

<b>Item No.</b> 16.	<b>Classification:</b> Open	<b>Date:</b> 10 December 2013	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Community Infrastructure Levy (CIL) Revised Draft Charging Schedule	
<b>Ward(s) or groups affected:</b>		All	
<b>Cabinet Member:</b>		Councillor Fiona Colley, Regeneration and Corporate Strategy	

## **FOREWORD - COUNCILLOR FIONA COLLEY, CABINET MEMBER FOR REGENERATION AND CORPORATE STRATEGY**

We consulted on our draft community infrastructure levy earlier this year and received a wide range of responses. Many of these raised concerns that our proposed CIL rates would have an impact on the amount of affordable housing provided in developments. We have listened to these concerns and propose to reduce our rates for residential homes in Zone 2 which incorporates several of our key regeneration areas including Elephant and Castle, Canada Water and Bermondsey. While we anticipate that this will reduce CIL funding generated in these areas, this needs to be balanced against our priority of securing 35% affordable housing with new development and supporting the ongoing regeneration of the borough. We have also listened to concerns around student housing and propose to allow a nil charge where student homes are provided by universities at low rents. In areas such as Camberwell, Elephant and Castle and Canada Water universities are playing an important part in regeneration and the CIL charges support this.

It is important that we adopt a CIL before April 2015, when the use of section 106 planning obligations will become more restricted. We will consult on our revised draft CIL over the next 3 months, review all the responses we receive and submit it to the Planning Inspectorate for an examination-in-public. We aim to adopt the CIL by autumn 2014.

## **RECOMMENDATIONS**

That cabinet

1. Agrees to publish and invite representations on the community infrastructure levy (CIL) revised draft charging schedule (Appendix A) and the draft "Regulation 123 List" (the list of infrastructure items which will not be funded by section 106 planning obligations, once CIL has been adopted) (Appendix B).
2. Notes the draft infrastructure delivery plan (Appendix C), the equalities analysis (Appendix D), the consultation plan (Appendix E), the consultation report (Appendix F) and house price heat map (Appendix G).
3. Approves the submission of the community infrastructure levy (CIL) revised draft charging schedule to the Planning Inspectorate for an examination-in-public, provided no substantive changes are necessary following consultation.
4. Delegates the approval of any minor amendments resulting from consultation on the community infrastructure levy (CIL) revised draft charging schedule and the

draft "Regulation 123 List" to the director of planning in consultation with the cabinet member for regeneration and corporate strategy.

## **BACKGROUND INFORMATION**

### **CIL**

5. The Community Infrastructure Levy (CIL) is a levy that local authorities can choose to charge on new developments in their area. The money can be used to support development by funding infrastructure that the council, local community and neighbourhoods want. Infrastructure is defined in the CIL Regulations to include: roads and other transport facilities, flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities and open spaces. The benefits are increased certainty for the funding and delivery of infrastructure, increased certainty for developers and increased transparency for local people.
6. If intending to apply the levy, councils (which are designated as "charging authorities") must produce a document called a charging schedule (Appendix A) which sets out the rate for their levy. These rates must be supported by an evidence base including:
  - An up-to-date development plan
  - The area's infrastructure needs
  - An overall assessment of the economic viability of new development
7. Once adopted, the levy is a compulsory charge levied on most new developments that involve an increase of 100sqm or more of additional floorspace or that involve the creation of a new residential unit. The charging authority can set one standard rate or it can set specific rates for different areas and types of development..
8. Some developments are exempt from paying the levy. These are developments of affordable housing and developments by charities of buildings used for charitable purposes.
9. It should be noted that in London's case, the Mayor is also a charging authority. The Mayor has introduced a CIL to fund Crossrail. The Mayor's levy is £35 per square metre, with a limited number of exceptions. Southwark collects this levy on behalf of the Mayor.

### **Section 106 Planning Obligations**

10. In the future, Section 106 planning obligations will continue to be used, but will have a much more restricted role. Once a CIL has been adopted or by April 2015 (whichever is the sooner) local authorities will not be able to pool more than 5 separate planning obligations to pay for one item of infrastructure. The intention of the CIL Regulations is that section 106 planning obligations should mainly be used to secure site specific infrastructure which is needed to directly mitigate the impact of development. Examples might include an access road needed to make the development acceptable or public realm improvements around the site. This restriction will make it very difficult for the council to apply the standard charges in the existing s106 Planning Obligations SPD which are based on the principle of pooling funding. If the council does not introduce a CIL by April 2015 it will potentially lose a significant amount of funding that is needed to contribute to

strategic infrastructure which is required to promote growth and development in its area.

11. Affordable housing will continue to be secured through s106 planning obligations.
12. The council is revising its Section 106 Planning Obligations SPD in 2013 and plans to consult on the SPD concurrently with the revised draft CIL charging schedule (see separate agenda item on the draft Section 106 Planning Obligations/Community Infrastructure Levy SPD). The revised SPD will supersede the existing Section 106 Planning Obligations SPD and provides detailed guidance on the use of planning obligations alongside CIL.

#### Process for preparing a CIL

13. The process for preparing a CIL involves a number of stages which are identified below:
  - i. Consultation on a preliminary draft charging schedule (this is the first CIL document the council consulted on. Southwark consulted on the preliminary draft CIL between July and October 2012).
  - ii. Consultation on a draft charging schedule (the council consulted on Southwark's draft CIL between February and April 2013).
  - iii. Submission of the draft charging schedule to the planning inspectorate, consultation on any post-submission modifications and examination-in-public.
  - iv. Receipt of the inspector's report and adoption of CIL.
14. As is noted above, the council consulted on a draft CIL (stage ii) between February and April 2013. The methodology and practice of preparing a CIL are still evolving and there have been some changes in requirements since the council consulted on the draft. In December 2012 the government published new statutory guidance and this was updated again in April 2013.
15. Representations, including from the GLA, raised concerns that Southwark's evidence did not meet revised tests needed to justify CIL charges. The council therefore decided to undertake further viability work to test the impact of CIL charges. In the light of this further work, officers are recommending some changes to the draft CIL which require a re-consultation on the CIL charging schedule (i.e. re-consultation at stage ii above on a revised draft charging schedule).

#### Infrastructure planning

16. In conjunction with preparing a CIL charging schedule, authorities should also prepare an infrastructure plan setting out strategic infrastructure required to support growth over the period of the council's local plan (in Southwark's case the core strategy period of 2011-2026). Southwark's draft infrastructure plan is set out in Appendix C. The infrastructure plan is part of the evidence base needed to help justify levying a CIL. The infrastructure set out in the infrastructure plan is not an exhaustive list. It is intended to be a living document which can be updated regularly. Omission of infrastructure items from the list would not preclude such items being funded in the future through CIL. Nor does the infrastructure plan commit the council to spending the amounts set out in the plan.

17. A key principle of CIL is that after CIL is adopted authorities should not be spending both CIL and s106 planning obligations on the same item of infrastructure. The new government guidance requires authorities to be clearer about those items which will not be funded by section 106 planning obligations and set these out in a list (Appendix B). This is called a Regulation 123 list (which refers to Regulation 123 of the CIL Regulations 2010). After CIL has been adopted, the Regulation 123 List can be amended, subject to appropriate local consultation.
18. Because the purpose of CIL is to support growth rather than mitigate impacts of specific developments, it can be used more strategically than section 106 contributions. A protocol for governing expenditure will be prepared in due course.
19. Under the Localism Act, the council must identify a 'meaningful proportion' of Southwark CIL that will be spent in the local area to ensure that those people affected by development see some of the benefit. The government has confirmed that the "meaningful proportion" will comprise 25% of CIL funding in areas where there is an adopted neighbourhood plan in place and 15% elsewhere. The draft section 106 Planning Obligations/CIL SPD explains how this would be implemented in Southwark. Southwark will aim to spend at least 25% in all areas of the borough. Funding would be allocated to projects on the community infrastructure project list (CIPL) which is based on a recently revised project bank list. This would be updated every year with consultation with the community councils and planning committee to ensure it reflects local needs.
20. Following this round of consultation on the revised draft charging schedule, it is anticipated that the document will be submitted to the Planning Inspectorate for an examination in public in early summer 2014. Subject to receiving a favorable report from the planning inspector, the council expects to adopt the CIL charging schedule in autumn 2014.

## **Consultation**

21. The Community Infrastructure Levy Regulations 2010 (as amended) and our Statement of Community Involvement (SCI) 2007 set out consultation requirements for planning documents.
22. In compliance with the SCI, the council consulted on the preliminary draft charging schedule for a period of 14 weeks, which included 6 weeks of formal consultation between 5 September and 17 October 2012. A second round of consultation was then held on the draft CIL schedule for a period of 8 weeks including a formal period of consultation of 6 weeks between 20 February and 3 April 2013. At both stages of consultation, as well as making the document available on the web and in local libraries, the council notified around 3,000 consultees in the Planning Policy database. Both the preliminary draft and draft CIL were publicised at the community councils and an event was held on 19 September 2012 with developers to raise awareness about CIL.
23. In response to consultation on the draft CIL 162 representations were made. The main areas of concern are summarised below:

## **GLA**

- Concerns are raised about the viability of the council's proposed rates and the evidence which justified them. Also queried how the CIL government guidance has been taken into account.

## **Developers/landowners/members of the public**

- The evidence needs to set out how the council has had regard to the various requirements and provisions contained in the government's statutory guidance document i.e. 'Community Infrastructure Levy: Guidance' (December 2012 and April 2013).
- The council has not provided evidence that considers proposed CIL rates against amounts of section 106 contributions raised in recent years through Section 106 Agreements and the extent to which affordable housing and other policy targets (e.g. housing supply) have been met, in line with the government's statutory guidance.
- Need to explain further how the draft CIL Charging Schedule accords with the National Planning Policy Framework (NPPF). In particular paragraphs 173 and 175 of the NPPF which explain that obligations and policy burdens on development should not threaten viability/deliverability and that CIL should be tested alongside the Local Plan. The evidence needs to be able to conclude that the proposed rates will be viable for the sufficient number and type of developments upon which the Local Plan relies i.e. strategic sites, over the course of the plan period.
- Concerns expressed over the overall viability of development, given the imposition of CIL alongside mayoral CIL, residual S106 requirements and affordable housing obligations
- The assumptions used in the site viability appraisals, such as the figures used for the benchmark land values, build costs, the premiums, profit margins, professional fees, sales values and the level of the section 106 costs were questioned. There appears to be no analysis or consideration of current market conditions and market values across different property uses and across the borough. Further explanation on the rationale for the inputs into the appraisals should be included in the study to allow further scrutiny.
- There is a blanket approach to risk. The site viability appraisals do not factor in the commercial and financial barriers in bringing forward larger strategic sites.
- The proposed residential CIL rates are considered disproportionately high relative to average residential sales values when compared with similar central London boroughs. This will impact upon development delivery. More comparison is needed on sales values achieved.
- The viability evidence to support the distinction between the retail differential CIL rates is insufficient. The retail site appraisals do not factor in high land assembly costs and the proposed rates should be zoned based on viability throughout the borough.
- The proposed student accommodation CIL rate is set too high and should not be comparable to private sector housing. The analysis of student accommodation is inadequate. The viability evidence assumes all schemes with subsidised rent will be developed where university is majority landowner and therefore are CIL exempt. Student accommodation provided by universities should qualify for relief from CIL, even if they are not the majority landowner.

- The proposed rate for offices and for “other uses” is not justified by evidence. Facilities provided by the police and fire brigade should be nil rated.
- Further justification is needed to show there is a sufficient buffer between the maximum CIL rate and the proposed CIL rate to ensure the rates are not set at the margins of viability.
- Further explanation is required on the proposed charging zones and the evidence which supports this.
- The council should consider introducing an exceptional circumstances relief policy to avoid threatening the delivery of the Core Strategy.
- There should be clear guidance set out as to what will still be charged through Section 106 agreements for clarity and to ensure that there is no double or triple dipping.

24. A table of all comments received and the council's responses is provided in the consultation report in Appendix F. The council is now proposing to re-consult on the revised draft charging schedule over a period of 12 weeks, including a 6 week period of formal consultation between 14 January 2014 and 25 February 2014. This complies with the statutory timeframe set out in the CIL Regulations, as well as the SCI. The council will make the document available on the web and in local libraries, place an advertisement in the press and notify consultees in the Planning Policy mailing list. A detailed consultation plan is provided in Appendix E.

## **KEY ISSUES FOR CONSIDERATION**

25. The CIL regulations specify that in setting their levies charging authorities must strike a balance between the desirability of securing funding for infrastructure and the potential impacts of charging a CIL on the economic viability of development across their areas. Levies must also take into account the requirement to pay the Mayoral CIL and should also consider impacts on planning policies, including the requirement to provide affordable housing.
26. As is noted above, in December 2012 the government published new statutory guidance and this was updated again in April 2013. The new guidance places more emphasis on the need to demonstrate that residual section 106 requirements have been rigorously justified and taken into account and the need to ensure that proposed CIL levies are generally below that maximum CIL levies that could be charged. While there is no guidance on what this buffer should be, inspectors have suggested that CIL charges which are 20% or 30% less than the maximum that could be charged are acceptable and allow for sufficient flexibility and variation in circumstances.
27. A summary of the proposed changes included in the revised draft charging schedule are below.
- Residential zone 1: maintain the £400 per square metre charge but move the eastern boundary to include Shad Thames.
  - Residential zone 2: delete this zone by splitting it between zone 1 and the zone which includes Canada Water, Bermondsey and Elephant and Castle.
  - Residential zone 3: change to 'zone 2' and reduce the charge from £250 per square metre to £200 per square metre.
  - Residential zone 4: change to 'zone 3' and maintain the charge at £50 per square metre.

- Student housing: Reduce the charge from £250 per square metre to £100 per square metre in the case of direct-let rent schemes and £0 for nomination rent schemes (see paragraph 34 below for an explanation of these terms).
- Office: maintain at £70 per sqm.
- Retail: maintain the differential rates of £250 per square metre and £125 per square metre but exclude town centre car parks.
- Health and education: maintain at £0 per square metre.
- All other uses: maintain at £30 per square metre.

#### Further details

28. In the light of the further viability testing officers are recommending that the number of residential CIL zones be reduced from four to three. Zone 2 (Tower Bridge Road to Rotherhithe village) is deleted and split between zone 1 (Bankside, Borough and London Bridge north of Union Street and Snowfields) and the zone which includes Canada Water, Bermondsey and Elephant and Castle). The change reflects the fact that there is a significant drop in residential land values east of Shad Thames. The zone 1 CIL residential rate of £400 per square metre could compromise the amount of affordable housing which can be provided in areas to the east of Shad Thames.
29. Officers are recommending maintaining the charge of £400 per square metre in the revised zone 1. There are generally few residential developments in this zone and those which have been built recently or are under construction are generating residential values which are significantly higher than elsewhere in the borough. These differences in land values are starkly represented on a “heat map” of house prices across the borough (see appendix G).
30. It is recommended that the charge for the revised zone 2 (which includes Elephant and Castle, Bermondsey Spa, Canada Water, Camberwell, Nunhead, East Dulwich and Dulwich) is reduced from £250 per square metre to £200 per square metre. Most homes in the borough which are expected to be built over the next 20 years are in this zone and therefore a reduction in CIL in this zone will reduce funding available for infrastructure. Officers have estimated that this reduction would be in the region of £1.5m per year across the borough. The charge is lower than the tariff agreed in the Elephant and Castle SPD and will reduce the amount of CIL generated in the Elephant and Castle opportunity area by around £5m over the period leading up to 2031.
31. However, the benefit of generating funding for infrastructure needs to be balanced against the imperative of continuing the supply of new homes and creating affordable housing, which are key objectives of the Core Strategy. The reduction is recommended as a result of the fact that the expectation about the amount of section 106 planning obligations which will be negotiated has been increased (we previously estimated £1000 per home and have raised that to £1,500 per home) and the need to comply with new government guidance which stresses that CIL should not stretch economic viability to the limit.
32. No changes are proposed to the £50 per square metre CIL charge in new zone 3 (Aylesbury estate, Burgess Park, Peckham and Old Kent Road).
33. These revised CIL rates for residential development are comparable with neighboring boroughs which have published rates. Lambeth is proposing

charges of £265/£150/£50; the City is proposing £150/£95; Tower Hamlets is proposing £200/£65/£35. Wandsworth has adopted a CIL of £250 p/sqm across the borough, with a £575 p/sqm charge in Vauxhall and Nine Elms (which has a much lower affordable housing requirement than Southwark).

34. With regard to student housing, the council previously proposed a charge of £250 per sqm. However, officers are proposing to amend this. The council has carried out a number of further appraisals of student housing schemes. These show that there are generally two types of student housing schemes: those run by universities or run by the private sector tied to a university and offering lower rents (these are called “nomination” schemes) and those run by the private sector charging higher rents (“direct let” schemes). In the developments appraised, the nomination schemes generally charge rents of between £85-£168 per week and direct let schemes charge around £229-£449 per week. The appraisals show that the nomination schemes are likely to require cross-subsidy from universities to make them viable. None could provide 35% affordable housing, which is a requirement of the Core Strategy, and CIL. On the other hand, the direct let schemes appraised are generally viable and can afford to provide affordable housing and CIL.
35. Where universities own land on which development is located they can use their charitable status to gain exemption from paying CIL. However, concern has been raised that universities do not always own land on which their developments are located and in those circumstances will be liable to pay CIL. The council is therefore proposing to amend the CIL charging schedule by defining the two types of student accommodation. A nil charge is proposed for nomination schemes and a CIL of £100 per square metre for direct let schemes. All of the direct let schemes appraised could afford that charge. To benefit from the nil charge, universities would need to enter into a section 106 agreement with the council to tie rents to a maximum of £168 per week, over a period of at least 7 years (7 years is the relevant period for securing charitable relief from CIL). CIL rates of £0/£100 per square metre are lower than rates proposed by other boroughs. However, this is compensated for by the fact that Southwark is the only borough which requires student developments to provide affordable housing. Securing affordable housing is a key objective in the Core Strategy and for that reason needs to be prioritised above CIL.
36. The council is not proposing to change the charges for hotels. The charge for hotels is varied between the north of the borough (north of Union Street) and the remainder of the borough. This reflects differences in viability which in turn is borne out by the geographic concentration of hotel development in recent years.
37. The council is proposing to maintain the charge for office space in CIL zone 1 at £70 p/sqm. Office rents in the borough’s prime office locations have been rising over the last 12 months and office schemes in zone 1 should be able to absorb Southwark’s CIL, as well as the Mayor’s Crossrail s106 which is also payable. Outside CIL zone 1, the appraisals suggested that office developments outside the CIL zone 1 are largely unviable at current values. Similarly, the appraisals suggested that industrial and warehousing developments are largely unviable and therefore a CIL levy of £0 p/sqm for these uses is maintained.
38. Most boroughs have differentiated rates for office space. The charge proposed in zone 1 in Southwark is similar to the rates proposed by other boroughs in their main office areas. These include: Lambeth (£125); the City (£75); Tower Hamlets (£120/£60); Wandsworth (£100) and Croydon (£120).



39. No changes are proposed to the retail charges of £250 p/sqm for supermarkets and shopping centres which have on-site parking facilities and £125 for all other retail space. The higher charge for supermarkets and shopping centre is justified on the basis of increased viability of these types of development. Concerns were expressed that the council had not sufficiently tested the viability of building covered car parks which, where they are part of a retail development, would attract a retail charge. Officers recommend setting a nil charge for parking where it is made available to all users of a town centre.
40. No changes are proposed to the nil charge proposed for public libraries, health or education uses and the charge for all other uses is maintained at £30 per square metre. Most development in the "other uses" category, such as cinemas, bingo halls, sports facilities etc, replace existing space and provided the existing space had been in use, would not be CIL liable. Where some additional floorspace is provided, the appraisals suggest that a modest levy would not impact significantly on viability.
41. The proposed reduction in the CIL rate in new zone 2, from £250 per square metre to £200 per square metre will reduce CIL revenues by about £1.5m per annum. Nevertheless, using the council's development capacity assessment, it is estimated that CIL could generate around £7m-£8m per year (at today's prices). The council has made an assessment of infrastructure required to support growth over this period. Sources of committed funding to support infrastructure have also been identified. Inevitably, there is more certainty over funding sources for projects to be delivered in the short term and much less certainty over mid and longer term projects. The infrastructure plan is a living document and can be updated regularly. CIL would play an important role in contributing to the infrastructure requirement, although would not be sufficient to cover the cost entirely and the council will continue to need to explore other sources of funding to deliver all the infrastructure set out in the infrastructure plan. The CIL regulations allow up to 5% of CIL generated to be used to monitor and administer the charge. As with s106 planning obligations, once the CIL is brought into effect the council will monitor funding generated and publish regular monitoring reports on the website.
42. Statutory guidance issued by the government in December 2012 indicates that authorities should also make available a draft list of infrastructure items that in the future will not be funded by section 106 planning obligations (the Regulation 123 list). These are items which could be funded or part funded by CIL. Projects not referred to on list could be funded by either CIL or planning obligations. However, it is anticipated that s106 planning obligations would only be used to pay for site specific infrastructure, such as an access road, improvements to the public realm around the site or instances where a developer were not able to meet planning policy requirements for on-site infrastructure, such as children's play space or amenity space. The government's December 2012 CIL guidance advises that authorities should be as clear as possible about what will be funded by CIL to avoid a scenario where a developer is charged twice for the same piece of infrastructure, once through CIL and again through s106 obligations.
43. Overall it is considered that the levies set out in the revised charging schedule represent an appropriate balance between generating funding to secure provision of infrastructure and ensuring that CIL does not put development and regeneration in the borough at risk.

## **Community impact statement**

44. An equalities analysis was undertaken as part of the preparation of the CIL preliminary draft charging schedule. This has been updated to reflect the changes proposed in the draft schedule. The equalities analysis considered the potential impacts arising as a result of the boundaries of the charging zones and the different levels of charge that would be applicable to different types of development within these zones. In accordance with the Equality Act 2010, the analysis considers the potential impacts of the charging schedule on those groups identified within the Act as having protected characteristics. The main issues are summarised below.
45. The range of CIL charges proposed and the boundaries of the charging zones are considered to give rise to limited impacts on the individual groups that are identified in the Equality Act. The imposition of a CIL charge could have potential impacts on small businesses in some parts of the borough, which could impact on a range of groups including BME communities. We propose to adopt a nil charge for office floorspace in all areas except for the commercial areas adjoining the river. As well as benefitting new businesses directly, this approach will ensure that CIL does not act as a barrier to job creation or as a disincentive to provide local services, which are important to those with reduced mobility, such as older people, disabled people and those who are pregnant or have young children.
46. While the nil charge for small shops was deleted, the testing of sites showed that a modest charge, which is comparable to charges in the section 106 Planning Obligations SPD, would not impede such development.
47. There is a small risk that CIL will drive up values which will make it harder to access housing which is affordable. However, the proposed charging schedule has been informed by viability appraisals and the level of CIL reflects existing values and is not reliant on any increase in values. The reduction in CIL residential rates from £250 to £200 and the fact that we have also set the level of CIL significantly below the maximum level which could be charged will help mitigate impacts on land values.
48. The proposed lower tariff in the centre of the borough acknowledges the need for new and improved infrastructure, but also aims to ensure that CIL does not hinder regeneration attempts, for instance in Peckham and at the Aylesbury Estate. Ultimately, CIL is a mechanism intended to raise money to fund infrastructure that will contribute to sustainable development in the borough. In this sense, the adoption of CIL should have an overall positive impact on the various equalities groups. More specific impacts may arise depending on the types of infrastructure that are ultimately funded through CIL, but such issues are not broached as part of the charging schedule and will be considered in due course in the context of decisions concerning expenditure.

## **Sustainability appraisal**

49. The Core Strategy 2011 was subject to a sustainability appraisal incorporating a strategic environmental assessment to ensure that principles of sustainable development were thoroughly considered. The Southwark CIL is an extension of the spatial vision and policies set out in the Core Strategy and should not raise additional implications for sustainable development objectives which have not been previously considered. CLG guidance on Charge setting and charging

schedule procedures, April 2013, states that because CILs are short financial documents, separate sustainability appraisal for CILs is not required.

### **Financial implications**

50. In the first year of operation a Southwark CIL it is estimated to secure £7-8m, which is broadly comparable to the non-affordable housing S106 income for 2011. There is a time delay in securing either S106 or CIL actual income, but CIL will replace the majority of S106 income over time. CIL income is expected to increase overtime as house prices and viability improves.
51. The expenditure of CIL income is far less restrictive than S106 funding and allows the council to apply it for infrastructure that supports growth in the borough. The proposed Southwark CIL is a direct response to previous changes in legalisation prevent using S106 tariffs (such as the current S106 toolkit and E&C tariff) from April 2014.
52. This report proposes a reduction in the CIL charge for the zone which includes Elephant and Castle, Canada Water and Bermondsey. As is noted in paragraphs 30 and 41 above, it is estimated that this would result in a reduction in CIL funds of approximately £1.5m per year across the borough. The revised charge is lower than the tariff agreed in the Elephant and Castle SPD and will reduce the amount of CIL generated in the Elephant and Castle opportunity area by around £5m over the period leading up to 2031. However, the reduction in CIL funds need to be balanced against the overall benefits of continuing to secure the supply of new housing, including affordable housing.
53. Costs associated with both managing, monitoring and establishing Southwark CIL can be recouped from up to 5% of any CIL income.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Director of Legal Services**

##### Background to CIL

54. The Planning Act 2008 ('PA 2008') introduced a discretionary planning charge known as the Community Infrastructure Levy ('CIL'). The statutory framework for CIL is set out in sections 205-225 and further detail is provided under a number of regulations, most notably, the Community Infrastructure Regulations 2010 ('CIL Regulations'). In December 2012, the Secretary of State also issued statutory guidance under section 221 of the PA 2008 entitled "Community Infrastructure Levy: Guidance". The Guidance is relevant to draft charging schedules which at the date of publication had not been submitted for examination.
55. CIL is a charge paid by owners and developers on new buildings over a certain size. The charge is designed to help fund local infrastructure as identified in a local planning authority's development plan and can only be spent on 'infrastructure'. Infrastructure is defined in section 216 of the PA 2008 as including a wide range of facilities such as roads/transport facilities, open space and schools. It does not currently include affordable housing.
56. CIL is payable to a 'charging authority' which in London includes London Boroughs. If the council intends to apply the levy, it must prepare a charging

schedule that sets out the CIL rates in their area (*section 211(1) of the PA 2008*). The charging schedule becomes part of the Local Development Framework (i.e. the planning documents taken into account in making planning decisions). The charging schedule sets out the rates for CIL in the council's area and the rate must be expressed as pounds per square metre of development (*regulation 12(2)(b) of the CIL Regulations*). The charge is levied on the net internal area of development (*regulation 40(5) of the CIL Regulations*). By virtue of *regulation 13 of the CIL Regulations*, charging authorities are able to charge different rates either on a geographical basis or by reference to the intended use of the development but subject to justification with reference to the overall viability of development within their areas. The Guidance clarifies that charging authorities do not have to base rates' on different use classes (albeit that may be a useful reference). There is currently no power to charge rates based on the uplift in land values caused by the grant of planning permission.

57. Section 211 of the PA 2008 deals with the crucial matter of what should inform preparation of charging schedules. The charging schedule must take into account all of the following considerations:-
- a. The total cost of infrastructure requiring funding from CIL;
  - b. other sources of funding available; and
  - c. the potential effect of CIL on the viability of development of the area.

To that end, the schedule must be informed by 'appropriate available evidence' regarding viability (*section 211(7A) of the PA 2008*). The legislation thus seeks to ensure that charging schedules are not merely a list of infrastructure items needed to support development, but are the result of balancing the desirability of funding infrastructure from CIL against the potential effects of the charge on the economic viability of development (regulation 14 of CIL 2010). The regulations set out other costs to be factored in, such as administrative expenses and Mayoral CIL. Indeed, the council's viability study methodology factors in Mayoral CIL, the provision of affordable housing and other relevant financial requirements.

58. Government guidance stresses the desirability of evidence on infrastructure needs being drawn directly from the infrastructure planning that underpins their development plans. If the development plan infrastructure planning is weak or needs updating, the guidance suggests that the charging authority 'undertake some additional bespoke infrastructure planning to identify its infrastructure funding gap. This work may be limited to those projects requiring funding from CIL, rather than covering all the potential infrastructure projects for the area'. In order to demonstrate the soundness of the infrastructure planning that underpins their charging schedules, several charging authorities have published 'infrastructure plans' or similar documents. Although not specified in the legislation, such evidence is necessary to discharge the statutory requirement of weighing viability with infrastructure need and to be accepted by the independent examiner who eventually approves the charging schedule for adoption.
59. The Infrastructure Plan is based on the infrastructure needs identified by the council with reference to a professional viability appraisal as to the impact of CIL on development in the council's area. The viability study supports the terms and rates on which the levy has been prepared. Moreover, the council has up to date local development plan documents that underpins and informs the Infrastructure Plan.

60. There is no legislation on how long a charging schedule should apply once adopted. Nor is there any duty in the PA 2008 or the CIL Regulations for the schedule to be reviewed. However, guidance strongly encourages charging authorities to keep their charging schedule and Regulation 123 lists under review. Should the charging schedule be reviewed, the charging authority must follow the same process of consultation, examination and approval as for the initial schedule.
61. In view of the need to keep development viability and indeed infrastructure provision up to date over the charging schedule's lifetime until 2023, it is advisable for the council to monitor and review the charging schedule at appropriate intervals, probably as part of the Authority's Monitoring Report.

#### Relationship with section 106 Agreements

62. Regulation 122 and 123 impose limitations on the use of planning obligations, such that "a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure". Effectively, where a charging authority has published a list of infrastructure projects that it intends to fund through CIL, such projects cannot be funded by way of planning obligations. The language of the regulation implies the production of a Regulation 123 List is a matter for the charging authority's discretion. However, the guidance (paragraphs 86-91) strongly suggests that a charging authority should submit a Regulation 123 List along with its draft charging schedule. Accordingly, it is noted that as well as preparing an up to date Infrastructure Plan that identifies a non-exhaustive list of infrastructure intended to be funded by CIL, the council has also prepared a Regulation 123 List for submission with its draft charging schedule. Notwithstanding this list, it is noted that where site specific considerations or particular policy planning requires additional mitigation, such items will not constitute strategic infrastructure.
63. CIL does not completely replace section 106 agreements. Where an authority introduces CIL they cannot use section 106 agreements to deal with the same infrastructure requirements set out in the levy; they would however be able to use section 106 agreements in relation to site specific matters directly related to the development. CIL does not cover affordable housing and therefore this will also continue to be secured through section 106 agreements. Authorities that do not introduce CIL can still use section 106 agreements to fund site-specific infrastructure - but after a specified date they will not be able to combine more than five separate contributions towards a common piece of infrastructure (regulation 123 of the CIL Regulations).

#### Consultation on Preliminary Charging Schedule

64. The council has consulted on its proposed CIL rates and its draft charging schedule (pursuant to section 211(7) of the PA 2008 and regulation 15 of the CIL Regulations). The council now intends to re-consult on its draft charging schedule as a result of changes that have been made.
65. In addition, the council continues to have regard to the general duty - introduced by section 110 of the Localism Act 2011 (by way of amendment to Planning and Compulsory Purchase Act 2004) - to cooperate with other prescribed bodies in respect of strategic planning matters which may impact sustainable development.

66. After the consultation procedure has been completed, the council intends to submit its draft charging schedule for examination. The independent examiner will hear representations and pursuant to section 212A(2) of the PA 2008 will either approve the charging schedule, approve it with modifications or reject it.
67. The CIL Regulations require a period of 4 weeks for representations, however, the guidance emphasises that 6 weeks is good practice. The council ordinarily allows for 6 weeks of formal consultation on planning related documents under its Statement of Community Involvement. Whilst the SCI does not deal specifically with CIL, given that the charging schedule will form part of the Local Development Framework, similar standards are advisable. Accordingly, the draft charging schedule will be published for 6 weeks during which representations can be made.

#### Equality impact assessment

68. The Equality Act 2010 introduced a single public sector equality duty (PSED). This duty requires the council to have due regard in our decision making processes to the need to:
  - (a) Eliminate discrimination, harassment, victimisation or other prohibited conduct;
  - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not;
  - (c) Foster good relations between those who share a relevant characteristic and those that do not share it.

The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The PSED also applies to marriage and civil partnership, but only in relation to (a) above.

69. The council has discretion as to whom it wishes to consult regarding the preliminary draft charging schedule. The council proposes consulting a broad range of groups and has made every effort to be inclusive. Therefore, the statutory equalities duties are satisfied.
70. CIL has the potential to impact unequally on persons having one or more protected characteristic. The council will need to monitor the impact of CIL. Although there will not be any effective method of analysing the characteristics of persons paying CIL, the overall effect will be evident.
71. There has been compliance with the council's Approach to Equalities as well as the public sector equality duty as contained within section 149 of the Equality Act 2010. All six equality strands have been duly considered and assessed, this is evidenced in the Equalities Assessment (EA).

## Human Rights Considerations

72. CIL potentially engages certain human rights under the Human Rights Act 1998 ('the HRA'). The HRA prohibits unlawful interference by public bodies with conventions rights. The term 'engage' simply means that human rights may be affected or relevant. In the case of CIL, a number of rights are potentially engaged: -
- **The right to a fair trial (Article 6)** – giving rise to the need to ensure proper consultation and effective engagement of the public in the process;
  - **The right to respect for private and family life (Article 8)** – for instance the setting of CIL tariffs could impact on viability of housing provision or re-provision. Other considerations may include impacts on amenities or the quality of life of individuals based on CIL being too prohibitive;
  - **Article 1, Protocol 1 (Protection of Property)** – this right prohibits interference with individuals' right to peaceful enjoyment of existing and future property / homes. It could be engaged, for instance, if CIL makes future development unviable;
  - **Part II Protocol 1 Article 2 Right to Education** – this is an absolute right enshrining the rights of parents' to ensure that their children are not denied suitable education. This will be a relevant consideration in terms of ensuring sufficient educational infrastructure is funded by CIL.
73. It is important to note that few rights are absolute in the sense that they cannot be interfered with under any circumstances. 'Qualified' rights (including Article 6, Article 8 and Protocol 1) can be interfered with or limited in certain circumstances. The extent of legitimate interference is subject to the principle of proportionality whereby a balance must be struck between the legitimate aims to be achieved by a local planning authority in the policy making process against potential interference with individual human rights.
74. Before making their decision members are advised to have regard to human rights considerations and strive to strike a fair balance between the legitimate aims of setting CIL for the benefit of the community against potential interference with individual rights.
75. At this stage it is not considered that the proposal to consult on or implement CIL would constitute unlawful interference with human rights. Indeed, CIL has the legitimate aim of securing the infrastructure necessary for development growth provided for in the development plan and mitigation of its impacts.

## Decision-making

76. The legislation on CIL does not prescribe decision making in respect of a charging schedule. The only relevant requirement within the PA 2008 is that the charging schedule, once approved by the Examiner, should be approved by a resolution of the full council of the charging authority (*section 213(2) of the PA 2008*).
77. As noted earlier, CIL is to be a part of the Local Development Framework and can be considered analogous to other LDF documents such as Development Plan Documents (DPDs). Under Part 3(C) of the Constitution, the Cabinet collectively has responsibility for the council's policy framework (function 3), its finances (function 7) and approval of preferred options (effectively advanced

drafts of) development plan documents (function 20). In any event, Cabinet has power to carry out all of the local authority's functions which are not the responsibility of any other part of the council.

78. Therefore, it is considered appropriate to follow the decision making pattern used for DPDs and similar documents. It is recommended that members of Cabinet may collectively approve the draft charging schedule for publication and submission to an examiner having regard to the contents of this report and the accompanying documents.

#### **Strategic Director of Finance and Corporate Services (FC13/081)**

79. The strategic director of finance and corporate services notes the recommendations in this report and the financial implications in paragraphs 50 to 53.
80. Currently, the council uses standard charges set out in its s106 Planning Obligations SPD to pool contributions for infrastructure such as new schools places, strategic transport infrastructure, open space, leisure facilities and health facilities. However, from the introduction of a CIL Charging Schedule the council will not be able to pool obligations to fund a single item of infrastructure.
81. The use of s106 funding has been forecast in the council's 10 year capital programme, using existing balances and new funds anticipated from future agreements. Use of CIL as a potential funding source for capital schemes was outlined in a report considered by cabinet on 17 July 2012. The capital programme will be subject to future refresh and depending on the final charging schedule for CIL this may be used to support appropriate capital programme schemes.
82. The income projections outlined in this report are indicative only and a full financial analysis of projected costs and income streams attributable to the operation of the levy should be undertaken prior to its formal introduction, and kept under review as part of normal budget and resource monitoring.
83. Officer time to effect the recommendations will be contained within existing budgeted revenue resources and any significant additional costs from any specific proposals arising from the consultation or any queries will be subject to the council's usual approval arrangements.



## BACKGROUND DOCUMENTS

Background paper	Held at	Contact
Southwark Statement of Community Involvement 2008	160 Tooley Street London SE1 2QH	Sandra Warren 020 7525 5471
<b>Link</b> <a href="http://www.southwark.gov.uk/info/856/planning_policy/1238/statement_of_community_involvement_sci">http://www.southwark.gov.uk/info/856/planning_policy/1238/statement_of_community_involvement_sci</a>		
Saved Southwark Plan 2007	160 Tooley Street London SE1 2QH	Sandra Warren 020 7525 5471
<b>Link</b> <a href="http://www.southwark.gov.uk/info/856/planning_policy/1241/the_southwark_plan">http://www.southwark.gov.uk/info/856/planning_policy/1241/the_southwark_plan</a>		
The Core Strategy 2011	160 Tooley Street London SE1 2QH	Sandra Warren 020 7525 5471
<b>Link</b> <a href="http://www.southwark.gov.uk/info/200210/core_strategy">http://www.southwark.gov.uk/info/200210/core_strategy</a>		

## APPENDICES

No.	Title
Appendix A	Community infrastructure levy (CIL) revised draft charging schedule (available with the report)
Appendix B	Draft Regulation 123 list (available with the report )
Appendix C	Infrastructure Plan (available on the website)
<b>Link</b> <a href="http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4553&amp;Ver=4">http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4553&amp;Ver=4</a>	
Appendix D	Equalities Analysis (available on the website)
<b>Link</b> <a href="http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4553&amp;Ver=4">http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4553&amp;Ver=4</a>	
Appendix E	Consultation Plan (available on the website)
<b>Link</b> <a href="http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4553&amp;Ver=4">http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4553&amp;Ver=4</a>	
Appendix F	Consultation Report (available on the website)
<b>Link</b> <a href="http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4553&amp;Ver=4">http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4553&amp;Ver=4</a>	
Appendix G	House price heat map (available on the website)
<b>Link</b> <a href="http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4553&amp;Ver=4">http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4553&amp;Ver=4</a>	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Fiona Colley, Regeneration and Corporate Strategy	
<b>Lead Officer</b>	Eleanor Kelly, Chief Executive	
<b>Report Author</b>	Tim Cutts, Team Leader, Planning Policy	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Legal Services	Yes	Yes
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>		28 November 2013