
REPORT FOR: CABINET

Date of Meeting:	10 March 2016
Subject:	Harrow Community Infrastructure Levy (CIL) – Land and Infrastructure Payments Policy
Key Decision:	Yes
Responsible Officer:	Paul Nichols, Divisional Director of Regeneration and Planning
Portfolio Holder:	Councillor Keith Ferry, Deputy Leader and Portfolio Holder for Business, Planning and Regeneration
Exempt:	No
Decision subject to Call-in:	Yes
Wards affected:	All
Enclosures:	Appendix 1 – draft Policy on In Kind Land and Infrastructure Payments

Section 1 – Summary and Recommendations

This report sets out the process for the Council to make land and infrastructure payments available under the Community Infrastructure Levy Regulations 2010 (as amended) and proposes a draft policy covering such payments.

Recommendations:

Cabinet is requested to:

- (A) Agree to issue notice that it is willing to accept In Kind Land and Infrastructure Payments under regulation 73 or 73A of the Community Infrastructure Levy Regulations 2010 (as amended).
- (B) Agree the draft Policy on In Kind Land and Infrastructure Payments attached at Appendix A.

Reason: (For recommendations)

Under the Community Infrastructure Levy Regulations 2010 (as amended), it is necessary for the charging authority (i.e. the Council) to give notice that it is willing to accept infrastructure payments in its area and to include a policy statement setting out the infrastructure projects, or types of infrastructure, which it will consider accepting the provision of as infrastructure payments. Whilst the Council is not required to give formal notice that it will accept land payments or adopt a policy for receipt of such payments, the draft policy for infrastructure payments is also intended to apply to land payments.

Section 2 – Report

1. Introduction / Current Situation

- 1.1 The Council's Local Plan is underpinned by evidence of the need for new green, physical and social infrastructure to support new development and existing communities. The implementation of the Harrow Community Infrastructure Levy (CIL) Charging Schedule on 1 October 2013 secures contributions from new development towards the delivery of strategic infrastructure required to support development in Harrow and the implementation of the Local Plan.
- 1.2 CIL largely replaces the s106 developer contributions system previously used to secure funding for new infrastructure in the borough. CIL is calculated having regard to the type of development (as different CIL rates apply to different uses) and the net gross internal area of the development (once existing lawfully used floor space is deducted). It is a non-negotiable, formula based mechanism intended to provide certainty for developers and be simple in its administration.
- 1.3 Payment of CIL is therefore normally in the form of monetary payments, which are pooled and used to fund the types of infrastructure listed on the Council's 'Regulation 123' list (see paragraph 7.2 below). At present, the amount of CIL the Council has received to date is relatively modest (£551,453), as CIL is only payable upon the commencement of the development, so there is a time lag between when the Council issues

the CIL Liability Notice (generally with the planning permission) and when CIL actually falls due and the Council receives the payment/s.

- 1.4 The CIL Regulations make provision for CIL to be paid 'in-kind', by land payment under regulation 73 and this kind of payment is allowed for by the Council within the CIL Schedule which was adopted in October 2013. The provision of physical infrastructure (an 'infrastructure payment') was subsequently introduced by Regulation 73A in February 2014. For the Council to be able to consider accepting infrastructure payments, it needs to give notice that it is willing to accept infrastructure payments in its area. It also needs to include a policy statement setting out the infrastructure projects, or types of infrastructure, which it will consider accepting the provision of as infrastructure payments.

2. Options considered

- 2.1 The only alternative option in this instance is for the Council to not give notice that it is willing to accept infrastructure payments. Not to give notice would mean that the CIL could only be paid in money or through a land payment (the Council does not need to give notice that it is willing to accept land payments), which would limit the options available to the Council to secure infrastructure required to support development within the borough. Giving notice that it is willing to accept infrastructure payments does not commit the Council to accepting specific proposals for infrastructure payments, it simply gives the Council the ability under the CIL Regulations to consider any proposals.

3. Rationale for infrastructure payments (why a change is needed)

- 3.1 Payment of CIL is typically through monetary payments, which allows pooling of contributions to fund large, strategic infrastructure, as well as being a relatively simple process to calculate and administer. However, in some instances, it may be expedient to accept the payment of CIL in a form other than money. This may include the acquisition of land or the provision of physical infrastructure.
- 3.2 For example, where the Council has already planned to invest in an infrastructure project there may be time, cost and efficiency benefits in accepting completed infrastructure from the party liable for payment of the levy, particularly where this infrastructure is an integral part of the overall development from which the CIL is due. Payment in kind can also enable developers, users and the Council to have more certainty about the timescale over which certain infrastructure items will be delivered. Such a process is also potentially more robust in securing the infrastructure than a simple market transaction (using CIL paid in money) as the CIL liability is not considered paid until the infrastructure is completed and ownership transferred to the Council. If this does not occur within the agreed timeframes, payment of the CIL liability defaults to being payable in money.

- 3.3 Consequently, subject to relevant conditions, and at its discretion, the Council may enter into an agreement for a land and/or infrastructure payment to discharge part or all of a levy liability.
- 3.4 An example of the mechanism in practice is that it is proposed that the new central library that forms part of the 51 College Road scheme (i.e. former post-office) is secured by way of an infrastructure payment. Such an arrangement will account for most of the CIL liability for that development that would otherwise have been payable in money. Such an approach is consistent with the Council's Library Strategy (adopted in March 2015) and the report on the relevant application to the Planning Committee in June 2015.

4. Process for infrastructure payments

- 4.1 If the Council chooses to agree to give notice that it is willing to accept infrastructure payments, it must publish a policy document under Regulation 73B which sets out its approach and conditions to these in detail. This document should confirm that the authority will accept infrastructure payments and set out the infrastructure projects, or types of infrastructure, they will consider accepting as payment (this list may be the same list provided for the purposes of Regulation 123, which is included in paragraph 7.2 below). The draft Harrow policy is attached at Appendix 1.
- 4.2 Before a land or infrastructure payment agreement is entered into, the Council must be satisfied that the relevant criteria in the CIL Regulations are met. These include:
 - (a) The Council must be satisfied that the transfer of land and / or provision of infrastructure is appropriate to support the delivery of the Local Plan and development in the borough, consistent with the purpose of CIL.
 - (b) The land or infrastructure is acquired by the Council as the charging authority or a person nominated by the Council.
 - (c) The infrastructure or land offered may not be necessary to make the proposed development acceptable in planning terms (such infrastructure is secured through s106 agreements).
 - (d) The chargeable development must not have commenced before a written agreement with the Council to pay part or all of the CIL amount as land and / or infrastructure has been made. This written agreement must be prepared in accordance with the criteria set out in Regulation 73 and 73A of the CIL Regulations (as amended).
 - (e) The person transferring the land and / or providing infrastructure to the charging authority as payment must have assumed liability to pay CIL and completed the relevant CIL forms.

- (f) Where CIL is paid by way of a land payment and / or infrastructure the amount of CIL considered to have been paid in this form is the amount equal to the value of the acquired land and / or infrastructure. Any remaining CIL liability is payable in money once the land / infrastructure is implemented and / or transferred to the Council.
 - (g) The land and / or infrastructure to be acquired must be valued by a suitably qualified and experienced independent person to be agreed with the Council. The valuation of land must represent the price that the land might reasonably be expected to obtain if sold on the open market on the day the valuation takes place and reflect the relevant purposes for which the land will be utilised. The valuation of infrastructure provided must reflect the cost of providing the infrastructure on the day the valuation takes place.
- 4.3 Land that is to make up a payment in kind may contain existing buildings and structures.
- 4.4 Payments in kind must be provided to the same timescales as cash payments, or otherwise on an agreed basis, subject to the provisions in the regulations and any other state aid considerations.
- 4.5 The Council can accept one or more land and infrastructure payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development..
- 4.6 Whilst the Council is not required to give formal notice that it will accept land payments or adopt a policy for receipt of such land payments, the draft policy for infrastructure payments is also intended to apply to land payments as the process and considerations are similar.

5. Proposed Policy on In Kind Land and Infrastructure Payments

- 5.1 The proposed Policy on In Kind Land and Infrastructure Payments is included in Appendix 1. It covers the key criteria for accepting such payments (as outlined in section 4.2 above). It also covers local administrative policies, including:
- (a) The Council will require the costs related to the independent valuation to be paid for at the applicant's expense.
 - (b) The reasonable costs (i.e. legal fees) of the Council in entering into any agreement are paid for at the applicant's expense.
 - (c) The land, subject to transfer, must be free from any interest in land and any encumbrance to the land, buildings or structures.
 - (d) The land and / or infrastructure subject to transfer must be fit for a relevant purpose being the land and / or infrastructure appropriate

to support the delivery of the Local Plan and development in the Borough.

- (e) Any outstanding CIL liable to the chargeable development after the transfer of land and /or delivery of infrastructure should be paid in money in line with the Regulations and the Council's Charging Schedule.
 - (f) The fact that the Council is willing to accept land and infrastructure payments does not oblige the Council to accept any offer for payment in these forms. The Council reserves the right to collect a CIL liability by way of monetary payment/s.
 - (g) The proposed date from which the policy is effective (18 March 2016, until cancelled or replaced).
 - (h) A clear statement that the policy does not relate to the Mayor of London's CIL.
- 5.2 If agreed, the policy at Appendix 1 will be made available on the Council's website and offices. The Council can revise or cancel the policy when it wishes to do so.

6. Implications of the Recommendation

Resource Implications

- 6.1 The resource implications of implementing the policy if agreed will be modest, as the legal and valuation costs of entering into such an agreement will be met by the applicant / developer.

Performance Issues

- 6.2 If the Cabinet agrees to consider accepting infrastructure payments and the policy included in Appendix 1, this will enable another potential avenue for delivering infrastructure to support new development within the borough.
- 6.3 The Council will however need to ensure that it fulfils its responsibilities in agreeing land or infrastructure payments in a timely manner as such agreements need to be in place before development commences.
- 6.4 Land and infrastructure secured by way of land and infrastructure payments is not 'new money', as it is in-lieu of the monetary payment of any CIL liability arising from the relevant development.

Environmental Impacts

- 6.5 No direct environmental impacts are anticipated should the Council agree to accept land and infrastructure payments. Any subsequent use of land or development of infrastructure will be subject to relevant planning and environmental regulations.

Risk Management Implications

Risk included on Directorate risk register? Yes

Separate risk register in place? No

- 6.6 Unlike monetary payment of CIL which is a simple calculation, land and infrastructure payments require valuation of the land or infrastructure to be provided and the entering into a legal agreement. This involves a degree of financial and legal risk but such risks would also apply if the land or infrastructure was acquired through other means. Risks will be mitigated through the land / infrastructure being valued by an independent person (as per the CIL Regulations) and the involvement of the Council's solicitors in drafting the agreement.

Legal Implications

- 6.7 The CIL Regulations require the Council to publish a notice and policy indicating that it is willing to accept infrastructure payments within the borough before it can enter into such agreements. The recommendation for the Cabinet to agree to the draft notice and policy attached at Appendix 1 meets the requirements of the Regulations.
- 6.8 Any subsequent agreements for specific CIL liabilities will need to comply with the requirements of the CIL Regulations, specifically Regulations 73, 73A, 73B and 74.
- 6.9 The authority to enter into a CIL agreement falls within the terms of reference for corporate directors.

Financial Implications

- 6.10 As noted above, the resource implications of agreeing the policy will be modest, as the legal and valuation costs of entering into such an agreement will be met by the applicant / developer. The financial merits of entering into an agreement for a specific CIL liability will be considered on a case-by-case basis.

Equalities implications / Public Sector Equality Duty

Was an Equality Impact Assessment carried out? No

- 6.11 CIL is effectively a tax on new development, with land and infrastructure payments simply being an alternative to monetary payment of the CIL liability arising from chargeable 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 was not considered necessary when the Harrow CIL was first implemented.

7. Council Priorities

The Council's vision:

Working Together to Make a Difference for Harrow

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

- Making a difference for the vulnerable
- Making a difference for communities
- Making a difference for local businesses
- Making a difference for families

7.2 It does this by providing a funding stream that can be used to support infrastructure identified on the Council's Regulation 123 list, as follows:

Education facilities	Early years, primary and secondary schools
Health services	GPs, acute healthcare
Social care	Supported accommodation
Emergency services	Police, Ambulance and Fire Services
Cultural and community facilities	Libraries and community halls
Improvements to public open space	Parks, natural green space, civic space and green corridors and green grid
Improvements to biodiversity	
Public recreation and leisure facilities	Neighbourhood and Youth Play space, sports and leisure centres, swimming pools and playing pitches
Cemeteries and burial space	
Strategic transport facilities	Roads, buses, cycling, rail and underground
Strategic flood mitigation	

Section 3 - Statutory Officer Clearance

Name: Jessie Man	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 11 February 2016		
Name: Jimmy Walsh	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 29 February 2016		

Ward Councillors notified:	NO, as it impacts on all Wards
EqIA carried out:	NO – see 6.10 above.
EqIA cleared by:	-

Section 4 - Contact Details and Background Papers

Contact: David Hughes – Planning Policy Manager, 0208 736 6082
david.hughes@harrow.gov.uk

Background Papers: Cabinet report – Adoption of Harrow’s Community Infrastructure Levy (18 July 2013), available from:
<http://www.harrow.gov.uk/www2/documents/s108795/CIL%20Adoption%20-%20Main%20Report.pdf>

Call-In Waived by the Chairman of Overview and Scrutiny Committee	NOT APPLICABLE <i>[Call-in applies]</i>
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