

CABINET

14 FEBRUARY 2012

Title: Community Infrastructure Levy	
Report of the Cabinet Member for Regeneration	
Open Report	For Decision
Wards Affected: All	Key Decision: yes
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Accountable Divisional Director: Jeremy Grint, Divisional Director for Regeneration and Economic Development	
Accountable Director: Tracie Evans, Director of Finance and Resources	
Summary: <p>The Government now allows Councils to set a Community Infrastructure Levy. This is a charge on nearly all new development to help pay for the cost of the infrastructure needs they generate. At the same time the Government has tightened the use of S106 agreements so that they can only be used for site specific impacts. Therefore if the Council wants to maximise developer contributions for infrastructure costs then it must introduce a CIL.</p> <p>The purpose of this report is to recommend to Cabinet that the Council proceeds with adopting a Community Infrastructure Levy and to seek approval to consult publicly on the proposed set of charges which are set out in the Preliminary Draft Charging Schedule (see Appendix 1).</p> <p>As part of the consultation on the Preliminary Draft Charging Schedule, the Council will need to make publicly available its Infrastructure Plan which is summarised in Appendix 2. This demonstrates the cost of providing the new infrastructure to meet the needs of new development and provides the justification for implementing a CIL. The Council must also publish its Economic Viability Assessment which assesses the viability of different types of development in different parts of the borough and provides the justification for the CIL charges which this report recommends should be set. This is available in the Members Rooms, on the Council's website and can be obtained from the author on request.</p> <p>Members should also note that the Mayor of London is instituting a CIL to help pay for Crossrail. This is due to apply from April 2012.</p>	
Recommendation(s) <p>The Cabinet is recommended to agree:</p> <p>(i) the Community Infrastructure Levy Preliminary Draft Charging Schedule, as</p>	

attached at Appendix 1, for consultation; and

- (ii) the draft Barking and Dagenham Infrastructure Plan for New Development and the Barking and Dagenham 2011 Community Infrastructure Levy and s106/Affordable Housing Economic Viability Assessment for publication.

Reason(s)

The Community Infrastructure Levy will help deliver two key priorities in the Council's Policy House; school and post 16 education and housing and estate renewal.

1. Introduction and Background

What is the Community Infrastructure Levy (CIL)?

- 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 sought, 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, for example improved road access, on site landscaping or an onsite play area. From 6 April 2014 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. Due to their reduced scope this means looking to the future that the amount of monies secured through S106 Agreements is likely to be significantly reduced.

- 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 introduced under the Planning Act 2008.
- 1.3 The Community Infrastructure Levy (CIL) is a new charge which local authorities in England and Wales 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. 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. However the list is not fixed and can be altered at any time.

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 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;
- The Council will be able to use anticipated CIL receipts to secure additional borrowings to deliver capital infrastructure items.

Affordable Housing

1.7 Affordable housing will continue to be delivered through S106 agreements. CIL and S106 both represent additional costs to the developer. Therefore in setting CIL a judgement has to be made about the level of affordable housing that developers should be asked to provide.

1.8 The Mayor of London's London Plan requires the Council, on schemes of ten or more new homes, to seek the maximum reasonable amount of affordable housing having regard to current and future requirements for affordable housing, local affordable housing targets, development viability and the availability of public subsidy. The Council currently does not have an overall affordable housing target within its Local Development Framework therefore the Council normally asks for a development appraisal to substantiate the size of the S106 and affordable housing offer the developer is proposing. Historically it has normally only been possible to secure affordable housing in Barking and Dagenham through S106 with recourse to Government subsidy. This subsidy is now much more limited and will not normally be available to support affordable housing through S106 unless part of a registered provider's agreed delivery program. Consequently the viability study has established that no more than 10% affordable housing can be secured without grant via S106 alongside a reduced CIL and then only in Barking Town Centre and Barking Riverside. However whilst CIL is fixed S106 contributions will vary from one scheme to the next and cannot be guaranteed. Therefore officers recommend that

the CIL is set at the CIL ceiling under the regulations and that the Council continues to use the Mayor's London Plan as guidance.

- 1.9 The Government is currently consulting on a proposal to allow CIL receipts to be spent on affordable housing. This may allow the Council the freedom to spend the CIL receipts on the type of affordable housing it deems to be the priority as an alternative to using S106 agreements.

Mayoral Crossrail CIL

- 1.10 The Mayor of London has introduced a CIL across London for all development, except schools and health facilities to assist in funding Cross-Rail. A charge of £20 per square metre applies to Barking and Dagenham. This is due to be introduced in April 2012 and applies until the Mayor has collected £300 million. This is scheduled to be achieved in 2019 at which point the Mayor's CIL will end. At this point the borough will be able to set a higher CIL. The Mayor's CIL is currently subject of a public inquiry. Due to the significant impact it will have on development viability in Barking and Dagenham the Council has contested the charge, however the recommended local CIL charges take into account the Mayoral CIL.

The Process of Implementing CIL

- 1.11 To apply the levy the Council must produce a charging schedule setting out its levy rates. The charging schedule will form part of the Council's Local Development Framework.
- 1.12 The Council is required to provide two key pieces of evidence in support of the Charging Schedule. Firstly a Local Infrastructure Plan. This estimates that the cost of the infrastructure required to support projected development over the next 15 years will amount to **£894,126,545** taking into account other funding sources (this includes the cost for the Docklands Light Railway Extension). As the infrastructure costs of supporting new development are greater than the forecast available funding, the Council is fully justified in seeking the maximum reasonable amount of CIL from qualifying developments subject to viability.
- 1.13 The Infrastructure Plan is summarised in Appendix 2.
- 1.14 The second piece of evidence required to support the charging schedule is a viability assessment to demonstrate that the charges have been set at a level which will not stop overall development coming forward across the borough and therefore undermine the delivery of the Local Development Framework. The charges can only be set on the basis of development viability they cannot be varied for any other reason and they must not be set at the margins of viability. Therefore the charges cannot be varied to achieve policy objectives. London boroughs are required by regulations to take full account of the rates already set by the Mayor of London (e.g. the proposed blanket charge of £20 per sq metre).
- 1.15 For this purpose an Economic Viability Assessment (Affordable Housing & CIL/S.106) has been prepared by consultants GVA. GVA worked closely with Council staff and local stakeholders in the local development industry in the undertaking of their work. The recommended charges set out in paragraph 2.2 represent the maximum reasonable amount of CIL the different types of

development listed it is calculated can afford to pay. This takes into account the impact on build costs of the various policy requirements set out in the Local Development Framework including for example Code for Sustainable Homes, and internal space standards.

2 Proposal and Issues

- 2.1 The Cabinet is being asked to support the approval of the Preliminary Draft Charging Schedule for consultation, and the activation of 'exceptional circumstances' relief, outlined in paragraph 2.8.

The Preliminary Draft Charging Schedule

- 2.2 The Preliminary Draft Charging Schedule, attached as Appendix 1, sets out the following charges:

Proposed Level of Residential CIL (per sq.m)

	0% Affordable Housing	Example 100 new homes at 80 sq.m each
Barking Town Centre Key Regeneration Area and Leftley and Faircross Estates	£70	£560,000
Barking Riverside Key Regeneration Area	£25	£200,000
Rest of Borough	£10	£80,000

Proposed Level of Commercial CIL (per sq.m)

	CIL	Example	
Large Convenience Retail (>1,500sqm)	£300	Supermarket 7500 sq.m	£2,250,000
Small Retail (A1-A5 <370 sqm)	Nil		
Office (B1a)	Nil		
Municipal Leisure	Nil		
Health¹	Nil		
Education²	Nil		
All other non-residential uses	£10	Warehouse 1000 sq.m	£10,000

- 2.3 Since sales values are a significant determinant of development viability, the borough was split up into five distinct residential market areas based on current house prices:

¹ 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

² 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

- Barking Town Centre, Leftley Estate and Faircross Estate
- Barking Riverside
- South Dagenham
- Rest of the borough medium (Chadwell Heath, Rush Green and Dagenham East)
- Rest of the borough low – all areas not covered any of the other four areas

2.4 The viability appraisal concluded that developments in Barking Town Centre and the Leftley and Faircross Estates, and to a lesser extent Barking Riverside, could support a higher charge. Elsewhere in the borough the study concluded that, developments can only afford to pay a de minimis CIL charge, and therefore a CIL charge of £10 per square metre is recommended.

Explanation of the Charges

2.5 The Economic Viability Assessment has confirmed that development values are low in Barking and Dagenham. This is due to capital construction costs, provincial sales values and therefore low land values. In many parts of the Borough there is limited scope for a development to provide CIL, S106 or affordable housing, other than the Mayor of London's CIL. The CIL has therefore been set at £10 per sq metre outside of Barking Town Centre and Barking Riverside.

2.6 The viability work shows that, currently, at the proposed CIL charges, development cannot also contribute towards affordable housing and the charges set out above are set on the basis of the Council continuing without an affordable housing target. Affordable housing can however still be negotiated through S106 agreements and therefore when and if development viability improves in the borough this will be reflected in increased amounts of affordable housing being secured.

2.7 It is important to view CIL proceeds against other arguably more lucrative funding streams especially the New Homes Bonus and to a lesser extent Council tax receipts and non-domestic rate receipts. The New Homes Bonus is a significant income source. The Council will receive £7,500 for each net new home and an additional £2,100 for each new affordable home built. Therefore New Homes Bonus will make a bigger contribution to meeting the infrastructure needs of new development than CIL. As outlined at the outset of this report it is considered that implementing a CIL will provide certainty to developers on the cost they will incur and also help speed up the planning process. In addition due to development viability in Barking and Dagenham being worse than in neighbouring boroughs CIL charges here will be less than in Redbridge and likely to be less than in Havering. For these reasons the implementation of a CIL should assist the delivery of new homes and new commercial floorspace and therefore help maximise New Homes Bonus and domestic and non-domestic rate income streams as set out in the recently published Local Government Finance Bill.

Relief for Exceptional Circumstances

2.8 Given the importance of ensuring 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. The Council can consider claims for relief on chargeable developments from landowners on a case by case basis, provided the

following conditions are met. Firstly, a section 106 agreement must exist on the planning permission permitting the chargeable development. Secondly, the Council must consider that the cost of complying with the section 106 agreement is greater than the CIL charge on the development and that paying the full charge would have an unacceptable impact on the development's economic viability. Finally, relief must not constitute State Aid; that is to say it would not amount to assistance by the Public Sector either by a relief or contribution to give a national business an unfair competitive advantage over other European businesses. Relief for Exceptional Circumstances can be withdrawn by the Council at any time and therefore does not have to be made available in perpetuity. It is recommended that the Council take up the option to provide for Relief for Exceptional Circumstances particularly given the potential for section 73 applications (applications to vary an existing condition) at Barking Riverside to make homes previously granted planning permission liable for CIL. Therefore the Preliminary Draft Charging Schedule makes clear that the Council will make relief available for exceptional circumstances in Barking and Dagenham.

Monitoring

- 2.9 The Council is required to monitor and report annually on the collection and spending of the levy. This will be done through the Council's Annual Monitoring Report. In addition it is proposed that the Council reviews the CIL charge annually to ensure it is set at the right level taking into account development viability. However it is suggested that any changes are only made at the least every two years due to the lengthy statutory processes that any changes to the charges would have to negotiate.

Governance

- 2.10 The collection of the borough's CIL will use the same arrangements and processes which will be implemented by 1 April 2012 to collect the Mayor's CIL. The CIL regulations allow the Council to recoup the administrative costs of collecting both sets of CIL.
- 2.11 It is recommended that CIL proceeds are spent on those projects within the Council's agreed Capital Strategy which meets the needs generated by new development.

CIL timetable

- 2.12 The table below sets out the timetable for implementing the Barking and Dagenham Community Infrastructure Levy.

Task	Progress
1. Seek approval of Preliminary Draft Charging Schedule at Cabinet	Cabinet date – 14 February 2012
2. Consultation on Preliminary Draft Charging Schedule (6 weeks)	21 February – 3 April 2012
3. Approval of Draft Charging Schedule (advert required Reg 16 a (d))	Cabinet date – June 2012 Assembly July 2012

4. Public Consultation on Draft Charging Schedule (4 + weeks)	August 2012
5. Submit the Draft Charging Schedule to the examiner plus also to PINs.	September 2012
6. Charging Schedule Examination	December 2012
7. Adoption and Publication	
- Report to Cabinet and Assembly for approval of Charging Schedule	March 2013
- Publish Charging Schedule	
8. CIL comes into effect	April 2013

3. Options Appraisal

3.1 Two other options were considered:

Option 1: No CIL and maximum affordable housing via S106

3.2 The disadvantages of this approach are:

- No money would be secured for education, transport and other infrastructure costs and this in turn could have negative implications for social cohesion
- The Council would not receive CIL from developments below 10 units or from non-residential uses
- Affordable housing has a higher child yield than private sale housing so would increase pressure on school places.
- In considering whether to proceed with this option it is important to consider which option ensures that the amount of developer contribution is maximised. Whilst CIL is a fixed amount, S106 and Affordable Housing are negotiated. Therefore this option has the disadvantage that there would be no certainty to the Council on how much affordable housing would be received as it would be negotiated on a site by site basis. Whilst the Council can set an overall local affordable housing target the final amount that is provided is determined through a development appraisal and will be dictated by the viability of the development.

Option 2: CIL and 10% indicative affordable housing target

3.3 The Council could set an affordable housing target alongside CIL. The viability study has established that no more than 10% affordable housing can be secured without grant via S106 alongside a reduced CIL and then only in Barking Town Centre and Barking Riverside. For the reasons set out in the last bullet point for Option 1 whilst with Option 2 the Council can be certain that it will receive a high CIL, with this option it can only be certain it will receive a low CIL. The amount of affordable housing that is provided is negotiated and cannot be guaranteed. Although the preferred option assumes no affordable housing, it does not mean that affordable housing cannot be secured. The developer would still be required to

demonstrate that they have provided the maximum reasonable amount of affordable housing viable. This has the advantage that if development viability improves beyond the levels modelled in the Economic Viability Assessment, it can be captured by the affordable housing.

4. Consultation

- 4.1 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 27th September 2011 to discuss the assumptions used in the viability assessment. Further workshops took place on 25th October and 7th November 2011 to discuss the results of the viability testing. All attendees and interested parties will continue to be consulted and kept informed via email.
- 4.2 Further consultation will be undertaken on the Preliminary Draft Charging Schedule as outlined in paragraph 2.12 above.

5. Financial Implications

Implications completed by: David Abbott, Principal Accountant

- 5.1 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).
- 5.2 The CIL is expected to provide additional monies for infrastructure but not replace mainstream funding.
- 5.3 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.
- 5.4 From 1st April 2012 a mayoral CIL will apply to all qualifying developments, meaning the Council will need to collect £20 per net additional square meter of new development from the developer and pass 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.
- 5.5 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.

- 5.6 Benchmark data with other Authorities (see below) indicates that the proposed charges are on the whole low. This reflects land values and development viability within the Borough.

£ / sq.m	Wandsworth	Redbridge	Croydon		LBBB
			Town Centre	Rest of Borough	
Residential	0-575	70	0	120	10-70
Retail	0-100 ³	70	120	120	0-300
Business	0	70	20 ⁴	0	10
Hotel	0	70	120	120	10
Leisure	0	70	120	120	10

- 5.7 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 / ongoing):

Viability study (consultants)	£22,640
Adverts	£2,100
Printing and postage	£1,000
Inspectors fees	£20,000
Room hire	<u>£1,000</u>
TOTAL	£46,740

- 5.8 There is also a cost in terms of the time spent by current staff. There will also be a cost of administering and collecting the CIL, but this cost is allowed to be met from the CIL proceeds.

6. Legal Implications

Implications completed by: Paul Field, Senior Lawyer

- 6.1 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 the development would not be agreed without a contribution from the Developer. The problem with this approach is that it was 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 Regulations 2010. Unlike the Section 106 arrangements most new buildings will be liable to pay the levy. This includes from 6 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.

³ Wandsworth includes offices

⁴ Croydon includes offices

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. This report has set out the process and suggests a potential charging framework. The proposed scheme set out in this report will be open for review and it maybe those aspects of the scheme may need to be revisited to take account of the national and local changes indeed the CIL allows the charges to vary with geographic areas. It is important that the schedule for the CIL is backed by an evidential basis. Further there needs to be evidence as to what infrastructure is needed and how the CIL would contribute, though it does not need to be the only source.

- 6.3 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.
- 6.4 Finally the CIL regime does not affect contributions secured for highway 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 landowners	Medium	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. The two stages of statutory consultation will give the Council the opportunity to address any concerns that are raised.
Draft charging schedule is rejected by the Examiner	Low	Medium	High	The Council has followed the relevant legislation and Government guidance in arriving at the charges proposed in the Preliminary Charging Schedule
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
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. On this basis charges in neighbouring boroughs are likely to be higher.

- 7.2 **Staffing Issues** - The proposals will not necessitate the need for additional staff. Systems will be put in place to collect the Mayor's CIL from 1 April 2012. The Council can recover its administrations cost from CIL.
- 7.3 **Customer Impact** - 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 and charitable development is exempt from the charge. The CIL will have a positive impact on the local community as it will help maximise developer contributions to meet the costs of new infrastructure generated by new development. The Council will have increased flexibility to ensure that funds from the levy 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 institution of higher education will not pay the levy.
- 7.5 **Health Issues** - Developments used wholly or mainly for the provision of any 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, eg CCTV provision or better lighting.
- 7.7 **Property / Asset Issues** The Council, as a landowner and developer, will be liable to pay CIL on qualifying developments.

Background Papers Used in the Preparation of the Report:

- CLG March 2010, Community Infrastructure Levy Guidance; Charge setting and charging schedule procedures.
- CLG May 2011, Community Infrastructure Levy: An overview
- CLG May 2011, Community Infrastructure Levy Relief.

List of appendices:

- Appendix 1: Preliminary Draft Charging Schedule
- Appendix 2: Summary of Infrastructure Plan 2012 – 2025