



Executive
18 June 2012

Report from the Director of Regeneration and Major Projects

Wards affected:
ALL

Community Infrastructure Levy

1.0 Summary

Government legislative changes mean the Community Infrastructure Levy will replace S106 Planning Obligations as the vehicle for funding the infrastructure that supports growth and development. Authorities will collect Community Infrastructure Levy contributions from developers to pay for the infrastructure needs created by development, with S106 Planning Obligations restricted in the main to site specific matters.

After Executive approved the Draft Charging Schedule in February, developers including Quintain Estates Development demonstrated that the method used by the Council's consultants to calculate proposed commercial Community Infrastructure Levy rates required adjustment. Officers have completed a thorough review of commercial CIL rates and recommend changes to some of the rates. These rates will be subject to a further consultation exercise.

2.0 Recommendations

That Executive:

- 2.1 Note the revisions to the BNP Paribas Real Estate Community Infrastructure Levy Viability Study (Appendix 1).
- 2.2 Agree the revisions to the proposed Community Infrastructure Levy rates in the Draft Community Infrastructure Levy Charging Schedule (Appendix 2).
- 2.3 Agree the revisions to the S106 Planning Obligations Supplementary Planning Document (Appendix 3).

- 2.4 Agree that ideas and requests for local S106 spend be made by members through the established ward working arrangements, for consideration by officers in liaison with the Lead Member.

3.0 Background

- 3.1 In October 2011 the Executive decided to move ahead with the introduction of a Brent Community Infrastructure Levy to replace existing S106 standard charge arrangements and to that effect formal consultation on Brent's Preliminary Draft Community Infrastructure Levy Charging Schedule and S106 Planning Obligations Supplementary Planning Document ran from the end of October to the end of December 2011.
- 3.2 In February 2012 the Executive agreed to the publication of a Draft Community Infrastructure Levy Charging Schedule for further consultation prior to submittal to the Planning Inspectorate for Examination. Subject to any changes the Planning Inspectorate may recommend, it is proposed that the Council adopt the subsequent Community Infrastructure Levy Charging Schedule. Executive also agreed to adopt a S106 Planning Obligations Supplementary Planning Document in parallel with the proposed Community Infrastructure Levy Charging Schedule in order to concurrently revise S106 arrangements.
- 3.3 Subsequent review of the BNP Paribas Real Estate Community Infrastructure Levy Viability Study that supports the proposed Draft Community Infrastructure Levy Charging Schedule has identified errors in the Study which once addressed suggest commercial development is less able to absorb the Community Infrastructure Levy than initially thought. Officers therefore propose that the Community Infrastructure Levy rates for commercial development be revised prior to publication. Executive are also asked to approve revisions to the S106 Planning Obligations Supplementary Planning Document that make more explicit the predominant role the Community Infrastructure Levy will play in funding infrastructure in the borough, as well as the Council's intention to make discretionary relief from the Community Infrastructure Levy in exceptional circumstances available in the borough and to consider in kind land payments in satisfaction of the Community Infrastructure Levy.

Financial Viability Evidence & Revised CIL Rates

- 3.4 In deciding and setting Community Infrastructure Levy (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 an Examination in Public that the proposed CIL rates would not put at serious risk overall development of the area and to this effect BNP Paribas Real Estate 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.

- 3.5 Following consultation of Brent's Preliminary Draft CIL Charging Schedule, in February Executive agreed the proposed CIL rates for Brent's Draft Charging Schedule. However, Quintain Estates Development commissioned analysis of the BNP Paribas Real Estate CIL Viability Study by consultants Gerald Eve submitted to the Council has prompted a review of the CIL Viability Study. Officers accept that the following mathematical computational errors in the appraisals for commercial development have been identified:

1. Errors in the calculation of rent free and voids periods
2. Errors in the floorspace calculations for demolition and building costs

- 3.6 Officers and BNP Paribas Real Estate have therefore undertaken a detailed review of the CIL Viability Study both to correct the identified errors and more generally to ensure the CIL Viability Study provides a sufficiently robust evidence base with which to support Brent's Draft CIL Charging Schedule. In addition to correcting the identified errors, the opportunity has been taken to make the following amendments

1. Existing Use Values assumptions have been informed by more detailed analysis of market evidence on commercial rents and yields in the borough from Estates Gazette
2. Commercial appraisal scenarios have been widened to include more scenarios where commercial development comes forward on sites in alternative commercial uses
3. Student accommodation rents, build costs and unit sizes have been brought more into line with market comparables in the Wembley area, and student accommodation yields lowered to 6.25% after consideration of research by Savills

Minor and presentational amendments have also been made, such that market forecasts have been updated, financial assumptions and market comparables made more explicit in the text, and appendices added on commercial lettings and completions evidence. We have also reviewed the proposed CIL rate for residential development but see no evidence to change this proposed rate. All amendments are consolidated in the Revised BNP Paribas Financial Viability Study (April 2011) which is attached as Appendix 1.

- 3.7 Officers recommendations for CIL rates on residential schemes, including hostels and HMOs, and office, assembly and leisure, and industrial uses remain unchanged. Officers propose CIL rates be lowered for student accommodation, hotels and retail and allied A Class uses.
- 3.8 Officers have also reviewed the proposed charge on sui generis uses, which are uses without a planning use class. The original proposal was to charge £200 per m2 on all sui generis uses except public transport stations, theatres,

fire stations and police stations. The proposal to charge £200 per m2 is maintained for sui generis uses that are clearly residential in nature, that is hostels and HMOs, however a new rate of £40 per m2 is introduced for all other sui generis uses, which tend to be more akin to commercial use, and include minicab offices, laundrettes, car showrooms, warehouse clubs etc. . The table below summaries the new proposed CIL rates and compares the rates with the previously proposed CIL rates. The Draft CIL Charging Schedule has been amended to this effect and is attached as Appendix 2.

Use Class or Development Type	Draft Charging Schedule Feb 2012 £ per m2	Draft Charging Schedule May 2012 £ per m2
Residential (Use Classes C3 & C4), Residential Institutions except hospitals (Use Class C2)	200	200
Student Accommodation	300	200
All Sui Generis uses except Student Accommodation, Public Transport Stations, Theatres, Fire Stations and Police Stations	200	40
Hostels and HMOs (Sui Generis)	200	200
Hotel (Use Class C1)	200	100
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	40
Office (Use Class B1a)	40	40
Assembly and Leisure, excluding public swimming pools, (Use Class D2)	5	5
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 (Use Class C2), Public Swimming Pools (Use Class D2), Public Transport Stations, Theatres, Fire Stations and Police Stations (Sui Generis).	0	0

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

S106 Planning Obligations SPD

- 3.9 After renewed representations from developers working in the borough seeking clarification regarding the relative roles of the Community Infrastructure Levy and S106 in infrastructure funding and delivery, the opportunity has been taken to make more explicit the predominant role the Community Infrastructure Levy will play in funding infrastructure in the borough. A revision has therefore been made to the S106 Planning Obligations SPD, to be adopted in parallel with the proposed Community Infrastructure Levy Charging Schedule, which explicitly states that the infrastructure required to mitigate the impact of new development and support sustainable growth will predominantly be delivered through the Community

Infrastructure Levy, with S106 Planning Obligations intended to deal with mostly site related local matters or compensation for loss of amenity. Against the backdrop of changing planning legislation, officers always intended that CIL and not S106 is the main and preferred vehicle for funding infrastructure. Some developers however have voiced concern that CIL and S106 would somehow double the requirement for planning obligations on development. Since the CIL regulations specifically state that a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure, the revision proposed to the S106 Planning Obligations SPD on this matter merely clarifies our legal position. Note is also made that the Council will consider in kind land payments in satisfaction (of whole or part) of the CIL amount due, in respect of any particular development in line with the CIL regulations.

- 3.10 In addition, officers propose that discretionary relief from CIL for exceptional circumstances be made available in the borough and that the Council issue a statement to that effect in line with the CIL regulations on adoption of any Brent CIL. Discretionary relief from CIL for exceptional circumstances may only be granted by an authority if relief is made in the area and a S106 planning obligation has been entered into in respect of a planning permission where the authority:

(i) considers that the cost of complying with the planning obligation is greater than the chargeable CIL amount payable in respect of a chargeable development

(ii) considers that to require payment of the CIL charged by it in respect the chargeable development would have an unacceptable impact on the economic viability the chargeable development, and

(iii) is satisfied that to grant relief would not constitute a State aid which is required to be notified to and approved by the European Commission.

- 3.11 Officers consider that to make discretionary relief from CIL for exceptional circumstances in the borough is desirable so as not to hamper development that requires the delivery of local infrastructure under a S106 Planning Obligation so significant as to exceed CIL liability and make development unviable. In such cases and under the CIL regulations developers would have to submit a claim for relief for consideration by the Council, including independent assessments of both the cost of complying with the relevant S106 Planning Obligation and the economic viability of the development. In any case, the regulations allow an authority to withdraw the availability of discretionary relief from CIL for exceptional circumstances in its area in 14 days by issue of a public statement.

Localism

- 3.12 CIL needs to be targeted in defined spending areas based on infrastructure needs. The government have indicated that there will also be a community element to CIL spend, however this has yet to be define in guidance. Within London, the 'community element' spend will be determined by the Boroughs,

however outside London the government have indicated that Parish Councils will have a role in determining local spend. Once clarification on the community element of CIL is provided, members will be able to determine how this element of CIL can be handled. In the meantime this report recommends that a scheme be agreed to spend S106 monies that are not specifically earmarked for more major infrastructure or site specific purposes.

- 3.13 The Council currently holds £16.393m in S106 money with a further £32.241m secured through agreements that have yet to be triggered. Whilst there is uncertainty over when the money that has yet to be paid will be received; and there is no guarantee that all the planning permissions that are subject to S106 agreements will be implemented, the Council does need to focus on spending the money that it holds. Records indicate that of the £47.5m of S106 money that the Council has received, £31m has been spent. Of the money currently held £11.593m is specifically allocated to prescribed works or spending areas, and the remainder, £4.8m, allows for more flexible spend, although the current intention is that this be directed predominantly towards infrastructure including schools, transport and open spaces. Nevertheless an element of this money can be reasonably directed to support local infrastructure improvements as long as they are in proximity to the development sites subject to the agreements.
- 3.14 As reported to the Executive last year some S106 spend could be used to support projects identified through local ward working. This arrangement will be reviewed in the future to include an element of CIL once the government have provided further clarity on 'the community element'.

4.0 Financial Implications

Estimated CIL receipts vs. Current S106 receipts

- 4.1 CIL has the potential to form a major future source of revenue for the Council, supporting its infrastructure work and associated administrative costs. CIL is part of a new mix of funding including retained business rates and New Homes Bonus and provides an opportunity to link the Council's revenue generating activities and the LDF strategy to deliver regeneration and growth.
- 4.2 CIL is a new and different system of securing infrastructure to support development and is not intended to replicate S106 collection. The Council must set rates that meet infrastructure requirements and continue to bring forward viable development. Officers have set the proposed CIL rates with this in mind. However, as a subsidiary exercise we have estimated projected receipt of both so that members could get some idea of potential outcomes. It is indeed the case that S106 and CIL are likely to be broadly similar on larger scale mixed sites. This is not a surprise because it means that both S106 and CIL are set at rates that have not or will not hamper development. Officers have also estimated the potential annual CIL take against S106. It is predicted that this may 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. The real benefit of CIL is that CIL is not so restricted by area or type of infrastructure expenditure as S106 and can be planned and spent on a borough wide basis, linking with the Council's capital programme. CIL will take some years to build up as many developments that have started will continue to pay S106 obligations. It is estimated that on an average rate of development CIL will secure around £5m per year. This however compares with an Infrastructure bill generated by development in the growth areas alone of over £400m. CIL will only therefore fund a limited proportion of the borough's infrastructure requirements.

Reimbursement of expenditure incurred and repayment of loans

- 4.3 Charging authorities may not borrow on the strength of getting future CIL revenue to pay for a piece of infrastructure early, however CIL Regulations cover 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 if certain conditions are met, most notably that the amount of CIL that can be applied to repay borrowed monies is conditional on Secretary of State direction.

Payment and Non-Payment of CIL

- 4.4 The Council will be able 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.
- 4.5 Late interest is chargeable at 2.5% above the Bank of England base rate from the due date of payment of CIL and in the case of non payment of CIL authorities can order relevant development activity to cease.

Examination

The Planning Inspectorate have been contacted regarding the cost of the Examination and have provided an initial estimate of £30,000 for budgetary purposes. These monies will be identified in the Regeneration & Major Project Departmental Budget for 2012-13.

5.0 Legal Implications

- 5.1 The Community Infrastructure Levy (CIL) is a new planning charge that came into force on 6th 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 S106 obligations but 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:

- New streets, Travel Plans, Permit Free schemes
 - Sustainability, Code for Sustainability Homes, BREEAM
 - Affordable Housing – including definitions, off site provisions and in-lieu contributions
 - Street tree planting and landscaping
 - Local employment and training provision
 - Community and cultural facilities
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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.

6.0 Diversity Implications

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.

The Community Infrastructure Levy will assist the Council in funding a wide range of infrastructure projects across the Borough which will be not only support growth, but at the same time help to meet the needs of local people. The Localism Bill will require the Council to consult with communities regarding the CIL collected within their area and which infrastructure projects that CIL will be spent on, including local projects. This will require the allocation of CIL to be both transparent and accountable, thereby helping to ensure an equitable distribution of CIL across the borough and that communities are given a level of infrastructure funding that is appropriate to the impact of new development within their area.

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

7.0 Staffing/Accommodation Implications (if appropriate)

A Programme Officer will need to be appointed for the Examination process, which is estimated will last up to 10 weeks. This will be funded from within existing resources.

The management of the CIL process will take place within the Planning Service, operating alongside the existing S106 and Mayoral CIL systems. A specialist post, currently vacant, exists within Planning and steps are being taken to fill this post, having broadened its remit to cover CIL. The Council has the ability to use part of the CIL receipt to cover administrative costs.

Background Papers

Executive Report 171011

Executive Report 130212

Impact Needs / Requirement Assessment 060112

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