance with the CIL regulations, the Council can only spend the majority³ of CIL on infrastructure which supports the development of the area. This is, however, a broader range of spend that is typically permitted under S106 and can include:

- Provision of infrastructure;
- Improvement of infrastructure;
- Replacement of infrastructure;
- Operation of infrastructure;
- Maintenance of infrastructure; and
- Addressing the demands of development.

CIL is not restricted to the area where the development from which it was derived took place, in fact CIL could be spent outside of the borough by a third party if it was felt that would best help development of Brent. CIL can be pooled in a number of ways and could be spent on a single item of infrastructure if that was deemed to be the best use of the funds.

The flexibility of CIL makes it a tempting source of funding for niche projects that would not otherwise secure Council funds in the current financial climate, however it is important to note that there is an opportunity cost to every spending decision that is made and the

³ Excluding CIL Neighbourhood Fund (at least 15%) and administration costs (5%)

flexibility of CIL makes it, in effect, the same as Council Capital Funding and therefore needs to be treated with similar levels of rigour when being allocated.

CIL Neighbourhood Fund

Brent will be split into a number of “CIL Neighbourhoods”; at present, the plan is to use the five Brent Connects forum areas as five “CIL Neighbourhoods”. The Neighbourhood Fund component will be retained in the “CIL Neighbourhood” in which the development takes place and, therefore, where the CIL receipts are collected (subject to exceptions where the funding is used to provide infrastructure beyond the CIL Neighbourhood boundaries that nevertheless has benefits for the CIL Neighbourhood).

Officers will engage with the communities of the “CIL Neighbourhoods” and their representatives to scope suitable projects. Officers will use information from the planning application process, the SIP and input from Service Areas and other officers to support the development of suitable projects.

S106

A new process was introduced in 2015 giving greater oversight to Members and the senior management team and to ensure S106 money is spent on projects that meet the Council’s strategic objectives, necessitating a greater co-ordination and facilitation role for Planning & Regeneration, officers from which, will have an overview of all projects by theme and area and will work to ensure the quality and value for money of projects.

The process is an annual one, following the financial year and beginning in late April after the final accounts for the previous financial year have been settled, to ensure a stable baseline is established. It follows the basic process set out below:



3. Legislation and Government Policy

On 19 November 2015, the Secretary of State for Communities and Local Government announced a review of the Community Infrastructure Levy (CIL) and commenced a consultation to identify issues for the review process.

The purpose of the review will be to assess the extent to which CIL does or can provide an effective mechanism for funding infrastructure, and to recommend changes that would improve its operation in support of the Government’s wider housing and growth objectives. The Group will make specific, prioritised recommendations that provide a

clear basis for improving the current system of collecting developer contributions to infrastructure delivery. The recommendations will also take account of the Government's pre-election manifesto commitment that "*when new homes are granted planning permission, we will make sure local communities know up-front that necessary infrastructure such as schools and roads will be provided*".

The consultation will close on the 15th January 2016 and by the end of March 2016, the Group will prepare a report for the Minister for Housing and Planning to consider. The report will include:

- An assessment of whether CIL is meeting its objectives and any recommendations for future change;
- An assessment of the relationship between CIL and Section 106, and how this is working in practice;
- An analysis of the operation of the CIL system and specific recommendations of how it could be improved; and
- An assessment of how CIL is deployed by local authorities both to deliver infrastructure and to support community engagement.

4. What are the main issues?

- Clarity and understanding of the role of elected members in the s106 & CIL decision process;
- The role of the local community and Brent residents in the s106 & CIL decision process;
- Clarity and understanding of legislation, where funds can and can not be spent.
- Services/departments not spending funds in time and returned unspent funds; and
- A change to officer's who champion planned projects, meaning the vision and drive for certain funding projects are lost.

5. What should the review cover?

There are four key areas that the review will focus on:

South Kilburn

The review will use South Kilburn as a live case study to see how S106/CIL are working in practice and what we can learn.

Policy

- An evaluation of Brent's current and previous s106 and CIL policies and processes; this should include looking at:
 - Brent priorities and links to the borough plan and service plans;
 - charging rates for s106 and CIL;
 - different models of member and public engagement; and
 - Lessons learnt and plans for the future.
- An evaluation of Brent's current s106 and CIL policies, processes and performance in comparison with other local authorities.

Engagement

- The involvement of elected members in the decision making processes for s106 and CIL funds; and
- Explore how Brent residents can be more actively engaged in the scoping and planning process.

Funding

- Analysis of how funds have been spent and plans for spending future funds;
- Explore how fund can be spent on more discretionary services, such as youth services, libraries and sports facilities; and
- Analysis of funds in reducing negative social impacts.

Future Planning

- Prioritising Brent's needs as outlined in the borough plan; and
- S106/CIL status for upcoming/ future development plans.

6. How do we engage with the community and our internal and external partners?

As part of this review the task group will invite relevant partners to get involved; through workshops, public group discussions and one-to-one interviews.

Partners: Group 1

- Relevant Council Departments:
 - Planning & Regeneration Team
 - Regeneration Policy Team
- Brent partners:
 - Brent Housing Partnership (BHP)
 - Local Developers
 - CVS Brent
- Local Groups:
 - Sudbury Town Neighbourhood Forum
 - Harlesden Neighbourhood Forum
 - The Unity (Church End and Roundwood) Neighbourhood Forum

Partners: Group 2

- Department for Communities and Local Government (DCLG);
- Planning Advisory Services (PAS);
- House Builders Federation (HBF);
- Quod - Specialist independent consultancy; and
- Best Practice Local Authorities:
 - LB Westminster
 - LB Haringey
 - LB Croydon
 - LB Hammersmith

7. What could the review achieve?

The review will strive to ensure that:

- That there is further transparency and better understanding of the policies and processes regarding s106/CIL funding;
- Brent council is achieving the best financial outcomes for the borough with its current section 106/CIL agreements;
- That all outcomes are linked to the borough's priorities and needs via the borough plan; and
- Flexibility is build into the section 106/CIL process to ensure that communities and councillors are engaged in making funding decisions.

Appendix B

Section 106 (s106) and Community Infrastructure Levy (CIL) MEMBERS TASK GROUP TERMS OF REFERENCE

A. CONTEXT

Community Infrastructure Levy (CIL)

The Community Infrastructure Levy is a planning charge, introduced by the Planning Act 2008 to provide a fair and transparent means for ensuring that development contributes to the cost of the infrastructure it will rely upon, such as schools and roads.

The Community Infrastructure Levy (the levy) is a tool for local authorities in England and Wales to help deliver infrastructure to support the development of the area. The levy may be payable on development which creates net additional floor space, where the gross internal area of new build exceeds 100 square metres. The limit does not apply to new houses or flats, and a charge can be levied on a single house or flat of any size, unless it is built by a 'self builder'.

The levy is charged on new development. Normally, this requires planning permission from the local planning authority, the Planning Inspectorate, or the Secretary of State on appeal. Planning permission can also be granted through local planning orders. Examples are simplified planning zones and local development orders. Development can also be granted consent by Neighbourhood Development Orders including Community Right to Build Orders. Some Acts of Parliament, such as the Crossrail Act 2008, also grant planning permission for new buildings.

The levy applies to all these types of planning consent. CIL is non-negotiable and therefore brings more certainty and transparency to the development process than the system of planning obligations which could cause delay as a result of lengthy negotiations; however, developments may still require a legal agreement to control other aspects of the development like sustainability or affordable housing. The Government decided that this tariff-based approach provides the best framework to fund new infrastructure to unlock development.

Charities and Social Housing has relief from CIL on application, as do large residential extensions or annexes and self built dwellings. Relief can also be granted in exceptional circumstances where CIL has an unacceptable impact on the economic viability of development. Decisions on whether to grant exceptional circumstances relief will be made by the Strategic Director of Regeneration & Growth in consultation with the Lead Member.

The Council can take land or infrastructure as payment towards CIL instead of money, provided that the payment is equivalent to the amount of CIL liable. It is at the Council's discretion to accept such an offer and decisions on this will be made by the Operational Director of Planning & Regeneration.

CIL Neighbourhood Fund

Brent must spend a minimum of 15% of CIL receipts in consultation with the local community,

subject to an annual cap of £100 per dwelling in the area⁴. This neighbourhood component (“the Neighbourhood Fund”), like the Strategic Fund, should be spent on infrastructure to support the development of the area but can also be spent on a broader range of items than the strategic part of CIL: on the provision, improvement, replacement, operation or maintenance of infrastructure; and anything else that addresses the demands that development places on an area. The Neighbourhood Fund can also be used to provide affordable housing.

Areas that have an adopted Neighbourhood Development Plan (“Neighbourhood Areas”) benefit from an increase in the neighbourhood component of CIL to 25%⁵.

Section 106

Section 106 (S106) agreements, also known as planning obligations, are agreements between developers and local planning authorities that are negotiated as part of a condition of planning consent.

The Town and Country Planning Act 1990 (the ‘1990 Act’) enables local authorities to negotiate contributions towards a range of infrastructure and services, such as community facilities, public open space, transport improvements and/or affordable housing.

Where an application is made for planning permission to undertake development on land within the area of a local planning authority, Section 106 of the 1990 Act allows the local planning authority and any person interested in the land to secure by a deed certain obligations which mitigate the harmful impact of the proposed development.

These obligations can:

- restrict the development or use of the land in any specified way;
- require specified operations or activities to be carried out in, on, under or over the land;
- require the land to be used in any specified way; or
- require a sum or sums to be paid to the authority.

The Community Infrastructure Levy Regulations 2010 set out the statutory criteria (the ‘necessity test’) for when a planning obligation may constitute a reason for granting planning permission for the development; that is when the obligation is:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

B. PURPOSE OF GROUP

A Council Members’ task group chaired by an elected member and coordinated by a council Scrutiny officer was set up in February 2016. Sponsored by the Scrutiny Committee, the aim

⁴ The annual cap is subject to indexation

⁵ This is also the case for CIL from developments not in an area with a neighbourhood development plan in place, but granted permission by a Neighbourhood Development Order made under section 61E or 61Q (community right to build orders) of the Town and Country Planning Act 1990.

of task group is to collate, review and evaluate evidence gathered from various sources; which include Brent's Planning & Regeneration Team and Regeneration Policy Team, Brent partners such as Brent Housing Partnership (BHP) and local developers. The task group will also engage with local groups and NGO and central government organisations which include the Department for Communities and Local Government (DCLG), Planning Advisory Services (PAS), House Builders Federation (HBF) and Quod a specialist independent consultancy.

It will also be vital for the task group to consult with other local authorities, specifically the London boroughs of Westminster, Haringey and Croydon; who have been singled out for their good work.

The objectives at the time were:

1. Liaise with stakeholders to gather evidence.
2. Use reviewed evidence to inform findings and recommendations for fully utilising Section 106 and Community Infrastructure Levy and funds in Brent.

C. AIMS & OBJECTIVES

Aim of the task group is to establish whether Brent council is achieving the best financial outcomes for the borough with its current section 106/CIL agreements and; how to ensure that flexibility is build into the section 106/CIL process to ensure that communities and councillors are engaged in the making of funding decisions.

- **Aims**

The aims of the task group form four main themes

South Kilburn

The review will use South Kilburn as a live case study to see how S106/CIL are working in practice and what we can learn.

Policy

- An evaluation of Brent's current and previous s106 and CIL policies and processes; this should include looking at:
 - Brent priorities and links to the borough plan and service plans,
 - charging rates for s106 and CIL,
 - different models of member and public engagement, and
 - lessons learnt and plans for the future
- An evaluation of Brent's current s106 and CIL policies, processes and performance in comparison with other local authorities.

Engagement

- The involvement of elected members in the decision making processes for s106 and CIL funds.
- Explore how Brent residents can be more actively engaged in the scoping and planning process.

Funding

- Analysis of how funds have been spent and plans for spending future funds.
- Explore how fund can be spent on more discretionary services, such as youth services, libraries and sports facilities.
- Analysis of funds in reducing negative social impacts.

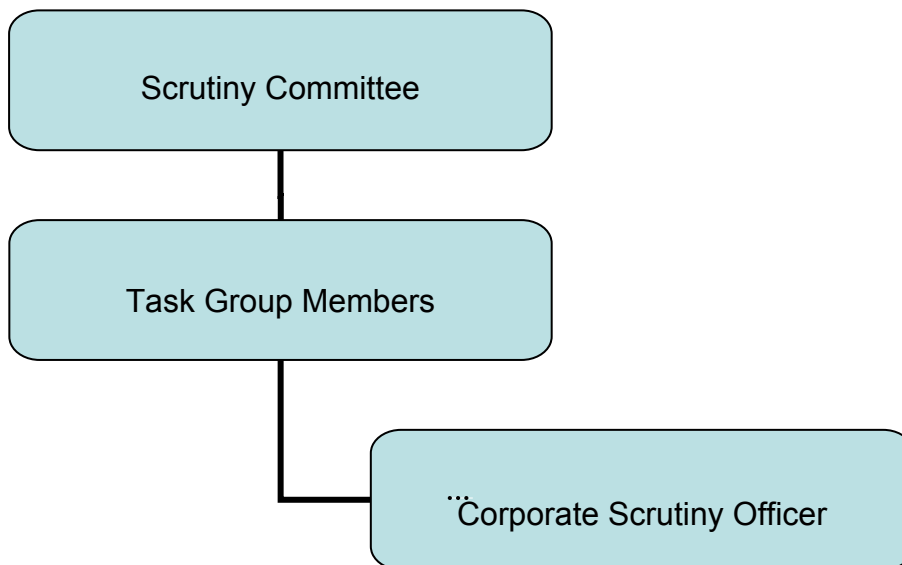
Future Planning

- Prioritising Brent's needs as outlined in the borough plan.
- S106/CIL status for upcoming/ future development plans.

Objectives

- That there is further transparency and better understanding of the policies and processes regarding s106/CIL funding.
- Brent council is achieving the best financial outcomes for the borough with its current section 106/CIL agreements.
- That all outcomes are linked to the borough's priorities and needs via the borough plan.
- Flexibility is build into the section 106/CIL process to ensure that communities and councillors are engaged in making funding decisions.

D. GOVERNANCE & ACCOUNTABILITY



E. MEMBERSHIP

1. Cllr Harbi Farah (Chair)
2. Cllr Wilhelmina Mitchell Murray
3. Cllr Milli Patel
4. Cllr Mary Daly
5. Cllr Bhagwanji Cohan
6. Mr Faraz Baber

Kisi Smith-Charlemagne – Scrutiny Officer

Other key stakeholders would be invited as appropriate.

F. QUORUM & FREQUENCY OF MEETINGS

There should be at least 2 members present at each meeting. A minimum would be the Chair, and another member of the task group. The task group will meet twice per month or approximately every two weeks with sub meetings held between the chair and the Scrutiny Officer as required.

G. DATE OF REVIEW

Start: February 2016

End: Scheduled for presentation to the Scrutiny Committee on 5 April 2016.