



Executive
13 February 2012

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

Wards affected:
ALL

**Community Infrastructure Levy and S106 Planning
Obligations**

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. This report details the results of the consultations on Brent's Preliminary Draft Community Infrastructure Levy Charging Schedule and the S106 Planning Obligations Supplementary Planning Document that closed at the end of last year. Approval is sought to publish, and submit for examination, a Draft Charging Schedule, as well as the adoption of the S106 Planning Obligations Supplementary Planning Document.

2.0 Recommendations

The Executive:

- 2.1 Note the comments received during the consultations on the Preliminary Draft Community Infrastructure Levy Charging Schedule and the S106 Planning Obligations Supplementary Planning Document and the subsequent amendments made to both documents; and
- 2.2 Agree to the publication of the Draft Community Infrastructure Levy Charging Schedule for submittal to the Planning Inspectorate for Examination, and, subject to any changes, recommend Full Council adopt the subsequent Community Infrastructure Levy Charging Schedule; and

- 2.3 Adopt the S106 Planning Obligations Supplementary Planning Document at the same time as the proposed Community Infrastructure Levy Charging Schedule.

3.0 Background

- 3.1 The Planning Act 2008 and Community Infrastructure Levy Regulations 2010 have introduced legislative changes to the planning framework which make the Community Infrastructure Levy (CIL) the government's preferred vehicle for the collection of pooled development contributions to fund the infrastructure needed to support growth and development. The new system of regulations restrict S106 agreements to necessary site related matters, and will limit the local use of S106 planning obligations for pooling developer contributions, and therefore the Council's current approach to delivering infrastructure through the S106 standard charge tariff. CIL is chargeable on any development resulting in a net increase of more than 100m² of floorspace or where one or more dwelling are created by the development. Material change of use, or conversion, of any land or building is not development for the purposes of CIL. Charities and minor development also have exemptions from CIL and Affordable Housing has relief from CIL.
- 3.2 In October 2011 the Executive therefore decided to move ahead with the introduction of a Brent Community Infrastructure Levy and to that effect formal consultation on Brent's Preliminary Draft Charging Schedule and S106 Planning Obligations Supplementary Planning Document opened at the end of October 2011.

Consultation

Consultation Strategy

- 3.3 In line with the Consultation Strategy, Officers presented at the Harlesden, Kilburn and Kensal, Willesden, Wembley, and Kingsbury and Kenton Area Consultative Forums in September and October 2011, prior to opening the formal consultation on the Preliminary Draft Charging Schedule and the S106 Planning Obligations Supplementary Planning Document. Officers sought to explain the proposed introduction of the Community Infrastructure Levy (CIL), communicate information on the formal consultation process, and answer any questions that residents might have. Although Officers emphasised the need for residents to engage with the formal consultation process, verbally there appeared broad support for the principle that new development contribute towards the infrastructure needed to support growth and questions focused upon what monies would spent and how local people could have a say in that.
- 3.4 Formal consultation opened 31st October 2011 and took the following forms:
- Brent Magazine – CIL notice placed in October edition of the Brent Magazine
Statutory consultees – consulted by email and letter as per CIL Regulation 15, including the Mayor of London, neighbouring boroughs, the Environment Agency and other statutory consultees
Letters – sent to over 500 relevant individuals and organisations on Brent's

Local Development Framework database, including, landowners, developers, agents, local businesses, community groups and key stakeholders
Details of proposals and documents available at One Stop Shops and libraries
Website - The Preliminary Draft Charging Schedule, S106 Planning Obligations Supplementary Planning Document and background evidence including the Infrastructure & Investment Framework and CIL Viability Assessment published on the Council's Community Infrastructure Levy webpage <http://www.brent.gov.uk/tps.nsf/Planning%20policy/LBB-364>
Weblinks distributed to all consultees

Summary of Representations

- 3.5 In total, twelve written comments were received on the Preliminary Draft Charging Schedule and ten written comments were received on the S106 Planning Obligations Supplementary Planning Document. Comments covered a range of matters. The most detailed comments were received from the GLA and the developer Quintain Estates & Development (QED).
- 3.6 The GLA were chiefly concerned that the S106 Planning Obligations Supplementary Planning Document be in general conformity with the London Plan and a series of amendments, mainly to the Standard Heads of Terms, were made to this effect. The GLA also noted that they were satisfied that on the basis of the evidence brought forward, the combined effect of the proposed Mayoral and Brent CILs would not have a significant effect on development viability in Brent.
- 3.7 QED urged the Council to be extremely cautious in setting CIL rates in the current economic climate and made a series of detailed points including that:
1. the Infrastructure & Investment Framework (I&IF) should be informed by population assumptions that account for the take up of new development by existing households and not just people new to the borough.
 2. the I&IF inappropriately applies higher standards to new infrastructure (particularly sports facilities) than existing facilities.
 3. whilst the strategic approach taken by the BNP Paribas CIL Viability Study may be appropriate for authorities where development is broadly spread, in Brent development viability will be determined by a small number of strategic locations, and particularly Wembley, and the CIL Viability Study appears to give no specific consideration to these key locations.
 4. given that many infrastructure requirements have already been secured under existing S106 commitments, the Council will need to ensure that there is no double counting between S106 contributions and the proposed CIL.
- 3.8 In response to the comments from QED, officers noted that whatever the economic conditions, the timetable for the introduction of CIL has been set by Government and one that Brent Council do not control. The introduction of CIL will undermine the continuation of the Council's current use of S106 agreements and approach to pooling S106 contributions through the standard charge tariff system, and, unless the Council is prepared to move forward with the changing planning legislation and adopt a local CIL, thereby undermine

the delivery of the infrastructure required to deliver Brent's adopted Local Development Framework Core Strategy (LDF CS).

With respect to the headline points detailed above, officers made the following remarks:

1. the population assumptions used to inform the adopted I&IF, have been based the more conservative Wandsworth population model, which uses an average household size of 1.92 persons, which is significantly below both the ONS projected Brent household size of 2.526 and the London Plan average household size of 2.19 to 2.34. QED have failed to provide evidence to substantiate the claim that the I&IF infrastructure requirements are in whole or part driven by natural population growth rather than new population growth created by development. We do not accept that natural population growth significantly undermines the infrastructure investment requirements needed to support the population growth created by new development.

2. standards of infrastructure provision have changed over time, in the main progressing and improving to meet the increased expectations of the general public, and therefore it should come as little surprise that new infrastructure such as sports facilities will generally be of a higher standard than older existing facilities. Most of the standards that inform the I&IF infrastructure requirements cost estimates follow current national and regional standards. In some cases given the amount and density of development planned under the LDF CS, the I&IF allows for higher qualitative standards in order cases to compensate for an actual shortfall against adopted quantitative standards.

3. the BNP Paribas Viability Study tests a series of development 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 considered far more important. The high level and strategic approach to testing viability is specifically recommended by CLG in their guidance on charge setting and whilst Wembley is an important growth area in the borough, the proposed CIL rates will apply across the whole borough. Note is made that the three authorities that have completed CIL Examinations to date (Newark & Sherwood, Shropshire and Redbridge), all of whose proposed Charging Schedule have been found to be appropriate, have taken a high level and strategic approach to viability, as have numerous other authorities who are preparing charging schedules for their areas. Note is also made that QED have already signed S106s on outline applications for their Stage 1 site, which includes development of up to 3,727 homes, and more recently their North West Lands site, which includes the development of up to 1,300 homes.

4. officers acknowledge that CIL Regulations mean S106 planning obligations may not constitute a reason for granting planning permission for the funding or provision of relevant infrastructure that is to be funded through CIL. QED should be reassured that the a full audit is being undertaken on triggered and untriggered S106 planning obligations to determine how funding is to be allocated against the I&IF, as well as any implications for the list of infrastructure projects or types of infrastructure that will be, or may be, wholly or partly funded by CIL. The Council will want to maintain the deliverability of

untriggerred S106 Planning Obligations and ensure the CIL Regulations are fully complied with.

- 3.9 Other comments were received from Transport for London, the Environment Agency, British Waterways, English Heritage, the Highways Agency, the Theatres Trust, NHS London Healthy Urban Development Unit, Development Securities, and on behalf of Network Rail and Kier Property, the London Fire and Emergency Planning Authority and Metropolitan Police. Amongst the range of matters raised, suggestions were made on S106 Planning Obligation standard heads of terms, potential infrastructure projects identified and viability issues highlighted for CIL rates for some Sui Generis Planning Uses.

All the consultation comments and responses are detailed in full on the Council's Community Infrastructure Levy webpages

http://brent.limehouse.co.uk/portal/planning/cil_cs/pdcs
http://brent.limehouse.co.uk/portal/planning/s106_spd/spds106

and are also appended to this report (Appendix 1 and Appendix 2)

Amendments

- 3.10 Amendments have been made to the Preliminary Draft Charging Schedule in response to consultation and in drawing up the proposed Draft Charging Schedule. Specifically,

1. For the avoidance of doubt, note has been made that a material change of use, or conversion, of any land or building is not development for the purposes of CIL
2. Theatre, Fire Station and Police Station uses have been excepted from the £200 per square metre CIL rate, and included in the zero per square metre CIL rate
3. The consultation section has been updated to reflect the proposal to consult on the Draft Charging Schedule and then go to examination

On the general matter of developer concerns regarding the potential impact of the imposition of CIL on the viability of development across the borough, officers have been informed by the BNP Paribas CIL Viability Study (Appendix 3). The study considers that in the main the imposition of CIL is not a critical factor in determining whether a scheme is viable or not, with the relationship between scheme value, costs and existing use value considered far more important. Officers have also followed the study recommendation to allow a margin or buffer between the proposed CIL rates in the Draft Charging Schedule (below) and the maximum rates that the study indicates are viable in the majority of development schemes. We conclude therefore that an appropriate has been struck between the desirability of funding infrastructure from CIL and the potential effects of the imposition of CIL on the economic viability of development across the borough.

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, Theatres, Fire Stations and Police Stations.	£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
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, Public Transport Stations, Theatres, Fire Stations and Police Stations.	£0 (Zero Charge)

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

3.11 A number of amendments have also been made to the proposed S106 Planning Obligations Supplementary Planning Document, including

1. Note of Local Development Framework Core Strategy Policies of particular relevance for planning obligations
2. Detailed revisions to the Standard Heads of Terms

The proposed Draft Charging Schedule and tracked changes against the Preliminary Draft Charging Schedule, and the final version of the S106 Planning Obligations Supplementary Planning Document and tracked changes against consultation version, are appended to this report (Appendix 4 and Appendix 5)

Localism

- 3.12 The Department for Communities and Local Government (CLG) consultation on more detailed proposals for CIL closed at the end of December 2011. More information has been provided regarding neighbourhood funds. Government propose to use the Localism Act to require charging authorities to allocate a meaningful proportion of the revenue generated from CIL to the local people to decide how CIL receipts should be spent. In district councils this spending decision is proposed to be devolved to parish and/or town councils. In London boroughs the spending decision is proposed to remain at borough level, which is an approach supported by Brent Planning Committee who have responded to the CLG consultation.
- 3.13 Whatever community engagement and local decision making process is introduced to inform the allocation of CIL will, as has been previously noted, need to be transparent, accountable and respect the principle that the aim of CIL funding is to support the delivery of identified infrastructure provision and, for Brent, the Council's adopted Infrastructure & Investment Framework (I&IF). Officers will need to consult further on local spending, and await with interest the result of the CLG consultation and planned statutory guidance on this matter. That the process of how local spending will work in practice has not yet been determined should not impede the lengthy forward process of consultation, examination and adoption of Brent's CIL Charging Schedule in line with the attached project plan (Appendix 6)

Draft Charging Schedule: Publication & Examination

- 3.14 The next steps towards the adoption of the proposed Brent CIL are set out in the CIL Regulations and require the Council to publish and advertise the CIL Draft Charging Schedule for a minimum period of four weeks in various prescribed places. Any representations received will then be put before an Independent Examination.

The Executive are recommended to approve publication of Brent's Draft Charging Schedule and, following the four week statutory consultation period, subsequent submission to the Planning Inspectorate for Examination, and, on successful completion of the Examination, to recommend that Full Council adopt the subsequent Community Infrastructure Levy Charging Schedule.

The Executive are recommended to adopt the S106 Planning Obligations Supplementary Planning Document but to delay that adoption until the the proposed Community Infrastructure Levy Charging Schedule can also be adopted, after the Examination, so that the Council can continue to use the existing S106 SPD until CIL is in place.

Mayoral Community Infrastructure Levy and Administration

- 3.15 The Mayor proposes to introduce a new Londonwide CIL that is intended to raise £300 million towards the delivery of Crossrail. The Mayoral CIL Examination in Public concluded at the beginning of December 2011 and it is anticipated that Mayoral CIL will be applied to development across Greater

London from 1st April 2012. Mayoral CIL in Brent is proposed to be charged at £35 per m2 for most development resulting in a net increase of more than 100m2 of floorspace.

- 3.16 London boroughs will have to collect Mayoral CIL on all planning applications granted after 1st April 2012 and allowed to claim up to 4% of the proposed Mayoral CIL that they collect for administrative charges.
- 3.17 CIL administration raises a number of challenges for authorities, surrounding areas such as development control, collection, enforcement, monitoring, IT and finance. The authority will be allowed to use up to 5% of the proposed local CIL for administrative charges. 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 Mayoral and Brent CIL systems will remain located within the Planning Service, the Brent CIL 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.

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.

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
- 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.

Introducing CIL is expected to require neither more nor less staff, with the proposed management and administration of CIL by existing S106 officers in the Planning Service

Background Papers

Executive Report 171011

Impact Needs / Requirement Assessment 060112

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