

	<p align="center"><b>London Borough of Hammersmith &amp; Fulham</b></p> <p align="center"><b>FULL COUNCIL</b></p> <p align="center"><b>20 MAY 2015</b></p>
<p><b>APPROVAL OF HAMMERSMITH &amp; FULHAM COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE</b></p>	
<p><b>Report of the Cabinet Member for Economic Development and Regeneration</b></p>	
<p><b>Open Report</b></p>	
<p><b>Classification - For Decision</b></p>	
<p><b>Key Decision: NO</b></p>	
<p><b>Wards Affected: All</b></p>	
<p><b>Accountable Executive Director: Nigel Pallace</b></p>	
<p><b>Report Author:</b> Siddhartha Jha, Senior Planning Policy Officer</p>	<p><b>Contact Details:</b> Tel: 02087531466 E-mail: Siddhartha.jha@lbhf.gov.uk</p>

## 1. EXECUTIVE SUMMARY

- 1.1. The Community Infrastructure Levy ('CIL') is a discretionary levy that local authorities can charge on most new developments that create additional floor space.
- 1.2. Local authorities that choose to charge CIL must use the funds collected to help deliver physical infrastructure needed to support development in their areas.
- 1.3. The Council has decided to charge CIL in the borough. On 20 March 2015, following two stages of public consultation and a public examination, an independent examiner made a recommendation approving the Council's proposed CIL charging schedule subject to minor modifications being made. The CIL charging schedule details the CIL rates to be charged for different land uses in the borough.
- 1.4. Council approval of the CIL charging schedule is required under statute in order for the CIL charging schedule to take effect.

## **2. RECOMMENDATIONS**

That the Council has regard to the CIL Examiner's report (Appendix 1) on the examination of the borough's Draft CIL charging schedule and the recommendations and reasons therein, before approving:

- the adoption of the CIL charging schedule;<sup>1</sup> and
- the CIL charging schedule to take effect from 1 September 2015.

## **3. REASONS FOR DECISION**

Approval of the borough CIL charging schedule will enable the Council to:

- collect and apply CIL to contribute toward the provision, improvement, replacement, operation or maintenance of physical infrastructure needed to support development in the borough. It is expected that CIL will generate around £3million annually; and
- secure the optimum level of contributions from developers for infrastructure provision in the borough. This is especially relevant as the Community Infrastructure Levy Regulations 2010 now restrict the scope of S106 planning obligations, which used to be the principal means for local authorities to secure contributions from developers.

## **4. INTRODUCTION AND BACKGROUND**

- 4.1. In September 2012, the Preliminary Draft CIL Charging Schedule and associated supporting documents were published for public consultation for a six-week period.<sup>2</sup> The representations received informed the preparation of the Draft CIL Charging Schedule.<sup>3</sup>
- 4.2. In August 2014, following Cabinet approval, the Draft Charging Schedule was published for a final five-week public consultation<sup>4</sup> before being submitted for examination by an independent examiner.<sup>5</sup>
- 4.3. On 20 March 2015, the independent examiner approved the Council's proposed CIL charging schedule, subject to minor modifications.
- 4.4. Full Council approval of the CIL charging schedule is the final necessary step required in order for the CIL charging schedule to take effect.

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<sup>1</sup> Planning Act 2008 s213

<sup>2</sup> [http://www.lbhf.gov.uk/Images/12-09-07-%201%20PDCS%20FINAL\\_tcm21-175143.pdf](http://www.lbhf.gov.uk/Images/12-09-07-%201%20PDCS%20FINAL_tcm21-175143.pdf)

<sup>3</sup> [http://www.lbhf.gov.uk/Images/Appendix%208-Reps%20by%20Organisation\\_tcm21-190000.pdf](http://www.lbhf.gov.uk/Images/Appendix%208-Reps%20by%20Organisation_tcm21-190000.pdf)

<sup>4</sup> [http://www.lbhf.gov.uk/Images/30.7.2014%20DCS%20Consultation%20Document%20Appendix%20B%20new%20cover%20page\\_tcm21-189996.pdf](http://www.lbhf.gov.uk/Images/30.7.2014%20DCS%20Consultation%20Document%20Appendix%20B%20new%20cover%20page_tcm21-189996.pdf)

<sup>5</sup> [http://www.lbhf.gov.uk/Directory/Environment\\_and\\_Planning/Planning/Planning\\_policy/167822\\_Community\\_Infrastructure\\_Levy.asp](http://www.lbhf.gov.uk/Directory/Environment_and_Planning/Planning/Planning_policy/167822_Community_Infrastructure_Levy.asp)

*A. What is the Community Infrastructure Levy?*

- 4.5. The Community Infrastructure Levy (CIL) is a new, discretionary levy that local authorities (including the Mayor of London) can set and charge on most types of new development in their area that create additional floor space.
- 4.6. The purpose of CIL is broadly to support development by funding (wholly or in part) the provision, improvement, replacement, operation or maintenance of physical infrastructure across the borough in a way that does not threaten the economic viability of development in the area.
- 4.7. CIL is levied in pounds sterling (£) per square metre of new floor space that is created as part of new development. Certain types of development such as affordable housing and charitable developments are exempt from paying CIL.
- 4.8. Different CIL rates may be charged depending on the location and the use of the proposed development. The CIL rates are set out in a document called the CIL charging schedule.
- 4.9. The CIL charging schedule must be subjected to an independent public examination prior to adoption. At the examination, the proposed CIL rates are tested to ensure they strike the appropriate balance in providing for infrastructure whilst preserving the economic viability of development in the borough.
- 4.10. Once CIL is adopted landowners are ultimately liable to pay the levy. While CIL will be collected as a cash contribution in most instances, in some cases it may be more appropriate to transfer land to the charging authority as payment of the charge. In such cases, a number of conditions must be met. In particular, the land must be used to provide or facilitate the provision of infrastructure to support development in the area.
- 4.11. Local authorities must use the funds collected from the application of CIL to help provide physical infrastructure needed to support development in the borough.

*B. The relationship between CIL and other types of developer contributions*

- 4.12. CIL constitutes one of several ways in which contributions may be sought from developers. In addition to the CIL charge, local authorities will still be able to negotiate securing additional contributions from developers. These include:

- S106 Planning Obligations,<sup>6</sup> which although reduced in scope since 6 April 2015, can be used to provide physical infrastructure to address the impacts of individual developments in order to make these developments acceptable. S106 obligations can also be used to provide or fund affordable housing, and non-infrastructure contributions such as employment and training schemes; and
  - S278 Highway Agreements,<sup>7</sup> which can be used to secure contributions from developers for any highway works for local roads that are needed to make schemes acceptable.
- 4.13. When CIL takes effect, it can be used to provide certain physical infrastructure to support development across the borough, which is identified in a list called the 'regulation123 list'(the r123 list')(See **Appendix 3**).<sup>8</sup> The r123 list sets out the items of physical infrastructure that could potentially be funded by CIL, although it is important to note that the Council is free to use CIL to fund physical infrastructure items not on the r123 list and that the list does not imply any priority in infrastructure funding. The key restriction that the r123 list places is that S106 planning obligations cannot be sought for specific items of infrastructure identified in the r123 list. This avoids developers having to pay twice for the same infrastructure item, via both CIL and S106 planning obligations. S106 planning obligations can still be sought for items that are not included in the r123 list provided other statutory criteria are satisfied.<sup>9</sup> As such, the proposed r123 list has been drafted in a manner that will enable the Council to obtain CIL funding and negotiate S106 planning obligations for the provision of physical infrastructure needed to address the particular site-specific impacts of individual developments (subject to the statutory criteria being met).
- 4.14. S106 planning obligations can therefore continue to be sought to provide:
- affordable housing or funding for affordable housing;
  - physical infrastructure which is not listed in the regulation 123 list(principally items needed to address the site-specific impacts of individual development schemes); and
  - contributions for items that are not physical infrastructure such as employment and training contributions.

Additionally, as of 6 April 2015, further limits have come into effect on the extent to which contributions from S106 obligations can be pooled to provide particular items or types of physical infrastructure('the pooling limit'). From this date, S106 planning obligations cannot be used to provide a particular infrastructure project or type of infrastructure if five or more obligations to provide that same infrastructure project or that type of infrastructure have already been entered into in other S106 Agreements (including on any other site or planning permission) since April 2010.

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<sup>6</sup> Town and Country Planning Act (as amended) s106

<sup>7</sup> The Highways Act 1980 s278

<sup>8</sup> Appendix 3 of this Council report.

<sup>9</sup> The Community Infrastructure Regulations 2010 r122

S278 Highways agreements can continue to be made and are unaffected by the pooling limit.

CIL will not apply within the White City East and the Earls Court and West Kensington Opportunity Areas. The Council has determined that S106 obligations will apply in these areas instead of a CIL rate for the following reasons:

- The considerable scale of site specific and local infrastructure that is needed to make developments in these areas acceptable;
- There have already been substantial contributions (often to a pooled sum) from agreed S106 agreements;
- The Council considers that S106 obligations needed in this area can be provided in compliance with the pooling limit on planning obligations referred to above; and
- The CIL Viability Study prepared to support the proposed CIL rates in the borough established that that developments in these areas would not be sufficiently viable to pay both CIL and the substantial S106s needed to make development acceptable.

- 4.15. This means that when CIL takes effect most developments will pay the fixed charge borough CIL (as well as Mayoral CIL) with some developments also being required to make S106 contributions for certain items. However, S106 planning obligations will be generally reduced in scope.

## 5. PROPOSAL AND ISSUES

### The CIL Charging schedule

- 5.1. The public examination of the Council's proposed draft CIL charging schedule began in mid-November 2014 and concluded on 20 March 2015, with the publication of the independent Examiner's report (see **Appendix 1**).
- 5.2. In his report, the Examiner recommended the adoption of the CIL charging schedule, subject to the inclusion of four modifications. The modifications do not materially impact on the appropriateness of the Council's approach in CIL rate setting or on the expected overall CIL contribution.
- 5.3. The modifications are summarised below
1. Modify the CIL Rates table to place only those uses which have been subject to viability testing in the £80 psm band, and to specify that all other uses are within a Nil charge band;
  2. Modify the CIL Charge Zones Map to show the boundaries of the CIL zones more clearly;
  3. Modify the CIL Charge Zones Map to account for the designation of

the Old Oak and Park Royal Development Corporation('the MDC') which will mean that the borough CIL will no longer apply in the MDC area; and

4. Modify the CIL Charge Zones Map to show a revised CIL boundary to the White City East area

The first modification relating to the CIL Rates table ensures that only those uses subjected to viability testing which shows that the rate can be justified on viability grounds should be charged the £80 per square metre rate. All other uses that have not been subject to viability testing should be charged a 'nil' CIL rate. As the core uses likely to be developed in the borough have been identified and subjected to viability testing, any loss of potential CIL funds for other uses assigned the nil CIL rate will be negligible.

The second modification relating to the CIL Charge Zones Map which forms part of the CIL charging schedule was addressed by increasing the highlighting of the boundaries of the different CIL zones.

The third modification relating to the CIL Charge Zones Map takes account of the creation as of 1 April 2015 of the Old Oak and Park Royal MDC. The MDC incorporates the Old Oak area to the north of the borough along with parts of the London Boroughs of Ealing and Brent. As the MDC is now the planning authority for this area, the borough CIL will not be chargeable on any development that takes place within the MDC boundary.

The fourth modification relating to the revised CIL zone boundary of the White City East area is to take account of a planning scheme that has received outline planning permission, the bulk of which falls within the White City East area where a 'nil' CIL rate applies and where agreed S106 planning obligations will be collected instead. The modification therefore avoids the splitting of an approved development for CIL purposes.

- 5.4. The final CIL charging schedule which incorporates the Examiner's recommended modifications and requires Full Council's approval to take effect is provided in **Appendix 2**.
- 5.5. The regulation 123 list('r123 list'), referred to in paragraph 4.14 above is provided in **Appendix 3**. The approval of this list is a matter for Cabinet and not for Council. The r123 list details the infrastructure projects or types of infrastructure that the Council intends can be funded, wholly or partly by CIL. Importantly, as stated above, in order to avoid developers paying twice for the same infrastructure, S106 planning obligations cannot be sought for items that are listed in the r123 list as these items will be funded by CIL.

## **6. OPTIONS AND ANALYSIS OF OPTIONS**

6.1 There are four possible options regarding the approval of the CIL charging schedule:

1. Approve CIL to take effect from 1 June 2015
2. Approve CIL to take effect from 1 September 2015;
3. Delay approving CIL; or
4. Not approving CIL.

6.2 Approving CIL will maximise the amount of funds available to the Council to contribute towards the provision of essential physical infrastructure by enabling the collection of both CIL and s106 planning obligations needed to address the site-specific impacts of proposed development. It is expected that CIL contributions will generate around £ 3 million annually.

6.3 The CIL charging schedule could be approved to take effect from as early as 1 June 2015. However, pursuing this option will mean that submitted planning applications under consideration which have not accounted for CIL liability but which are liable to pay CIL will need to do so if planning permission is obtained after CIL takes effect. Further, some submitted schemes including major schemes under consideration are already at an advanced stage of assessment including in relation to S106 negotiations. Imposing CIL on these schemes is likely to result in lost time and resources for both the Council and developers who will have to reassess and/or modify the details of these schemes, causing substantial delays in their determination. This option will also not allow sufficient time for the Council to put the necessary planning, finance, ICT and other administrative procedures in place for charging and collecting the borough CIL. Additionally, in taking the above into account, officers have stated on the Council website and when responding to queries from developers that CIL is expected to take effect in Autumn 2015.

6.4 The CIL charge could also be approved to take effect from 1 September 2015. The advantage of this date is that it would allow sufficient time for the Council to determine submitted planning schemes and major schemes that are at an advanced stage of assessment including any associated S106 negotiations. This date will also allow the Council sufficient time to put the necessary planning, finance, ICT and other administrative procedures in place for charging and collecting the borough CIL.

6.5 If CIL is delayed for a prolonged period or not adopted, it will not be possible to secure the equivalent of around £3 million annually via S106 planning obligations, as planning obligations are only to be used to mitigate the site specific impacts of development. Unlike CIL, S106 obligations cannot be used to provide general, strategic infrastructure that is needed to support development in the borough. Additional statutory restrictions now also apply on S106 planning obligations whereby it is no longer possible to grant permission based on a planning obligation that

contributes to an infrastructure project or type if five or more contributing obligations have been entered into since April 2010.

- 6.6 Given the above, Option 2, namely approving CIL with it taking effect on 1 September 2015 remains the preferred option that will best contribute to the provision of the necessary infrastructure to support development in the borough.

## 7. CONSULTATION

- 7.1 The draft CIL charging schedule including the draft r123 list was subjected to two statutorily prescribed stages of public consultation as follows:

Consultation dates	Stage of development of CIL
September 2012 – October 2012	1 <sup>st</sup> stage public consultation on the Preliminary Draft Charging Schedule (PDCS)
August 2014 - October 2014	2 <sup>nd</sup> stage public consultation: Draft Charging Schedule (DCS)

- 7.2 The CIL consultations received comments from a wide range of people including, the local community, businesses, neighbouring boroughs, the Mayor of London, developers and the property industry and infrastructure providers. Following consideration of the representations received during both stages of public consultation, appropriate amendments were made to the draft CIL charging schedule.<sup>10</sup>

## 8. EQUALITY IMPLICATIONS

- 8.1 An Equalities Impact Assessment (EqIA) was prepared and consulted on for both the first and second stages of public consultation (the 'PDCS' and the 'DCS' stages of CIL). No comments were received on the EqIA during either of these stages. A final version of the EqIA has been prepared for this stage of the CIL approval process(see **Appendix 4**)

- 8.2 The protected characteristics considered in the EqIA include:

- Age
- Disability
- Gender reassignment

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<sup>10</sup> [http://www.lbhf.gov.uk/Images/Appendix%208-Reps%20by%20Organisation\\_tcm21-190000.pdf](http://www.lbhf.gov.uk/Images/Appendix%208-Reps%20by%20Organisation_tcm21-190000.pdf) (CIL Reg 15 Preliminary Draft Charging Schedule representations) ; [http://www.lbhf.gov.uk/Images/19.01.15%20Council%20response%20to%20representations%20on%20CIL%20Draft%20Charging%20Schedule%20v2\\_tcm21-193212.pdf](http://www.lbhf.gov.uk/Images/19.01.15%20Council%20response%20to%20representations%20on%20CIL%20Draft%20Charging%20Schedule%20v2_tcm21-193212.pdf) (CIL Reg 16 Draft Charging Schedule representations)



- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion/belief (including non-belief)
- Sex
- Sexual orientation

8.3 The direct effect of the charges in the CIL charging schedule are considered to have a generally neutral effect on the protected characteristics. However, the potential investment in physical infrastructure to support development in the borough is considered to have a generally positive effect on the protected characteristics.

## 9. LEGAL IMPLICATIONS

9.1 The Examiner's Report (Appendix 1 paragraph 39) concludes that, subject to the modifications set out above in this report, the CIL charging schedule, satisfies the requirements of Section 212 of the Planning Act 2008 and meets the criteria for viability in the Community Infrastructure Levy Regulations 2010.

9.2 Section 213 of the Planning Act 2008 provides that the Council may approve a CIL charging schedule only if it has had regard to the Examiner's recommendations and his reasons for them.

### State Aid

9.3 In light of the government guidance on state aid and relevant legislation, it is considered that the Charging Schedule does not give rise to unlawful state aid.

9.4 State aid is a concept derived from European Law ('EU Law'). In very broad terms EU Law prohibits a European Union member state from providing support to 'undertakings' (i.e. persons engaged in economic activity) which distorts or threatens to distort competition, affects trade between member states of the European Union and which favours certain undertakings or the production of certain goods. In setting differential rates, including zero rates, the Council must not do so 'in such a way that they constitute a notifiable state aid under European Commission regulations.'

The Council's Charging Schedule only sets 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<sup>11</sup> and relevant legislation, the Council does not consider that these proposals give rise to unlawful state aid.

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<sup>11</sup> Adapted from Department for Business, Innovation & Skills (November 2010) State Aid Assessment and (November 2013) State Aid: The Basics

*Implications verified by LeVerne Parker, Chief Solicitor and Head of Regeneration Law, Legal Services, 020 7361 2180*

## **10. FINANCIAL AND RESOURCES IMPLICATIONS**

- 10.1. Funds collected from the application of CIL will be used to contribute toward the provision, improvement, replacement, operation or maintenance of physical infrastructure needed to support development in the borough. It is estimated that CIL will generate around £3 million annually.

It should be noted that under s.61 of the community Infrastructure Levy Regulations 2010, the Council can apply CIL receipts to administrative expenses incurred before the Charging Schedule is published, provided that total administrative costs do not exceed 4% of CIL collected in the first 3 years. Therefore CIL-related administrative expenses is expected to be funded retrospectively through future CIL receipts.

*Implications verified by Gary Hannaway, Head of Finance (Transport & Technical Services) 0208 753 6071*

## **11. IMPLICATIONS FOR BUSINESS**

- 11.1 The Localism Bill CIL Impact Assessment considers that CIL will provide a number of benefits to businesses, developers and landowners, including:
- Simplicity and reducing risk and providing upfront certainty about liability;
  - Speeding up the development process; and
  - Ensuring that most developments contribute to the costs of providing infrastructure needed to support growth.

Both the CIL Regulations Explanatory Memorandum and the Localism Bill CIL Impact Assessment emphasise the provisions in the CIL Regulations which are partly intended to help small businesses, namely:

- The 100sqm threshold under which no CIL liability occurs to ensure small developments do not pay CIL;
- The £50 CIL liability threshold under which CIL liability is deemed to be zero, to avoid administrative costs associated with paying small amounts of CIL; and
- The ability for charging authorities to introduce discretionary instalments policies to help with any cash flow issues.

The Council may decide at a later date to introduce a policy to allow instalments although that is not currently part of this particular decision-making process.

## **12. RISK MANAGEMENT**

- 12.1 The key risk relating to the recommendations in this report relate to delay or refusal to approve CIL and the financial implications arising for which the options have been analysed in section 6 of this report.
- 12.2 *Implications completed by Siddhartha Jha, Senior Policy Planner 0208 753 1466*
- 12.3 *(Details of actions taken to minimise the risks associated with the Recommendations)*

## **13. PROCUREMENT AND IT STRATEGY IMPLICATIONS**

- 13.1 There are no procurement related matters contained in the report

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

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

<b>No.</b>	<b>Description of Background Papers</b>	<b>Name/Ext of holder of file/copy</b>	<b>Department/ Location</b>
1.	NA	NA	NA

### **LIST OF APPENDICES:**

APPENDIX 1 – CIL Examiner’s Report dated 20 March 2015

APPENDIX 2 - CIL Charging Schedule

APPENDIX 3 – Regulation 123 list

APPENDIX 4 - Equalities Impact Assessment