

CABINET

21 October 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
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Accountable Divisional Director: Jeremy Grint, Divisional Director of Regeneration	
Accountable Director: Steve Cox, Director of Growth	
Summary: <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 LBBD Charging Schedule should be approved in its published form.</p> <p>As well as recommending that Cabinet recommend to Assembly that the LBBD Charging Schedule is adopted the report also covers other consequential issues related to the administration of the charge.</p>	
Recommendation(s) <p>The Cabinet is recommended:</p> <ul style="list-style-type: none">(i) To recommend to the Assembly that the LBBD Community Infrastructure Levy Charging Schedule is adopted(ii) To approve the introduction of the Community Infrastructure Levy rates from 2 March 2015(iii) To approve that how residents and businesses are consulted on the neighbourhood CIL allocation is agreed on a case by case basis in agreement with the Cabinet Member for Regeneration	

- (iv) To agree to allow the payment in kind of CIL by land or infrastructure payments
- (v) To approve the S106/Planning Obligations Planning Advice Note.
- (vi) To delegate any final amendments permitted by the Examiner's Report to the Divisional Director for Regeneration in consultation with the Cabinet Member for Regeneration

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 LBBDD 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

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 13th 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.

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.
- 5.6 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

- 5.8 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.

5.9 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	Low	Medium	High	Developers and landowners were consulted in the early

challenged by developers and land owners				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: LBB Community Infrastructure Levy Charging Schedule
- Appendix 2: LBB CIL Consultation Statement – October 2013
- Appendix 3: Regulation 123 list
- Appendix 4: Draft S106/Planning Obligations Planning Guidance Note July 2014