

<b>Item No.</b> 15.	<b>Classification:</b> Open	<b>Date:</b> 12 February 2013	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Community Infrastructure Levy (CIL) 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**

The Community Infrastructure Levy (CIL) is a new 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. The benefits are increased certainty for the funding and delivery of infrastructure, increased certainty for developers and increased transparency for local people.

Southwark's proposed Draft CIL Charging Schedule provides potential developers with a clear schedule of contributions that are required for each type of development across the various parts of the borough. The rates have been viability tested to ensure that the aspirations of Southwark's development plan are not affected by the rates. CIL income will provide the council with money to invest in local and strategic infrastructure across the borough to support growth.

## **RECOMMENDATIONS**

That cabinet

1. Agree to publish and invite representations on the community infrastructure levy (CIL) draft charging schedule (Appendix A) and the draft "Regulation 123 List" (Appendix B).
2. Note the draft infrastructure delivery plan (Appendix C), the equalities analysis (Appendix D), the consultation plan (Appendix E) and consultation report (Appendix F).
3. Approve the submission of the community infrastructure levy (CIL) draft charging schedule to the Planning Inspectorate for an examination-in-public, provided no substantive changes are necessary following consultation.
4. Delegate the approval of any minor amendments resulting from consultation on the community infrastructure levy (CIL) 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

5. The Community Infrastructure Levy (CIL) is a new 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. The benefits are increased certainty for the funding and delivery of infrastructure, increased certainty for developers and increased transparency for local people.
6. The Planning Act 2008 provides that London borough councils are charging authorities for the purposes of the Community Infrastructure Regulations 2010. If intending to apply the levy, charging authorities must produce a document called a charging schedule 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 mandatory 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. In setting rates, a charging authority is required to strike a reasonable balance between the need to finance infrastructure from CIL against the impact of CIL on the economic viability of development across its area. The charging rates and zones which Southwark is proposing are set out in Appendix A.
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.
10. S106 planning obligations will continue to play a part in delivering local site specific improvements such as public realm or transport, which are needed to make the particular development acceptable in planning terms. From time to time there will be site specific considerations or particular planning policy requirements which dictate provision or re-provision as a direct result of a specific development. In these cases, mitigation will not amount to strategic infrastructure of the sort specified on the Regulation 123 list. For example, if there is a loss of a sports field or a health facility because of a particular scheme, this will require site specific mitigation and may be dealt with by 106 obligations. Affordable housing will also continue to be delivered through s106 planning obligations.
11. However, from April 2014 or the adoption of a CIL Charging Schedule, planning obligations will no longer be used as the basis for a tariff to fund infrastructure. Local authorities will not be able to pool more than 5 obligations to fund a single item of infrastructure. 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. From April 2014, the fact that the council will not be able to pool more than 5 obligations will place restrictions on this approach. The council must bring a CIL into effect before this date if development is to continue to contribute to strategic infrastructure which is needed to promote growth and development in its area.

12. The council is proposing to update its s106 Planning Obligations SPD in 2013. The revised s106 Planning Obligations SPD would supersede the existing SPD and provide detailed guidance on the use of planning obligations alongside CIL.
13. The purpose of CIL is to help fund infrastructure which supports growth in the borough. Infrastructure is defined in the Regulations to include: roads and other transport facilities, flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities and open spaces.
14. In conjunction with preparing a CIL charging schedule, charging 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 (IP) 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 IP 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 IP commit the council to spending the amounts set out in the plan.
15. At the point that the council adopts its CIL, it must publish a "Regulation 123 List". This list (which refers to Regulation 123 of the CIL Regulations 2010) sets out what the council intends to fund using CIL. If an infrastructure item is included on the Regulation 123 list, the council would not be able to seek s106 planning obligations for that item, once CIL has been adopted. After CIL has been adopted, the Regulation 123 List can be amended, subject to appropriate local consultation.
16. Because the purpose of CIL is to support growth rather than mitigate impacts of specific developments, it can be used more strategically than s106 contributions. A protocol for governing expenditure will be prepared in due course.
17. 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. This allocation would be made using the community infrastructure project list (CIPL) which may be 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. The definition of a local area would also be subject to consultation. The government has recently 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.
18. This is the second stage of preparation of the CIL charging schedule. The first stage comprised consultation on the preliminary draft charging schedule which took place between 10 July and 17 October 2012. All comments received on the preliminary draft charging schedule have been considered and taken into

account in preparing the draft charging schedule.

19. Following consultation on the draft charging schedule, it is anticipated that the document will be submitted to the Planning Inspectorate for an examination in public in summer 2013. Subject to receiving a favorable report from the planning inspector, the council expects to adopt the CIL charging schedule by the end of 2013.

## **CONSULTATION**

20. The Community Infrastructure Levy Regulations 2010 and our Statement of Community Involvement (SCI) 2007 set out consultation requirements for planning documents.
21. 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. As well as making the document available on the web and in local libraries, the council notified around 3000 consultees in the Planning Policy database. The document was publicised at all the community councils between June and October 2012 and an event was held on 19 September 2012 with developers to raise awareness about CIL.
22. In preparing the preliminary draft CIL it should be noted that Southwark cooperated with a range of organisations, including the GLA and TfL, particularly in preparing the Infrastructure Plan. Infrastructure items such as the improvements to the Northern line ticket hall and Elephant and Castle northern roundabout reflect this joint working. Further details of engagement which has taken place are set out in the Consultation Report (appendix F).
23. In all 273 representations were made by 39 objectors. The main areas of concern are summarised below:
  - The proposed charges may make development unviable, particularly for the strategic sites within the opportunity areas and growth areas in the borough. These areas should be assessed separately.
  - Zones 1, 2 and 3 should be amalgamated and the proposed charge for those areas dropped to £250 sqm. The CIL in these areas should be phased in over time.
  - Canada Water should be included in zone 2 and the proposed residential charge increased to £400.
  - The proposed charges may compromise the provision of affordable housing.
  - The assumptions used to prepare the site viability appraisals, such as the figures used for the existing use land values, the premiums, profit margins, professional fees, sales values were questioned.
  - It is unclear whether non-residential s106 planning obligations have been taken into account in undertaking the viability appraisals.
  - The Regulations do not allow authorities to distinguish between uses on the basis of size. Therefore the proposed charges for retail uses are not compliant with the Regulations.
  - Affordable retail space is not a distinguishable type of retail space. The proposed retail charges may breach state aid guidelines.
  - In terms of use, there is no distinction between a private health facility and a public health facility, or a private school and a state school. The

Regulations do not allow authorities to vary levies on the basis of a funding mechanism.

- It is unclear whether the proposed charge for student accommodation takes into account the lower rents charged by universities. Student accommodation provided by universities should qualify for relief as development by charitable institutions.
- 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.
- It is not clear how the proposed charging zones were derived. They should be more aligned to planning policy area designations, such as the Elephant and Castle Opportunity Area and Canada Water Action Area.
- The council should set out a policy on installments and include more detail on the process for reviewing CIL.
- With regard to the supporting Infrastructure Delivery Plan (IDP) document, some respondents suggested there needed to be additional reference to specific items of infrastructure or the removal of some items, taking care that CIL is spent on genuine infrastructure projects that support the planned growth. TfL requested the inclusion of public realm improvements on Blackfriars Road.

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 consult on the draft charging schedule over 4 weeks (19 February – 19 March 2012). This complies with the statutory timeframe set out in the CIL Regulations. Including consultation at preliminary draft stage, the council will have consulted for 18 weeks in all, which complies with 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 effects, taken as a whole, of the imposition of 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. The CIL levy rates and charging zones proposed by the council have been informed by an economic viability appraisal encompassing a series of viability appraisals of sites around the borough. The number of proposed zones and their locations reflect broad value ranges. Since the preliminary draft CIL was consulted on, the council have retested the viability of a number of sites to ensure that future likely s106 requirements, including the Mayor’s Crossrail s106 requirement are taken into account appropriately and to ensure that impacts on hotel uses, retail uses and leisure uses have been adequately tested.
27. Officers are recommending to make no changes to the charges for residential floorspace which were previously proposed in the preliminary draft charging schedule. The three residential charges which are proposed are: £400 per square metre (p/sqm) in the north of the borough (north of Union Street,

Snowsfields and Jamaica Road), £250 p/sqm in areas around Elephant and Castle, Bermondsey Spa, Canada Water, Camberwell, Nunhead, East Dulwich and Dulwich and £50 p/sqm around the Aylesbury estate, Burgess Park, Peckham and Old Kent Road. The boundaries of the residential zones have been informed by post code data on house prices which show average value bands and broad geographical breaks between areas.

28. The charge for zone 3, which includes Elephant and Castle is both viable and consistent with the s106 tariff level agreed in the Elephant and Castle supplementary planning document 2012 (the CIL, when brought into effect, will replace the Elephant and Castle SPD tariffs).
29. These CIL rates for residential development are comparable with those boroughs which have published rates. Wandsworth is proposing a rate of £250 p/sqm across the borough, with a £575 p/sqm charge in Vauxhall and Nine Elms (which has a lower affordable housing requirement), Hammersmith and Fulham is proposing charges ranging between £100 p/sqm and £400 p/sqm, Islington is proposing a charge of £300 p/sqm, Lambeth is proposing charges between £50 p/sqm and £369 p/sqm and Camden is proposing charges of between £150 p/sqm and £500 p/sqm.
30. In response to consultation, several objectors stated that zones 1 and 2 should be amalgamated into zone 3 and the proposed charge for those areas dropped to £250 p/sqm. Others stated that a charge of £250 p/sqm would render development unviable or place affordable housing provision at risk and that consequently CIL should be phased in over a number of years. One representation requested that Canada Water be included in the £400 p/sqm zone. Officers consider that the zonal charges are justified. The average maximum viable CIL that could be charged in zones 1 and 2 was about 50% higher than could be charged at Canada Water and 80% higher than could be charged at Elephant and Castle. There is a noticeable change of values in areas around Bankside, London Bridge, Shad Thames, Riverside ward north of Jamaica Road and Rotherhithe village which are close to the River Thames and which benefit from good public transport access.
31. The CIL Regulations do not allow authorities to phase in a CIL levy. Local authorities can review their CILs, although each review would be subject to two stages of consultation and an examination in public, which in all would take about 18-24 months. The majority of the residential developments tested were viable developments and would support the proposed CIL charges. Moreover, the proposed CIL charges are comfortably below the maximum viable charges. Those developments tested which were found to be currently unviable, would remain unviable irrespective of CIL. Inevitably in the first year or two of operation, there may be some sites where levels of affordable housing are impacted, while the market absorbs the new charge. Generally however, the outcome of the appraisals provides confidence that the proposed residential charges will not jeopardise development or impede the council's regeneration efforts.
32. The council is not proposing to change the charges for either student housing or for hotels. Student housing would be charged at the same rate as residential development. Student accommodation provided directly by universities and which is used for charitable purposes may qualify for relief from CIL. 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.

33. The council is proposing to amend the charge for office space in CIL zone 1 by reducing the levy from £100 p/sqm to £70 p/sqm. This change is proposed following retesting of office sites to incorporate the tariff for the Mayor's Crossrail s106 and a reassessment of costs and capital yields. Outside CIL zone 1, the council is not proposing to amend the nil charge which was consulted on at the preliminary draft stage. 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 justifiable.
34. Most boroughs have differentiated rates for office space. The charge proposed in zone 1 in Southwark is similar to the rates proposed by most other boroughs in their main office areas. These include: Islington (£150 p/sqm); Barnet (£135 p/sqm); Tower Hamlets (£125 p/sqm); Lambeth (£125 p/sqm); Croydon; (£125 p/sqm); Wandsworth (£100 p/sqm); Hammersmith and Fulham (£80 p/sqm); Camden (£45 p/sqm); Brent (£40 p/sqm); Hillingdon (£35 p/sqm); Richmond (£25 p/sqm); and Newham, Sutton, Lewisham, Harrow, Merton and Haringey (£0).
35. The preliminary draft schedule sought to apply three charges for retail space: £0 p/sqm for space below 280sqm, £125 p/sqm for space between 280sqm and 2,500sqm and £250 p/sqm for space larger than 2,500sqm. Several objectors noted that the CIL Regulations do not allow authorities to distinguish solely by floorspace size. The council is therefore proposing to make the schedule more robust by providing a more detailed description of those uses which would attract the higher charge of £250 p/sqm, namely supermarkets and shopping centres which have on-site parking facilities. The higher charge is justified on the basis of increased viability of these types of development. All other retail space would have a charge of £125 p/sqm. Of the sites tested, all of the 17 viable developments should be able to pay this charge and on that basis, the proposed charged should not put development at risk.
36. It is proposed that the nil charge for affordable retail space proposed in the preliminary draft schedule is deleted on the basis while the affordability of the space affects viability, it is not in itself a distinct type of retail provision. Affordable retail space is only a requirement in large retail developments at Elephant and Castle. The testing indicated that any costs associated with affordable space should be absorbed within the overall retail element of the development and therefore this change should not put such development at risk.
37. No changes are proposed to the nil charge proposed for public libraries. The preliminary draft schedule sought to make distinct charges for health and education floorspace which is predominantly publically funded. Several objectors however raised an objection that the CIL Regulations 2010 only allow authorities to distinguish between uses and not on the basis of funding sources. Having considered the issue, the council is proposing to apply a nil charge to all education and health floorspace.
38. The preliminary draft charging schedule also sought to exempt public sports facilities. As in the case of health and education space, on reflection officers do not consider that the CIL Regulations would allow this. Most other facilities, 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. To reflect this situation, the council is proposing to reduce the CIL charge for “all other uses” from £50 p/sqm to £30 p/sqm

39. 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. Following consultation, several adjustments have been made to the infrastructure plan to update it. 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.
40. Statutory guidance issued by the government on 14 December 2012 indicates that charging authorities should also make a draft Regulation 123 List available for the examination in public. Soutwark's draft list (Appendix B) contains those projects from the Infrastructure Plan which could be funded only by CIL and not, once CIL is adopted, by s106 planning obligations. 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 charging 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.
41. Overall it is considered that the proposed levy 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**

42. 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.
43. 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.

44. While the nil charge for small shops is deleted, the testing of sites showed that a modest charge, which is comparable to charges in the s106 Planning Obligations SPD, would not impede such development.
45. 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. Moreover, we have also set the level of CIL significantly below the maximum level which could be charged which will help mitigate impacts on land values.
46. 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**

47. 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, 2010, states that because CILs are short financial documents, separate sustainability appraisal for CILs is not required.

### **Financial implications**

48. In the first year of operation a Southwark CIL it is expected to secure about £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 but not all S106 income over time. We expect the CIL income to increase overtime as house prices and viability improves. 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.

49. 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.
50. 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**

51. 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 CIL Regulations 2010 (as amended). 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 those draft charging schedules which at the date of publication were not submitted for examination.
52. 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 the PA 2008 (s216) as including a wide range of facilities such as roads/transport facilities, open space and schools. It does not currently include affordable housing, although the government is yet to announce its decision after consulting on the possibility of funding affordable housing from CIL.
53. CIL is payable to a 'charging authority' which in London means 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), 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), CIL Regulations 2010*). The charge is levied on the net internal area of development (*regulation 40(5), CIL Regulations 2010*). By virtue of *regulation 13, CIL Regulations 2010*, 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 'differential rates' with reference to intended uses and that use for the purposes of the CIL Regulations is not tied to classes within the Use Classes Order 1987 (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.
54. 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) 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 such infrastructure from CIL against the potential effects of the charge on the economic viability of development in the authority’s area (Reg 14, 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.

55. 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.
56. Overall, the Infrastructure Plan is based on the infrastructure needs identified by the council and 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 (comprising its Core Strategy Southwark Plan and relevant Area Action Plans or Supplementary Planning Documents) that underpins and informs the Infrastructure Plan.
57. 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 2010 (as amended) for the schedule to be reviewed. However, government 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.
58. 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**

59. 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 infrastructure 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 requirements provision or re-provision of items of mitigation as a direct impact of a proposed development, such items will not constitute strategic infrastructure. The report at paragraph 10 gives the example of a sports field or facility lost as a result of development which may necessitate obligations compliant with Reg 122 and 123, although, at strategic level health related infrastructure may be covered by CIL.

60. CIL does not completely replace section 106 Agreements. Where an authority introduces CIL, they could not use a section 106 Agreement to deal with the same matters and Section 106 would be scaled back to site specific matters directly related to the development. On the other hand, CIL does not cover affordable housing, so this in particular will continue to be secured via s.106. Authorities who do not introduce CIL can still use s.106 to fund site-specific infrastructure needs arising from particular developments. However, an authority's ability to use more than five separate planning obligations to pool contributions towards a common piece of infrastructure will be phased out effective from April 2014 (Reg 123).

#### **Consultation on Preliminary Charging Schedule**

61. The council has consulted on its proposed CIL rates, i.e. the preliminary draft charging schedule, before finalising its current draft charging schedule (pursuant to section 211(7), PA 2008 and regulation 15, CIL Regulations 2010). In preparing the draft charging schedule, the council has had regard to and evaluated consultation responses in formulating its draft charging schedule.
62. In addition, the council has had 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. Although it may be arguable that this duty (which is directed at local planning authorities), does not strictly apply to the process of preparing charging schedules, taking a purposive approach the council has opted to cooperate with a range of organisations including the GLA and TfL among others.
63. Following consultation on the preliminary charging schedule, the council is now intending to publish and submit for examination its draft charging schedule pursuant to Regulations 16 / 17 and Section 212 of the PA 2008. The independent examiner will hear representations, and decide to approve the charging schedule, approve it with modifications or reject it. (section 212A(2), PA 2008).
64. The 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 also form part of the Local Development Framework, similar standards are advisable. Accordingly, the draft Schedule will be published for 6 weeks during which representations can be made.

### **Equality impact assessment**

65. 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.

66. 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.
67. 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.
68. 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**

69. CIL potentially engages certain human rights under the Human Rights Act 2008 (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.

70. 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 the Article 6, Article 8 and Protocol 1 rights, 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.
71. 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.
72. 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**

73. The legislation on CIL does not prescribe decision making in respect of a charging schedule. Neither are the Local Government (Functions and Responsibilities Act) England Regulations 2010 amended to deal with CIL, suffice it to say that CIL is a planning policy function. The only relevant requirement within the CIL Regs is that the charging schedule, once approved by the Examiner, should be approved by a resolution of the full council of the charging authority (PA 2008, s.213(2)).
74. 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 under Article 6 of the council’s Constitution (“the Constitution”) to carry out all of the local authority’s functions which are not the responsibility of any other part of the council.
75. 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: the draft charging schedule the viability appraisal, infrastructure plan and Regulation 123 list.

### **Strategic Director of Finance and Corporate Services (FC/13/104)**

76. The strategic director of finance and corporate services notes the recommendations in this report.
77. 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 April 2014 or the adoption of a CIL Charging Schedule the council will not be able to pool more than 5 obligations to fund a single item of infrastructure.
78. 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.
79. 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.
80. 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**

<b>Background paper</b>	<b>Held at</b>	<b>Contact</b>
Statement of Community Involvement 2008 (available on the council's website)	Council Offices, 160 Tooley Street, London SE1 2QH	Sandra Warren 0207 525 5471
CIL viability study 2013 update (available on the council's website)	As above	Sandra Warren 0207 525 5471

## APPENDICES

No.	Title
Appendix A	Community infrastructure levy (CIL) draft charging schedule
Appendix B	Draft Regulation 123 list
Appendix C	Infrastructure Plan (available on the website)
Appendix D	Equality Analysis (available on the website)
Appendix E	Consultation Plan (available on the website)
Appendix F	Consultation Report (available on the website)

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Fiona Colley, Cabinet Member for Regeneration and Corporate Strategy	
<b>Lead Officer</b>	Eleanor Kelly, Deputy Chief Executive	
<b>Report Author</b>	Tim Cutts, Team Leader, Planning Policy	
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<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
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>	1 February 2013	