

# HILLINGDON'S COMMUNITY INFRASTRUCTURE CHARGING SCHEDULE AND REVISED PLANNING OBLIGATIONS SPD

<b>Cabinet Member</b>	Councillor Keith Burrows
<b>Cabinet Portfolio</b>	Planning, Transportation and Recycling
<b>Officer Contact</b>	James Gleave: Residents Services
<b>Papers with report</b>	<b><u>Circulated separately</u></b> Appendix 1: Community Infrastructure Levy Charging Schedule Appendix 2: Revised Planning Obligations SPD

## HEADLINE INFORMATION

<b>Purpose of report</b>	This report provides information to the Cabinet on the outcome of the Examination of Hillingdon's Draft Community Infrastructure Levy (CIL) Charging Schedule and seeks a recommendation to present the Charging Schedule and the revised Planning Obligations SPD to Full Council for Adoption.
<b>Contribution to our plans and strategies</b>	The Council's Planning Policies Our Built Environment
<b>Financial Cost</b>	Income from the CIL would be used to fund general infrastructure provision associated with incremental growth in the Borough. Different uses will be subject to different CIL charges.  Hillingdon would charge a 5% administration fee on all CIL contributions. £20,000 cost for economic viability work relating to sui generis charging band to be funded from existing planning budgets.
<b>Relevant Policy Overview Committee</b>	Residents' and Environmental Services Policy Overview Committee
<b>Ward(s) affected</b>	All

## **RECOMMENDATION**

### **That Cabinet:**

- 1. Recommends that the Community Infrastructure Levy Charging Schedule incorporating the Examiner's recommendations (as set out in Appendix 1) and also the Planning Obligations SPD (as set out in Appendix 2) are referred to Full Council in July for Adoption.**
- 2. Approves the administration fee set at a 5% deduction from each and every CIL contribution.**
- 3. Approves the proposed instalments policy for CIL payments.**
- 4. Approves the commissioning of additional work to support the modification of the Charging Schedule to include a charging rate for Sui Generis uses.**
- 5. Recommends the withdrawal of the current Planning Obligations SPD following the Adoption of the revised document.**
- 6. Grants delegated authority to the Deputy Chief Executive and Corporate Director of Residents Services to agree, in conjunction with the Cabinet Member for Planning, Transportation and Recycling, to make any further minor editing and textual changes to the Draft Charging Schedule before it is adopted at full Council.**

### **Reasons for Recommendation**

Further to Cabinet approval in February 2013, officers submitted Hillingdon's Draft Charging Schedule for Examination in March 2013. The hearing sessions associated with the Examination took place on 1<sup>st</sup> October 2013. The Examiner's report was published on 10<sup>th</sup> February 2014 and concluded that, subject to modifications which included the removal of the proposed charge for Sui Generis uses, the charging schedule should be approved.

This report provides a commentary on the outcome of the Examination and seeks approval to present a report at the next Full Council meeting, with a recommendation to formally adopt the CIL Charging Schedule and the associated revised Planning Obligations SPD which was consulted on in May 2012.

### **Alternative Options Considered**

Cabinet may decline to recommend the referral of the Draft Charging Schedule and Planning Obligations SPD to Full Council for adoption. Cabinet may also not approve the amendments to the CIL Charging Schedule recommended by the Examiner.

The alternative options would result in the need for further work which would delay the adoption of the Charging Schedule and the Planning Obligations SPD. Failure to take account of the Examiner's recommendations could result in a legal challenge to the Charging Schedule.

### **Comments of Policy Overview Committee(s)**

None at this stage.

## Supporting information

### The Community Infrastructure Levy Charging Schedule

1. In February 2013, Cabinet recommended that the following CIL documents be submitted to the Secretary of State for Examination:

- **The Draft Charging Schedule:** This document sets out charging rates for new development in £/per square metre. The following charging rates were proposed in the Charging Schedule submitted for Examination:

**Table A: Schedule of CIL Charging Rates Submitted for Examination**

Use	Rate (£/sqm)
Large Format Retail 1,000 sqm (A1-A5)	215
Offices	35
Hotels	40
Residential Dwelling Houses	95
Industrial Uses (B8)	5
Sui Generis	35

- **The Council's Draft Strategic Infrastructure Plan:** containing the proposed infrastructure to support growth over the period of the Local Plan Part 1.
- **Economic Viability Study:** containing the viability evidence necessary to support the implementation of the CIL charges.

2. These documents were formally submitted for Examination on 28<sup>th</sup> March 2013. On 9<sup>th</sup> April 2013 the Planning Inspectorate confirmed the appointment of Kevin Ward as the Examiner of the Draft Charging Schedule. During the early stages of the Examination, Mr Ward identified that there was a need to include maps of the proposed charging zones for retail uses. These were formally submitted and subject to an additional consultation period of 6 weeks.

3. A one day hearing session associated with the Examination was chaired by the Examiner and took place on 1<sup>st</sup> October 2013. The following matters were the subject of discussion at the hearing session:

#### The Proposed Charge for Sui Generis uses

4. Consultants representing the Emergency Services attended the hearing session and argued that the proposed charge for Sui Generis uses would make emergency service development economically unviable. No evidence was provided to support this submission.

5. In response, officers noted that many forms of Sui Generis uses (including airport terminals and emergency service provision) do not generate a financial return in the same way as residential or commercial development. The following evidence of viability was presented to Examiner in support of the proposed charge:

- The proposed charge would represent 1-2% of the overall build costs for most forms of Sui Generis use. This is well within the margin for error of most development schemes and the proposed charge is therefore unlikely to affect financial viability.
- The cost of CIL would represent a minute fraction of the overall capital programme of the largest developer of Sui Generis development in the Borough, Heathrow Airport. This amounts to some £3.5 billion and the addition of CIL is unlikely to affect its delivery.
- A key test for CIL charges is that they should not affect the delivery of the Local Plan. Even if the imposition of the CIL were to threaten the viability of Sui Generis schemes in the Borough, such developments are not likely to form a significant part of the development programme across the area. As such, the delivery of the Local Plan would not be affected.
- Other CIL Examiners have accepted that there are many opportunities to recover the cost of CIL from other parts of the development process.

#### Charges for retail development

6. During the course of the Examination, the Examiner raised concerns that there was not sufficient viability evidence to justify charging differential rates for retail uses over 1,000 sqm in and out of centre. The Council argued that the £0 per square metre charge for retail development within town centres could be justified by the higher land assembly costs in central locations. Following the conclusion of the hearing session the Examiner wrote to the Council inviting the submission of further evidence to support this point.

#### **The Examiner's Report and Recommendations**

7. The Examiner's Report was received by the Council on 10<sup>th</sup> February 2014. This concluded that the Draft Charging Schedule was approved, subject to the following amendments:

- Table 3.1 in the Charging Schedule should be amended to clarify that the rate for large format retail only applies outside of designated town centres.
- Include maps in the Charging Schedule identifying the town centres.
- Amendment of the description of the rate for large format retail so that it only applies to A1 uses in Table 3.1 and paragraph 2.3.
- Deletion of the references to a Sui Generis rate from Table 3.1, paragraph 2.3, paragraph 5.6 and paragraph 5.7.

8. The CIL charging rates approved by the Examiner are therefore as follows:

**Table B: Schedule of CIL Rates Approved by the Examiner**

<b>Use</b>	<b>Rate (£/sqm)</b>
Large Format Retail (A1 uses outside of designated centres and over 1,000 sqm)	215
Offices	35
Hotels	40
Residential Dwelling Houses	95
Industrial Uses (B8)	5

9. Whilst officers are generally satisfied with the Examiner's amendments it is disappointing that he has not chosen to approve the proposed rate for Sui Generis uses. Following the receipt of Counsel's advice it has been decided not to challenge this conclusion through the judicial review process. However, officers are of the view that the modification of the charging schedule to include a charging rate for Sui Generis uses can be justified. Approval is therefore sought from Cabinet to commission further economic viability work to the value of £20,000 to support such a modification.

### **Instalments Policy**

10. The Draft Charging Schedule submitted for Examination stated that the Council will implement an instalments policy to assist in the payment of CIL charges. Cabinet is requested to recommend the approval of the following instalments policy, which has been prepared following research into existing policies being applied elsewhere:

**Table C: Proposed CIL Instalments Policy**

<b>Amount of CIL Liability</b>	<b>Number of instalments</b>	<b>Payment Periods and Amounts</b>
Any amount less than £250,000	No instalments	Total amount payable within 60 days of commencement of development.
Amounts more than £250,000 but less than or equal to £500,000	two instalments	£250,000 payable within 60 days of commencement of development. Balance payable within 120 days of commencement of development.
Amounts greater than £5,000,000	three instalments	£250,000 payable within 60 days of commencement of development. Balance payable in two further instalments of equal amount within 120 and 180 days of commencement of development.

## **Next Steps for the Charging Schedule**

11. Officers have updated the Charging Schedule to take account of the Examiner's amendments (see Appendix 1). The 2008 Planning Act requires that the Charging Schedule must be approved at a meeting of the authority and by a majority of votes of members present. Cabinet is therefore asked to recommend that the adoption of the Draft Charging Schedule is decided at the Full Council meeting on 10<sup>th</sup> July 2014.

## **Draft Planning Obligations SPD**

12. In May 2012 the Council consulted on a revised version of the Planning Obligations SPD, alongside the Preliminary Draft Charging Schedule. The outcome of the consultation process and the subsequent changes to the draft SPD were reported to Cabinet on 27<sup>th</sup> September 2012. In this report, officers noted that:

*'No further consultation is necessary for the Planning Obligations SPD. However because the processes relating to the introduction of CIL and the changes to the planning obligations procedures are so intrinsically linked, it is proposed hold the Planning Obligations SPD in abeyance until the receipt of the Inspector's Report on the draft CIL Charging Schedule. At that time, Cabinet approval will be sought to adopt both documents together. The adoption process for the SPD involves the preparation of an Adoption Statement, which must be publicised in the same way as the Draft Planning Obligations SPD outlined in Table A.'*

13. Officers have made some minor changes to the Planning Obligations SPD to reflect current legislation and the status of Hillingdon's Local Plan. Officers now seek approval from Cabinet to present the revised Planning Obligations SPD (see Appendix 2) to Full Council for adoption alongside the CIL Charging Schedule in July. Should adoption of the SPD be recommended, officers will prepare an adoption statement containing:

- The date on which the SPD was adopted,
- Details of the modifications made as a result of the consultation process,
- Confirmation that a person may apply for a judicial review of the Council's decision to adopt the SPD
- That such an application should take place within 3 months of the adoption process.

14. The Adoption Statement will be made available for inspection with the SPD at the Civic Centre and local libraries. It will also be published on the Council website for a period of not less than 3 months.

## **Withdrawal of the current S106 SPD**

15. Following the introduction of the revised Planning Obligations SPD and CIL Charging Schedule, it will be necessary to formally withdraw the current Planning Obligations SPD adopted in July 2008. A statement confirming the withdrawal of the SPD will be publicised at the same time and in the same way as the Adoption Statement relating to the revised SPD.

## **Conclusion**

16. Following the receipt of the Examiner's report officer's are now keen to proceed with the adoption of Hillingdon's Draft Community Infrastructure Levy. Cabinet is requested to:

- Approve the modifications to the Draft Charging Schedule as proposed by the Examiners Report.
- Recommend that the CIL Charging Schedule and Replacement Planning Obligations SPD are put before Full Council in July for adoption.
- Approve the commissioning of additional work to support the modification of the Charging Schedule to include a charging rate for Sui Generis uses.
- Approve the CIL instalments policy contained in paragraph 12 of this report.
- Approve the withdrawal of the current Planning Obligations SPD at the time of the adoption of the CIL Charging Schedule and replacement Planning Obligations SPD.

### Financial Implications

The CIL is a cash payment, payable on commencement of the development. This differs from S106 which can be a payment in kind through the provision of infrastructure as well as a cash payment. The CIL scheme also allows for 5% retention of the levy for the resource of administration costs of collection.

The additional CIL receipts over and above the level of receipts from the S106 contributions will provide a beneficial financing resource for the Council's capital programme, combined with the greater flexibility of its application to a wider range of infrastructure schemes across the whole of the Borough.

The Examiner's report, recommending the removal of Sui Generis as a category for charge, this would be disadvantageous for the Council and would reduce the amount of CIL that could be collected otherwise.

The recommendation to look at further viability work would be likely to support a justification to further modify the CIL currently approved by the Examiner. However this could not be reinstated in the time frame of the summer adoption and would have to be further reviewed by the Examiner. The process to establish the Sui Generis charging band could take up to a further year and the financial impact of this is not certain as any CIL effectively not levied in that immediate period is not known, but the assessment of the potential CIL over the next 5 years suggested that up to 20% receipts may come from this charging band and therefore an average year could be as much as £1 million. The £20,000 for further economic viability work will be funded from the planning budget.

## **EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES**

### **Consultation Carried Out or Required**

As part of the preparation of this paper, internal discussions have been held with the Council's Housing Supply Team, Corporate Finance and Corporate Policy.

## **CORPORATE IMPLICATIONS**

### **Corporate Finance**

Corporate Finance has reviewed this report and the financial implications set out above, noting that the Council is now in a position to adopt a CIL Charging Schedule for non-Sui Generis development in the Borough at its meeting in July 2014. Introduction of the scheme after this date will enable the Council to secure funding for infrastructure projects detailed in the Council's Capital Programme.

In order to enable Sui Generis developments to be brought into CIL at the earliest possible time, this report recommends further economic viability studies to be funded from existing planning budgets. In order to ensure that sufficient developer contributions to meet infrastructure requirements of major Sui Generis schemes granted planning permission prior to this change to the CIL charging schedule, it would be prudent to retain existing Section 106 Contributions.

The instalments policy noted in this report will result in a staging of payments on major developments, which will broadly reflect current practice on collection of Section 106 Contributions. There are therefore no material financial implications from the Council arising this policy.

### **Legal Comments**

The Planning Act 2008 ("PA 2008") introduced a discretionary planning charge known as the Community Infrastructure Levy ("CIL"). On the 6 April 2010 the CIL Regulations 2010 (as amended) ("CIL Regulations 2010") came into force. CIL is a charge on new buildings above a certain size that enables the Council to fund infrastructure identified in the development plan. CIL is based on a formula that relates the size and character of the development to the amount charged.

The Council is bound to prepare a CIL charging schedule that sets out the CIL rates in the Borough and will form part of the local development framework. Following the Examination in Public, the Inspector found that modifications are required. Cabinet has the option to adopt the CIL Charging Schedule without the Inspector's required modifications, however this is not advisable as it will expose the charging schedule to the risk of legal challenge.

On adoption of the CIL charging schedule the Council is restricted in the use of section 106 planning obligations. A planning obligation cannot be sought for infrastructure intended to be funded by CIL and no more than five obligations can be pooled by the Council to provide for the same item of infrastructure.

Should Full Council be minded to adopt the CIL charging schedule the Council must as soon as practicable publish the CIL charging schedule along with a report setting out how the CIL charging schedule has been amended to implement the Inspector's required modifications and make those documents available for inspection by the public. The Council shall also give notice by local advertisement of the approval of the CIL charging schedule and confirm where those documents can be found. The Council must



also give notice to those persons who specifically requested such notification and send a copy of the CIL charging schedule to the relevant consenting authorities.

A person may challenge the validity of the CIL charging schedule within three months of Full Council's adoption of the CIL charging schedule.

Cabinet are responsible for proposing and developing policies which would include supplementary planning documents. The new Planning Obligations Supplementary Planning Document ("SPD") will be used as a guide to any planning obligations that the Council will seek in order to mitigate against the effects of the development on local infrastructure.

Should Full Council be minded to adopt the new Planning Obligations SPD the Council must as soon as practicable make the Planning Obligations SPD and adoption statement available in accordance with Regulation 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012/767 ("Local Planning Regulations") and send a copy of the adoption statement to any person who has requested to be notified of the adoption of the new Planning Obligations SPD. The adoption statement must state the date the Planning Obligations SPD was adopted, whether any modifications were made to take account of representations, that a person may apply to the High Court for permission to undertake judicial review proceedings and that any such application must be made promptly and in any event no later than three months after the date on which the Planning Obligations SPD was adopted.

In order to withdraw the Council's current Planning Obligations SPD the Council must as soon as reasonably practicable make available a statement confirming the withdrawal, send all those who made representations notification that the current Planning Obligations SPD has been withdrawn and cease to make any documents relating to the withdrawn Planning Obligations SPD available in accordance with the Regulation 35 of the Local Planning Regulations (other than the withdrawal statement).

If specific advice is required Legal Services should be instructed.

### **Corporate Property and Construction**

Corporate Property and Construction supports the recommendations set out in the report. However, it is noted that the introduction of the proposed CIL Charging Schedule and the Replacement Planning Obligations will impact on viability considerations for the Council's property development and asset disposals projects.

### **BACKGROUND PAPERS**

NIL