

REPORT FOR: **CABINET**

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| Date of Meeting: | 11 October 2012 |
| Subject: | Harrow Community Infrastructure Levy – Draft Charging Schedule |
| Key Decision: | Yes [Affects all Wards] |
| Responsible Officer: | Andrew Trehern, Corporate Director of Place Shaping |
| Portfolio Holder: | Councillor Keith Ferry, Portfolio Holder for Planning and Regeneration |
| Exempt: | No |
| Decision subject to Call-in: | Yes |
| Enclosures: | Appendix 1 – CIL Draft Charging Schedule Appendix 2 – Consultation Statement Appendix 3 – Recommendation from LDF Panel – scheduled to meet on 4/10/2012 |

Section 1 – Summary and Recommendations

This report summarises the comments received to consultation on the Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule and the Councils response to these in preparing the Draft Charging Schedule for a further round of consultation prior to submission for Examination in Public.

Recommendations:
Cabinet is requested to:

- A. Note the representations made to the CIL Preliminary Draft Charging Schedule and the Council's response to these appended at Appendix 2.
- B. Recommend that Council approve the CIL Draft Charging Schedule at Appendix 1 for a six week period of public consultation in accordance with the Council's adopted Statement of Community Involvement;
- C. Recommend that authority be delegated to the Divisional Director of Planning in consultation with the Portfolio Holder for Planning and Regeneration to make any minor changes to the CIL Draft Charging Schedule resulting from the consultation, prior to its submission for Examination in Public.

Reason:

To progress with preparing and adopting a CIL Charging Schedule that will enable the Council to charge CIL on new development to help pay for social and physical infrastructure within the Borough.

Section 2 – Report

The Council's spatial vision in its Core Strategy is underpinned by evidence of the need for new green, physical and social infrastructure to support new development and existing communities. The preparation and adoption of a CIL Charging Schedule will ensure that the borough continues to receive contributions from new development towards the delivery of strategic infrastructure required to achieve that vision.

Options considered

It is considered that there are limited genuine alternative options to introducing a CIL charging schedule. Although CIL is not a statutory requirement, boroughs without a charging schedule from April 2014 will generally not be able to pool contributions towards new infrastructure.

There are alternative options around the level of charge to set for different types of development or different geographic areas. Such options were explored in preparing the preliminary draft charges that were subject to public consultation over August and September 2012. On the basis of the feedback received, no further changes are proposed to the Harrow CIL rates.

Consultation on the Preliminary Draft Charging Schedule

Following Cabinet approval in July 2012, the Council invited comments on its Preliminary Draft Charging Schedule from 10th August to 21st September 2012.

A formal notice setting out the proposal matters was placed in the 'Harrow Observer' newspaper on the 16th August 2012. In addition, on 9th August 2012 a total of 1,048 letters were sent by post or email to all contacts on the LDF database, including all specific and appropriate general consultation bodies. Those emailed were also provided with the web link to the documents on the Council's consultation portal and LDF web pages.

Hard copies of the Harrow CIL Preliminary Draft Charging Schedule Report, the Viability Study (BNP Paribas, July 2012), Harrow Council's Infrastructure Assessment & Delivery Plan (updated June 2012) and the Infrastructure Report (CiL Knowledge, July 2012) were made available at the Harrow Civic Centre (Access Harrow) and all libraries across the Borough. The documents were also made available to view and download from the LDF web pages of the Council's website and via the Council's consultation portal. The consultation portal has the added benefit of enabling respondents to submit their representations online as they review the document.

In total 12 responses were received (see Appendix 2 for full representations) - three representing statutory bodies; three from the development industry; two representing service providers; two from local individuals; one from Harrow School; and one from an adjoining local authority. The following section of this report summarises the comments made and sets out the officers consideration and response to these. It also sets out further changes recommended to the Draft Charging Schedule with respect to regulatory requirements and clarifying procedural matters.

Summary of Responses

Hertsmere Borough Council

Hertsmere BC noted the content of the Draft Charging Schedule for Harrow and confirmed that they did not have any comments at this stage.

In response the Council noted that no action / changes were required.

Mr Parkins

Suggested that Harrow's identified funding gap could be considered as Harrow overspending by £61.2m and suggested the Council needed to economise. Mr Parkins also queried whether the Council had a valid mandate to effectively raise taxes.

In response, the Council clarified that new development gives rise to the need for new physical, social and environmental infrastructure, such as schools, healthcare, transport etc, and therefore developers should to contribute towards the cost of new or enhanced infrastructure provision. The infrastructure identified represented that essential to ensure new development results in sustainable development for Harrow. The Council also clarified that the CIL Regulations provided the mandate to introduce CIL, and this

effectively replaced section 106 agreements for strategic infrastructure provision.

Mr Vekaria

Sought clarification that the CIL rate for residential schemes also applied to extensions, new build conversions. Mr Vekaria also considered that the proposed residential charge of £110 per sqm would make development unviable and suggested £35 per sqm would be more appropriate.

In response, the Council clarified that new buildings, including extensions, are liable for CIL where the net increase in floorspace area exceeds 100sqm or where the development involves the creation of a new residential unit, even if the unit is below 100 square metres in area. The Council has suggested that this clarification be included in the supporting text to the Draft Charging Schedule.

With respect to Mr Vekaria's viability concerns, the Council stated that the residential rate was supported by robust evidence of viability, was set well below the upper levels of viability, and therefore was considered to strike an appropriate balance between development viability and raising funds to pay for essential infrastructure to support new development. It also reiterated that CIL monies is not new money, as it replaces s106 contributions, and that a charge of £35 per sqm would further exacerbate the existing funding gap.

Thames Water

Sought to ensure buildings for water and wastewater infrastructure would be exempt from CIL. Thames Water also asked the Council to consider using CIL contributions for enhancements to the sewerage network in respect of protect against surface water flooding.

In response, the Council clarified that the definition of a building or floorspace applicable to the CIL levy does not include buildings which people do not normally go into or that people only go into intermittently for the purpose of maintaining or inspecting machinery. The Council also considered such buildings to be classified as sui generis and therefore they would fall under the category of 'all other uses' under the Harrow draft charging schedule, and attract a 'nil' levy. Therefore on both accounts, buildings required for water and wastewater infrastructure would be exempt from a CIL Levy.

With regard to the use of CIL to enhance the sewerage network, the Council responded that this was appropriate in respect of flood risk from surface water sewer flooding, as suggested. Strategic water and waste water infrastructure was the subject of assessment as part of the Harrow IDP, which details proposed strategic flood mitigation works, which cover flooding from all sources. Such infrastructure requirements are therefore proposed for inclusion in the Regulation 123 List.

Network Housing Group

The Network Housing Group wrote in support of Harrow's proposed CIL rate for residential development, which they considered was set at an appropriate level that balances the need to provide infrastructure, without prejudicing the viability of the majority of developments. They considered that increasing the

CIL level above the £110 rate would increase the number of the schemes whereby affordable housing would need to be significantly reduced below policy levels.

In response, the Council welcomed Network Housing Group's support for the draft charging schedule and the acknowledgement that the proposed residential rate is considered appropriate, especially within the context of affordable housing delivery.

Natural England

Sought to ensure that CIL contributions would be used for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure.

In response, the Council confirmed that green infrastructure, such as that suggested by Natural England for inclusion in the Regulation 123 list, were the subject of the infrastructure assessment as part of the Harrow IDP, which covered open space (parks, natural and semi-natural green space, allotments, amenity space and green corridors and green grid), biodiversity (BAP identified infrastructure) and transport (including rights of way). Such infrastructure requirements are therefore proposed for inclusion in the Regulation 123 List.

Mayor of London

Wrote to confirm that they were pleased that the Mayor's CIL applicable to Harrow had been taken into account in the viability report and subsequently in the rates proposed by Harrow.

In response, the Council noted the comments.

CgMs on behalf of the Mayor's Office for Policing and Crime / and the Metropolitan Police Service

Supported the proposed CIL rates and sought to ensure that the Council's list of beneficiaries of CIL (the Regulation 123 List) would include policing facilities.

In response, the Council welcomed the support for the Harrow CIL and confirmed that the provision of emergency services, such as police, ambulance and fire services were all the subject of the infrastructure assessment. Such strategic infrastructure requirements are therefore proposed for inclusion in the Regulation 123 List.

English Heritage

English Heritage raised concern that the application of a local CIL charge on development which affects heritage assets or their settings might lead to harm being caused to their historic significance. They therefore sought that, in such cases where development viability in respect of a heritage asset is threatened by CIL, that the Borough operate a discretionary relief policy.

In response, the Council reiterated the limited mandatory and discretionary circumstances under which exceptional circumstances relief can be granted. The Council then outlined the reasons why, within Harrow, exceptional

circumstances relief was not warranted, including that the majority of schemes, following the adoption of CIL, would be unlikely to require onerous Section 106 agreements, and such agreements could be appropriately negotiated, and that the level of charge had been set at a considerably lower level than the maximum viable level, which the Council considered would provide sufficient flexibility to overcome viability concerns such as that highlighted by English Heritage in respect of heritage assets.

Gerald Eve on behalf of Signature Senior Lifestyle

Queried the Council's justification for proposing a charge of £55 per sqm for residential institutions which they considered is not supported by the viability evidence base. They also highlighted the fact the Hotel developments were not identified on the Preliminary Draft Charging Schedule as being subject to CIL despite the recommendation of the viability report that a suggested rate of £55 per sq is appropriate. Lastly, they sought to make a case for care homes (both public and private) being considered as healthcare facilities and therefore part of the Borough's social infrastructure requirements.

In response, the Council confirmed that Hotel developments should have been included in the Charging Schedule as being subject to a CIL charge of £55 per sqm. This omission will therefore be addressed in the Draft Charging Schedule.

With respect to the inclusion of residential institutions being included in the charging schedule as liable to a charge of £55 per sqm, the Council considered that it is the nature of CIL that some assumptions and generalisations have to be made and CIL guidance recommends that overly complicated methods and rates are avoided. The Council noted that the respondents had not provided evidence to suggest that the CIL rate for residential institutions should be any different to other residential institution accommodation. On basis that the rates for residential institutions had been set at a considerably lower level than the maximum viable level, the Council considered that there is sufficient flexibility to accommodate issues specific to care homes. Nevertheless, the Council will seek confirmation of the range of Class C2 type development viability, and will publish this as an addendum to the viability report.

With regard to care homes being part of the Borough's infrastructure requirements, the Council considers privately built and operated care homes are run on a purely commercial basis with the costs of provision being met by sales /rents /fees charged to occupiers of the development. As such they are considered to fall outside the remit of social infrastructure provision.

Thomas Eggar on behalf of Asda Stores Limited

Sought acknowledgement within the CIL rates proposed of the role of retail development in delivering Council's objectives for the regeneration of town centres and job creation. They also queried whether all relevant development costs had been considered in the viability assessments, in particular those related to brownfield development and allowances for s106 costs. They also queried the approach to setting the charge generally, which they consider should be calculated based on the total cost applied equally across all planned development, stating the approach set out in the

Regulations results in a fundamental disconnect between CIL charges and the infrastructure requirements of CIL liable development. They also suggested the Council should consider, in developing its CIL instalments policy, payments staged to development phasing rather than the Regulation requirements that instalments be set based on time periods. Lastly, they encourage the Council to adopt an exceptional circumstances relief policy to address borderline viable developments.

In response, the Council reiterated that Harrow's CIL must comply with the requirements of the CIL Regulations in respect of determining the charging schedule and the instalments policy. The Council also reiterated the Government's guidance on establishing CIL charges, noting in particular, that CIL cannot be used as a tool to deliver policy as it must be predicated on economic viability.

With respect to development costs, the Council confirmed that the viability methodology included all relevant and normal / standard development costs. It also pointed out that these were the subject of a workshop where BNP went through each variable line by line with representatives of the development community, to confirm these prior to running the viability scenario models. The Council therefore confirmed that it was satisfied that the methodology and the findings of the viability report are robust.

With regard to the adoption of an exceptional circumstances relief policy, the Council again reiterated the limited mandatory and discretionary circumstances under which exceptional circumstances relief can be granted under the Regulations and again outlined the reasons why, within Harrow, the Council considered that exceptional circumstances relief was not warranted.

Harrow School

The School sought clarification on its charitable status and whether, as a registered charity, any development undertaken by the School would therefore be exempt from CIL.

In response, the Council set out the criteria set out in the Regulations and CIL guidance that must be fulfilled to qualify for charitable exemption. If the School can demonstrate they met these requirements, then such development would be exempt from the CIL, noting also that education development falls within the category of 'all other land uses' which under the Harrow Draft Charging Schedule would attract a 'nil' charge.

Additional amendments

In addition to those amendments outlined above, the proposed Draft Charging Schedule has been amended to include further detail and clarity on the application of the CIL, including a proposed instalments policy and the Council's list of strategic infrastructure that CIL funding will help to deliver (the Regulation 123 List).

Next steps

The remaining timetable for preparation and adoption of the Harrow CIL Charging Schedule (based upon a need to report to November full Council meeting) is as follows:

- Final community engagement on CIL: November - December 2012
- Submit for independent examination: January 2013
- Independent examination – public hearings: February/March 2013
- Adoption: June/July 2013

Governance

CIL is fundamentally different to S106 in that it places the onus and responsibility on the Charging Authority (the Council) to ensure that the right infrastructure is provided at the right time. Developers paying the charge (and the communities receiving new development) will expect the infrastructure to be in place to support their development and are likely to be particularly concerned to see that appropriate organisational structures and reporting and monitoring provisions are in place.

Officers are currently reviewing models for the planning and management of infrastructure delivery. The democratic and governance processes, together with financial management arrangements will need to be developed in parallel with the delivery of the Charging Schedule, as well as new IT infrastructure currently under development with the Councils IT supplier. Options for the management of a pooled fund for strategic infrastructure will be reported to Members at a later date.

The Use of Planning Obligations (S106 agreements)

S106 remains to secure affordable housing and to mitigate the site specific impacts of the development in question but can not be applied to address the cumulative effects of development. The changes to the use of S106 are to ensure that Councils cannot double charge developers for the same items of infrastructure through both the levy and a planning obligation. The Regulations therefore require the Council to set out, in broad terms, what types of infrastructure it intends to fund through the levy (known as the Regulation 123 list) otherwise it will not be able to fund any infrastructure through S106 once the levy is adopted. Note: s278 of the Highways Act can be used in conjunction with CIL development on the Regulation 123 list.

Given the changes to the use of S106, in tandem with preparation of a Harrow CIL, the Council will also prepare a Supplementary Planning Document to assist applicants in understanding the site specific planning obligations the Council may still seek to secure through the use of S106. These would include, but are not limited to impacts upon building heritage and conservation, archaeology, Green Belt management, biodiversity, on-site flood mitigation and on-site requirements for district heating network facilities, as well as for affordable housing (at least for the time being).

Implications of the Recommendation

Resources and Costs

Becoming a CIL charging authority will require staff and resources to be put to ensuring the processes and procedures are in place for the CIL operation which will involve officer time from Planning (including registration, land charges, policy and development management), and Finance (collection, accounting, invoicing where necessary). The establishment of a CIL for Harrow is currently provided for from Planning Delivery Grant within the Planning Division Budget, as part of the Planning Divisions budget for 2012/13. In future years, the regulations allow for up to 5% of the charge to relate to implementation /administration costs – although recent consultation on the review of these provisions suggest that this limit may be raised in future.

Legal comments

The power to charge by way of CIL was introduced by Part 11 (Sections 205-225) of the Planning Act 2008. The Community Infrastructure Levy Regulations 2010 (as amended in 2011) deal with the detailed implementation of CIL and cover matters such as the procedure for setting CIL, the charging and collecting of the levy and liability for payment. A charging authority cannot adopt CIL unless it has first produced a charging schedule based on appropriate available evidence which has informed the preparation of the charging schedule.

Financial Implications

The introduction of CIL will mean that the Council will be able to charge developers based on specific rates set out in this report in order to generate income to fund infrastructure improvements. Existing S106 funding is to be scaled back and will be replaced by the new charges under CIL. Therefore the income generated by CIL will not be entirely new money but also partly a replacement of what the Council might have got under S106. However, this funding remains significantly less than the funding requirement as identified in the Infrastructure Delivery Schedule and income from the CIL will contribute towards this.

The costs associated with the printing, publishing and consulting on the CIL Preliminary Draft Charging Schedule will be met from the existing Planning Services budget through a specific allocation of £4k from the Planning Delivery Grant.

Performance Issues

As set out in this report, CIL is not new money (its effectively replaces S106) and will not be the primary source of funding for new infrastructure. Rather the purpose of CIL is to help close the existing gap in funding the infrastructure required to support new development. In this context the introduction of the CIL will be positive, in that it should assist the Council's performance in the delivery of strategic infrastructure. However, in terms of

which types of strategic infrastructure will be delivered and their priority, this remains for the Council to determine through its processes for the allocation of capital spending, bidding for grants, property disposal etc.

Environmental Impact

There are no environmental impacts associated with the introduction of a Harrow CIL. Environmental issues are at the heart both of the planning process and the delivery of supporting infrastructure. Site specific environmental impacts will continue to be mitigated through the negotiation of appropriate S106 obligations. Ultimately it is for the Council to decide what infrastructure projects they wish to fund in full or part through CIL receipts, which may or may not include environmentally beneficial infrastructure projects.

Risk Management Implications

Risk included on Directorate risk register? Yes

Separate risk register in place? No

The key risk associated with CIL is not in getting the charging schedule adopted but rather in ensuring that CIL receipts are used effectively to deliver the strategic infrastructure identified as being required in the Infrastructure Delivery Schedule. Once CIL is adopted, the Council will not be in a position to refuse planning applications on the basis of inadequate provision of strategic infrastructure. Both the community and developers will expect the Council be transparent in the use of CIL receipts and to monitor and report on its effectiveness.

Equalities implications

Was an Equality Impact Assessment carried out? No

CIL is effectively a tax on new development. The Regulations are limiting in terms of how CIL is to be applied and any exemptions, and were subject to a central government equalities assessment, which found there to be no negative consequences of introducing a CIL. In this context, a local EqIA is not considered necessary.

Corporate Priorities

The CIL will provide funding and a system to help support the implementation of the following corporate priorities:

- Keeping neighbourhoods clean, green and safe – through the delivery of funding for strategic infrastructure projects aimed at improving the quality of our existing green spaces, the expansion of the Green Grid network.
- United and involved communities: A Council that listens and leads – CIL provides scope to support communities in the shared delivery of

infrastructure – particularly through the provisions for consultation and local implementation that are currently under review.

- Supporting and protecting people who are most in need – through provision of new or enhanced health care and other community facilities. Depending on amendments to the Regulations, CIL might also be made available to assist in the delivery of affordable housing.
- Supporting our town centre, our local shopping centres and businesses - through the provision of physical infrastructure including public transport and new public realm that can assist in generating economic growth and town centre vitality.

Section 3 - Statutory Officer Clearance

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|-------------------------|-------------------------------------|---|
| Name: Kanta Hirani | <input checked="" type="checkbox"/> | on behalf of the Chief Financial Officer |
| Date: 25 September 2012 | | |
| Name: Abiodun Kolawole | <input checked="" type="checkbox"/> | on behalf of the Monitoring Officer |
| Date: 25 September 2012 | | |

Section 4 – Performance Officer Clearance

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| Name: Martin Randall | <input checked="" type="checkbox"/> | on behalf of the Divisional Director Partnership, Development and Performance |
| Date: 19 September 2012 | | |

Section 5 – Environmental Impact Officer Clearance

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| Name: Andrew Baker | <input checked="" type="checkbox"/> | on behalf of the Divisional Director (Environmental Services) |
| Date: 19 September 2012 | | |

Section 6 - Contact Details and Background Papers

Contact: Matthew Paterson, Senior Professional Planning Policy, Place Shaping, 020 8736 6082

Background Papers: Cabinet Paper of 19 July 2012

The link to the paper is: [www.harrow.gov.uk/www2/documents/g61070/Public](http://www.harrow.gov.uk/www2/documents/g61070/Public%20reports%20pack,%20Thursday%2019-Jul-2012%2019.30,%20Cabinet.pdf?T=10) reports pack, Thursday 19-Jul-2012 19.30, Cabinet.pdf?T=10

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

NOT APPLICABLE

[Call-in applies]