

# **Committee: Borough Plan Advisory Committee**

**Date: 15 June 2011**

Agenda item: 5

Wards: all

## **Subject: Community Infrastructure Levy – project timetable**

Lead officer: Director for Environment and Regeneration, Chris Lee

Lead member: Cabinet Member for Environmental Sustainability and Regeneration,  
Councillor Andrew Judge

Forward Plan reference number: N/A

Contact officer: Section 106 Monitoring Officer – Development Control; Tim Catley;  
Programme Manager - Strategic Policy, Tara Butler.

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### **Recommendations:**

A. That the Borough Plan Advisory Committee considers the content of this report.

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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. This report sets out Merton's timetable for developing a charging schedule to apply the Community Infrastructure Levy (CIL) to most new development in Merton.
- 1.2. Under current legislation, Community Infrastructure Levy will replace Section 106 agreements by April 2014 as the principal means by which developer contributions towards providing the necessary infrastructure to support new development should be collected. Therefore Merton will have to adopt a CIL Charging Schedule by April 2014 to help fund infrastructure in the borough.
- 1.3. From April 2014, Section 106 agreements will only be able to be applied to affordable housing, some "in kind" infrastructure (e.g. transfer of land or buildings) and financial contributions in exceptional cases where there are still site-specific development mitigation requirements necessary to make a particular development acceptable in planning terms (the latter development could not be charged CIL as well).
- 1.4. This report sets out Merton's proposals for creating a Community Infrastructure Levy Charging Schedule, which local planning authorities must adopt in order to be able to charge CIL.
- 1.5. The project plan including the timetable for production of Merton's proposed CIL Charging Schedule is set out in Merton's Local Development Scheme, which is being presented to Members of Cabinet (20 June) and Council (13 July 2011) for resolution to approve.

## **2 DETAILS**

- 2.1. The provisions of the Community Infrastructure Levy are set out in the CIL Regulations April 2010, the government's announcement on CIL on 18 November 2011, and the amended CIL Regulations 2011.

- 2.2. Appendix 1 to this report is the CLG publication in May 2011 “Community Infrastructure Levy – an overview” which gives a useful explanation of the CIL Regulations, what they can be used for and how they will work.

#### CIL Charging Schedule – key points

- 2.3. Under CIL, local authorities and the Mayor of London will be able to charge a mandatory tariff on a wide variety of development including most new owner-occupied homes and other buildings over 100 sqm.
- 2.4. CIL will be levied as a charge per square metre of additional (to existing) gross internal floor area (please refer to p.11 para 40 of Appendix 1 for further details). This will make it much more straightforward to calculate in advance for every new development that it applies to.
- 2.5. Before CIL can be charged, a CIL Charging Schedule must be prepared by the charging authority that, includes community engagement on the potential charge, followed by an independent examination in public and adoption by the Council, under a process very similar to the preparation of LDF documents.
- 2.6. The CIL Charging Schedule must prove that it is necessary to help bridge any infrastructure funding gap to support growth across the borough over the Core Strategy plan period (2011-26 in Merton’s case). Therefore the background work to preparing the Charging Schedule must be sound infrastructure planning based on the LDF and ensuing viability testing.
- 2.7. The charging schedule must set out and cost the infrastructure (e.g. new school places, new healthcare facilities etc) needed to support the growth in resident population in Merton over the next 15 years. This infrastructure needs assessment should not include matters that would be necessary to service the existing population (e.g. maintenance of an existing school).
- 2.8. Merton has an up-to-date infrastructure assessment, completed in 2011, which supported Merton’s sound Core Planning Strategy.
- 2.9. CIL charges should cover the whole of the local authority area but can have differential charging rates (by area or development type) across the area.
- 2.10. The setting of those rates must have a sound basis in viability terms so as not to prevent otherwise sound development coming forward.
- 2.11. Adopting a CIL is not mandatory but changes to S.106 (see below) make it necessary for Merton if the borough is to have the infrastructure needed to support new development. Please refer to paras. 2.31 and 2.32 of this report.
- 2.12. No other councils have adopted a Charging Schedule at this time; councils including Redbridge, Wandsworth and Portsmouth have published initial proposals for consultation and Newark and Sherwood District Council has submitted its draft Charging Schedule to an independent examiner.

#### Exemptions

- 2.13. The following are exempt from having to pay CIL:
- Affordable housing;

- Where an active (i.e. not long-term vacant) non-residential use is converted into residential and there is no additional gross internal floorspace.
  - Changes of use that do not involve an increase in floorspace (e.g. most dwelling conversions in Merton)
  - Buildings which people do not normally go into or go into intermittently for the purposes of maintenance (e.g. electricity substations; railway signal maintenance sheds).
- 2.14. Developers may be able to claim for a reduction on the basis of viability in exceptional circumstances in accordance with an exemption procedure should the local authority choose to operate and publish such a procedure.
- 2.15. As mentioned above, the charging authority may choose or be required to exempt certain areas or types of development from having to pay CIL as a result of the findings of its infrastructure planning, viability assessment or to encourage regeneration if the necessary infrastructure could be funded by other means.

#### Mayor of London's CIL

- 2.16. The Mayor of London is preparing a CIL to fund the £300million funding gap towards Crossrail. In the Mayor's initial CIL consultation in January 2011, charge of £35 per square metre is proposed to be levied on new development (residential and commercial) in Merton to pay for Crossrail. This is the middle of three charging bands: the higher band, including most central London boroughs, Wandsworth and Richmond is proposed at £50 per square metre, the lower band, which includes Croydon and Sutton, is proposed at £20 per square metre.
- 2.17. Once adopted, boroughs will have to collect the Mayor's CIL on his behalf and give it priority in calculating the viability of their own CILs.
- 2.18. For example (assuming no change to initial proposed Charging Schedules), new development in L.B.Redbridge may be expected to provide £105 per square metre: £70 of which would go towards infrastructure within Redbridge and £35 of which would go to the Mayor of London to help pay for Crossrail.
- 2.19. The Mayor proposes a final consultation on the Mayor's CIL later in 2011, with the public examination and potential adoption of the Mayor's CIL by mid 2012.

#### Applying CIL

- 2.20. Developers have to make CIL payments on a date following commencement of works. Local authorities can decide their own payment deadlines, including payment by instalments if necessary (otherwise a standard 60-day deadline will apply).
- 2.21. Developers can meet their CIL liabilities in kind (by transfer of land or existing buildings and structures); changes have been made in the amended CIL Regulations 2011 to remove the minimum threshold for payments in kind (made via transfer of land) so even very small in-kind land transfers can count as meeting CIL liabilities. Merton officers consider that this is

welcomed as it expands the scope for CIL to be used to unlock land parcels required for infrastructure provision.

- 2.22. Inspectors acting on behalf of the Secretary of State in their role as examiners of proposed CIL Charging Schedules can't reject a charging schedule except for an error in law that can't be corrected. Councils can accept Inspectors' suggested changes or make their own to address the shortcomings of their schedules without having to go back to the Inspector. These changes will be introduced through provisions in the Localism Bill.

#### Spending CIL

- 2.23. The CIL Regs. April 2010 allowed CIL to be spent by Charging Authorities on any capital infrastructure. They can be passed to infrastructure providers such as the NHS, Met Police and the Fire Service. Local authorities cannot borrow in advance of CIL receipts.
- 2.24. The amended CIL Regulations 2011 state that it will be mandatory for "neighbourhoods" to be given a "meaningful proportion" of CIL revenues. CLG publication entitled "Community Infrastructure Levy – an Overview" May 2011, advises that this means that some CIL monies for the neighbourhoods must be passed to them by Councils – i.e. not spent by councils on behalf of neighbourhoods. This doesn't apply to the Mayoral CIL.
- 2.25. While the meaning of "neighbourhoods" and "meaningful proportion" is undefined in the amended CIL Regulations 2011 or any other guidance on CIL, it is unclear what the impact of this proposal will be. There are some concerns regarding the legal implications for receipt and disposal of funding for infrastructure, and the extent of the impact on the infrastructure funding gap.
- 2.26. The Localism Bill (first reading 13 December 2010, due to become law by April 2012) will amend the Planning Act 2008 to allow for Regulations to be changed in the following manner:
- To specifically allow or prohibit CIL revenues to be spent on maintenance, operational and promotional activities. To date, no advice has been provided by CLG regarding the intention of this change so we will need to wait for updated advice and/or any amendments to the Regulations and CIL Guidance. If the Regulations were to make provision in favour of such revenue type expenditure then this would significantly expand the scope for spending CIL to such measures as town centre management, and notably infrastructure operation (e.g. salaries for those working in schools or healthcare.) If the scope for spending CIL would be expanded to such an extent there is a concern that this would be too far a departure from the intention of and justification for CIL, namely to fund the infrastructure necessary to support the growth over the plan period set out in the LDF.
  - To allow for the expenditure of CIL revenue on future ongoing costs associated with the capital infrastructure projects funded by CIL. There has been no advice provided by CLG regarding the intention of this change so we will need to wait for changes to the relevant regulations and other advice. This is currently being interpreted to mean that CIL could be spent

on, for example, a project manager to deliver a new school development (where the school was funded by CIL).

- 2.27. If it was decided to take up this facility then project management costs for both local Councils and Neighbourhoods might be CIL fundable. It is noted that further expansion of the scope for spending CIL as per paragraphs 2.26 above would impact upon the amounts that might be available for any particular project. This is because there is a finite capacity of development to generate CIL revenues.

### **The Case for a Merton CIL**

- 2.28. As Merton will have to adopt a CIL Charging Schedule by April 2014 to replace most S106 in helping fund infrastructure in the borough, it is recommended that the council starts preparations towards this. Paragraph 5.1: below sets out the proposed timetable for carrying out this work.
- 2.29. It is considered that there are no reasonable alternative options to help fund infrastructure associated with a growing population and new development beyond 2014, other than take forward a CIL Charging Schedule.
- 2.30. The CIL Regulations 2010 and 11 make Section 106 obligations illegal unless they are:
- (a) necessary to make the development acceptable in planning terms;
  - (b) directly related to the development; and
  - (c) fairly and reasonably related in scale and kind to the development
- 2.31. The Regulations also provide a transitional period (to 6 April 2014 or, by the date of the introduction of a local CIL, whichever the earlier) after which it would be impossible for local authorities to use S.106 like a tariff.
- 2.32. In other words by 6 April 2014 it would be unlawful the Council to require s.106 contributions to be pooled to provide new infrastructure such as education, open space/play space, sustainable transport projects as is done currently.
- 2.33. Once the initial preparations and viability testing has been carried out officers will have a better idea as to how the amount of revenue that may be generated from CIL receipts would compare with S.106 revenue. While it is anticipated that the benefits of adopting a CIL earlier outweigh the disbenefits, the date for adoption/publication could be delayed to a date closer to the 6<sup>th</sup> of April 2014 (but no later) should it be preferable to continue operating the existing S.106 regime for as long as possible.

## **3 ALTERNATIVE OPTIONS**

- 3.1. As set out in paragraphs 2.29-32 above, it is considered that there are no reasonable alternative options to help fund infrastructure associated with a growing population and new development beyond 2014, other than take forward a CIL Charging Schedule.

## **4 CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1. Consultation is proposed to inform the preparation of Merton's CIL Charging Schedule as set out in Section 5 below.

## **5 TIMETABLE**

- 5.1. The proposed timetable for Merton to produce a CIL Charging Schedule is as follows:

- Preparation and viability testing – September-December 2011
- Community engagement on draft Merton CIL Charging Schedule – Jan-Feb 2012
- Finalise Merton CIL Charging Schedule – summer 2012
- Final community engagement on CIL: September-November 2012
- Submit for independent examination: January-February 2013
- Independent examination – public hearings – April/May 2013
- Adoption – July/October 2013

## **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1. As set out in the body of the report, from April 2014 CIL will replace most S106 agreements in funding infrastructure associated with new development. As set out in paragraphs 2.28-2.33 above, CIL will be the only mechanism for collecting funds to support new infrastructure where these funds are pooled, e.g. for open space, play space, sustainable transport and education.
- 6.2. For example, as set out in Merton's Annual Monitoring Report 2009-10 (chapter 13) in the three financial years between April 2007 and March 2010 Merton Council agreed monetary Section 106 amounting to approximately £2,440,000 for educational contributions, £1,344,920 for open space and leisure. Although some of these contributions are site specific, however many of them are pooled to cover areas in the vicinity of several developments. Without an adopted CIL charging schedule, this would not be possible from April 2014.

## **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1 The power to charge CIL is contained within Part 11 (Section 205-225) of the Planning Act 2008 ("the Act"), the Community Infrastructure Levy Regulations 2010 and the amended Community Infrastructure Levy Regulations 2011. CIL is defined as an imposition of a charge; the purpose of which is to ensure costs incurred in providing infrastructure to support development of the area can be funded (wholly or partly) by owners or developers of land (Section 205(1) and (2) of the Act).
- 7.2 It should be noted that a charging authority cannot adopt CIL unless it has first produced a charging schedule and must only implement CIL in reliance on an up-to-date development plan. Merton's Core Planning Strategy is recommended for adoption at the meeting of full Council on 13 July 2011.

7.3 A charging authority must approve the charging schedule at a meeting of the authority and by a majority of votes of members present. There are requirements in the CIL Regulations and the Act relating to appeals against the application of CIL and the enforcement of CIL.

7.4 On 18 November 2010, the government announced that CIL will be retained and reformed via regulations associated with the Localism Bill so that neighbourhoods may receive a proportion of funds raised by Councils as part of CIL. When these Regulations are published, they will guide legal issues surrounding the third party expenditure of CIL funds.

## **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

8.1 Adoption of the levy would allow the Council, and potentially local neighbourhoods, to target the resulting revenue stream towards those types of infrastructure considered necessary to meet the needs of different areas. This is a key point in terms of delivering equality and diversity through the Council's services. Consequently, the levy is potentially a very positive development.

## **9 CRIME AND DISORDER IMPLICATIONS**

9.1. CIL will replace Section 106 agreements in helping to fund the infrastructure necessary to mitigate crime and disorder issues arising from new development.

## **10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

10.1. None for the purposes of this report

## **11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- Appendix 1 - CLG: "Community Infrastructure Levy – an overview"

## **12 BACKGROUND PAPERS**

- CLG "Community Infrastructure Levy – an overview" (May 2011)
- CIL Regulations 2011 (April 2011)
- Government announcement on CIL (18 November 2010)
- CIL Regulations 2010 (April 2010)
- Merton's Annual Monitoring Report 2009-10

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## Community Infrastructure Levy An overview



# Community Infrastructure Levy

## **An overview**

May 2011  
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*This overview document replaces the previous overview document published November 2010*

## Introduction

1. This document provides an overview of the Community Infrastructure Levy; a new planning charge that came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010 (now amended by the Community Infrastructure Levy (Amendment) Regulations 2011). It is not guidance issued by the Secretary of State, but explains the key features of the new charge, its rationale, purpose and how it will work in practice. The document is designed to inform all those who have an interest in the levy and who might be involved in its operation. The Government will issue guidance on specific aspects of establishing a Community Infrastructure Levy regime.

### **What is the Community Infrastructure Levy?**

2. The Community Infrastructure Levy (the levy) came into force in April 2010. It allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of development. This includes new or safer road schemes, flood defences, schools, hospitals and other health and social care facilities, park improvements, green spaces and leisure centres.

### **Who may charge the levy?**

3. The Community Infrastructure Levy charging authorities (charging authorities) in England will be district and metropolitan district councils, London borough councils, unitary authorities, national park authorities, The Broads Authority and the Mayor of London. In Wales, the county and county borough councils and the national park authorities will have the power to charge the levy. These bodies all prepare development plans for their areas, which are informed by assessments of the infrastructure needs for which the levy may be collected.

### **The benefits of the levy**

4. The Government has decided that this tariff-based approach provides the best framework to fund new infrastructure to unlock land for growth. The Community Infrastructure Levy is fairer, faster and more certain and transparent than the system of planning obligations which causes delay as a result of lengthy negotiations. Levy rates will be set in consultation with local communities and developers and will provide developers with much more certainty 'up front' about how much money they will be expected to contribute.

5. Under the system of planning obligations only 6 per cent of all planning permissions brought any contribution to the cost of supporting infrastructure<sup>1</sup>, when even small developments can create a need for new services. The levy creates a fairer system, with all but the smallest building projects making a contribution towards additional infrastructure that is needed as a result of their development.
6. The Community Infrastructure Levy also has far greater certainty. It provides the basis for a charge in a manner that the planning obligations system alone could not easily achieve; enabling, for example, the mitigation of cumulative impacts from development.

### **Why should development pay for infrastructure?**

7. Almost all development has some impact on the need for infrastructure, services and amenities - or benefits from it - so it is only fair that such development pays a share of the cost. It is also right that those who benefit financially when planning permission is given should share some of that gain with the community which granted it to help fund the infrastructure that is needed to make development acceptable and sustainable.
8. However, developers should have more certainty as to what they will be expected to contribute, thus speeding up the development process, and that the money raised from developer contributions should be spent in a way that developers will feel worthwhile; namely, on infrastructure to support development and the creation of sustainable communities set out in the local development framework. This is what the levy will do.

### **How much will the levy raise?**

9. The introduction of the levy has the potential to raise an estimated additional £1bn a year of funding for local infrastructure by 2016 (the impact assessment on the Community Infrastructure Levy published on 31 January 2011 sets out further details). The levy will make a significant contribution to infrastructure provision. The levy is intended to fill the funding gaps that remain once existing sources (to the extent that they are known) have been taken into account. Local authorities will be able to look across their full range of funding streams and decide how best to deliver their infrastructure priorities, including how to utilise monies from the levy. This flexibility to mix funding sources at a local level will enable local authorities to be more efficient in delivering the outcomes that local communities want.

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<sup>1</sup> *The Incidence, Value and Delivery of Planning Obligations in England in 2007-08*, University of Sheffield, 2010.  
[www.communities.gov.uk/publications/planningandbuilding/planningobligationsreport](http://www.communities.gov.uk/publications/planningandbuilding/planningobligationsreport)

## How will the levy be spent?

10. Local authorities are required to spend the levy's funds on the infrastructure needed to support the development of their area and they will decide what infrastructure is needed. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development. The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development.

Using new powers introduced in the Localism Bill, the Government will require charging authorities to allocate a meaningful proportion of levy revenues raised in each neighbourhood back to that neighbourhood. This will ensure that where a neighbourhood bears the brunt of a new development, it receives sufficient money to help it manage those impacts. It complements the introduction of other powerful new incentives for local authorities that will ensure that local areas benefit from development they welcome.

Local authorities will need to work closely with neighbourhoods to decide what infrastructure they require, and balance neighbourhood funding with wider infrastructure funding that supports growth. They will retain the ability to use the levy income to address the cumulative impact on infrastructure that may occur further away from the development.

11. Charging authorities will be able to use funds from the levy to recover the costs of administering the levy, with the regulations permitting them to use up to 5 per cent of their total receipts on administrative expenses to ensure that the overwhelming majority of revenue from the levy is directed towards infrastructure provision. Where a collecting authority has been appointed to collect a charging authority's levy, as will be the case in London where the boroughs will collect the Mayor's levy, the collecting authority may keep up to 4 per cent of the revenue from the levy to fund their administrative costs, with the remainder available to the charging authority up to the 5 per cent ceiling.

## What is infrastructure?

12. The Planning Act 2008 provides a wide definition of the infrastructure which can be funded by the levy, including transport, flood defences, schools, hospitals, and other health and social care facilities. This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, district heating schemes and police stations and other community safety facilities. This gives local communities flexibility to choose what infrastructure they need to deliver their development plan.
13. The regulations rule out the application of the levy for providing affordable housing.

14. In London, the regulations restrict spending by the Mayor to funding roads or other transport facilities, including Crossrail, to ensure a balance between the spending priorities of the boroughs and the Mayor.

The Government will clarify through the Localism Bill that the levy can be spent on the ongoing costs of providing infrastructure.

### **Infrastructure spending outside a charging area**

15. Charging authorities may pass money to bodies outside their area to deliver infrastructure which will benefit the development of their area, such as the Environment Agency for flood defence or, in two tier areas, the county council, for education infrastructure.
16. If they wish, charging authorities will also be able to collaborate and pool their funds from their respective levies to support the delivery of 'sub-regional infrastructure', for example, a larger transport project where they are satisfied that this would support the development of their own area.

### **Timely delivery of infrastructure**

17. It is important that the infrastructure needed by local communities is delivered when the need arises. Therefore, the regulations allow authorities to use the levy to support the timely provision of infrastructure, for example, by using the levy to backfill early funding provided by another funding body.
18. The regulations also include provision to enable the Secretary of State to direct that authorities may 'prudentially' borrow against future income from the levy, should the Government conclude that, subject to the overall fiscal position, there is scope for local authorities to use monies from the levy to repay loans used to support infrastructure.

### **Monitoring and reporting spending of the levy**

19. To ensure that the levy is open and transparent, charging authorities must prepare short reports on the levy for the previous financial year which must be placed on their websites by 31 December each year. They may prepare a bespoke report or utilise an existing reporting mechanism, such as the annual monitoring report which reports on their development plan.
20. These reports will ensure accountability and enable the local community to see what infrastructure is being funded from the levy. Charging authorities must report on how much monies they received from the levy in the last financial year and on how much was unspent at the end of the financial year. They must also report total expenditure from the levy in the preceding financial year, with summary details of what infrastructure the levy funded, how much of the levy was 'spent' on each item of infrastructure and how much on administrative expenses.



# Setting the Community Infrastructure Levy charge

## Charging schedules

21. Charging authorities should normally implement the levy on the basis of an up-to-date development plan or the London plan for the Mayor's levy. A charging authority may use a draft plan if they are planning a joint examination of their core strategy or local development plan and their Community Infrastructure Levy charging schedule.
22. Charging authorities wishing to charge the levy must produce a charging schedule setting out the levy's rates in their area. Charging schedules will be a new type of document within the folder of documents making up the local authority's local development framework in England, sitting alongside the local development plan in Wales and the London plan in the case of the Mayor's levy. In each case, charging schedules will not be part of the statutory development plan.

## Deciding the levy's rate

23. Charging authorities wishing to introduce the levy should propose a rate which does not put at serious risk the overall development of their area. They will need to draw on the infrastructure planning that underpins the development strategy for their area. Charging authorities will use that evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy upon the economic viability of development across their area.
24. In setting their proposed rates for the levy, charging authorities should identify the total infrastructure funding gap that the levy is intended to support, having taken account of the other sources of available funding. They should use the infrastructure planning that underpinned their development plan to identify a selection of indicative infrastructure projects or types of infrastructure that are likely to be funded by the levy. If a charging authority considers that the infrastructure planning underpinning its development plan is weak, it may undertake some additional bespoke infrastructure planning to identify its infrastructure funding gap. In order to provide flexibility for charging authorities to respond to changing local circumstances over time, charging authorities may spend their monies raised from the levy on different projects from those identified during the rate setting process.

## Evidence of economic viability

25. Charging authorities will need to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the imposition of the levy upon the economic viability of development across their area. Charging authorities should prepare evidence about the effect of

the levy on economic viability in their area to demonstrate to an independent examiner that their proposed rates, for the levy, strike an appropriate balance.

26. In practice, charging authorities may need to sample a limited number of sites in their areas and in England, they may want to build on work undertaken to inform their strategic housing land availability assessments. Charging authorities that decide to set differential rates may need to undertake more fine-grained sampling to help them to estimate the boundaries for their differential rates.

### **Charge setting in London**

27. A London borough setting their levy must take into account any levy rates that have been set by the Mayor of London. Allowing both the Mayor and the boroughs to charge the levy will enable the levy to support the provision of both local and strategic infrastructure in London.

### **Differential rates**

28. Charging schedules may include differential rates, where they can be justified either on the basis of the economic viability of development in different parts of the authority's area or by reference to the economic viability of different types of development within their area. The ability to set differential rates gives charging authorities more flexibility to deal with the varying circumstances within their area, for example where an authority's land values vary between an urban and a rural area.

## **Procedure for setting the charge**

### **Preparing the charging schedule**

29. The process for preparing a charging schedule is similar to that which applies to development plan documents in England and local development plans in Wales. Charging authorities are also able to work together when preparing their charging schedules.

### **Public consultation**

30. Charging authorities must consult local communities and stakeholders on their proposed rates for the levy in a preliminary draft of the charging schedule. Then, before being examined, a draft charging schedule must be formally published for representations for a period of at least four weeks. During this period any person may request to be heard by the examiner. If a charging authority makes any further changes to the draft charging schedule after it has been published for representations, any person may request to be heard by the examiner, but only on those changes, during a further four-week period.

### **The examination of the charging schedule**

31. A charging schedule must be examined in public by an independent person appointed by the charging authority. Any person requesting to be heard before the examiner at the examination must be heard in public. The format for the levy's examination hearings will be similar to those for development plan documents and the independent examiner may determine the examination procedures and set time limits for those wishing to be heard to ensure that the examination is conducted in an efficient and effective manner.
32. Where a charging authority has chosen to work collaboratively with other charging authorities, they may opt for a joint examination of their charging schedule with those of the other charging authorities. In addition, an examination of one or more charging schedules may be conducted as an integrated examination with a draft development plan document.

### **Outcome of the levy's examination**

33. The independent examiner will be able to recommend that the draft charging schedule should be approved, rejected, or approved with specified modifications and must give reasons for those recommendations. A charging schedule may be approved subject to modifications if the charging authority has complied with the legislative requirements, but for example, the proposed rate for the levy does not strike an appropriate balance given the evidence.
34. The independent examiner should reject a charging schedule if the charging authority has not complied with an aspect of the legislation (and this cannot be addressed by modifications), or if it is not based on appropriate available evidence. The examiner's recommendations will be binding on the charging authority, which means that the charging authority must make any modifications recommended if they intend to adopt the charging schedule and cannot adopt a schedule if the examiner rejects it. However, the charging authority is not under an obligation to adopt the final charging schedule, but can, if it prefers, submit a revised charging schedule to a fresh examination.

The Government has included provisions in the Localism Bill to limit the binding nature of the examiners' reports on levy rates. Currently, an examiner scrutinises a council's levy rates, and all changes that they request are binding, including the rates set for specific areas or types of development.

Under the new provisions examiners will only be able to ensure councils do not set unreasonable charges. Councils will be required to correct charges that examiners consider to be unreasonable, but they will have more discretion on how this is done – for example, they could depart from the detail of the examiner's recommendations on the mix of charges to be applied to different classes of development or the rates to be applied in different parts of their area.

### **Procedure after the levy's examination**

35. To ensure democratic accountability, the charging schedule must be formally approved by a resolution of the full council of the charging authority. In London, the Mayor must make a formal decision to approve his or her charging schedule.
36. In order to ensure that the correct rate for a levy is charged, certain errors in the charging schedule may be corrected for a period of up to six months after the charging schedule has been approved. If the charging authority corrects errors it must republish the charging schedule.

### **Ceasing to charge the levy**

37. Charging authorities should keep their charging schedules under review (although there is no fixed end date). Charging authorities may formally resolve to cease charging the levy at any time through a resolution of the full council.

## **How will the Community Infrastructure Levy be applied?**

### **What development is liable to pay the levy?**

38. Most buildings that people normally use will be liable to pay the levy. But buildings into which people do not normally go and buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery, will not be liable to pay the levy. Structures which are not buildings, such as pylons and wind turbines, will not be liable to pay the levy. The levy will not be charged on changes of use that do not involve an increase in floorspace.

### **How will the levy be charged?**

39. The levy must be charged in pounds per square metre on the net additional increase in floorspace of any given development. This will ensure that charging the levy does not discourage the redevelopment of sites.
40. Any new build – that is a new building or an extension – is only liable for the levy if it has 100 square metres, or more, of gross internal floor space, or involves the creation of additional dwellings, even when that is below 100 square metres. Whilst any new build over this size will be subject to the Community Infrastructure Levy, the gross floorspace of any existing buildings on the site that are going to be demolished will be deducted from the final liability. Any floorspace resulting from the development to the interior of an existing building will similarly be deducted. Floorspace subject to demolition or resulting from change of use will only be disregarded where it has been in continuous lawful use for at least six months in the 12 months prior to the

development being permitted.

41. In calculating individual charges for the levy, charging authorities will be required to apply an annually updated index of inflation to keep the levy responsive to market conditions. The index will be the national All-In Tender Price Index of construction costs published by the Building Cost Information Service of The Royal Institution of Chartered Surveyors.

#### **How does the levy relate to planning permission?**

42. The levy will be charged on new builds permitted through some form of planning permission. Examples are planning permissions granted by a local planning authority or a consent granted by the Independent Planning Commission. However, some new builds rely on permitted development rights under the General Permitted Development Order 1995. There are also local planning orders that grant planning permission, for example simplified planning zones and local development orders. Finally, some Acts of Parliament grant planning permission for new builds: the Crossrail Act 2008 is one such Act. The levy will apply to all these types of planning consent.
43. The planning permission identifies the buildings that will be liable for a Community Infrastructure Levy charge: the 'chargeable development'. The planning permission also defines the land on which the chargeable buildings will stand, the 'relevant land'.

#### **Who collects the levy?**

44. Collection of the levy will be carried out by the 'Community Infrastructure Levy collecting authority'. In most cases this will be the charging authority but, in London, the boroughs will collect the levy on behalf of the Mayor. County councils will collect the levy charged by districts on developments for which the county gives consent. The Homes and Communities Agency, urban development corporations and enterprise zone authorities can also be collecting authorities for development where they grant permission, if the relevant charging authority agrees.

#### **How is the levy collected?**

45. The levy's charges will become due from the date that a chargeable development is commenced in accordance with the terms of the relevant planning permission. The definition of commencement of development for the levy's purposes is the same as that used in planning legislation, unless planning permission has been granted after commencement.
46. When planning permission is granted, the collecting authority will issue a liability notice setting out the amount of the levy that will be due for payment when the development is commenced, the payment procedure and the possible consequences of not following this procedure.

47. The levy's payment procedures encourage someone to assume liability to pay the levy before development commences. Where liability has been assumed, and the collecting authority has been notified of commencement, parties liable to pay the levy will always benefit from a 60 day payment window on any instalments policy a local authority may have in place. However, payments are always due upon commencement if no party assumes liability and/or no commencement notice is submitted before commencement.
48. If a charging authority wishes to set its own levy payment deadlines and/or offer the option of paying by instalments, it must publish an instalments policy on its website and make it available for inspection at its principal offices. If the charging authority wishes to publish a new policy or withdraw the policy it must give at least 28 days notice before the new policy takes effect and/or old policy is withdrawn.

### **Who is liable to pay the levy?**

49. The responsibility to pay the levy runs with the ownership of land on which the liable development will be situated. This is in keeping with the principle that those who benefit financially when planning permission is given should share some of that gain with the community. That benefit is transferred when the land is sold with planning permission, which also runs with the land. The regulations define landowner as a person who owns a 'material interest' in the relevant land. 'Material interests' are owners of freeholds and leaseholds that run for more than seven years after the day on which the planning permission first permits development.
50. Although ultimate liability rests with the landowner, the regulations recognise that others involved in a development may wish to pay. To allow this, anyone can come forward and assume liability for the development. In order to benefit from payment windows and instalments, someone must assume liability in this way. Where no one has assumed liability to pay the levy, the liability will automatically default to the landowners of the relevant land and payment becomes due immediately upon commencement of development. Liability to pay the levy can also default to the landowners where the collecting authority, despite making all reasonable efforts, has been unable to recover the levy from the party that assumed liability for the levy.

### **Charity and social housing relief**

51. The regulations give relief from the levy in two specific instances. First, a charity landowner will benefit from full relief from their portion of the liability where the chargeable development will be used wholly, or mainly, for charitable purposes. A charging authority can also choose to offer discretionary relief to a charity landowner where the greater part of the chargeable development will be held as an investment, from which the profits are applied for charitable purposes. The charging authority must publish its policy for giving relief in such circumstances. Secondly, the regulations provide 100 per cent relief from the levy on those parts of a chargeable development which are intended to be used as social housing.

52. To ensure that relief from the levy is not used to avoid proper liability for the levy, the regulations require that any relief must be repaid, a process known as 'clawback', if the development no longer qualifies for the relief granted within a period of seven years from commencement of the chargeable development.

### **Exceptional circumstances**

53. Given the importance of ensuring that the levy does not prevent otherwise desirable development, the regulations provide that charging authorities have the option to offer a process for giving relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay the levy. A charging authority wishing to offer exceptional circumstances relief in its area must first give notice publicly of its intention to do so. A charging authority can then consider claims for relief on chargeable developments from landowners on a case by case basis, provided the following conditions are met. Firstly, a section 106 agreement must exist on the planning permission permitting the chargeable development. Secondly, the charging authority must consider that the cost of complying with the section 106 agreement is greater than the levy's charge on the development and that paying the full charge would have an unacceptable impact on the development's economic viability. Finally, relief must not constitute a notifiable state aid.

### **In-kind payments**

54. There may be circumstances where it will be more desirable for a charging authority to receive land instead of monies to satisfy a charge arising from the levy, for example where the most suitable land for infrastructure is within the ownership of the party liable for payment of the levy. Therefore, the regulations provide for charging authorities to accept transfers of land as a payment 'in kind' for the whole or a part of a the levy, but only if this is done with the intention of using the land to provide, or facilitate the provision of, infrastructure to support the development of the charging authority's area.
55. An agreement to make an in-kind payment must be entered into before commencement of development. Land that is to be paid 'in kind' may contain existing buildings and structures and must be valued by an independent valuer who will ascertain its 'open market value', which will determine how much liability the 'in-kind' payment will off-set. Payments in kind must be provided to the same timescales as cash payments.

### **How will payment of the levy be enforced?**

56. The vast majority of parties liable to pay the levy are likely to pay their liabilities without problem or delay, guided by the information sent by the collecting authority in the liability notice. In contrast to negotiated planning obligations which can cause delay, confusion, and litigation over liability, the levy's charges are intended to be easily understood and easy to comply with. However, where there are problems in collecting the levy, it is important that

collecting authorities have the means to penalise late payment and deter future non-compliance. To ensure payment, the regulations provide for a range of proportionate enforcement measures, such as surcharges on late payments.

57. In most cases, these measures should be sufficient. However, in cases of persistent non-compliance, the regulations also enable collecting authorities to take more direct action to recover the amount due. One such measure is the Community Infrastructure Levy Stop Notice, which prohibits development from continuing until payment is made. Another is the ability to seek a court's consent to seize and sell assets of the liable party. In the very small number of cases where a collecting authority can demonstrate that recovery measures have been unsuccessful, a court may be asked to commit the liable party to a short prison sentence.
58. The payment and enforcement provisions of the regulations add substantial protection for both charging authorities and liable parties compared with the existing system of planning obligations, particularly for small businesses which may not have easy access to legal advice.

## The relationship between the Community Infrastructure Levy and planning obligations

59. The levy is intended to provide infrastructure to support the development of an area rather than to make individual planning applications acceptable in planning terms. As a result, there may still be some site specific impact mitigation requirements without which a development should not be granted planning permission. Some of these needs may be provided for through the levy but others may not, particularly if they are very local in their impact. Therefore, the Government considers there is still a legitimate role for development specific planning obligations to enable a local planning authority to be confident that the specific consequences of development can be mitigated.
60. However, in order to ensure that planning obligations and the levy can operate in a complementary way and the purposes of the two regimes are clarified, the regulations scale back the way planning obligations operate. Limitations are placed on the use of planning obligations in three respects:
  - i. putting the Government's policy tests on the use of planning obligations set out in *Circular 5/05 Planning obligations* on a statutory basis for developments which are capable of being charged the levy
  - ii. ensuring the local use of the levy and planning obligations does not overlap; and
  - iii. limiting pooled contributions from planning obligations towards infrastructure which may be funded by the levy



### **Making the Circular 5/05 *Planning obligations* tests statutory for development capable of being charged the levy**

61. The regulations place into law for the first time the Government's policy tests on the use of planning obligations. The statutory tests are intended to clarify the purpose of planning obligations in light of the levy and provide a stronger basis to dispute planning obligations policies, or practice, that breach these criteria. This seeks to reinforce the purpose of planning obligations in seeking only essential contributions to allow the granting of planning permission, rather than more general contributions which are better suited to use of the levy.
62. From 6 April 2010 it has been unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, that is capable of being charged the levy, whether there is a local levy in operation or not, if the obligation does not meet all of the following tests:
  - (a) necessary to make the development acceptable in planning terms
  - (b) directly related to the development; and
  - (c) fairly and reasonably related in scale and kind to the development
63. For all other developments (i.e. those not capable of being charged the levy), the policy in Circular 5/05 will continue to apply.

### **Ensuring the local use of the levy and planning obligations does not overlap**

64. On the local adoption of the levy, the regulations restrict the local use of planning obligations to ensure that individual developments are not charged for the same items through both planning obligations and the levy. Where a charging authority sets out that it intends to fund an item of infrastructure via the levy then that authority cannot seek a planning obligation contribution towards the same item of infrastructure.
65. A charging authority may publish, 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 the levy. If a charging authority does not publish a list, then this would be taken to mean that the authority was intending to use monies raised from the levy for any type of infrastructure capable of being funded by the levy, and consequently that authority could not seek a planning obligation contribution towards any such infrastructure.
66. A charging authority can at any time update its published list of infrastructure projects or types of infrastructure. It may consider it expedient to update its list as its infrastructure priorities change over time. The process of updating the

list is separate to the formal process of reviewing its charging schedule. If it wishes to update the list, the charging authority simply needs to amend the published list on its website.

### **Limiting pooled section 106 contributions towards infrastructure capable of being funded by the levy**

67. On the local adoption of the levy or nationally after a transitional period of four years (6 April 2014), the regulations restrict the local use of planning obligations for pooled contributions towards items that may be funded via the levy. The levy is the government's preferred vehicle for the collection of pooled contributions.
68. Pooled contributions may be sought from up to five separate planning obligations for an item of infrastructure that is not locally intended to be funded by the levy. The limit of five applies as well to types of general infrastructure contributions, such as education and transport. In assessing whether five separate planning obligations have already been entered into for a specific infrastructure project or a type of infrastructure, local planning authorities must look over agreements that have been entered into since 6 April 2010<sup>2</sup>.
69. For provision that is not capable of being funded by the levy, such as affordable housing, local planning authorities are not restricted in terms of the numbers of obligations that may be pooled, but they must have regard to the wider policies set out in *Circular 5/05 Planning obligations*.
70. Crossrail will bring benefits to communities across London and beyond and its funding will be met by a range of sources, including contributions from the levy and planning obligations. To effectively maintain the ability of planning obligations to raise monies for Crossrail, this restriction will not apply to planning obligations that relate to or are connected with the funding of Crossrail.

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<sup>2</sup> Planning obligations attached to applications made under Section 73 to vary a planning condition must be included when charging authorities are assessing how many separate planning obligations have contributed to an infrastructure project or type of infrastructure

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