

Report for: Cabinet

Item number:

Title: Community Infrastructure Levy Governance/ Planning Obligations SPD

Report

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Lead Officer: Matthew Paterson, Head of Strategic Planning, Transport and Infrastructure

Ward(s) affected: All

Report for Key/

Non Key Decision: Key

1 Describe the issue under consideration

- 1.1. Consultation on the Preliminary Draft Charging Schedule (PDCS) was held from 10th March to 21st May 2017. This contained an update to the Council's adopted (2014) CIL rate in the south-eastern charging zone from £15m² to £130m² for residential development, excluding Mayoral CIL. The rest of the Charging Schedule remained unchanged.
- 1.2. The consultation also invited comments on a revised Regulation 123 List (i.e. the list of infrastructure types the Council intends to spend its CIL on), and the Council's proposed governance arrangements for spending both the neighbourhood and strategic portions of CIL.
- 1.3. The purpose of this report is to provide a summary of the comments received to consultation, highlighting a couple of particular issues raised. It outlines how we intend to address these in progressing the various elements of the partial CIL review, and seeks agreement to the adoption of the CIL governance arrangements and a new revised Regulation 123 List.

2 Cabinet member introduction

- 2.1. We recently adopted our new Local Plan for Haringey that will enable the determination of planning applications for new development proposals that will meet our identified needs for housing, including affordable housing, employment, community facilities, and infrastructure.
- 2.2. It is therefore essential that we update our guidance on planning obligations and introduce governance arrangements for the spending of CIL, alongside a revised Regulation 123 list, to ensure we secure the necessary funding and commitments from new development and use our CIL receipts to deliver the

infrastructure and community benefits needed to realise our ambitions for the borough, its residents, businesses and environment.

- 2.3 This report recommends postponing the raise in rate of CIL in Tottenham because of the impact on outline applications that are already in the pipeline and so that we can retain the negotiated high levels of affordable housing in these schemes.

3 Recommendations

- 3.1 That Cabinet note the findings of the PDCS consultation (at Appendix A).
- 3.2 That Cabinet agree to defer consultation on the Draft Charging Schedule (DCS), until such time as its publication will not put known development within Tottenham Hale at viability risk.
- 3.3 That Cabinet to adopt the revised Regulation 123 List (Para 5.16) and the governance arrangements for the spending both the strategic (Para 5.13) and neighbourhood (Para 5.14 – 5.15) portions of CIL for inclusion in the existing CIL Charging Schedule (at Appendix B).
- 3.4 That Cabinet approve publication of the Draft Revised Planning Obligations Supplementary Planning Document (provided at Appendix C) for public consultation in accordance with the Haringey Statement of Community Involvement.

4 Reasons for decision

- 4.1 As the Council has been collecting CIL since November 2014, it is necessary that it put in place clear governance arrangements for spending both the neighbourhood and strategic portions of CIL monies.
- 4.2 Having been subject to consultation, the revised Regulation 123 List will help provide clarity about the types of infrastructure the Council will consider eligible for funding through the strategic portion of CIL.
- 3.3 The revised Planning Obligations Supplementary Planning Document (SPD) will give greater clarity to the Council's priorities for the collection of Section 106 planning contributions.

5 Alternative options considered

- 5.1 The Council has had regard to legal advice in regard to whether the proposed PDCS was likely to be found sound at Examination in Public, and whether it would have a significant adverse impact on emerging developments in the Tottenham Hale area. The conclusion of this is that it could indeed have a prejudicial impact on development with existing outline consents, and consequentially the CIL charging schedule is recommended to be delayed. More details on the legal opinion are included at Paragraphs 5.6 – 5.10.

6 Background information

Responses to consultation on the Preliminary Draft Charging Schedule

- 6.1 We received 15 written representations to the consultation. These were predominantly from the development industry and statutory agencies. The detailed comments, and the Council's proposed response to these, are set out in the Consultation Statement attached at Appendix A.
- 6.2 In summary, with respect to the statutory agencies, most wrote to confirm they had no objection (GLA, Natural England, Canals and Rivers Trust, and Highways England), while others sought further inclusions in the Regulation 123 List for infrastructure items related to their area of interest (e.g. Sport England – indoor and outdoor sports facilities; the Environment Agency – flood defences and green & blue infrastructure). TfL, who manage the Mayoral CIL, requested the Mayoral CIL rate be shown with indexation added, sought amendments to provide further clarity on the application of exemptions and the treatment of s278 works, and offered suggestions in respect of the governance arrangement – ensuring these are not overly administratively complex.
- 6.3 A Harringay Councillor queried why the CIL rate was lower in the north of Tottenham, when compared to the south of Tottenham. They cited rising land values in the area, and a recommendation in Section 1.14 of BNP's viability evidence that the rate for student housing could be charged at the same rate for the two charging areas. This ignores the evidence presented in Paragraph 1.12 of the same report which states that for residential use the north Tottenham area cannot support an increased rate. As residential will be the principle use out of the two, it is considered simpler to keep the student housing rate the same as the residential rate in all charging zones.
- 6.4 With respect to the development industry representations, these objected to the increase in the CIL rate for the south-eastern charging zone, with a number querying the viability evidence prepared by BNP Paribas and others raising concern with the effect the higher charge would have on development in the borough's growth area of Tottenham Hale, including the delivery of affordable housing.
- 6.5 Officers are content that the evidence base is robust, is based on the delivery of policy compliant development, and justifies the increase in the CIL rate. However, one developer did raise an issue that was not fully considered through the Scrutiny Panel review that initiated the CIL review. This is the fact that, for outline applications the Council has already granted, the new CIL rate will be applicable to the subsequent reserved matters applications. In these circumstances, the LPA has determined the application based upon a balance of obligations and viability predicated on a CIL liability rate of £15m². The imposition of a change in CIL to £130m² would have a significant detrimental impact on delivering these schemes and the levels of affordable housing negotiated. This would impact on 3 sites that have outline planning permission or will shortly have outline planning permission in Tottenham Hale.

Legal position

- 5.6 Normally, planning permission “first permits development” on the day that the planning permission is granted for that development (i.e. the date of the Decision Notice) – see regulation 8(2) of the CIL Regulations 2010 (as amended) (‘CIL Regulations’). The CIL Regulations were amended in 2014 to make different provision for phased development, such that: -
- “a. In the case of an outline planning permission, such as at Hale Wharf, planning permission “first permits” a phase of the development (regs. 8(2) and 8(3A)(a)) -“(i) on the day of final approval of the last reserved matter associated with that phase; or(ii) if earlier, and if agreed in writing by the collecting authority before commencement of any development under that permission, on the day final approval is given under any pre-commencement condition associated with that phase.”*
- 5.7 The reference to “final” in the last sub-para is slightly misleading, as the main point is that the Council can agree that the liability for CIL is calculated on the day that approval is given under any of the pre-commencement conditions.
- 5.8 In practice this means that the CIL rate can be fixed at the point when the first pre-commencement condition on the first reserved matters application in each outline application is approved. We estimate that for the sites affected in Tottenham Hale that the discharges of these pre-commencement conditions will have taken place by January 2019.
- 5.9 The National Planning Policy Guidance sets out the following: “When reviewing their charging schedule, charging authorities should take account of the impact of revised levy rates on approved phased developments, as well as future planned development.” These applications were not taken account of in the viability work that was carried out to support the increased rate.
- 5.10 For sites which have already been granted outline planning consent, it is considered that the increasing of the CIL rate would potentially be found to undermine the levels of affordable housing currently agreed on these sites in the Housing Zone where affordable housing is a priority. As such it is recommended that the Council delay the revision of the CIL schedule until a projected implementation date of January 2019 to allow these sites to be implemented with the current levels of affordable housing.

Changes to modelled CIL Revenue

- 6.11 Due to the delay, there are three sites which will now be anticipated to be charged £15/m² rather than £130/m². This would mean an overall reduction in the net financial benefit of the CIL uplift from £16.6m to £12.6m. these sites are highlighted in bold & italics below:

Site Name	CIL @ 15	CIL @ 130	Year
Bruce Grove Station (BG2)	£2,916.00	£25,272.00	2019
Tottenham Chances & Nicholson Court (TG2)	£4,074.32	£35,310.78	2019
Bruce Grove Snooker Hall & Banqueting Suite (BG3)	£4,664.84	£40,428.59	2021

Tottenham Police Station & Reynardson Court (TG3)	£4,880.14	£42,294.57	2021
Red House, West Green Rd (SA58)	£5,558.05	£48,169.73	2020
L/b Seven Sisters Road & Tewkesbury Road (SA35)	£8,559.00	£74,178.00	2021
Constable Crescent (TH13)	£25,205.40	£218,446.80	2018
Vale/Eade Roads (SA33)	£25,376.25	£219,927.50	2020
Tottenham Delivery Office (BG4)	£25,771.50	£223,353.00	2021
Herbert Rd (TH12)	£33,325.80	£288,823.60	2019
18-20 Stroud Green Road (SA37)	£61,776.00	£535,392.00	2021
Gourley Triangle (SS4)	£100,859.53	£874,115.93	2021
Ashley Road North (TH7)	£113,152.95	£980,658.90	2018
Station Interchange (TH2)	£137,772.00	£1,194,024.00	2017
Welbourne Centre & Monument Way (TH10)	£189,000.00	£1,638,000.00	2021
Hale Wharf (TH9)	£339,916.50	£2,945,943.00	2020
Arena Retail Park (SA29)	£364,045.50	£3,155,061.00	2021
Tottenham Hale Retail Park (TH3)	£897,059.68	£7,774,517.22	2021
Total	£2,168,330.71	£18,792,199.50	

Revised Governance Arrangements

- 6.12 Officers have taken on board the comments of TfL and made amendments to ensure the implementation of Haringey's CIL is not ambiguous and its governance is robust but is also as simple as it can be.
- 6.13 All funding for new projects from strategic CIL revenues will be required to be for projects within the Capital Programme for the borough, which are assessed by the Assistant Director for Planning as being CIL eligible and suitable to support growth linked to development in the borough.
- 6.14 Where there is a neighbourhood plan in place, the neighbourhood plan should identify the local neighbourhood projects required to support development proposed by the plan or to give effect to policies/proposals within the plan. Projects eligible for the neighbourhood portion of CIL funding should be specifically identified and, where appropriate, projects prioritised.
- 6.15 In areas where there is not an adopted neighbourhood plan, it is proposed to group wards into 8 CIL Neighbourhood Groups. Consultation will be undertaken this year with the communities in each of these group areas to identify and prioritise projects specific to each that the neighbourhood portion of CIL could deliver in part or full. The indicative list of projects for each Neighbourhood Group area would be provided on the Council's website alongside the neighbourhood portion of CIL receipts received and owing. Neighbourhood projects costing more than £100k would be referred to the Council's Capital Board for approval, otherwise, the Assistant Director for Planning will approve the projects following an assessment of CIL eligibility and evaluation against criteria to ensure these support new development and growth, and represent value for money.

Updated Regulation 123 List

- 6.16 The infrastructure types included in the revised Regulation 123 List reflect that needed to support the development and growth planned for through the Haringey Local Plan, as set out in the Council's Infrastructure Delivery Plan. There is also already a significant funding gaps between the cost of the identified infrastructure needed and the funding available. Officers therefore do not recommend any further changes to the Regulation 123 List, as set out below.

Haringey CIL funding may be applied in whole or part to the provision, improvement, replacement or maintenance of the following infrastructure:
New and expanded Primary and Secondary Schools
Further Education Facilities
Health and wellbeing Facilities
Parks and Open Spaces (including Green and Blue Infrastructure)
Social and Community Facilities
Transport and Highways (excluding works that area required as part of a development proposal to be secured through a Section 278 Agreement)
Enterprise Space
Sports and Leisure Facilities
Public Realm Improvements
Community Safety Measures
District Energy Network and associated infrastructure
The above list is not in order of priority.
The above list excludes infrastructure projects that are required to make a development acceptable in planning terms in accordance with the planning policies set out in the Council's Local Plan. Whilst CIL will be the Council's main mechanism for securing funding towards the infrastructure that is required to support the cumulative demands from development in Haringey, there will be some instances where individual development gives rise to their own requirements for infrastructure in order to make the development acceptable in planning terms. Such infrastructure will be secured as part of the development through the use of planning conditions or planning obligations. Further details on this approach are set out in the Council's Planning Obligations SPD.
This Regulation 123 list therefore explicitly excludes the provision of infrastructure that is required to make a development acceptable in planning terms and which meets the legal tests of Regulation 122 of the CIL Regulations. Through the publication of this list the Council therefore retains its discretion to negotiate necessary planning conditions and planning obligations to secure such infrastructure.

Revisions to the Planning Obligations SPD

- 6.17 The Planning Obligations SPD is being updated to reflect the changes to the Local Plan, CIL and other central government regulations and guidance, and Mayoral guidance, since its adoption in 2014. While most of the document remains unchanged, some significant changes include:
- Significantly revised housing section setting out how viability will be assessed and how affordable housing contributions will be collected on sites, including making provision for increased on site provision or off-site contributions

should new development exceeds values set out in viability assessments, as recommended through the Mayors Housing SPD.

- Greater clarity on when, and how off-site contributions towards ensuring new developments meet their zero carbon commitments will be accepted including an increase in rate to £90 per tonne.
- The addition of affordable workspace clauses.
- Tightening up on employment and training obligations including making link to projects to break down barriers to getting back into work.
- The addition of a section covering making buildings broadband ready and the provision of Public Art.

Proposed changes to Mayoral CIL

- 6.18 The Mayor of London has commenced a Preliminary Draft Charging Schedule consultation on a revision of CIL rates in London from January 2019. In Haringey this would be a revision of the current £35/m² CIL rate, to £60/m². As the current (indexed) rate has inflated from £35/m² to c£50/m² between 2012-2017, it is unlikely that, if this revised CIL rate is adopted, there would be a significant impact on Haringey in CIL rate-setting terms.
- 6.19 If the new Mayoral CIL rate is adopted prior to the re-consultation of Haringey CIL, it would be appropriate to revisit the viability evidence to ensure that the new proposed rate is still viable.

7 Next Steps

Table 2: Milestones in preparation of amendments to the Haringey CIL	
Task	Completion Date
Preliminary Draft Charging Schedule approved by Cabinet	December 2016
Preliminary Draft Charging Schedule consultation	Jan-Mar 2017
Draft updated Planning Obligations SPD approved by Cabinet	October 2017
Regulation 123 List approved by Cabinet	
Revised CIL Governance arrangements approved by Cabinet	
Draft Planning Obligations SPD consultation	Oct-Nov 2017
Final Planning Obligations SPD adopted by Cabinet	Jan 2018
Draft Charging Schedule approved by Cabinet	May 2018
Draft Charging Schedule consultation	Jun-Jul 2018
Submission of Draft Charging Schedule to Planning Inspectorate	Aug 2018
Examination in Public of CIL Charging Schedule	Oct 2018
Received Inspectors Report	Nov 2018
Adoption of CIL Charging Schedule at Full Council	Dec 2018
Implementation of Haringey CIL	1 st January 2019

8 Contribution to strategic outcomes

- 8.1 Priority 4: Drive Growth from which everyone can benefit. By amending the CIL rate upwards, CIL receipts will be increased as a source of funding for local and strategic infrastructure projects.

- 8.2 Priority 5: Create homes and communities where people choose to live and are able to thrive. By amending the CIL rate, increased revenues will be made available to fund local and strategic infrastructure projects which will ensure that the necessary infrastructure is provided to make Haringey's places.

9 Comments of Chief Financial Officer

- 9.1 Consultation on the Preliminary Draft Charging Schedule (PDCS) was held from 10th March to 21st May 2017. This contained an update to the Council's adopted (2014) CIL rate in the south-eastern charging zone from £15m² to £130m² for residential development, excluding Mayoral CIL.
- 9.2 As illustrated in 5.11 of the report, the increase in the charge will result in an increase in potential income of £17.97m, however as Cabinet are requested to agree to the delay of the charging policy for Tottenham, this will result in a net loss of potential CIL income of approximately £4.09m.

	CIL @ £15	CIL @ £130	Increase in Income
Total (as per 5.11 above)	£2,343,913.46	£20,313,916.62	£17,970,003.16
Exclude due to extant outline permission			
Welbourne Centre & Monument Way (TH10)	£189,000.00	£1,638,000.00	
Hale Wharf (TH9)	£339,916.50	£2,945,943.00	
Red House, West Green Rd (SA58)	£5,558.05	£48,169.73	
Sub Total	£534,474.55	£4,632,112.73	£4,097,638.18
Revenue impact of not increasing CIL in Tottenham	£2,343,913.46	£15,681,803.89	£13,337,890.43

- 9.3 The budget setting process will provide the opportunity to ensure that the CIL Regulation 123 list properly reflects the most update infrastructure investment priorities for the use of CIL receipts.

10 Comments of Chief Legal Officer

- 10.1 The Assistant Director of Corporate Governance notes the contents of this report on which Legal Services have been consulted.
- 10.2 The delay to revising the CIL charging schedule is noted as set out above.
- 10.3 Apart from approval of the charging schedule for submission to the Secretary of State, and adoption of the charging schedule, following independent examination, all other CIL decisions are executive functions, including the approval of the regulation 123 list. The government guidance regarding revising the regulation 123 list is that changes should be clearly explained and subject to appropriate local consultation. The regulation 123 list, once approved, needs to be published on the Council's website.

- 10.4 In line with government guidance in the National Planning Policy Framework, a SPD should only be prepared where necessary and be used to help applicants make successful applications or aid infrastructure delivery, and not be used to add unnecessarily to financial burden on development.
- 10.5 As the proposed SPD concerns planning obligations the Legal Team will be closely involved in the evolution of the SPD following consultation.

11 Use of Appendices

- Appendix A – Draft Consultation Statement to Consultation on the Preliminary Draft Charging Schedule
- Appendix B – Draft revised Planning Obligations Supplementary Planning Document
- Appendix C – Haringey's CIL Charging Schedule including new CIL governance arrangements and a revised Regulation 123 List.

12 Local Government (Access to Information) Act 1985

Preliminary Draft Charging Schedule consultation document 2017

http://www.haringey.gov.uk/sites/haringeygovuk/files/preliminary_draft_charging_schedule_consultation_document_2017_1.pdf

BNP Viability Report 2017

http://www.haringey.gov.uk/sites/haringeygovuk/files/lb_haringey_eastern_cil_zone_viability_review_report_1.pdf

Report to Cabinet (24th January 2017) seeking approval to consultation on the revised CIL, regulation 123 list, and the proposed new CIL governance arrangements

<http://www.minutes.haringey.gov.uk/documents/s90555/CIL%2024.01.2017%2018.05.pdf>