

	London Borough of Hammersmith & Fulham CABINET 11 AUGUST 2014
COMMUNITY INFRASTRUCTURE LEVY (CIL) DRAFT CHARGING SCHEDULE (DCS) CONSULTATION	
Report of the Cabinet Member for Economic Development and Regeneration ; Councillor Andrew Jones	
Open Report	
Classification: For Decision Key Decision: Yes	
Wards Affected: All	
Accountable Executive Director: Nigel Pallace, Bi-Borough Executive Director, Transport & Technical Services	
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1. EXECUTIVE SUMMARY

- 1.1 Developers can provide contributions to help fund infrastructure needed to support development in the borough. These contributions can be by way of a Community Infrastructure Levy (CIL) and in the form of S106 Agreements. CIL will be charged at fixed rates of £/m² on most new development that creates net additional floorspace, subject to a number of exemptions and reliefs (see Appendix B of this report).
- 1.2 When CIL is introduced it will still be possible to have section 106 agreements (S106s) where these are necessary to make developments acceptable, provided that it is not for purposes on which the Council intends to spend CIL as shown in the published Regulation 123 List. S106s can continue to be used where necessary to secure contributions for infrastructure purposes (providing they are not on the R123 list and meet the restrictions on pooling), for non-physical infrastructure purposes and for securing affordable housing.
- 1.3 The proposed CIL DCS public consultation represents the 2nd stage of public consultation in the process that will lead to the introduction of CIL charges in the borough from 2015 according to the council's timetable (see section 5 of this report).

- 1.4 The proposed CIL charge rates have to be set primarily with regard to and the economic viability of development in the borough, but the council must strike an appropriate balance between the desirability of funding infrastructure from CIL the potential impact on viability (see section 5 of this report).

2. RECOMMENDATIONS

- 2.1. That approval be given for publication of the Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS) and associated evidence base documents for public consultation in accordance with Regulation 16 of the CIL Regulations 2010 (as amended).
- 2.2. That the strategy for securing the provision of, or financial contributions to, the cost of infrastructure to support development in White City East and Earls Court & West Kensington Opportunity Area should continue to be S106 agreements (S106s) rather than CIL (£0/m² CIL rates are proposed for these two areas in the CIL DCS).
- 2.3. That approval be given for public consultation on other related issues including the Equalities Impact Assessment (EqIA) and Neighbourhood CIL.
- 2.4. That the Bi-Borough Executive Director for Transport & Technical Services, in consultation with the Cabinet Member for Transport, Environment & Resident Services, be authorised to approve any technical and other minor amendments to the proposed public consultation documents.

3. REASONS FOR DECISION

- 3.1. Public consultation on the CIL DCS and associated evidence base documents is required in accordance with Regulation 16 of the CIL Regulations 2010 (as amended). As part of this, the Council must set out its approach to future S106s.
- 3.2. Public consultation on the EqIA is required to help ensure that the Council's equality duties are fulfilled (in advance of a final EqIA being produced for a final decision to bring the CIL into effect).
- 3.3. Public consultation on Neighbourhood CIL is required to help the Council plan for the expenditure of Neighbourhood CIL and engage with communities in accordance with statutory National Planning Practice Guidance (NPPG) on CIL (para. 073).

4. INTRODUCTION AND BACKGROUND

- 4.1 The Community Infrastructure Levy (CIL) has been introduced to enable local authorities to help fund new physical infrastructure facilities, needed to make development acceptable and sustainable. In addition to the CIL charge, local authorities will still be able to negotiate S106 Agreements, particularly on larger developments, to provide for, or to fund affordable housing, for site specific infrastructure improvements, and for other non-infrastructure purposes, such as employment and training schemes, necessary to make particular schemes acceptable
- 4.2 The CIL charge rate proposed by the Council has to take account of other obligations and policy requirements that might affect the viability of development and is only one element of the total contribution that the Council can receive for a given development. CIL will be charged at fixed rates of £/m² on most new development that creates net additional floorspace, subject to a number of exemptions and reliefs.
- 4.3 The proposals for CIL in LBHF envisage that future development contributions for physical infrastructure will generally be by means of CIL charges which will help fund the facilities that are needed to support development in the borough (except in areas discussed later in this report). The Council must publish a R123 list of the infrastructure on which it intends to spend CIL and that effectively rules out also having future S106 obligations for the same infrastructure. There will also be strict limits on the extent to which contributions from S106 obligations for infrastructure can be pooled. All this means that in future most developments will pay the fixed charge borough CIL (as well as Mayoral CIL) and some developments will also be required to make S106 contributions but overall S106 contributions will be scaled down.

What does and does not pay CIL?

- 4.4 National legislation sets out how CIL operates once a Council has set charge rates. In accordance with national legislation, CIL may be payable on development which creates net additional floorspace, where the gross internal area (GIA) of new build exceeds 100m². That limit does not apply to new dwellings, and a charge can be levied on a single house or flat of any size, unless it is built by a 'self-builder'. Some development, including social housing and charitable development does not pay CIL. Further information on what does and does not pay CIL and the payment process is covered in section 1 of Appendix B.

5. PROPOSAL AND ISSUES

Evidence base & striking a balance

- 5.1. Statutory National Planning Practice Guidance (NPPG) on CIL expects CIL to have a positive economic effect on development in a council's area

and the Council must show and explain how the proposed CIL will contribute towards the implementation of both the Mayor of London's adopted London Plan (as altered) and the Council's adopted Core Strategy and Development Management Local Plan (see sections 2.1 and 2.2 of Appendix B).

- 5.2. The proposed CIL charge rates have to be set primarily with regard to the economic viability of development in the borough, but the Council must strike an appropriate balance between the desirability of funding infrastructure from CIL and the potential impact on viability (see section 2.1 of Appendix B).

Viability

- 5.3 The Council must set CIL charges which do not threaten the ability to develop viably the sites and scale of development identified in the adopted Core Strategy.
- 5.4 A Viability Study has been prepared (Appendix 5) which assumes a policy-compliant level of affordable housing (40%) in line with the adopted Core Strategy. The Viability Study has also considered the amount of financial contribution that might be charged through a S106 agreement. This is particularly the case for White City East and Earls Court & West Kensington. The proposed approach to S106s after CIL is introduced is set out later in this section of the report.
- 5.5 Further information on the Viability evidence base is covered in section 4 of Appendix B and Appendix 5 (Viability Study).

Proposed CIL charge rates

- 5.6 The proposed CIL charge rates (Appendix A) are as follows and are additional to the Mayor's CIL:

Uses	Residential (C3)	Office (B1a/b)	All uses unless otherwise stated	Health
	HMO (C4)			Education
Charging Zones*		Hostel	Nil	Industrial (B1(c)/B2)
	£100/m ²			£80/m ²
North	£200/m ²	£80/m ²	£80/m ²	Warehousing (B8)
Central A		Nil		Nil
Central B	£400/m ²	Nil	£80/m ²	
South				Nil
White City East	Nil	Nil	Nil	

Earls Court & West Kensington Opportunity Area		
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*A map of the CIL Charging Zones is provided in section 5.1 of Appendix B

- 5.7 The Council has only set the differential rates, including zero rates, where this is based on economic viability evidence which justifies this approach. In light of the government guidance on state aid and relevant legislation, it is considered that these proposals do not give rise to unlawful state aid (see section 5.8 of Appendix B).
- 5.8 The proposed charge rates are broadly comparable to those established and emerging in the neighbouring boroughs (see section 4.5 of Appendix B and Appendix 6).

Regeneration Areas & S106s

- 5.9 In White City East and Earls Court & West Kensington Opportunity Area it is recommended that all development contributions for infrastructure should continue to be by negotiated S106 obligations rather than CIL which would have a zero charge.
- 5.10 The reason for this is that there is a considerable scale of site specific and local infrastructure that is needed specifically to make developments in these areas acceptable. There have already been substantial contributions (often to a pooled sum) from approved S106s. Based on the CIL Viability Study (Appendix 5), it is clear that developments in these areas would not be sufficiently viable to pay CIL in addition to substantial S106s.
- 5.11 In South Fulham Riverside, which is the principal development area in the South Charging Zone, there is also a considerable scale of infrastructure which is needed specifically to make development in this area acceptable. In view of the size of the area and the number of potential developments (having regard to the future restrictions on pooling S106 obligations), CIL is considered to be the more appropriate primary mechanism for raising developer contributions and the CIL Viability Study (Appendix 5) suggests that residential developments could afford to pay CIL at £400/m². Where appropriate, to ensure schemes are acceptable additional S106 obligations could be sought.
- 5.12 For more detail on the approach to regeneration areas and S106s as part of the viability evidence base, see section 4.2 of Appendix B.

Infrastructure

- 5.13 An infrastructure planning exercise, undertaken primarily for the purposes of CIL charge-setting, has identified a £379 million funding gap for potential physical infrastructure schemes which support development across the borough and could potentially benefit from CIL. It has been

estimated that the proposed CIL charge rates could contribute approximately £58.3m towards this funding gap over the period 2014/15-2032 (see Figure 3.11 of Appendix B). In estimating the funding gap, assumptions have been made concerning the contribution of existing significant S106s.

- 5.14 This demonstrates that CIL will only be able to make a contribution towards the borough's total infrastructure funding gap and it will not be able to cover the costs for all schemes. It would be expected that other sources of funding (including other developer contributions such as S106s) will become available over time and these could reduce the funding gap, however, it would be unrealistic to expect that the overall resultant funding gap would not be substantial. This is not an unusual finding for Councils when researching infrastructure funding gaps for CIL charge-setting purposes.
- 5.15 Decisions on expenditure of CIL, once it is in effect and receipts start to accumulate, will need to be made as part of the Council's financial and decision-making structures, as appropriate.
- 5.16 Further information on the Infrastructure evidence base, including definitions and categories of infrastructure, is covered in section 3 of Appendix B and Appendices 2 (Infrastructure Categories) and 3 (Infrastructure Schedule).

Neighbourhood CIL

- 5.17 The Council must allocate at least 15% of CIL receipts to spend on priorities that should be agreed with the local community in areas where development is taking place (capped at £100 per council tax registered dwelling). This Neighbourhood CIL can be spent on anything that is concerned with addressing the demands that development places on an area, including but not limited to infrastructure. The proportion increases to 25% where there is an adopted Neighbourhood Plan.
- 5.18 Neighbourhood CIL could equate to approximately £490,000 per year on average for the borough as a whole. However, this figure is based on a broad estimate and the actual Neighbourhood CIL expenditure would depend on the actual quantum and location of CIL-liable development which gets built.
- 5.19 Whilst it will be some time before substantial amounts of CIL are likely to be received by the Council for use on Neighbourhood CIL, it is appropriate to use the proposed Draft Charging Schedule consultation as the first opportunity for suggestions for Neighbourhood CIL expenditure to be put forward.
- 5.20 Further information on the Neighbourhood CIL is covered in section 3.3 of Appendix B, and a Form for suggesting Neighbourhood CIL suggestions is provided in Appendix 11 (Consultation Response Form).

Draft Regulation 123 ('R123') List

- 5.21 The Council must ensure there is clarity about the Council's infrastructure needs and what developers will be expected to pay for through which route (CIL or S106).
- 5.22 To assist with providing clarity about S106s and the interface with CIL, Regulation 123 ('R123') of the CIL Regulations 2010 (as amended) allows the Council, upon adoption of the CIL, to set out a list of those projects or types of infrastructure that it intends to fund, or may fund, through CIL. If an item of infrastructure is on the R123 List, the Council cannot require a S106 to make provision or fund it, as part of approving a planning application. If no List is published, the Council cannot require a S106 for any infrastructure and all infrastructure would be funded by CIL
- 5.23 As part of the appropriate evidence to inform the preparation of the charging schedule, the Council must set out a draft of the R123 List and any known site-specific matters for which S106s may continue to be sought. The Draft R123 List is set out in Appendix 4 (Draft R123 List).
- 5.24 After the Council starts charging CIL, the Council must prepare short reports on CIL by the end of each calendar year for the previous financial year covering information including: CIL receipts and expenditure on items of infrastructure and Neighbourhood CIL (see section 5.12 of Appendix B).
- 5.25 For more detail on the R123 List, see section 3.2 of Appendix B and Appendix 4 (Draft R123 List).

What is the timetable for the Council's CIL?

- 5.26 The timetable to date, and the expected future timetable for the council's CIL is set out below (subject to change):
- Monday 18th July 2011 Cabinet Member Decision: Procurement of a CIL Viability Assessment
 - Friday 7th September to Friday 19th October 2012 (6 weeks) 1st stage public consultation (closed): Preliminary Draft Charging Schedule (PDCS)
 - **Friday 22nd August to Friday 3rd October 2014 (8 weeks)** 2nd stage public consultation: **Draft Charging Schedule (DCS)**
 - Autumn / Winter 2014 Submission of DCS for examination
 - Late 2014 Independent public examination
 - Early 2015 Publication & effect

5.27 It should be noted that the Mayor of London CIL Charging Schedule for Greater London came into effect on 1st April 2012 for which a charge of £50/m² is levied in the borough, although medical/health services and schools/colleges have a zero or nil charge (£0/m²). The Mayor's CIL is intended to raise £300m towards the cost of Crossrail. The council, as the statutory collecting authority, has been collecting the Mayor's CIL in the borough since it came into effect.

6. OPTIONS AND ANALYSIS OF OPTIONS

6.1 This report recommends that the Council continues with the introduction of CIL in the borough by way of publishing the DCS and associated evidence base documents for public consultation. Negotiation of S106s would continue for site-specific purposes, and for non-infrastructure purposes, but scaled back such that funding of infrastructure to generally support development in the borough as a whole would in future largely come from CIL. However, the council is not required to introduce CIL and it would continue to rely wholly on negotiating S106s to fund infrastructure. In considering this option, it should be noted that:

- From April 2015, pooling of S106 planning obligations towards infrastructure costs will be limited. It will not be possible to grant permission based on a planning obligation that contributes to an infrastructure project or type if there are already five or more contributing obligations entered into since April 2010.
- With CIL, all development that is liable will make a contribution to general infrastructure costs. This means that development will contribute through CIL even though a S106 may not have been justified or possible because of the pooling restrictions. In effect, CIL provides unlimited pooling and, in practice, many more developments will contribute to infrastructure costs than has been (or could be) possible under S106 alone.

6.2 There is a general expectation that when CIL is introduced, S106s should be scaled back to those matters that are directly related to a specific site; however, the government considers there is still a legitimate role for development-specific planning obligations (see section 3.2 of Appendix B).

6.3 Three options for the CIL DCS consultation are analysed below:

Option	When undertake CIL DCS consultation?	When could CIL come into effect at the earliest?	Impact on income for infrastructure
1	Summer 2014	Early 2015	Maximises potential income
2	Delay until Autumn / Winter 2014	Mid/Late 2015	Less potential income due to S106 pooling restrictions from April 2015 (see above) and delayed CIL income (average estimated £3m/year opportunity cost)
3	Do not implement CIL	Never	No CIL income Less potential S106 income due to pooling restrictions (see above)

6.4 In light of the above analysis, the preferred option is Option 1.

7. CONSULTATION

What comments have been made so far?

7.1 As set out in section 4 of this report, the CIL DCS represents the 2nd stage of public consultation following a 1st stage ('PDCS') which was undertaken in September – October 2012. Subsequently, the Council has had further discussions with some of those who made representations (including early engagement with local developers and the property industry). The principal areas of comment so far have been:

- CIL Charging Zones
- Affordable housing
- S106 costs
- Sample sites
- Development costs and values
- CIL charges and uses
- CIL policies

7.2 Further detail on the comments made so far is provided in section 6.2 of Appendix B and Appendices 8 and 9 (PDCS Reps & Council Responses).

Who is being consulted?

7.3 The proposed CIL DCS consultation will involve communities, neighbourhoods, local businesses, ward councillors, neighbouring boroughs, the Mayor of London, the London Enterprise Panel, local developers and the property industry, infrastructure providers and all bodies consulted at the 1st stage ('PDCS') including voluntary bodies (see section 6.3 of Appendix B).

What is being consulted on?

- 7.4 Representations are welcomed regarding the CIL DCS and associated evidence base documents (such representations will be submitted to an independent examiner as part of the independent public examination – see section 4 of this report) and the Neighbourhood CIL and the EqIA (such representations will be considered by the council). Further detail is provided in section 6.4 of Appendix B.
- 7.5 Further detail on the proposed CIL DCS consultation is provided in section 6 of Appendix B and Appendices 10 (Notice & Statement of the Representations Procedure) and 11 (Consultation Response Form).

8. EQUALITY IMPLICATIONS

- 8.1 An Equalities Impact Assessment (EqIA) was consulted on for the 1st stage public consultation ('PDCS') for which no comments were received.
- 8.2 An updated EqIA (Appendix 7) has been undertaken for this 2nd stage public consultation (DCS) for which further comments will be welcomed in advance of a final EqIA being produced for a final decision to bring the CIL into effect. The protected characteristics considered in the EqIA include:
- Age
 - Disability
 - Gender reassignment
 - Marriage and civil partnership
 - Pregnancy and maternity
 - Race
 - Religion/belief (including non-belief)
 - Sex
 - Sexual orientation
- 8.3 The charges in the proposed DCS are considered to have a generally neutral effect on the protected characteristics. When the potential investment in infrastructure to support development in the borough is considered, the charges in the proposed DCS are considered to have a generally positive effect on the protected characteristics.

9. LEGAL IMPLICATIONS

- 9.1 The proposed consultation is in accordance with the Planning Act 2008, the Localism Act 2011 and the CIL Regulations 2010 (as amended). The full legislative context is set out in sections 2.2, 3.1, 4.1 and 5.7 of Appendix B. These are considered in the main body of the report.
- 9.2 Implications verified by Alex Russell, Senior Solicitor (Planning, Highways and Licensing) 0208 753 2771.

10. FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1 As part of the CIL charge-setting evidence base and consultation process, the Council must provide an estimate of future CIL income to assess how this would address the identified infrastructure funding gap. It has been estimated that the proposed CIL charge rates could generate approximately £58.3m over the period 2014/15-2032. This is based on known future housing sites and future commercial floorspace quantum remaining to be developed (see Figure 3.11 of Appendix B).
- 10.2 The estimated costs of the CIL DCS consultation and examination (excluding existing staff cost budgets) are estimated at £30-40,000 which can be met by the existing Policy & Spatial Planning budget. This will not be claimed to revenue and will be refunded as future CIL receipts are collected which will commence from early 2015. Regulation 61 of the CIL Regulations 2010 (as amended) allows up to 5% of CIL receipts to cover the costs incurred by the council in establishing the CIL charging schedule.
- 10.3 Implications verified by Gary Hannaway, Head of Finance (Transport & Technical Services) 0208 753 6071.

11. RISK MANAGEMENT

- 11.1 The CIL is overseen by a CIL Project Board chaired by the Bi-Borough Executive Director, Transport & Technical Services. As part of the CIL Project Board, a Risk Log is maintained for the project. The key risk relating to the recommendations in this report relate to delay and financial implications, for which the options have been analysed in section 6 of this report.
- 11.2 Implications completed by Sid Jha, Policy Planner 0208 753 7032.

12. PROCUREMENT AND IT STRATEGY IMPLICATIONS

- 12.1 Whilst most of the work required to establish the CIL charging schedule has been undertaken 'in house', some work requires the use of external consultants relating to expert CIL and viability advice.
- 12.2 The Cabinet Member Decision on Monday 18th July 2011 'Procurement of a CIL Viability Assessment' allowed the appointment of Roger Tym & Partners, now operating under the name Peter Brett Associates, which produced the Viability Study (Appendix 5).
- 12.3 Work required during and in advance of the independent public examination will require some further use of the consultants, which will be procured through existing contracts, within the existing Policy & Spatial Planning budget and through the appropriate procurement procedures where necessary.

12.4 Implications verified by Alan Parry, Procurement Consultant 0208 753 2581.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	N/A	N/A	N/A

LIST OF APPENDICES:

Appendix A CIL DCS

Appendix B CIL DCS Consultation Document with Appendices:

Appendix 1 Glossary

Appendix 2 Infrastructure Categories & Relevant Strategies

Appendix 3 Infrastructure Schedule

Appendix 4 Draft R123 List

Appendix 5 Viability Study

Appendix 6 Neighbouring Authorities' Residential CIL Charge Rates

Appendix 7 Equalities Impact Assessment (EqIA)

Appendix 8 PDCS Reps & Council Responses

Appendix 9 PDCS Reps & Council Responses: Summary

Appendix 10 Notice & Statement of the Representations Procedure

Appendix 11 Consultation Response Form

Appendix 12 Ward Maps