

MUNICIPAL YEAR 2015/2016 REPORT NO. 198A

MEETING TITLE AND DATE:

Cabinet: 15th March 2016
Council: 23rd March 2016

REPORT OF:

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Agenda – Part: 1	Item: 8
Subject: Adoption of Enfield's Community Infrastructure Levy Charging Schedule	
Wards: All Key Decision No: 4247	
Cabinet Member consulted: Cllr Alan Sitkin – Cabinet Member for Economic Regeneration and Business	

1. EXECUTIVE SUMMARY

- 1.1 Cabinet recommended approval of the Community Infrastructure Levy (CIL) draft Charging Schedule to the 8th October 2014 meeting of Council, and to proceed to its examination and implementation. This report seeks Cabinet's endorsement of the Adoption of the Council's CIL Charging Schedule and recommendation to Council that it is formally adopted and operational as of 1st April 2016.
- 1.2 The CIL Charging Schedule will be used to raise contributions from developers to fund essential infrastructure needed to support planned growth in the borough such as transport improvements.
- 1.3 The Council submitted the CIL Draft Charging Schedule to the Secretary of State for the Examination in Public on 16th July 2015. Inspector Terrence Kemmann-Lane was appointed by the Secretary of State to conduct the examination. A public hearing session took place on 4th November 2015.
- 1.4 The Council received the Inspector's Report into the soundness and legal compliance of Enfield's CIL Draft Charging Schedule on the 18th December 2015. The Inspector concluded the Council's CIL 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 demonstrate that the levy is set at a level that will not put future development in the borough at risk.

2. RECOMMENDATIONS

Subject to final approval and recommendation by Cabinet on 15th March 2016, Council is asked to approve:

- 2.1 The adoption of the Enfield Community Infrastructure Levy (CIL) Charging Schedule as recommended by the Inspector (**Annex 1**), to take effect on the 1st April 2016, in accordance with Section 213 of the Planning Act 2008 and Regulation 25 of the CIL Regulations.
- 2.2 The adoption of the Regulation 123 List (**Annex 2**) is to take effect on the 1st April 2016, in accordance with Section 216 of the Planning Act 2008, Regulation 123(4) of the CIL Regulations and the relevant sections of the National Planning Practice Guidance (NPPG) for CIL.
- 2.3 The adoption of the Instalment Policy (**Annex 3**), to take effect on 1st April 2016 in accordance with Regulation 69B of the CIL Regulations.

3. BACKGROUND

- 3.1 The CIL was introduced by the previous government as the recommended method for new development to contribute to the funding of infrastructure to serve the residents and occupiers of both new and existing development. It came into force in April 2010 through the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations).
- 3.2 The Government decided CIL, a tariff-based approach with charging rates determined locally by locally elected representatives based on viability, is fairer, faster, and provides greater certainty and transparency than the current system of seeking planning contributions through s.106 of the Town and Country Planning Act 1990.
- 3.3 At present, s.106 is generally agreed through negotiation on a development scheme by development scheme basis (with the Council's Revised Draft s.106 Supplementary Planning Guidance March 2015, used as a basis for negotiation. This document is currently out for consultation until Tuesday 23rd February 2016). CIL is designed to provide developers and communities with much more certainty 'up front' about how much funding will be expected through the development management process.
- 3.4 The use of CIL will ensure that the Council receives increased funding to help deliver major infrastructure, as CIL will apply to the majority of developments rather than just major developments which s.106 generally apply to.

- 3.5 Since April 2015, local authorities do not have the ability to collect the full amount of possible funding from new development. s.106 still exists, but with a much narrower focus, as a mechanism to deliver affordable housing and to mitigate the impacts of development within the immediate area of a development. CIL, on the other hand, will assist in the delivery of major strategic infrastructure across the borough.
- 3.6 The Mayor of London currently applies a 'Mayoral CIL' across London borough's requiring new development to contribute to the provision of Crossrail. The Council currently collects this on behalf of the Mayor of London and the rate that applies to Enfield is £20 per sq. m
- 3.7 Council officers have developed for Enfield a CIL 'Charging Schedule' (setting out the rates that will be applied to new development in the borough). As a statutory planning document the CIL charging schedule sits alongside the Council's Local Plan and will be used as the main tool to raise contributions from development occurring in the Borough.
- 3.8 The Enfield CIL Charging Schedule has been developed using the rates set out in the Draft Charging Schedules. The Draft Charging Schedule and the earlier Preliminary Draft Charging Schedule have previously been presented to Cabinet in May and September 2014.
- 3.9 The CIL will enable the Council to continue to address its manifesto commitments through infrastructure to support our growing communities, by listing the intended CIL spending items in the Regulation 123 List which is also included in this report, and being put forward for adoption, along with an instalments policy required to assist in the operation of the Enfield CIL.
- 3.10 The adoption of the CIL Charging Schedule will ensure that the Council continues to deliver and manage the demands of development on infrastructure and support growth and regeneration in the borough.

Enfield CIL Inspector's Report

- 3.11 The Enfield CIL Examination took place on 4th November 2015 in the Civic Centre; Terence Kemmann-Lane was the appointed Inspector. Three representations were initially received but subsequently withdrawn prior to the hearing.
- 3.12 The Inspector issued his report (**Annex 4**) to the Council on 18th December 2015. The report concluded that the Council's Community Infrastructure Levy Draft Charging Schedule provides an appropriate basis for the collection of the levy in the borough and the Council has sufficient evidence to support the schedule and can demonstrate the levy is set at a level that will not put the overall development of the borough at risk.

3.13 There were two modifications to the Draft Charging Schedule recommended by the Inspector including:

- The production of a Residential Charging Zones map with National Grid lines and reference numbers; and
- Making changes to remove unnecessary text and making the document concise.

Enfield CIL Adoption

3.14 If agreed and adopted by Cabinet and Council it is proposed that the Enfield CIL Schedule as modified by the Inspector and as it appears in **Annex 1** is implemented from 1st April 2016. This would then be commensurate with the start of the new financial year.

Regulation 123 List

3.15 Under Regulation 123 of the CIL Regulations, the Council is required to publish a list of infrastructure that it intends to fund, or may fund, through the levy. The purpose of the list is to differentiate between those types of infrastructure that the authority intends to fund through CIL and those areas where a s.106 planning obligation or Section 278 highway agreement will be sought to make the development acceptable in planning terms. This will ensure there is no 'double charging'.

3.16 The Draft Regulation 123 List in **Annex 2**, proposes that only rail improvements (Angel Road Station) and the Causeway in Meridian Water will be presently funded from CIL. The Council's specific approach to the inclusion of items on the draft regulation 123 List rather than listing a type of infrastructure such as 'health' or 'education' will provide flexibility to continue to seek contributions through s.106 agreements, subject to the legal tests set out in Regulation 122 and the pooling restrictions in Regulation 123 of the CIL Regulations (as amended).

3.17 s.106 will therefore continue to be sought for items of infrastructure such as 'education' subject to viability and legal considerations. The Council has a comprehensive process in place for the management of s.106 contributions and where necessary, s.106 contributions will continue to be negotiated with planning applicants in line with the legal tests set out in Regulation 122 based on items of infrastructure identified in the Council's Infrastructure Delivery Plan where:

- the infrastructure / development mitigation needs are proven;
- the other tests are met, as above;
- the pooling restriction has not yet been triggered; and
- subject to site-specific viability considerations where necessary.

- 3.18 Once CIL is implemented, the Regulation 123 List must be available to view on the Council's website. It can be reviewed and updated regularly, as funding streams and priorities change, subject to appropriate local consultation. Monitoring of CIL income and expenditure is required and results have to be published on an annual basis.

Instalment Policy

- 3.19 An Instalment Policy (**Annex 3**) will allow the payment of CIL in instalments on large developments and is consistent with the policy adopted by the Mayor of London in relation to the Mayoral CIL.

Enfield CIL Implementation

- 3.20 If adopted the Enfield CIL Charging Schedule will be implemented from 1st April 2016; however, it is likely to take between 12-18 months of collection before the Council begins to see significant levels of income being received. This is due to CIL payments becoming payable 60 days after the commencement of development and few developers start on site immediately upon securing planning permission.
- 3.21 As the CIL rates were developed through a cycle of growth and recovery from a period of economic uncertainty, an initial review of the charging schedule will be undertaken as required through two years after adoption, and will be reviewed thereon as required subject to conditions around Local Plan review, economic viability (rising land and property values), programming of Meridian Water project delivery and need for infrastructure over a wider area of the borough.
- 3.22 There are stringent auditing and operational requirements for s.106 and CIL. In accordance with Regulation 62 an annual report of CIL receipt and spend is required, guidance also recommends regular updates being made available on the Council website with detail of s.106 spend to ensure there is no double allocation on projects and the spend is as transparent as possible. The Council's revised s.106 Supplementary Planning Document (SPD) has been drafted to make it clear no double counting will exist between s.106 and CIL moving forward.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The intention to prepare a CIL Charging Schedule is set out in the Council's Local Development Scheme and the adopted Core Strategy. To solely continue with s.106 Agreements as the main source of developer contribution after the imposition of s.106 pooling restrictions from April 2015, has significantly reduce the revenues that can be raised to help deliver the growth and regeneration objectives proposed in the borough, as contained within the Local Plan.

5. REASONS FOR RECOMMENDATIONS

- 5.1 Significant investment in infrastructure is needed to support the regeneration and growth planned as set out in the Council's Local Plan. With the introduction of restrictions on the pooling of contributions collected via s.106 agreements in April 2015, CIL will become the main source of securing developer contributions for significant infrastructure improvements. Adoption of the CIL Charging Schedule is crucial to advancing CIL and maintaining developer contributions.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 The proposed charging rates have been informed by an independent assessment of development viability undertaken by specialist consultants Dixon Searle Partnership. The recommended rates differ according to land use, and in the case of residential development, also by location. The charging rates in Tables 1 and 2 of the Charging Schedule exclude the Mayor's CIL charge and only related to Council CIL.

- 6.1.2 Annex 2 includes a draft 123 list of the type of infrastructure and projects that the Council intends will be partly or wholly funded through the Community Infrastructure Levy. The estimated amount of CIL the Council we receive is dependent on the planning applications submitted and these can vary for a number of factors such as the economic climate.

- 6.1.3 Under the CIL Regulations the role of s.106 agreements will be scaled back to those matters that directly relate to a specific site and are not set out on the infrastructure list, this will apply on the introduction of CIL or by April 2016. s.106 pooling restrictions will also impact on the level of developer contributions that the Council receives so the revenue raised from s.106 will be significantly reduced from April 2016. CIL will eventually replace most s.106 agreements in funding infrastructure associated with new development and CIL will be the main mechanism for collecting funds to support new infrastructure.

6.2 Legal Implications

- 6.2.1 The legislative framework for CIL is contained in Sections 205-225 of the Planning Act 2008, following which the Secretary of State published the CIL Regulations 2010 (as amended), which came in to force 6th April 2010.

- 6.2.2 Regulation 13(1) authorises the Council (being a 'charging authority') to set differential rates (a) for different zones in which development would be situated; (b) by reference to different intended uses of development.
- 6.2.3 Regulation 13(2) provides that a charging authority may set supplementary charges, nil rates, increased rates or reductions.
- 6.2.4 The Charging Schedule must be approved by a resolution of full Council and publicised in the local newspapers and notified to relevant persons in accordance with Regulation 25.
- 6.2.5 Regulations 122 and 123 place limitations on the use of s.106 contributions after the CIL charging schedule is adopted or in any event after April 2016 as set out in the body of the report.
- 6.2.6 The recommendations contained in this report are in accordance with the Council's powers and duties.

6.3 Property Implications

- 6.3.1 Property Services was consulted on the originally drafted geographical boundaries for the proposed charging bands, and agreed that the suggested boundaries reflect three broad categories of property value across the borough.
- 6.3.2 CIL enhances transparency in viability assessment and in the provision of future infrastructure requirements, and is welcomed. The inflationary effect of CIL charges on property transactions is potentially cancelled out, as it is a substitute for an existing instrument. Whilst it will be a factor in the location for new development, it will be one of many other factors and the CIL rates are not expected to distort market activity.
- 6.3.3 As stated above, the revised Government Guidance on CIL, issued in February 2014, recommends a sharper focus on strategic sites on which the local plan relies, where the impact of the levy is likely to be most significant. As a result of further viability work undertaken by consultants, it is apparent that residential development proposals within the Meridian Water Masterplan (MWM) area are constrained by the significant site preparation and infrastructure costs, and the intention to provide affordable housing at levels compliant with the Core Strategy.
- 6.3.4 Consequently, the intention to include the whole of the MWM area as a nil band for CIL contributions is justified in terms of viability, and will act as a stimulus to help bring forward development. However, it should be recognised that many of the infrastructure costs and other expenditure for Meridian Water set out in the Regulation 123 list, will need to be borne by development elsewhere in the borough through the wider application of CIL payments. The Mayor's CIL of £20 per square metre will still be paid on new market housing within the Meridian Water Masterplan area.

- 6.3.5 Government guidance makes it clear that planning obligations (under s.106) cannot be sought for infrastructure intended to be funded by the levy, and that closer scrutiny to such obligations will apply to ensure that they are fairly and directly related to the development proposed. Similar scrutiny will apply to Section 278 agreements, dealing with highway improvements, to ensure there is no 'double counting'.
- 6.3.6 The decision not to impose CIL on industrial and office development is welcomed, given the importance of business premises to the local economy. The absence of CIL also reflects the relatively limited s.106 contributions paid by new business development through current arrangements.
- 6.3.7 The non-residential CIL for retail (A1) and other uses appropriate to a shopping centre will only apply to new development in excess of 100 square metres. In view of the contraction of retail uses generally, it is anticipated that this will not yield substantial CIL payments for the foreseeable future. The retail units that are Council owned, are generally small units, proposals generally relate to changes of use (not liable for CIL) rather than re-development and expansion. This is a pattern that is reflected in respect of small shop units throughout the Borough. Government amendments to the Permitted Development regulations in April 2014 enable more flexible changes of use without the need for planning permission.

7. KEY RISKS

- 7.1.1 **Risk:** Under the CIL Regulations the pooling of s.106 developer contributions have been restricted to five developments on the establishment of CIL or by April 2015 (whichever is earlier). Contributions for infrastructure currently collected as part of s.106 agreements will be significantly reduced under this regime.

Mitigation: Adoption of the CIL charging schedule prior is therefore critical to the pooling of funds to help deliver the infrastructure required to support the growth proposed in the borough as detailed in the Local Plan.

- 7.1.2 **Risk:** In setting CIL charging rates there is a need to strike an appropriate balance between contributing to local infrastructure funding needs and development viability.

Mitigation: The wider costs of development, ongoing uncertain market conditions, affordable housing implications and variable land value levels require that very careful consideration is given to the setting of the CIL charging levels. The Council has engaged expert viability consultants to advise on the appropriate CIL charging rates for the borough.

7.1.3 **Risk:** Although under the CIL regulations affordable housing is not liable for CIL charging, if CIL rates were to be set too high there would be a danger that in order for schemes to remain economically viable the affordable housing component will be squeezed and the number of affordable homes delivered could fall.

Mitigation: The proposed CIL rates have been set to take into account the need for development to provide affordable housing to comply with the adopted Core Strategy and Development Management Document. This will ensure that the affordable housing target is met, reducing the risk to the delivery of affordable housing in the borough.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

8.1.1 CIL as a charging regime will be fairer to more in the borough. The CIL Charging Schedule will ensure fairness for all as from the outset a person applying for planning permission for a CIL liable development will know how much that they are expected to pay in developer contributions.

8.2 Growth and Sustainability

8.2.1 CIL will be instrumental in achieving sustainable growth in the borough through pooling developer contributions and spending monies accrued on the borough's regeneration infrastructure priorities.

8.3 Strong Communities

8.3.1 The CIL Amendment Regulations (2013) propose that a proportion of CIL monies be passed to neighbourhoods this is set at 25% uncapped of CIL receipts in an area with a Neighbourhood Plan, and 15% capped at £100 per existing dwelling in an area where there is no Neighbourhood Plan in place. For local authorities without Parish Councils such as Enfield, the spending of this proportion will be in consultation with the community, aiding the development of stronger communities. Communities concerned will not have direct control of the money.

9. EQUALITIES IMPACT IMPLICATIONS

9.1 An initial Equalities Impact Assessment (EQIA) was carried out for the Preliminary Draft CIL Charging Schedule to ensure that equal opportunities were promoted in all aspects of consultation and production of the schedule. Representations received to the Preliminary Draft Charging Schedule were used to inform the Draft Charging Schedule that was submitted for independent examination.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

- 10.1 The CIL Charging Schedule will provide clear guidance on the levy to be paid on CIL liable developments on the implementation of planning permission. Preparation of the CIL and its collection will help to deliver the Council's Infrastructure Delivery Plan and contribute towards the achievement of the following priorities in the Council's Business Plan (2012 – 2015): Serve the whole borough fairly and tackle inequality, a clean, green and sustainable environment, bring growth, jobs and opportunity to the borough, listen to the needs of local people and be open and accountable, encourage active citizenship and work in partnership with others to ensure Enfield is a safe and healthy place to live.

11. PUBLIC HEALTH IMPLICATIONS

- 11.1 The Infrastructure Delivery Plan Review 2014 sets out the local commissioning priorities that are proposed to be delivered in partnership with the Council and NHS to support growth within the borough up to 2026; this includes new health care facilities at Meridian Water. It is important that CIL ensures developments mitigate for any adverse impacts on health infrastructure in the borough.

Background Papers

None