

| Mayor and Cabinet | | |
|--------------------------|--|-----------------------|
| Report Title | Adoption of Lewisham Community Infrastructure Levy Charging Schedule | |
| Key Decision | Yes | Item No. |
| Ward | All | |
| Contributors | Executive Director for Resources and Regeneration | |
| Class | Part 1 | Date: 14 January 2015 |

1. Summary

- 1.1 The Community Infrastructure Levy (CIL) is a levy which the local planning authority may charge against most types of new development in their area. This report sets out the Lewisham CIL Charging Schedule for approval by the Mayor and recommendation for Adoption by Full Council. A charging authority must set out its proposed levy rates in a charging schedule as pounds per square metre. The Lewisham CIL Charging Schedule has been prepared in accordance with the Community Infrastructure Levy Regulations 2010 (as amended). The draft CIL charging schedule was subject to a Public Examination and found compliant by the Inspector. It is this charging schedule that the Council must adopt if it wants to introduce a charging schedule.
- 1.2 In addition to the charging schedule (Appendix 1) the report recommends adoption of a list of types of infrastructure the Lewisham CIL will be used to fund. This is know as the regulation 123 list (Appendix 2). A policy on Instalment payments (Appendix 3) is also set out and conforms with the Mayor of London's CIL instalments policy. This is another requirement of the regulations and will make administration of both the Lewisham and London Mayor's CIL easier and more efficient for collection.

2. Purpose

- 2.1 The purpose of this report is to recommend the Mayor approve the introduction of the Lewisham Community Infrastructure Levy (CIL) Charging Schedule and recommend that Full Council adopt the CIL Charging Schedule with its introduction from 1st April 2015.

3. Recommendations

- 3.1 The Mayor is recommended to approve the:
- Lewisham Community Infrastructure Levy (CIL) Charging Schedule as set out at appendix 1 to this report
 - Lewisham CIL Regulation 123 List as set out at appendix 2 to this report.
 - Lewisham CIL Installments Policy as set out at appendix 3 to this report.

And

- 3.2 To recommend Full Council adopt the
- Lewisham Community Infrastructure Levy (CIL) Charging Schedule as set out at appendix 1 to this report
 - Lewisham CIL Regulation 123 List as set out at appendix 2 to this report.
 - Lewisham CIL Installments Policy as set out at appendix 3 to this report.
- With an implementation date of 1st April 2015.

4. Policy Context

4.1 The content of this report are consistent with the Council's policy framework. The CIL is a discretionary charge that the local planning authority can impose to help pay for local strategic infrastructure. The Core Strategy adopted by the Council in June 2011 is part of the Council's policy framework. The Core Strategy is the spatial implementation plan for the Sustainable Community Strategy.

4.2 The Core Strategy was accompanied by an Infrastructure Delivery Plan (IDP), published in 2010, which set out the types of infrastructure needed to implement the growth strategy set out in the Core Strategy. The IDP was the starting point for the evidence of need for infrastructure that was necessary for producing and justifying the CIL Charging Schedule. The money from CIL will help implement the Core Strategy and the Sustainable Community Strategy (SCS).

4.3 This report supports the following SCS objectives:

Empowered and responsible: where people can be actively involved in their local area and contribute to tolerant, caring and supportive local communities.

Clean, green and liveable: where people live in affordable, high quality and adaptable housing, have access to green spaces and take responsibility for their impact on the environment.

Healthy, active and enjoyable: where people can actively participate in maintaining and improving their health and well-being, supported by high quality health and care services, leisure, culture and recreational activities.

Safer: where people feel safe throughout the borough and are able to live lives free from crime, anti-social behaviour and abuse.

Dynamic and prosperous: where people are part of vibrant and creative localities and town centres, well-connected to London and beyond.

5. Background

5.1 The Community Infrastructure Levy (CIL) was introduced by the Planning Act 2008. It is a levy which Local Planning Authorities in England may charge against most types of new development in their area. The money raised is to be used to pay for local strategic infrastructure in order to support the additional demand arising from new development such as schools, hospitals, roads and transport schemes, as well as parks and leisure centres.

5.2 Once in force CIL will largely replace the use of Section 106 planning

obligations as a means of funding infrastructure through development. However, the system of using Section 106 agreements for securing affordable housing, local site mitigation measures and non-infrastructure matters, such as, employment and training contributions, will remain. As such the s106 Supplementary Planning Document has been revised to ensure that it is appropriate when CIL is adopted. The S106 SPD is a separate item on this agenda and provides more detail of the relationship between Planning Obligations and CIL.

- 5.3 The current Government timetable to reduce the scope of s106 is April 2015. Regulation 123 of the CIL Regulations 2010 (as amended) restricts the use of Planning Obligations for infrastructure that will be funded by CIL. Infrastructure types or projects that are set out in the Regulation 123 list cannot be secured through s106 obligations. From April 2015, whether or not a Council has adopted a CIL, it will no longer be possible to pool together 5 or more S106 Obligations to pay for a single infrastructure project or type of infrastructure. The limitation on pooling will take into account any S106 agreed from April 2010.
- 5.4 The chargeable area for CIL is the net additional increase in floorspace of any given development. It is applicable to all new buildings and extensions greater than 100sqm of gross internal floorspace and to all new dwellings. If there are existing buildings on the development site which are to be demolished for redevelopment, the associated floorspace may be applicable for deduction from the chargeable floorspace, although other regulations have a bearing.
- 5.5 The regulations introduced by Government require that a Local Planning Authority that wants to introduce a CIL Charging Schedule must produce evidence that there is a need for the new infrastructure. The LPA must show that there is a shortfall in the funding for the needed infrastructure and that the charging rate is set at a level that will not make development taken as a whole unviable in the area. Charging authorities must keep the charging schedule under review and should ensure that levy charges remain appropriate over time. A charging authority, that is, the Council may revise their charging schedule in whole or in part at any time. Government advise is that a review of the charging schedule should be linked to any review of the local plan for the borough.

6. Preparing a CIL Charging schedule

- 6.1 A charging authority must set out its proposed levy rates in a charging schedule. Charging schedules should be consistent with and support implementation of the Councils Local Plans.
- 6.2 The Community Infrastructure Levy Regulations 2010 (as amended) set out the process for adopting a charging schedule. This involves producing viability evidence and consulting on a preliminary draft charging schedule that shows the levy will not put the overall development of the area at risk. The Planning Service produced a CIL Infrastructure Delivery Schedule (CIL IDS) that identifies a list of infrastructure projects that are required to support development and have a £70M gap in secured funding which CIL can assist

with. This document was required to establish the need for CIL. The CIL IDS identify infrastructure considered necessary to help make Lewisham a sustainable community.

- 6.3 In order to assist with understanding the economic viability of development in the borough, the Council employed independent consultants to produce an Economic Viability Study (EVS). The resulting report provides a robust and evidenced assessment of the size of CIL rate (in £/sqm) that future development in the borough will, in general, be able to afford to pay without causing development, in general to become financially unviable.
- 6.4 In accordance with the regulations the planning service consulted on the Preliminary Draft Charging Schedule and the accompanying evidence base in March and April 2012. Following assessment of the comments made the Planning Service prepared a Draft Charging Schedule which was approved for statutory consultation and submission for public examination by the Full Council at its meeting held on 28th November 2012. The consultation was undertaken during December 2012 and January 2013 and the examination was held on 15th October 2013. The Inspectors report was received on 23rd January 2014 and he concludes that ‘the London Borough of Lewisham Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. The Council has sufficient evidence to support the schedule and can show that the levy is set at a level that will not put the overall development of the area at risk.’

7. Adoption of Lewisham CIL Charging schedule

- 7.1 As the Inspector has found the proposed charging schedule compliant and supported by appropriate evidence he has recommended that the draft charging schedule should be approved. The Council may now adopt the charging schedule and implement CIL in the borough. The Council must adopt the charging schedule as approved at the public examination by the Inspector.
- 7.2 The charging schedule approved by the Inspector proposed 2 charging zones (Zones 1 and 2) and 3 rates for development (Categories A, B and C). The zones are defined by postcode and identified on plans in the draft charging schedule. Zone 1 is the smallest zone, along the northern edge of the Borough abutting the Thames and Greenwich. The rate here for residential development in Use Class C3 (Category A) is £100 per square metre (psm). The rest of the Borough forms Zone 2 where the residential rate (Class C3) is £70 psm. Category C is all development in Use Class B where the rate is zero across the Borough. Category B is all other development for which the rate is £80 psm across both zones.
- 7.3 The CIL charging schedule for adoption is set out as **Appendix 1** to this report. As is required by the regulations it is the charging schedule approved by the Inspector at Examination. However, for clarity of presentation the categories A, B and C used at examination have been dropped. Table 1 Lewisham CIL rates is now presented in a simplified manner with 2 geographical zones and 3 CIL rates. This presentation is considered clearer as it avoids any possible confusion between Use Class B and Category B.

- 7.4 The Lewisham CIL Charging Schedule is based on two geographic zones identified by postcode. The CIL Regulations (as amended) require that where differential rates are charged they must be shown on an ordnance survey map. The Charging Schedule at Appendix 1 therefore contains a map showing the boundary of the two zones. However, as postcodes can change over time officers have prepared a digital map that shows the boundary as they were presented to the examination in 2013. For the purpose of administration it is proposed that the digital map shows the definitive boundary of the two zones. The digital map will be placed on the CIL web pages.
- 7.5 The charging schedule must be formally approved by a resolution of the Full Council before it can be brought into effect. The recommended commencement date to start charging CIL is 1st April 2015 as this is the date Government has announced S106 must be scaled back whether or not CIL is adopted. The regulations require that the date the charging schedule comes into effect must be at least one day after the date of publication.

8. Regulation 123 List

- 8.1 The CIL regulations (as amended) require the Council when approving a charging schedule to specify and list those types of infrastructure or projects that it proposes to fund through the levy. This is known as the Regulation 123 List. Government advice is that the List should be based on the draft list that was part of the examination of the draft charging schedule. The Regulation 123 list for adoption is set out as **Appendix 2** to this report.
- 8.2 The Lewisham Regulation 123 list sets out the types of infrastructure on which CIL income would or could be spent. The list includes state education facilities; public health care facilities; strategic transport enhancements; publically accessible open space; strategic flood management; publically owned leisure facilities and local community facilities and public emergency services.
- 8.3 At the CIL Examination the Council made a commitment that appropriate public infrastructure related to the public emergency services would be funded by CIL to the amount equal to the CIL liability thus negating the cost of the CIL charge imposed on the development. To achieve this aim the Council proposed that the Regulation 123 list should include 'Public Emergency Services' to allow, for example, new police and fire stations to benefit from the Council's approach. The Regulation 123 list set out for adoption at Appendix 2 to this report therefore includes this new type of infrastructure as proposed at the examination.
- 8.4 The inclusion of either a project or a infrastructure type in the Regulation 123 list does not commit the Council to fund all the types of infrastructure listed. Nor does the order of infrastructure items within the list imply or signify any order of preference or priority for CIL funding. However, it is intended as a guide to the types of infrastructure that CIL will be used to fund in whole or part by the Council. This list can be amended at any time, but when amended does require 'local consultation'. Where the regulation 123 list includes a generic item (such as education or transport), section 106 contributions should

not normally be sought on any specific projects in that category. Such site-specific contributions should only be sought where this can be justified. The Revised Planning Obligations Supplementary Planning Documents sets out the relationship between CIL and S106 Planning Obligations.

- 8.5 When charging authorities wish to revise their regulation 123 list, which sets out what they plan to spend levy receipts on, they should ensure that these changes are clearly explained and subject to appropriate local consultation. Charging authorities should not remove an item from the regulation 123 list just so that they can fund this item through a new section 106 agreement. Where a change to the regulation 123 list would have a significant impact on the viability evidence that supported examination of the charging schedule, this should only be made as part of a review of the charging schedule.
- 8.6 With the introduction of CIL and in any event from April 2015, S106 Planning Obligations will be scaled back to those matters that are directly related to a specified site and are not set out in the 123 list. From this time no more funds may be collected in respect of a specific infrastructure project or type of infrastructure through a S106 agreement. If 5 or more obligations for that project or type of infrastructure have already been entered into since 6th April 2010, and it is a type of infrastructure that is capable of being funded by the Levy.

9 Instalments policy

- 9.1 To aid cash flow for developers in making CIL payments during the construction of a scheme, the CIL Regulations allow for the adoption of a CIL instalments policy. Under Regulation 69B a charging authority which wishes to allow persons liable to pay CIL to do so by instalments must publish on its website an instalment policy containing only the information specified in the Regulations.
- 9.2 Under CIL Regulations (69B), the Council may chose to adopt its own CIL instalments policy. However, if it chooses not to, the London Mayor's CIL instalments policy will apply (Reg 70) . A number of other London Boroughs are already applying the London Mayor's CIL instalments policy. Doing so allows boroughs collecting their own CIL, as well as the London Mayor's CIL, to have a common approach to the collection of both CILs. This is simpler in terms of administration, and allows for the aggregation of money due under the Mayoral and Lewisham CILs to be used in determining the threshold for phased payments.
- 9.3 It is therefore proposed that the Lewisham CIL Instalment Policy, reflect that adopted by the Mayor of London. The Lewisham CIL Instalment Policy is set out in **Appendix 3**. to this report.

10 Compulsory and Discretionary CIL Relief

- 10.1 The CIL Regulations make a number of provisions, some compulsory, others discretionary, for charging authorities to give relief from the levy. CIL relief means any exemption or reduction in liability to pay the levy. Relief can only be given if the claimant is an owner of a material interest in the relevant land.

The regulations set out the detail of what is compulsory and what is discretionary. In both cases a formal application must be made to the Council as the charging authority. In summary, compulsory relief is for:

- Exemption for minor development (Reg 42)
- Exemption for residential annexes or extensions (Reg 42A, B & C)
- Exemption for Charities (Reg 43)
- Social Housing relief (Reg 49)
- Exemption for self-build housing (Reg 54A)

10.2 In addition to the compulsory relief the regulations allow for discretionary relief in relation to charities, social housing and exceptional circumstances relief. The regulations set out the detail of when discretionary relief can be offered but in all cases they require the charging authority to publish a relief policy on the web site and make it publically available. Where no such policy document is issued, that is, stating the policy on discretionary relief, the charging authority is deemed not to offer that form of relief. However, the Council can introduce a discretionary relief policy at any time.

10.3 The Lewisham CIL has been designed to ensure that the rates set out in the charging schedule (appendix 1) are affordable. This has been tested at Examination and accepted by the Inspector. The regulations on discretionary CIL relief are relatively complex and would not be straight forward to administer. The Mayor of London does not currently offer discretionary charity relief or exceptional circumstances relief. Officers consider that the Lewisham CIL rate is affordable and it would not be appropriate at this time to introduce discretionary relief in Lewisham. However, this situation will be kept under review and may change in the future if experience shows it would be wise to introduce a discretionary relief policy.

11. Legal Implications

11.1 The report requests the Mayor to approve the Lewisham CIL Charging Schedule, the Lewisham Regulation 123 list and the Lewisham CIL Instalments Policy for adoption and recommend that Full Council formally adopt the documents to be effective from 1 April 2015.

11.2 Regulation 123 of the Community Infrastructure Regulations 2010 requires that where planning permission is being granted for development then:

1. a planning obligation may not constitute a reason for granting planning permission to the extent that the obligation provides for the funding or provision of a relevant infrastructure
2. a condition may not be imposed on the grant that requires a highway agreement for funding or provision of relevant infrastructure to be entered into or prevent or restrict the carrying out of development until a highway agreement has been entered into

3. a planning obligation may not constitute a reason for granting planning permission to the extent that the obligation provides for the funding or provision of an infrastructure project and five or more separate planning obligations for development within the area of the charging authority; and which provide for the funding or provision of that project have been entered into on or after 6th April 2010 .

In short, planning obligations and or conditions are not to be used to secure the provision of relevant infrastructure. “Relevant infrastructure” means, in this context where a charging authority has published on its website a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL those infrastructure projects or those types of infrastructure. This is the Regulation 123 list.

Once the Charging Schedule is adopted and implemented it will not be appropriate to use planning conditions or planning obligations to secure relevant infrastructure.

- 11.3 Section 213 (2) of the Planning Act 2008 requires that a Charging Schedule be approved at a meeting of the authority and by a majority of votes of members present.

Regulation 25 of the CIL Regulations require that as soon as practicable after the charging authority approves a charging schedule in accordance with section 213 it must—

- (a) publish the charging schedule, on its website;
- (b) make the charging schedule available for inspection at the places at which the documents mentioned in regulation 16(1)(a) were made available;

- 11.4 a charging schedule is to take effect at the beginning of the day specified for that purpose in the charging schedule (Regulation 28 of the CIL Regulations)

- 11.5 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 11.6 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

- 11.7 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and

proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

11.8 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:
<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

11.9 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

11.10 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:
<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

12. Financial Implications

12.1 The adoption of a CIL charging policy, charging schedule and instalments policy will enable the Council to generate income in order to fund necessary infrastructure, particularly the types of infrastructure identified in the regulation 123 list. However this income will not be entirely new money as the scaling back of S106 income will offset any income generated through CIL. A precise estimate of the income arising from CIL is difficult to predict as it is dependent on planning applications however an estimate has been made of these, particularly residential developments, and this results in estimated CIL income of £20m over the five year period from 2014/15 to 2018/19. Any expenditure in relation to this income is subject to the usual council processes and procedures including reports to Mayor and Cabinet when appropriate or otherwise incurred under the scheme of delegation.

13 Crime and disorder implications

- 13.1 There are no specific crime and disorder implications arising from this report.

14. Equalities implications

- 14.1 The Council's Comprehensive Equality Scheme for 2012-16 provides an overarching framework and focus for the Council's work on equalities to support the Sustainable Community Strategy and to ensure compliance with the Equality Act 2010.
- 14.2 An equalities analysis assessment (EAA) was undertaken on the CIL Charging Schedule in January 2012. The assessment of impact, outcomes and key follow up actions was as follows;-
- 14.3 There are no major concerns regarding equalities and the overall principles of introducing a CIL rate. Additionally this can be said for the specific rates that are proposed in Lewisham as is proven by the Economic Viability Study.

Of minor concern is the process by which developments are made exempt from paying CIL. The Council should take care that any exemptions are purely based on economic viability to ensure they are not detrimental to any equalities group.

A further minor concern is how the income from CIL is spent. The Council should ensure that the process that is implemented for delivering change with the proceeds of CIL is fair and equal across types of infrastructure and the geography of the borough.

The CIL regulations state that the Council must monitor both incoming CIL payments and the system by which the proceeds are spent. Both processes will be monitored through the introduction of relevant measures to the LDF Annual Monitoring Report once the CIL has been adopted.

15 Environmental implications

- 15.1 There are no specific environmental implications arising from this report. However, CIL receipts will be used to implement physical infrastructure that by its nature will have an impact on the environment. As the infrastructure is needed to make Lewisham a sustainable place the impact should be positive.

16. Conclusion

- 16.1 The CIL charging schedule has been found legally sound at examination and the Council can now adopt it and bring it into effect. The CIL Regulations set out in some detail what must be included in a charging schedule. These have been included in the Lewisham charging schedule set out at appendix 1 to this report. They also require the Council to publish a list of the types of infrastructure or actual projects that the Council intends to use CIL funds to deliver. This is known as the Regulation 123 List, and is set out as Appendix

2 to this report. The Regulations also allow for an instalments policy and this is set out as appendix 3 to this report and follows that already adopted by the Mayor of London for his CIL.

Background documents

| Short Title Document | Date | File Location | File Reference | Contact Officer | Exempt |
|----------------------|------|----------------|-----------------|-----------------|--------|
| The CIL Regulations | 2010 | Laurence House | Planning Policy | Brian Regan | No |

If you have any queries on this report, please contact Brian Regan, Planning Policy, 3rd floor Laurence House, 1 Catford Road, Catford SE6 4RU – telephone 020 8314 8774.

Appendix 1: The Lewisham CIL Charging Schedule

Appendix 2: The Lewisham Regulation 123 List

Appendix 3: The Lewisham CIL Instalments Policy