



Planning Committee

16 November 2011

Report from the Assistant Director, Planning & Development

Wards affected:
All

Community Infrastructure Levy-Consultation on Detailed Proposals

1.0 Summary

1.1 The Community Infrastructure Levy (CIL) was introduced by the government in 2008 as a replacement for Planning Obligations (S106) to help fund much needed infrastructure required as a consequence of new development. The government are now consulting on some more detailed proposals concerning the implementation of CIL and how the council should use and account for infrastructure expenditure at a local level. This report responds to the consultation process.

2.0 Recommendations

2.1 That Planning Committee agrees with the responses set out in paragraphs 3.6 to 3.11 of this report to be sent to Communities and Local Government as the council's response to its consultation paper.

3.0 Detail

Introduction

3.1 In October 2011 the Communities and Local Government (CLG) government department sent out a consultation paper on more detailed issues around the collection and expenditure of the Community Infrastructure Levy (CIL). The main areas for consultation are how neighbourhoods should have a direct say in spending the neighbourhood levy, whether receipts should be used for affordable housing.

History

3.2 On 9th March 2011, the Planning Committee received a report on the Mayor of London's CIL. This report set out the general principles around the CIL concept. The idea of CIL is intended to be a more flexible form of Planning Obligation (S106) that allows for the funding of large scale infrastructure projects. In broad terms there is support for such an approach as it will allow the council, for example, to set an overall charge on all developments and then have the flexibility to fund key bits of

infrastructure in a timely manner. There would be less restriction on expenditure than in the S106 system.

- 3.3 In July 2011, officers reported to Executive on the first draft of the borough's own CIL Charging Schedule. The Charging Schedule is set out in Appendix 1 and is now the subject of a six week consultation exercise. The government's consultation on CIL discussed below looks at some of the detailed arrangements that the council may need to undertake to bring CIL forward and also arrangements for agreeing how CIL should be spent, how this should be recorded and reported and how local people should have a say in its spend

The CLG Consultation Paper on CIL

- 3.4 The first issue for consultation is how CIL should be spent and what local involvement there should be in its spend. Clause 103 of the Localism Bill allows ministers to lay regulations to place a duty on charging authorities to pass a proportion of the funds that they raise through the levy to other persons. The Localism Bill suggested that local authorities allocate a meaningful proportion of the revenue generated from the levy to the local elected council for the area where the development and growth take place. The first question asked in the consultation paper is, should the duty to pass on a meaningful proportion of levy receipts only apply where there is a parish or community council for the area where those receipts were raised? And the second question is that for areas not covered by a parish or community council, should statutory guidance require charging authorities to engage with their residents and businesses in determining how to spend a meaningful proportion of the funds locally.

Council response to Q1 and Q2

- 3.5 The council understands why, in some authorities, parish councils should have a say in where infrastructure funds are spent as this helps them to see the benefits of development as they see improvements to local infrastructure as a consequence. London boroughs such as Brent do not have parish or community councils as in district and county authorities. Whereas often parish councils may represent a geographically distinct community such as a village, in Brent communities geographically overlap and are socially more diverse. Most of the infrastructure spend in one area of the borough will have impacts on most other parts of the borough such as its interconnectedness. The duty to pass on some CIL receipts to other persons or groups such as parish councils is not intended to apply in London boroughs. This distinction is strongly supported. In terms of the second question, statutory guidance should not be required to engage with residents and businesses to determine how some proportion of the CIL funds should be spent. The council should set these matters out in its Core Strategy and other Development Plan Documents and consult with the community at that stage. The council consults its residents on all strategic matters as a matter of good practice and it should be for local authorities to determine this level of consultation for itself - it is a local matter that should not be prescribed by central government.
- 3.6 Questions 3 and 4 ask about the level of CIL that parish and community councils should be able to spend and whether there should be a cap on this proportion and regulations on the timing of payments. Since this system will not apply in London boroughs, no response is proposed. Question 5 -7 also apply to parish and community councils and no response is offered.

- 3.7 Question 8 proposes to remove any cap on administrative expenses that any council could charge from the CIL pot- this is currently fixed at 5%. This is because any local consultation may turn out to be more expensive than the administrative costs limit. This is unlikely to be the case in Brent but it is better to have the most flexibility in any system and therefore removal of the cap is supported.
- 3.8 Questions 9-11 deal with questions relating to affordable housing and CIL. At the moment it is proposed that authorities should not spend CIL levy receipts on affordable housing. Affordable housing will continue to be provided on site and will be dealt with through the modified S106 regulations. In short, S106 Planning Obligations can still be used but only for site related needs, such as access roads or the provision of affordable housing. Q9 asks whether local authorities should be given the choice to use CIL levy receipts for affordable housing? Q10 asks if authorities wish to use both the levy and planning obligations to deliver local affordable housing priorities, should they be given the choice to do so?. Q11 asks if local authorities were permitted to use both instruments, what should they be required to do to make it clear the circumstances under which they used S106 or CIL levy powers other or both?
- 3.9 Your officers recommend that the council reject the idea of using CIL receipts for affordable housing. CIL's purpose is to collect a levy for infrastructure and taking affordable housing from this levy will reduce the amount available for infrastructure. The council has never fared so well when it has accepted off-site affordable provision and this lack of on-site affordable provision mitigates against mixed and balanced communities. Therefore CIL and affordable housing should be clearly separated. Question 12 considers the issues of Pooling S106 contributions. After the local adoption of the levy, or in all local authorities after 6 April 2014, local authorities may only enter up to five separate planning obligations to contribute to a single affordable housing project or to a general affordable housing fund. This is because the levy is seen as the main instrument to collect payments, S106 being a mechanism to deal with local development matters. Question 12 asks that if the CIL levy can be used for affordable housing, should affordable housing be excluded from the regulation that limits pooling of planning obligations, or should the same limits apply? Your officers comment is that it is much better to use the current pooling arrangements under S106 for offsite affordable housing than use the levy (whether pooling arrangements are applied or not). In Brent's case affordable housing provision will mostly be on-site and the S106 pooling arrangement would be sufficient power to deal with occasional off site requirements. This can be done without entangling affordable housing up with CIL collection and payments.
- 3.10 The final questions within the consultation paper concern the Mayor collecting CIL in Mayoral Development Corporations. No answer is offered as they are not relevant to Brent. The consultation paper also deals with reporting arrangements for which specific questions are not asked.

4.0 Financial Implications

- 4.1 CIL will have a significant impact on the council and it should allow more easily the provision of key bits of infrastructure across the borough. The full financial implications of CIL are set out in the council's Executive report of July 2011 but overall the levy will bring in a similar amount of money than the S106 system, but will be significantly less restricting in how it can be used.

4.2 In considering the financial impact of the consultation paper, if the levy were to include affordable housing payments then the council would have to increase the overall CIL levy otherwise it would receive significantly less for infrastructure. The council is consulting on the first draft of the CIL Charging Schedule and is required by regulations to undertake a second round of consultation, in the spring of next year. The full implications of any changes to the Levy as a result of this consultation can be factored into further second round consultation on the Charging Schedule.

5.0 Legal Implications

5.1 The Planning Act 2008 sets out the general CIL powers and CIL regulations 2010 as amended give greater details about how authorities must implement those powers. The Localism Bill currently going through Parliament also proposed changes to the regulations concerning how local people may be involved in decisions on spending the CIL levy. This was under the general principle of promoting localism. It is assumed that any changes to put localism principles to effect will be made after this consultation process by amending the CIL regulations.

6.0 Diversity Implications

6.1 There are no significant diversity implications as a result of this consultation process.

7.0 Staffing/Accommodation Implications

7.1 There are no staffing/accommodation implications as a result of the consultation exercise.

8.0 Environmental Implications

8.1 The Environmental implications are considered in the body of the report but in broad terms, the more timely provision of infrastructure should bring environmental benefits.

9.0 Background Papers

Brent Core Strategy July 2010

Report to Council's Executive on draft CIL Charging Schedule July 2011

Community Infrastructure Levy: Detailed proposals and draft regulations for reform – Consultation, October 2011

Contact Officers

Any person wishing to inspect the above papers should contact Dave Carroll, Regeneration & Major Projects 020 8937 5202

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Appendix 1 – Draft CIL Charging Schedule

Preliminary Draft Charging Schedule

London Borough of Brent

Planning Act 2008 - Community Infrastructure Levy Regulations 2010

The Community Infrastructure Levy (CIL) is a new system of securing developer contributions through the planning system which local authorities are empowered, but not required, to charge on new development in their area. The levy can be used to fund infrastructure that supports growth and sustainable development.

CIL is a charge on new development, expressed as a cost per square metre, set at the time planning permission is granted and paid on commencement of the development, or in accordance with an instalment policy adopted by the local authority. In London CIL can be set by the local authority and by the Mayor of London. CIL is applied to any development resulting in a net increase of more than 100m² of floor space or where one or more dwellings are created by the development, however affordable housing and developments by charities for charitable purposes are exempt from CIL. The London Borough of Brent is proposing to charge differential rates of CIL dependent on land use.

CHARGING SCHEDULE

The London Borough of Brent is a charging authority according to Part 11 of the Planning Act 2008. Brent is proposing to charge the Community Infrastructure Levy in respect of development across all of the London Borough of Brent at the following rates relative to the proposed land use (expressed as pounds per square metre).

This Preliminary Draft Charging Schedule has been issued, approved and published in accordance with Part 11 of the Planning Act 2008 and the Community Infrastructure Regulations 2010, as amended.

USE	CHARGE PER SQM
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
Student Accommodation	£300
Office (Use Class B1a)	£40
Retail (Use Class A1), Financial & Professional Services (Use Class A2), Restaurants & Cafes (Use Class A3), Drinking Establishments (Use Class A4), Hot Food Take-aways (Use Class A5)	£80
Assembly and Leisure, excluding Public Swimming Pools (Use Class D2)	£5
	£0

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)

***The above charge will apply across all of Brent, in addition to any Mayoral CIL**

Calculating the Chargeable CIL

CIL applies to the gross internal area of the net increase in development (Regulation 14). The amount to be charged for each development will be calculated in accordance with Regulation 40 of the Community Infrastructure Levy Regulations 2010. For the purposes of the formulae in paragraph 5 of Regulation 40 (set out below), the relevant rate (R) is the differential rate relating to each specific use as set out in this Charging Schedule.

Calculation of chargeable amount

(1) The collecting authority must calculate the amount of CIL payable ("chargeable amount") in respect of a chargeable development in accordance with this regulation.

(2) The chargeable amount is an amount equal to the aggregate of the amounts of CIL chargeable at each of the relevant rates.

(3) But where that amount is less than £50 the chargeable amount is deemed to be zero.

(4) The relevant rates are the rates at which CIL is chargeable in respect of the chargeable development taken from the charging schedules which are in effect—

(a) at the time planning permission first permits the chargeable development; and

(b) in the area in which the chargeable development will be situated.

(5) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times I_P}{I_c}$$

where—

A = the deemed net area chargeable at rate R

I_P = the index figure for the year in which planning permission was granted; and

I_c = the index figure for the year in which the charging schedule containing rate R took effect.

(6) The value of A in paragraph (5) must be calculated by applying the following formula—

$$\frac{C_R \times (C - E)}{C}$$

C

where—

C_R = the gross internal area of the part of the chargeable development chargeable at rate R, less an amount equal to the aggregate of the gross internal area of all buildings (excluding any new build) on completion of the chargeable development which —

- (a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use;
- (b) will be part of the chargeable development upon completion; and
- (c) will be chargeable at rate R.

C = the gross internal area of the chargeable development; and

E = an amount equal to the aggregate of the gross internal areas of all buildings which—

- (a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use; and
- (b) are to be demolished before completion of the chargeable development.

(7) The index referred to in paragraph (5) is the national All-in Tender Price Index published from time to time by the Building Cost Information Service of the Royal Institution of Chartered Surveyors; and the figure for a given year is the figure for 1st November of the preceding year.

(8) But in the event that the All-in Tender Price Index ceases to be published, the index referred to in paragraph (5) is the retail prices index; and the figure for a given year is the figure for November of the preceding year.

(9) Where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish—

- (a) the gross internal area of a building situated on the relevant land; or
- (b) whether a building situated on the relevant land is in lawful use, the collecting authority may deem the gross internal area of the building to be zero.

(10) For the purposes of this regulation a building is in use if a part of that building has been in use for a continuous period of at least six months within the period of 12 months ending on the day planning permission first permits the chargeable development.

(11) In this regulation “building” does not include—

(a) a building into which people do not normally go;

(b) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery; or

(c) a building for which planning permission was granted for a limited period.

(12) In this regulation “new build” means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings.