
Meeting	Cabinet
Date	25 February 2013
Subject	Community Infrastructure Levy
Report of	Leader of the Council Cabinet Member for Planning.
Summary	<p>The Community Infrastructure Levy (CIL) mechanism replaces planning obligation tariffs and will improve the process of applying infrastructure funding from new development by making it more flexible and responsive. Local authorities must develop a 'Charging Schedule' to justify levying the charge on development in terms of both the cost of funding new infrastructure as well as the viability of development.</p> <p>The Charging Schedule document has progressed to its final version, and an Examination in Public (EIP) took place on 21 December 2012. The document was found to be sound, and can now be adopted.</p>

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Status (public or exempt)	Public
Wards Affected	All
Key Decision	Cabinet
Reason for urgency / exemption from call-in	Not applicable
Function of	Executive
Enclosures	Appendix A: Draft Charging Schedule (Submitted to Examiner) Appendix B: 'Regulation 123 List' of Infrastructure Projects
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1. RECOMMENDATIONS

- 1.1 That Cabinet approve the Barnet Community Infrastructure Levy Charging Schedule (Appendix A) for reference to the next meeting of the Council on 16 April 2013 for formal adoption on 1 May 2013.**
- 1.2 That Cabinet approve the draft Regulation 123 list for publication, and permit future changes to the list to be delegated to the Director for Place.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 On 25 February 2012 Cabinet Resources Committee, (Decision Item 16) approved the process for adopting CIL in the borough, and to progress the Preliminary Draft Charging Schedule (PDCS) for public consultation, and that progress to continue through all the stages required until a final version of the Charging Schedule is ready for adoption by a resolution of the full council.
- 2.2 On 19 October 2010, Cabinet Resources Committee, (Decision Item 7) approved the Infrastructure Delivery Plan as part of the Council's evidence base to support the Core Strategy as well as to be used as the basis for developing a Community Infrastructure Levy to replace the use of S106 tariff arrangement.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 Adoption of a Community Infrastructure Levy supports all three core Council objectives as set out in the Corporate Plan 2012 to 2013 by providing a funding stream to support delivery of community infrastructure.
- 3.2 The Council's 'Three Strands Approach: Protect, Enhance and Consolidate planned Growth (PECG)' is a key planning and regeneration strategy that requires effective infrastructure planning and funding solutions to have real effect.

4. RISK MANAGEMENT ISSUES

- 4.1 Barnet was successful in being selected to be a round 2 national frontrunner for the delivery of its Community Infrastructure Levy and the work undertaken to date, particularly in terms of forward planning infrastructure and funding was acknowledged as an exemplar by the team working for the Planning Advisory Service. The Council's preparations for the delivery of CIL have been audited by the CIL Knowledge Partnership (commissioned by the Planning Advisory Service to support national frontrunner local authorities) and found to be sound in all aspects.
- 4.2 Failure to deliver a Community Infrastructure Levy to replace Planning Obligations tariffs by March 2014 would impact significantly on the Council's ability to fund Education, Libraries and Healthcare infrastructure.

- 4.3 Delays to the adoption of a local CIL could impact on the proposed adjustment to support the viability of development within Barnet.
- 4.4 If the rates of CIL set are too high, then there is a risk that delivery of new development in the Borough will be affected, where as if the rates set are too low, then there is a risk that less funds are raised towards supporting the delivery of infrastructure than could otherwise have been achieved and alternative sources of funding will need to be found.
- 4.5 Getting the balance right has been a three stage process of
- i) Firstly getting independent testing of the viability of development,
 - ii) Secondly considering the maximum income that could be achieved through a CIL approach focused on maximising income from development and
 - iii) Lastly considering the impact of a maximum charge against the ability to deliver regeneration and other development in the borough, alongside the signals this will send to the local development industry.
- The assessment of various options for rate-setting has led to selection of a rate that focuses on a locally appropriate balance seeking to support the local development industry to return to growth.

- 4.6 Internal and external legal advice was sought at various stages of the Charging Schedule document to ensure it complied with the relevant legislation, regulations and statutory guidance. At Examination by the Planning Inspectorate the document was found compliant with Regulations.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Successful delivery of the Councils Protect, Enhance and consolidated Growth Strategy, as set out in the Council's Local Plan Core Strategy, requires an effective programme of infrastructure delivery as described within the corporate Infrastructure Delivery Plan. The funding and delivery of critical and necessary infrastructure is therefore essential to the outcomes of the Local Plan being achieved for all residents across the borough and to deliver a successful place for people to work and live.
- 5.2 The Community Infrastructure Levy is a key funding source that will contribute towards the funding required to enable delivery of physical, social and green infrastructure projects in Barnet that are needed to maintain or improve upon the quality public services and the facilities through which they operate. The purpose of the Community Infrastructure Levy supporting such infrastructure investment is to address and mitigate for the impacts of population growth and change; through setting an appropriate charge upon the parties involved in delivering new development within the borough. Those who benefit contribute towards mitigating for the impacts on local and wider communities.
- 5.3 Barnet's Charging Schedule has followed two 6-week rounds of public consultation, plus a further 4-week round of 'modifications' consultation managed through the Council's consultation website alongside the ability to review copies of documentation available in all public libraries and Barnet's Planning Reception. Adverts were published in local newspapers, two developer forums were held, and planning officers have discussed the

implications with developers with whom they have been reviewing their applications or discussing potential future applications.

- 5.4 A letter or email notifying people of the consultations was sent to every person registered on the Council's Planning Policy Consultation database notifying them of the proposed Levy, and it is considered that all interested parties and suitable representation groups for protected communities are included within this database. The Council has therefore gone beyond straightforward compliance with Regulations to ensure it has a wide-ranging and appropriate consultation process, reflected by the fact that only three parties chose to submit concerns to the Public Examination in December 2012, after receiving many responses at previous stages of the consultation.
- 5.5 No equalities issues have been raised in relation to the introduction of the Community Infrastructure Levy, neither through the consultation stages described above nor at public examination. The Council's Charging Schedule has been reviewed by the Planning Inspectorate, found to be in full compliance with Legislation and Regulations and therefore deemed sound. The application of a zero rate to all forms of community and public service development will ensure that such facilities are not made unviable by the charge. The Council therefore considers itself to have fully complied with the Public Sector Equalities Duty.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 The cost of setting up collection systems and preparing for introduction of a local Community Infrastructure Levy is expected to be up to £179,000 of capital investment; although savings to this budget are expected when the final costs come through. The operation of a monitoring and enforcement team (1 manager and 3 staff) over the first 3 years in which the Community Infrastructure Levy will operate is anticipated to cost approximately £465,000.
- 6.2 The combined cost of £644,000 represents the total cost of providing all the policy documentation, IT systems and staffing with which to monitor and enforce all Planning Obligation and Community Infrastructure Levy matters in order to ensure developers contribute towards the necessary infrastructure required to support delivery of growth within the borough.
- 6.3 The cost to operate the team is funded through planning obligation (s.106) monitoring contributions and a monitoring percentage is permitted to be applied to Community Infrastructure Levy income through the Regulations, with funds able to be used interchangeably as their function is the same.
- 6.4 The Community Infrastructure Levy Regulations permit an administration charge of up to 5% of the levy collected in the first three years of its operation that can be used to support the set up and ongoing operation of a Community Infrastructure Levy; the total income is anticipated to be up to £430,000.
- 6.5 Furthermore, the Councils collecting responsibilities on behalf of the Mayor of London mean that up to 4% of Mayoral CIL can be retained for administration costs; a further £85,000 is therefore anticipated from collecting Mayoral CIL.

- 6.6 Lastly the Council currently has an existing monitoring amount of approximately £300,000 towards the monitoring and administration of Planning Obligations (s.106) agreements, this pot will cash flow the Community Infrastructure Levy adoption and operation whilst its administration funds are collected.
- 6.7 Considering the above information, the anticipated cost of introducing and operating a Community Infrastructure Levy and appropriate enforcement support will be approximately £644,000 whilst anticipated income to support the functioning of the monitoring and enforcement team will be £815,000, therefore a 26% allowance has been accounted for in case Community Infrastructure Levy collection rates are lower within the three year period.
- 6.8 Use of electronic means of communication will be maximised in order to reduce process and production costs.
- 6.4 All income collected through the operation of Barnet's CIL, except for the monitoring percentage, will be paid into an Infrastructure Reserve held by the Council, and utilised to support priority infrastructure projects.
- 6.5 Decisions on spend priorities will be determined through the usual capital programme processes, but taking into account of the community spending priorities identified within the Infrastructure Delivery Plan.
- 6.6 The Council's 'Regulation 123 list', the list of projects eligible to be funded using CIL income, will be published online and updated annually or more often as required. Updates will likely reflect changes in CIL spending priorities and the needs and impact of any new Planning Applications for large scale development. The first version of this list is detailed in Appendix B.

7. LEGAL ISSUES

- 7.1 The Planning Act 2008 made provision for the imposition of a charge to be known as the Community Infrastructure Levy. The Community Infrastructure Levy Regulations came into effect on 6 April 2010, and the latest amendments on 28 November 2012. Formal Guidance was also reissued on 28 November 2012, which provides detail and clarification enabling Local Authorities to set up and adopt a Charging Schedule.
- 7.2 Upon formal adoption the Community Infrastructure Levy will become a statutory levy upon local development, and the local authority's permitted rights to secure agreed levy payments are set out in the 2010 Regulations as amended; these include the levying of fines and the ability to instigate criminal proceedings should this be required to secure payment of due contributions.
- 7.3 The Regulations have received a number of changes through the course of delivering the final version of the Charging Schedule. The latest amendments took place on 28 November 2012, and further changes are currently being discussed by government, but without such details being currently available.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

- 8.1 The Council's Constitution in Part 3, Responsibility for Functions, states in paragraph 3.8 the functions delegated to the Cabinet; namely decision to recommend to Council for adoption a plan or strategy.
- 8.2 The government's formal Guidance on development of Charging Schedules requires that a Local Community Infrastructure Levy is adopted by resolution of full council, meaning the importance of the document is considered similar to a Development Plan Document, despite not being a required part of the Local Development Framework.

9. BACKGROUND INFORMATION

9.1 Purpose of the 'Community Infrastructure Levy' (CIL)

- 9.1.1 At present, development related infrastructure funding is principally generated from Planning Obligation 'Section 106' contributions, details of the income and its application are reported to this committee, for which the Council currently has around £14m unspent, much of which is already fully allocated to projects, whilst projections of existing approved planning permissions for smaller scale major and minor development anticipate £5m further income in 2013-16.
- 9.1.2 The current 'tariff' usage of Section 106 will be replaced through a new form of charge upon all development known as a 'Community Infrastructure Levy'. The Planning Act 2008 introduced 'CIL Regulations' that allow councils to charge developers to pay for local infrastructure.
- 9.1.3 The Community Infrastructure Levy will improve predictability and certainty for developers. The flat rate is intended to introduce a level of simplicity, to encourage greater confidence and higher levels of inward investment. The flexibility and freedom in the use of CIL funding affords the Council to set its own priorities and creates a predictable funding stream for Barnet to plan ahead more effectively.
- 9.1.4 Whilst far from a completely new source of funding, the delivery of CIL will assist in the delivery of the Growth Strategy in Barnet. CIL will broaden the range of developments asked to contribute; consequently this allows the cumulative impact of developments to be better addressed. The flat rate is envisioned to create an environment for growth in the local economy and benefit for the community.
- 9.1.3 The 'Charging Schedule' will identify the universal CIL rate required to be paid per square metre of net additional floor space. The Council is determined to focus on supporting growth in the economy rather than maximising its infrastructure funding to ensure that not only will development remain viable, but it will be incentivised to come forwards to support local economic growth.
- 9.1.4 From 6 April 2014, CIL will become the only permitted mechanism through which contributions from new development can be legally 'pooled' (levied on more than 5 development proposals) for the delivery of required local

infrastructure. This means that its introduction will affect income presently received in relation to Education, Libraries and Healthcare facilities; the introduction of a local CIL is intended to fully address this concern.

- 9.1.5 The Government views CIL as offering additional benefit to local authorities as funding will be very flexible and could be applied to any capital infrastructure project that is published in the Council's official list of CIL-related infrastructure ("Regulation 123 list" – see appendix B).
- 9.1.6 The drafting of the List has allowed the Council to identify the needs of the borough, supporting the implementation of the local Growth Strategy, creating the ability for investment in skills and employment, and investment in Barnet's transport infrastructure and community facilities. This List is appended to this report, it will be regularly updated to ensure greater transparency for local people and to account for changes in planned infrastructure delivery.
- 9.1.7 A report to assess the economic viability of the various types of development in Barnet was commissioned from BNP Paribas; it offered analysis of the viability of different types of development and for different areas.
- 9.1.8 Four 'rate-setting' approaches were considered in terms of ensuring the right balance is struck between infrastructure delivery and development viability:
 - (i) maximum infrastructure income (limit of average development viability),
 - (ii) maximum viability based on all viable development – low flat rate,
 - (iii) maximum viability based on residential development – medium flat rate,
 - (iv) differential rates focused on achieving regeneration scheme viability.
- 9.1.9 Barnet's Regeneration Review determined that at the present time and for the short term, up to three years, a single (low) flat rate should be applied to enable development in Barnet to become more viable and thereby facilitate economic growth. This approach followed the successful approach taken by LB Redbridge who were the first Council to adopt a Charging Schedule.
- 9.1.10 The flat rate of CIL proposed by the Council was £135 /sqm of development, the Charging Schedule background document provided an impacts analysis of this rate and how it compared to existing planning obligation tariffs levied by the Council on different types of residential development. This rate was anticipated to secure a total income of £12m from Planning Permissions permitted before April 2016, although only £8m of this will actually be collected during the period as the CIL income depends on development commencing. This will be applied to the delivery of critical infrastructure as identified in the Infrastructure Delivery Plan – allocated through the Capital Programme.
- 9.1.11 As discussed in Section 9.6, the Planning Inspector has recommended that residential and retail developments should be liable for the £135 /sqm CIL, but that all other forms of development within the Borough are to be zero rated.
- 9.1.12 Barnet's flat rate compares well compared with other local authorities in London when considered against the aims behind the proposed rate. Figure 1 details the different rates introduced or proposed for adoption across London.

Figure 1 - Community Infrastructure Levy rates being introduced across London

Local Authority	Progress	Flat rate	Differential rate				
			Residential	Office/ Retail	Industrial	Community	Other
Barnet	Adoption proposed April 2013		£135 residential (C1-C4) + HMO <i>Excl. ancillary car parking</i>	£135 retail (A1-A5) <i>Excl. ancillary car parking</i>	£0	£0	£0
Brent	Adoption proposed Spring 2013		£200 Residential (C3-C4) + HMO £200 student halls (C2) £100 Hotels (C1)	£40 office £40 retail	£0	£5 leisure D2	£40 Sui Generis
Croydon	Adoption proposed April 2013		£120 borough wide (C3-C4) £0 'met centre' (C3-C4) £0 C1 & C2	£120 'met centre' office (B1) £120 'met centre' (A1-A5) £0 elsewhere	£120	£120	None
Haringey	Adoption proposed Summer 2013		£265m ² Residential West £165m ² , Central £ 15m ² North East	£95m ²	£25 m ²		
Harrow	EIP Early Spring		£110m ² Residential £55m ² (C1-C2, Sui Generis HMOs)	£100m ² , Retail (A1 - 5)	£0	£0	None
Hillingdon	Adoption proposed March 2013		£40 m ² Hotels £95 m ² Residential	£215m ² Large Retail (A1-A5 1000m ² +), £35 m ² Office	£5m ² ,	£0	£35 m ² Sui Generis
Lewisham	EIP Spring 2013		£100 m ² (Zone 1) £70m ² (Zone 2)	£80 m ² £0 m ² B1&B8 (Zone 1) £0 m ² B1&B8 (Zone 2)	£80 m ²	£80 m ²	£80m ² ,
Merton	Consultation		£385 Wimbledon £140 Colliers Wood / Raynes Park £42 Mitcham/Morden	£100 retail £0 office	£0	£0	None
Redbridge	Adopted January 2012	£70					
Sutton	Adoption proposed Summer 2013		£100	£120			
Wandsworth	Adopted November 2012		£575 & £265 - Nine Elms £0 - Roehampton £250 - Wider-Wandsworth	£120 'Nine Elms £0 Wider-Wandsworth	£0	£0	None

9.2 The London context: accounting for a regional CIL

- 9.2.1 According to the legislation, Barnet's CIL must account for the viability of development inclusive of top-slicing for the proposed £35 /sqm contribution towards the Mayoral CIL; this became chargeable from April 2012.
- 9.2.2 The Mayor's Charging Schedule allows him to charge for strategic transport infrastructure in London at present; this is directed to support the £300m CIL contribution required by government as part of the Crossrail funding package.
- 9.2.3 Together with the Mayoral CIL, the combined rate for new development will be £170 /sqm of 'net additional floor space' on residential and retail development.

9.3 Barnet's proposed CIL arrangements

- 9.3.1 In terms of the local context it is clear that only residential, hotel and retail development appear to be sufficiently viable to be delivered in the current market, given the primary need to support economic growth locally, a flat rate of CIL for these forms of development is proposed to be set to ensure that all development is made more viable.
- 9.3.2 Certain types of development are exempted from being charged CIL by the Regulations, namely development where:
- (i) Gross internal area <100m²; except if one or more additional dwellings is created.
 - (ii) A charitable institution owns the chargeable development and it will be wholly or mainly used for those charitable purposes
 - (iii) Chargeable floorspace is intended for social housing
- 9.3.3 The Council intends to permit relief available in the CIL regulations for exceptional circumstances where a development may be allayed from the requirement to pay CIL. This mechanism in conjunction with the operations of the emerging Planning Obligations SPD will enable the Council to have the necessary flexibility to address the varied planning needs in the borough, in particular with respect to Regeneration Schemes.
- 9.3.4 To further secure the viability of development, the Council is looking to adopt its own instalment policy, or follow the policy set by the Mayor of London for CIL to be paid in stages instead of an up front lump sum payment.

9.4 Review of Barnet's Charging Schedule

- 9.4.1 In Barnet, the decision to set a flat rate of CIL on residential and retail development is intended to focus on the short-term objective of promoting growth through a difficult economic climate. The Regeneration Review recommended that such a rate only operate for three years, and therefore if it is in operation as proposed from May 2013, then a new rate will need to be consulted upon and adopted to operate from May 2016 if the Council is to continue to strike the right balance between funding infrastructure and supporting delivery of new development.
- 9.4.2 Secondly to fit with the Infrastructure Delivery Plan operating in 5-year time periods, it is anticipated that the 'Charging Schedule' should be reviewed in

early 2015/16 to enable a new Charging Schedule to be adopted by May 2016, thereby account for the next group of infrastructure projects required to be delivered in the 2016-21 period. To enable this to take place it is proposed that completion of an update to the Infrastructure Delivery Plan, including costing for 2016-21, will be required to be in place by April 2015.

9.5 Consultation on the Barnet CIL

9.5.1 The consultation for the Preliminary Draft Charging Schedule (“PDCS”) took place on 12 March 2012 to 23 April 2012 – a period of 6 weeks. Aside from support provided through telephone and email conversations, the Council ran a Developers Forum on 27 March 2012 and a further session for Regeneration Partners on 18 April 2012 to assist developers to adjust to Mayoral CIL and to respond to the PDCS consultation. Space for questions to be asked and answers given was therefore available throughout the consultation period to assist local developers to understand CIL and how the system will operate.

9.5.2 The consultation on this Draft Charging Schedule took place from 27 July until 5pm 7 September 2012 in compliance with Regulations for a period of 6 weeks.

9.5.3 Barnet made modifications to the Draft Charging Schedule after its publication. A Statement of Modification has been produced on 5 November 2012, and made available for comment over a 4 week period as required by Regulations.

9.6 Examination in Public

9.6.2 The Examination in Public (EIP) hearing took place on 21 December 2012, and provided the opportunity for discussions about the submitted Charging Schedule document led by the Examiner.

9.6.3 At the EIP hearing, the Examiner highlighted a number of discussion points which were referred to in his report.

9.6.4 **Charging Schedule Format** – the Charging Schedule drafted by the Council incorporated explanatory notes that were intended to clarify the operations of CIL in the borough. It was suggested by the Examiner that only the required regulation items are placed in the Charging Schedule, with the remaining explanatory notes to be attached separately as guidance. The Council has accepted this amendment to the document presented at the EIP, and the revised version of the Charging Schedule, following the recommendation in the Examiner’s Report is attached as Appendix A.

9.6.5 **Community uses / other development identified to be unviable** – the purpose of a single flat rate was to encourage development, and to introduce simplicity and transparency to the development community. Representations were made at the examination that nil rates should have been applied to types of developments in the borough identified in the evidence as unviable. The Examiner has accepted these concerns and recommended that the Council adopt a zero rate of CIL for forms of development other than residential and retail, the Council has accepted this recommendation and the amendments are incorporated in Appendix A.

9.6.6 **Ancillary Car Parking** – the inspector received representations in relation to a major development scheme within the Borough, it was recognised at the examination that the application of CIL to ancillary car parking would impact on the viability of this development. As such development was deemed significant with relation to the Borough’s development plan, and no evidence was presented to suggest that ancillary car parking was anticipated to secure required CIL income, the Examiner has recommended the exclusion of the £135 /sqm CIL rate from car parking ancillary to residential and retail uses.

9.6.7 The Examiner confirmed compliance with procedure in relation to the Legislation, Regulations and Statutory guidance for the Charging Schedule document. As a result, the Examiner has recommended approval with modifications to the Charging Schedule document.

9.7 Examiner’s Report

9.7.1 It is a requirement under the Planning Act 2008 that the Council accepts the Examiner’s recommendations to adopt the Charging Schedule.

9.7.2 In conclusion, the Examiner considers Barnet’s Charging Schedule to be sound. We regard the recommendations to be acceptable after considering the importance of adopting the Community Infrastructure Levy in Barnet in May 2013.

10. LIST OF BACKGROUND PAPERS

10.1 Barnet’s Local Plan Core Strategy

10.2 Planning Obligations Supplementary Planning Document (Draft Dec 2012)

10.3 Regenfirst Barnet Council Review of Regeneration Functions (Feb 2012)

10.4 Barnet’s Community Infrastructure Levy Draft Charging Schedule

10.5 The complete set of documents related to the CIL Draft Charging Schedule, and submitted to the Examiner is available on the Barnet website. Anyone wanting to inspect these papers should contact Ricky Ching on 020 8359 5136.

Cleared by Finance (Officer’s initials)	MC/JH
Cleared by Legal (Officer’s initials)	CH