

Notice of Meeting

ASSEMBLY

**Tuesday, 25 November 2014 - 7:30 pm
or on the rising of the Extraordinary
Assembly Meeting
Council Chamber, Town Hall, Barking**

To: Members of the Council of the London Borough of Barking and Dagenham

Chair: Cllr Tony Ramsay
Deputy Chair: Cllr Syed Ghani

Date of publication: 17 November 2014

Graham Farrant
Chief Executive

Contact Officer: Margaret Freeman
Tel: 020 8227 2638
E-mail: margaret.freeman@lbbd.gov.uk

AGENDA

- 1. Apologies for Absence**
- 2. Declaration of Members' Interests**

In accordance with the Council's Constitution, Members are asked to declare any interest they may have in any matter which is to be considered at this meeting.
- 3. Minutes - To confirm as correct the minutes of the meeting held on 17 September 2014 (Pages 3 - 16)**
- 4. Death of Freeman Vera Reynolds (Page 17)**
- 5. Appointments**
- 6. Members' Allowances - Payment to position of Chief Whip (Pages 19 - 22)**
- 7. Council Constitution (Pages 23 - 30)**
- 8. Adoption of Community Infrastructure Levy (Pages 31 - 119)**
- 9. Proposed Byelaw to Prohibit Spitting in Public Places (Pages 121 - 129)**

10. **Sealing of Byelaw Order to Ban Skateboarding in Barking Town Square (Pages 131 - 144)**
11. **Treasury Management Mid-Year Review (Pages 145 - 157)**
12. **Motions**
13. **Leader's Question Time**
14. **General Question Time**
15. **Any other public items which the Chair decides are urgent**
16. **To consider whether it would be appropriate to pass a resolution to exclude the public and press from the remainder of the meeting due to the nature of the business to be transacted.**

Private Business

The public and press have a legal right to attend Council meetings such as the Assembly, except where business is confidential or certain other sensitive information is to be discussed. The list below shows why items are in the private part of the agenda, with reference to the relevant legislation (the relevant paragraph of Part 1 of Schedule 12A of the Local Government Act 1972 as amended). ***There are no such items at the time of preparing this agenda.***

17. **Any confidential or exempt items which the Chair decides are urgent**



Barking and Dagenham's Vision

Encourage growth and unlock the potential of Barking and Dagenham and its residents.

Priorities

To achieve the vision for Barking and Dagenham there are five priorities that underpin its delivery:

1. Ensure every child is valued so that they can succeed

- Ensure children and young people are safe, healthy and well educated
- Improve support and fully integrate services for vulnerable children, young people and families
- Challenge child poverty and narrow the gap in attainment and aspiration

2. Reduce crime and the fear of crime

- Tackle crime priorities set via engagement and the annual strategic assessment
- Build community cohesion
- Increase confidence in the community safety services provided

3. Improve health and wellbeing through all stages of life

- Improving care and support for local people including acute services
- Protecting and safeguarding local people from ill health and disease
- Preventing future disease and ill health

4. Create thriving communities by maintaining and investing in new and high quality homes

- Invest in Council housing to meet need
- Widen the housing choice
- Invest in new and innovative ways to deliver affordable housing

5. Maximise growth opportunities and increase the household income of borough residents

- Attract Investment
- Build business
- Create a higher skilled workforce

This page is intentionally left blank

MINUTES OF ASSEMBLY

Wednesday, 17 September 2014
(7:00 - 8:44 pm)

PRESENT

Cllr Tony Ramsay (Chair)
Cllr Syed Ghani (Deputy Chair)

Cllr Syed Ahammad	Cllr Sanchia Alasia	Cllr Jeanne Alexander
Cllr Saima Ashraf	Cllr Abdul Aziz	Cllr Melanie Bartlett
Cllr Simon Bremner	Cllr Sade Bright	Cllr Laila Butt
Cllr Evelyn Carpenter	Cllr Josephine Channer	Cllr Faruk Choudhury
Cllr Edna Fergus	Cllr Irma Freeborn	Cllr Cameron Geddes
Cllr Rocky Gill	Cllr Kashif Haroon	Cllr Chris Hughes
Cllr Amardeep Singh Jamu	Cllr Jane Jones	Cllr Elizabeth Kangethe
Cllr Eileen Keller	Cllr Danielle Lawrence	Cllr Mick McCarthy
Cllr Giasuddin Miah	Cllr Dave Miles	Cllr Margaret Mullane
Cllr James Ogungbose	Cllr Adegboyega Oluwole	Cllr Moin Quadri
Cllr Hardial Singh Rai	Cllr Linda Reason	Cllr Chris Rice
Cllr Lynda Rice	Cllr Darren Rodwell	Cllr Faraaz Shaukat
Cllr Danielle Smith	Cllr Liam Smith	Cllr Sam Tarry
Cllr Bill Turner	Cllr Dominic Twomey	Cllr Jeff Wade
Cllr Lee Waker	Cllr Phil Waker	Cllr John White
Cllr Maureen Worby	Cllr Dan Young	Cllr Linda Zanitchkhah

APOLOGIES FOR ABSENCE

Cllr Peter Chand

8. Declaration of Members' Interests

There were no declarations of interest

9. Minutes (12 June 2014)

The minutes of the meeting held on 12 June 2014 were confirmed as correct.

Further to Minute 6, the Chief Executive advised that a report would be presented to the next Assembly meeting relating to the payment of a Special Responsibility Allowance to the previous position of Chief Whip as part of the Members' Allowances Scheme.

10. Death of former Councillor John Dias-Broughton

(The Chair agreed that this matter could be considered at the meeting as a matter of urgency under the provisions of Section 100B(4)(b) of the Local Government Act 1972 to allow the Assembly to mark the passing of a former Councillor.)

The Assembly noted with deep regret that former Councillor John Dias-Broughton had passed away on Wednesday, 10 September 2014 following a short illness.

A number of Councillors spoke in tribute to Mr Dias-Broughton, recalling their personal anecdotes and commenting on his commitment to his constituents.

The Assembly stood for a minute's silence as a mark of respect.

11. **Appointments to the Political Structure and Other Bodies**

Assembly **agreed** the following appointments:

- **Councillor Channer** as the Thames Ward representative on the Barking Housing Forum, following the resignation of **Councillor Turner**
- **Councillor C Rice** to the Development Control Board, following the resignation of **Councillor Zanitchkhah**
- **Councillors Bright and Choudhury** to the Health & Adult Services Select Committee
- **Councillors Butt and Kangethe** to the Licensing and Regulatory Board
- **Councillor Reason** to the Living and Working Select Committee

and **noted** the following appointments:

- by the Cabinet Member for Regeneration, Councillor Geddes:
 - of **Councillors Alasia and Butt** as deputies on the London Councils Transport and Environment Committee
 - of **Councillor Turner** to the Public Transport Liaison Group, and
- by the Cabinet Member for Housing, Councillor Ashraf, of **Councillors Ahammad and Fergus** to the Registered Provider Forum.

12. **Adoption of Barking and Dagenham Employment Areas Local Development Order**

The Assembly received this report introduced by the Cabinet Member for Regeneration, relating to a Local Development Order to benefit businesses in Barking and Dagenham and promote the borough as a business friendly place.

The Assembly **agreed** to adopt the Barking and Dagenham Employment Areas Local Development Order as attached at Appendix 1 to the report.

13. **Adoption of Public Houses Supplementary Planning Document**

The Assembly received this report introduced by the Cabinet Member for Regeneration, relating to the Supplementary Planning Document "Last Orders?"

Preserving Public Houses" which aimed to give the Council more control over the loss of pubs through the planning system.

Following debate, the Cabinet Member thanked Members for their support in preserving the status of public houses in the Borough, recognising the important role they play in the community, and noted that Whalebone ward has two public houses and not one as stated in the report.

The Assembly **agreed** to adopt the Supplementary Planning Document "Last Orders? Preserving Public Houses" attached at Appendix 1 to the report.

14. Treasury Management Annual Report 2013/14

The Assembly received the Treasury Management Annual Report 2013/14 introduced by the Cabinet Member for Finance. The report is required to be presented to the Council in accordance with the Revised CIPFA Code of Practice for Treasury Management in the Public Services.

Following debate and questions from a number of Members, the Chief Finance Officer provided clarification in that:

- Cabinet had agreed in August 2014 for the regeneration of the Gascoigne Estate and Abbey Road and a change to the Council's borrowing level to reflect that the scheme is to be funded by borrowing from the European Investment Bank (EIB), which would result in there being periods when high cash balances would be held. Finalising these changes to the borrowing limits for the EIB borrowing are recommended to be delegated to the Chief Finance Officer;
- the report asks Assembly to ratify the borrowing of £89m from EIB, to be drawn down in a series of up to five tranches for the investment on the Gascoigne Estate and Abbey Road based on the Cabinet decision, and the Council would be required to draw down the monies within three years of the proposed agreement with EIB;
- terms with EIB had not yet been finalised but it was expected that the funds would be drawn down within two and a half years of agreement;
- Investec Asset Management fee was £40,692;
- a report would be brought back to the Assembly in relation to the lending limit for cash funds.

The Assembly **agreed** to:

- (i) Note the Treasury Management Annual Report for 2013/14;
- (ii) Note that the Council complied with all 2013/14 treasury management indicators;
- (iii) Note that the Council did not borrow in 2013/14 to finance its capital programme but utilised internal cash in line with its strategy;
- (iv) An increase in the period the Council can invest with the Royal Bank of Scotland (RBS) from one year to a maximum of two years, as outlined in section 4.5 of the report.;

- (v) Approve the actual Prudential and Treasury Indicators for 2013/14; and
- (vi) Delegate authority to the Chief Finance Officer, in consultation with the Cabinet Member for Finance, to approve appropriate amendments to the authorised and operational borrowing limits and proportionally amend the counterparty lending limits within the Treasury Management Strategy Statement, to reflect the decisions made by the Cabinet in respect of the “Gascoigne Estate (East) Phase 1 and Abbey Road Phase 2 Funding Proposals” as detailed in paragraph 3.3.4 of the report.

15. Council Constitution

The Chair advised the Assembly that the Constitution Review report as set out on pages 121-125 of the agenda had been deferred.

16. Vision and Priorities for the Borough

The Assembly received this report introduced by the Leader of the Council, relating to the proposed new vision and priorities for Barking and Dagenham, which are intended to reflect the changing relationship between the Council, partners and the community, and the Council's role in place shaping and enabling community leadership within the context of a significantly reducing budget.

Following debate, the Leader thanked Members for their useful and supportive comments.

The Assembly **agreed** to adopt the refreshed vision and priorities as detailed in Appendix 1 to the report.

In accordance with the Council Constitution (Part B, Article 1, paragraph 9.8) Councillor Quadri was not permitted to vote as he had not been present throughout the discussion on this item.

17. Appointment of Parent Governor (Primary) Co-opted Member to the Children's Services Select Committee

The Assembly received this report relating to the appointment of the Primary School Parent Governor position on the Children's Services Select Committee, introduced by the Cabinet Member for Central Services.

The Assembly **agreed** to approve the appointment of **Mrs Toluwalope Elizabeth Dahunsi** as the Primary School Parent Governor Co-opted Member to the Children's Services Select Committee for a term of four years.

In accordance with the Council Constitution (Part B, Article 1, paragraph 9.8) Councillor Alasia was not permitted to vote as she had not been present throughout the discussion on this item.

18. Appointment of Independent Persons

The Assembly received this report relating to the appointment of two Independent

Persons, introduced by the Cabinet Member for Central Services.

Following debate, the Assembly **agreed** to defer this item, pending a further report from the Monitoring Officer.

19. General Question Time

Question 1 from Councillor L Waker:

“Having seen the appreciation from elderly, disabled and vulnerable tenants to having the decorations carried out in their homes that the Council introduced recently, I am seeking an assurance from the Cabinet Member for Housing that this highly valued service will continue for the rest of this electoral term of office and that there is no intention to stop or reduce this service or other front-line services such as those in flatted communal areas etc.”

RESPONSE from Councillor Ashraf, Cabinet Member for Housing:

"Thank you for the question.

This scheme commenced in September 2013. It was previously delivered by Enterprise. I am proud to say that since September 2013 B&D Direct Labour Organisation has delivered this service to our tenants. Very positive feedback has been received from those tenants who have benefited with many personal compliments being passed on to the painters and decorators. Tenants applying must be over the age of 80. If Members want further details about the acceptance criteria, please contact me.

As you know, we are currently reviewing budgets and I am unable to give guarantees at this time. However, I support the decorations to elderly persons' property scheme and want to ensure it continues to be available to as many of our elderly tenants as possible.

I think it is an excellent service. However, I am very mindful of financial considerations. I therefore hope to continue to offer elderly tenants in the borough to have two rooms of their choice decorated. This I believe will make this important and successful scheme available to the maximum number of our elderly tenants."

Question 2 was withdrawn by Councillor Miles as he considered that the Cabinet Member for Housing in her response to Question 1 had answered his question.

Question 3 from Councillor L Smith:

“Can the Cabinet Member for Environmental Services confirm and fully commit this Council to continuing to provide the residents of the borough with a weekly household rubbish collection for the next three financial years?”

Could the Cabinet Member also give her full support to keeping all Environmental Services in-house including street sweepers, grounds maintenance and refuse collection, rather than follow the approach of many Conservative Councils to outsource front line services”?

RESPONSE from Councillor L Rice, Cabinet Member for Environment:

"This Council currently operates waste collection services on a fortnightly basis for dry recyclables in a brown bin, and green garden waste in a green bin. All other waste is collected in a grey bin every week.

In 2012 this Council successfully bid for funding made available by Government so that local authorities can maintain their weekly waste collections. Our bid brought in £1.3 million over 3 years for us to promote waste minimisation and to maintain our existing waste collection arrangements. As a condition of this funding there is on record an existing commitment to maintaining a weekly waste collection service until 2017/8.

As the Member is well aware we face many difficult decisions as a Council over the coming months, it would be wrong for me to pre-empt tonight the discussions as we seek to protect our residents and staff from the impact of the decisions taken by this unpopular Tory Government.

This Council can be rightly proud that unlike many Tory Councils we focus on the needs of our residents. This means protecting the public services our residents rely on. But we also know that Government policies are hitting real take home pay hard and so we must also make sure that we keep our costs down and deliver services that offer real value for money."

Question 4 from Councillor P Waker:

“The Council's Constitution has until now been very clear that Councillors, both individually and through Select Committees, are entitled to ask for and receive "any documents" (as outlined in Article 13 of the Constitution and the Principles of Corporate Governance) that are not in draft or relate to an individual or Court cases etc (i.e. data protection).

Notwithstanding any changes of wording to the Constitution and noting the difficult decisions that Councillors will have to make in the next few years as well as events in Councils such as Rotherham that may not have been as open with all their documents to Councillors as they could have been, can the Leader assure the Assembly that any attempts to restrict Councillor access to documents that are not exempt will not be tolerated?

Furthermore, does the Leader accept that there is not an "internal" part of the Council entitled to information and an external part of the Council in LBBD that is not entitled to information and that neither officers nor Councillors should not be able to decide what is "good enough" to give Councillors and what is not "good enough”.

RESPONSE from the Leader of the Council:

“The Council’s Constitution at Article 13 sets out the Access to Information rules.

A Select Committee is entitled to copies of documents which are in the possession or control of the Cabinet unless (a) the document is in draft or (b) the document is the advice of a political adviser.

I emphasised the wording here as I am quoting from the Constitution and those words are missing from your first paragraph. The appendix to Article 13 also helpfully sets out a list of exempt information for clarity.

I am not aware of any attempts to restrict member access to documents and if any Member is of that opinion they should contact the Monitoring Officer.

I do not recognise the phrases ‘internal’ or ‘external’ parts of the Council. Every Member and Officer must abide by the Council’s Constitution. Any attempt by an Officer or a Member to circumvent this would be unconstitutional and a breach of the Employee or Member Code of Conduct.”

Question 5 from Councillor Gill:

“Can the Cabinet Member for Regeneration please explain what actions the Council is taking to lobby Barclays Bank about the decision to close their branch in Faircross Parade, Barking and to also ensure that the site is not converted into another betting shop”?

RESPONSE from Councillor Geddes, Cabinet Member for Regeneration:

"I'm grateful for the question from Councillor Gill and I recognise that with me he has long shared a concern about the proliferation of betting shops across the borough.

If I can just preface my comments by saying that, as of earlier today, we hadn't heard of any proposals to change the use of the particular site mentioned in the question, either to a use that would require planning permission or to a use, such as a betting shop, that would not. That said, the local councillors might have more information on this matter.

I'd also like to place into context the Council's concerns about the spread of betting shops. About a year ago we started work on two policies; one was an Article 4 Direction that would have made it harder for pubs, restaurants, take-aways and cafés to turn into betting shops. The other was an SPD (a Supplementary Planning Document) that would have made it harder for betting shops to cluster in certain destinations. When we met with the national representatives of the betting chains, a meeting Rocky (*Councillor Gill*) attended, they stressed that there has only been a very small increase in the number of betting shops across Barking and Dagenham - the problem is, however, as elsewhere across the country, that the shops we have are clustering together in places like Barking Town Centre. So far, for various reasons, we haven't progressed with either of these policies and I am hoping that another development I'll mention shortly will mean we will not need to do so.

At this point I'd like to add that it isn't only in planning legislation where the odds are stacked against local councils and their communities. Both Councillor Channer, who chairs the Licensing Board, and Councillor Butt, the local Cabinet Member responsible for Enforcement, have expressed to me their frustration at not being able to deal with this issue. For example, at a recent board hearing, at which considerable concerns were expressed, members had to bear in mind that applications cannot be turned down even for such reasons as there being no need for yet another betting office in an area or that the building concerned didn't seem suitable for a betting office.

Turning specifically to the location mentioned in the question, I was aware of the local ward councillors lobbying on this matter as soon as the bank's future was in doubt. Subsequently to that the Leader has written to the bank concerned, Barclays. Now normally I wouldn't be too optimistic about the response to such a letter because we wrote to Barclays previously when their branch in the Town Centre was becoming empty. All we got then was a polite reply, which stated that their commercial interests had to take precedence. However, we have since found out that Barclays have adopted a 'Stewardship' policy, which they interpret to mean 'leaving things better than they found them'. I would put it to all elected members and to the local community that it will be interesting to see if they will try to justify taking away a much valued bank and replacing it with a betting shop, which would be the third betting shop within about fifty metres in this area.

What we have also done is to support Hackney Council's campaign to have betting shops placed into a separate use class and since we have done that over sixty other councils around the UK have also supported the campaign, which again shows the wide support that there is for something to be done on this matter.

Perhaps in response to this or to the Labour Party saying what it would do, we have also been consulted by the current Coalition Government on their plans to stop banks becoming betting shops without planning permission and this might be a better way to move forward, rather than potentially expensive and difficult planning legislation from local councils. That consultation paper went to our Development Control Board back in September and they not only supported the changes suggested, but also added the concern, to which I referred earlier, about clustering.

I hope this demonstrates that we have been acting in a comprehensive way to try to deal with the matter for some time, but, if there is anything further that Rocky (*Councillor Gill*) or any other member feels we should consider doing, I am happy to discuss this informally."

Question 6 from Councillor Gill:

"Does the Cabinet Member for Finance believe that freezing Council Tax for a 7th consecutive year and accessing any available grants like previous years is crucial to helping local residents through the cost of living crisis unlike Tory led Havering Cabinet who are considering increasing Council Tax by 2%?"

RESPONSE from Councillor Twomey, Cabinet Member for Finance:

"Whilst I agree with the principle Councillor Gill raises, that we should support those who are struggling with the cost of living, I do not believe that the Council Tax freeze is a crucial element in the cost of living crisis, but is a helpful element at a time of raising utility bills, debt issues and the impact of welfare reform.

There is, however, a balance that we need to find between not wishing to increase Council Tax for our residents and the need to continue to provide valuable services for them, including those who are the most vulnerable.

What we all as Councillors need to be doing is ensuring all our residents are aware of all the ways they can access financial support and advice to help them manage their finances in these challenging times, alongside practical steps to improve their way of life. From encouraging them to take to the third sector, including the Liberty credit union who offer more affordable support, to referring to food banks and also to the Council for assistance with Discretionary Housing Payments.

The Council has made use of grants in recent years, which has enabled it to freeze Council Tax, but many of those grants have, however, only provided partial or short term relief as they have not been converted into an ongoing funding stream or have only covered part of the income that could have been raised by increasing Council Tax. If Council Tax had been raised by the maximum available without requiring a referendum, it would mean that the authority would have over £3.6m more income year on year as its Council Tax base, at a time when we have had to cut a number of services that were valued by residents and, therefore, we need to reflect on which will have the greater impact – the additional cost of a 2% increase in Council Tax or reducing or removing important services.

I have been fully supportive of the Council Tax freeze over the four years I have been an elected Councillor.

I would like to say that I believe in collective decision making and it would be presumptive of me to pre-empt a decision that is not in my gift to make."

Question 7 from Councillor McCarthy:

"Could the Cabinet Member for Crime and Enforcement please explain why the Council has painted double-yellow lines outside Singh Sabha London East Barking Gurdwara in North Street without any local consultation? Would the Cabinet Member agree that this is not a good example of empowering local communities and is also against the spirit of localism?"

RESPONSE from Councillor Butt, Cabinet Member for Crime and Enforcement:

"Councillor McCarthy, thank you for giving me the opportunity to share with Assembly the many good things we are doing to make sure that we are London's growth opportunity.

As Barking grows we must ensure that there is safe and accessible parking, for all our communities, which help tackle local congestion. It will always be difficult, when we introduce changes, but we must balance different needs if we are going to be one borough; one community.

Empowering local communities to look after their area and help themselves is, of course, important. But in this instance, this is not about the needs of one group, but rather the safety of all.

As we have redeveloped the area, the demand for parking has grown and will continue to grow. We have looked at the demand for parking:

- from William Street Quarter and Whiting Avenue residents,
- from the many shoppers who will visit the new ASDA when it opens,
- from those who will use our new Abbey Leisure Centre when it opens in December, and
- from those who come to worship in this part of the borough.

I know that when new parking restrictions are introduced, some motorists will park in any available free parking space. This is not usually in the community's best interests. So, when a petition was received on behalf of the Gurdwara, I ensured that an officer, who had not previously been involved in the decision to install the double yellow lines, reviewed whether the decision was the right one. And, although the area is in my ward, and I know it very well, I went on a site visit to look at the detail for myself.

I am satisfied that the right decisions were made, and would remind Members that not only has the Gurdwara itself got two car parks with access directly into the building, but London Road Car Park is just a few minutes' walk away.

The Director advises me, that whilst the decision to install the lines was correct, there was a lack of co-ordination between different Council teams, which led to mistakes being made over consultation with the Gurdwara.

Therefore, Councillor Geddes and I have asked officers to ensure that, in future, there is better co-ordination, to avoid this kind of mistake.

However, there are long-term benefits for road safety and congestion in this area and that is why this decision must stand."

Question 8 from Councillor Mullane:

"Would the Cabinet Member for Environmental Services please assure the Assembly that front-line workers covered by her portfolio who communicate with Councillors about the many issues that affect the Council will not be subject to disciplinary procedures? Could the Cabinet Member also ensure that a letter is sent to staff confirming that while the Council faces a difficult time because of the savage cuts imposed by this Government that they are free to talk to Councillors

without fearing bullying, harassment or disciplinary action?"

The Leader of the Council delegated authority for the RESPONSE to be made by Councillor Twomey, Deputy Leader and Cabinet Member for Finance:

"As the question covers issues that affect all staff and all Members, I will respond to it as I am looking at all aspects of engagement between staff, trade unions and Members. Firstly, I can assure you that bullying and harassment will never be tolerated in this Council by anyone at any level. In terms of disciplinary action, the current Constitution is clearly the starting point in terms of an answer and it is very clear.

The Protocol re Member and Employee Relations at paragraph 7.2 says:

Contact between Councillors and employees should be via the relevant Corporate Director or Divisional Director/Head of Service, with the exception that all case work should be channelled through a Members' casework officer, the contact details of whom will be provided to Councillors.

All officer and Members need to be fully aware that this is the process which has been agreed by the Assembly. Officers need not fear disciplinary action if the correct process is followed. No Member should compromise an officer by requesting information directly, but go through the appropriate channels as set out in the Constitution or through Members' casework.

The primary role of both Members and officers is to serve the community to the best of their abilities. This is also expressly set out in the Council's Constitution. There is a need for greater awareness amongst members and officers around the Code of Conduct applicable to them as both Codes set out the seven principles of public life identified by the Nolan Committee and endorsed by the Council in the Constitution.

Members and officers are of course free to talk to each other in order to work together. What is not appropriate however, is for Members to either involve themselves in or try to dictate day to day operation of any part of any service. Any Member wishing to do so should remind themselves of the Member/ Officer Protocol and ensure the boundaries between both roles to not become blurred.

Conversely, if any officer in any department has any issue that they think affects the Council, then they should bring it to the attention of Members through the appropriate line management channels."

Question 9 from Councillor Bartlett:

"This Council has consistently opposed the academisation of schools in Barking & Dagenham and has been fully committed to comprehensive education. Could the Cabinet Member for Education and Schools please provide an assurance that this Council will continue to oppose the academies agenda and will fight any attempt to

remove any schools from local authority control?"

RESPONSE from Councillor Carpenter Cabinet Member for Education and Schools:

"Thank you for your question Cllr Bartlett.

This question is about my vision for our education service in Barking and Dagenham.

We've just agreed the vision and priorities: One Borough, One Community, London's Growth Opportunity. Education is embedded throughout the whole vision.

We are all on a learning journey from birth to old age. Before becoming a councillor, I worked for over 20 years in local authorities in Manchester and London supporting schools and colleges. To help create an integrated service where all could thrive - children, young people and adults - to unlock their potential and achieve their aspirations.

I am totally opposed to the ferocious fragmentation imposed by this government on education services and schools. We worked hard to support the Warren School which we partnered with Robert Clack, one of the best schools in the country. We learnt from the judicial review of Warren, however, that even the strongest case can be overruled by the Secretary of State.

We have been under ferocious scrutiny by the government. Did you know that over the past 2 academic years, there have been 78 OFSTEDs and monitoring visits?

I say, bring it on OFSTED!

I am proud of our schools, our teachers, pupils and their parents. We have seen improvements. We are now above the national average on most of the main measures at 5, 7 and 11.

At secondary level, our Borough has held on to its best performance at GCSE in spite of significant drops elsewhere. A level results have improved too.

However, there is still much to do. I want all our schools to be good or outstanding. I know you want this too.

There was an inspiring Governors' conference last Saturday where the large hall of Manor Junior School was filled to overflowing with governors keen to prepare for the new academic year. One of the most popular workshops was on partnerships between schools. How an outstanding school is helping another drive up standards. I am grateful to Cllr Phil Waker for leading this workshop.

While I am education and schools portfolio holder, I shall fight the fragmentation of our education service here in Barking and Dagenham. Partnerships between schools supported by the local authority is the way forward.

Thank you again for your question Cllr Bartlett. Let's work with schools to build on the partnerships now in place. Let's realise the vision of One Borough and One Community. Let's position the London Borough of Barking and Dagenham's education service to face the future."

Question 10 from Councillor Young:

Does the Cabinet Member for Finance believe that maintaining the current terms and conditions of front line staff and doing our best to ensure there is no loss of income for the poorest paid council staff is vital to their morale and helps ensure they continue to do the good job that we expect of them?

Furthermore, as many of those staff live in the borough, does the Cabinet Member accept that this will help to maintain average income levels in Barking and Dagenham, already low in comparison to other areas of London, and will also assist the economy in difficult times?"

RESPONSE from Councillor Twomey, Cabinet Member for Finance:

"I believe that just looking to maintain employee terms and conditions when we should be striving to improve upon all aspects of our employees' conditions within the workplace, whether that be terms and conditions, pay, training or developmental opportunities is probably short sighted of my colleague. As all of these things significantly impact on staff morale and as we know that the quality of our services is a result of the ongoing commitment and skill of the people who work for us, we will ensure that both staff and trades unions continue to play an active part in shaping future terms and conditions as they have successfully done over the last four years.

We are already trying our best to protect our lowest paid employees in terms of outstripping the London living wage by awarding our lowest paid employees over £9 per hour and also protecting as many jobs as possible amongst the backdrop of the savage funding cuts imposed on us by the Tory/Lib Dem government.

Having just short of 50% of our staff living in the borough does, I am sure, assist the local economy in difficult times. However, we need to ensure that we offer our residents choice in where to spend their money and this will only be achieved by being an outward looking borough, which encourages significant growth and regeneration opportunities.

Finally, I would like to address the point of average income levels within the borough. I would say just trying to maintain average income levels that, as you rightly point out, trail many parts of London is again short sighted, and I believe as an employer the Council needs to raise average income levels as much as possible, which is why regeneration of the borough is key to our future success in terms of aspirational housing, regeneration and new business growth."

ASSEMBLY**25 November 2014**

Title: Death of Freeman Vera Reynolds	
Report of the Chief Executive	
Open	For Information
Wards Affected: None	Key Decision: No
Report Author: John Dawe, Group Manager, Democratic Services	Contact Details: Tel: 020 8227 2135 E-mail: john.dawe@lbbd.gov.uk
Accountable Divisional Director: Fiona Taylor, Head of Legal and Democratic Services	
Accountable Director:	The Chief Executive
<p>Summary:</p> <p>The Assembly is asked to note with deep regret that Freeman Vera Reynolds passed away on Monday, 29 September 2014. Her funeral took place on Monday, 20 October 2014 at South Essex Crematorium.</p> <p>Vera Reynolds was presented with the Freedom of the Borough in 2009 after being nominated as 'Peoples' Choice' for her work in the borough.</p> <p>Vera was a prominent member of the Girls Brigade and rose in ranks to become the Commissioner of Barking and Dagenham Division. She trained a number of girls in their Duke of Edinburgh Award and was presented with her own award in 1993. Vera worked at Cambell Junior School in Dagenham for 37 years.</p> <p>In later years, Vera continued to be a prominent member of the community. She started a club for the over 50s called Breakaway, provided administration support for the Noah's Ark Centre for Child Care, was a Trustee and Church Secretary of New Life Church Centre in Dagenham and a member of the Standing Advisory Council for Religious Education in Barking.</p>	
Recommendation/Reason	
The Assembly is asked to stand for a minute's silence as a mark of respect.	

This page is intentionally left blank

ASSEMBLY

25 NOVEMBER 2014

Title: Members' Allowances – Payment of an allowance to the Chief Whip	
Report of the Monitoring Officer	
Open	For Information
Wards Affected: All	Key Decision: No
Report Author: Fiona Taylor, Head of Legal and Democratic Services	Contact Details: Tel: 020 8227 2114 E-mail: fiona.taylor@lbbd.gov.uk
Accountable Head of Service:	Fiona Taylor, Head of Legal and Democratic Services
Accountable Director:	The Chief Executive
Summary:	
<p>This report is in response to a request made at the Annual Assembly in June 2014 regarding the decision to cease payment to the position of Chief Whip as part of the Members' Allowance Scheme adopted at that meeting. A legal view was requested as to why the position has changed since the local scheme was adopted in 2010 and if the payment made at that time was illegal or unlawful.</p>	
Recommendation(s)	
The Assembly is asked to note this report.	
Reason(s)	
This is an information item following a request for clarification by Members at the June 2014 Assembly.	

1. Background

- 1.1 The Local Authorities (Members Allowances) (England) Regulations 2003 require local authorities to make an annual scheme of allowances. In setting a Scheme the Council must have regard to recommendations of an Independent Remuneration Panel (IRP) either established locally or in the case of London Boroughs by having regard to the findings of the independent panel established by London Councils. The only exception to this being where a local authority does not intend to change the basis of the allowances except for an annual indexation adjustment for a period of no more than four years.

- 1.2 When the Members' Allowances Scheme ("the Scheme") was presented this year, the recommendation advised Members to have regard to the London Council's IRP report when applying what amounted to a further freeze in the cost of allowances.

2. Form of allowances

- 2.1 There are two forms of allowance the Basic Allowance and the Special Responsibility Allowance (SRA).

Basic allowance

- 2.2 Every local authority must make provision in its scheme for a basic flat rate allowance payable to all members. The purpose of the basic allowance is to recognise the time commitment of members and to cover incidental expenses. The basic allowance is currently £10,006.

Special Responsibility Allowance

- 2.3 Local authorities may also make provision for the payment of a Special Responsibility Allowance (SRA) for those members who have significant responsibilities over and above the normal work of a ward member. The 2003 regulations set out the following specific criteria where payments can be applied:
- (a) acting as Leader or Deputy Leader of a political group within the authority;
 - (b) acting as a member of an executive where the authority are operating executive arrangements within the meaning of Part II of the Local Government Act 2000;
 - (c) presiding at meetings of a committee or sub-committee of the authority, or a joint committee of the authority and one or more other authorities, or a sub-committee of such a joint committee;
 - (d) representing the authority at meetings of, or arranged by, any other body;
 - (e) acting as a member of a committee or sub-committee of the authority which meets with exceptional frequency or for exceptionally long periods;
 - (f) acting as the spokesman of a political group on a committee or sub-committee of the authority;
 - (g) acting as a member of an adoption panel within the meaning of the Adoption Agencies Regulations 1983;
 - (h) acting as a member of any committee or sub-committee that deals with any function arising under any enactment authorising the authority to license or control the carrying on of any activity; and
 - (i) carrying out such other activities in relation to the discharge of the authority's functions as would require of the member an amount of time and effort equal to or greater than would be required of him by any one of the activities mentioned in sub-paragraphs (a) to (h) (whether or not that activity is specified in the scheme).

3. Whip Allowance

- 3.1 Set out in the table below is an extract of a sample of other London Boroughs' allowance schemes from this year. The source was the authorities own published figures and a survey by London Councils and shows a mixed picture, with some authorities making payments to both the positions of chief whip and opposition whips, and with others, including Barking and Dagenham, not recognising the position within their schemes. In 2010 a report did come to the Assembly for the introduction of an allowance for the chief whip which was approved. In the table below, only in one example, LB Newham, is the position of Chief Whip receiving a separate allowance.

Authority	Is a Whip Allowance paid	Level of Remuneration	Comments
Barnet	No	N/A	N/A
Barking & Dagenham	No	N/A	N/A
Hackney	Yes	£2,222.53	First Opposition Group Whip, and Majority Group Chair, Secretary and Whip
Haringey	Yes	£15,750	Chief Whip, Opposition Chief Whip
Havering	No	N/A	N/A
Newham	Yes	£3,621	Majority Group Whip
Redbridge	No	N/A	N/A
Waltham Forest	Yes	£4,000 / £8.000	Council Chief Whip £8,000; Opposition Chief Whip £4,000;
Wandsworth	Yes	£2,804.88	Opposition Group Whip
Westminster	Yes	£4,000 / £5.000	Council Chief Whip £5,000; Opposition Chief Whip £4,000;

- 3.2 Having examined the regulations it is clear that whilst the role of a whip is not listed as a specific activity warranting a payment, it could reasonably be argued that such a position would qualify under regulation 5 (i) (see paragraph 2.3 above), on the basis of 'discharging one of the authorities functions'. It is not therefore illegal or unlawful.
- 3.3 The London Councils IRP whose recommendations were taken into account when setting this year's scheme did specify differing levels of SRAs across a range of bandings including '*First Opposition Whip (in respect of council business)*' and '*Majority Party Whip (in respect of council business)*'.
- 3.4 The qualification of '*in respect of council business*' suggests that the local authority whips only have a role to be remunerated if they facilitate getting business through the Council, as opposed to maintaining discipline in the party group. On that basis, to make a payment for the position of Chief Whip, the justification in an authority with a single party is not so obvious. This is because there is no reason to suppose

that the governing majority party will not get its business through the Council's decision making structures.

4. Conclusions

- 4.1 The findings from the review of the regulations is that as long as it can be demonstrated that the activities of a whip relate in some way to the discharge of the Council's business then making a payment is appropriate and not unlawful or illegal. The same rationale does not appear to have been applied before the setting of the Members' Allowances Scheme in 2010. The review carried out in 2014 in relation to all allowances was completed against the backdrop of savings pressures facing the Council.

5. Options Appraisal

- 5.1 Maintain the current position in light of (i) a majority administration and (ii) the Council's savings pressures.

6. Consultation

- 6.1 Not applicable

7. Financial Implications

Implications completed by: Olufunke Johnson
Telephone and email: olufunke.johnson@lbbd.gov.uk 020 7227 2485

- 7.1 There are no financial implications.

8. Legal Implications

Implications completed by: Paul Feild Corporate Governance Lawyer

Telephone and email: 020 8227 3133 paul.feild@bdtlegal.org.uk

- 8.1 The body of this report sets out the legal framework and as explained the Council is required to administer its Members' Allowances in accordance with the Local Government and Housing Act 1989 and regulations made thereunder.

9. Other Implications - None

Background Papers Used in the Preparation of the Report:

Local Government and Housing Act 1989
Local Authorities (Members Allowances) (England) Regulations 2003
London Councils – The Remuneration of Councillors in 2014 – Report of the Independent Panel

Assembly

25 November 2014

Title: Constitution Review	
Report of the Head of Legal and Democratic Services	
Open Report	For Decision
Wards Affected: None	Key Decision: No
Report Author: Alan Dawson, Democratic Services Manager	Contact Details: Tel: 020 8227 2348 E-mail: alan.dawson@lbbd.gov.uk
Accountable Divisional Director: Fiona Taylor, Head of Legal and Democratic Services	
Accountable Director: Graham Farrant, Chief Executive	
<p>Summary</p> <p>The Council is required by Section 37 of the Local Government Act 2000 to keep its Constitution up to date and under annual review.</p> <p>A comprehensive review has been carried out over the past 12 months to ensure that the document is up to date and reflects new legislative requirements, and in order to deal with any ambiguity or poor wording. A plain English approach has also been adopted.</p> <p>A report appending the new Constitution in its entirety was presented to the Assembly for adoption on 17 September 2014. However, a number of Members were concerned that they had not had the opportunity to properly understand the changes that were proposed in such a relatively short period since the circulation of the document. It was decided, therefore, to refer it to a special meeting of the Public Accounts and Audit Select Committee (PAASC) to review the main changes and any other aspects identified by Members, with a view to re-presenting the report, along with any recommendations with a view to the adoption of the document at this meeting.</p> <p>PAASC met on 5 November and agreed a number of proposals for the Assembly's consideration, which are detailed in the body of this report.</p>	
<p>Recommendation(s)</p> <p>The Assembly is asked to:</p> <ul style="list-style-type: none"> (i) Consider the proposed main changes to the new Constitution detailed in section 2 of the report, taking into account the views of PAASC both in relation to the main changes and other aspects put forward by that Committee as detailed; (ii) In the light of (i) above, adopt the new Constitution as presented to the last meeting subject to the following and any other amendments agreed at this meeting: 	

- (a) That the merger of the 'Leader's Questions' and 'General Questions' processes into a single 'Questions With Notice' process also make provision for supplementary questions to be asked in the following terms: "After the initial answer, the Councillor who submitted the question may ask one supplementary question arising directly out of the initial question or answer, without notice, and the person who answered the initial question shall respond to the supplementary question wherever possible. There shall be no further debate on the issue."
- (b) To confirm the creation of a Licensing Sub-Committee to determine applications, with a membership of three to be made up of Members of the Board, while noting the overriding provision within the Licensing and Regulatory Board's terms of reference which enable the full Board to consider any matter delegated to the Sub-Committee or officers.
- (c) That the appointment of non-Cabinet Councillors to the various JNC Panels should be the responsibility of the Assembly as part of its general responsibilities in respect of Member appointments, and that the appointment arrangements be amended so that a pool of four non-Cabinet Councillors are appointed for the respective Panels and the Chief Executive, in consultation with the Leader of the Council, is authorised to appoint the two non-Cabinet Councillors from the pool to sit on each panel.
- (d) That the business at ordinary meetings of the Assembly be amended to include "Receive the minutes of the meetings of JNC committees, sub-committees and panels".
- (e) That the terms of reference of the JNC Salaries and Conditions Panel be amended to include "... to consider and make final decisions in relation to senior management (JNC) structures / reorganisations" and that the corresponding amendments be made to the Officer Scheme of Delegation.
- (iii) Authorise the Monitoring Officer to make any consequential amendments prior to the publication of the document, the provisions of which will come into immediate effect.

Reason(s)

To meet the requirements of the Local Government Act 2000.

1. Introduction and Background

- 1.1 Section 37 of the Local Government Act 2000 requires that the Council has in place a document, known as its Constitution, which contains the Council's standing orders, codes of conduct, and such other information as the Council considers appropriate or required by law.
- 1.2 The Council Constitution was adopted by the Assembly in 2000 and although it has been maintained and updated throughout that time it has never undergone a full, cover-to-cover review. With that in mind, a comprehensive review has been carried out over the past 12 months.

- 1.3 There were two key principals underpinning the review. The first was to ‘challenge’ the Council’s rules and protocols to ensure that they reflected modern ways of working and new legislative requirements. The second was to improve the general language to make the document easier to read and understand, while at the same time maintaining the integrity of such an important document. A plain English approach has been adopted. The structure remains largely the same as the current Constitution with the vast majority of the current component parts remaining, although several new elements and some former elements have been removed as detailed in this report.
- 1.4 Forming part of the new document are several sections that have already been approved by the Assembly in the past year, namely the Contract and Financial Rules, the Employees’ Code of Conduct and Protocol for Councillor/Employee Relations. As these parts of the Constitution have already been approved by the Assembly they have not formed part of this latest review.
- 1.5 Following the decision to refer the matter to PAASC to review the proposed revisions to the Constitution, and seeing the importance and relevance of the document for all Councillors, PAASC Members were asked to liaise with their colleagues to identify any issues within the new Constitution which they felt needed addressing or clarifying through the review. A number of issues in relation to the new wording in Part 2 (“The Articles”) were highlighted by PAASC, with changes proposed for consideration as detailed in paragraph 2.3 below. Officer comments on each of those changes are also set out for consideration.
- 1.6 In addition PAASC highlighted a number of other minor wording aspects to aid clarification of the document which officers have acknowledged and will address.
- 1.7 Dependent on Members’ decisions the document will be revised and published to the Council’s website. Hard copies will be made available on request.

2. Proposal and Issues

- 2.1 As part of the overall review, many aspects of the layout of the Constitution have been amended and therefore it is not practical to detail every precise change. Paragraph 2.2 details the significant changes, with the key points to highlight from a more general perspective being:
 - a) There is a greater focus on Council procedure rules, statutory functions and responsibilities;
 - b) The revised structure brings together each committee’s procedures and responsibilities into one document under the individual Articles in Part 2 (previously these were in separate parts of the document and therefore more difficult to follow);
 - c) Some non-essential (from a constitutional perspective) but nonetheless practical information, such as “Use of Council resources, facilities and equipment”, “Protocol re Communications for Council members” and “Conference, visit and hospitality rules” in the previous Constitution have been removed and will now be maintained, following review, and available on the Council’s website for Councillors and officers to refer to;
 - d) Simpler language and less repetition;

e) 60+ fewer pages.

2.2 The significant changes which the Assembly is asked to focus on together with PAASC's recommendations on each are set out below (these are listed under the relevant Part of the new Constitution).

Part 2

(i) **Merger of former Leader's Questions and General Questions processes into single "Questions with Notice" section (Chapter 4, paragraph 9).**

The separate Leader's Questions and General Questions processes were considered to be an unnecessary duplication and could cause confusion due to different deadlines for each process. Therefore, a single process is proposed which allows an individual Councillor to submit up to two questions by a deadline of midday the Friday before the meeting, which is a compromise between the former five working day deadline for Leader's and two working day deadline for General Questions.

PAASC recommendation - Support the proposed change with an additional provision to allow the Councillor asking the question to ask one supplementary question at the meeting. A general point was also made about whether there should be written procedures laid down in the Constitution to allow for non committee member questions at other meetings such as the Cabinet.

Officer response – With regard to the provision for a supplementary question, if the Assembly is minded to support PAASC's recommendation, the suggested wording for the Constitution (replacement paragraph 9.9) is as follows:

"After the initial answer, the Councillor who submitted the question may ask one supplementary question arising directly out of the initial question or answer, without notice, and the person who answered the initial question shall respond to the supplementary question wherever possible. There shall be no further debate on the issue."

As regards questions at other meetings it is not felt necessary to amend the provisions within the current Constitution which provides for Chair's discretion subject to any other overriding provisions.

(ii) **Clarification of the process for Call-in, the requirements for a valid call-in and Chief Executive's determination (Chapter 8, paragraph 6).**

There are no proposed changes to the deadlines or thresholds for call-in. The changes are aimed at providing greater clarity to Members on the factors that they need to take into account, including providing evidence, when considering a call-in. The changes also include specific circumstances where a call-in would be considered invalid (for example, when pre-decision scrutiny has been undertaken), specify that the Chief Executive is responsible for making the final decision on the validity or otherwise of a call-in request and include a new exemption from call-in in relation to the awarding of contracts that have followed a lawful procurement process.

Linked to this point, the Budget and Policy Framework now includes a detailed process for dealing with call-in decisions which are potentially considered to be contrary to the Budget or Policy Framework (**Chapter 18, paragraph 6**).

PAASC recommendation - Support the new wording as proposed.

(iii) **Creation of new Licensing Sub-Committee to consider all applications (Chapter 10).**

Statutory Guidance issued in June 2013 under Section 182 of the Licensing Act 2003 recommends that decisions on applications where there are representations should be delegated to a sub-committee and not dealt with by the full committee. With that in mind, revised terms of reference of the Licensing and Regulatory Board (LRB) have been drawn up which propose the appointment of a sub-committee, with a membership of three, to determine applications that have, up to now, been considered by the full LRB. There are no proposed changes to the level of decisions which are made by Members and those made by officers under delegated authority. The full LRB would meet quarterly to consider strategic / policy matters and other current issues and the new Licensing Sub-Committee would meet as and when required to consider applications.

PAASC recommendation - As it is only guidance, albeit statutory, it is proposed to maintain the current arrangements whereby the full Board should determine applications. This is on the basis that the benefits of a wider discussion, principally in relation to consistency in decision-making, outweigh other considerations.

Officer response - There are a number of risks associated with not complying with the Statutory Guidance issued under Section 182 of the Licensing Act 2003. Primarily, a successful challenge to a Magistrates Court of the Council's arrangements could expose the Council to costs and result in a decision, or decisions, made by the full Board being overturned on the grounds that failure to comply with statutory guidance infringed natural justice. The benefits of maintaining the status quo suggested by PAASC are acknowledged but it is officers' view that they do not outweigh the benefits of complying with the statutory guidance, particularly as provision will remain for the full Board to consider applications in certain circumstances. On this basis, it is officers' recommendation that the proposed creation of a Licensing Sub-Committee to make decisions on applications should proceed as proposed.

(iv) **New section on "Outside Bodies" which includes a "Guide to the Law for Councillors and Officers on Outside Bodies" (Chapter 15)**

PAASC recommendation- Support the introduction of the new section.

Part 3

(v) **Officer Scheme of Delegation (Chapter 1, paragraph 14).**

A new clause has been included to reflect requirements of the Openness of Local Government Bodies Regulations 2014 in relation to the recording and publication of delegated decisions taken by officers.

PAASC recommendation- Support the introduction of the new clause.

Part 5

(vi) **New protocol to reflect the requirements of the Openness of Local Government Bodies Regulations 2014 in relation to filming, social media etc. at Council meetings (Chapter 6).**

PAASC recommendation- Support the introduction of the new protocol. Members also commented that they would welcome the introduction of web casting at Council meetings to aid openness and transparency of decision making.

(vii) **New protocol on Politically Restricted Posts (Chapter 7).**

PAASC recommendation- Support the introduction of the new protocol.

(viii) **New protocol on Indemnities for Members and Officers (Chapter 8).**

PAASC recommendation- Support the introduction of the new protocol.

2.3 Other Issues

The following provisions set down in Part 2 (“The Articles”) were highlighted as part of the review by PAASC for consideration:

(i) **Responsibility For Functions (Chapter 4 –The Assembly):**

PAASC recommendation - Assembly approval of the Budget Framework should include the HRA budget in view of its importance and links to the Budget Framework, particularly in relation to General Fund budgets.

Officer response – The approval of the Budget Framework is reserved by statute to the Assembly whilst the setting of rents and other HRA-related matters is presently reserved to the Cabinet. Although it is not proposed to vary that arrangement at the present time, officers shall review the process in the light of Members’ comments and best practice and will report to a future meeting of the Assembly on any proposed changes to the arrangements.

(ii) **Appointments to JNC Panels (various) (Chapter 4 – The Assembly)**

PAASC recommendation: Appointments of non Cabinet members to all JNC Panels should be responsibility of the Annual Assembly as part of the general

Member appointments process. It is proposed that a pool of four non-Cabinet members be appointed to each Panel for selection as required.

Officer response - Appointments as described would allow for targeted member training such as recruitment and other HR processes. It is recommended that selection from the pool of non-Cabinet members should be the responsibility of the Chief Executive in consultation with the Leader of the Council.

(iii) Minutes of JNC Panel Meetings

PAASC recommendation: There should be specific reference in the Constitution that all JNC Panel minutes will be presented to the Assembly for information.

Officer response – Support additional wording to reflect the requirement.

(iv) JNC-level restructures

PAASC recommendation: The terms of reference of the JNC Salaries and Conditions Panel should include consideration of senior management (JNC) structures / reorganisations.

Officer response – Under the current Scheme of Delegation, the Chief Executive (as Head of Paid Service), in consultation with the Divisional Director of HR and OD, is responsible for all matters relating to restructuring / reorganisation. PAASC's proposal would bring some consistency to current arrangements so if the Assembly is minded to support the recommendation, it will be necessary to extend the terms of reference of the JNC Salaries and Conditions Panel and make an appropriate amendment to the Officer Scheme of Delegation as set out in Part 3 of the new Constitution.

3. Options Appraisal

3.1 This is not relevant to this report.

4. Consultation

4.1 This Constitution review has been led by officers in Legal and Democratic Services who have consulted with relevant colleagues throughout.

4.2 In respect of the areas of significant change, consultation took place with the appropriate Cabinet Members, Chairs and Deputy Chairs prior to the original report being presented to the Assembly. Subsequent to that Assembly meeting, PAASC met to consider the proposals and its recommendations are covered in this report

4.3 The Constitution will be subject to continual review. Any issues or questions which Members may have can be dealt with under that continual review process via the Head of Legal and Democratic Services and, where necessary, appropriate amendments put forward to subsequent meetings of the Assembly.

5. Financial Implications

Implications completed by: Jonathan Bunt, Chief Finance Officer

- 5.1 There are no direct financial implications arising from this report.

6. Legal Implications

Implications completed by: Fiona Taylor, Head of Legal and Democratic Services

- 6.1 The Local Government Act 2000 requires Councils to produce, maintain and review the Constitution document as part of their good governance arrangements.

Public Background Papers Used in the Preparation of the Report: None

List of appendices: None

ASSEMBLY

25 November 2014

Title: Adoption of Community Infrastructure Levy Charging Schedule	
Report of the Cabinet Member for Regeneration	
Open Report	For Decision
Wards Affected: All	Key Decision: yes
Report Author: Claire Adams, Principal Planning Officer	Contact Details: Tel: 020 8227 5274 E-mail: claire.adams@lbbd.gov.uk
Accountable Divisional Director: Jeremy Grint, Divisional Director of Regeneration	
Accountable Director:	Steve Cox, Director of Growth
<p>Summary:</p> <p>At its meeting on 22 January 2013, the Cabinet approved the Borough's Community Infrastructure Levy (CIL) Draft Charging Schedule for consultation and for submission for examination (Minute 84 refers).</p> <p>Consultation took place for a period of six weeks from 15 March to 26 April 2013. No modifications were made to the Draft Charging Schedule following consultation, and it was subsequently formally submitted to the Planning Inspectorate on 25 February 2014 for independent public examination.</p> <p>Examination took place on 14 May 2014. On 28 May 2014 the Planning Inspectorate submitted their report to the Council recommending the LBBB Charging Schedule should be approved in its published form.</p> <p>This report proposes the adoption of the LBBB CIL Charging Schedule and covers other consequential issues related to the administration of the charge.</p> <p>The Cabinet considered this report at its meeting on 21 October 2014 and endorsed the recommendations below.</p>	
Recommendation(s)	
The Assembly is recommended to:	
<ul style="list-style-type: none"> (i) Adopt the LBBB Community Infrastructure Levy Charging Schedule as set out at Appendix 1 to the report; (ii) Approve the introduction of the Community Infrastructure Levy rates from 2 March 2015; (iii) Approve that how residents and businesses are consulted on the neighbourhood 	

CIL allocation be agreed on a case by case basis, in agreement with the Cabinet Member for Regeneration;

- (iv) Agree to allow the payment in kind of CIL by land or infrastructure payments;
- (v) Approve the S106 / Planning Obligations Planning Advice Note as set out at Appendix 4 to the report; and
- (vi) Delegate authority to the Divisional Director for Regeneration, in consultation with the Cabinet Member for Regeneration, to make any final amendments permitted by the Examiner's Report.

Reason(s)

The Community Infrastructure Levy will help deliver the borough's growth agenda by providing funding to pay for the infrastructure to support growth and by removing the need for many S106 agreements which currently cause delay in the planning process.

1. Introduction and Background

1.1 Currently, contributions are sought from developers through agreements made under S106 of the Town and Country Planning Act 1990 (S106 Agreements) to mitigate the impacts of their development. The Government has recently tightened the operation of S106 agreements by making law the tests they must meet. S106 monies can now only be agreed as a reason to approve a development, if they meet all of the following three legal tests:

- necessary to make the development acceptable in planning terms
- directly related to the development
- fairly and reasonably related in scale and kind to the development.

Therefore Section 106 monies can now only be used to mitigate the direct impacts of a development. From 6 April 2015 or local adoption (whichever is sooner) a maximum of five S106 contributions can be pooled for any one item of infrastructure. This includes any S106 agreements agreed since 1 April 2010. Therefore this severely restricts the use of S106 to fund wider infrastructure needs.

- 1.2 The Government now expects the wider infrastructure impacts of development, such as the provision of school places, to be funded not through S106 contributions but through a new mechanism called the Community Infrastructure Levy.
- 1.3 The Community Infrastructure Levy (CIL) is a new charge which local authorities are empowered, but not required, to levy on all net new development of 100 square metres or more or the creation of one additional residential unit in their areas. The proceeds of the levy can be spent on infrastructure to support the needs of new development anywhere in the borough.
- 1.4 The Planning Act 2008 provides a wide definition of the infrastructure which can be funded by the levy, including transport, flood defences, schools, hospitals, and other health and social care facilities. The implementation process is set out in the Community Infrastructure Regulations 2010 as amended. Regulation 123 of the

Regulations requires the Local Planning Authority (the Council) to publish a Regulation 123 list which sets out the general infrastructure on which it will spend CIL proceeds on. The list is exclusive to the Council so it cannot then seek additional S106 contributions for items which are listed on the 123 list.

- 1.5 Whilst S106 agreements are negotiated on a case by case basis due to the circumstances of each development being unique, CIL is an automatic non-negotiable charge which once in place applies to all eligible development.
- 1.6 The benefits of moving to a CIL regime can be summarised as follows:
 - Applies to nearly all new development except affordable housing and development for charitable purposes;
 - As it is a fixed, non-negotiable charge there is greater transparency, predictability and certainty for developers;
 - It delivers additional funding to carry out a wide range of infrastructure projects that support growth and benefit the local community;
 - It gives freedom and flexibility to set priorities for what the money should be spent on, as well as a predictable funding stream that assists in planning ahead;
 - It provides developers with much more certainty 'up front' about how much money they will be expected to contribute, which in turn encourages greater confidence and higher levels of inward investment. It will therefore assist in the delivery of new homes and commercial floorspace and therefore help maximise income from other potentially more lucrative funding streams such as the New Homes Bonus and domestic and non-domestic rates;
 - Unlike S106 agreements, it will not slow down or complicate the development assessment process and will help speed up the planning system;
- 1.7 The Community Infrastructure Regulations 2010 as amended prescribe the process for a local authority to adopt a Community Infrastructure Levy. First the Council must publish a Preliminary Charging Schedule for consultation, then a Draft Charging Schedule for consultation and then submit this to the Planning Inspectorate for examination before formally adopting it.
- 1.8 This report represents the last step in the process; to adopt a Community Infrastructure Levy for Barking and Dagenham.
- 1.9 At its meeting on the 14 February 2012, the Cabinet recommended to approve the Community Infrastructure Levy Preliminary Draft Charging schedule for consultation (Minute 114 refers). Responses were received from eleven respondents. In response a number of changes to the proposed charges were made.
- 1.10 Originally a nil charge for small retail (under 370 square metres) and £10 for all other retail (shops, banks, estate agents, cafes, takeaways, restaurants and pubs) was set with the exception of supermarkets/superstores over 1500 square metres which were set a charge of £300 per square metre. This was reduced to £175 per square metre but applied to supermarkets and superstores of any size with all other retail uses paying £10 per square metre. These changes were made first of all to address uncertainty about the legality of having different charges for different sizes of shops and to ensure that the charge for supermarkets/superstores was viable under the terms of the Community Infrastructure Regulations. The charge for business uses (Use Class B1b – Research and Development, Use Class B1c -

Light Industrial, Use Class B2 - General Industrial and Use Class B8 - Storage and Distribution) was also reduced. After further scrutiny it was considered that the proposed levy for some of these uses, at £10 per square metre, was on the margins of viability and as such the charge was reduced to £5 per square metre. No other changes were made.

- 1.11 At its meeting on 22 January 2013, the Cabinet recommended to approve the Community Infrastructure Levy Draft Charging Schedule for consultation and for submission for examination. A six week consultation took place from 15 March to 26 April 2013. A total of 20 responses were received but no evidence was submitted to show that the rates proposed would render development unviable. Therefore, no modifications were made to the schedule.
- 1.12 The Draft Charging Schedule was submitted for to the Planning Inspectorate for examination on 25 February 2014 and the examination took place on 14 May 2014. One objector, the London Fire and Emergency Planning Authority, attended the examination hearing. The Planning Inspectorate's report, received on 28 May 2014, recommended that the LBBD CIL Charging Schedule (attached as Appendix 1) should be approved in its published form.

2. Proposal and Issues

- 2.1 The Planning Inspectorate's report of 28 May 2014 concludes that 'the Barking and Dagenham Community Infrastructure Levy Draft Charging Schedule provides an appropriate basis for the collection of the levy in the Borough. The Council has sufficient evidence to support the schedule and can show that the levy is set at a level that will not put the overall development of the area at risk. I have recommended that the schedule should be approved in its published form, without changes.' The rest of this report deals with detailed implementation issues.

Implementation Date

- 2.2 The Council needs to take into account when determining the introduction of CIL the impact on outstanding planning applications. CIL will be liable on all planning permissions for qualifying development once it comes into force. To enable negotiations on current applications to be concluded under the current system it is recommend that CIL is charged from 2 March 2015.

Review of charges

- 2.3 Officers recommend that the charges should be kept under review for future amendments in light of infrastructure delivery, macro economics trends and changes in local land values. Any further changes to the charging schedule will require a fresh viability study, a repeat of public consultation, and another independent examination. It is the case that development viability has improved during the process of setting the CIL charges and therefore an early review may be necessary to ensure they continue to be set at the right level.

Allocation of CIL and establishing priorities for spending

- 2.4 The CIL Regulations 2010 as amended require collecting authorities to publish a Regulation 123 list which sets out a list of those projects or types of infrastructure

that it intends to fund, or may fund, through the levy. This is drawn from the Council's Infrastructure Plan which identified the infrastructure spending gaps which justified the Council setting a CIL. The Regulation 123 list therefore focuses on the infrastructure necessary to deliver the Core Strategy. The list was submitted to the Examination in Public and any future changes will need to be subject to "local appropriate consultation"

2.5 The list makes a distinction between those site specific items which will continued to be funded by S106 and the strategic infrastructure which will be funded by CIL. The following items are listed in the Regulation 123 list to be funded by CIL:

- Education facilities
- Transport improvements
- Environmental improvements including hard and soft landscaping, green grid and blue ribbon
- Sport, leisure, parks and open spaces
- Health facilities
- Business support facilities
- Community safety projects
- Community facilities
- Flood defences

2.6 The following items will continue to be funded by S106 where they meet the legal tests listed earlier.

- Affordable housing
- Local labour and local supplier contracts
- New bus connections or services and cycle/pedestrian routes and connections through the development
- Local junction / highways improvements and access into the site
- On-site greenspace and public realm improvements
- On-site drainage and flooding solutions
- On site sustainable energy requirements

A draft list is attached as Appendix 3.

2.7 To help developers understand the relationship between S106 and CIL and how they will operate together a draft S106/Planning Obligations Planning Advice Note is attached as Appendix 4. This sets out where planning obligations or Section 106 will be sought following the adoption of the Council's CIL charging schedule. This is not a statutory Local Development Document but a planning advice note.

2.8 Prior to CIL coming into force mechanisms must be put into place to deal with the distribution of funding and how infrastructure on the Regulation 123 list is prioritised. Officers recommend that this is decided through the existing Capital Programme procedures in consultation with the Lead Member for Regeneration. However alternatives include Growth Board and the Local Development Steering Group. Since payments under the LBBD CIL are unlikely to be received until Autumn 2015 there is sufficient time for the preferred mechanism to be agreed.

Neighbourhood Portion

- 2.9 The Council must allocate at least 15% of levy receipts to the local area where the respective development is taking place and what they are spent on must be agreed with the local community. This rises to 25% in those areas with an adopted neighbourhood plan. Currently there are none in Barking and Dagenham. The Government does not prescribe a specific process for agreeing how the neighbourhood portion should be spent but suggests that charging authorities should use existing community consultation and engagement processes. The consultation should be proportionate to the level of levy receipts and the scale of the proposed development to which the funding relates. Officers recommend that the appropriate consultation process is agreed on a case by case basis in agreement with the Lead Member for Regeneration since the best way to do so will vary from one part of the borough to the next depending on what mechanisms already exist in each location.

Discretionary Relief

- 2.10 Whilst the CIL charges have been set at a level which should not affect the viability of development it is the case that development in some parts of the borough is difficult due to low land values and low sales prices. This is evidenced by the relatively low CIL charges which are proposed in some parts of the borough. To ensure that CIL does not prevent otherwise desirable development, the regulations provide that the Council has the option to offer a process for giving relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay it. Officers recommend this option is offered by the Council. The Council can then consider claims for relief on chargeable developments from landowners on a case by case basis, provided the conditions set out in Regulation 55 of the Community Infrastructure Levy Regulations 2010 (as amended) are met:

- a section 106 agreement must exist on the planning permission permitting the chargeable development; and
- the charging authority must consider that paying the full levy would have an acceptable impact on the development's economic viability; and
- the relief must not constitute a notifiable state aid.

Instalments

- 2.11 Officers recommend that the Council follows the Mayor of London's instalment policy for the Mayor of London's Community Infrastructure Levy. For CIL liability of £500,000 or less the total amount is payable within 60 days of commencement of development. For CIL liability of over £500,000 the greater of £500,000 or half the value of the total amount payable is due within 60 days of commencement of development and the remainder within 240 days of development.

CIL Payment in Kind

- 2.12 The CIL (Amendment) Regulations 2014 include amendments to Regulations 73 and 74, allowing the CIL levy to be paid through the provision of infrastructure or land. This must be infrastructure that is included in the Regulation 123 list. In order to implement this change, the Council must publish a notice on its website announcing the intention to accept in-kind infrastructure payments. Officers

recommend that the Council allow in-kind infrastructure payments as there may be circumstances where it will be more beneficial for a developer to provide infrastructure rather than money being paid to the Council to implement the work. Issuing this notice does not mean that the Council is obligated to accept in-kind infrastructure payments.

Annual CIL Monitoring Report

- 2.13 Following the introduction of CIL, an annual monitoring report must be produced outlining how much CIL has been collected each financial year and how it has been spent on infrastructure. This will be published on the borough's website.

Process

- 2.14 Subject to Cabinet approval of the recommendations of this report, officers will carry out the necessary adoption procedures including:
- the publication of a Notice of Adoption in the local newspaper
 - placing an electronic copy of the Charging Schedule on the Council's website
 - making a copy available for inspection at all Libraries and at Barking Town Hall and the Civic Centre as required by the Regulations.

3. Options Appraisal

- 3.1 Two other options were considered:

- Option 1: No CIL and maximum affordable housing via S106
- Option 2: CIL and 10% indicative affordable housing target

- 3.2 These were detailed in a report to 14 February 2012 Cabinet (Minute 114 refers) and are not repeated here.

4. Consultation

- 4.1 Consultation on the Draft Charging Schedule took place for a period of six weeks from 15 March to 26 April 2013. Letters were sent out to the consultation bodies required by Regulation 16 of the CIL Regulations 2010 (as amended), contacts on the Local Plan database, and stakeholders which took part in earlier consultation workshops. In addition, an advert was placed in 'The Post' on Wednesday 13 March 2013. The Draft Charging Schedule, a statement of representation procedure, and supporting documents were made available on the Council's website and in Barking Town Hall, Dagenham Civic Centre and all libraries in the Borough.
- 4.2 A total of twenty representations were made in accordance with Regulation 17 of the CIL Regulations 2010 (as amended). A summary of the representations and the Council's response to these is attached as Appendix 2. No modifications were made to the Draft Charging Schedule following consultation.
- 4.3 If the Council wishes to revise the Regulation 123 list, this can be done without revising the Charging Schedule, however the changes would need to be clearly explained and subject to appropriate local consultation. Where a change to the Regulation 123 list would have a very significant impact on the viability evidence

that supported examination of the Charging Schedule, this should be made as part of a review of the Charging Schedule.

- 4.4 The Cabinet considered this report at its meeting on 21 October 2014 and fully supported the recommendations as set out.

5. Financial Implications

Implications completed by: Carl Tomlinson Group Finance Manager

- 5.1 The CIL is expected to generate funding for the infrastructure needed to support new development. Section 106 payments will still exist but only for site specific infrastructure.
- 5.2 The main significant difference in controlling S106 and CIL proceeds is that with S106 contributions there is a legal requirement that any payment should be directly related to the development whereas with CIL the payment will go to an accumulated fund to finance infrastructure projects generally (as defined in legislation and regulation). S106 contributions are negotiated on a development-by-development basis and therefore it is not possible to say at present whether the introduction of the CIL will impose greater costs for developers. However, as the CIL is based on a charging schedule, developers will have much greater certainty in calculating their likely costs.
- 5.3 From 1 April 2012 a mayoral CIL has applied to all qualifying developments, meaning the Council collects £20 per net additional square metre of new development from the developer and passes it on to the Mayor of London. The total CIL charge, including the mayoral and Authority's own CIL will be collected as one payment, and the mayoral element will then be forwarded on. After 2019 it is anticipated that the mayoral CIL will cease, at which point the mayoral element of the charge can be incorporated into the Authority's own charge, thus leaving our charges £20/sq.m higher in each band.
- 5.4 The Council will be required to exercise proper governance and monitoring arrangements to be able to demonstrate what monies have been received and how they have been spent in line with existing reporting and accounting procedures.
- 5.5 The incremental costs of producing and consulting on the CIL have been met from within the current Regeneration & Economic Development budget, which are summarised below (some figures are approximate):

Viability study (consultants)	£32,000
Adverts	£ 2,100
Printing and postage	£ 1,000
Inspectors fees	£12,100
Room hire	<u>£ 1,000</u>
TOTAL	£48,200

- 5.6 There is also a cost in terms of the time spent by current staff. The cost of administering and collecting the CIL and setting up the systems to do this is allowed to be met from the CIL proceeds provided this does not exceed over 5% of the total CIL collected in the first three years. In year four, and each subsequent year, the

total amount of CIL that may be applied to administrative expenses incurred during that year shall not exceed five per cent of CIL collected in that year.

- 5.7 Whether the Authority will receive considerably more funds from developers once the CIL charges are introduced is difficult to predict. Section 106 incomes will inevitably reduce as CIL income increases but the amount that will be forthcoming will depend on the scale of future development, the type and purpose of the buildings, their size, intended use and location.

6. Legal Implications

Implications completed by: Paul Field, Senior Lawyer

- 6.1 Development of land or change of use inevitably has an effect on the community. A balance has to be struck between allowing land use and mitigating negative effects of development. The historical basis for ensuring developments did not have a cost on the community was by the granting of planning permission subject to an agreement which might involve payment or works, that is to say that a development would not be agreed without a contribution from the Developer. This is referred to as S.106 Town and Country Planning Act Agreements or '*S.106 Agreements*' for short. The problem with that approach was that it could be seen as arbitrary in nature and, as it were, putting a price on the grant. As the developers' circumstances and the viability of the scheme varied, so did the contribution. In reality it meant that some developments were charged different amounts under S.106 agreements or not at all.
- 6.2 To address concerns about the S.106 payments, the Planning Act 2008 introduced the Community Infrastructure Levy. The application is set out in the Community Infrastructure Levy Regulations 2010 (as amended). Unlike the S106 arrangements, most new developments will be liable to pay the levy. This includes from 6th April 2013 new buildings that are granted permission by way of a general consent, such as via the General Permitted Development Order or through a Local Development Order.
- 6.3 The CIL regime is designed to be transparent and while it will still reflect local planning considerations the charges will be open for all to see. The proposed charges are attached as Appendix 1.
- 6.4 There are a broad range of measures that can be taken to ensure recovery of payment. Furthermore, late payments will incur a surcharge. Prosecution can follow if the commitment to pay is breached as effectively it will be as if a condition has not been met which means that resort can be made to stop notices and if necessary an injunction.
- 6.5 Finally, the CIL regime does not affect contributions secured for highways work or improvements under Section 278 Highways Act 1980. Such agreements will continue.

7. Other Implications

7.1 Risk Management

Risk	Probability	Impact	Priority	Action
Proposed charges are challenged by developers and land owners	Low	Medium	High	Developers and landowners were consulted in the early stages of developing the draft charging schedule to ensure that it was based on local evidence. A number of objections were received in the first stage of consultation and changes were made to the retail charges to ensure that they are legal and therefore to reduce the risk of High Court Challenge. The borough's charges have been endorsed by the Planning Inspectorate.
Levy stops development coming forward	Low	High	High	In line with the CIL Regulations 2010, the Council has not set charges at the margins of viability. However officers recommend that discretionary relief is offered.
Neighbouring Council's set Levy at lower rate	High	Medium	Low	The CIL charge can only be set on the basis of development viability. It is the responsibility of neighbouring boroughs to do likewise. With the exception of the charge for supermarket/superstores, Redbridge's charges are significantly higher than LBBD's. Newham's charges vary from £40-£80 per square metre for residential, £30 for retail and £120 for hotels. All other uses are £0. Havering currently does not have a CIL.

7.2 **Staffing Issues** – The proposals will not necessitate the need for additional staff. The Council has been collecting the Mayor of London's CIL from 1 April 2012. The Council can cover its administration costs from CIL.

7.3 **Customer Impact** – The Community Infrastructure Levy will help deliver the borough's growth agenda by providing funding to pay for the infrastructure to support growth and by removing the need for many S106 agreements which currently cause delay in the planning process. In line with the CIL regulations the charge has been set based on development viability. The charge cannot be varied to achieve policy objectives. However, it is relevant to note that a nil charge will apply to public health, schools and municipal leisure centres and residential extensions and alterations below 100 square metres. In addition, affordable

housing, self-build housing and charitable development are exempt from the charge.

The CIL will have a positive impact on the local community as it will maximise developer contributions to meet the cost of new infrastructure generated by new development. The Council, will have increased flexibility to ensure that funds from CIL are spent where they are most needed in the borough; this will enable the Council to ensure that the needs of residents from different areas, age groups, incomes and equality groups, can be taken into account in deciding which infrastructure developments to support.

- 7.4 **Safeguarding Children** – The proposal will have a positive impact on the wellbeing of children as it will help provide funding for the Council’s Capital Strategy which includes extensions to existing schools and new schools to meet the needs generated by new development. Monies generated by CIL can also be used to fund Children’s Centres and community services which are important for family welfare, and also to provide places for young people to help reduce anti-social behaviour. Development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institute of higher education will not pay the levy.
- 7.5 **Health Issues** – Developments used wholly or mainly for the provision of any publicly funded medical or health services will not pay the levy.
- 7.6 **Crime and Disorder Issues** – Section 17 of the Crime and Disorder Act 1998 requires local authorities to consider the crime and disorder implications of any proposals. New developments can often raise issues of concern around crime and disorder both within the development phase but also long term if due crime design advice is not given or adhered to. This proposal may therefore have a positive impact if CIL is spent on community safety initiatives which will mitigate any impact either directly on the development, or on the surrounding area, e.g. CCTV provision or better lighting. Whilst CIL is payable on new policing facilities the Council’s CIL is half that of the Mayor of London’s and therefore it is not considered that the Council’s CIL will adversely impact on the provision of these.
- 7.7 **Property / Asset Issues** – The Council, as a landowner and developer, will be liable to pay CIL on qualifying developments. The Asset Management service is concerned about the impact on small retail businesses and considers that the charges could lead to more shops within the borough closing. It is important to clarify that the charge is only on net new development and therefore will only apply to new retail floorspace. Therefore, existing shops, or new shops taking existing space will not be affected by this charge.

Background Papers Used in the Preparation of the Report: None

List of appendices:

- Appendix 1: LBBB Community Infrastructure Levy Charging Schedule
- Appendix 2: LBBB CIL Consultation Statement – October 2013
- Appendix 3: Regulation 123 list
- Appendix 4: Draft S106/Planning Obligations Planning Guidance Note July 2014

This page is intentionally left blank

London Borough of Barking and Dagenham**Community Infrastructure Levy
Charging Schedule
October 2014****1. The Charging Authority**

- 1.1 This Community Infrastructure Levy (CIL) Charging Schedule has been published by the London Borough of Barking and Dagenham. The Council will be both a Charging Authority and a Collecting Authority.

2. The date on which the charging schedule was approved

XXXX

3. The date on which the charging schedule takes effect

2 March 2015

4. Statutory Compliance

- 4.1 The Draft Charging Schedule has been xxxxx for publication at a meeting of the Council's Assembly on xxxxx. It is published in accordance with Part 11 of the Planning Act 2008 (as amended by Part 6 of the Localism Act 2011), and the Community Infrastructure Levy Regulations 2010 (as amended).

5. Who will pay CIL?

- 5.1 The charge will be levied on development of more than 100 sq.m of new floor space and those creating 1 or more dwellings even where the floor space is less than 100 sq.m. In principle, this affects all types of development that involve buildings 'into which people normally go'.
- 5.2 Subject to caveats the levy will not be charged on developments that do not involve a net increase in floor space. Therefore sub-divisions of existing dwellings to form other dwellings will not be charged. Structures which are not buildings, or which people do not regularly go into to use will not be liable, in accordance with the CIL regulations as amended. Affordable housing development, development for charitable purposes and self build housing, annexes and extensions will also be exempt in accordance with the regulations.

6 Relief for Exceptional Circumstances

- 6.1 The London Borough of Barking and Dagenham will make relief available for exceptional circumstances in its area, including Barking Riverside. The power to do this will be activated following the adoption of the Charging Schedule. The regulations on this matter make clear that relief should only be granted in truly 'exceptional circumstances'.

- 6.2 The Council will consider claims for relief on chargeable developments from landowners on a case by case basis, provided the conditions set out in Regulation 55 of the Community Infrastructure Levy Regulations 2010 (as amended) are met:
- a section 106 agreement must exist on the planning permission permitting the chargeable development; and
 - the charging authority must consider that paying the full levy would have an unacceptable impact on the development's economic viability; and
 - the relief must not constitute a notifiable state aid.

7 When will the levy be collected?

- 7.1 The levy will become due from the date that a chargeable development is commenced in accordance with the terms of the relevant planning permission.
- 7.2 When planning permission is granted, LBBB will issue a liability notice setting out the amount of the levy that will be due for payment when the development is commenced, the payment procedure and the possible consequences of not following this procedure.
- 7.3 The levy's payment procedures encourage someone to assume liability to pay the levy before development commences. Payments must be made in accordance with the instalment policy published by the Mayor of London. For developments where the CIL payable is £50 - £500,000 the whole amount shall be paid not more than 60 days after commencement of the development. For developments where the CIL payable is £500,000+, developers have the option to make two installment payments:
- The greater of £500,000 or half the value of the total payable amount 60 days after commencement and;
 - The remainder 240 days after commencement.
- 7.4 The responsibility to pay the levy runs with the ownership of land on which the liable development will be situated. That benefit is transferred when the land is sold with planning consent, which also runs with the land. Although ultimate liability rests with the landowner, the regulations recognise that others involved in a development may wish to pay. To allow this, anyone can come forward and assume liability for the development.
- 7.5 There may be circumstances where it will be more desirable for a charging authority to receive land instead of monies. The regulations provide for charging authorities to accept transfers of land as a payment in kind for the whole or part of the levy. This will be subject to negotiation with the Council.

8 Evidence for Draft Charging Schedule

- 8.1 The regulations require the 'Charging Authority' (LBBB) to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effect of the imposition of CIL on the economic viability of development across the area.

8.2 Charging authorities are therefore required to prepare evidence about the effect of the levy on economic viability in their area to demonstrate to an independent examiner that their proposed rates strike an appropriate balance.

8.3 The development of the Charging Schedule has been informed by the following pieces of evidence:

- Barking and Dagenham Local Development Framework
- LBBDC Community Infrastructure Plan 2012/13 – 2025/26
- Affordable Housing and Community Infrastructure Levy/S106 Economic Viability Assessment 2011
- CIL Economic Viability Study: Addendum on Retail

Community Infrastructure Plan

8.4 The Barking and Dagenham Community Infrastructure Plan (CIP) outlines community infrastructure provision across the borough. It is based on the London Plan housing monitoring target of 1,065 homes per year which equates to 14,910 new homes and 36,082 new residents (based on a yield of 2.42 persons per new home). The CIP looks at the impact of growth on education, transport, health, public realm, open space, allotments, leisure, play, children’s centres, cemeteries, libraries, flood defences and mitigation measures, employment and local labour and emergency and essential services

8.5 For each of these it examines:

- Current provision of facilities
- Existing shortfall or surplus
- Projected shortfall or surplus based on the demand from an additional 36,082 residents
- New facilities required to meet new demand
- Costs of meeting new demand
- Potential available funding sources

8.6 The table below summarises the overall requirement for new community infrastructure facilities to 2025, estimated costs and the responsible delivery agencies.

Cost of Community Infrastructure to support growth in Barking and Dagenham to 2025.	
Type of Facility	Existing shortfall
Council’s and Local Education Authority’s Responsibilities	
Education (incl. land for 4 additional primary schools and 2 additional 8FE secondary schools all on confined sites. Also includes 6398 primary school places and 4,570 primary school places)	£147,613,529
Transport (incl. £500m for DLR Extension, £70m for Renwick Road Junction Improvements)	£633,511,000
Public Realm (incl. London Road/North Street Market Square, A406 roundabout, BTC East Street, Street	£2,660,000

Scene Enhancement, Becontree Station Improvements, Creekmouth Industrial Area)	
Open Space (incl. Abbey Green, Mayesbrook Park)	£7,540,000
Allotments (maintenance and creation of allotment space)	£649,476
Leisure (Indoor) (Build and land costs for 2 additional 4 court leisure centres. This assumes Barking Riverside will provide land and building for 8 lane swimming pool)	£4,032,900
Leisure (Outdoor) (additional 17.76 hectares of playing pitches, 1.5 tennis courts, 1 bowling green and upgrading of sports pavilion in eight strategic parks)	£6,814,140
Play (play provision for 5-9 year olds. Under 5s to be provided through S106 agreements (doorstep play)).	£1,049,920
Children's Centres	£5,600,000
Cemeteries	No information
Libraries (Revenue costs for Barking Riverside Library, Ongoing maintenance costs of existing estate)	£3,600,000
Flood Defences (Measures to manage surface water flooding in LBBB. Does not include fluvial or tidal flooding)	£56,310,823
Employment and Local Labour (Revenue requirements for Barking Business Centre. Local Labour agreements to be provided through S106 agreements)	£2,600,000
Emergency Services	None.
NHS Outer North East London's responsibilities	
Health (capital requirements for 36,082 people)	£22,144,757
Further Education Provider's Responsibilities	
Further Education	Tbc
Total	£894,126,545

CIL Economic Viability Assessment 2011

8.7 The Council appointed GVA Grimley in September 2011 to undertake three pieces of work:

- Preparation of a construction cost schedule
- Preparation of a land value appraisal study
- Preparation of an economic viability assessment

In September 2012 further testing was undertaken by GVA on retail development.

8.8 GVA has drawn on both primary and secondary evidence sources in order to test the viability of CIL/S106 and affordable housing delivery in Barking and Dagenham.

8.9 The work has taken the form of quantitative viability testing of a series of possible housing splits, tenure variations and CIL/S106 charging options for a range of types of development in order to identify the levels of viability for future development.

Work has also included extensive discussions with stakeholders including local authority planning officers, local landowners, developers and agents.

- 8.10 GVAs analysis suggests that Barking and Dagenham should adopt three different residential charging zones – a higher one for Barking Town Centre Leftley and Faircross (£70) a medium one for Barking Riverside (£25) and a lower charge for the rest of the borough (£10).
- 8.11 For commercial developments, the viability findings are more varied. Office schemes are unable to make any contribution, whilst retail, private leisure, industrial and waste uses can afford to contribute more. Supermarkets and superstores can afford to make a significant CIL/S106 contribution.
- 8.12 GVAs analysis shows that public health, education and municipal leisure development cannot afford any level of CIL/S106 tariff contribution.
- 8.13 These charges have been set on the basis of the Council continuing without an affordable housing target.

9. Proposed CIL Rates and Charging Areas

- 9.1 Having examined the findings of the evidence base, the Council consider that the most appropriate approach is to have variable rates of CIL by area and use. The proposed areas and charges per square metre are set out in the plans and tables below.

LBBB Charging Zones – Residential

Zone	LBBB Area	Rates (£ per sq. m.)
1	Barking Town Centre, Leftley and Faircross ¹	£70
2	Barking Riverside ²	£25
3	Rest of borough ³	£10

¹ The area covered by the Barking Town Centre Area Action Plan plus the area bounded by the District Line, Mayesbrook Park and the London Borough of Redbridge including the former University of East London site.

² The area covered by the Barking Riverside Key Regeneration Area as shown on the adopted Local Development Framework Proposals Map.

³ The London Borough of Barking and Dagenham excluding Barking Town Centre, Leftley and Faircross, and Barking Riverside.

Differential Rates: intended uses

Use	Rates (£ per sq. m.)
Supermarkets and Superstores of any size ⁴	£175
Office (B1a)	Nil
Business (Research and Development - B1b, Light Industry - B1c, General Industrial - B2 and Storage and Distribution - B8)	£5
Municipal Leisure	Nil
Health Development used wholly or mainly for the provision of any publicly funded medical or health services except the use of premises attached to the residence of the consultant or practitioner	Nil
Education Development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education	Nil
All other non-residential uses	£10

10. How will CIL rates be calculated?

- 10.1 CIL will be levied in pounds per square metre of the net additional increase in floor space of any given development. The rate will be calculated based on Regulation 40 - Calculation of chargeable amount, as set out within the Community Infrastructure Levy Regulations 2010 (as amended).
- 10.2 The chargeable rate will be indexed linked. The index referred to in the calculation formula 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 November of the preceding year.

⁴ Supermarkets: Self-service stores selling mainly food, with a trading floorspace less than 2,500 square metres, often with car parking.

Superstores: Self-service stores selling mainly food, or food and non-food goods, usually with more than 2,500 square metres trading floorspace, with supporting car parking.

11. Mayor of London's Crossrail CIL

11.1 London Boroughs are also required to collect the CIL charged by the Mayor of London. This was implemented 1st April 2012 and the charge is **£20 per sq.m** in Barking and Dagenham.

11.2 The following types of development are exempt:

- Development used wholly or mainly for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner
- Development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education

This page is intentionally left blank

London Borough of Barking and Dagenham
Community Infrastructure Levy
Consultation Statement
(including Regulation 19(b) Statement)
October 2013

Community Infrastructure Levy Consultation Statement

This consultation statement was prepared in accordance with Regulations 15 and 16 of The Community Infrastructure Levy Regulations 2010(as amended).

Community Infrastructure Plan

In the preparation of this Plan, from Autumn 2010 to Summer 2011, input was provided by LBBD officers (Children's Services, Parks and Leisure Development, Transport Planning, Library Services, Area Regeneration, and Economic Development), NHS Outer North East London, and the Environment Agency.

Representations were also sought from:

- Lead Members
- Spatial Planning
- Development Management
- Regeneration and Economic Development
- Customer Services Department
- Adult and Community Services Department
- Resource Department
- Finance
- Legal Services

Economic Viability Stakeholder Workshops

Stakeholder consultation was undertaken as part of the economic viability work to inform the charges set out in the Preliminary Charging Schedule. A stakeholder workshop involving developers and agents was held on 27 September 2011 to discuss the assumptions used in the viability assessment. 40 stakeholders were invited, 8 attended and 8 asked to be kept informed. Further workshops took place on 25 October (5 attendees) and 7 November 2011 to discuss the results of the viability testing and the issues around affordable housing. All attendees and interested parties continued to be consulted and kept informed via email throughout the process.

Preliminary Draft Charging Schedule

Consultation was undertaken on the CIL Preliminary Draft charging Schedule for a period of six weeks from 27 February to 10 April 2012. Letters were sent out to the consultation bodies outlined in Regulation 15, contacts on the LDF database, and stakeholders from the workshops outlined above.

The Preliminary Draft Charging Schedule and the following supporting documents were made available on the Council's website and in Barking Town Hall, Dagenham Civic Centre and all libraries in the Borough:

- LBBB Community Infrastructure Plan 2012/13 – 2025/26
- Economic Viability Assessment, Affordable Housing and Community Infrastructure Levy/S106, GVA January 2012
- Plan showing the CIL charging zones.

A summary of representations about the Preliminary Draft Charging Schedule, along with the Council's responses are attached as Appendix 1.

Draft Charging Schedule

Consultation was undertaken on the Draft Charging Schedule for a period of six weeks from 15 March to 26 April 2013. Letters were sent out to the consultation bodies outlined in Regulation 15, contacts on the LDF database, and stakeholders from the workshops outlined above. In addition, an advert was placed in 'The Post' on Wednesday 13th March 2013.

The Draft Charging Schedule, a statement of representation procedure, and the following supporting documents were made available on the Council's website and in Barking Town Hall, Dagenham Civic Centre and all libraries in the Borough:

- LBBB Community Infrastructure Plan 2012/13 – 2025/26
- Economic Viability Assessment, Affordable Housing and Community Infrastructure Levy/S106, GVA January 2012
- CIL Economic Viability Study: Addendum on Retail, GVA September 2012.
- Plan showing CIL residential charging zones.
- Summary of responses to Preliminary Draft Charging Schedule

Regulation 19(b) Statement

A total of 20 representations were made in accordance with Regulation 17. A summary of the representations made on the Draft Charging Schedule, along with the Council's responses, are attached as Appendix 2.

Of the representations received, one requested to be heard at examination. This was Sanofi, represented by Catherine Mason of Savills.

Modifications

No modifications have been made to the Draft Charging Schedule following consultation.

Appendix 1

London Borough of Barking and Dagenham

Community Infrastructure Levy Preliminary Draft Charging Schedule

Summary of Comments and Responses

January 2013

Response No.	Respondent Name	Summary of Comments	Council Response	Charging Schedule Amendments
1	English Heritage	Suggest document could benefit from reference to acknowledge that growth can have impacts on the historic environment as on other areas of planning and that heritage should be regarded as a recipient of CIL within the Council's responsibilities in relation to historic public realm, open spaces and cemeteries.	Charging schedule already refers to public realm, open space and cemeteries. Further distinction not necessary. However please note that the consultation is on the proposed charges not on what the proceeds of the levy will be spent on. The comments are noted and will be considered when the Council publishes its Regulation 123 list which lists the infrastructure types to be funded by CIL.	None

2	Brett Group	CIL does not apply to minerals extraction development and therefore Bretts do not wish to make any comments on this consultation exercise	Noted	None
3	Dron Wright Property Consultants acting on behalf of the London Fire and Emergency Planning Authority	<p>As fire stations are a vital community facility we believe that they should be excluded from payment of this levy. This is on the basis that fire stations are community safety facilities which are included within the definition of infrastructure under the Planning Act 2008</p> <p>Despite the Council's infrastructure plan saying that the borough's fire stations are not in need of investment Barking Station is in need of investment and Dagenham Station is part of a PFI project to provide nine new fire stations across London. With this in mind together with the increase in growth in the area LFEPA will be under increased financial pressure in providing the essential services that are required of</p>	<p>The levy can only be set on the basis of viability. No evidence has been presented that fire stations cannot afford to pay the modest charge of £10 per square metre that has been set. It is important to note that existing floorspace to be demolished/retained can be discounted where the building has been in continuous use for six months in the last twelve months. This is relevant to the LFEPA if they plan to invest in existing stations.</p> <p>It is also important to clarify that the consultation is on the proposed charges not on what the proceeds of the levy will be spent on. The LFEPA comments are</p>	<p>None</p> <p>None</p>

		them. It is therefore requested that consideration should be given to the provision of funding for LFEPA community facilities, from the CIL payments which are collected.	noted and will be considered when the Council publishes its Regulation 123 list which lists the infrastructure types to be funded by CIL.	
4	Highways Agency	No comment	None	None
5	Joint Nature Conservation Committee	No comment	None	None
6	Natural England	<p>Approach seems reasonable and in line with relevant legislation, therefore Natural England does not wish to offer any substantive comments in respect of the Community Infrastructure Levy rate.</p> <p>Natural England is pleased to see the inclusion of Open Space provision within the document especially section 3.5.2 which refers to the provision of new open space and links to the east London Green Grid. This is welcomed and to be encouraged.</p>	<p>None</p> <p>None</p>	<p>None</p> <p>None</p>
7	Peacock and Smith	Strongly object to proposed CIL rate of £300 sqm for large convenience retail	The levy can only be set on the basis of viability. Page 226 of the	

	<p>representing Morrison's Supermarket</p>	<p>floorspace (>1500 sqm)</p> <p>It is acknowledged that the charge has been informed by viability assessments prepared by GVA Grimley, our client is gravely concerned that the suggested 'abnormal' charge will have a significant adverse impact on the overall viability of future (large) convenience retail development in the borough. A balance has not been found between infrastructure funding requirements and viability. Effectively, supermarket operators are being used as a scapegoat.</p> <p>Morrisons raises concerns that the viability analysis does not take into account all likely costs associated with developing a new foodstore. For example the potential costs associated with developing a brownfield site (e.g. site remediation and preparation) can be extortionate.</p>	<p>Council's Economic Viability Report demonstrates that large convenience retail developments (>1500 sqm) can afford a levy of up to £1500 per square metre. However the Council has decided to remove the large convenience threshold and instead has tested the viability of supermarkets/superstores in general. This has evidenced that supermarkets and superstores can afford a charge of £175 per square metre.</p>	
--	--	---	--	--

		<p>The draft charge will put undue additional risk on the delivery of foodstore proposals and will be an 'unrealistic' financial burden. This, in turn, poses a significant threat to potential new investment and job creation in the borough, especially in regeneration areas, at a time of economic recession and low levels of development activity.</p> <p>Furthermore, it is important to note that the proposed £300/sq m levy for convenience retail development is disproportionately higher than those being proposed by other London boroughs. By way of example, the boroughs of Lewisham, Merton and Croydon are proposing rates of £80/sq m, £100/sq m and £120/sq m respectively which, on average, are a third of the</p>		
--	--	--	--	--

		charge being proposed by LB Barking and Dagenham.		
8	Savills acting on behalf of Sanofi	<p>Extremely concerned about the proposed blanket charge across the borough of £300 per square metre for 'large convenience retail' and the consequences that this would have for the viability of the recently approved Sanofi scheme. Acknowledge that approved scheme and subsequent reserved matters would not be liable to charge but are concerned about impact on any fresh applications. Sanofi consider that a charge of this level could undermine the entire proposal and would almost certainly prevent it being built. The Charging Schedule should be updated to take into account site location and other factors including:</p> <ul style="list-style-type: none"> • high remediation costs associated with a development • where retail and other uses 	<p>The Council accepts that the permitted Sanofi development and any subsequent reserved matters are not liable for Mayor of London CIL as it was permitted before 1 April 2012 and therefore neither is it liable for the Council's CIL.</p> <p>Therefore Sanofi's concerns are only relevant to an entirely new planning application.</p> <p>Notwithstanding that the site already has the benefit of permission for a supermarket, no evidence has been provided that an entirely new planning permission for a supermarket could not afford the levy being proposed.</p>	

		<p>subsidises less valuable uses on a scheme which delivers important community benefits, including job creation and facilities such as health care</p> <p>The Charging Schedule should take these matters into account and should allow for a lower, if not 'nil', rate.</p> <p>The draft Residential charge takes into account the different areas within the Borough and recognises that variable rates should apply dependent on viability considerations. Our site falls within the 'Rest of the borough' which has the lowest rate. We can not understand why the same approach has not been applied for the other uses. Furthermore, we note that the charge for B1a and health uses is Nil and it is our view that the rates for retail and other non-residential uses should also be nil in certain circumstances as set out above.</p> <p>Unless changes are made to the charging schedule developments such as this, which will secure important benefits for the community, will be unviable.</p>	<p>All the employment and training uses on the sites would pay between £5 - £10 per square metre in comparison to the Mayor of London's charge of £20 per square metre. This is not considered unreasonable and again no evidence has been provided that this is not viable.</p> <p>The Council's viability work shows that whilst there is a significant difference in the viability of residential uses across the borough this is not true for non-residential uses.</p>	
--	--	---	---	--

9	Gerald Eve acting on behalf of Fresh Wharf Developments limited	<p>The level at which the LBBD CIL is set must have careful regard to the area's market context. There is little development activity in the borough at the moment and the market remains in a weak condition. If the CIL is set at too high a level it will put further pressure on an already weakened property market and stifle future development.</p> <p>It is not clear from the documentation provided how the Council have set the</p>	<p>Tables 31 and 32 of the Economic Viability Report, model development viability in Barking Town Centre on the basis of 0% affordable housing. This shows that a LBBD CIL (Mayoral CIL is included as a cost) varying from £122-154 per sqm can be supported in Barking Town Centre on schemes of 250 units and below. However for a scheme of 1000 units CIL is more marginal due to the extra cost of building to Code Level 5. However Local Plan policy does not demand Code Level 5 for schemes of this size and therefore development costs should be comparable to smaller schemes and consequently similar CIL levels should be supported.</p> <p>The Council is proposing a CIL of £70 so this is not at the margins of viability. This is on the basis of 0% affordable housing.</p>	
---	---	---	---	--

		<p>final rates set out in the PDCS. These are not in line with the recommendations by GVA, in particular with regard to the Barking Town Centre, Leftley and Faircross residential rate of £70 sqm. Note that the GVA recommendation is made with the assumption of 10% affordable housing delivery, but it is not clear if this is either carried over to the PDCS, or increase or indeed decreased simply the document states “without an affordable housing target”.</p> <p>GVA have used a non-specified appraisal model. We assume that this is a bespoke appraisal as there is no specific explanation of it or software which has been used. We note that there are a number of standard models for appraising residential development including Argus Developer, the GLA Three Dragons Toolkit and the HCA model in addition to bespoke models some of which are referenced. Whilst these adopt to varying degrees standard development appraisal principles, the detailed methodology does vary in some</p>	<p>The approach and methodology of the viability testing is explained in Chapter 2 of the Economic Viability Report. A market value rather than existing use value approach has been applied.</p>	
--	--	--	---	--

		<p>cases considerably. We have no objection to advocating a bespoke model approach, particularly given the limitation of the GLA Toolkit, but this needs to be transparent in order to be able to examine the appropriateness in the circumstances.</p> <p>The methodology assumes that the land value is the Net Residual Land Value once all planning contributions, including affordable housing have been taken into account and this has been cross checked with benchmark land values for this area. However, there is no evidence of comparable information provided and therefore this does not conform with the recommendations of the exposure draft RICS Guidance Note on Viability in Planning. We consider that at the benchmark land value of £625,000 per acre for Barking Town Centre residential land value is low to our experience of the local property market.</p>	<p>Paragraph 2.17 of the Economic Viability Report explains that the benchmark land values reflect prevailing development values. These are sourced from analysis of the current situation in Barking and Dagenham and corroborated through Valuation Office Agency</p>	
--	--	---	---	--

			data, GVA's own Agency Team knowledge of transactions in the Borough and local stakeholder discussions.	
10	Iceni Projects acting on behalf of Estates and Agency Properties Limited	<p>CIL charging regime is a one size fits all approach and provides no flexibility in the application of the identified charging regime. It must demonstrate an appropriate level of flexibility to respond to the commercial realities of development. With regard to Relief for Exceptional Circumstances the PDCS states</p> <p>"...the fact that a development might be unviable at the time a planning application is considered is unlikely to constitute an 'exceptional circumstance' in relation to the CIL Regulations".</p> <p>Such an approach is considered to be overly restrictive and contrary to directions from Central Government in particular the ministerial statement title "Planning for Growth" and the CLG CIL</p>	<p>Unlike the Mayor of London the Council has chosen to offer Discretionary Relief for Exceptional Circumstances. So the Council is being flexible. However it is important to clarify that in exercising this relief the Council will have to comply with the provisions set out in the Community Infrastructure Regulations 2010 as amended when determining whether discretionary relief can be provided.</p> <p>The regulations do provide for charging authorities to accept transfers of land as a payment 'in kind' for the whole or a part of a CIL payment, but only if this is done with the intention of using the land to provide, or facilitate the</p>	

		<p>summary document.</p> <p>The PDCS does not offer any flexibility in charging where it can be demonstrated that a development would be unviable as a consequence of the requirements of CIL. Accordingly the adoption of an onerous and overly restrictive approach to CIL has the potential to undermine schemes which could otherwise be delivered in the short term and help to meet wider regeneration aims and objectives within the Borough.</p> <p>The PDCS should be amended to reflect a degree of flexibility where issues of viability would causes undue delay to the achievement of wider regeneration aims through otherwise appropriate development. It should recognise that in certain instances the provision of on-site facilities and benefits will make the same – if not a greater – contribution to the Borough’s infrastructure provision.</p>	<p>provision of, infrastructure to support the development of the charging authority’s area.</p> <p>The levy can only be set on the basis of viability. The CIL regulations do not allow the Council to set the levy to achieve regeneration objectives.</p> <p>No evidence has been presented that large convenience retail developments (>1500 sqm) or residential in Barking Town Centre cannot afford to pay the charge that has been set. However the Council has altered the retail charges, and on the basis of further testing proposes to charge £175 per square metre for supermarkets and superstores of any size.</p>	
--	--	--	--	--

		<p>It is noted that there is a large disparity between the level of charging for certain uses over others and the geographical areas to which these relate.</p> <p>As acknowledged in the LDF the focus of future retail and residential development in the Borough will largely be upon Barking Town Centre with the aim of fulfilling wider regeneration aims and objectives on identified key sites. E&A considers that the PDSC for convenience retail floorspace combined with the lack of flexibility proposed within the charging regime would in combination have a significant effect on development values in Barking Town Centre. This could render schemes unviable and stifle the opportunity to realise wider regeneration aims and objectives as identified in adopted policy.</p> <p>The PDSC should prioritise investment within Barking Town Centre by adopting</p>	<p>Please see response to Gerald Eve for justification of levy for residential in Barking Town Centre.</p>	
--	--	---	--	--

		<p>a charging regime in the Town Centre equating to 25% of the overall charge for comparable developments in locations beyond the BTCAAP boundary. This discounted rate should apply to retail and residential floorspace on the basis that the regeneration and revitalisation of the Town Centre should be the priority within the Borough. The application of such a discounted rate would increase the viability of existing stalled schemes making it more no less likely that such schemes will materialise and would incentivise developers to pursue potentially more expensive and difficult sites over easier options beyond the Town Centre boundary.</p> <p>Having reviewed the PDCS there is a very real concern that the proposed level of contributions for both large retail development and residential development within town centres is disproportionate to developers reasonable expectations of a financial return and has the potential to impact upon the viability of such developments</p>		
--	--	--	--	--

		<p>impacting upon the achievement of wider regeneration goals.</p> <p>Combined with the lack of flexibility of the proposed charging schedule, it is considered that the rigidity of the document as presented has the potential to stifle development on key sites in the short to medium term.</p> <p>In respect of the above it is considered that the proposed charging schedule would be improved with the following changes:</p> <ul style="list-style-type: none">• The removal of paragraph 3.1 to improve flexibility in the application of charges• Lowering the charge on large retail development, and spreading costs more evenly over the use classes; and,• Lowering the charge on residential development within town centre areas to improve		
--	--	---	--	--

		flexibility and viability		
11	CGMS on behalf of the Mayor's Office for Policing and Crime (MoPC) and the Metropolitan Police Service (MPS)	<p>The provision of effective policing is of crucial importance across London to ensure safe places to live are created as part of a sustainable community, consistent with planning policy at all levels. The MoPC and MPS provide a vital community service to Barking and Dagenham and it is essential that the required community infrastructure such as policing comes forward in line with development in order to maintain safety and security in the borough.</p> <p>It is noted the Council do not intend to impose a charge for new small retail, offices, leisure, health and education floorspace. This should be extended to include all new community infrastructure floorspace, in particular that proposed by the Metropolitan Police.</p> <p>By being subject to a CIL payment, community uses including policing are prejudiced in being able to provide</p>	<p>The levy can only be set on the basis of viability. No evidence has been presented that police stations cannot afford to pay the modest charge of £10 per square metre that has been set. It is also relevant to note that whilst the Mayor of London is responsible for supervising the Metropolitan Police the Mayor of London's CIL does apply to new policing floorspace. The Mayor of London's CIL is £20 per square metre. Therefore the Council's CIL would only represent 33% of the overall CIL charge for new policing facilities.</p>	

		<p>essential policing facilities which will impact upon the Council's ability to deliver a safe and secure environment contrary to the aims of the NPPF, London Plan and Core Strategy. It is therefore essential that CIL is not payable for new policing floorspace in the Borough.</p> <p>It should be further noted that, in providing a community infrastructure (i.e. new policing facilities) which would attract a CIL liability, the MPS contribution to infrastructure would effectively be double-counted. Therefore the MOPC/MPS strongly recommend that the draft charging schedule provides an exemption from CIL for community uses including policing facilities in addition to small retail, offices, leisure, health and education uses.</p>		
--	--	--	--	--

Appendix 2

London Borough of Barking and Dagenham

Community Infrastructure Levy Draft Charging Schedule

Summary of Comments and Reponses

October 2013

Response No.	Respondent Name	Summary of Comments	Council Response	Charging Schedule Amendments
1	H.G. Rent & Co. (Highbury) LTD	<p>Concerned that the CIL charge, combined with the cost of implementing planning conditions, will prevent investment and drive away small businesses.</p> <p>Suggest that the charge should be related to the project build cost, the size of the business and whether it is owner occupied.</p>	<p>The Council's Economic Viability Assessment evidences that industrial uses can sustain a charge of £10 per square metre. This is based on current build costs which reflect current policy requirements and takes into account the Mayor of London's CIL which is £20 per square metre. The Council has set a charge of £5 per square metre. Varying the CIL charge on the basis of build cost, business size and ownership would be far too complex as it would result in a different rate per square metre for every single planning application. However the Council has taken a more fine grained approach than for example Redbridge who</p>	None

			charge £70 per square metre for all uses and the Mayor of London.	
2	Highways Agency	No comment on the charging schedule.		None
3	Michael Cullen	No comment on the charging schedule.		None
4	Natural England	No comment on the charging schedule, but suggest infrastructure items that they would like CIL to be spent on.	The Council will consider the infrastructure items suggested, along with those included in the community infrastructure plan, in the development of our Regulation 123 list.	None
5	Dron & Wright Property Consultants on behalf of the London Fire and Emergency Planning Authority (LFEPA)	Suggest that, as fire stations are a vital community safety facility, they should be excluded from the payment of the levy. Also say the charge would render new fire station development unviable. Request to be considered for CIL funding.	The levy can only be set on the basis of viability and no evidence has been submitted to show that a £10 per metre charge is unviable. No justification has been provided as to why it is legitimate for the Mayor of London to charge £20 per square metre for LFEPA but not for the Council to charge £10 per square metre. The LFEPA request for funding is noted and will be considered in the development of our Regulation 123 list.	None
6	Barry Kitcherside on behalf of Friends Life Ltd	Suggests that the generic convenience retail tariff should be revised to reflect each individual proposal to be judged on their merits and location. £175 per square metre is still too high increasing the viability tensions.	The CIL Regulations do not allow collecting authorities to judge each planning application individually in terms of CIL. Once the CIL charging schedule is adopted is must be charged on all CIL liable	None

			<p>developments.</p> <p>No evidence has been submitted to show that a £175 per metre charge for convenience retail is unviable.</p>	
7	Peacock and Smith in behalf of WM Morrison Supermarkets Plc	<p>The property market review in respect of retail contains no supporting market evidence for supermarkets. No data is given to support rents, values, yields or land values for supermarket developments.</p> <p>The consultants have not presented any market evidence in respect of supermarket values to underpin the appraisal</p> <p>Only limited commentary is provided as to how benchmark land values have been arrived at. RICs guidance emphasises importance of comparable market evidence.</p> <p>CIL should not be set at the margins of viability.</p> <p>There is no specific market evidence of</p>	<p>Rent and yield assumptions are based on GVAs local knowledge and research including their retail agency and development teams. They have acted previously on a number of schemes in the borough.</p> <p>The benchmarks set out in table 10 of the Economic Viability Assessment report where used for retail.</p> <p>The results of the modelling presented in the Retail Addendum demonstrate that the proposed CIL of £175 per sqm is not at the margins of viability.</p> <p>The benchmarks set out in table 10 of the Economic Viability Assessment report where used for</p>	

		<p>commentary within the Property Market Review on the commercial benchmarks. A benchmark value for retail land is required.</p> <p>No allowance is made for rent free. There is no explanation for this given the strong rent and yield selected. More realistic yield of 5.5-5.75% should be selected which would significantly impact on viability. Council is effectively saying that “supermarkets can only be developed by the national retailers”.</p> <p>Assessment is made on an operator led approach. Results of the developer led approach have not been presented.</p> <p>No actual residual development appraisals have been made available and we have not been able to review such models. These should reflect appropriate timescales, land assembly costs and requirements, brownfield development remediation and site preparation costs, for larger schemes S278 and S106 costs.</p>	<p>retail.</p> <p>Rent and yield assumptions are based on GVAs local knowledge and research including their retail agency and development teams. They have acted previously on a number of schemes in the borough.</p> <p>CIL testing is intended to provide robust evidence at the point of Examination, and not rely on assumptions which reflect a snapshot of the market at the time the testing is undertaken.</p> <p>The Addendum on Retail models Developer Led and Operator Led scenarios and the proposed CIL charge has been set accordingly.</p> <p>The Retail Addendum demonstrates that for the larger schemes to which the most significant S106 often apply (D, E and F) CIL and a S106 of £100 per sqm can be supported whether developer led or operator led.</p>	
--	--	--	--	--

		<p>No conclusions or recommendations are presented in the Economic Viability Assessment regarding retail development.</p> <p>Addendum No data is given to support rents, values, yields or land values for supermarket developments. No detail on build costs or any other assumptions necessary to produce the residual development appraisals. Impossible to comment on validity of potential maximum CIL charge without this information.</p> <p>Previous comments apply for Benchmark Land Values and rent free, yield and profit and viability findings.</p> <p>CIL levy rates calculating CIL as a proportion of GDV and build cost bear no resemblance to the levy proposed for supermarket development in the charging schedule. Table needs updating.</p> <p>Imposition of a high CIL levy will jeopardise the potential financial report that retail development can currently offer.</p>	<p>Recommendations are provided in the Executive Summary.</p> <p>Data on build costs is given in table D4. More detailed information requested will be published on website in advance of examination.</p> <p>See previous comments</p> <p>Table has been updated</p> <p>The addendum demonstrates that £175 sqm is affordable whether developer led or operator led.</p>	
--	--	---	---	--

		<p>The build costs needs to be provided in full. Details of developers profit levels need to be provided</p> <p>Checks made that double dipping have been avoided.</p>	<p>Build costs and developer profits are provided in Table 7 of the Economic Viability Assessment.</p> <p>The retail addendum demonstrates that the CIL charge has been set at a level which also allows S106 to be afforded.</p>	
8	Sustrans	<p>No comment on the charging schedule.</p> <p>Request that funds raised through CIL are spent on improving the urban realm and improving provision for pedestrians and cyclists throughout Barking and Dagenham, whilst reducing car reliance.</p>	<p>Sustrans request for funding is noted and will be considered in the development of our Regulation 123 list.</p>	None
9	Savills on behalf of Thames Water Utilities Ltd (Thames Water) Property Services	<p>Considers that water and wastewater infrastructure buildings should be exempt from CIL because CIL would impact on the ability to deliver water and wastewater infrastructure required to support growth and because this type of development has no significant impact on wider infrastructure provision.</p>	<p>The levy is set on the basis of viability and no evidence has been presented to show that the charge is unviable.</p> <p>No justification has been provided as to why it is legitimate for the Mayor of London to charge £20 per square metre for this type of infrastructure but not for the Council to charge £5 per square metre.</p> <p>It should be noted that buildings that people do not normally go in to are exempt from CIL.</p>	

10	Savills on behalf of Sanofi	<p>Concerned about the £175 charge for supermarkets and superstores and the consequences for viability. A charge of £175 could have undermined the entire proposal and would almost certainly prevent it being built.</p> <p>Suggest the charging schedule should be updated to take into account site location and other factors including:</p> <ul style="list-style-type: none"> • High remediation costs • Retail and other valuable uses on a scheme cross subsidise the less valuable uses which provide community benefits. 	<p>General comments</p> <p>It is important to stress that in setting CIL charges the Council must consider the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area. The CIL guidance published by the CLG April 2013 further clarifies that in meeting the requirements of regulation 14(1), charging authorities should show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant Plan and support the development of their area. As set out in the National Planning Policy Framework in England, the ability to develop viably the sites and the scale of development identified in the Local Plan should not be threatened. The Council's proposed CIL rates are consistent with the regulations and guidance in this regard. The Sanofi site already has outline planning permission so only new separate applications will be CIL liable. A reserved matter planning application is due for the Sainsbury's supermarket on the</p>	
----	-----------------------------	--	--	--

			<p>Sanofi site. This will not be CIL liable. Therefore the proposed CIL charge has no impact on the viability of this scheme.</p> <p>Sanofi are hypothesising that if the Sanofi application were subject to the Council's proposed CIL charges that it would have undermined the entire proposal. This misses the point that the Sanofi outline was approved in March 2012 and was not liable for Mayoral or LBBD CIL and therefore was subject only to a S106. Sanofi are correct that had the outline have been submitted in March 2014 a different approach to securing the same benefits would have been necessary.</p> <p>There will be greater scrutiny in future on whether agreements satisfy the S106 tests set out in the CIL regulations 2010 as amended. CIL will change the way developments are delivered, this is not an issue though about the rate of the levy</p> <p>Reforms to CIL propose that the land or cash in kind will be able to</p>	
--	--	--	--	--

		<p>Suggest that a differential retail rate should be set based on location.</p> <p>Suggests that the £5 business rate should be geographically specific. Also suggests that the rate does not take account of abnormal costs.</p>	<p>be discounted against CIL, so any benefits a supermarkets funds within the wider development will be able to be taken into account.</p> <p>Viability evidence Retail CIL rate Sanofi have provided no evidence that the superstore/supermarket charge should be varied across the borough. Moreover page 21 of Appendix B of the GVA report shows that supermarket rents and yields are consistent across the borough. The same applies to the £5 charge for other uses.</p> <p>Retail CIL rate GVA did additional testing for retail charges and these are presented in the addendum to the Economic Viability Assessment. This testing tested stores from 280 square metres to 10,000 square metres in size in Barking Town Centre, Barking Riverside and the Rest of the Borough. The results of the testing show that the proposed charge of £175 per square metre is far from the margins of viability and therefore has sufficiently flexibility for</p>	
--	--	---	---	--

			<p>abnormal or sunkcosts.</p> <p>Business CIL rate Table C2 tests rents between £75 and £86 per square metre which is within the range of £65-97 per square metres advised by agents. Since the Sanofi site is within the “Rest of the Borough” rents of £75 per square would have been used. However the resultant charge is only £5 per square metre. The Council considers, that even if the evidence supported a more fine grained approach, this would be contrary to guidance published by the CLG which states that; “Charging authorities that plan to set differential levy rates should seek to avoid undue complexity, and limit the permutations of different charges that they set within their area. “</p> <p>It is also important to note that the proposed charge is a quarter of that levied by the Mayor of London.</p>	
--	--	--	--	--

<p>11</p>	<p>Turley Associates on behalf of Sainsbury's Supermarkets Ltd</p>	<p>There is no adequate evidence that the sale of retail goods within a supermarket or superstore is a different intended use (Reg 13) to the sale of goods from all other class A1 to A5 uses.</p> <p>Viability evidence does not reflect the characteristics of local market conditions or variations in land values across the borough.</p> <p>Imposing a high CIL charge would</p>	<p>Paragraphs 34 and 35 of the latest CIL guidance make clear that:</p> <ul style="list-style-type: none"> • differences in rates need to be justified by reference to the economic viability of development • the definition of use is not tied to the classes in the Use Classes Order <p>The definition of superstores and supermarkets provided in the draft charging schedule is taken from Annex B of PPS4 which identified them as distinct types of development. The GVA study and addendum clearly evidences that these uses can sustain a charge of £175 per square metre.</p> <p>No evidence has been submitted to demonstrate that the charge proposed for supermarkets and superstores is not viable. Whilst the assessments are high level they are relevant to Barking and Dagenham and local market land values have been used. Table 7 shows the costs and rental values that have been used.</p> <p>The experience in LBBB has been</p>	
-----------	--	--	---	--

		<p>lessen the financial support they could provide to other uses within scheme as a whole</p>	<p>that the value supermarket/superstore generates is captured by the S106. Since S106 has been reigned in and will be diluted further in 2015 it is entirely appropriate to set the CIL at the proposed level. Reforms to CIL propose that the land or cash in kind will be able to be discounted against CIL, so any benefits a supermarkets funds within the wider development will be able to be taken into account.</p> <p>The Council is currently dealing with three supermarket applications. An extension to the Morrison's in Wood Lane. No other uses are involved. A new Sainsbury's superstore on the Abbey Retail Park. No other uses are involved. It has recently lost a High Court challenge to approve an extension to Tesco's in London Road. No other uses were involved. It has recently approved the variance of a condition to allow an ASDA supermarket. No other uses were involved.</p> <p>Whilst the Council has recently approved an ASDA in Barking</p>	
--	--	---	--	--

		<p>When applications are made, particularly for smaller retail units, the operator will not be known, so the authority will not know whether a £10 or a £175 charge should be levied.</p>	<p>Town Centre which helped fund a Skills Centre and public realm improvements and an Outline Permission for a supermarket on the Sanofi site which has helped deliver benefits for sport and recreation and employment, CIL will demand in future that such developments are dealt with differently. This is not a problem with the level at which CIL is set but is due to the realities of delivering development under the new CIL regime and the reforms to the scope of S106.</p> <p>The Council has not encountered this situation in Barking and Dagenham. Without exception all applications have either been made with a known operator or where the operator was not known, such as at Sanofi, the retail use and type was clearly stated. This was necessary in order to undertake the retail impact assessment.</p> <p>Usually smaller retail units are located in existing buildings so would not incur a CIL charge. For example none of the six Tesco</p>	
--	--	---	---	--

		<p>Supermarkets and superstores sell an overlapping range of goods with many other shops and compete in the same market. There is no consideration in the available evidence on the state aid implications of this or whether it is objectively justified.</p> <p>Sainsbury consider it essential that Barking and Dagenham also prepare and adopt an instalments policy in line with Regulation 69B.</p> <p>Sainsbury's suggest the Council offer exceptional circumstances relief.</p>	<p>Metros which have recently opened in the borough would have been liable for CIL.</p> <p>The latest CIL guidance makes clear that rates must be set in such a way so as not to give rise to notifiable State aid – one element of which is selective advantage. Authorities who choose to differentiate rates by class of development or by reference to different areas, should do so only where there is consistent evidence relating to economic viability that constitutes the basis for any such differences in treatment. As previously explained LBBB's CIL charge for supermarkets and superstores is based on economic viability and appropriately evidenced.</p> <p>The Council have stated their intention on the CIL webpage to adopt the Mayoral instalment policy.</p> <p>The Council have, in the draft charging schedule, stated their intention to allow exceptional circumstances relief.</p>	
--	--	--	---	--

12	Iceni Projects on behalf of Estates and Agency Properties Limited (EAPL)	<p>Highlights the current consultation on CIL reforms and advise that LBBB should take another year to better justify its CIL and take account of the reforms</p> <p>Concerned that the charging schedule is a one size fits all approach, which provides no flexibility for bespoke proposals which would deliver significant regeneration and community benefits. Paragraph 6.1 of the schedule (which offers Exceptional Circumstances Relief) does not offer any flexibility in charging where it can be demonstrated that a development would be unviable as a consequence of CIL.</p> <p>Concerned that the £175 retail charge is abnormally high and will have a significant adverse impact on the overall viability. Suggests the schedule should be updated to take into account that retail development can subsidise less valuable uses on a site. It will burden the retail proposals for Abbey Retail Park.</p>	<p>Council is satisfied that its current evidence is adequate and satisfies the CIL regulations 2010 as amended.</p> <p>The Council are being flexible by allowing exceptional circumstances relief. The Council can only operate this relief in line with the CIL Regulations which clearly specify when it can be applied.</p> <p>GVA found that supermarkets were highly viable and could afford to pay up to £1,500 per sqm. We have chosen a charge of £175 per sqm which is significantly below the margins of viability to allow for the fact retail may cross subsidise other development in mixed used schemes. Abbey retail Park could receive a discount on the CIL charge for all current retail space which is in use and being demolished (subject to CIL</p>	
----	--	--	---	--

		<p>Suggest a discounted or nil rate for residential development in Barking Town Centre on the basis that regeneration and revitalisation of the Town Centre should be the priority in the borough.</p>	<p>Regulations).</p> <p>The residential rates are set based on viability evidence and cannot be set on any other basis, such as to achieve policy aims.</p>	
13	Iceni Projects on behalf of Hanbury Healthcare Limited (HHL)	<p>Highlights the current consultation on CIL reforms and advise that LBBDD should take another year to better justify its CIL and take account of the reforms.</p> <p>Of the opinion that the proposed CIL charging regime represents an inflexible approach that provides no relief for bespoke residential proposals which could deliver community benefits in their own right.</p> <p>The current approach to CIL has the potential to create unnecessary financial burdens on the delivery of residential schemes.</p> <p>Strongly disagree with the inclusion of paragraph 6.1 of the draft charging schedule as currently draft as it does not</p>	<p>Council is satisfied that its current evidence is adequate and satisfies the CIL regulations 2010 as amended.</p> <p>Rates are set on the basis of viability and once they are set there is no negotiation over payments on a case by case basis. There are, however, circumstances where relief is allowed, which is set out in the CIL Regulations. The Council must operate within the CIL Regulations.</p> <p>No evidence has been submitted to demonstrate that the rates make development unviable.</p> <p>These two statements are contradictory. Paragraph 6.1 says the LBBDD will offer exceptional</p>	

		<p>offer any flexibility in charging where it can be demonstrated that a specific development would be unviable as a consequence of CIL. Recommend that a policy providing for LBBD to offer discretionary relief from the CIL payments should be adopted.</p> <p>It is not clear how LBBD have set the final residential rates, which do not appear to be in line with the evidence of recommendations from consultants.</p> <p>There is a significant disparity between levels of charging for residential development based on geographical locations. A single low rate charge for residential development would be a more fair approach</p>	<p>circumstances relief .Exceptional circumstances relief must be operated within the confines of the CIL Regulations. LBBD cannot offer further flexibility.</p> <p>Pages 31 and 32 of the GVA study show that Scheme, 3, 4 5 and 6 all generate a CIL of over £100 per square metre. Scheme 6 does not due to the increase build costs of meeting Code Level 5. In practice Council would not require this and therefore Scheme 6 is likely to generate a similar CIL level to smaller schemes. The consultants recommendations in paragraph 5.8 are based on 10% affordable housing CIL charges have been set on basis of 0%. The rates have been set based on viability evidence and development in Barking Town Centre is more viable than other areas of the borough. Notwithstanding this the charge set for Barking Town Centre (including Mayoral CIL) is lower than neighbouring Redbridge which exhibits similar</p>	
--	--	--	---	--

		Strongly recommend the adoption of an instalments policy.	development viability characteristics. The Council have stated their intention to adopt the Mayoral instalment policy on the CIL pages of the website.	
14	Transport for London (TfL)	TfL comment on the transport projects within the Infrastructure plan and the need to understand how transport projects will be prioritized. It suggests updates to a number of the projects, including the DLR extension, Renwick Road Junction, Barking Station and East London Transit.	LBBB welcome TfLs comments and suggestions and are happy to work with them in the development of the Regulation 123 list. LBBB will update the Infrastructure Plan in the light of their comments. TfLs comments do not alter the fact that their remains a significant funding gap which justifies LBBB proceeding with CIL.	
15	Barton Willmore on behalf of Goodman	Comments are made in relation to the development of the London Sustainable Industries Park (LSIP). The draft charging schedule bears no clear relation to the suggested cost of required local infrastructure. GVA are seriously inaccurate in their assumptions as to development viability. The draft charging schedule fails to	There is no Regulatory requirement to relate the charge to the individual infrastructure impacts of a development. The funding required for infrastructure far exceeds what we will collect from CIL. The charges are based on the viability of development, not the infrastructure needs each development creates. A minimal £5 charge has been	

		differentiate between different parts of the borough for industrial development.	<p>suggested for industrial development. Whilst each local planning authority has to determine the viability of its own CIL charges it is not true to say that no other Thames Gateway authority has adopted a CIL in respect of B class uses. Thurrock charges up to £25 per square metre and Bexley is proposing £10 per square metre</p> <p>Table 6 of the GVA report makes clear that base build costs of £700 per square metre have been used to industrial waste uses and not £450 per square metre.</p> <p>Recent planning permissions in Dagenham Dock include 11/00460/FUL where a S106 was agreed for £96,000 for a building of 5,656 square metres and 10/00287/LBBD where a S106 for £300,000 was agreed for a building of 18,296 square metres. This demonstrates that the Council's proposed CIL charges are comfortably within the margins of viability.</p>	
16	Barton Willmore	Concerned that any revised applications	S73 variations do not trigger CIL	s

	<p>on behalf of Barking Riverside Limited (BRL)</p>	<p>for Barking Riverside will mean a further cost liability.</p> <p>Suggest that a £25 per sqm CIL charge cannot be justified for Barking Riverside.</p> <p>Disagrees with the assumptions used by GVA, particularly residential sales values/rates.</p>	<p>liability unless there is a increase in floorspace.</p> <p>The £25 rate has been set on the basis of viability evidence from GVA. The only reason there is a cross against scheme 14 in Table 13 is that this includes Code Level 5 costs. In practice the Council would accept Code Level 4 as with the other schemes and therefore viability would be comparable to at least scheme 13. It is also the case that GVA have modelled without grant scenarios and the likelihood is that affordable housing could only be provided with grant. Finally the Council has varied charges across the borough. It is because the Council does not want to set charges at the margins of viability that it is proposing a far lower charge in Barking Riverside than Barking Town Centre.</p> <p>A representative from Barking Riverside Limited (Bellways) was involved in initial stakeholder meetings and inputted into discussions about the setting of the assumptions for the viability</p>	
--	---	--	---	--

		<p>Argue that the CIL test should be against the full affordable housing amount of</p>	<p>study. In addition, LBBB will be offering exceptional circumstances relief in line with the CIL Regulations. Moreover the sales value suggested by Barking Riverside Limited are very low. They evidence a sales value of £168 per square foot. For an average home of 1000 square feet this gives a sales price of £168,000. This compares to the build costs of between £91-£139 per square. BRL then state a £9.30 per square metre infrastructure cost, The point is that the CIL charge will not apply to current permissions, only future permission. In this regard CIL will have a marginal impact on viability. All things being equal increasing sales value by £2.32 per square foot would cover the cost of the CIL.</p> <p>It is also important to note that the existing outline planning permission includes a £2000 per new home contribution to bus service improvements.</p> <p>LBBB does not have a 50% affordable housing policy, but</p>	
--	--	--	--	--

		<p>50%, not against reduced levels.</p> <p>There does not appear to be an allowance in GVAs viability assessment for S106 costs</p> <p>Considers that with proposed CIL rate Barking Riverside is unviable and therefore should qualify for relief for exceptional circumstances. Concerned that they may be charged twice for infrastructure as they have already entered into a S106 agreement.</p>	<p>refers to the Mayor's policy which seeks the maximum amount based on viability on a case by case basis. The GLA have confirmed they are satisfied with the Council's approach in this regard.</p> <p>CIL, S106 and Affordable Housing will be drawn from value left in development once all other costs including market land value have been accounted for. GVA work demonstrates that a CIL charge of £25 per square metre can be sustained with zero affordable housing without grant.</p> <p>The fact that a development might be unviable at the time a planning application is considered unlikely to constitute an exceptional circumstance in relation to CIL regulations.</p> <p>CIL Regulations state that Section 73 applications will only create a CIL liability for additional floorspace.</p>	
--	--	---	---	--

		<p>Considers it imperative that an instalments policy is outlined at the earliest opportunity.</p> <p>There are no details of when LBBB is intending to review its charging schedule and under what circumstance LBBB may reduce or increase its charge.</p>	<p>The Council has stated its intention to adopt the Mayor's instalment policy as outlined on the CIL pages of the LBBB website.</p> <p>The proposed CIL reforms propose to treat each phase as a new chargeable development.</p> <p>There is no requirement to publish a proposed review date at this time – a review will be carried out when market conditions have changed significantly enough to warrant a review of rate.</p>	
17	Greater London Authority (GLA)	<p>Have some concerns about the extent to which the proposals take full account of the CIL rates set by the Mayor as required by Regulation 14(3) of the CIL Regulations 2010 (as amended).</p> <p>They appreciate the work already undertaken to address these concerns but suggest a meeting to explore these issues further.</p>	<p>Following further discussions the Mayor of London has confirmed that the Mayor's CIL has been taken fully into account in bringing forward the Council's proposals as required by regulation 14(3) of the Community Infrastructure Regulation 2012 as amended.</p>	
18	Thomas Eggar on behalf of Asda Stores Limited	<p>Impact on policies promoting growth and employment opportunities</p> <p>Proposed rate would not ensure that the relevant retail and employment aims of the Core Strategy are met. The Council may find it difficult to attract retail development and redevelopment at</p>	<p>The CIL rates have been set on the basis of viability evidence. The CIL funds collected by the borough are only likely to represent a low percentage of the funding which is required for infrastructure.</p>	

		<p>these rates and there is a risk that the borough will lose potential developers to surrounding areas where CIL rates may be lower.</p>	<p>The Retail Addendum demonstrates that for the larger schemes to which the most significant S106 often apply (D, E and F) CIL and a S106 of £100 per sqm can be supported whether developer led or operator led.</p> <p>The example provided by Thomas Eggar proves that the CIL charge is affordable. Whilst the S106 items listed may not be affected by the inability to pool S106 in future, there will be greater scrutiny in future on whether agreements satisfy the S106 tests set out in the CIL regulations 2010 as amended.</p> <p>CIL will change the way developments are delivered, this is not an issue though about the rate of the levy but due to the reigning in of S106 and their reduced scope. The proposed reforms to CIL aim to address this inflexibility by allowing land/cash in kind improvements to be discounted against the CIL charge.</p>	
--	--	---	--	--

		<p>The proposal to split convenience and comparison retail development To date the Council only appears to have assessed the impact of CIL on one specific retail warehouse scheme. This is hardly sufficient evidence to demonstrate the comparison retail in all its possible formats and proposed locations has a different viability profile to comparable convenience stores.</p> <p>The financial assumptions and viability assessments contained in the Council's viability study. The viability study and addendum do not make sufficient allowance for section 106 and s278 contributions or costs involved in obtaining planning</p>	<p>Government guidance is clear that a charging authority must use "appropriate available evidence" to inform its charging schedule. Due to the changing retail landscape the Council does not expect to receive many if any applications for comparison retailing which will be liable for CIL over the plan period. The Council has tested a retail warehouse scheme of 1500 but even this form of development is unlikely to materialise given that the borough's retail warehouse parks are not expanding. This is in stark contrast to the continuing pressure for new convenience floorspace in borough as epitomised by the conversion of a former B&Q warehouse to an ASDA supermarket and the proposal for a Sainsbury's supermarket on the Abbey Retail Park.</p> <p>The Retail Addendum demonstrates that for the larger schemes to which the most significant S106 often apply (D, E and F) CIL and a S106/S38 of £100 per sqm can be supported whether developer led or operator</p>	
--	--	--	---	--

		<p>permission for a development scheme. This underestimates true cost of retail developments and artificially inflated residual land values used and in turn inflated CIL values.</p> <p>Without evidence of how CIL compares to previous S106 it is difficult to see how the Council can be certain that the proposed CIL levy will not prohibit the viability of retail development.</p> <p>Concerns about the Council's approach to setting CIL charges generally Concerns relating to change of use and conversion projects</p>	<p>led.</p> <p>Build cost assumptions are set out in Table 7. No evidence has been submitted to challenge these.</p> <p>Whatever S106 has been achieved historically on supermarkets has not been evidence based but the result of a negotiation process and the need to mitigate the impact of the development. CIL charges are based on viability evidence they are not moderated by the need to meet S106 tests nor are they affected by the vagaries of a negotiation process. That said the Council's CIL charges are not dissimilar to the developer contributions agreed on the Tesco's Extension on London Road, ASDA on Whalebone Lane (where incidentally there was no increase in floorspace), and on the London Road/North Street ASDA.</p> <p>The Council will need to apply the Community Infrastructure Regulations as amended when calculating CIL charges for change of use and conversion</p>	
--	--	--	---	--

		<p>Concerns on CIL payments and the infrastructure requirements Charging schedule does not make the connection between the CIL charges proposed and the infrastructure requirements of the particular development upon which they are being levied.</p> <p>Exceptional circumstances policy This is supported</p> <p>Instalment policy Welcome the fact that the Council is considering a draft instalments policy</p> <p>Flat rate levy A fairer solution would be to divide the Council's estimate for infrastructure costs over the charging period by total expected floorspace and apply to all forms of development.</p>	<p>projects.</p> <p>There is no requirement to do this for each individual development but only across the area as a whole. The CIL collected in the future will only represent a very small percentage of the funding required for infrastructure.</p> <p>LBBD is proposing to adopt an exceptional circumstance policy and the Mayor's instalment policy.</p> <p>The cost of deliverable infrastructure far exceeds the funding that can potentially be achieved through CIL. A flat rate calculated on this basis would likely to be much higher than the rates currently being proposed and would render most development unviable.</p> <p>Exceptional circumstances relief is not intended to be applied in anything other than exceptional</p>	
--	--	--	--	--

		<p>CIL reform Consider delaying CIL until CIL reform consultation is finished and outcome known</p>	<p>circumstances.</p> <p>The Council is satisfied that there is nothing in the proposed CIL reforms which challenges its current CIL charges and methodology.</p>	
19	Planning Potential on behalf of Aldi Stores Ltd	<p>Consider that the proposed £175 retail rate is too high.</p> <p>Much of the infrastructure highlighted is intrinsically linked to residential development although acknowledges that a foodstore may require some highways improvements. It is confusing as to why the rates for residential development are lower than for retail</p> <p>Concerned that the viability does not appear to be based on a discount operator</p>	<p>No evidence is provided to demonstrate that this rate is unviable.</p> <p>There is no Regulatory requirement to relate the charge to the individual infrastructure impacts of a development. The funding required for infrastructure far exceeds what we will collect from CIL.</p> <p>The assumptions that the Council has used are clearly set out in the GVA Economic Viability Assessment and the Addendum on Retail. No evidence has been provided to challenge their accuracy.</p>	
20	The Theatres Trust	A nil rate for municipal leisure is supported if this includes theatres.	The nil rate does not apply to theatres but charitable relief would likely apply.	None

Appendix 3

Stakeholder Workshop Invite List

Mr	Neeraj	Dixit	LagMar (Barking) Limited c/o CB Richard Ellis	
Mr	Javiera	Maturana	London Development Agency	Planning Manager
Mr	Graham	Oliver	Countryside Properties plc and Freshwharf Developments Ltd c/o GERALD EVE	
Mr	Andrew	Boyd	Savills on behalf of Swan Housing Group	Associate
Mr	Steve	Flowers	Swan Group	
Mr	Robert	Ham	HCA	Planning Manager
Mr	John	Parry	Glenny	Partner, Professional Services
Mr	Keith	Brelsford	Glenny	Partner, Residential
Mr	John	Bell	Glenny	Managing Partner, Head of Business Space Agency
Mr	Ian	Wickerson	Bidwells	Director
Mr	Guy	Jenkinson	Bidwells	Director
Mr	Jonathan	Branch	Bidwells	
Ms	Alice	Leach	London Thames Gateway Development Corporation	Senior Planning Implementation Officer
Mr	Peter	Elliot	London Thames Gateway Development Corporation	Development Manager

Ms	Jennie	Bean	Tesco Stores Ltd c/o GL HEARN	Planning Director
Mr	Ed	Kemsley	Peacock and Smith Limited (WM Morrison Supermarkets Plc)	
Ms	Eilidh	Campbell	Sainsbury's Supermarket Ltd c/o Turley Associates	Planner
Mr	Ian	Anderson	Estates and Agency c/c Icen Projects Limited	Director
Mr	Paul	Gibbs	Persimmon Homes	Development Director
Mr	Stephen	Yates	Axa Sunlife	
Mr	Kevin	Sullivan	LBBB Property Services	Group Manager Assets
Mr	David	Evans	LBBB Property Services	
Mr	Neil	Rowley	Savills	Director, Planning
Mr	Tony	Fisher	Lambert Smith Hampton	
Mr	Richard	Burrows	Bellway Homes Limited (Essex)	Managing Director
Mr	Jim	Atkinson	Bouygues UK	
Mr	Guy	Price	ASDA	
Mr	Simon	Brown	Taylor Wimpey	Managing Director
Mr	Daniel	Butcher	Kemsleys	Commercial Agent
Mr	Colin	Herman	Kemsleys	Director of Agency
Mr	Richard	Payne	Weston Homes	Development Director
Mr	Steve	Hearn	Laing O'Rourke	
Mr	Lee	O'Neill	Cluttons	Associate, Residential Agency
Ms	Kari Trajer	Trajer	Cluttons	Lettings Manager, Residential Lettings

Mr	Chris	Collins	Strettons	Head of Retail & Residential
Mr	Ian	Stevenson	Porter Glenny Estates	Managing Director
Mr	Andrew	File	Sandra Estate Agents	Managing Director
Mr	Micheal	O'Brian	Ramsey Moore Estate Agents	
Ms	Melanie	Mcintosh	Mace Group	Marketing
Mr	Drew	Pindoria	Bairstow Eves	Manager

Draft Regulation 123 List – October 2014

Regulation 123 of the Community Infrastructure Levy Regulations provides for charging authorities to set out a list of those projects or types of infrastructure that it intends to fund through the levy.

When a charging authority introduces the Community Infrastructure Levy (CIL), section 106 requirements should be scaled back to those matters that are directly related to a specific site, and are not set out in a regulation 123 list.

For transparency, the Council will publish guidance on how S106 and CIL will operate together so that it is clear how double dipping will be avoided. It will look to incorporate this into its Local Plan at the first opportunity.

The Council's regulation 123 list includes a number of generic items. To avoid double dipping Section 106 will only be sought for site-specific items where this is necessary to make the development acceptable in planning terms for example:

- Affordable housing
- Local labour and local supplier contracts
- New bus connections or services and cycle/pedestrian routes and connections through the development
- Local junction / highways improvements and access into the site
- On-site greenspace and public realm improvements
- On-site drainage and flooding solutions
- On site sustainable energy requirements

The inclusion of a project or type of infrastructure in this list does not signify a commitment from the Council to fund (either in whole or in part) the listed project or type of infrastructure through CIL. The order of the list does not imply any preference or priority.

Regulation 59 of the Community Infrastructure Levy (Amendment) Regulations 2013 requires the Council to pass 15% of its CIL receipts to the local area capped at £100 per dwelling (plus index linking). Since there are no parish or community Councils in Barking and Dagenham then the Council retains this element of the CIL receipts. However the Council is required to engage with the local community to agree how this money should be spent. The regulations make clear that the funds must be used to support the development of areas within the local authority by funding the provision, improvement, replacement, operation or maintenance of infrastructure or anything else that is concerned with addressing the demands that development places on an area.

THE COMMUNITY INFRASTRUCTURE LEVY (AMENDMENT) REGULATIONS 2013

This list draws on information in the Council's Infrastructure Plan which sets out the infrastructure needed to deliver the growth set out in the Local Plan up to 2025

CIL will be spent on one or more of the following strategic (non-site specific) infrastructure

- **Education facilities**
- **Transport improvements**
- **Environmental improvements including hard and soft landscaping, green grid and blue ribbon**
- **Sport, leisure, parks and open spaces**
- **Health facilities**
- **Business support facilities**
- **Community safety projects**
- **Community facilities**
- **Flood defences**

**London Borough of Barking and
Dagenham**

***Draft* Planning Advice Note 10**

Section 106/Planning Obligation

October 2014

1 Introduction

Background

- 1.1 Barking and Dagenham has the most untapped potential for growth in the capital, has excellent accessibility and is London's next big growth story after Docklands and Stratford. Barking and Dagenham will deliver 17,000 new homes and 10,000 new jobs in the borough over the next 20 years, which will in turn create high-value opportunities in the manufacturing, green tech, bio tech, creative industries, health and social care, retail and leisure sectors. The Council is committed to growth, to playing its role in London and delivering for its community. The ambition and aspiration is to become a destination of choice, where people stay and feel welcome.
- 1.2 New development plays an important role in the borough in meeting current and future needs in, for example, the provision of new homes, employment or recreational facilities. However, in order to achieve sustainable growth and maximise the quality and contribution of new development and the benefit that it brings to existing and new communities, developer contributions towards community benefits will be sought wherever appropriate.
- 1.3 The Council will seek to ensure that new development contributes to a safer, healthier and more prosperous borough by ensuring that it incorporates high quality design, mitigates any adverse impact it may cause, and contributes to the needs of the local community.

Purpose of this document

- 1.4 The main aims of this document are:
 - to set out the circumstances where planning obligations or Section 106 will be sought following the adoption of the Council's Community Infrastructure Levy (CIL) charging schedule
 - improve transparency in the calculation of planning obligations
 - provide applicants with greater certainty on when planning obligations will be sought.
- 1.5 The Community Infrastructure Levy (CIL) is a new system of developer contributions which can be spent on providing new facilities and infrastructure (such as schools and transport improvements) to support new development. CIL is set locally and will become a standard charge per square metre applied to all qualifying developments with the exception of social housing and buildings used by charities. The charge will be imposed at the time planning permission is granted and normally be paid at the commencement of development.
- 1.6 When introduced, this new CIL charge will replace many section 106 agreements as the CIL Regulations 2010 limit their use. However some S106

agreements will still be used for the specific impacts of a development (such as a new access road) and for affordable housing.

- 1.7 This document will assist prospective developers by identifying the planning obligations that will be sought by the council, through the grant of planning permission for development, where such development generates a need for new infrastructure. Acknowledgement and preparation for the required planning obligations should be integral to negotiation of land transactions, and the formulation of development proposals. The Council will expect developers to enter into discussions on planning obligation requirements at the pre-application stage. The Council's aim is to agree in principle the Heads of Terms of any planning agreement before applications are submitted.
- 1.8 This guidance aims to set out:
- the types of developments that would be subject to planning obligations; and
 - the range of likely contributions that may be sought.

2. Addressing the impacts of development

- 2.1 There are five main mechanisms available to the Council to ensure that development addresses any adverse impacts as well as contributes to local infrastructure and the environment. These are:

Planning Conditions

- 2.2 Where a development proposal does not meet the standards required of local planning policy, for example providing high quality design, securing planning permission may prove difficult. Developers are encouraged to engage in pre-application discussions with the Council to determine what aspects of a proposal may need to be improved to secure planning permission.
- 2.3 The Council will often grant planning permission subject to conditions. Planning conditions are usually to ensure that the proposal will be implemented in a manner consistent with the approved planning application, but they may also be used as a mechanism for the provision of essential on-site design requirements. While they mainly relate to the development and site proposed, they can also be used to secure off-site provision in some circumstances. In line with the Council's desire to speed up the delivery of development it will only impose those conditions which are absolutely necessary. Therefore the Council encourages developers to provide the necessary detail in their planning application to limit the number of conditions that are imposed.

Planning Obligations

- 2.4 Planning obligations enter the developer into a legal commitment to undertake specific works, provision of land/facilities, or providing a financial contribution towards the provision of a service or piece of infrastructure. They are set out in Section 106 (S106) of the Town and Country Planning Act 1990 and are intended to secure the necessary site specific requirements to make an individual proposal 'acceptable'.
- 2.5 Planning obligations can range from the on-site drainage solutions through to provision of a road to connect a site to the local highway network. It is also the mechanism by which affordable housing is secured.
- 2.6 However, the application of S106 has not always been consistent and has created uncertainty for developers. The burden of S106 tends to fall more on larger proposals even though smaller proposals, collectively, may have more of an impact.

Section 278 Agreements – Highway Improvements

- 2.7 As a Local Highway Authority, the council can also use Section 278 of the Highways Act 1980 to secure works to the local highway network where necessary to serve the proposed development. Transport for London (TfL), which is the highway authority for the 'TfL Route Network' may also require such an obligation. Examples of work covered by this type of agreement could include road safety improvements, such as traffic calming, street lighting, improved facilities for pedestrians and cyclists, roundabouts, signalised junctions, priority junctions, new accesses to development sites, and footway and carriageway resurfacing.

Unilateral Undertakings

- 2.8 A unilateral undertaking is a form of Section 106 agreement where the developer submits proposals for a Section 106 planning obligation without prior agreement with the local planning authority. The undertaking is submitted unilaterally, alongside the planning application, or with planning appeal submissions. Although not generally encouraged, unilateral undertakings may be acceptable for straight forward or smaller schemes.

Community Infrastructure Levy (CIL)

- 2.9 As part of the changes introduced under the Planning Act 2008, a new mechanism called the Community Infrastructure Levy was introduced to provide greater consistency in the charging of planning obligations.
- 2.10 The main concept behind CIL is to provide a standard charge, or set of charges, that can be levied on all development. It can be spent on new or improved infrastructure deemed necessary to deliver the local plan.

- 2.11 A separate CIL is charged by the Mayor of London to help pay for Crossrail, and this has been chargeable from 1st April 2012.
- 2.12 The Council's CIL becomes effective on 5th January 2015. The London Borough of Barking and Dagenham's CIL Charging Schedule can be found on the borough's website via the following link:
- <http://www.lbbd.gov.uk/Environment/PlanningPolicy/Pages/CommunityInfrastructureLevy.aspx>
- 2.13 A list of projects which may be funded by CIL is set out in the Regulation 123 list. This is published on the Council website (via above link). The 123 list will be updated from time to time, as necessary.
- 2.14 To help communities to accommodate the impact of new development and to strengthen the role and financial autonomy of neighbourhoods, at least 15% of the funds collected by the charging authority will be spent following engagement with communities where development has taken place and agree with them how best to spend the neighbourhood funding. This will be achieved through consultation with existing community groups wherever possible.

3. Policy Context

- 3.1 The relevant policies for this document are as follows:
- National Planning Policy Framework (March 2012)
 - Community Infrastructure Levy Regulations 2010 (as amended)
 - The London Plan (2011) - Policy 8.2 on planning obligations
 - London Borough of Barking and Dagenham Core Strategy – Policy CC3: achieving Benefits Through Developer Contributions

National Planning Policy Framework (NPPF) (March 2012)

- 3.2 The NPPF, in paragraph 173, states:
- 'Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.'
- 3.3 Paragraphs 203 to 206 of the NPPF are all that remains of Circular 05/2005. Three of the five key policy tests outlined in previous Government guidance remain. These are now enshrined in the Community Infrastructure

Regulations 2010 as amended. Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

3.4 Paragraph 205 of the NPPF states, “Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled”

CIL Regulations 2010 (as amended) – pooling of S106 contributions

3.5 Regulations 122 and 123 of the CIL Regulations 2010 (and subsequent amendments) place limitations on the use of Section 106 agreements. Regulation 122 limits the planning obligation tests to the three outlined above, while Regulation 123 only allows the pooling of contributions from up to five separate planning obligations for a particular item if it is not locally intended to be funded by the levy. The regulations state that the latter will apply from 6 April 2015 or when a charging authority’s charging schedule takes effect (if sooner). This will date back to 6 April 2010, therefore if five or more S106s have been pooled during this five year period for a particular project or type of infrastructure, no further S106s can be entered into for the same item. Instead, CIL should be used.

The London Plan July 2011

3.6 The London Plan Policy 8.2 sets out the Mayor’s strategic priorities for planning obligations, which are:

- Affordable housing;
- Supporting the funding of Crossrail* where appropriate; and
- Other public transport improvements.

3.7 Importance should also be given to tackling climate change, learning and skills, health facilities and services, childcare provisions and the provision of small shops.

3.8 Crossrail S106 will be payable on office and retail development within 1km of a crossrail station (£31 per sqm for office and £16 for retail). In all cases, contributions should be calculated in respect of developments exceeding 500sqm with a net increase in floor area of the relevant use. For mixed use developments, contributions will be sought on any increase in floorspace for any of the uses (subject to 500sqm threshold).

London Borough of Barking and Dagenham Core Strategy (July 2010)

- 3.9 Policy CC3 (Achieving Community Benefits through Developer Contributions) outlines the Council's planning obligations policy. This sets out why developer contributions may be sought and what they may be used for. This policy will need to be updated through the Local Plan review when the Council adopts its CIL Charging schedule.

4. Negotiating Planning Obligations

- 4.1 The Council offers a pre-application advice service to assist potential applicants in drawing up their proposals and to encourage detailed discussion before a formal planning application is submitted.
- 4.2 During these pre-application discussions, the planning officers will, where necessary, identify the issues relevant to the development to be considered in respect of planning obligations. The scope of these obligations will be informed by comments from formal consultees, local, regional and national planning policy, and the location and characteristics of the site concerned.
- 4.3 We will negotiate draft S106 Agreement 'Heads of Terms' during this pre-application stage. The Heads of Terms should clarify what items the S106 will include and their value.
- 4.4 A fee for pre-application advice is payable for certain types of applications. There is no charge for pre-application advice for householder applications, or other minor developments such as small changes of use, shop fronts or small commercial floorspace extensions.
- 4.5 Please refer to the guidance note, 'Charging for pre-application advice', for further details. This can be found on the council's website via the link below:

<http://www.lbbd.gov.uk/Environment/planning/Pages/Pre-applicationadviceandcharging.aspx>

5. The Scope of Planning Obligations

- 5.1 The broad categories for developer contributions outlined in Core Strategy policy CC3. However an updated list is provided in the Council's Regulation 123 list:
- Affordable housing
 - Local labour and local supplier contracts
 - New bus connections or services and cycle/pedestrian routes and connections through the development
 - Local junction / highways improvements and access into the site
 - On-site greenspace and public realm improvements
 - On-site drainage and flooding solutions
 - On site sustainable energy requirements

- 5.2 There may be cases where the development proposed results in a specific need for infrastructure that is not currently available, and has not been identified for investment through CIL or wider investment programmes. For example, a major junction improvement may be required to 'unlock' a site. In such circumstances, the Council would normally expect this to be addressed as part of the proposal at the time planning permission was sought. Their delivery will often be secured by a S106 agreement or other mechanisms such as Section 278 of the Transport Act.
- 5.3 S106 will continue to be used for local infrastructure requirements on development sites, such as local access or connection to services. Some of these requirements may be physically off site but, will be secured under S106 where they are clearly linked to the development site and needed to make that particular site acceptable in planning terms.
- 5.4 S106 will also be used for affordable housing provision where viable.
- 5.5 Many developments will be required to pay both CIL and enter into a S106 agreement, but a development cannot be charged twice for the same items of infrastructure through both S106 and CIL.
- 5.6 There may be cases where infrastructure provision necessary to make a development acceptable cannot be delivered on-site, in which case the Council will expect off-site contributions, whether as alternative provision or a commuted sum.

Affordable Housing

- 5.7 Affordable housing will continue to be provided through S106 as there is no provision for this to be paid from CIL.
- 5.8 The Council does not have an affordable housing policy so instead defers to policies contained within the London Plan (3.8 to 3.14). Therefore, for developments of 10 or more homes, we seek to negotiate the maximum reasonable amount of affordable housing based on the viability of the scheme. The basis for viability appraisals is the 'Three Dragons model' developed and updated by the Greater London Authority or similar.
- 5.9 It is recognised that some sites within the borough will not be able to provide affordable housing. However, it will be the responsibility of the developer to provide viability evidence to justify this.
- 5.10 The NPPF definition for affordable housing includes social rented, affordable rented (up to 80% of market rent) and intermediate housing, provided to eligible households whose needs are not met by the market.
- 5.11 The London Plan tenure split of 60% social rent and 40% intermediate will be applied.

Transport Infrastructure

- 5.12 A modern and efficient transport network is essential to growth in Barking and Dagenham. New development will place increased pressure on the existing transport system so must be delivered in parallel with improvements to transport and movement in the borough, attracting new employers and residents, as well as providing the existing population with improved access to employment opportunities within the borough and further afield.
- 5.13 From 1st April 2012, the Mayor of London's CIL came into operation. The purpose of this levy is to contribute to the funding of Crossrail, which will increase capacity across the tube network by around 10%, benefiting all of London. In Barking and Dagenham the levy is £20 per square metre and will be charged in addition to the Barking and Dagenham CIL.
- 5.14 Funding for transport infrastructure required as a result of incremental growth, in particular public transport improvements, will normally be provided through the Council as part of the standard CIL charge and other mainstream funding programmes.
- 5.15 Where development is required to make specific contributions toward improvements, amendments or additions to public transport services, not identified or expected to be met by CIL, these contributions will be secured by a legal agreement. The Council's Transport Section/Transport for London, or Network Rail, will advise on the requirements for individual applications, which may cover the following range of improvements:
- New bus connections or services through the development
 - Cycle/pedestrian routes and connections through the development
 - Local junction / highways improvements and access into the site
 - sitings of bus stops
 - Access and other improvements to rail and underground stations
 - Facilities to assist interchange between modes
 - Associated street furniture
 - Associated carriageway and pavement measures
 - Associated pedestrian and cycle links
 - Cycle parking
 - Motor cycle parking
 - Car club provision
- 5.16 Where development is expected to result in severe adverse traffic impacts on the wider highway network, measures will be secured to reduce, minimise or eliminate the impacts, which may not be met by the CIL charge. Alterations or improvements to the local highway network, necessary to promote a safe, efficient or sustainable relationship between development and the public highway, may be secured through planning and/or highway legal agreements.
- 5.17 Where development exceeds the thresholds for a travel plan set out in the Local Plan a travel plan will be secured with the objective of reducing adverse

transport impacts and will include measures required to successfully implement the plan. In addition, strategic level travel plans are required for larger scale developments that are referred to the Mayor.

- 5.18 Borough-wide Development Policies Development Plan Document policies BR10 (Sustainable Transport) and BR11 (Walking and Cycling) provide the main policy background relating to achieving a sustainable relationship between development and transport.
- 5.19 Barking and Dagenham's Local Implementation Plan highlights transport investment proposals and priorities for the borough.

Public Facilities – Education, Community and Health

- 5.20 Providing education, health and community facilities is a fundamental part of the borough's growth agenda and is essential in spreading benefits to the local population.
- 5.21 The 2011 census revealed that in Barking and Dagenham there has been almost a 50% rise in 0-4 year olds between 2001 and 2011. This is the highest growth for this age group of any local authority in England and Wales. In addition, the borough has the highest population percentage of 0-19 year olds in the country at 31%. This means that there is enormous pressure on schools within the borough.
- 5.22 Where an assessment of current and future community facilities capacity shows that a major residential development scheme establishes a site-specific need for additional community facilities, accessibility to such services is required to be demonstrated as part of the planning proposal. This will also apply where land, or the provision of a new facility, is required within or nearby the proposed development site.
- 5.23 On-site provision will not forgo the need for developments to contribute to CIL.
- 5.24 In large, mixed-use developments, there may be a S106 requirement to retain a building to be used for a public facility. In some high density, high rise developments this may not be possible. The Council will accept off-site provision through a S106 in exceptional circumstances.

Employment, Skills and Training

- 5.25 Development increases opportunities for local employment, particularly those facing barriers to employment. Maximising local labour also reduces the need to travel which can help to ensure that development is more sustainable.
- 5.26 The Council therefore requires that opportunities for the employment, training and support of local labour are provided throughout the construction phase of a development and for the end use of non-residential development.

- 5.27 Local supply of goods and services to development supports the maintenance of a sustainable local economy which in turn provides further employment opportunity for local labour as local contractors and suppliers are more likely to employ local labour.
- 5.28 The Council will work with developers and employers to ensure that employment, training and business opportunities are tailored to the development proposed.
- 5.29 See Planning Advice Note 2: Local Labour and Local Business Agreements.
<http://www.lbbd.gov.uk/Environment/PlanningPolicy/Pages/Planningadvicenotes.aspx>

Open Space

- 5.30 Open space in this section refers to the provision of green infrastructure, public open space, outdoor sports, playing fields, recreational land for biodiversity purposes and play space.
- 5.31 Where the development would cause a localised requirement for additional open space this is expected to be provided on-site as part of the development proposal. In exceptional circumstances open space may be provided off-site, or through payment of a commuted sum via a Section 106 agreement.
- 5.32 Play space will be required in accordance with the Mayor's Supplementary Guidance: Shaping Neighbourhoods: Play and Informal Recreation SPG.

Public Realm

- 5.33 As Barking and Dagenham's population continues to grow, it is important to ensure that the spaces and places between buildings function well and are attractive and enjoyable. New development has a key role in making sure it contributes to this continued improvement in the public realm and, in doing so, support economic growth in the borough by attracting new investment, employers and residents to the area.
- 5.34 All development schemes that have a significant impact on the public realm will be assessed for appropriate public realm improvements in the vicinity of the scheme, or the adjoining area.
- 5.35 Where necessary, planning obligations will be sought for public realm works on or immediately adjacent to a development site. This will exclude more general public realm improvements that will be funded using CIL.
- 5.36 Public realm works will either be undertaken by the developer, or made through financial contributions to the Council, who will organise or undertake works directly.
- 5.37 These may include:

- New or improved footways and/or hard or soft landscaping improvements
- Replacing paving or landscape material on existing public realm including carriageways and footways
- Improvement of pedestrian and cycle links to local facilities and public transport
- Traffic management measures and initiatives
- Street Lighting
- Tree planting and biodiversity improvements
- Community safety initiatives
- Appropriate new street furniture and signage
- CCTV or other community safety measures
- Removal of street clutter

Historic Environment

- 5.38 Barking and Dagenham has a rich local history, but compared to other borough's has relatively few protected historical environment assets such as listed buildings and conservation areas. With this in mind, the Council will take particular care to protect and, wherever possible, enhance the historic environment. Policies CP2 (Protecting and promoting our historic environment), BP2 (Conservation Areas and Listed Buildings) and BP3 (Archaeology) outline the Council's requirements in relation to management of the historic environment.
- 5.39 The Council will generally use conditions to ensure our policies on historic environment are adhered to but there may be circumstances where a S106 agreement may be required, for:
- Repair, restoration or maintenance of a heritage asset and its setting;
 - Increased public access and improved signage to and from heritage assets;
 - Measures for preservation or investigation and recovery of archaeological remains and sites;
 - Display of archaeological sites.

Sustainable Design and Construction

- 5.40 There are a number of different policies and regulations which influence the standards of sustainability in new developments and this in an area of policy which is constantly evolving.
- 5.41 The Building Regulations Part L set out national standards for CO2 emissions in new buildings, with an aim to reach 'zero carbon' standards by 2016. The preference is for CO2 emissions to be minimised as far as possible on-site. As standards become more stringent, it will be more difficult to meet targets through building design and on-site low carbon/renewable energy alone. Beyond the on-site carbon-compliance standards, the Government is

developing an approach to 'allowable solutions' which will allow developers to support off-site carbon reduction measures, such as district heating schemes, and retro-fitting insulation in existing buildings, where it is not technically feasible or commercially viable to abate all carbon emissions through on-site means.

- 5.42 Alongside the policies of the London Plan, the sustainability standards the Council expects from development are set out in Core Strategy Policy CR1 (Climate Change and Environmental Management, and Borough Wide Policies Development Plan Document policies BR1 (Environmental Building Standards) and BR2 (Energy and on-site renewables). These provide detail on the appropriate standards for different types of development including BREAM and Code for Sustainable Homes, as well as standards relating to energy efficiency, decentralised energy networks and renewable energy. For major developments the Council will require developers to pay for independent assessment of their sustainability information and reports to ensure compliance with the Council's policies. Meeting the requirements for sustainable design and construction is often achieved in the detailed design or construction phases. Normally requirements for sustainable design will be dealt with using conditions, but in some circumstances, a S106 agreement may be required to secure the highest environmental standards of development.
- 5.43 The following features may be specified through further details required to be submitted as part of a S106 agreement if they cannot be implemented through the approved design or satisfactorily secured through conditions:
- energy efficient design measures;
 - renewable energy facilities;
 - waste and recycling storage facilities;
 - water retention and recycling facilities;
 - heating or cooling systems;
 - caps on internal water consumption levels; and
 - the proportion of materials used from sustainable sources.

Decentralised Energy Networks

- 5.44 In line with the London Plan, the Council is working with partners to maximise the opportunity to provide new networks supplied by decentralised energy. Developments near to a planned or potential future network should make provision for a connection to the network should one be established.
- 5.45 Where appropriate, S106 agreements will be used in relation to securing the installation of Combined Heat and Power (CHP)/Combined Cooling Heat and Power (CCHP) and the generation and use of energy.

Flood Risk

- 5.46 A number of areas within the borough are at risk of flooding. This risk comes from a variety of sources including the tide, rivers, runoff, groundwater and sewers.
- 5.47 Provision of flood risk measures such as Sustainable Drainage Systems (SUDS) are expected to be provided on-site and secured through conditions or S106 agreement. Developers should refer to Council policy CR4 (Flood Management).
- 5.48 As part of the Council's requirements as contained within the Flood and Water Management Act 2010, it is anticipated that the Council will be identifying surface water flood alleviation schemes which may require contributions. Subject to negotiation and where appropriate, a planning obligation in the form of a commuted sum will be secured for off site flood risk mitigation work where a flood alleviation project directly mitigates flood risk on-site. Any such contributions will be subject to the limitations set out in Sections 122 and 123 of the CIL Regulations.

Biodiversity Habitats

- 5.49 Planning obligations may be used to require developers to carry out works to secure or reinstate existing habitat features, enhance existing features, create new features or to undertake habitat creation schemes. In those very exceptional circumstances where a developer cannot protect an ecological habitat adjacent to or within the boundaries of the site and in other respects the development is acceptable, they will be required to provide an alternative compensatory measure of equal or greater value in the locality. These measures could be land off-site on which the Council or other responsible agency can carry out works and recover the reasonable costs from the developer, or assistance in enlarging or enhancing existing nature conservation assets and habitats in the locality, and make provision for maintenance of the site.

Air Quality

- 5.50 Where a development is likely to have a significant negative impact on air quality, the Council will request the submission of an air quality impact assessment, in line with Borough Wide Development Policies Development Plan Document policy BR14 (Air Quality). Where necessary, a commuted sum will be sought to be used towards specific monitoring and control of air quality emissions.

6. Viability

- 6.1 Developers should take potential planning obligations, and any identifiable exception site development costs, into account when acquiring land for development. If during identification of the Heads of Terms it is claimed that

the economic cost of fulfilling certain planning obligations would prevent development from occurring, it is expected that developers will also submit detailed 'open book' information about the scheme's economics to the council prior to the formal submission of a planning application. Before reviewing the nature of the planning obligations sought, the council may seek valuation advice from an independent third party. All costs incurred by the council in validating claims will have to be met by the developer.

7. Review of Section 106 Agreements

- 7.1 In the event of a stalled development, the applicant/developer may wish to come back to the council seeking to review previous agreements with a view to possible deferred payment of contributions, changes to design and/or flexibility of uses. The Council will consider such a scenario on its merits and in accordance with the Viability section above.

8. Monitoring

- 8.1 It is imperative that the Council has robust monitoring processes in place to ensure that S106 obligations are delivered as planned, that all monies received are accounted for and spent as intended. To resource this the Council applies a 4% monitoring charge to S106 obligations.

9. Indexation

- 9.1 S106 contributions are index linked. The amount shall be increased by the percentage by which the All Items (Series CHAW) Index of Retail Prices published by the Office for National Statistics has been increased from the last published figure prior to the grant of the Planning Permission to the figure last published prior to the Implementation of the Development and subject to the following formula:

$C/B \times A = D$ where:

A = the contribution amount specified in this Deed in pounds sterling;

B = the last figure published in the All Items (Series CHAW) Index of Retail Prices prior to the grant of Planning Permission;

C = the last figure published in the All Items (Series CHAW) Index of Retail Prices prior to Implementation of Development;

D = the recalculated contribution amount in pounds sterling applying under this Deed;

This page is intentionally left blank

ASSEMBLY

25 November 2014

Title: Consultation and implementation of a new byelaw to prevent spitting in a public place	
Report of the Cabinet Member for Crime and Enforcement	
Open	For Decision
Wards Affected: All	Key Decision: Yes
Report Author : Robert Curtis, Service Manager, Street Enforcement & Network Management	Contact Details: Tel: 020 8227 2122 E-mail: Robert.curtis@lbbd.gov.uk
Accountable Divisional Director: Robin Payne, Divisional Director of Environment Services	
Accountable Director: Anne Bristow, Corporate Director of Adult and Community Services	
Summary	
<p>The Council has received a petition co-ordinated by the Barking Labour Party containing over 2000 valid signatures from borough residents requesting that the Council seek Secretary of State approval to the making of local byelaw(s) prohibiting spitting and urinating in public places.</p> <p>In summary the petition (the prayer of which is set out in Appendix A) is asking for byelaws to enable the Council to impose fixed penalty notices in the same way as dropping litter or clearing up dog mess, to tackle what is seen as a growing problem.</p>	
Recommendation(s)	
<p>The Assembly is recommended for the reasons set out in the report to:</p> <ul style="list-style-type: none"> (i) Seek the Secretary of State's approval to the making of a byelaw prohibiting spitting in public spaces and imposing a fine for non compliance; and (ii) note that as urinating in a public place is currently enforced by the Police under Section 5 of the Public Order Act 1986, there is no need to impose a separate byelaw. 	

Reason(s)

The Assembly is responsible for authorising the making of byelaws.

Spitting is an offensive act and bringing in a new offence of spitting in a public place through the adoption of a byelaw will enable us to provide a clear focus on prevention. This will support the Council objectives of promoting civic pride and encouraging social responsibility.

1. INTRODUCTION AND BACKGROUND

- 1.1 The Council's Petition Scheme set out on the website states that petitions that meet the required threshold of 1500 valid signatures may trigger debate at a public Council meeting. In the normal course of events that would take place at the appropriate Select Committee. However due to the timing of the submission of the petition and the current workloads of the Select Committees, consideration of the petition would be unduly delayed. Furthermore due to the subject matter, ultimately the decision on whether to seek adoption of local byelaws is the responsibility of the Assembly.
- 1.2 The Chairperson of the Barking Labour Party has supplied a petition with over 2000 signatures which asks that the Council takes steps to introduce a new byelaw prohibiting spitting and urination in public places. This would be achieved by writing to the Secretary of State of the Department for Communities and Local Government (DCLG) in support of an application to make a byelaw that would then allow the use of fixed penalty notices for offences.
- 1.3 Section 87(1) of the Environmental Protection Act 1990 has been used to enforce against spitting in a public place by other Local Authorities relying on a view that the spit that is discharged has waste within it and therefore contrary to this section of the Act. However, it is widely felt that this interpretation of the Act is unsafe and is open to challenge in the courts and therefore not the best way to deal with spitting in a public place.
- 1.4 Urination in a public place is currently enforced by the Police under S5 of the Public Order Act 1986. Due to this there is no requirement for the Local Authority to make this anti social, unhygienic behaviour enforceable by a byelaw as it already has legislation that effectively deals with it.
- 1.5 Taking into account the strength of local feeling, as demonstrated by the number of signatures on the petition, officers recommend that a byelaw for prohibiting spitting in a public place is supported by the Council because there is no current legislation that effectively prohibits this anti social and unhygienic behaviour.
- 1.6 Under the proposal to establish a local byelaw any person offending against the byelaw shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale (no more than £500) or a fixed penalty notice.

- 1.7 London Councils is currently consulting with its members to set fixed penalty levels for any byelaws made by London Borough Councils under the London Local Authorities Act 2004 which are to be set by London Council's Transport and Environment Committee (TEC). Once the fixed penalty fee is agreed and approved by TEC it becomes available to all London Boroughs seeking to adopt such a bye law. It is envisaged that on 11 December 2014 the TEC committee will agree and approve fixed penalty notice levels for spitting in a public place.

2. LEGAL PROCESS

- 2.1 A provisional application and draft byelaw must be provided to the DCLG. This will be submitted by the Legal Department and will be considered. The DCLG will then provide the Council with advice and may list issues that need to be addressed before an application can progress. It should be noted that the Government has indicated previously that it does not consider that a ban on spitting is something that should be addressed by way of a byelaw. As part of the process the Council may need to carry out separate consultation with local people and respond to any concerns. Clearly it is hoped that the petition will demonstrate there has been sufficient consultation with local people.
- 2.2 Once consideration has been given to the provisional application, the DCLG will indicate whether the byelaw is likely to be approved.
- 2.3 The wording of a draft byelaw prohibiting spitting in a public place is set out in Appendix B.
- 2.4 At least one month before application to the Secretary of State for confirmation of the byelaw is made, notice of the intention to apply for confirmation shall be given in one or more local newspapers circulating in the area to which the byelaw is to apply. A copy of the byelaw should be deposited at the offices of the Council, and shall be open to public inspection at all reasonable hours without payment.
- 2.5 The Secretary of State will then approve or reject the byelaw. If approved, the Secretary of State will then set a date for it to become law.

3. LEGAL IMPLICATIONS

Implications completed by: Christopher Pickering, Principal Lawyer

- 3.1 Section 235 of the Local Government Act 1972 enables the Council to make byelaws for the good rule and government of the whole or any part of the district or borough and for the prevention and suppression of nuisances. This is subject to the principle that byelaws cannot be made under that section if provision for the purpose in question is made, or may be made, under any other enactment.
- 3.2 Since byelaws create criminal offences, they cannot come into effect unless they have been confirmed by a Secretary of State. In terms of procedure if it is determined to proceed, it is recommended that the model byelaw is utilised.
- 3.3 The Secretary of State sets out in a Guidance Note the steps to be taken and advises that he should be consulted before any resolution is made. Therefore, if

the Assembly agrees to the principle of making a byelaw the next step would be the submission of a draft byelaw to the Secretary of State for consideration. Only when provisional approval has been given can the Assembly approve the byelaw.

- 3.4 Once the decision is made there are further steps to be taken including sealing the document and statutory advertisements that the byelaw will be sent to the Secretary of State for his confirmation. He will consider any representation and if he decided to confirm the byelaw will set a date normally at least a month after confirmation as to when it would take effect.

4. FINANCIAL IMPLICATIONS

Implications completed by: Olufunke Johnson, Principal Accountant

- 4.1 There are no additional costs associated with the recommended route of gaining the approval of the Secretary of State or the drafting and implementation of the byelaw. This will be contained within existing resources. There will be a small one off cost for advertising the byelaw, which will be funded from the Street Enforcement budget.
- 4.2 Also any enforcement activity with regard to the new byelaw will be contained within existing budgets. TEC will be agreeing and approving fixed penalty notice levels in December and therefore at this stage potential income levels would be difficult to quantify.

5. OTHER IMPLICATIONS

- 5.1 None

6. CONTRACTURAL ISSUES

- 6.1 None

7. STAFFING ISSUES

- 7.1 The Street Enforcement team will be enforcing this byelaw with the Police. This is consistent with their existing duties.

8. CUSTOMER IMPACT

- 8.1 None

9. SAFEGUARDING CHILDREN

- 9.1 The age of criminal responsibility in England and Wales is 10 years old. Children between 10 and 17 are treated differently from adults within the justice system and are dealt with by youth courts. Officers will challenge the behaviour of any person who appears to be above 10 years old but will only issue a fixed penalty notice where they are known to be above the age of sixteen.

10. HEALTH ISSUES

- 10.1 The implementation of a spitting byelaw will support the work carried out by health agencies to reduce and or eradicate the spread of airborne diseases.

11. CRIME AND DISORDER

- 11.1 The introduction of a byelaw by the Council will create a new criminal offence for this anti social behaviour that has not previously existed

12. PROPERTY/ ASSET ISSUES

- 12.1 None

13. RISK MANAGEMENT

- 13.1 Referral of the petition to the full Assembly addresses risk of non-compliance with the Local Democracy, Economic Development and Construction Act 2009.

14. IMPACT ON COUNCIL PRIORITIES

- 14.1 Bringing in a new criminal offence for spitting in a public place will support the Council's objectives of civic pride and social responsibility.

Appendix A Anti spitting petition

Appendix B Draft spitting byelaw

Background Papers

Council Petition Scheme

Petition from the Barking Labour Party

Environmental Protection Act 1990

Public Order Act 1986

Local Government Act 1972

London Local Authorities Act 2004

This page is intentionally left blank

No Spitting on our Street Campaign

Consultation with local people has shown that **Spitting in Public** is a growing concern. At present there is nothing in law that prevents this disgusting habit. Barking Labour Party and Margaret Hodge MP would like Barking and Dagenham Council to establish a local by law under the Government's Localism Act that would see people issued with Fixed Penalty Notices for spitting and urinating in public places, in the same way as dropping litter and not clearing up after your dog is punished.

We must demonstrate there is widespread public support among local residents for this by-law. So, we are asking borough residents if they would like to see the Council introduce a ban on spitting in public.

That's why we are asking you to join our campaign by signing our petition. Please ask as many of your friends, neighbours and colleagues to sign our petition and return it to us free at: **FREEPOST RSEY-YCYR-AUHL, 152 Reede Road, Dagenham, Essex RM10 8DX.**

We Support Labour's "NO Spitting on our Streets" Campaign

Name	Address	E-mail Address	Phone Number

This page is intentionally left blank

London Borough of Barking and Dagenham

Byelaws made under section 235 of the local government Act 1972 by Council of the London borough of Barking and Dagenham for the good rule and government of the London Borough of Barking and Dagenham and for the prevention and suppression of nuisances.

Application

- 1) The Byelaw applies throughout the London borough of Barking and Dagenham

Spitting

- 2) No person shall spit in, into or from any relevant place without reasonable excuse
- 3) No offence shall be committed where the spitting is done within a handkerchief, tissue, bin spittoon or other similar receptacle for the purpose of proper disposal

Interpretation

4 In this Byelaw

- (i) a place is a relevant place if it is open to the air, save where the public does not have access to it with or without payment

And

- (ii) a place shall be deemed to be open to the air notwithstanding that it is covered if it is open to the air on at least one side

Seal of LBBD and signature of Mayor

This page is intentionally left blank

ASSEMBLY

25 November 2014

Title: Proposed byelaw to ban skateboarding in Arboretum Place and the Town Square	
Report of the Director of Adult and Community Services	
Open Report	For Decision
Wards Affected: Abbey	Key Decision: Yes
Report Author: Katherine Gilcreest	Contact Details: Tel: 0208 227 2457 E-mail: katherine.gilcreest@lbbd.gov.uk
Accountable Divisional Director: Glynis Rogers, Divisional Director Commissioning and Partnerships	
Accountable Director: Anne Bristow, Corporate Director, Adult and Community Services	
Summary	
<p>A group of young people have been using Arboretum Place and the Town Square as an informal skateboarding park and residents consider them to be a danger to other users of the space and a considerable nuisance late into the night for residents who live in the flats which surround the area.</p> <p>Members agreed at Assembly on the 19 February 2014 that a byelaw to prohibit skateboarding in this location be applied for. The Department of Communities and Local Government (DCLG) gave provisional approval for this byelaw on the 7 October 2014 as shown in the letters at Appendices 1 and 2.</p> <p>Members are requested to consider the byelaw in the form agreed with DCLG, so this Order can be sealed by the Council and the formal consultation with residents and other affected parties can commence.</p>	
Recommendation(s)	
<p>The Assembly is recommended to:</p> <p style="padding-left: 40px;">Approve the byelaw agreed by DCLG found at Appendix 2, authorise its sealing and proceeding with the necessary steps to complete its making as a byelaw of the Council.</p>	
Reason(s)	
<p>Assembly should agree to seal the byelaw as it contributes to the Council's Vision and Priorities 2014. It contributes to Encouraging Civic Pride by helping to 'promote and protect our green and public open spaces'. This is because residents have clearly stated that they are disrupted by the noise created by skateboarders and feel unsafe due to the activity and nuisance caused in a public space.</p>	

1. Introduction and Background

- 1.1 The Town Square and Arboretum Place form a large public space where people can sit and relax which is used by the community for events throughout the year.
- 1.2 On 19 February 2014 Assembly agreed to support a proposal to put in place a byelaw prohibiting skateboarding in Arboretum Place and the Town Square. This was agreed due to the concerns residents in the area have raised since 2009 regarding noise from skateboarding.
- 1.3 Following this decision consultation has been ongoing with DCLG to seek their provisional approval for the byelaw. DCLG gave their provisional approval for a byelaw prohibiting skateboarding in this location on the 7 October 2014, confirmed in the letter shown at Appendix 1 and made out in the terms shown at Appendix 2.

2. The Byelaw

- 2.1 Assembly are asked to seal the Order for the byelaw. The sealing of the Order is a required step in the process and necessary before formal consultation and therefore recommended. The wording of the byelaw is in line with the DCLG model byelaws and states that:

No person shall skate, slide or ride on rollers, skateboards or other self-propelled vehicles in designated areas set out in Schedule 1 except where authorised to do so by the owner of the land.

- 2.2 Schedule 1 of the DCLG agreement states that a

“self propelled vehicle” means a vehicle other than a cycle, wheelchair or pram which is propelled by the weight or force of one or more persons skating, sliding or riding on the vehicle or by one or more persons pulling or pushing the vehicle.”

- 2.3 Any person offending against this byelaw shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale (i.e. no more than £500).
- 2.4 The area affected by the byelaw is shown in Appendix 2; the proposed byelaw would cover all public areas demarcated on this map.

3. Next Steps

- 3.1 If the Assembly agrees the byelaw then the Council will make and seal the byelaw.

Once sealed, the byelaw is advertised by placing a notice in a local newspaper which circulates in the area in which it is being made, inviting any representations to the Secretary of State. Suggested text for the advert, drafted by Legal Services, is attached at Appendix 3. The DCLG will notify the Council of any representations. The Council will then consider the representations and respond to any issues raised to the DCLG.

- 3.2 The Council must hold a copy of the byelaw at the Council offices so that it can be inspected by the public during office hours for at least a month from when the notice

is advertised in the newspaper. A person can also apply to the Council for a copy of the byelaw in whole or in part which must be provided.

- 3.3 Once the byelaw has been sealed and has been advertised for a month, the Council then sends the sealed copy of the byelaw to the Secretary of State to have it confirmed. The Secretary of State then confirms their decision – if objections were received they consider these together with the Council’s response to the objections when making their decision. If the Secretary of State confirms the byelaw they will then sign it and return it to the Council and advise of the date it will come into force.
- 3.4 The byelaw will normally come into force one month from the date of confirmation. It can come into force sooner if the Council requests this in the application (e.g. due to the number of complaints received of the nuisance etc). It is expected that this would be no later than 1 April 2015. The anticipated timeline for this process is outlined in Appendix 3.

6. Financial Implications

Implications completed by: Dan Herholdt

- 6.1 The potential cost of signage is £500 and this can be contained within existing budgets.

7. Legal Implications

Implications completed by: Paul Feild - Senior Governance Solicitor

- 7.1 Section 235 of the Local Government Act 1972 enables Councils to make byelaws for the good rule and government of the whole or any part of the district or borough and for the prevention and suppression of nuisances. This is subject to the principle that byelaws cannot be made under that section if provision for the purpose in question is made, or may be made, under any other enactment. The Secretary of State has produced model byelaws for control of skateboarding and like activities.
- 7.2 Many of the activities regulated by byelaws made under section 235 are not in themselves a danger or nuisance, but may be if conducted in certain areas or in a particularly hazardous or annoying manner. As an example, local authorities do not have the power under section 235 to make byelaws to prohibit activities such as skateboarding throughout the whole of the borough, but they do have the power to prohibit it in certain places. Therefore, a requirement of the byelaw making power will be that a specific area is identified in which skateboarding causes a particular danger or nuisance to others, or alternatively, to regulate the manner in which those activities can be conducted.
- 7.3 The breach of the byelaw is a criminal offence and thus will subject predominately young people to the criminal justice process. This could have consequences for future employment of young people, so such methods for suppression of nuisances should be seen as the very last resort.
- 7.4 Since byelaws create criminal offences, they cannot come into effect unless they have been confirmed by the Secretary of State. In terms of procedure, to ensure a

greater likelihood of agreement officers have drafted the bye law using the Secretary of State's byelaw as a basis.

- 7.5 As the report explains the Council's proposed byelaw has been sent to the Secretary of State for consideration.
- 7.6 The Secretary of State has given his provisional approval. The next stage is for the byelaw to be presented to the Assembly for approval and a decision to proceed and authorise its sealing. Once the Assembly decision is made there are further steps to be taken, including statutory advertisements that the byelaw will be sent to the Secretary of State for his confirmation. The Secretary of State will consider any representation made and the Council's response and if it is decided to confirm the byelaw, will set a date, normally at least a month after confirmation, as to when it takes effect.

8. Other Implications

- 8.1 **Risk Management** – There are three major risks associated with the ban of skateboarding in Arboretum Place and the Town Square, which are listed below with steps taken to mitigate them:

People may not abide by the byelaw resulting in increased criminalisation of young people. However, to date, young people have been mostly compliant when asked to move on or stop skating by security officers. It is felt that, provided the skaters are given enough information and guidance on the byelaw, they should comply with its ruling. Further to this, there are a number of out-of-court disposals, which can be used for young people who offend if it is a relatively low level offence, their first offence (except in certain circumstances) and they plead guilty. If a young person were to be convicted of skateboarding in Arboretum Place and the Town Square, breaking the byelaw, it is likely that they would be subject to an out-of-court disposal, as opposed to a higher level order. In most cases, this type of disposal would not affect later career opportunities, etc.

In addition to this, if the byelaw is put in place, members of the community may request similar byelaws in other areas. However, there have been minimal complaints from residents about sporting activities in other local areas and if the level of complaints received about the skateboarders in Arboretum Place and the Town Square were to be received about another area, the Council would be required to carry out a similar exercise to understand the extent of the issue and alternative options.

Imposing a byelaw may result in the potential displacement of skateboarders to other areas in which they may create a further nuisance. To date, when skateboarders have been moved on from the area, they have relocated to Abbey Green. Abbey Green is a large open space, removed from residential areas. It is felt that this is a positive alternative for skateboarders, as it allows them to skate in a safe, well-lit area, without disturbing residents. Initial enquiries have been made regarding providing an area designed for skateboarding in this location and this proposal will continue to be investigated.

- 8.2 **Contractual Issues** - none
- 8.3 **Staffing Issues** - none
- 8.4 **Corporate Policy and Customer Impact** – The proposal has strong links to the Council’s Vision and Priorities. A key priority of the Council’s Vision and Priorities (2014) is ‘Encouraging civic pride’. This priority includes an aim to ‘promote and protect our green and public open spaces’ (Barking and Dagenham Council’s Vision and Priorities 2014). This byelaw will reduce antisocial behaviour in a public open space with no negative effects on other residents and visitors using the area.
- 8.5 **Safeguarding Children** – A large number of the responses from residents stated that the noise from skateboarders had a detrimental impact on the wellbeing of their children and several respondents raised concerns about their children being able to perform at school due to this. The proposal balances the needs of the children residing in Arboretum Place and the Town Square with the needs of the young people skating in this area as the area where skateboarding is to be banned is a very small area where there are high numbers of residential premises, but not to restrict this activity in areas where issues of noise are likely to have less of an impact.
- 8.6 **Health Issues** – If agreed, the proposal should improve the health of residents of Arboretum Place and the Town Square who have reported sleep deprivation and negative impact on health as a direct result of skating in the area.
- However, there is also a risk that the proposal will have a negative effect on the health of young people using the area to skate as skating is a good form of exercise. However, the proposal will only prohibit skateboarding in a small area (see map). In order to mitigate this, it will be ensured that young people are aware that they are not prohibited from skating outright and they will be signposted to other areas where they can skate freely.
- 8.7 **Crime and Disorder Issues** – Discussed in body of report.
- 8.8 **Property / Asset Issues** – If the byelaw is agreed, there could be a positive impact on property in the area. Currently, there are a number of unoccupied shop units in Arboretum Place and the Town Square. This may be impacted by the skateboarding that is occurring directly outside of shop fronts, potentially dissuading businesses from leasing units. Responses to the consultation identified that young people skating leave litter in the area, which makes it an unattractive environment for those using it. It is therefore felt that the byelaw could increase selling and leasing potential of the area by reducing disruption and litter.

List of appendices:

- Appendix 1 – Barking and Dagenham Byelaw Provisional Approval Letter
- Appendix 2 – DCLG Arrangement of Byelaws – Skateboarding
- Appendix 3 – Wording for Byelaw Advert and Time Line

This page is intentionally left blank



**Department for
Communities and
Local Government**

Ms Claire Linton
Employment Lawyer
Legal and Democratic Services
London Borough of Barking & Dagenham
Civic Centre
Dagenham
Essex
RM10 7BN

07 October 2014

Via e mail
Claire.Linton@BDTLegal.org.uk

Dear Ms Linton,

**London Borough of Barking and Dagenham
Byelaws for Good Rule and Government
Provisional Approval Application**

Thank you for your Council's application of 14 May 2014, seeking provisional approval to make Good Rule and Government byelaws for the London Borough of Barking and Dagenham.

The Department has carefully considered the Council's application in line with our scrutiny a role set out on the Communities and Local Government website at <https://www.gov.uk/local-government-legislation-byelaws>.

I am pleased to confirm that the Council's updated byelaws, as submitted to the Department on 02 October 2014, have now been provisionally approved.

In terms of next steps, subject to the consideration of any objections which we may receive the byelaws may be submitted to the Department for confirmation if they are formally adopted by the Council and submitted to us in accordance with the procedure set out in the guidance notes, which can be found on the Communities and Local Government website link referred to above.

Any representations and objections received by the Department during the statutory consultation period, which the Council may now proceed with, will be forwarded to the Council for comments, and will be taken into consideration when determining any application for confirmation.

Department for Communities and Local Government
Fry 2NE
2 Marsham Street
Westminster
SW1P 4DF

Tel 0303 444 4162
e mail: LewisNewbury@communities.gsi.gov.uk

Yours sincerely,

Lewis Newbury

Department for Communities and Local Government
Fry 2NE
2 Marsham Street
Westminster
SW1P 4DF

Tel 0303 444 4162
e mail: LewisNewbury@communities.gsi.gov.uk

**THE LONDON BOROUGH OF BARKING AND
DAGENHAM
BYELAWS FOR GOOD RULE AND GOVERNMENT
ARRANGEMENT OF BYELAWS-SKATE BOARDING**

1. General interpretation
2. Application
3. Skateboarding
4. Penalty

SCHEDULE 1

Byelaws made under section 235 of the Local Government Act 1972 by The London Borough of Barking and Dagenham for the good rule and government of The London Borough of Barking and Dagenham for the prevention and suppression of nuisances.

GENERAL INTERPRETATION

1. In these byelaws:

"the Council" means The London Borough of Barking and Dagenham

"self-propelled vehicle" means a vehicle other than a cycle, wheelchair or pram which is propelled by the weight or force of one or more persons skating, sliding or riding on the vehicle or by one or more other persons pulling or pushing the vehicle;

APPLICATION

2. These byelaws shall apply to the areas of London Borough of Barking and Dagenham designated in Schedule 1 and shown hatched in black on the plans attached to these byelaws.

SKATEBOARDING

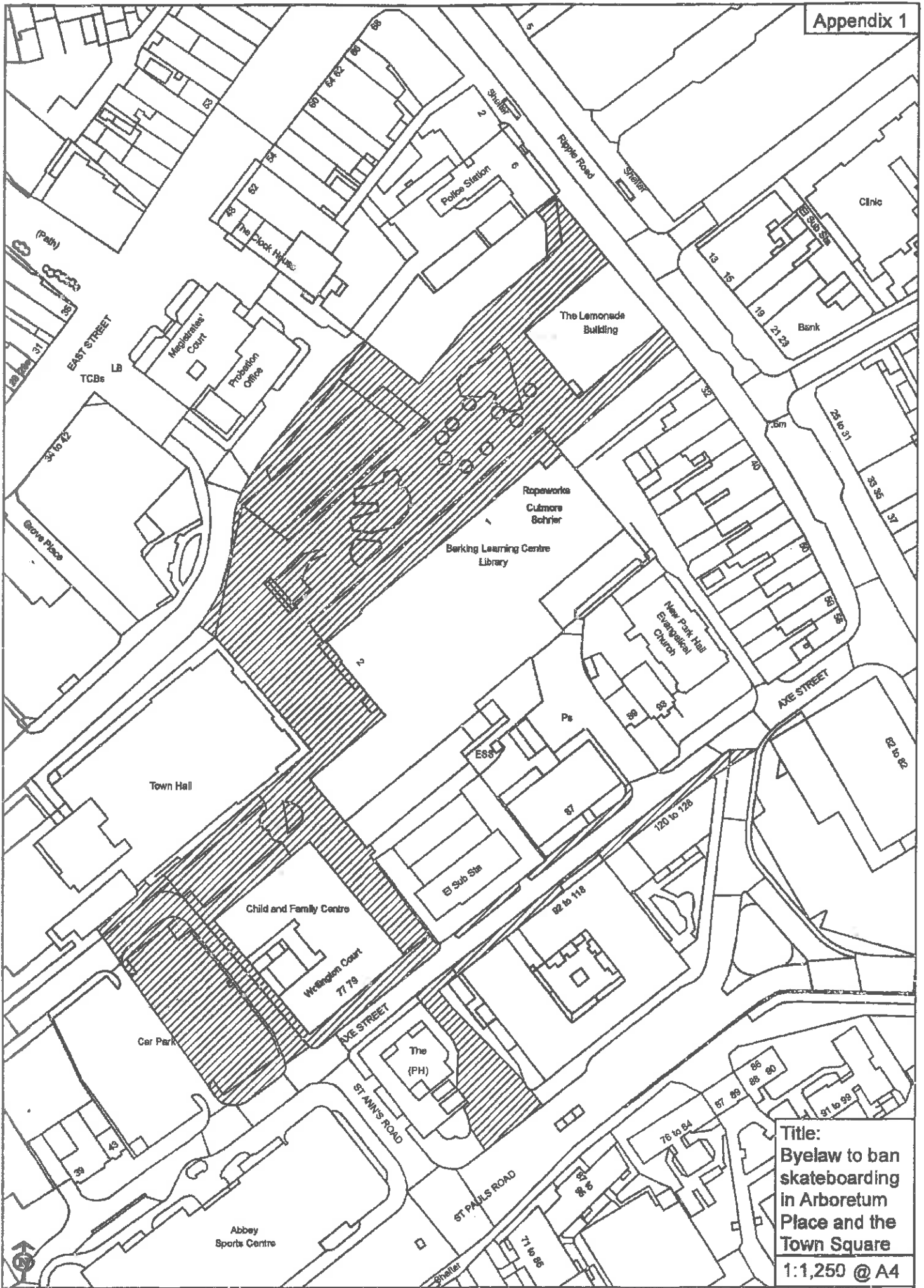
3. No person shall skate, slide or ride on rollers, skateboards or other self-propelled vehicles in designated areas as set out in Schedule 1 except where authorised to do so by the owner of the land.

PENALTY

4. Any person offending against these byelaws shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

SCHEDULE [1]

The designated areas are Arboretum Place and The Town Square in Barking as delineated by black hatching on the plan attached to these byelaws.



Title:
 Byelaw to ban
 skateboarding
 in Arboretum
 Place and the
 Town Square

1:1,250 @ A4

© Crown copyright. All rights reserved
 Licence number - 100018280 (2014)

Time Line

Milestone	Date/Estimated Date	Description of Stage
Consultation of interested parties	December to February 2014	Consultation undertaken with all interested parties and matter taken to Assembly on 19 February 2014 at which meeting Members' agreed to proceed with Byelaw application.
Provisional Approval by DCLG	7 October 2014	DCLG consider the informal consultation process and any comments made and the Byelaw being proposed. Provisional approval for the Byelaw (shown at Appendix 1 and 2) was granted by DCLG on the 7 October 2014
Assembly to agree the Byelaw as provisionally approved by DCLG	25/26 November 2014	As the Byelaw has been amended by DCLG, Assembly agreement for this order to be sealed is requested
Sealing the bye law	By 15 December 2014	When provisional approval is received, the Council then makes and seals the Bye Law
Advertising the bye law and holding the bye law on deposit	By 31 January 2015 (Statutory 1 month formal consultation)	<p>The bye law needs to be advertised by:</p> <ul style="list-style-type: none"> • Placing a notice in a local paper, inviting any representations to the DCLG. Appendix 3 provides the wording for the advertisement • Hold a copy of the byelaw at the council offices indicated in the advertisement for inspection by the public during office hours. • A person can also apply to the council for a copy of the bye law in whole or in part which must be provided. <p>The DCLG will then notify the council of any representations received which they will forward to the council. The Council then considers the representations and respond to any issues raised to the DCLG.</p>
Applying for confirmation of the bye laws	February 2015	The Council then sends the sealed copy of the bye law to the secretary of state to have it confirmed. If the Byelaw is required to come into force sooner than 1 month after its confirmed this must be stated in the application at this stage.
Confirmation of the decision	Outside of Council control	If the secretary of state confirms the bye law they will then sign and return this to the Council.
Bye law comes into force	Month after confirmation. Aiming for this to be sooner than 1 April 2015	The bye law will then come into force 1 month from the date of confirmation unless application made for earlier commencement date, as stated above.

Suggested wording for advert – Bye Laws

THE LONDON BOROUGH OF BARKING AND DAGENHAM
CONFIRMATION OF BYELAWS

Notice is hereby given that The London Borough of Barking and Dagenham intends, after the expiry of the period referred to below, to apply to the Secretary of State for Communities and Local Government for confirmation of bye laws made by the Council.

The byelaws to prohibit skateboarding in the Arboretum Place and the Town Square, Barking.

Copies of the byelaws will be kept at the offices of the Council at Barking Town Hall, 1 Town Square IG11 7LU and will be open to inspection without payment on any weekday during the usual business hours for one calendar month from the publication of this notice. Copies of the byelaws will also be supplied on receipt of an application.

Any objection to the application for the confirmation by the Secretary of State for Communities and Local Government of the byelaws may be made in writing to: Byelaws Team, Department for Communities and Local Government, Zone 3/J1, Eland House, Bressenden Place, London, SW1E 5DU, or by email to byelaws@communities.gsi.gov.uk. Objections should be made no later than one week after the period of inspection finished.

Signed

Proper officer of the Council

Date:

ASSEMBLY

25 November 2014

Title: Treasury Management Strategy Statement Mid-Year Review 2014/15	
Report of the Cabinet Member for Finance	
Open Report	For Decision
Wards Affected: None	Key Decision: Yes
Report Author: David Dickinson, Group Manager Pensions and Treasury	Contact Details: Tel: 020 8227 2722 E-mail: david.dickinson@lbbd.gov.uk
Accountable Director: Jonathan Bunt, Chief Finance Officer	
<p>Summary:</p> <p>Regulation changes have placed greater onus on elected Members in respect of the review and scrutiny of treasury management policy and activities. This mid-year review report is important in that respect as it provides details of the mid-year position for treasury activities and highlights compliance with the Council's policies previously approved by the Assembly.</p> <p>The Assembly agreed the Treasury Management Strategy Statement for 2014/15 on 19 February 2014 which incorporated the Prudential Indicators. This report updates Members on treasury management activities in the current year.</p> <p>This report is to be considered by the Cabinet at its meeting on 18 November and any matters raised by the Cabinet will be reported to the Assembly.</p>	
<p>Recommendation(s)</p> <p>The Assembly is recommend to:</p> <ul style="list-style-type: none"> (i) Note the Treasury Management Strategy Statement Mid-Year Review 2014/15; (ii) Note that in the first half of the 2014/15 financial year the Council complied with all 2014/15 treasury management indicators; (iii) Note the borrowing of £89m through a loan facility from the European Investment Bank (EIB) to support an urban regeneration and economic growth programme agreed by the Assembly on 17 September 2014; and (iv) Delegate authority to the Chief Finance Officer, in consultation with the Cabinet Member for Finance, to proportionally amend the counterparty lending limits agreed within the Treasury Management Strategy Statement for the duration of the 2014/15 financial year, subject to a review of this authority in the February 2015 Treasury Management Strategy report to take into account of any potential additional borrowing from the EIB which has been agreed previously by Cabinet. 	

Reason(s)

This report is required to be presented in accordance with the Revised CIPFA Code of Practice for Treasury Management in the Public Services.

1. Background and Introduction

- 1.1 The Council operates a balanced budget whereby cash raised during the year meets the Council's cash expenditure needs. Part of the treasury management operations is to ensure this cash flow is adequately planned, with surplus monies invested with counterparties of an appropriate level of risk, providing adequate liquidity before considering maximising investment return.
- 1.2 The second main function of treasury management is the funding of the Council's capital programme. These capital plans provide a guide to the Council's borrowing need, which is essentially the use of longer term cash flow planning to ensure the Council can meet its capital spending operations. This management of longer term cash may involve arranging loans, using cash flow surpluses or restructuring previously drawn debt to meet Council risk or cost objectives.
- 1.3 The Chartered Institute of Public Finance and Accountancy's (CIPFA) Code of Practice on Treasury Management (revised 2011) recommends the:
- I. Creation and maintenance of a Treasury Management Policy Statement which sets out the policies and objectives of the Council's treasury management.
 - II. Creation and maintenance of Treasury Management Practices which set out the how the Council will seek to achieve those policies and objectives.
 - III. Receipt by the full council of an annual Treasury Management Strategy Statement (TMSS), including the Annual Investment Strategy and Minimum Revenue Provision Policy for the year ahead, a Mid-year Review Report and an Annual Report (stewardship report) covering the previous year's activities.
 - IV. Delegation by the Council of responsibilities for implementing and monitoring treasury management policies and practices and for the execution and administration of treasury management decisions.
 - V. Delegation by the Council to a specific named body, for this Council this is Cabinet, to scrutinise the treasury management strategy and policies.
- 1.4 This mid-year report has been prepared in compliance with CIPFA's Code of practice on Treasury Management, and covers the following:
1. Economic summary and outlook, including the Council's investment strategy;
 2. Treasury, Debt and Investment Position at 30 September 2014;
 3. The Council's Capital Position (Prudential Indicators), including:
 - Prudential Indicator for Capital Expenditure;
 - Changes to the Financing of the Capital Programme;
 - Prudential Indicator – Capital Financing Requirement; and
 - Limits to Borrowing Activity.

2. Economic Summary and Outlook

2.1 United Kingdom (UK)

- 2.1.1 The UK continued to grow steadily in Q2 2014 with a growth rate of 0.9% and an annual rate of 3.2%. Slower growth is forecast for the rest of the year and into 2015. Inflation (CPI) decreased to 1.2% in September 2014.
- 2.1.2 The improved economic conditions enabled unemployment levels to dip under the Monetary Policy Committee's (MPC) threshold rate of 7%, below which it would consider increasing its Bank Rate. The MPC subsequently broadened its forward guidance by adopting five qualitative principles and looking at a wider range of indicators to form a view on how much slack there is in the economy. The MPC has indicated that it is concerned that the squeeze on disposable incomes should be reversed by wage inflation rising back above the level of inflation to ensure the recovery is sustainable.
- 2.1.3 Most economic forecasters expect growth to peak in 2014 and then to ease off though but still remaining strong in 2015. Unemployment is expected to keep on its downward trend, which should feed through to an increase in pay rates at some point during the next three years. However, just how much those future increases in pay rates will counteract the depressive effect of increases in Bank Rate on consumer confidence are areas that will need to be kept under regular review.

2.2 United States

- 2.2.1 The Federal Reserve continued its monthly \$10bn reductions in asset purchases. Asset purchases have now fallen from \$85bn to \$15bn and are expected to stop in October 2014, providing strong economic growth continues. The US faces similar debt problems to those of the UK, but thanks to reasonable growth, cuts in government expenditure and tax rises, the annual government deficit has been halved from its peak without significant damage to growth.

2.3 Eurozone (EZ)

- 2.3.1 The EZ is facing an increasing threat from weak or negative growth and from deflation. The ECB took limited action in June to loosen monetary policy in order to promote growth. In September, the inflation rate fell to a low of 0.3%. The EZ took further action to cut its benchmark rate to 0.05%, its deposit rate to -0.2% and to start a programme of purchases of corporate debt.

2.4 China

- 2.4.1 The Chinese Government action in 2014 to stimulate the economy appeared to be putting the target of 7.5% growth within achievable reach but recent data has raised fresh concerns. There are concerns as to the creditworthiness of much bank lending to corporates and local government during the post 2008 credit expansion period and whether the bursting of a bubble in housing prices is drawing nearer.

2.5 UK interest rate forecasts

- 2.5.1A first increase in Bank Rate is expected by Q2 2015, followed by a slow pace of increases to lower levels than prevailed before 2008. Drivers that may push rates higher include UK inflation being higher than the EU and US, causing an increase in the inflation premium inherent to gilt yields and improved investor confidence leading to a flow of funds from bonds into equities.
- 2.5.2 Drivers that may push rates lower include geo-political pressures, a weak rebalancing of UK growth, weak growth or recession in the UK's main trading partners (the EU and US) or by monetary policy action failing to stimulate sustainable world growth.

2.6 Council investment strategy

- 2.6.1 The current economic conditions have resulted in an improvement in medium term (one to two years) rates of return. As a result the treasury section made a number of medium term investments in the first half of 2014/15. These investments pushed the rate of return as at 30 September 2014 to 1.03%, with an average duration of 0.7 years.
- 2.6.2 Members are asked to be aware that rates available to investments made by the Council are significantly lower than rates that may be available to individuals through the retail banking sector. Although rates of 3% to 5% are available within the retail banking sector, these are available on much smaller deposits. Given the duration, risk and size of the Council's cash holding a return of 1.03% in current market conditions is considered a good return for the level of risk taken.
- 2.6.3 Although market conditions are improving, counterparty risk remains significant and officers continue to monitor the financial institutions the Council is invested with. It is expected that, as the rate of returns improve during the remaining part of 2014/15, treasury will seek to increase the average duration to over one year, with the average forecast return improving to around 1.30% by 31 March 2015.
- 2.6.4 The current investment counterparty criteria selection approved in the TMSS and amended in the Annual Treasury Review report agreed by Assembly on 17 September 2014, is meeting the requirement of the treasury management function and there are no recommendations to change these.

3. Treasury Position at 30 September 2014

- 3.1 Table 1 below details the Council's mid year treasury position.

Table 1: Council's treasury position at 30 September 2014

	Principal Outstanding £000s	Rate of Return %	Average Life (yrs)
Fixed Rate Borrowing:			
PWLB	(265,912)	3.50	41.31
Local Authority (Temporary Loan)	(22,500)	0.38	0.20
Market	(40,000)	4.02	54.11
Total Debt	(328,412)	3.35	40.05
Investments			
Call Accounts / Money Market Funds	8,300	0.44	Nil
Bank Certificate Of Deposit	45,000	1.25	1.20
Banks Fixed Deposits	64,500	0.91	0.36
Local Authorities	25,000	1.04	1.04
UK GILTS	5,780	1.25	3.81
Total Investments	148,580	1.03	0.70

4. Debt Position at 30 September 2014

- 4.1 The Council's capital financing requirement (CFR) for 2014/15 is forecast to be £479.6m. The CFR denotes the Council's underlying need to borrow for capital purposes. This need to borrow can be met through the use of reserves, external and internal borrowing and careful management of the Council's cash flow.

The Council currently holds sufficient cash balances to allow a significant amount of its overall borrowing requirements to be funded internally. This approach has provided the Council with savings as the cost to borrow is significantly higher than the return achieved by investing the cash. Where any further borrowing is considered, officers will base any decisions on the Council's cash flow requirements at the most appropriate and cost effective interest rate available.

4.2 European Investment Bank (EIB) Funding

At the 17 September 2014 Assembly, Members agreed to borrow £89m from the EIB to support a comprehensive urban regeneration and economic growth programme in the borough including affordable housing, energy efficiency measures and other social infrastructure projects. The borrowing included:

1. £66m to finance the development and ownership of the Shared Ownership and Affordable Rent tenures in the Gascoigne Estate (East) Phase 1 re-development project; and
2. £23m to finance the development and ownership of the Affordable Rent tenures in the Abbey Road Phase 2 development project;

A further £4.5m worth of borrowing was agreed from the PWLB to fund 50% of 51 private for sale units to be developed and sold jointly by the Council and East Thames Group via a limited company;

The EIB loan agreement was signed with the EIB on 23 October 2014. The terms are sufficiently flexible to provide the Council with the option of fixing the interest

rate for some or all of the loan facility at completion of contracts; this will enable the Council to drawdown tranches on the most economically advantageous terms.

The EIB and the Council are discussing opportunities to fund further urban regeneration activities which could generate an income and help deliver the Council's wider social and economic growth agenda. As these opportunities are developed, further reports will be taken to Cabinet for approval of both the projects and to utilise the EIB as the source of funding.

At the September Assembly Members raised queries over the delegation of authority to the Chief Finance Officer in consultation with the Cabinet Member for Finance to proportionally amend the counterparty lending limits agreed within the TMSS to take into account the £89m borrowed from the EIB. The principal concern was that the delegated authority was open ended.

To address this, it is recommended that Members agree that the delegated authority is maintained, and amended to incorporate any subsequent decisions by Cabinet for additional borrowing from EIB, but that this is reviewed in each treasury management report to Assembly. The next opportunity for Members to review will be the annual TMSS report in February 2015.

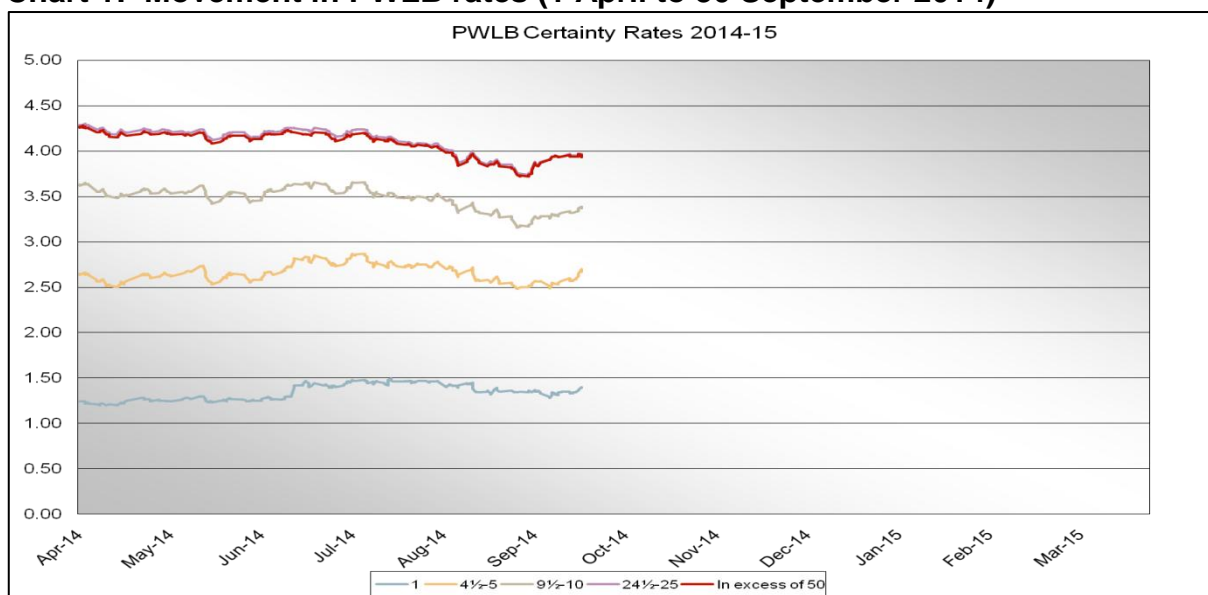
4.3 Debt Repayment and Rescheduling

On 28 April 2014 a £10m PWLB loan matured and, as there was sufficient cash held by the Council to meet the 2014/15 CFR, the £10m borrowing was not replaced. Repaying the £10m, with an interest rate of 4.25%, reduced the interest payments for 2013/14 by £394k. If the interest forgone is included, which would have been in the region of £88k, proper management of the Council's cash flow has made a net in year saving of £306k in 2014/15.

Debt rescheduling opportunities are limited in the current economic climate. During the first six months of the year, no debt rescheduling was undertaken.

- 4.4 Chart 1 below shows the movements in PWLB rates for the first six months of the financial year (to 30 September 2014). The chart shows that rates over 10 years have decreased with shorter terms borrowing costs of up to two years increasing.

Chart 1: Movement in PWLB rates (1 April to 30 September 2014)



4.5 Table 2 provides a breakdown of the Council's debt as at 30 September 2014.

Table 2: General Fund Debt held as at 30 September 2014

Borrowing/ Loan Held	Type	Interest Rate	Principal	2014/15 Interest
		%	£000s	£000s
PWLB	HRA	3.50	50,000	1,175
PWLB	HRA	3.48	65,912	2,294
PWLB	HRA	3.49	50,000	1,745
PWLB	HRA	3.52	50,000	1,760
PWLB	HRA	3.49	50,000	1,745
Barclays Bank	General Fund	3.98	10,000	398
Dexia Bank	General Fund	3.97	10,000	397
RBS Bank	General Fund	4.06	20,000	812
Short Term Loans	General Fund	0.38	22,500	21
Total		3.35	328,412	10,347

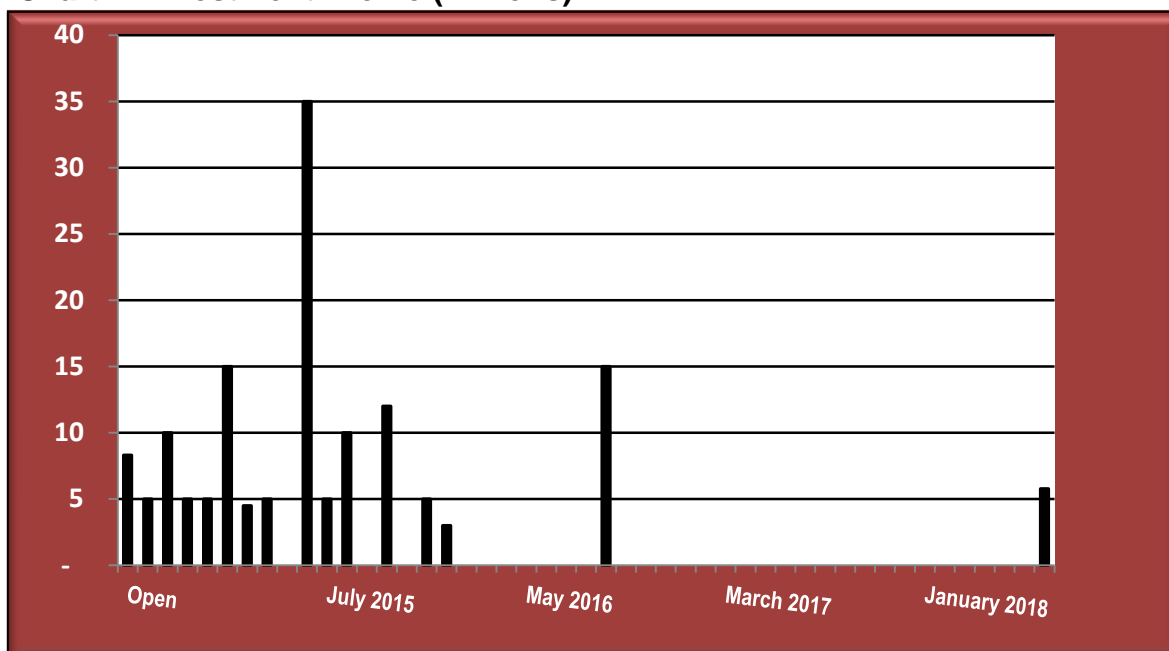
5. Investment Portfolio 2014/15

5.1 It is the Council's priority to ensure security of capital and liquidity before obtaining an appropriate level of return which is consistent with the Council's risk appetite. In the current economic climate the Council's risk appetite remains relatively low. There is an expectation that the base rate, currently at 0.5%, will increase in 2015 if economic indicators improve, which may increase the interest received.

5.2 Investment Profile

The Council's investment maturity profile in Chart 2 below shows that as at 30 September 2014, 15.7% of the Council's investments had a maturity of 60 days or less, with 72.6% having a maturity of one year or less. Spreading out the maturity of longer dated investments allows the Council to take advantage of improved rates of return while ensuring sufficient liquidity.

Chart 2: Investment Profile (Millions)



5.3 Holdings and Return

As at 30 September 2014 the Council held £148.6m of investments, all invested in-house by the Council’s treasury section. The Chief Finance Officer confirms that the approved investment limits within the Annual Investment Strategy were not breached during the first six months of 2014/15. A summary of the performance of the treasury management is provided below, with a full list of investments as at 30th September 2014 in appendix 1.

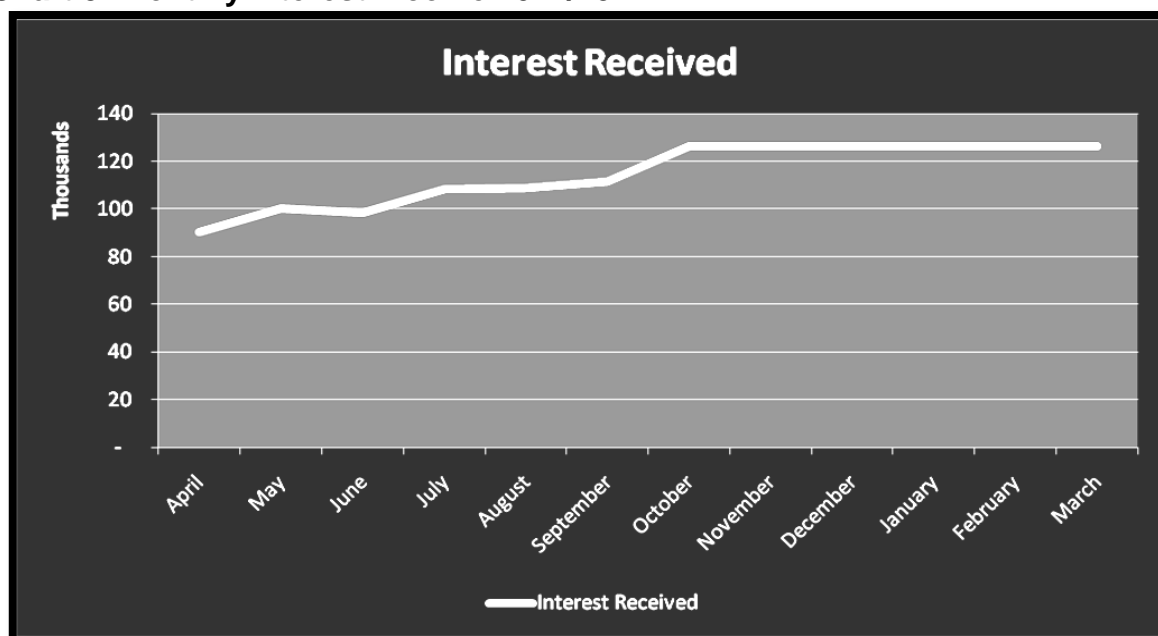
The interest received forecast is for an additional £350k to be received compared to the 2014/15 budget. The forecast is based on the first six month actual interest achieved and the expected interest to be received from the current investment held by the Council.

Table 3: Interest Received Budget against Actual for 2014/15

Description	2014/15 Budget £000s	2014/15 Forecast £000s	Variance £000s
Interest Received	(1,100)	(1,450)	(350)

Average returns increase over the first six month of the financial year with returns for the remainder of the year likely to average 1.15%. Chart 3 below provides a summary of the monthly interest income between April and September 2013 for the in-house treasury section and provides a forecast of the expected monthly interest income for the remaining six months of the year.

Chart 3: Monthly interest income 2014/15



6. The Council's Capital Position (Prudential Indicators)

6.1 Prudential Indicator for Capital Expenditure

Table 4 shows the revised estimates for capital expenditure and the changes since the capital programme was agreed at the Budget.

Table 4: Revised Estimate to Capital Programme as at 30 September 2014

Capital Expenditure by Service	2014/15 Original Budget £000s	2014/15 Revised Budget £000s
Adult & Community Services	10,056	10,451
Children's Services	30,098	26,882
Housing and Environment	5,104	5,492
Chief Executive	7,901	9,139
HRA	100,808	90,439
Total	153,967	142,403

6.2 Changes to the Financing of the Capital Programme

Table 5 draws together the main strategy elements of the capital expenditure plans (above), highlighting the original supported and unsupported elements of the capital programme, and the expected financing arrangements of this capital expenditure. The borrowing element of the table increases the underlying indebtedness of the Council by way of the Capital Financing Requirement (CFR), although this will be reduced in part by revenue charges for the repayment of debt (the Minimum Revenue Provision). This direct borrowing need may also be supplemented by maturing debt and other treasury requirements.

Table 5: Revised Borrowing need as at 30 September 2014

Capital Expenditure	2014/15 Original Budget £000s	2014/15 Revised Budget £000s
General Fund CFR	153,967	142,403
Financed by:		
Capital grants & contributions (incl. S106)	34,851	31,696
Capital receipts	11,522	11,522
Contributions from Revenue / Reserves	3,109	4,703
MRA / HRA funding	100,808	90,439
Total financing	150,291	138,360
Borrowing need	3,676	4,043

6.3 Prudential Indicator (PI) – Capital Financing Requirement

The Council is on target to achieve the original forecast CFR as outlined in table 6 below:

Table 6: Revised CFR as at 30 September 2014

	2013/14 Outturn £000s	2014/15 Revised Estimate £000s
Capital Financing Requirement		
CFR – non housing	156,177	153,666
CFR – housing	267,722	267,722
Alternative Financing (PFI and leases)	60,844	58,191
Total CFR	484,743	479,579
Net movement in CFR	(6,835)	(5,163)
External Debt / the Operational Boundary		
Long Term Borrowing	305,912	305,912
Short Term Borrowing	10,000	0
Other long term liabilities	60,844	58,191
Total debt 31 March	376,756	364,103

6.4 Limits to Borrowing Activity

The first key control over the treasury activity is a prudential indicator to ensure that over the medium term, net borrowing (borrowings less investments) will only be for a capital purpose. Net external borrowing should not, except in the short term, exceed the total of CFR in the preceding year plus the estimates of any additional CFR for 2014/15 and next two financial years. This allows some flexibility for limited early borrowing for future years.

Table 7: Revised Borrowing Limits as at 30 September 2014

	2014/15 Original Estimate £000s	2014/15 Revised Estimate £000s
Gross borrowing	305,912	305,912
Plus other long term liabilities	60,844	58,191
Less investments	(140,000)	(140,000)
Net borrowing	226,756	224,103
CFR (year end position)	484,743	479,579

- 6.5 The Chief Finance Officer (CFO) reports that no difficulties are envisaged for the current or future years in complying with this prudential indicator.
- 6.6 A further prudential indicator controls the overall level of borrowing. This is the Authorised Limit which represents the limit beyond which borrowing is prohibited, and needs to be set and revised by Members. It reflects the level of borrowing which, while not desired, could be afforded in the short term, but is not sustainable in the longer term. It is the expected maximum borrowing need with some headroom for unexpected movements. This is the statutory limit determined under section 3 (1) of the Local Government Act 2003.

Table 8: Authorised External Debt Limit and Position at 30 September 2014

Authorised External Debt Limits	2014/15 Original Indicator £000s	Position at 30 September 2014 £000s
Borrowing	441,000	441,000
Other long term liabilities	59,000	59,000
Total	500,000	500,000

7. Consultation

- 7.1 The Chief Finance Officer has been informed of the approach, data and commentary in this report.

8. Financial Implications

Implications completed by: Jonathan Bunt, Chief Finance Officer

- 8.1 This report sets out the mid-year position on the Council's treasury management position and is concerned with the returns on the Council's investments as well as its short and long term borrowing positions.

9. Legal Implications

Implications completed by: Eldred Taylor-Camara, Legal Group Manager

- 9.1 The Local Government Act 2003 (the "Act") requires the Council to set out its treasury strategy for borrowing and to prepare an Annual Investment Strategy

which sets out the Council's policies for managing its investments and for giving priority to the security and liquidity of those investments.

9.2 The Council also has to 'have regard to' the CIPFA Code of Practice on Treasury Management and the CIPFA Prudential Code for Capital Finance in Local Authorities when carrying out its functions under the Act.

9.3 A report setting out the Council's strategies in accordance with the Act was presented to Cabinet in February 2014. This report is a midyear review of the strategy's application and there are no further legal implications to highlight.

10. Options Appraisal

10.1 There is no legal requirement to prepare a TMSS Mid-year Review; however, it is good governance to do so and meets the requirements of both the CIPFA Code of Practice on Treasury Management (the Code) and the CIPFA Prudential Code for Capital Finance in Local Authorities (the Prudential Code).

11. Other Implications

11.1 **Risk Management** - The whole report concerns itself with the management of risks relating to the Council's cash flow. The report mostly contains information on how the Treasury Management Strategy has been used to maximise income during the first 6 months of the year.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- **Appendix 1:** Investments as at 30 September 2014

Appendix 1

Investments as at 30th September 2014

Investments Held	Fitch LT/ ST Rating	Interest Rate	Call A/C	Principle	Issue Date	Repayment Date
Lloyds Banking Group	A/F1	0.40%	Call A/C	500	N/A	N/A
Federated Money Market Fund	AAA	0.44%	MMF	7,800	N/A	N/A
Lloyds Banking Group	A/F1	0.98%	Fixed	5,000	03/10/2013	03/10/2014
Doncaster MBC	AA+ Equivalent	1.07%	Fixed	5,000	10/10/2013	09/10/2015
Gateshead Council	AA+ Equivalent	1.05%	Fixed	5,000	09/10/2013	09/10/2015
Aylesbury Vale District	AA+ Equivalent	1.03%	Fixed	5,000	02/12/2013	02/12/2015
Lloyds Banking Group	A/F1	0.98%	Fixed	5,000	29/11/2013	28/11/2014
Lloyds Banking Group	A/F1	0.98%	Fixed	5,000	09/12/2013	09/12/2014
City Of Glasgow Council	AA+ Equivalent	1.00%	Fixed	5,000	17/12/2013	17/06/2015
Staffordshire Moorlands	AA+ Equivalent	1.10%	Fixed	3,000	24/01/2014	22/01/2016
Greater London Authority	AA+ Equivalent	1.03%	Fixed	2,000	06/01/2014	06/10/2015
Lloyds Banking Group	A/F1	0.95%	Fixed	5,000	08/01/2014	08/01/2015
Lloyds Banking Group	A/F1	0.95%	Fixed	5,000	26/02/2014	26/02/2015
Lloyds Banking Group	A/F1	0.95%	Fixed	5,000	31/03/2014	31/03/2015
Lloyds Banking Group	A/F1	0.95%	Fixed	4,500	11/04/2014	13/04/2015
Goldman Sachs International	A/F1	0.76%	Fixed	5,000	07/05/2014	07/11/2014
Lloyds Banking Group	A/F1	0.95%	Fixed	10,000	04/06/2014	04/06/2015
Lloyds Banking Group	A/F1	0.95%	Fixed	5,000	05/06/2014	05/06/2015
Lloyds Banking Group	A/F1	0.95%	Fixed	5,000	27/06/2014	26/06/2015
Royal Bank Of Scotland	BBB+/F1	0.95%	Fixed	20,000	04/07/2014	03/07/2015
Goldman Sachs International	A/F1	0.78%	Fixed	5,000	19/08/2014	19/02/2015
Standard Chartered Bank Plc	A+/F1	0.95%	Fixed	10,000	22/08/2014	21/08/2015
Royal Bank Of Scotland	BBB+/F1	1.85%	Fixed	15,000	19/09/2014	19/09/2016
5 Year UK Government Gilt 1.25%	AA+	1.25%	Fixed	5,780	22/07/2013	22/07/2018
			Total	148,580		
			Average Return	1.03%		

This page is intentionally left blank