

## **Council**

**Date: 20 November 2013**

## **Subject: Adoption of Merton's Community Infrastructure Levy Charging Schedule**

Lead officer: Director for Environment and Regeneration, Chris Lee

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

Contact officer: Strategic Policy and Research Manager, Tara Butler

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### **Recommendations:**

That the Council adopts Merton's Community Infrastructure Levy Charging Schedule and that Merton's CIL is applied to the relevant new developments from 01 April 2014.

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

- 1.1 By April 2014, the Community Infrastructure Levy (CIL) will largely replace Section 106 agreements in helping to fund infrastructure necessary to support new development. "Infrastructure" can include education, health, community facilities, public realm initiatives, parks and other open spaces, sports facilities, walking and cycling routes, nature conservation and other matters. Affordable housing will still be secured through S106 obligations.
- 1.2 Local Authorities who wish to charge the levy must produce a CIL charging schedule setting out CIL rates for their area, which are expressed as pounds sterling per square metre (e.g. £100 per square metre). The Mayor of London's CIL charge has been applied to new developments in all London boroughs since April 2012.
- 1.3 Merton's CIL Charging Schedule was consulted on twice during 2012 and 2013 and has recently passed an independent examination by a planning inspector.
- 1.4 The purpose of this report is to recommend that full Council resolve that Merton's CIL Charging Schedule be adopted by the council on 20 November 2013 and that Merton's CIL be applied to appropriate new developments from 01 April 2014.

## 2. DETAILS

- 2.1 CIL is a charge per square metre of additional floorspace which is levied on certain types of new development. Each borough must set their own CIL Charge according to what types of development can afford to pay the charge in their area.
- 2.2 The funds raised can be used by the local authority to help pay for local infrastructure necessary to support development (e.g. parks and open spaces, school places, healthcare, public realm improvements etc).
- 2.3 Government is clear that CIL should only be used to part fund infrastructure, usually between 10% and 30% of the total cost. Other sources of funding, e.g. government borrowing, grants etc should make up around 70% of the costs of what is needed.
- 2.4 Once the CIL charge is adopted, it is a mandatory land charge and therefore is non-negotiable unless exempt through the CIL Regulations from paying CIL. It is payable once construction has started, not when planning permission is granted.
- 2.5 CIL is calculated and applied to new development in parallel with the planning application process. Government have recently consulted on changes to the way CIL is applied to specific developments. Merton's CIL charges will be applied to new development in line with the most up-to-date regulations in place on the date the charges are applied.
- 2.6 In accordance with the regulations, Merton's CIL Charging Schedule has been presented for public consultation twice; between January and March 2012 (with responses accepted into May 2012) and again between January and February 2013). Following approval by full council on 10 July 2013, it was submitted to the Secretary of State and examined by an independent planning inspector, who held a public hearing on 26 September 2013.
- 2.7 The inspector's final report was received in October 2013 and is attached to this report as appendix 2. It makes some minor amendments to the text of Merton's CIL Charging Schedule for clarity.
- 2.8 It is recommended that Merton's CIL charge be adopted and apply to new developments in Merton from 01 April 2014. As CIL funds are payable when the development starts, and not when planning permission is granted, there is usually a time lag of more than nine months between CIL being applied to the first developments and CIL funds being received in significant amounts by the council.
- 2.9 Between now and 2014, officers will start to prepare guidance on the application of CIL and Section 106 in Merton and the allocation of funds. As set out in the

reports to Cabinet and full Council in July 2013, lists of infrastructure projects that may receive CIL funding would be subject to community consultation and infrastructure projects that could receive CIL would also be able to be suggested by residents, businesses and others in Merton's communities, though all projects would have to be in line with government Regulations.

- 2.10 Government has very recently (25 October 2013) published the results of its most recent consultation on how CIL is applied and what it can be spent on. Government has said that the results of this consultation are likely to lead to a change in the CIL Regulations. Officers will prepare guidance based on the most up-to-date CIL Regulations and will report on this to councillors in 2014.

### **3. ALTERNATIVE OPTIONS**

- 3.1 Since 01 April 2012, London boroughs have been levying and collecting CIL on behalf of the Mayor of London. Boroughs should set their own CIL before April 2015. Without a CIL charge in place, boroughs will have very limited ability to pool funding secured through s.106 contributions.
- 3.2 Now that Merton's CIL Charging Schedule has passed its independent examination, it is considered that there are no realistic alternative options other than recommending its adoption and implementation if Merton wants to continue to receive some financial contribution from new development towards local infrastructure.
- 3.3 If Merton was to bring the implementation date forward, for example to 1 January then this would be unfair to applicants (with outstanding S.106 agreements) with whom we have been working with to deliver community benefits through S.106 agreements before 1 April 2014 and add significant additional workload to Development Control who would have to take cases back to Planning Applications Committee to remove S.106 requirements. The 1 April implementation date is also considered to have advantages from a financial management perspective considering it would be the first day of the fiscal year. There are also some IT system improvements that are necessary for the Merton CIL that are not likely to be ready by the start of 2014.

### **4. CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1 As set out in section 2 of this report, Merton's CIL Charging schedule has been consulted on twice: the first time between January and March 2012 (responses were accepted into May 2012) and the second time between March and May 2013.

- 4.2 Responses to these consultations have been considered in preparing Merton's final CIL. Responses and the council's actions from these responses are set out on Merton Council's website: [www.merton.gov.uk/CIL](http://www.merton.gov.uk/CIL).
- 4.3 The proposals set out in this report have been approved by Borough Plan Advisory Committee and Cabinet.

## **5. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

### **Financial, Resource and Property implications of moving from S106 to CIL**

- 6.1 Government guidance is clear that CIL should be used as part of infrastructure funding, usually between 10% and 30% of the funding needed. (For example, the Mayor of London is using the Mayoral CIL, levied on all London boroughs, to pay for £300million for Crossrail. However this is less than 5% of the total funding necessary to deliver Crossrail, currently forecast as £15.9 billion.)
- 6.2 The total funding needed to support local infrastructure (e.g. education, healthcare, transport, open spaces etc) throughout the 15-year lifetime of the Core Planning Strategy excluding funding from other sources is circa £154million. This is very similar to other London boroughs.
- 6.3 Under CIL Regulations, 15% of all CIL raised should be allocated by local community groups to help fund projects that they see as important to them.
- 6.4 In the 11 years between 2000 and 2011, Merton received on average £960,000 per year in Section 106 receipts. However across each of the 11 years this varied from circa £400k in one year to circa £3million in another year, depending on what developments were built that year.
- 6.5 Like most outer London boroughs, many of Merton's development sites are not vacant land but have existing buildings on them. Under Government Regulations, CIL can generally only be levied on the net additional floorspace (i.e. not including the existing floorspace on the site) therefore this reduces the CIL liable for redevelopment of sites that already have buildings on them.
- 6.6 Not all developments will be charged CIL (e.g. affordable housing, charitable institutions, healthcare, community, education, office, industrial are either exempt in the Regulations or unviable for CIL in Merton).
- 6.7 Therefore, Merton's CIL revenue could average circa £1,000,000 in CIL receipts per annum, very similar to what Merton already receives in Section 106. This estimate is based on:
- development trends in Merton since 1999,
  - development forecast by use and area for the next five years,

- consideration of CIL exemptions,
- the potential CIL charges proposed in this report, and
- the example of collection the Mayor of London's CIL in Merton over the nine months since April 2012.

6.8 It is difficult to accurately forecast CIL receipts due to the complicated nature of levying the new charge, the uncertainty surrounding proposed further government amendments to the CIL regulations, when and whether development will start construction and how often landowners will pursue CIL exemptions. CIL is payable once construction has started on site. Once planning permission is granted developers have up to three years to start construction and may apply for an extension to this.

## **6. LEGAL AND STATUTORY IMPLICATIONS**

7.1 Part 11 of the Planning Act 2008 introduces CIL. CIL is also provided for by the Localism Act 2011. Government have prepared CIL Regulations 2010; CIL (amendment) Regulations 2011 and 2012.

7.2 As the CIL Regulations 2012 relate mainly to how CIL is spent, Merton's CIL Charging Schedule is being prepared in line with the provisions of the CIL Regulations 2010 (as amended).  
There have been five different sets of CIL Regulations and guidance published since September 2012, all of which have some bearing on how CIL is prepared (though generally a greater focus on how CIL is spent). Public consultation on the most recent draft CIL Regulations ended on 28 May 2013.

7.3 Section 106 will be largely replaced by CIL from April 2015. Planning Inspectors are already closely examining Section 106 agreements at planning appeals to ensure that each agreement meets the terms of the CIL Regulations, and striking out those that are deemed not to comply. Therefore it is important that Merton's CIL charge is adopted in a timely manner in order to help fund local infrastructure projects.

7.4 Government has recently consulted on more potential amendments to the CIL Regulations on how CIL should be applied to development. The results of the most recent government consultation were published on 25 October 2013, and are likely to result in regulatory changes. Merton's CIL will be applied and collected in line with the most up-to-date regulations at the time of collection.

## **7. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

7.1 None for the purposes of this report.

## **8. CRIME AND DISORDER IMPLICATIONS**

- 8.1 Planning obligations are used to fund infrastructure to reduce crime and disorder, including CCTV. As infrastructure providers, the Met Police may apply to local authorities for CIL funding.

## **9. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 9.1 It is considered that starting to prepare for CIL implementation at this stage is essential to reducing the risks of losing out on infrastructure funding, where Section 106 agreements do not meet the terms of the CIL Regulations 2010. It would also reduce the risks of not being ready to charge CIL by April 2014.

## **10. APPENDICES – the following documents are to be published with this report and form part of the report**

Appendix 1: Merton's CIL Charging Schedule for adoption

Appendix 2: Merton CIL Charging Schedule examination: inspector's final report

## **11. BACKGROUND PAPERS**

### **Merton-specific (in reverse date order)**

- Merton CIL draft charging schedule (consultation 25 March to 10 May 2013)  
<http://www.merton.gov.uk/environment/planning/cil.htm>
- Merton's Statement of Consultation for Merton's CIL Preliminary Draft Charging Schedule:  
[http://www.merton.gov.uk/environment/planning/merton\\_preliminary\\_draft\\_cil\\_consultation\\_statemtn\\_2012-2.pdf](http://www.merton.gov.uk/environment/planning/merton_preliminary_draft_cil_consultation_statemtn_2012-2.pdf).
- Merton's CIL Preliminary Draft Charging Schedule 2011:  
[http://www.merton.gov.uk/enivronment/planning/merton\\_cil\\_prelim\\_draft\\_charging\\_schedule\\_jan2012\\_final.pdf](http://www.merton.gov.uk/enivronment/planning/merton_cil_prelim_draft_charging_schedule_jan2012_final.pdf).

### **Mayor of London**

- Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy –draft SPG (November 2012):  
<http://www.london.gov.uk/sites/default/files/SPG-planning-obligations-Crossrail-CIL-draft.pdf>
- Mayor of London Community Infrastructure Levy (April 2012)  
<http://www.tfl.gov.uk/businessandpartners/23188.aspx>

## Government Regulations and guidance

- April – May 2013 CIL further reforms (consultation) (DCLG) (proposes amendments to the existing Regulations)  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/190882/Consultation\\_on\\_Community\\_Infrastructure\\_Levy\\_further\\_reforms.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/190882/Consultation_on_Community_Infrastructure_Levy_further_reforms.pdf)
- December 2012 - CIL Statutory Guidance (DCLG) (replaces and amends December 2010 statutory guidance)
- November 2012 - Amendments to the CIL Regulations (DCLG)
- October 2011 - “Community infrastructure levy – collection and enforcement”, information document DCLG  
<http://www.communities.gov.uk/publications/planningandbuilding/cilcollectionenforcement>
- October-December 2011 Community Infrastructure Levy: detailed proposals and draft regulations for reform: consultation (CLG)  
<http://www.communities.gov.uk/publications/planningandbuilding/cilreformconsultation>
- May 2011 “Community Infrastructure Levy Relief”, Information document, DCLG
- May 2011 “Community infrastructure levy – an overview”, May 2011 DCLG
- April 2011 The Community Infrastructure Levy (Amendment) Regulations
- November 2010 “The Community infrastructure levy summary”, DCLG
- March 2010 “Community infrastructure levy guidance – charge setting and charging schedule procedures”, DCLG
- 2010 The Community Infrastructure Levy Regulations

## Useful guidance

Planning Advisory Service – CIL frequently asked questions

<http://www.pas.gov.uk/pas/core/page.do?pageId=1242969>

Planning Officers Society CIL advice note (October 2011):

[http://www.planningofficers.org.uk/downloads/pdf/POS%20advice%20note\\_CIL%20and%20Infrastructure%20Planning\\_October%202011\\_V2.pdf](http://www.planningofficers.org.uk/downloads/pdf/POS%20advice%20note_CIL%20and%20Infrastructure%20Planning_October%202011_V2.pdf)

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