



SCRUTINY

**COMMUNITY
INFRASTRUCTURE LEVY
(CIL) & SECTION 106
TASK GROUP
REPORT**

JULY 2016

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1. THE CHAIR'S FOREWORD

I am pleased to present, on behalf of the members of the task group, the findings arising from the community infrastructure levy and section 106 task group, set up to establish whether Brent council is achieving 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 make sure that communities and councillors are engaged in the making of funding decisions.



The task group was established following a request to the Scrutiny Committee. 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. The reason for undertaking the task was to address concerns raised regarding the effectiveness of the S106 and CIL funding process and also to establish if sufficient policies were in place for engagement with Ward Members and local communities and that steps are being taken to enable these groups to contribute to the decision making process. As well as the effectiveness of current communication and ongoing engagement with Ward Members and local communities throughout the process.

This report highlights a number of areas for improvement, and by the time the task group started its work I observed an increasing level of communication improvements and assurance being made. This task group's primary concern was gaining a full understanding of the purpose of Section 106 and CIL contributions, and the processes used in monitoring and allocating them.

The task group was pleased to receive information from officers at Brent Council, local developers, voluntary sector and neighbourhood forums as well as the chair of planning committee in respect of their processes. The emerging picture in relation to the impending Housing and Planning Bill was also looked at. This is the subject of current consideration by officers, and the group felt it would be beneficial to receive further information on this topic at a later date.

I would like to thank my fellow Councillors for their work over the course of the review, and officers for their supporting contributions.

**Cllr Harbi Farah, Welsh Harp Ward
July 2016**

2. TASK GROUP MEMBERSHIP



Cllr Harbi Farah (Chair)



Cllr Mary Daly



Cllr Wilhelmina Mitchell-Murray



Cllr Mili Patel



Cllr Chohan Bhagwanji



Mr Faraz Baber

3. EXECUTIVE SUMMARY

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.

Brent must spend a minimum of 15% of CIL receipts in consultation with designated neighbourhood planning forums, subject to an annual cap of £100 per dwelling in the area. Areas that have an adopted Neighbourhood Development Plan (“Neighbourhood Areas”) benefit from an increase in the neighbourhood component of CIL to 25% which is uncapped.

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.

The task group has made over twenty six individual recommendations, spread across the four key questions outlined in its Terms of Reference. The recommendations have been grouped into one of five discovery themes which the task group believes should form the basis of Brent Council’s future Community Infrastructure Levy (CIL) and Section 106 (S106) policies.

1. Best practice

The council’s planning department should actively seek examples of excellent practice regarding CIL collection and allocation; and the obligations stated in section 106 agreements from other local authorities and integrate these into its own long term strategy, whilst always ensuring that systems in Brent are designed to respond to the borough’s unique needs. Performance targets should be carefully set, measured and benchmarked against other local authorities.

2. Engagement and Consultation

Public engagement in planning gain derived from development across the borough should become a council priority. The council should look for every opportunity to increase public awareness about the way local communities can help to shape their local environment through the planning system, particularly in relation to borough CIL receipts towards major community facilities and localised neighbourhood planning forum CIL receipts for smaller locally defined projects. This should also include wider consultation beyond the Cabinet members, planning committee, local councillors and officers by seeking to reach out to both residents, local businesses and hard to reach groups, particularly the younger and older communities who can participate in decisions about future developments in their local area and across the borough.

3. Alignment with strategic priorities

Brent Council should work to ensure that every development granted is aligned with the council's priorities such as social value that it received at a local/ neighbourhood level. The 2020 Outcome Based Reviews (OBRs) Housing Vulnerable People, Employment Support and Welfare Reform and Regeneration (physical, social and environmental). The council's borough plan 2015-19 Better Place, emphasises increasing the supply of affordable, good quality housing; and Better Lives highlights supporting local enterprise, generating jobs for local people and helping people into work.

It is right the council seek to use their planning gain receipts by reinvesting in projects that can produce a return using the Regeneration Benefit Assessment Tool, however, a balance must be struck on providing for cross sector strategic priorities and using receipts that also deliver local value add where communities directly benefit from development that emerges in their locality, which may not necessarily provide a return on investment – but provides for direct community value

4. Targeted transparency

All decisions about S106 and CIL should be made in a fully transparent way with the ability for the community and business stakeholders, Members (including back bench members whose wards are directly affected) to have the opportunity to engage in the process via different forms of consultation. Overall the council should be seeking to create a more transparent process, with increased focus on providing easy and understandable information for residents, businesses and developers to access to understand both how much money has been collected (on a quarterly basis) and demonstrate how the receipts are being utilised.

5. Working in partnership

In order to ensure that the council are getting the best possible outcomes (financial and otherwise) for the residents, and local business community of Brent, Brent Council should take every opportunity to improve partnership working with developers at a strategic level, supporting good pre-existing individual and team based relationships. Further partnership working should also include council partners such as the voluntary sector, resident associations and established neighbourhood forums. Following the Scrutiny Committee's discussion with the local development community, it was clear that there is a benefit to bring together a local developer forum that can actively engage with elected members on a quarterly basis to share points of view on how things are progressing across the borough and to use it as a vehicle to understand how the local property market across Brent is performing. The local developer forum would be an ideal opportunity to provide for a channel to look at how interested and active developers can support the council in meeting its strategic priorities and objectives.

4. RECOMMENDATIONS

The task group recommend:

South Kilburn

1. The successes of the South Kilburn Project engagement strategies and consultation activities is used as a benchmark when considering how to manage developments across the borough.

Policy

2. There is no clear leadership or responsibility on who is in charge on CIL and S106 and the task group recommend that a named officer assumes direct responsibility, accountability and operates in a more transparent way.
3. A public register is created (taken from the bi annual report and statement) detailing the infrastructure projects that are being funded directly through CIL receipts.
4. The council review its affordable housing policy and the relationship between s106 and CIL, once the Mayor of London announces its housing policy. As part of the review, a forensic independent analysis should be commissioned and reported back in a joint session to the Resources & Public Realm Scrutiny Committee and Cabinet on how the council is meeting its affordable housing targets in light of the introduction of CIL and the Mayor of London targets for social housing.
5. The council ensures that there is better understanding off planning performance in dealing with planning applications – both planning and legal team. This should be done be producing easy to understand guidance via the councils website.
6. The council carry out a review of delegated powers given to officers for spending limits and prioritisation of CIL/ S106 receipts for projects. All variations to CIL and S106 agreements be published quarterly and an agenda item at planning committee policy meetings.
7. The planning department conduct an annual review of S106 agreements and that where developers have not complied with the agreement action plans are included with that report. The task group recommend that that report is considered annually at a planning committee policy meeting and is available for scrutiny.

Engagement

8. The council invite the voluntary sector to submit proposals demonstrating the value they can add to supporting the expansion of Neighbourhood Forums. The council's expectation of the voluntary sector to include setting up viable community action groups, accessing available government funds, organising training for both the Neighbourhood Forums and elected members.
9. The current engagement and consultation process with residents is inadequate and it is recommended that where CIL receipts are to be spent, at least 25% of resident respond, the demographic make-up should be reflective of the population and the location concerned.

10. There is wider consultation with residents groups, faith groups, the business sector, residents associations and elected members before the Community Action Groups go live. The Community Action Groups have clear objectives linked to delivery of Community Development Plan objectives.
11. Elected ward members are involved in the decision making process for developments within their wards. Elected members should also be informed any planning applications in their wards with the view of engaging concerned residents and neighbourhood forums.
12. Provide neighbourhood forum training and support in whichever capacity is possible, in order for residents to create independent and sustainable Neighbourhood forums.
13. Support at the highest strategic level a Brent Developers Forum consisting of elected members and active developers in the borough which meets quarterly to review existing development projects and engages in forward planning. The task group recommend that a subcommittee of the developer's forum works with Community Action Groups to deliver added value to CIL projects.
14. Geographical Information System (GIS) mapping support is provided for voluntary sector organisations and neighbourhood forums, in order for these groups to access site previously and currently being developed.
15. Up-to-date information is provided about S106 /CIL that it is easily accessible and shared online and regularly email to members, neighbourhood forums and voluntary sector.

Funding

16. A bi –yearly report and financial statement is provided, outlining CIL receipts every six months showing the income and expenditure on specific projects funded through CIL receipts should be provided to the Cabinet. An annual Report summarising CIL receipt income and expenditure should be published and presented to the Full Council annually together with a draft forward plan of strategic projects to be funded over the next year.
17. Neighbourhood CIL receipts are accounted for and a reporting and expenditure mechanism is established between the Council and designated Neighbourhood Planning Forums.
18. A more flexible allocation of CIL receipts beyond schemes that are prioritised through the Regeneration Benefits Assessment Tool (RBAT). The task group recommend that the Council review the Regeneration Benefits Assessment Tool (RBAT) after it has been operating for three years.
19. Consideration is given for borough CIL receipts use in the wider local communities (in both areas with and without Neighbourhood Planning Forums).

Future planning

20. A review of its CIL viability assessment test is commissioned to see if all the CIL receipts rates are viable and that it is not deterring the council's policy objectives in achieving its affordable housing targets.
21. Maximise the expertise and resources, directly or in kind of the development community and facilitate in partnership with CVS Brent, dialogue between developers and community/residents and neighbourhoods forums to work on community issues.

22. We recommend that S106 agreements are available to the Planning Committee as part of planning committee reports. We recommend the council review the viability of travel plans and ensure that detailed travel plans are included in all reports going to the planning committee. The council's planning officers should provide an in-depth and detailed briefing of the developments with regard to viability, CPZ and travel plans to the planning committee before the application is made.
23. Council planning negotiators ensure that agreements are aligned with council priorities, has political oversight and accountability in order to take full advantage of future development/ regeneration opportunities; this includes priorities such as social value and employment.
24. The task group recommend that at least half of the Planning Committee members serve two years terms at any given time and all committee members and relevant committee members involved in housing and regeneration receive relevant up to date training on planning development and viability policy and practice issues.
25. The task group recommend regular strategic meetings on future regeneration issues is held between officers, the cabinet and chair of planning committee.

5. INTRODUCTION – SCOPE OF THE TASK GROUP

Background

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-build 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.

Mayoral CIL

London boroughs, including Brent Council also have to collect a CIL receipt towards contributing £300m from a mayoral CIL to pay for Crossrail. The borough collects this CIL payment on behalf of the Mayor from development liable to pay the CIL charge. In Brent, the current Mayoral CIL charge is £35m² (Zone 2). Other rates are £50m² in Zone 1 and £20m² in Zone 3

Brent CIL rates

Brent Council have adopted their CIL charging schedule and apply the following rates for new eligible development:

CIL Neighbourhood Fund

Brent must spend a minimum of 15% of CIL receipts in consultation with designated neighbourhood planning forums, subject to an annual cap of £100 per dwelling in the area. 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 that can be funded through 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 if the For a have identified this as a priority they wish to see delivered.

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

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:

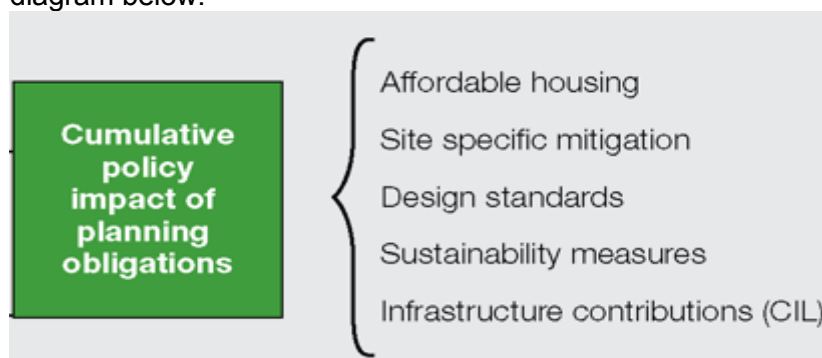
- restrict the development or use of the land in any specified way;
- require specified operations or activities to be carried out in, on, under or over the land;
- require the land to be used in any specified way; or
- require a sum or sums to be paid to the authority

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

Section 106 contributions are also used to collect affordable housing contributions but are based on the viability assessment having taken account of the cumulative planning obligations of CIL, s278 agreements and s106 agreements to make the development acceptable in development terms.

This cumulative set of planning obligations required from an applicant can be shown in the diagram below:



Questions

The review considered the following questions in five key areas:

South Kilburn

- What were the key contributing factors to the success of South Kilburn?
- What can we learn?
- How can we emulate these practices across the borough?

Policy

- What are the council's current S106 and CIL policies and processes?, this includes:
 - How policies are aligned to the council's priorities?
 - What are the council's charging rates for CIL and priority S106 obligations?
- How does the council's current S106 and CIL policies, processes and performance compare with other local authorities?

Engagement

- What is the engagement model used?
- What is the involvement of elected members in the decision making processes for s106 and CIL funds?
- How can Brent residents become more actively engaged in the planning and development of local infrastructure?

Funding

- How funds have been spent and plans for spending future funds?
- How can funds be spent on more discretionary services, such as youth services, libraries and sports facilities?
- Can CIL & S106 funds be spent on mitigating negative social impacts?

Future Planning

- What are the council's priorities for future infrastructure in the borough?
- What is the status of impending S106 & CIL agreements?

Aims

The aims of the review set out at the start of the investigation were as follows:

- That there is further transparency and better understanding of the policies and processes regarding s106/CIL funding.
- Brent council is achieving the best 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 built into the section 106/CIL process to ensure that communities and councillors are engaged in making funding decisions.

6. METHODOLOGY

As part of this review the task group invited relevant partners to contribute through discussion groups, meetings and visits. Primarily, the task group started by collecting information about the national, regional and local picture on the use of CIL and S106. This included meetings with the Heads of Service for Planning and Regeneration and the Lead Cabinet Member.

The task group decided to hold five themed discussion meetings which reflected the key areas of the review (Policy, Engagement, Funding, Future Planning and Voluntary Sector) and met with the project manager for the South Kilburn development. Local residents' groups were invited to attend along with officers and partners. As part of these discussion groups other local councils attended and added their knowledge which enriched the quality of the discussions held. Given the focus on identifying good practice elsewhere, the group consulted with the LB Ealing, LB Camden, LB Lambeth, LB Haringey and LB Wandsworth.

Partners: Group 1

- Relevant Council Departments
- Brent partners
- Local Residents Groups
- Local Business Groups

Partners: Group 2

- Department for Communities and Local Government (DCLG)
- Planning Advisory Services (PAS)
- House Builders Federation (HBF)
- Best Practice Local Authorities

*A full list of participants of the task group's work can be found in section 10 of this report

7. POLICY CONTEXT

7.1. 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 majority¹ 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
- 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 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 allocating.

CIL Neighbourhood Fund

Br The only neighbourhood forum which currently has access to CIL receipts from development derived from their area is Sudbury Town Neighbourhood Forum which has both a designated neighbourhood forum and also a neighbourhood plan which has successfully passed a referendum.

Brent Connects which is split into five neighbourhoods are not eligible to neighbourhood apportionment of CIL receipts as they are not designated neighbourhood forums as defined by the Localism Act 2011. However, Brent Council recognises Brent Connects as a vehicle to engage the community to help shape what the boroughs needs are which can help to inform how the borough CIL receipts are allocated.

Officers must engage with designated Neighbourhood Forums to determine their priorities of neighbourhood and borough CIL expenditure. Brent Council should also liaise with Brent Connects on how the borough CIL receipts should be spent. Officers will use information from

¹ Excluding CIL Neighbourhood Fund (at least 15%) and administration costs (5%)

the planning application process, the Strategic Infrastructure Plan (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:



7.2. National

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.

Planning Act says 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 is in the vast majority of cases linked geographically to the development from which they are derived: they must be spent in the vicinity or locality of the development. In every case, they 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 majority 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.

8. KEY FINDINGS

8.1 South Kilburn Project

As part of the task group's policy discussion meeting with officers and the lead cabinet member, it deliberated the South Kilburn Project (SKP), specifically focusing on s106 obligations and what the council thought were the developments successes and lessons learnt. The task group were informed that SKP has its own Programme Board, a project team that has been working on the project for some considerable time and that the project has been through a period of change with different funding strategies. The SKP started off as a New Deal with Communities (NDC) which had a particular framework of £55 million over 10 years.

It was felt that the project had various success, however, the main reason was due to the land being owned by Brent. Other factors of success included, a very clear strategy from the top on how to deploy and develop the land and working very closely with the communities. The project gave clear reassurances to the existing residents regarding rehousing, which the council has fulfilled. In terms of affordable housing, the SKP is the only development which the council is providing affordable social housing at 50%. The final factor to the success of the South Kilburn project, was that NDC not just in Brent but across the country, spent half its time engaging and capacity building.

The task group also met with the South Kilburn Project Manager, who agreed that the extensive and ongoing engagement and communication with the communities regarding the development including the s106 investment in education, was key to the project's success. More recently the SKP have embarked on ambitious engagement and consultation project for the Woodhouse Urban Park and the land north of Chippenham Gardens

Woodhouse Urban Park – A New High Quality Urban Park Coming Soon to NW6

The engagement board (WHUP Engagement) (*Appendix 1*) identifies the range of consultation sessions, workshops that were held throughout the early lifecycle of the project. The sessions extended to a visit to the Olympic Park Tumbling Bay where residents had the opportunity to gain inspiration for the design of Woodhouse Urban Park – (our appointed architect designed the Olympic Park Tumbling Bay). In addition to the scheduled sessions additional workshops with the local children were held to gain further ideas and input into the play items.

Land North of Chippenham Gardens (LNCG) – 52 New High Quality Homes for NW6

An engagement strategy for LNCG has been developed (*Appendix 2*) and a number of consultation sessions have been held to engage and inform the community, residents and stakeholders of the projects objectives, benefits and progress

In addition to the consultation sessions for LNCG; regular updates are provided in various publications, articles for the press, The Brent Magazine and the SK Connect which enables residents and the local community to be fully updated of the projects process.

Key recommendations

- ★ The successes of the South Kilburn Project engagement strategies and consultation activities is used as a benchmark when considering how to manage developments across the borough.

8.2 Policy

Leadership

From the information gathered through the task group's discussion meetings, it is the opinion of the task group that there is a lack of overall leadership, responsibility and accountability in regards to S106 and CIL. The task group accepts that to date the council has not spent any CIL money to date, in fact, it has been difficult to get an accurate picture of the amount of CIL the borough has managed to collect since it was introduced. The task group has also heard evidence that CIL will be managed through a process identified as a Regeneration Benefit Assessment Tool, although this has some flaws to it based on the tool not recognising that community value can on occasion override the need to invest in infrastructure provision that primarily provides a simple return. There is clear that there is still a lot more work to be done and this will be difficult to achieve without clear direction and leadership.

The task group feel that this also applies to S106, where the council's thinking around S106 does not appear to be linked up or cross cutting, we are missing opportunities to maximise social value and affordable housing delivery. The task group is aware and welcomes the current work being carried out by the council's Employment Skills and Enterprise team to make all major developments within the borough subject to s106 employment, training and apprenticeship obligations (*Appendix3*).

CIL Receipts

In two of the task group's discussion meetings on Policy and Future Planning, the task group felt that there was both confusion and a lack of clarity on whether the Cabinet had agreed that a small proportion of the borough CIL receipts are being allocated to help local resident associations. Some members of the task group were rightly worried that by not being a neighbourhood forum that residents would lose out from accessing CIL receipts to assist their local community on projects they would like to see delivered. Officers and the Portfolio member for housing and regeneration confirmed that there would be a set amount of borough CIL (5% or cash) that could be used towards local resident associations. To date, the task group has seen no evidence or policy paper which outlines whether an apportionment of borough CIL receipts be used ring fenced for local communities who are not designated as a neighbourhood forum for community scale projects. It is important this policy is clarified and that existing neighbourhood forums should not be penalised in accessing this local community wide borough CIL if it wishes to do so either.

A local community CIL the council allocates would resonate well with our earlier recommendation 18 to provide CIL receipts for project that don't necessarily adhere to the RBAT process. In both the Policy & Future Planning discussion meetings, we explored officers' views on how the new CIL charging schedule (London CIL Charge rates LGA *Appendix 4*) in Brent is impacting on the ability to deliver a sufficient supply of affordable housing across the borough. We heard some conflicting views from officers in these meetings. In one meeting, officers cited that 'CIL was being used as an excuse to avoid paying a fair share of s106 affordable housing contributions' through to another session which officers reported to the task group that 'they are one of the highest achieving boroughs to deliver affordable housing contributions from schemes'.

Based on the assumption made at the Policy discussion meeting that some planning officers were not viewing how CIL, s106 and other obligations were adding to a cumulative set of obligations, which would either be viable or not. If officer's had such concerns over whether the council was getting the best planning gain from development, then why has the council not put in place a suitable mechanism or approach that would ensure the best possible deal could be struck. In other words, are viability assessments issued by applicants being

understood by officers or are these perceptions of applicants simply being made without any proper evidence?

Affordable Housing

Conversely, a senior officer in the Future planning meeting made it clear the council is achieving its ability to generate an additional affordable housing take in addition to CIL, so much so, it is one of the highest performing London boroughs to do so. Whilst this on the face value of it is good news, the task group has seen no evidence or paper to support this statement.

Given only anecdotal statements without supporting evidence being produced at any stage of the proceedings despite promises from officers, it is both difficult and impossible to ascertain at this stage what the impact of CIL has had to s106 contributions for affordable housing. It is important when the officers provide a bi-annual statement to the Cabinet and full report to the council (see earlier recommendation) that a full account of what s106 contributions in both cash and % terms is provided so that elected members can see what impact the CIL charging rates are having to affordable housing provision.

At this stage the task group are unable to assess whether CIL is impacting the borough's ability to deliver affordable housing provision at the policy rate stipulated in the local plan.

Delegated Powers

It was reported to the task group that the level of officer's delegated powers was set in accordance with other boroughs and was agreed by cabinet at £250,000. The lead member informed the task group that if this was not the case, cabinet members would be inundated with request to sign off small spending amounts. The task group feel that the delegated powers provided to officers that was set out in the CIL and Strategic Infrastructure Planning report presented to Policy Coordination Group (PCG) on the 19th March 2015 (*Appendix 5*), of £250,000 is quite a large sum. The current arrangements for delegated powers do not provide for sufficient scrutiny of expenditure of receipts and the Cabinet (led by both the housing and regeneration lead) should have greater control and oversight of this process than they currently have. The task group feel that large amounts of CIL expenditure should be brought to members for their final decision.

Key recommendations

- ★ There is no clear leadership or responsibility on who is in charge on CIL and S106 and the task group recommend that a named officer assumes direct responsibility, accountability and operates in a more transparent way.
- ★ A public register is created (taken from the bi annual report and statement) detailing the infrastructure projects that are being funded directly through CIL receipts.
- ★ The council review its affordable housing policy and the relationship between s106 and CIL, once the Mayor of London announces its housing policy. As part of the review, a forensic independent analysis should be commissioned and reported back in a joint session to the Resources & Public Realm Scrutiny Committee and Cabinet on how the council is meeting its affordable housing targets in light of the introduction of CIL and the Mayor of London targets for social housing.

Other Recommendations

- The council ensures that there is better understanding off planning performance in dealing with planning applications – both planning and legal team. This should be done be producing easy to understand guidance via the councils website.

- The council carry out a review of delegated powers given to officers for spending limits and prioritisation of CIL/ S106 receipts for projects. All variations to CIL and S106 agreements be published quarterly and an agenda item at planning committee policy meetings.
- The planning department conduct an annual review of S106 agreements and that where developers have not complied with the agreement action plans are included with that report. The task group recommend that that report is considered annually at a planning committee policy meeting and is available for scrutiny.

8.3 Engagement

Engagement Model

The task group was informed that the current council engagement proposal is to communicate at a CIL neighbourhood level which is effectively the same level as the Brent Connects level, so that the boundaries of those will be the same. The council is not considering having conversations specifically at ward level but at a wider level. The reason for taken this approach as appose to engaging at the ward level, is purely to do with how we resource this and what is a proportionate response. Another reason for the council's approach not being at ward level is that some wards have little to no CIL funds, even dividing the borough into five ward areas for neighbourhood CIL, 3 of those areas have less than £100,000. If drilled down even further, the council feel there would be a resource issue of trying to manage a very small pot of money within an area that has little development with council resources that are restraint in the current environment.

- Harlesden £40,000
- Kilburn & Kensal £80,000
- Kingsbury & Kenton £400,000
- Wembley £1.4 mil
- Willesden £90,000
- Sudbury Town £0

The council have stated that this is still a work in progress and that they are trying to ensure that a robust system is in place. The council feel that it still has some time, as Sudbury Town is the only neighbourhood forum with a designated plan, but has no CIL funds just yet. The council are conscious that it has been some time since it adopted CIL and it is a priority. The council don't believe that it would be prudent to promise whatever a local forum wants it will be able to support, however it would do its upmost to support it. In terms of CIL it was agreed at cabinet that the council would set up Community Action Groups (CAG).

The role of the community action groups will be to work at a grass roots level to develop small scale local interventions and projects which enable community action to have a real impact, utilising the networks, resources and assets within each locality. The final paper is yet to be agreed. The PCG discussed setting up CAGs with ward councillors specifically to work closely with the CAGs for the delivery of CIL. This is not to replace neighbourhood forums, it is completely separate, there are a number of ways of bringing the community together to make decisions on CIL, however as the CAG are still being trialled, ward level is too detailed, and there are established neighbourhood forums; the council needs to agree the most fair and appropriate level to engage and decide spending priorities. The expectations is that ward councillors will help to identify appropriate groups, working together for the delivery of CIL in the borough.

There is currently three pilots community action groups (*Appendix 6*) and the council will look at how those mechanisms will work, to ensure the information comes forward and how that can be linked to funding from the projects that the community wants to see. This does not mean that we cannot also take on board the views that are coming out of Brent Connects. Under our constitution no decisions are delegated to a single community group, so in fact ideas from the community action groups, will be in conjunction with ideas coming from Brent connects; all of these groups are sources of information to support members in making informed decisions.

As part of the task group's work it reviewed the CIL engagement processes of several other councils. The council's proposal and approach is similar to a number of other authorities. Council officers attend the CIL collection group, which is hosted by TfL on behalf of the Mayor,

it's an opportunity for all London boroughs that deal with CIL to come together and discuss common interests. Some of the work done in benchmarking the councils approach was carried out through this group, Brent Council are not too dissimilar to the majority of authorities who have a system in place.

- LB Ealing: While there are no governance procedures in place yet, LB Ealing intend to do the same as Brent interns of administrative boundaries. The three neighbourhood forums which are established would receive the maximum 25%.
- LB Wandsworth: Similar to Brent and divided among 5 boundaries.
- LB Lambeth: Similar to Brent and divided among 7 boundaries.
- LB Camden: Camden is in the minority and is divided via wards.

Voluntary Sector and Residents' Associations

The task group met with the voluntary sector and resident associations from across the borough, who live and work in Brent, have valuable skills and knowledge and are a vital element of the community network. The task group believe that groups such as these should also be included in the engagement processes and feed information into the members and contribute to the decision-making process. Further investigation will need to be undertaken to establish suitable candidates, it is envisaged that CVS Bren will lead on this work.

The voluntary sector and resident associations welcomed the opportunity to engage with the task group and are very keen to be a part on the Neighbourhood CIL engagement process. To date, they have had no communication with the council and have little knowledge of the CIL regulations.

Information and Communications

Beyond keeping a log of which areas are entitled to receive additional money, there is no advice been given to the neighbourhood forums, the council is in the process of recruiting to a post to do just that. The CIL fund is now at £15 million, an amount where the need for support is required and the council should ensure that it is linked to designated neighbourhood forums in the borough, the community action groups, voluntary sector and resident associations and Brent connects. There is a significant link to council resources, if we look at Westminster who have 12 area forums to manage, if Brent had these numbers the planning team would simply be overwhelmed, with not just localised plan making but also with the income expenditure of CIL receipts. It is also important the forums themselves keep in contact with the council.

The Neighbourhood fund presents an opportunity for the council to have conversations with the local community on a much more regular basis on what their priorities are on the local infrastructure; not just for CIL but for s106 also. The council are proposing a register for local infrastructure priorities and schemes; it will be a resource that is refreshed and updated with input from residents, the community and members. This will not just be for CIL and s106, but for other services of the council to identify projects within their local areas and strategies as part of the borough plan.

The council has stated that it will also have a strong online presence, effectively a voting system where people can register their views.

Neighbourhood Forums

It is clear little or no training or support is being provided to both residents associations or elected members on how and what neighbourhood forums are. The Sudbury Town Neighbourhood Forum only came about because it has a strong community base emanating from the Sudbury Town Residents Association which had a strong desire to adopt the localism

agenda with the support of local councillors. Clearly, there is merit in the council providing a platform to both share best practice to both residents associations who may wish to convert to a neighbourhood forum and separately to all elected Members' so that they can also engage their own local communities in the process. At present, there is no support in place to help elected members' and resident associations alike to promote the neighbourhood forum model and this needs to be resolved with some degree of urgency. Failure to not tackle this issue early on could lead to unnecessary resentment between bordering local communities where established neighbourhood forums exist and where they don't. London Neighbourhood Forums (*Appendix 7*)

Key recommendations

- ★ The council invite the voluntary sector to submit proposals demonstrating the value they can add to supporting the expansion of Neighbourhood Forums. The council's expectation of the voluntary sector to include setting up viable community action groups, accessing available government funds, organising training for both Neighbourhood Forums and elected members.
- ★ The current engagement and consultation process with residents is inadequate and it is recommended that where CIL receipts are to be spent, at least 25% of resident respond, the demographic make-up should be reflective of the population and the location concerned.
- ★ There is wider consultation with residents groups, faith groups, the business sector, residents associations and elected members before the Community Action Groups go live. The Community Action Groups have clear objectives linked to delivery of Community Development Plan objectives.

Other recommendations

- Elected ward members are involved in the decision making process for developments within their wards. Elected members should also be informed any planning applications in their wards with the view of engaging concerned residents and neighbourhood forums.
- Provide neighbourhood forum training and support in whichever capacity is possible, in order for residents to create independent and sustainable Neighbourhood forums.
- Support at the highest strategic level a Brent Developers Forum consisting of elected members and active developers in the borough which meets quarterly to review existing development projects and engages in forward planning. The task group recommend that a subcommittee of the developer's forum works with Community Action Groups to deliver added value to CIL projects.
- Geographical Information System (GIS) mapping support is provided for voluntary sector organisations and neighbourhood forums, in order for these groups to access site previously and currently being developed.
- Up-to-date information is provided about S106 /CIL that it is easily accessible and shared online and regularly email to members, neighbourhood forums and voluntary sector.

8.4 Funding

CIL Receipts

It was noticeable from the sessions we held with senior officers' that there was little clarity on the CIL income received and how this was being allocated to the delivery of infrastructure schemes across the council. To date, the task group has not been provided the supplementary information on the CIL income and expenditure it was promised.

A report which outlines a clear narrative explaining how CIL receipts have been allocated to specific projects with an accompanying summary why the project was prioritised is necessary for both transparency and accountability to elected members'. This should be provided bi-annually to the Cabinet and presented to full council by way of a detailed annual report. Providing elected members with this information will help to inform elected members' how planning gain is being used across the borough and help them to dispel any misinformation to their respective constituents that new development is not providing anything back to the local community. At the moment, elected members' are simply unsighted how a major chunk of development gain is being used.

The task group feel that there is still confusion regarding the allocation of neighbourhood CIL receipts. It was also unclear, as the collecting authority, how the council are accounting and managing the neighbourhood CIL apportionment. Officers need to be clear that neighbourhood CIL receipts generated from development from their area is for that neighbourhood forum to spend on local projects they have identified as a priority. The CIL generated for the neighbourhood forum will either be at 15% capped at £100 per dwelling if they have only got a neighbourhood forum (designated) in place or 25% uncapped receipts if they have an adopted neighbourhood plan in place that has passed a local referendum (such as Sudbury Town Neighbourhood Forum). No neighbourhood CIL receipts generated from these designated Neighbourhood Forums can or must be spent in other areas.

The council should establish a clear accounting and reporting structure to these Neighbourhood Forums to enable them to understand how much money they have allocated for their neighbourhood area to spend that has been generated from development derived in their area. Furthermore, the council should work with the Forum to establish what community infrastructure projects they would like the neighbourhood CIL receipts to be spent on and how and when this will be delivered. Currently, there is no clear mechanism in place on how this process is going to work in practice and this should be established with some urgency given that neighbourhood forums are in place across the borough.

Regeneration Benefits Assessment Tool (RBAT)

Whilst the proposal presented to the task group on how the council intend to allocate CIL expenditure to infrastructure projects based on RBAT are laudable; particularly as they seek invest in projects which derive a future financial return (new homes bonus, business rates retention, council tax revenue), there should to be some flexibility which permits local councillors to bid for projects which do not necessarily provide a financial return back to the council, but endeavour to provide some real community value which would not otherwise be funded. It is important local communities and elected Members are able to show they can deliver small/ medium size social infrastructure projects if there is a clear demand and consensus for it which do not otherwise get funded from other conventional pots of money the council has. A good example might be CCTV in areas where the local community has expressed a strong desire to see this installed in their high street, whilst this would be difficult to fund from conventional funding streams, it would be permissible from CIL receipts. Here, the local councillor would be seen to respond to the local needs and the council, whilst not directly getting a financial return, would be viewed in a positive light. It must be remembered,

borough CIL receipts are more flexible in how they are applied than conventional s106 receipts and the council should be more responsive to meet local's needs.

Beyond neighbourhood CIL receipts the borough CIL could allocate a fixed amount (cash or %) of CIL receipts which are allocated for community projects. Prioritising these projects may be done through a variety of engagement processes including elected member sessions to the Cabinet pitch for specific projects through to using established forums such as Brent Connects.

Key recommendations

- ★ A bi –yearly report and financial statement is provided, outlining CIL receipts every six months showing the income and expenditure on specific projects funded through CIL receipts should be provided to the Cabinet. An annual Report summarising CIL receipt income and expenditure should be published and presented to the Full Council annually together with a draft forward plan of strategic projects to be funded over the next year.
- ★ Neighbourhood CIL receipts are accounted for and a reporting and expenditure mechanism is established between the Council and designated Neighbourhood Planning Forums.

Other recommendations

- A more flexible allocation of CIL receipts beyond schemes that are prioritised through the Regeneration Benefits Assessment Tool (RBAT). The task group recommend that the Council review the Regeneration Benefits Assessment Tool (RBAT) after it has been operating for three years.
- Consideration is given for borough CIL receipts use in the wider local communities (in both areas with and without Neighbourhood Planning Forums).

8.5 Future Planning

Development Community

CIL receipts are ultimately derived from development that takes place across the borough. In discussions with developers the Scrutiny learnt:

- Rotation of planning staff (officers) has been challenging for major developers with long term schemes in the borough to maintain relationships; this leads to new officers having to slowly get up to speed on the detail which can slow down progress and be challenging for the developers who are working against a restrictive timeline;
- Planning Performance Agreements which are paid by applicants are not translating to the additional resource that was promised to deal with major planning applications through this bespoke planning service;
- Despite assurances from a senior legal officer in the last task group session that resourcing was not an issue and that their work (Brent legal) is being handled in a timely manner, this was a contrary to the views expressed by the developer group who cited examples (in one case six months) where there were lengthy delays in finalising s106 agreements by the legal department.
- Developers felts the CIL charge was working fine but the s106 contributions towards affordable housing they were being asked to pay were not being seen as part of the cumulative planning obligation (CIL + s106 + other planning gain contributions for local transport). This issue resonates with earlier concerns on how the officers are handling planning applications in the context of CIL and s106 obligations. There is a clear disconnect at present between CIL and s106 affordable housing contributions.
- A major concern and unknown by developers is how the council proposes to spend the CIL receipts – they felt that there was a need for clarity on expenditure which currently lacks any detail.
- On neighbourhood forums, developer's felts the council should fast-track the creation of neighbourhood forums and would happily active engage in these where suitable to do so.
- Would welcome the council to set up a local developers forums with elected members to engage in borough wide discussions (such as the session held at the task group) on a more regular basis. This would act as a channel for dialogue and openness on how applicants are finding the interaction with the council.

Key recommendations

- ★ A review of its CIL viability assessment test is commissioned to see if all the CIL receipts rates are viable and that it is not deterring the council's policy objectives in achieving its affordable housing targets.
- ★ Maximise the expertise and resources, directly or in kind of the development community and facilitate in partnership with CVS Brent, dialogue between developers and community/residents and neighbourhoods forums to work on community issues.
- ★ We recommend that S106 agreements are available to the Planning Committee as part of planning committee reports. We recommend the council review the viability of travel plans and ensure that detailed travel plans are included in all reports going to the planning committee. The council's planning officers should provide an in-depth and detailed briefing of the developments with regard to viability, CPZ and travel plans to the planning committee before the application is made.

Other recommendations

- Council planning negotiators ensure that agreements are aligned with council priorities and has political oversight and accountability in order to take full advantage of future development/ regeneration opportunities; this includes priorities such as social value and employment.
- The task group recommend that at least half of the Planning Committee members serve two years terms at any given time and all committee members and relevant committee members involved in housing and regeneration receive relevant up to date training on planning development and viability policy and practice issues.
- The task group recommend regular strategic meetings on future regeneration issues is held between officers, the cabinet and chair of planning committee.

9. CONCLUSION

The legislation surrounding CIL and S106 is complex, and the direction from central government is primarily focused on CIL. On 19 November 2015, the Secretary of State for Communities and Local Government announced a review of the CIL and commenced a consultation to identify issues for the review process. The purpose of the review is 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.

For many years the collection of s106 developer contributions was undertaken on an ad hoc basis with no overall monitoring, control and reporting back system. It has therefore never been more important for Brent council to ensure that its CIL and S106 policies are fit for purpose and meet the strategic and local infrastructure needs.

This report has set out some key mechanisms by which this can be achieved.

Firstly, it has identified the vital role that public education can play in building confidence in how the council's, collects, and allocates CIL. Increasing public engagement of the facts around CIL is especially important in an era of tightening laws and tightening budgets. It is worth mentioning one of the key differences between CIL and Section 106 contributions is that the monies collected are not linked to site-specific agreements. The monies can, therefore, be used flexibly and creatively to meet local and strategic infrastructure needs. As a consequence, one of the challenges is to decide how to prioritise the spending of CIL receipts in conjunction with other funding streams.

Secondly, it has identified how members can support the council and the community in reaching its infrastructure objectives.

Thirdly, it has shown how additional obligations can potentially yield important social value outcomes.

Fourthly, it has emphasised the importance of a supportive environment for the council's planning and legal staff recognising the great work they do. Remembering developers can "take their foot off the metal" once a scheme has been to the planning committee.

The task group believes that this report provides a range of important recommendations which, when implemented, will lead to improved outcomes for the borough.

We look forward to seeing these changes in action.

10. PARTICIPANTS, REFERENCES AND APPENDICES

Participants

London Borough of Brent:	Strategic Director of Environment & Regeneration
	Operational Director of Regeneration
	Planning, Policy and Projects Manager
	Brent Planning Services
	Brent Legal Services
	Employment & Enterprise Team
	Procurement Team
Brent Elected Councillors	
Government Agencies	Department for Communities and Local Government (DCLG)
	Planning Advisory Services (PAS)
Non-Government Organisations	House Builders Federation (HBF)
	Best Practice Local Authorities
Brent Partners	CVS Brent
	Eritrean Youth and Community Brent and Harrow
Brent Resident Groups	Harlesden Neighbourhood Association
	Sudbury Residents Association
	Queens Park Residents Association
	Kilburn Village Residents Association
	South Kilburn Trust
	Unity Neighbourhood Forum for Church End and Roundwood
	Kilburn Neighbourhood Plan Forum
Developers:	Quintain
	Anthology
	Innisfree
	Notting Hill Housing Group
	Hub Group
	Network Housing
Other Local Authorities	LB Ealing
	LB Haringey
	LB Camden
	LB Lambeth
	LB Wandsworth

References:

The task group referred to a number of reports in the course of its work. Key documents include:

1. National Planning Policy Framework, Communities and Local Government , 2012
2. The Community Infrastructure Levy Regulations, 2010
3. Town and Country Planning Act 1990
4. Community Infrastructure Levy Guidance, Department for Communities and Local Government (DCLG), 2014

Table of Appendix

	Appendices
1	Woodhouse Urban Park (WHUP) Engagement
2	Land North of Chippenham Gardens (LNCG) Consultation Strategy
3	Draft Section 106 Heads of Terms – employment and training obligations
4	London CIL Charge rates LGA
5	CIL and Strategic Infrastructure Planning report presented to Policy Coordination Group (PCG) on the 19th March 2015
6	Developing Community Action Groups (CAGs) and a partnership approach to Brent Connects report presented to Policy Coordination Group (PCG) on the 16th December 2015
7	London Neighbourhood Forums June 2015