

ASSEMBLY

25 February 2013

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| Title: Community Infrastructure Levy Draft Charging Schedule | |
| 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 Regeneration and Economic Development |
| Accountable Corporate Director: | Graham Farrant, Chief Executive |
| Summary: <p>At its meeting on the 14 February 2012, the Cabinet authorised the Community Infrastructure Levy Preliminary Draft Charging schedule for consultation (Minute 114 refers). Responses were received from eleven bodies. In response it is proposed to change the charges for retail uses.</p> <p>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. Officers are now proposing to reduce this to £175 per square metre but to apply it to supermarkets and superstores of any size with all other retail uses paying £10 per square metre.</p> <p>These changes have been 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 is viable under the terms of the Community Infrastructure Regulations.</p> <p>Officers have also reduced 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). After further scrutiny it is 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 has been reduced to £5 per square metre. No other changes are proposed.</p> <p>If Assembly agree these changes, the Council can proceed to the next stage of statutory consultation which is to consult on the Draft Charging Schedule and then submit it for examination. The Draft Charging Schedule is attached as Appendix 1 to this report. The responses and the Council's suggested response to these are attached as Appendix 2 to this report.</p> <p>The Cabinet considered this report at its meeting on 12 February 2013 and endorsed the</p> | |

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| recommendations below. |
| <p>Recommendation(s)</p> <p>The Assembly is recommended to agree the Borough's Community Infrastructure Levy Draft Charging Schedule for consultation and for submission for examination.</p> |
| <p>Reason(s)</p> <p>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.</p> |

1. Introduction and Background

- 1.1 At its meeting on the 14 February 2012, the Cabinet agreed to approve the Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule for consultation (Minute 114 refers). A six week consultation took place between 27 February and 10 April 2012. This report sets out the responses received and recommends a revision to the proposed CIL charge following responses to the consultation process and further consideration of the representations and assessment of the potential effect of charges on the viability of development.

2. Proposal and Issues

- 2.1 Responses to the consultation were received from eleven bodies. These are summarised below along with the suggested Council response, which is provided in full in **Appendix 2**.
- 2.2 Four responses did not raise any objections so are not covered here.
- 2.3 English Heritage were concerned that CIL should be spent on investment in heritage. It is suggested that no changes are necessary. The consultation was on the proposed charges not on what the proceeds of CIL would be spent on.
- 2.4 The London Fire and Emergency Planning Authority (LFEPA) advocated that new fire stations should be exempt from the levy and that consideration be given to spending CIL on investment in them. In response to this, it is observed that no changes are necessary because again the consultation was not about what CIL should be spent on. Furthermore the LFEPA provided no evidence that fire station development would not be viable if they were subject to the proposed £10 per square metre CIL. It is important to note that the Mayor of London's CIL applies to fire stations and is set at £20 per square metre.
- 2.5 Peacock and Smith acting on behalf of Morrison's supermarket strongly objected to the proposed CIL rate of £300 per square metre for large convenience retail (>1500 square metres). They consider that supermarket operators are being used as a scapegoat. They think that the charge will put undue additional risk on the delivery of food store proposals. They compare the Council's proposed charge to Lewisham, Merton and Croydon which are set between £80 and £120 per square metre.

- 2.6 Across the country the charges set for retail are proving the most controversial. The focus of objectors, particularly the big four supermarkets, is the varying of charges on the basis of the size of a premises. Whilst the CIL regulations do not expressly allow this, neither do they expressly disallow it. Undoubtedly until a national and regional picture emerges there will be uncertainty and a charging base at variance will present a risk of Judicial Review particularly if there is not robust evidence to back up a CIL figure. It is the threat of a High Court challenge which has led some authorities to remove their differential retail charges, equally others have opted to proceed with them.
- 2.7 The CIL regulations do expressly allow different charges to be applied to different uses or the same uses in different locations. For this reason officers recommend substituting the initial proposed charge for large convenience retail (£300 per square metre for large convenience stores over 1500 square metres). Whilst in viability terms there is a justification for a higher charge for large convenience stores this is clearly a differentiation on the basis of the size of a premises not its use. Therefore if a charge is levied on convenience stores it has to apply to all stores regardless of size. The Council has undertaken further viability testing to understand the level to set the charge on this basis. In this regard it is important to note that in setting rates regard has to be had to the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area. On this basis the testing has established that a charge of £175 per square metre is more in keeping with the borough circumstances. Therefore officers recommend a charge of £175 per square metre for supermarkets and superstores of any size, these being self service stores, usually with car parking mainly selling food or food and non-food goods.
- 2.8 Previously the Cabinet had agreed a nil charge for small retail so that all shops, cafés, restaurants and pubs below 370 square metres would not pay CIL. Any such uses above this size would pay £10 per square metre except for large supermarkets /superstores over 1500 square metres which would pay £300 per square metre. Officers recommend that the nil charge for small retail is revised because this is a charge based on the size of a premises. This means that apart from supermarkets/ superstores, all other shops, cafés, takeaways, restaurants and pubs would pay £10 per square metre. Please note that since the Council adopted the Supplementary Planning Document “Saturation Point – Addressing the health impacts of hot food takeaways” in July 2010, only one takeaway has been permitted and that was on appeal by the Planning Inspectorate. As it involves a change of use and not new floor space it would not be liable for CIL in any event.
- 2.9 Officers do not consider that the £175 per square metre charge will impact on the viability of small supermarkets whether these are small independent grocers or the more recent trend for metro supermarkets as these tend to be established through changes of use to existing premises. The CIL charge only applies to new build floor space over 100 square metres.
- 2.10 Turning back to Morrisons’ actual objection that supermarket operators are being used, as they choose to call, as a “scapegoat”, this observation is rejected. The meaning of scapegoat is an object for which the blame for all the ills of a community is attached. The CIL can only be set on the basis of viability and the Council’s latest viability evidence, evidences that a charge of £175 per square metre can be

supported. Moreover no evidence was provided by the respondent on the issue of viability.

- 2.11 The Agents for Sanofi (Savills) also expressed concern about the original £300 per square metre proposal charge for large convenience retail. Notwithstanding that the recently approved Sanofi development is not liable for CIL they are concerned about the impact of CIL on new planning applications and its impact on the viability of the entire proposal. They suggested that a nil charge should apply to the Sanofi site at Dagenham East. In response to this objection it is suggested that no change is necessary apart from the changes to the retail charges as detailed previously. No evidence has been provided by the respondent that this charge is not viable.
- 2.12 Gerald Eve acting on behalf of Freshwharf Developments Limited noted that if the CIL is set at too high a level it will put further pressure on an already weakened property market and stifle development. They query the charge of £70 per square metre for Barking Town Centre and how this has been arrived at, they query the specification of the GVA appraisal model and finally they query the evidence which supports the residential land value benchmarks which they consider are too low. In response to this objection it is suggested that no changes are necessary. The Council's Economic Viability Report demonstrates that the £70 per square metre charge for housing in Barking Town Centre is viable. The report also clearly details the methodology of the viability testing and it explains that the benchmark land values reflect prevailing development values sourced from analysis of the current situation in Barking and Dagenham and corroborated through Valuation Office Agency data, GVA's own Agency Team knowledge of transactions in the Borough and local stakeholder discussions.
- 2.13 Icen, acting on behalf of Estates and Agency Properties Limited, made representations that the Council's CIL is a *one size fits all* approach and provides no flexibility and therefore does not respond to the commercial realities of development and could undermine schemes that help meet the borough's regeneration aims. They want the CIL to be amended so it takes account of the provision of on-site facilities and benefits. They consider that the CIL should prioritise investment and incentivise developers in Barking Town Centre by applying a discounted rate to retail and residential floor space in this location. They consider the charge for residential and large convenience retail in Barking Town Centre is disproportionate to developers' reasonable expectations of a financial return. Therefore they want three changes, removal of paragraph 3.1 of the Preliminary Draft Charging Schedule, a lowering of the charge on large retail development with the costs spread more evenly over the use classes, and lowering the charge on residential development within town centre areas to improve flexibility and viability. In response to this objection it is suggested that no changes are necessary other than the changes to the retail charges as previously detailed. Unlike the Mayor of London, the Council has chosen to offer Discretionary Relief for Exceptional Circumstances, so the Council is being flexible. Removing paragraph 3.1 would remove this mechanism. The regulations do provide for charging authorities to accept transfers of land as a payment "in kind" for the whole or part of a CIL payment. Again it is important to stress that CIL can only be set on the basis of viability. The Council is not allowed to set CIL to achieve regeneration objectives. Finally no evidence has been presented that large convenience retail developments or residential in Barking Town Centre cannot afford to pay the charge that has been set.

- 2.14 CGMS on behalf of the Mayor's Office for Policing and Crime (MoPC) and the Metropolitan Police Service (MPS) advocate that new policing facilities should be exempt from the levy as otherwise this will impact upon the Council's ability to deliver a safe and secure environment. In response to this objection it is suggested that no changes are necessary because the levy can only be set on the basis of viability. No evidence has been presented that new policing facilities 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 floor space. 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.

Timetable for adopting the Community Infrastructure Levy

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

| Task | Progress |
|---|--|
| 1. Approval of Draft Charging Schedule | Cabinet 22 January 2013 Assembly 25 February 2013 |
| 2. Publish Draft Charging Schedule (advert required Reg 16 a (d)) | March 2013 |
| 3. Public Consultation on Draft Charging Schedule (4 + weeks) | March/April 2013 |
| 4. Submit the Draft Charging Schedule to the examiner plus also to PINs. | May 2013 |
| 5. Charging Schedule Examination | August 2013 |
| 6. Adoption and Publication | |
| - Report to Cabinet and Assembly for approval of Charging Schedule | October 2013 |
| - Publish Charging Schedule | |
| 7. CIL comes into effect | October 2013 |

3. Draft Community Infrastructure Levy Charges

- 3.1 Proposed Level of Residential CIL (per sq.m) – NO CHANGE

| | 0% Affordable Housing |
|--|-----------------------|
| Barking Town Centre Key Regeneration Area and Leftley and Faircross Estates | £70 |
| Barking Riverside Key Regeneration Area | £25 |
| Rest of Borough | £10 |

Proposed Level of Commercial CIL (per sq.m) – CHANGES TO RETAIL CHARGES

| ORIGINAL CHARGES | CIL | PROPOSED NEW CHARGES | CIL |
|--------------------------------------|------------|--|------------|
| Large Convenience Retail (>1,500sqm) | £300 | Supermarkets/Superstores | £175 |
| Small Retail (A1-A5 <370 sqm) | Nil | Office (B1a) | Nil |
| Office (B1a) | Nil | Municipal Leisure | Nil |
| Municipal Leisure | Nil | Health ¹ | Nil |
| Health ¹ | Nil | Education ² | Nil |
| Education ² | Nil | Business (Research and Development - B1b, Light Industry - B1c, General Industrial - B2 and Storage and Distribution - B8) | £5 |
| All other non-residential uses | £10 | All other non-residential uses including all other retail | £10 |

3.2 Benchmark data with other Authorities (see below) indicates that the proposed charges for LBBD are on the whole low / competitive in comparison. This reflects land values and development viability within the Borough. Please note that for London Boroughs the Mayor of London CIL charge applies on top of the authorities charges. The Mayoral charge for each of the London Borough's is detailed in row 1 of the table below. Since Thurrock is outside London the Mayor of London's CIL does not apply.

| £ / sq.m | Newham Draft | Waltham Forest Prelim-Draft | Red-bridge Adopted | Thurrock Prelim-Draft | Tower Hamlets Prelim-Draft | Islington Prelim-Draft | Southwark Prelim-Draft | LBBD |
|-------------------------|--------------|-----------------------------|--------------------|-----------------------|----------------------------|------------------------|------------------------|--------|
| Mayoral CIL /sqm | 20 | 20 | 35 | NA | 35 | 50 | 35 | 35 |
| Residential | 40-80 | 70 | 70 | 0-38 | 35-200 | 300 | 50-400 | 10-70 |
| Retail | 30 | 0-150 | 70 | 0-150 | 0-200 | 200-300 | 0-250 | 10-175 |
| Business | 0 | 0 | 70 | 0-25 | 0 | 0 | 0-100 | 5 |
| Hotel | 120 | 20 | 70 | 0 | 425 | 450 | 125-250 | 10 |
| Leisure | 0 | 0 | 70 | 0 | 0 | 80 | 50 | 10 |

4. Options Appraisal

4.1 Two other options were considered.

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

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

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

5. Consultation

- 5.1 The CIL Preliminary Draft Charging Schedule was consulted on between 27 February 2012 and 10 April 2012. The consultation was in accordance with the Community Infrastructure Levy Regulations 2010, the Community Infrastructure Levy (Amendment) Regulations 2011 and the Council's adopted Statement of Community Involvement.
- 5.2 Letters were sent out to the Local Development Framework database and stakeholders involved in earlier stakeholder workshops. Consultation material regarding the CIL Preliminary Draft Charging Schedule was also made available in various locations and formats including on the Council website, in the borough Libraries, and the Civic Centre and Town Hall Receptions for the entire consultation period.
- 5.3 Section 2 of this report details the feedback received.
- 5.4 In line with the Community Infrastructure Regulations 2010 as amended representations will be invited on the Draft Charging Schedule for a minimum period of four weeks. The Draft Charging Schedule, the representations and the other documentation stipulated by the regulations will then be sent to an examiner for an independent examination.

6. Financial Implications

Implications completed by: Philip Horner, Principal Accountant

- 6.1 The report follows up on the report of 14 February 2012 in which Cabinet gave approval to consult on the proposed CIL charges.
- 6.2 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.
- 6.3 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.
- 6.4 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. Subject to approval, the Authority's own CIL element will be added to the amounts collected from August 2013. The total CIL charge (comprising 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.

- 6.5 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.
- 6.6 The incremental cost of producing and consulting on the CIL have been incurred over the past 18 months and met from within the current Regeneration & Economic Development revenue budget, which are summarised below (some figures are approximate / ongoing):

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|-------------------------------|---------------|
| 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 |

- 6.7 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.

7. Legal Implications

Implications completed by: Paul Field, Senior Lawyer

- 7.1 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.
- 7.2 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 developments 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.
- 7.3 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. This report has set out the process and suggests a potential charging framework. 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

- 7.4 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.
- 7.5 Finally the CIL regime does not affect contributions secured for highway work or improvements under Section 278 Highways Act 1980 such agreements will continue.

8. Other Implications

8.1 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. A number of objections as detailed in this report have been received during the first stage of consultation and changes have been made to the retail charges to ensure that they are legal and therefore to reduce the risk of High Court challenge. |
| 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 Draft 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 Councils 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. The only neighbouring Council to have an adopted CIL is Redbridge and with the exception of the charge for supermarket/superstores their charges are significantly higher than LBBDs. |

- 8.2 **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 recover its administration costs from CIL.
- 8.3 **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 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.

- 8.4 **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.
- 8.5 **Health Issues** - Developments used wholly or mainly for the provision of any publicly funded medical or health services will not pay the levy.
- 8.6 **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. 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.
- 8.7 **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 floor space. 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:

- Cabinet Report, 14 February 2012: Community Infrastructure Levy (Minute 114 - 14/02/12).
- Cabinet Report, 22 January 2013: Community Infrastructure Levy Draft Charging Schedule
- 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.
- National Planning Policy Framework

List of appendices:

Appendix 1: LBBB Draft Charging Schedule

Appendix 2: Responses to the Council's Preliminary Draft Charging Schedule