



**Executive**  
17 October 2011

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

Wards affected:  
ALL

**Community Infrastructure Levy & S106 Planning  
Obligations**

**1.0 Summary**

This report explains the rationale and approach to the proposal for the Council to charge a Community Infrastructure Levy in respect of development across Brent and concurrent and related changes to planning obligations required by the Council under Section 106 agreements. The changing legislative backdrop to the proposed movement away from the use of S106 Planning Obligations to fund strategic infrastructure and towards the introduction of a Brent Community Infrastructure Levy is explained. The Community Infrastructure Levy will help deliver the infrastructure and investment needed to support the Council's adopted Local Development Framework growth strategy, however a careful balance must be struck between the desirability of funding infrastructure through the Community Infrastructure Levy and the potential impact of the Community Infrastructure Levy on the economic viability of development.

**2.0 Recommendations**

- 2.1 The Executive to give approval to the Director of Regeneration & Major Projects to formally consult on the Preliminary Draft Community Infrastructure Levy Charging Schedule.
- 2.2 The Executive to give approval to the Director of Regeneration & Major Projects to formally consult on the S106 Planning Obligations Supplementary Planning Document.
- 2.3 The Executive to note proposals to increase member and community involvement in the spending of monies secured through S106 Planning Obligations and the Community Infrastructure Levy, and locate internal management arrangements for expenditure on infrastructure to support major projects and growth within the New Initiatives Team.

### **3.0 Moving from S106 to CIL**

3.1 The use of Planning Obligations (S106 agreements), essentially legal agreements between the council and developers that are negotiated through the planning application system, is well known. Their purpose is to mitigate the negative impact of developments or provide new infrastructure created as a result of it. New roads or school buildings are examples. The council has standardised much of the S106 process so that a developer pays a payment related to the number of homes developed. The Government now requires councils to go further with this idea and levy a straight per square metre charge on all development over a given size (100m<sup>2</sup>).

3.2 The new system of regulations will restrict S106 use to site related matters, which are usually relatively minor matters such as access roads, and by 2014, any payment mechanism will have to be through the use of the Community Infrastructure Levy (CIL). The real choice for the council is over timing of implementation. That said, the new CIL offers significant benefits to the council and is recommended by officers to Executive for the following reasons:

- Some developments do not currently pay any S106 but would pay CIL
- The council is likely to increase the amount of infrastructure funding it secures overall
- The council has much more freedom in how it spends CIL, whereas in the past S106 payments have had many restrictions, making expenditure more difficult
- Developers will be clearer about what they have to pay under CIL and this transparency will speed up the planning and development process

3.3 There are some other features of CIL that are also worth bearing in mind:

- A meaningful proportion of CIL must be spent and determined locally, although the regulations do not specify what this should be or what process should be used to determine what is local
- CIL can be varied by area or by type of development but councils are recommended to keep the system as simple as possible
- Education, Health (C2), Affordable Housing, public swimming pools and public transport stations are usually excluded from making any payment
- All payments are made on the net increase of floor space and there is a set formula for timing of payments
- The Mayor of London's CIL charges (proposed on all development in the borough at £35 per m<sup>2</sup> of development) are paid first.

#### **Brent's current S106 system**

3.4 Section 106 agreements (S106) are legal agreements between local authorities and developers, which are usually linked to planning permissions. S106 agreements are drawn up when it is considered any requirements to mitigate the pressure and negative impacts of a development cannot be dealt

with through conditions in the planning permission. New developments place additional pressure on the existing social, physical and economic infrastructure in the surrounding area and, under S106 agreements, planning obligations aim to balance the extra pressure from development, with improvements to the surrounding area, in order to mitigate adverse effects of the development and ensure the development makes a positive contribution to the local area. S106 agreements are not only enforceable against persons entering into the obligation but also against any persons deriving title from those persons, and usually take the form of a legal charge on the land such that they transfer automatically with any change in ownership.

3.5 In 2007 the council adopted a Supplementary Planning Document (SPD) setting out a standardised approach to securing S106 Planning Obligations across the borough. The SPD established a clear formula for calculating a standard charge in respect of certain infrastructure requirements and specifically covers contributions for Education and Training, Transport, Open Space, Sport and where relevant Air Quality. On applications where:

- an additional residential unit is created, £3,000 per additional bedroom is sought (with a 20% discount for affordable housing if supported by the council);
- an increase of over 500sqm in commercial floor space (B1/B2/B8), £25 per sq metre is sought
- No standard charge is applied to other proposed planning uses, albeit relevant contributions are negotiated on a case by case basis.

3.6 The council has successfully secured developer contributions for infrastructure through S106 and over the last year has negotiated 113 agreements and completed 79, securing obligations worth over £8 million in contributions, affordable housing, sustainability, renewables, open spaces and training schemes amongst others. Brent currently holds £13.7m and have secured a further £31.7m which has yet to be triggered. The money currently held is allocated through the agreements entered into in the following way:

- £6.8m is standard charge (Local infrastructure e.g. transport, education, open space)
- £2.2m is only for Transportation
- £1.28m is only for Education
- £0.63m is only for Sports
- £0.58m is only for Parks

Public Art, Environmental Health, Landscape and Housing each have under £0.2m.

The rest is for a combination of service areas, such as Parks and Landscape or Transportation and Parks.

3.7 Annual turnover equates to receipts of approximately £4-5m and spend of £3-5m. The money sits in a separate interest bearing account currently managed through Planning. Most S106 agreements have indexation clauses that protect the value of contributions not yet drawn down.

3.8 Spending of S106 monies has been managed through Planning, although the way monies have been apportioned to projects and works has largely been left to spending services e.g. Transport, Parks and Education. Regular reports on S106 spend used to be made to the Environment Committee, and latterly through Capital spending items through Executive. With a more flexible approach through the use of the standard charge, and the adoption in support of the LDF Core Strategy of an Infrastructure and Investment Framework to support the Council's growth strategy, greater scope has been provided in the ways S106 funding can be used to secure more difficult to achieve items, due to clearer prioritisation of how and where money should be spent, easier S106 pooling arrangements, and use of S106 monies as the council's contribution to a wider funding pot.

#### **4.0 Community Infrastructure Levy**

4.1 The Community Infrastructure Levy (CIL) is a new system of securing developer contributions from planning permissions. The Planning Act 2008 confers the power to charge CIL on certain bodies, known as charging authorities. Local Planning Authorities are the charging authorities for their own areas, however the Mayor of London is a charging authority for Greater London in addition to the Local Planning Authorities. CIL came into statutory force through the CIL Regulations on the 6<sup>th</sup> April 2010.

4.2 CIL is a planning charge on new development that is expressed as a cost per net additional square metre of floorspace, set at the time planning permission is granted and paid upon the commencement of development. Almost all development is expected to contribute to CIL but there are exemptions and reliefs for:

- Minor development (defined as under 100sqm, save where an additional residential unit is created)
- Developments used by charities for charitable purposes
- Affordable Housing

CIL Regulations also allow a charging authority to grant discretionary relief from liability to pay CIL in respect of a chargeable development on proven economic viability grounds.

4.3 A charging authority must apply monies secured through CIL to fund infrastructure to support the development of its area, which is broadly defined as including:

- (a) roads and other transport facilities,
- (b) flood defences,
- (c) schools and other educational facilities,
- (d) medical facilities,
- (e) sporting and recreational facilities,
- (f) open spaces, and

CIL may also be used to fund infrastructure outside a charging authority's area where to do so would support the development of its area, which may help better enable strategic partnerships on infrastructure delivery between neighbouring authorities.

4.4 Brent's Infrastructure & Investment Framework (I&IF) was adopted in May 2009 and sets out the major infrastructure needs of the growth areas and other areas in the borough that require social and transport infrastructure to support growth. This framework indicates global infrastructure costs of development across the borough of just over £286m. Possible funding sources of almost £259m were identified, including an estimate that £110m (or just under 40% of the total costs) could be secured through S106 Agreements. In preparing for the introduction of CIL and in light of reductions and anticipated reductions in public sector capital expenditure, for example education, Officers are currently updating the I&IF. Global infrastructure costs now stand at £406m, with significant pressure on school places requiring greater capital spend on education and driving the bulk of the uplift verses the 2008/09 infrastructure cost figures. Funding sources have fallen in this period, due to the withdrawal of Building Schools for the Future and the reduction in other government capital spending programmes, and therefore the infrastructure investment funding gap has widened.

4.5 A charging authority may apply CIL to administrative expenses incurred in connection with CIL. In relation to a charging authority which collects CIL charged by itself, administrative charges shall not exceed 5% of the total amount of CIL collected. In relation to a collecting authority which collects CIL on behalf of a charging authority (for example London Boroughs who collect the Mayoral CIL), administrative charges shall not exceed 4% of the total amount of CIL collected.

## **5.0 Mayoral Community Infrastructure Levy**

5.1 The Mayor proposes to introduce a new Londonwide Community Infrastructure Levy that is intended to raise £300 million towards the delivery of Crossrail. Consultation on the Mayoral CIL Draft Charging Schedule closed in early July 2011. The levy will apply to development across Greater London and, as above, will be charged on the net additional floorspace of developments of new building of 100sqm or greater, with exemptions and reliefs for charities, health, education and affordable housing. The Mayor intends to charge CIL at the different rates in each of the London Boroughs on the basis that they can expect both transport and economic benefits from Crossrail. The proposed rates are listed below and Brent is zoned at a charging rate of £35 per m<sup>2</sup>.

5.3 The Council considers that the proposed Mayoral CIL presents a number of challenges to development in the borough and has responded to the consultation on the Mayoral CIL Draft Charging Schedule. The next step in the process for setting the Mayoral CIL will be the holding of a public examination, expected to take place in the late autumn of this year. In setting the council's CIL, the council has had regard to the possible impact of the Mayor of London's CIL even though the level will only be determined after examination.

## **6.0 Brent Community Infrastructure Levy**

6.1 The Community Infrastructure Levy is now the government's preferred vehicle for the collection of pooled development contributions to fund infrastructure. The CIL Regulations place limitations on the use of S106 Planning Obligations such that a planning obligation may now only constitute a reason for granting planning permission for the development if the obligation is:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development

On the local adoption of the levy, or nationally after a transitional period of four years, that is 6th April 2014, CIL regulations will also restrict the local use of S106 planning obligations for pooled contributions towards items that may be funded via the levy. Pooled contributions may then only be sought from up to five separate planning obligations for an item of infrastructure that is not locally intended to be funded by the levy. The limit of five applies as well to types of general infrastructure contributions, such as education and transport. The introduction of CIL will therefore undermine the continuation of the council's current use of S106 agreements and approach to pooling S106 contributions through the standard charge to deliver infrastructure.

### ***Local Decisions on Spending CIL***

6.2 The Department for Communities and Local Government have, vaguely, indicated that a 'meaningful proportion' of CIL spending should be decided locally. The council's consultation programme is to go to Area Forums to canvass ideas about how this could work. While the idea of local decisions on CIL spending is laudable, some issues arise. The aim of CIL funding is to support identified infrastructure provision. If local decision makers agreed expenditure on other matters, the council may be at risk of challenge. If the council for example needs CIL funding for a new school for which it has a statutory duty, should decisions be made at more local levels that may divert spending to a different use? Spending on a local school is also local spending but the government implies that there is some distinction between local and council decision making. There are clearly a number of accountability and practical issues to be resolved. It would appear that most authorities are looking at some form of top-slicing of the total revenues from CIL and, in a similar way to ward working, devolving down decision making for that element.

6.3 The matter of local spending is proposed to form part of the council's consultation process but this is not a matter that needs to be resolved immediately. It will not impede the forward process, which is to establish whether the proposed CIL charges are fair and allow development to come forward in the borough. The exact process of local decision making can be debated and firmed up as the lengthy process to get to an adopted CIL charging schedule continues.

6.4 The recent restructuring and the establishment of the new Regeneration & Major Projects Department, with a clear focus on project delivery, means that

whilst the management of the S106 and CIL system will remain located within Planning, the spend side around infrastructure in support of major projects and the Council's five growth areas is proposed to be undertaken through the New Initiatives Team.

### ***Brent's Preliminary Draft CIL Charging Schedule***

- 6.5 The move to Brent CIL will involve statutory consultation of the principles underpinning the scheme and the charging schedule. Brent are required to:
- Prepare and publish a document known as the "charging schedule" which will set out the rates of CIL which will apply in the authority's area. This will involve consultation and independent examination
  - Apply the CIL revenue it receives to funding infrastructure to support the development of its area, and;
  - Report to the local community on the amount of CIL revenue collected, spent and retained each year.
- 6.6 In deciding and setting CIL rates, Brent are required to strike an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area, using appropriate available evidence to inform the draft charging schedule. Brent will be expected to provide evidence at the CIL Examination in Public that the proposed CIL rate would not put at serious risk overall development of the area and to this effect BNP Paribas were appointed to undertake a CIL viability assessment of the impacts of the proposed introduction of CIL on the economic viability of development in the borough. An Executive Summary of the BNP Paribas CIL Viability Assessment is attached as Appendix 1 and the full report is available as a background paper to this report. The financial model has tested the viability of a range of different CIL rates across a sample of sites in different areas within the borough, considers recent completed schemes and planning permissions in the borough, and has been used to inform the council's policy approach and the setting of the CIL rates set out in Brent's Preliminary Draft Charging Schedule.
- 6.7 The BNP Paribas study tests the ability of developments across the borough to yield contributions to infrastructure requirements through CIL. The study uses a standard development valuation methodology that compares residual land values of a range of developments to the sites' current use values, plus a margin to incentivise landowners to release sites for development. The value of potential development schemes is estimated, cost, financing, fees, CIL and profit deducted, and due regard given to policy requirements that residential development contribute towards affordable housing provision. If a development incorporating a given level of CIL generates a higher value than the current use value, plus an appropriate landowner's margin, then it can be judged that the proposed level of CIL will be viable.
- 6.8 The report tests a series of development scenarios and in the main the imposition of CIL is not considered a critical factor in determining whether a scheme is viable or not, with the relationship between scheme value, costs

and existing use value benchmarks being far more important. The report considers that the majority of development schemes should be able to absorb the following CIL rates, inclusive of the Mayoral CIL of £35 per square metre:

	Inclusive of Mayoral CIL	Exclusive of Mayoral CIL
Residential	£200-£300	£165-£265
Hotel	Up to £320	Up to £285
Student Accommodation	£300-£350	£265-£315
Office	£81-£147	£46-£112
Retail	£66-£341	£31-£306
Industrial & Warehousing	Zero	Zero
Community	Zero	Zero

The results of the viability analysis therefore indicate a degree of variation in viability of development in terms of use classes and officers support the report's recommendation that different CIL rates be set for different use classes.

6.9 In setting CIL rates, charging authorities must strike a balance between the need to raise funds to provide the infrastructure to ensure development is sustainable on the one hand, and the potential impact of CIL on the economic viability of development on the other. Setting very high CIL rates on development may on the surface be appealing in raising revenue to contribute to the social, physical and economic infrastructure requirements in an area, however in reality may simply deter development and therefore deliver less infrastructure than a lower rate. Conversely, whilst setting very low CIL rates may offer some encouragement to development, without sufficient infrastructure to support that growth such development could place a heavy and unsustainable burden on existing infrastructure. Officers have therefore considered the findings and recommendations of the BNP Paribas Viability Assessment within the wider context of how the Council's development and growth strategy, as set out in the adopted Local Development Framework, is to be delivered, and the role that CIL has to play within that strategy. Officers have also carried out informal consultation with neighbouring borough to get a feel for what proposed CIL rates can be expected to come forward across West London. Brent's Preliminary Draft Charging Schedule is attached as Appendix 2 and proposes the following CIL rates. The CIL rates are expressed exclusive of Mayoral CIL and are considered to be at levels that can help support the infrastructure and investment required to support growth, without endangering the economic viability of development within the borough, and can be seen to be in line with the BNP Paribas study recommendations and broadly fall within the lower to middle of the ranges set out as able to be viably absorbed by the majority of developments:

- Hotel (Use Class C1), Residential (Use Classes C3 & C4), Residential Institutions except hospitals (Use Class C2) and all Sui Generis uses except Student Accommodation = £200 per square metre;
- Student Accommodation Sui Generis use = £300 per square metre
- Office (Use Class B1a) = £40 per square metre;



- Retail (Use Class A1), Financial & Professional Services (Use Class A2), Restaurants & Cafes (Use Class A3), Drinking Establishments (Use Class A4), Hot Food Takeaways (Use Class A5) = £80 per square metre
- Assembly and Leisure, excluding public swimming pools, (Use Class D2) = £5 per square metre;
- Light Industry and Research & Development (Use Class B1b&c), General Industrial (Use Class B2), Storage & Distribution (Use Class B8), Health, Education, public libraries, museums, public halls and places of worship (Use Class D1a-h)), Hospitals, public swimming pools and public transport stations. = Zero charge.

6.10 Executive are recommended to approval formal consultation on the Preliminary Draft CIL Schedule, which is scheduled to commence at the end of October and close in the middle of December. After consideration of comment and any amendments, Full Council will be required to approve the publication and submittal to the Secretary of State of the Draft CIL Charging Schedule. An Examination in Public will follow. Presuming there are no difficulties or delays in the process, the CIL Charging Schedule could then be adopted by Full Council in the autumn of 2012.

### ***Consultation Strategy***

6.11 A charging authority which proposes to issue a charging schedule must first prepare a preliminary draft charging schedule for consultation. Apart from consulting the Mayor for London the charging authority must also invite representations on the preliminary draft from persons who are resident or carrying on business in its area and at its discretion voluntary bodies and bodies which represent the interests of persons carrying on business in the charging authority's area.

6.12 The Regulations do not prescribe the length of the consultation period. It is considered that six weeks would be an appropriate period in order to ensure that local communities and stakeholders have sufficient opportunity to make their view known. It is for the charging authority to decide how best to undertake the consultation exercise

6.13 The charging authority must take into account any representations made before it publishes a draft of the charging schedule which represents its firm proposals for CIL. A period of at least four weeks is given for representations to be made. The charging authority must then appoint a person to examine the draft charging schedule. The person appointed must be independent of the charging authority and is likely to be one of the Government's Planning Inspectors. Any person who has made representations can request to be heard at the examination.

6.14 It is proposed that Brent's consultation for the adoption of its CIL should be similar to that of its other Development Plan Documents in line with the council's Statement for Community Involvement. It is proposed that the consultation will take place in the following forms:

- Statutory consultees – will be consulted by email, and where appropriate hard copies will be sent out to consultees.
- Local press – Details of the consultation dates and proposed events to be placed within local newspapers to ensure that all residents are aware of the proposals.
- Leafleting and letters – to be sent to relevant individuals and organisations on the Brent’s Local Development Framework database - including neighbouring boroughs, developers, agents, other statutory consultees and service providers.
- Residents and local people – will be approached at Area Consultative Forums. Details of the Charging Schedule proposals will be available at One Stop Shops and libraries.
- Landowners, developers, local businesses and key stakeholders – will be approached via letter, using the Local Development Framework database.
- Mayor of London – consultation letters to be sent to the Mayor of London and Officers to ensure that the Mayor is involved in the process from the first instance.
- Website - The Preliminary Draft Charging Schedule and background evidence including the Infrastructure Investment Framework and Viability Assessment to be published on the council’s Community Infrastructure Levy webpage, to be given prominence on the Planning Service webpage during the consultation. Weblinks to be distributed to all consultees.
- Hard copies – to be placed in all libraries and One Stop Shops across the borough.
- Area Consultative Forums – presentations to be given in September and October to the local forums in order to provide comments on the Preliminary Charging Schedule and identify local priorities in line with proposals in the Localism Bill for a meaningful proportion of CIL to be handed over to the local community. Events to be held at both rounds of consultation.
- Brent Magazine – Details of CIL to be included within the Brent Magazine.

If an address is supplied from consultees at the Preliminary Draft Charging Schedule consultation stage, the council will notify those parties once the Preliminary Draft Charging Schedule is published prior to submission to the Secretary of State for examination. Any individual making representations will also be made aware that they may request the right to be heard by the Inspector at the Examination in Public.

The recommendations of the person examining the draft charging schedule are binding on the charging authority

## **7. Revised S106 Planning Obligations SPD**

- 7.1 In parallel with the introduction of Brent CIL, the Council will need to review the approach taken towards S106 Planning Obligations. The revised S106 Planning Obligations SPD, attached as Appendix 3, sets out the principles for when, where and what form planning obligations will be required by the Council for development in light of the CIL Regulations and proposed introduction of Brent CIL.

7.2 S106 obligations will only be used where the identified pressure from a proposed development cannot effectively be dealt with by conditions and the infrastructure requirement is not covered by CIL. Standard charge will therefore be removed from S106, which will now focus on these mitigations:

- Affordable Housing – including definitions, off site provisions and in-lieu contributions
  - Sustainability, Code for Sustainability Homes, BREEAM
  - Onsite renewable / carbon reduction provision, off site contributions.
  - Permit Free
  - Training provision / notification.
  - Repaving the footway adjoining the development.
  - Travel Plan, including fees and fines.
  - Community Access agreements
  - New Streets
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- Other obligations such as: public access / community agreements, public rights of way; community or affordable workshop space; servicing agreements; CCTV; highways improvements, adoption of new highways (S38 /S278 agreements); listed building improvements; allowance of future connection of the site to any Decentralised Heat / Energy network (in areas with a proposed DHE Network); contributions for loss of D1 space (Policy CP23); contributions for significant under provision of amenity space; join and adhere to the Considerate Contractors scheme.

7.3 Executive are recommended to approval formal consultation on the Draft S106 Planning Obligations SPD, which is scheduled to commence at the end of October and close in the middle of December. After consideration of comment and any amendments, and a successful CIL Examination, the S106 Planning Obligations SPD could be adopted by Full Council in the autumn of 2012.

## **8.0 Financial Implications**

8.1 The present arrangements for the handling and banking of S106 money has been agreed by Finance & Resources and is subject to regular audit, the most recent audit being 2010/11. Non-payments, although not a significant problem, are now handled through the Sundry Debt Recovery Team.

8.2 It is standard practise with most agreements that sums due are index linked to ensure that they do not diminish in value over time. Funds are generally drawn down once triggers on agreements are reached, e.g. 'upon completion of the first 50 dwellings'. Most S106 agreements are prepared by Legal Services and the costs of preparation recovered from the applicants.

### **Estimated CIL receipts vs. Current S106 receipts**

8.3 Members should be very clear that CIL is a different system and that it is not intended to replicate S106 collection. The council must set a rate that meets its infrastructure requirements and continue to bring forward viable

development. Officers have set CIL rates with this in mind. However we have then projected receipt of both so that members could get an idea of the likely outcomes. It is indeed the case that S106 and CIL will be broadly similar on larger scale mixed sites. This is not a surprise because it means that both CIL and S106 are set at rates that have not or will not hamper development. Officers have also calculated the likely annual CIL take against S106. It is predicted that this will be slightly higher than overall s106 annual sums mainly because CIL will be applied to a wider range of development sites and CIL will be applied to developments at a smaller scale than S106. The key principle that Members must have in mind is that CIL provides a reasonable sum for infrastructure without hindering development proposals. The intention is not to set CIL at a maximum - indeed any CIL sum that is too high will prevent development and add nothing to the overall fund.

### ***Reimbursement of expenditure incurred and repayment of loans***

- 8.4 Charging authorities may not borrow on the strength of getting future CIL revenue to pay for a piece of infrastructure early, however CIL Regulation 60 covers circumstances where a charging authority can apply CIL to reimburse expenditure already incurred on infrastructure. Where a charging authority, other than the Mayor, has borrowed money for the purposes of funding infrastructure, it may apply CIL to repay that money, and any interest, if the conditions set out in Regulation 60 paragraphs (4), (5) and (6) apply:

(4) Condition 1 is that the charging authority has collected CIL, or CIL has been collected on its behalf, for at least one full financial year before the date on which CIL is to be applied to repay the money.

(5) Condition 2 is that the total amount to be applied in any one financial year does not exceed the relevant percentage of CIL collected by or on behalf of the charging authority in the preceding financial year.

(6) For the purposes of paragraph (5), the relevant percentage is such percentage as the Secretary of State may direct or, in the absence of a direction, zero per cent.

Secretary of State direction as to the limiting percentage of CIL collected in the preceding financial year, to which a charging authority can apply CIL to reimburse expenditure already incurred on infrastructure, must be made in respect of authorities generally. Therefore any opportunities for a charging authority to frontload infrastructure delivery to help unlock development are limited by central government policy on the matter.

### ***Payment and Non-Payment of CIL***

- 8.5 Part 8 of the CIL Regulations covers CIL administration, including payment arrangements. CIL Regulation 69B (as amended March 2011) sets out requirements for a charging authority to allow persons liable to pay CIL by instalments. The charging authority must publish an instalment policy on its website that states:

(a) the date on which it takes effect, which must be no earlier than the day after the instalment policy is published on the website;

- (b) the number of instalment payments;
- (c) the amount or proportion of CIL payable in any instalment;
- (d) the time (to be calculated from the date the development is commenced) that the first instalment payment is due, and the time that any subsequent instalment payments are due; and
- (e) any minimum amount of CIL below which CIL may not be paid by instalment.

CIL Regulation 70 applies in what is considered to be analogous to most normal cases dealt with under current S106 arrangements, whereby a planning permission is granted for a chargeable development and liability for CIL accepted. Here, CIL is payable in accordance with the charging authority instalment policy save in the case:

- 1) where the charging authority has no instalment policy, when CIL is payable in full at the end of the period of 60 days beginning with the intended commencement date of the development
- 2) where CIL is charged by both a London Borough Council and the Mayor of London and, whilst the London Borough Council has no instalment policy, the Mayor of London has an instalment policy, when CIL is payable in accordance with the Mayor of London's instalment policy.

CIL Regulation 71 applies where nobody assumes liability for CIL and here payment is due in full upon commencement of development.

- 8.6 CIL Regulation 73 allows a charging authority, under certain conditions, to accept one or more land payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development.
- 8.7 Part 9 of the CIL Regulations covers CIL enforcement and measures that a charging authority can take against non-payment of CIL. A number of surcharges can be applied where CIL is legitimately chargeable but liability not accepted or payment not received. Late interest is chargeable at 2.5% above the BoE base rate from the due date of payment.
- 8.8 CIL Regulations 89 through 94 cover Stop Notices, which are not provided for under current S106 arrangements. Stop Notices can be used by a charging authority to require development activity to cease in instances of non-payment of CIL, under certain conditions. Contravention of a Stop Notice is an offence, conviction of which is liable to a fine of up to £20,000.

## **9.0 Legal Implications**

- 9.1 The Community Infrastructure Levy (CIL) is a new planning charge that came into force on 6 April 2010. It allows local authorities to raise funds through a tariff based approach from developers undertaking new building projects in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of development. It applies to most new buildings and charges are based on the size and type of new development. If it decided to levy CIL then the Council as charging authority will have to prepare and

publish a charging schedule. Details of this are contained in this report to which the Director of Legal and Procurement has had an input.

The charging schedule will sit within the Local Development Framework but will not form part of the statutory development plan nor will it require inclusion within the Local Development Scheme.

The Council will still be able to ask for a S106 obligation but limited as explained in paragraph 7.2 of this report.

## **10.0 Diversity Implications**

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

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

## **11.0 Staffing/Accommodation Implications (if appropriate)**

Introducing CIL is expected to require neither more nor less staff.

### **Background Papers**

BNP Paribas Viability Assessment 280911  
Impact Needs / Requirement Assessment 280911

### **Contact Officers**

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