

<b>Item No.</b> 6.1	<b>Classification:</b> Open	<b>Date:</b> 25 March 2015	<b>Meeting Name:</b> Council Assembly
<b>Report title:</b>		Community Infrastructure Levy	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Cabinet	

## RECOMMENDATIONS

That council assembly:

1. Consider the examiner's report on the Southwark community infrastructure levy (Southwark CIL) (Appendix A).
2. Approve the Southwark CIL (Appendix B) and bring it into effect on 1 April 2015.
3. Approve Southwark's "Regulation 123 List" (Appendix C).
4. Note the Southwark CIL infrastructure plan (Appendix D), the updated equalities analysis (Appendix E) and consultation report (Appendix F).
5. Note that cabinet will consider the community Infrastructure levy and section 106 planning obligations and community infrastructure levy supplementary planning document at its meeting on 17 March 2015 and that a supplemental report will be circulated following the cabinet meeting which confirms the decisions of cabinet.

## BACKGROUND INFORMATION

### Community infrastructure levy

6. 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 community infrastructure levy regulations 2010 (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.
7. If intending to apply the levy, councils (which are designated as "charging authorities") must produce a document called a charging schedule (Appendix B) 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.
8. Once brought into effect, the levy is a compulsory charge levied on most new

developments that involve an increase of 100 square metres 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.

9. Some developments are exempt from paying the levy. These are developments of affordable housing and developments by charities of buildings used for charitable purposes.
10. It should be noted that in London, 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.

### **Process for preparing a CIL**

11. 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 and a revised draft charging schedule (RDCS) between December 2013 and February 2014).
  - 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 examiner's report and approval of CIL.
12. The council is now at the final stage in the process. The examination in public hearings on Southwark's revised draft charging schedule (RDCS) took place in July 2014. Following the hearings, the examiner issued an interim findings report which advised that the council would need to prepare and consult on further evidence in order to justify its proposed rates. The council also proposed a number of modifications to the RDCS in light of the examiner's interim findings and the further evidence. The council consulted on the modifications and further evidence between 11 December 2014 and 13 January 2015. Representations received were passed to the examiner and on 2 March he submitted his final report (Appendix A).
13. In accordance with the CIL Regulations, the examiner's report was published by the council as soon as was practicable. The Planning Act 2008 stipulates that a local authority cannot approve its CIL unless an examiner has recommended approval and may only approve it subject to any modifications recommended by the examiner.

### **Infrastructure planning**

14. 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 infrastructure plan is set out in Appendix D. The

infrastructure plan is part of the evidence base needed to help justify levying a CIL. The infrastructure set out in the 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 plan commit the council to spending the amounts set out in the plan.

15. A key principle of CIL is that after CIL is adopted authorities should not be spending both CIL and section 106 planning obligations on the same item of infrastructure. Government advice in the national planning practice guidance (NPPG) requires authorities to be clear about those items which will not be funded by section 106 planning obligations and set these out in a list (Appendix C). This is called a regulation 123 list (which refers to regulation 123 of the CIL regulations). After CIL has been approved, 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 section 106 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. The government has confirmed that the "meaningful proportion" will comprise 25% of CIL funding in areas where there is an adopted neighbourhood plan and 15% elsewhere. The supplementary planning document (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 in consultation with the community councils and the planning committee to ensure it reflects local needs.
18. The council will monitor the collection and use of CIL and publish these details in an annual report.

### **Section 106 planning obligations**

19. Planning obligations are used to address negative impacts of a development. They are legally binding and comprise either an agreement between a council and a developer or a unilateral undertaking made by a developer. They can be used to specify the nature of developments (for example, requiring a given portion of housing to be affordable), compensate for loss or damage created by a development (for example, loss of open space), or address a development's impact (for example, through a contribution towards public realm improvements in the local area). They can involve a financial or non-financial obligation. Southwark's current guidance on section 106 planning obligations is set out in the 2007 section 106 planning obligations supplementary planning document (the adopted SPD).
20. The adopted SPD sets out a number of standard charges which the council uses to calculate section 106 planning obligations. These charges cover a range of infrastructure, including school places, open space, strategic transport improvements, sports development and play facilities. Funding which is generated is often pooled as individual obligations are often not sufficient to pay for large infrastructure items.

21. However, the introduction of the Planning Act 2008 and the CIL regulations has changed the way that developments contribute towards funding strategic infrastructure. 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 6 April 2015 (whichever is the sooner) local authorities will not be able to pool more than five 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 adopted SPD which are based on the principle of pooling funding. If the council does not introduce a CIL by 6 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.
22. Affordable housing will continue to be secured through Section 106 planning obligations.
23. The council has prepared a revised section 106 planning obligations and community infrastructure levy SPD (the revised SPD) to be adopted at the point that Southwark's CIL comes into effect. The revised SPD will supersede the adopted SPD and provides detailed guidance on the use of planning obligations alongside CIL. It explains the circumstances in which the council will seek to negotiate section 106 planning obligations. This includes circumstances where public realm or site specific transport improvements are required and where developments do not meet on-site policy requirements for amenity space provision, play facilities and carbon dioxide reductions.
24. The council consulted on the revised SPD between December 2013 and February 2014. The adoption of the SPD will be considered by Cabinet on 17 March 2015 and subject to approval, will be adopted on the day that the Southwark CIL takes effect.

## **Consultation**

25. The council's approach to consultation on the CIL was consistent with the CIL regulations 2010 and our statement of community involvement (SCI) 2007.
26. In compliance with the SCI, the council consulted on the preliminary draft charging Schedule for a period of 14 weeks, which included six 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 eight weeks including a formal period of consultation of six weeks between 20 February and 3 April 2013. Southwark then consulted on a revised draft charging schedule (RDCS) for a period of 12 weeks, including a six week period of formal consultation between 14 January 2014 and 25 February 2014. Finally, during the examination stage the council consulted for a period of four weeks between 11 December 2014 and 13 January 2015 on further evidence and proposed modifications to the RDCS.
27. At each stage 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. The preliminary draft, draft and revised draft CIL were publicised at the community council meetings and events were held in September 2012 and October

2014 with developers to raise awareness about CIL and to discuss the evidence base. A full report on consultation is contained in Appendix F.

## **KEY ISSUES FOR CONSIDERATION**

28. 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. Following a lengthy period of preparation and an examination-in-public, the council has received the examiner's report and is able to approve its CIL and bring it into effect. As was identified in paragraph 16 above, it should be noted that the council can only approve its CIL subject to the modifications proposed by the examiner.
29. A summary of the proposed charges included in the RDCS is set out below:
- Residential Zone 1: £400 per square metre (north of Union Street, Snowsfields and Jamaica Road and including relevant areas in Bankside, Borough, London Bridge and Shad Thames).
  - Residential Zone 2: £200 per square metre (including Canada Water, Bermondsey, Elephant and Castle and Dulwich).
  - Residential Zone 3: £50 per square metre (including the Aylesbury Estate, southern end of Old Kent Road and Peckham).
  - Student housing: £100 per square metre in the case of direct-let rent schemes and £0 for nomination rent schemes.
  - Office: £70 per sqm in CIL zone 1 and £0 elsewhere.
  - Retail: £250 per square metre for shopping centres and supermarkets and £125 per square metre for other retail types.
  - Town centre carparking: £0 per square metre.
  - Health, education and public libraries: £0 per square metre.
  - Industry and warehousing: £0 per square metre.
  - All other uses: £30 per square metre.
30. Following the public hearings into the RDCS in July 2014 the examiner issued his interim findings which included the following:
- The residential rates should be supported by further evidence regarding a number of inputs into the viability appraisals including build costs, contingency, profit rates and floorspace efficiency.
  - There was insufficient evidence to justify the higher retail rate.

- There was insufficient evidence to justify the charge for “all other uses”.
  - A minor modification should be made to the definition of nomination student housing.
  - The boundary between Zones 1 and 2 should be realigned along the railway viaduct just to the north of Union Street, rather than Union Street itself.
31. Following receipt of the interim findings report, the council prepared the additional evidence advised by the Examiner. It also proposed the following modifications to the RDCS:
- The rate of £250 per square metre for shopping centres and supermarkets should be replaced by a flat retail charge of £125 per square metre.
  - The charge for “all other uses” should be reduced to £0.
  - The Union Street boundary should be amended, in accordance with the Examiner’s findings.
  - The definition of nomination student housing should be amended, in accordance with the Examiner’s findings.
32. On 2 March the council received the examiner’s final report (Appendix A). The examiner endorsed the RDCS, recommending that it should be approved subject to the council making the modifications set out in paragraph 31 above.
33. With regard to residential development, 42 of the schemes appraised in the evidence base contained residential homes (6 in CIL Zone 1, 29 in CIL Zone 2 and 7 in CIL Zone 3). Of these, there were two schemes which were made unviable by CIL. 24 schemes were viable and the remainder (16 schemes) were unviable before the application of a CIL charge. In all cases CIL comprised a small proportion of gross development value (on average less than 3%). It was the view of the council’s consultants, BNP Paribas, that the outcomes show that where schemes are unviable, with the exception of two developments, this would not be because of CIL and consequently CIL would not be a critical factor in determining whether schemes are delivered. The examiner broadly endorsed the inputs and methodology used in the viability appraisals and also noted that there was not sufficient evidence to justify lower rates in opportunity areas or action areas.
34. The examiner noted the need for a small adjustment in the boundary of CIL Zone 1, to align the boundary with the viaduct rather than Union Street. There are few development opportunities in the area between Union Street and the viaduct and this change would not be expected to have a significant impact on overall CIL income.
35. There was discussion during the public hearings about private rented sector (PRS) housing and whether such housing should have a different CIL rate from private “for sale” housing. The examiner noted that Southwark has no adopted planning policy which would limit a developer’s ability to offer property for rent or conversely which would restrict it and prevent it changing to “for sale” housing. Moreover, available evidence suggested that residential developments will alternate between PRS and “for

sale” housing, according to changing circumstances. The viability evidence identified that although in some instances PRS is less viable than “for sale” housing, the proposed CIL rates are set at a level that should allow PRS schemes to come forward. The Examiner endorsed the council’s approach.

36. Eight schemes involving student accommodation were appraised. One of these was made unviable by the proposed CIL charge and four were unviable before the application of CIL. It is considered that the council’s approach of dual charges of £100 per square metre for direct let student accommodation and a nil charge for schemes delivered with universities, where rents are capped over a period of at least seven years, remains justified. The examiner noted that a small change was required in the reference to the rent cap in the RDCS (to refer to an average rent rather than a cap).
37. With regard to offices, based on evidence of new developments and lettings and investment deals undertaken in the borough it is evident that the office market in the north of the borough around CIL Zone 1 is thriving. Elsewhere in the borough, office rents are identified as being considerably lower and as a result developments incorporating large amounts of office space are unlikely to come forward in the short to medium term as speculative developments as the capital values generated are insufficient to cover development costs. In most cases such uses are being cross subsidised by other uses in the developments and such space is only coming forward as part of mixed use developments. Overall, it is considered that the charges in the RDCS are justified and the examiner did not question the council’s approach.
38. Similarly, the evidence suggested that industrial and warehousing development is largely unviable in the current market, which would justify a nil charge. The examiner did not question this approach, or the council’s proposal that health and education uses and public libraries, which are often publically funded, are nil rated.
39. With regard to hotels, the examiner concluded that the hotel market in London is buoyant and there is good evidence that capital values per room are very much higher in the north of the borough. The rates in the RDCS reflect this situation and are sufficiently conservative.
40. With respect to retail, the examiner concluded there was not sufficient evidence to justify a higher charge for supermarkets and shopping centres or malls. By contrast, the lower rate of £125 per square metre was not substantially challenged. Of 36 schemes tested which involved retail provision, only one was made unviable by the proposed CIL rates. The reduction in the CIL charge from £250 per square metre to £125 per square metre is not expected to have a significant impact on overall CIL income. There are few opportunities to deliver supermarket/shopping centre type development and much of the space that will be delivered (for example on the Elephant and Castle shopping centre, Surrey Quays shopping centre and the Aylesham Centre) will replace existing space, which would significantly reduce CIL liability in any event.
41. The examiner also considered that the council’s nominal charge for “other floorspace” was not justified by evidence. Six schemes involving a cinema, assembly and leisure uses and a private gym were tested and all were unviable before the application of CIL. While it was not necessarily the leisure uses that made these schemes unviable, it is not considered that the evidence would justify a charge for “other floorspace”.

42. Overall the examiner concluded that the council had been realistic in terms of achieving a reasonable level of CIL income to address the acknowledged gap in infrastructure funding which is needed to support growth, while ensuring that a range of development remains viable across the borough as a whole.
43. The CIL regulations also require publication of a regulation 123 list, alongside a CIL. This is a list of infrastructure items that in the future will not be funded by section 106 planning obligations. These are items which could be funded or part funded by CIL. Projects not referred to on the list could be funded by either CIL or planning obligations. However, it is anticipated that section 106 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 NPPG 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 Section 106 planning obligations. The regulation 123 List can be amended with appropriate consultation and without the need to revise CIL rates.
44. As is noted in paragraph 18 above, the council will monitor the collection and use of CIL and publish these details in an annual report. Through the council's published local development scheme (LDS) the council has committed to reviewing its CIL within three years.

## **Community impact statement**

### **Equalities analysis**

45. An equalities analysis was undertaken as part of the preparation of the CIL preliminary draft charging schedule. This was updated to reflect the changes proposed in the RDCS and the proposed modifications (Appendix E). 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.
46. 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.
47. 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 adopted SPD, would not impede such development. The reduction in the CIL charge for supermarkets and shopping



centres is unlikely to have any significant impacts on groups with protected characteristics. There are few opportunities to develop such space in the borough and CIL is unlikely to be a decisive factor in determining whether such developments go ahead.

48. While the deletion of the charge for “other floorspace” may result in a small reduction in overall CIL revenues, this would be offset by beneficial impacts on groups with protected characteristics. It would reduce costs in developing such floorspace, reducing the overall cost burden for the development of space which is used by community groups, including meeting spaces, youth clubs etc.
49. 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.
50. 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**

51. 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. The guidance in the NPPG on charge setting and charging schedule procedures states that sustainability appraisal for CILs is not required.

### **Financial implications**

52. In the first year of operation, it is estimated that the Southwark CIL will secure £7-8 million, which is broadly comparable to the non-affordable housing income gained through section 106 planning obligations. There is a time delay in securing either section 106 planning obligations or CIL actual income, but CIL will replace the majority of section 106 income over time. Overall, CIL is expected to generate around £112 million over 20 years at today’s prices, although this may vary significantly depending on how much development takes place. The rates set out in the CIL charging schedule (Appendix B) will be index linked and should increase over time.
53. The modifications recommended by the examiner will result in a further reduction in CIL revenues. However, as set out in paragraphs 34 and 40 above, it is not expected

this reduction would be significant. The council's modelling of future CIL revenues is reliant on residential development and would not be affected by the modifications.

54. The expenditure of CIL income is far less restrictive than section 106 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 legislation that prevent the use of Section 106 tariffs (such as the current section 106 toolkit and transport tariff in the Elephant and Castle SPD) from April 2015.
55. 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**

56. 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 of the PA 2008 and further detail is provided under a number of regulations, in particular, the CIL Regulations 2010 (as amended).
57. 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 (section 216) as including a wide range of facilities such as roads/transport facilities, open space and schools.
58. CIL is payable to a 'charging authority' which in London means each London Borough Council. If the council intends to apply the levy, it must prepare a charging schedule that sets out the CIL rates in its area (section 211(1) of the PA 2008). The charging schedule becomes part of the local development framework (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 2010). The charge is levied on the net internal area of development (regulation 40(5) of the CIL Regulations 2010). By virtue of regulation 13 of the CIL Regulations 2010, charging authorities are able to charge different rates based on either a geographical basis or with reference to the intended use of the development. The council must however consider the overall viability of development within its area.
59. Section 211 of the PA 2008 provides that the council, in setting its rates or other criteria, must have regard to:
  - a) The actual and expected costs of infrastructure
  - b) The economic viability of development (which may include, in particular, actual or potential economic effects of planning permission or of the imposition of CIL)
  - c) Other actual and expected sources of funding for infrastructure.
60. The legislation therefore seeks to ensure that charging schedules balance the desirability of funding infrastructure against the potential effects of the charge on the economic viability of development in the authority's area (regulation 14 of the CIL

Regulations 2010). The regulations also set out other costs to be factored in, such as administrative expenses and Mayoral CIL.

61. The schedule must be informed by 'appropriate available evidence' regarding viability (section 211(7A) of the PA 2008).
62. 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 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.
63. In view of the need to keep development viable and the infrastructure list up to date, it is advisable for the Council to monitor and review the charging schedule at appropriate intervals.

### **The relationship between CIL and section 106 agreements**

64. 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 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, guidance 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 adoption with its draft charging schedule.
65. Notwithstanding the list, section 106 agreements may still be used to secure site specific mitigation and affordable housing.

### **Consultation**

66. In compliance with the SCI, the council consulted on the preliminary draft charging schedule for a period of 14 weeks, which included six 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 eight weeks including a formal period of consultation of six weeks between 20 February and 3 April 2013. The council then consulted on a revised draft charging schedule (RDCS) for a period of 12 weeks, including a six week period of formal consultation between 14 January 2014 and 25 February 2014. Finally, during the examination stage the council consulted for a period of four weeks between 11 December 2014 and 13 January 2015 on further evidence and proposed modifications to the RDCS. The Examiner recommended that the draft charging schedule be approved on 2 March 2015.
67. The council has had regard to the general duty, introduced by section 110 of the Localism Act 2011, to cooperate with other prescribed bodies in respect of strategic planning matters which may impact upon sustainable development. Although it may be argued that this duty does not strictly apply to the process of preparing charging

schedules, the council has taken a purposive approach and has cooperated with a range of organisations.

### **Equality impact assessment**

68. The Equality Act 2010 introduced a single public sector equality duty. This duty requires the Council to have due regard in its 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.
69. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
70. The council has consulted a broad range of groups and has made every effort to be inclusive. The Council has also prepared a detailed equalities assessment in relation to the charging schedule.
71. CIL has the potential to impact unequally on persons having one or more protected characteristic and the council will need to monitor this.

### **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 convention 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 the 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 the potential interference with individual rights.

### **Decision making**

75. 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. Under Part 3(C) of the council's 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 constitution to carry out all of the local authority's functions which are not the responsibility of any other part of the council.
76. The legislation on CIL does not prescribe decision making in respect of a charging schedule. The only relevant requirement 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 Planning Act 2008).

### **Strategic Director of Finance and Corporate Services (FC14/055)**

77. This report is requesting council assembly to approve the community infrastructure levy and Southwark's "regulation 123 list" as reflected in the recommendations. Full details of the proposals are contained within the main body of the report.
78. The strategic director of finance and corporate services notes that the council expects to receive the same amount of income under the new proposals. However, it is noted that, as 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.
79. It is also noted that the availability of income under the new proposals in funding the council's infrastructure projects will be closely monitored on a regular basis.
80. Staffing and any other costs connected with this recommendation to be contained within existing departmental revenue budgets.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
London Plan 2011 <a href="http://www.london.gov.uk/priorities/planning/londonplan">http://www.london.gov.uk/priorities/planning/londonplan</a>	Southwark Council 160 Tooley Street London SE1 2QH	Barbara-Ann Overwater 020 7525 5411
Southwark Statement of Community Involvement 2008 <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>	Southwark Council 160 Tooley Street London SE1 2QH	Barbara-Ann Overwater 020 7525 5411
Saved Southwark Plan 2007 <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>	Southwark Council 160 Tooley Street London SE1 2QH	Barbara-Ann Overwater 0207 525 5411
The Core Strategy 2011 <a href="http://www.southwark.gov.uk/info/200210/core_strategy">http://www.southwark.gov.uk/info/200210/core_strategy</a>	Southwark Council 160 Tooley Street London SE1 2QH	Barbara-Ann Overwater 020 7525 5411
Section 106 Planning Obligations and Community Infrastructure Levy (CIL) Supplementary Planning Document (SPD)	Southwark Council 160 Tooley Street London SE1 2QH	Barbara-Ann Overwater 020 7525 5411

## APPENDICES

No.	Title
Appendix A	Examiner's Report on the Southwark CIL Revised Draft Charging Schedule (RDCS)
Appendix B	Southwark Community Infrastructure Charging Schedule
Appendix C	Regulation 123 List
Appendix D	Southwark CIL Infrastructure Plan (available on the website)
Appendix E	Southwark CIL Updated equalities Analysis (available on the website)
Appendix F	Southwark CIL Consultation Report (available on the website)

## AUDIT TRAIL

<b>Lead Officer</b>	Eleanor Kelly, Chief Executive	
<b>Report Author</b>	Tim Cutts, Planning Policy	
<b>Version</b>	Final	
<b>Dated</b>	12 March 2015	
<b>Key Decision?</b>	Yes	
<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
Strategic Director for Finance and Corporate Services	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>	12 March 2015	